



9-15-2019

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Recommended Citation

W. E. Afield, *Social Justice and the Low-Income Taxpayer*, 64 Vill. L. Rev. 347 (2019).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol64/iss3/5>

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Articles

SOCIAL JUSTICE AND THE LOW-INCOME TAXPAYER

W. EDWARD AFIELD*

I. INTRODUCTION

TAX justice is social justice. To those regularly working to resolve tax controversies for low-income taxpayers and who are often dealing with the financial implications of life and death issues like human trafficking, the ability to afford medical care, and the risks of financial despair leading to suicide,¹ this is an uncontroversial statement. To those for whom “tax attorney” is often the punchline to their favorite lawyer joke, however, this statement appears not to fit in with traditional conceptions of social justice. This is particularly true when social justice is defined as requiring not just improved access to representation in any type of legal matter but also as requiring specific societal outcomes that reduce poverty, improve housing access, combat racial discrimination, reduce hunger, and improve healthcare access.² At first blush to those outside the tax bar who do not appreciate that most of these issues are inextricably linked to the tax system, tax justice does not appear to do any of these things. Accordingly, tax issues are often overlooked in the conversation about improving social justice.

Tax justice, however, is in fact a social justice issue. The most illustrative example of the social justice gains that can occur when tax justice is

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1. INTERNAL REVENUE SERV., OFFICE OF THE TAXPAYER ADVOCATE, IRS PUBLICATION NO. 5066, *LOW INCOME TAXPAYER CLINIC PROGRAM REPORT: ASSISTING TAXPAYERS FACE-TO-FACE WITH AN INCREASINGLY AUTOMATED TAX SYSTEM* 13, 14, 17 (Dec. 2015) [hereinafter PUBL’N No. 5066 (Dec. 2015)].

2. AM. BAR ASS’N, COMM’N ON THE FUTURE OF LEGAL SERVS., *REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES* 12 (2016), <http://abafuturesreport.com/#download-full-report> [<https://perma.cc/F6B4-QL4A>] (describing basic human needs as shelter, sustenance, safety, health, child custody, immigration, education, employment, relationship dissolution, housing, and bankruptcy/consumer debt).

prioritized as an area of need can be found in the work of low-income taxpayer clinics (LITCs). LITCs engage in a combination of representation, education, and advocacy work that is essential in protecting taxpayer rights, securing economic benefits for the poor, and helping the vulnerable avoid having a tax liability impact their ability to obtain housing, healthcare, and/or employment.

Appreciating the social justice components of tax justice is not solely an academic issue of definitional precision—failing to understand the connection between tax work and social justice has negative societal consequences as well. The limited resources available to provide legal assistance to low-income individuals are often allocated towards solutions perceived to be improving social justice as well as access to justice, and tax issues are consequently often not prioritized because of a perceived lack of connection to this mission.³ This is particularly true in the academic clinical community, which, given the resource advantages that many academic institutions have over legal service organizations, is a critical component of both improving access to justice and advancing social justice.⁴

The history of LITC expansion throughout the country illustrates the difficulties that can arise in attempting to have sufficient resources allocated towards tax assistance when decisionmakers do not view tax justice as a social justice issue.⁵ While these clinics have their historical roots in the academic community,⁶ currently the vast majority of LITCs exist in

3. Anna C. Tavis, *Tax and Social Justice: Perspectives of a Brunswick Public Service Fellow*, 68 TAX L. 455, 457-58 (2015) (noting that there is a dearth of public interest attorneys focusing on tax issues given the fact that many public interest attorneys do not appreciate the role that tax representation plays in combating poverty); Leslie Book, *Academic Clinics: Benefitting Students, Taxpayers, and the Tax System*, 68 TAX L. 449 (2015) [hereinafter Book, *Academic Clinics*] (providing an example of a tax practitioner who did not immediately see the connection between tax work and anti-poverty social justice work until he was exposed to it directly).

4. Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 331, 342 (2012); Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. J.L. & SOC. JUST. 345, 353-54 (2012); Book, *Academic Clinics*, *supra* note 3, at 449; Tavis, *supra* note 3, at 457-58.

5. INTERNAL REVENUE SERV., OFFICE OF THE TAXPAYER ADVOCATE, PUBLICATION NO. 3319, 2019 GRANT APPLICATION PACKAGE AND GUIDELINES (May 2018) [hereinafter PUBL'N NO. 3319 (May 2018)].

6. Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 TAX L. 3, 5-37 (2013) [hereinafter Fogg, *Taxation with Representation*] (providing a detailed history of the expansion of low-income taxpayer clinics). Technically, the first LITC was created at Harvard Law School in 1968, but it only survived eighteen months before it was discontinued because of a perception that it did not benefit the law school or the IRS. Keith Fogg, *A Brief History of Low-income Taxpayer Clinics*, at 5 n.8 (Villanova Law Sch. Pub. Law & Legal Theory Working Paper Series, Working Paper No. 2013-3005, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142144 [<https://perma.cc/JQ44-L9UZ>] [hereinafter Fogg, *A Brief History of Low-Income Taxpayer Clinics*]. Thankfully, in 2015 Harvard had a change of heart regarding the benefits of LITCs, and Professor Fogg re-established the LITC there. See *About Keith Fogg*, PROCEDURALLY TAXING, <http://procedurallytaxing.com/about-keith-fogg/> [<https://perma.cc/T96C-NF5F>] (last visited June 15, 2019).

legal service organizations that are often strapped for both resources and expertise (and thus are more responsive to the financial incentives created by the availability of federal LITC grant funds) when compared to their academic counterparts.⁷ The growth of legal service organization LITCs is commendable and essential, but it masks a problem of continued untapped potential in the academic clinical LITC community that, if realized, would produce dividends by leveraging unique advantages of academic LITCs. Given the importance of social justice to the mission of academic clinics, it is likely that at least one explanatory factor for the academic LITC market not being fully saturated is that the perceived lack of a social justice mission causes LITCs to be undervalued.⁸ Thus, appreciating tax justice as a social justice issue has practical implications for future LITC growth and for the benefits that such growth provides, particularly in the academic community.

This paper will demonstrate that tax justice is in fact a social justice issue by examining how LITCs routinely advance social justice missions. Part I will describe what LITCs do in their three core categories of representation, education, and advocacy. Part II reviews the predominant competing definitions of social justice and illustrates the role that LITCs play in advancing a social justice mission under each of these definitions. Part III examines the question of whether LITCs could advance social justice even further if the IRS changed the requirements of the federal grant funding program for LITCs, and accordingly briefly shifts its intended audience from those outside the LITC community to those within it. Finally, Part IV considers the practical benefits of LITCs being viewed as having a distinct social justice mission in the form of encouraging further LITC growth, particularly in the form of prioritizing growth in the academic clinic community, which is often best positioned both in terms of resources and expertise to realize the most significant social justice gains for taxpayers.

II. THE THREE PILLARS OF LITCS: REPRESENTATION, EDUCATION, AND ADVOCACY

In order to illustrate the connection between LITCs and social justice, a natural first step is to sketch briefly the activities that occupy the bulk of an LITC's efforts. These activities are broadly divided into the three categories of representation, education, and advocacy. In order to be eligible for federal grant funds, LITCs are obligated to pursue each of these three goals to varying degrees.⁹

7. Fogg, *Taxation with Representation*, *supra* note 6, at 26, 37-47 (describing this growth and noting: "By 2012, a near majority of LITCs existed in LSC-funded programs and a majority of LSC field offices had an LITC. Since the passage of section 7526, approximately 20 academic tax clinics opened as compared to over 60 LSC-funded programs.").

8. See Kosuri, *supra* note 4.

9. PUBL'N NO. 3319 (May 2018), *supra* note 5, at 1-2.

A. Representation

LITCs' first, and typically most time-consuming activities involve individual representation, which prevent inevitable failures in the just administration of the tax laws that occur when low-income taxpayers are routinely unrepresented.¹⁰ Each year, LITCs represent thousands of taxpayers with federal tax controversies and help secure millions in cash refunds.¹¹ Who are these taxpayers? She is the taxpayer who escapes the control of a human trafficker and starts a new life as a hairdresser only to find out that the trafficker has left her with a crippling tax bill from when he controlled her finances.¹² He is the taxpayer who badly needs dentures that he knows he cannot afford because of a tax bill caused by bad (or no) advice.¹³ He is also the veteran with post-traumatic stress disorder who is contemplating suicide because of tax liens that appear to be overwhelming.¹⁴ These are the types of taxpayers that LITCs routinely help.¹⁵

Representation can occur at various stages of the controversy and may involve assisting in the audit/examination stage, the litigation stage in the

10. Fogg, *Taxation with Representation*, *supra* note 6, at 60. In addition to the benefits that naturally flow to a party when they obtain representation in an adversarial system, this representation can have systemic benefits as well in that it can help restore trust in the tax system, can help educate taxpayers about future compliance obligations that will be beneficial to the taxpayer and to the system as a whole even if the taxpayer does not prevail in a particular controversy, and can provide an opportunity for the advocate to educate the IRS about issues that the IRS might not have fully appreciated previously. *Id.* Furthermore, this work can be critical in achieving an increasing sense in low-income taxpayers that the tax system is being administered fairly, which ideally helps instill a compliance norm that can be critical in improving compliance going forward. Fogg, *A Brief History of Low-Income Taxpayer Clinics*, *supra* note 6 (describing the benefits to the tax system as a whole); W. Edward Afield, *Dining with Tax Collectors: Reducing the Tax Gap Through Church-Government Partnerships*, 7 RUTGERS BUS. L.J. 53, 91-99 (2010) (describing the importance of actions that shift taxpayer norms towards compliance).

11. INTERNAL REVENUE SERV., OFFICE OF THE TAXPAYER ADVOCATE, PUBLICATION NO. 5066, LOW INCOME TAXPAYER CLINIC PROGRAM REPORT: ASSISTING TAXPAYERS FACE-TO-FACE WITH AN INCREASINGLY AUTOMATED TAX SYSTEM 3 (Feb. 2018) [hereinafter PUBL'N NO. 5066 (Feb. 2018)] (noting that "[t]he combined efforts of clinic staff and volunteers brought over 4,200 taxpayers facing an IRS collection action back into compliance. In each case, a licensed tax professional represented each of them for free or for a nominal fee."). Apart from how many taxpayers successfully get brought back into compliance, the numbers of taxpayers that LITCs assist in a tax controversy are even higher—in 2016 alone, LITCs assisted 19,479 taxpayers with a tax controversy and secured \$4.3 million in cash refunds. *Id.* at 5.

12. PUBL'N NO. 5066 (Dec. 2015), *supra* note 1, at 13.

13. *Id.* at 17.

14. *Id.* at 14.

15. All of the examples just described are real stories of LITC clients from around the country and all represent success stories of help that an LITC provided: the victim of human trafficking was able to rebuild her credit and start a new business; the taxpayer needing dentures was able to afford them because his liability was reduced; and the veteran was able to resolve his tax liens and directly credited the LITC with saving his life. *Id.* at 13-17.

U.S. Tax Court, or in the collections stage for taxpayers who may be struggling to be able to afford to pay their tax liabilities.¹⁶ Representation can involve establishing that taxpayers are either entitled to a refund¹⁷ or do not owe some or all of a particular tax liability.¹⁸ Representation could also involve simply negotiating a resolution to an existing liability that brings taxpayers back into compliance without having the tax liability leave them destitute.¹⁹

Because of the high number of taxpayers who attempt to resolve their disputes in the U.S. Tax Court (the only judicial forum that allows taxpayers to resolve a tax controversy without paying the liability first, and thus, practically speaking, often the only judicial forum available to low-income taxpayers),²⁰ LITCs work closely with the U.S. Tax Court to attempt to provide representation to as many of these individuals as possible.²¹ This work involves LITCs being present at Tax Court calendar calls to provide

16. The income eligibility guidelines for representation are that, for any LITC, at least 90% of its clients cannot have incomes that exceed 250 percent of the federal poverty level. PUBL'N NO. 3319 (May 2018), *supra* note 5, at 45.

17. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 5 ("Refund cases represented eight percent of the overall caseload worked in 2016, and LITCs succeeded in securing over \$4.3 million dollars in cash refunds for low income taxpayers.").

18. Liability challenges can occur in a variety of settings, from the audit and examination stage, to contesting a liability in Tax Court, and can even occur in the collection phase through an audit reconsideration or an offer-in-compromise based on doubt as to liability. See generally W. Edward Afield et al., *Chapter 10: Handling Tax Collection Matters—Procedures and Strategies*, in EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS 10-1 to -104 (Keith Fogg ed., 7th ed. 2018).

19. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 5. Resolving these tax liabilities is not only critical because of the actual amount of the liability but also because certain IRS collection techniques, such as filing a notice of federal tax lien, can make it difficult for taxpayers to obtain employment and sell assets. Mark Howard & Matthew Hutchens, *Chapter 11: Obtaining Relief From Federal Tax Lien*, in 1 EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS 11-15 (Keith Fogg ed., 7th ed. 2018) (noting that the notice of federal tax lien makes a taxpayer's problems public, which can impact credit, result in termination from certain types of employment, and thus, paradoxically, makes it more difficult for the taxpayer to satisfy the liability). Note, however, that the credit impacts may have been lessened recently by credit agencies' decision to no longer list tax liens on credit reports. AnnaMaria Andriotis, *Missed a Tax Payment? That May No Longer Count Against Your Credit Score*, WALL ST. J., Mar. 22, 2018, <https://www.wsj.com/articles/missed-a-tax-payment-that-may-no-longer-count-against-your-credit-score-1521716406> [<https://perma.cc/X862-L83M>]; Keith Fogg, *Credit Scores and the Federal Tax Lien*, PROCEDURALLY TAXING (Aug. 12, 2016), <http://procedurallytaxing.com/credit-scores-and-the-federal-tax-lien/> [<https://perma.cc/U78C-T4QR>] [hereinafter Fogg, *Credit Scores and the Federal Tax Lien*] (speculating, however, that one possible effect of the removal of the NFTL from credit reports might be to create an incentive for the IRS to start filing NFTLs at lower liability dollar amounts).

20. Compare I.R.C. § 6213 (2018) (ability to petition Tax Court), with I.R.C. § 7422 (2018) (ability to file refund suit).

21. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 8 (noting that this need for representation is significant given that a 2015 study indicated that more than 70% of Tax Court petitions are pro se); Scott A. Schumacher, *Getting to Yes, Sooner*, PROCEDURALLY TAXING (Sept. 17, 2015), <http://procedurallytaxing.com/getting-to-yes-sooner> [<https://perma.cc/L54J-JMNS>].

free consultations to low-income taxpayers who arrive without representation.²² LITCs also make significant efforts to reach these taxpayers earlier, through sending flyers to taxpayers informing them of the availability of clinics well in advance of when their cases are set to appear on a Tax Court calendar.²³

This representation work can be particularly critical in not only resolving tax disputes but in ensuring that eligible taxpayers are able to claim social benefits that are administered through the tax code, such as the earned income tax credit (EITC), which continues to be one of the most effective anti-poverty programs in the United States, and the Affordable Care Act's Premium Tax Credit.²⁴ Access to the EITC can quite simply mean the difference between living in or out of poverty for some taxpayers.²⁵ Despite the fact that administering an anti-poverty program through the tax code should theoretically be more efficient than administering it through another social welfare agency,²⁶ access to the EITC nev-

22. The U.S. Tax Court's description of this program is available at the following link: <https://www.ustaxcourt.gov/clinics.htm> [<https://perma.cc/V9BD-5TKW>].

23. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 9-10 (noting that currently 124 of the nation's LITCs participate in the Tax Court's clinic program designed to increase awareness of LITC availability); The Honorable Peter J. Panuthos, *The United States Tax Court and Calendar Call Programs*, 68 TAX L. 439 (2015). Some clinics have taken this approach a step further and have developed a collaboration with the IRS Chief Counsel Field Office in their cities to host "pro bono days" in which unrepresented taxpayers are invited to a location where both IRS and clinic attorneys will be present in an effort to provide representation that can help the taxpayers determine if a resolution is possible prior to their court date. Nathan J. Richman, *Atlanta Settlement Conference Days Help a Quarter of Petitioners*, TAX NOTES TODAY (Feb. 23, 2018), <https://www.taxnotes.com/tax-notes/litigation-and-appeals/atlanta-settlement-conference-days-help-quarter-petitioners/2018/02/26/26xgn> [<https://perma.cc/PG44-ANJ7>]; Schumacher, *supra* note 21.

24. Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103 (2006) [hereinafter Book, *Preventing the Hybrid from Backfiring*]; Michelle Lyon Drumbl, *Beyond Polemics: Poverty, Taxes, and Noncompliance*, 14 E JOURNAL TAX RES. 253 (2016) [hereinafter Drumbl, *Beyond Polemics*]; Michelle Lyon Drumbl, *Those Who Know, Those Who Don't, and Those Who Know Better: Balancing Complexity, Sophistication, and Accuracy on Tax Returns*, 11 PITT. TAX REV. 113 (2013) [hereinafter Drumbl, *Those Who Know*]; Francine Lipman, *Access to Tax (In)Justice*, 40 PEPP. L. REV. 1173 (2013); Mary Leto Pareja, *Beyond the Affordable Care Act's Premium Tax Credit: Ensuring Access to Safety Net Programs*, 38 HAMLINE L. REV. 241 (2015); Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791 (2014); Dennis J. Ventry, *Welfare By Any Other Name: Tax Transfers and the EITC*, 56 AM. U. L. REV. 1261 (2007).

25. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 5 ("Refundable credits such as the EITC and CTC [child tax credit] provide a significant portion of the annual budget for many low income families.").

26. Ventry, *supra* note 24, at 1264 (noting that administration through the tax code should be more efficient in that it simply requires the filing of a form rather than the interaction with a social welfare agency). Some of these efficiency benefits are muted by the fact that many taxpayers who are EITC eligible would likely not have an income tax filing requirement at all and would have fewer compliance costs were they not attempting to claim the benefit. Lipman, *supra* note 24, at 1187-89.

ertheless often times hinges on taxpayers having access to effective representation.²⁷ This is because the EITC is subject to a high audit rate, even in a climate of low overall governmental tax enforcement.²⁸ Because the IRS conducts the bulk of EITC examinations through correspondence exams, in which taxpayers can have difficulty understanding the nature of the IRS's request for additional information, legitimate beneficiaries of

27. Book, *Academic Clinics*, *supra* note 3, at 450. LITCs are often the only vehicle that low-income have to obtain this representation given that many other legal service providers are not as well equipped to navigate the nuances of establishing eligibility. Leslie Book, *A New Paradigm for IRS Guidance: Ensuring Input and Enhancing Participation*, 12 FLA. TAX REV. 517, 579 (2012) [hereinafter Book, *A New Paradigm for IRS Guidance*] (“In essence, clinics are a proxy for legal representation before the IRS, playing a role necessitated in part by the explosion of the use of the tax system as a means for delivering benefits in the aftermath of welfare reform, ensuring IRS focus on compliance among taxpayers claiming those benefits, and the traditional absence of tax work from general legal service organizations.”). This access to representation is particularly critical given that the IRS has insufficient resources to provide face-to-face service to all taxpayers, and low-income taxpayers may be particularly vulnerable to having difficulties interacting with an automated tax collection system. PUBL’N NO. 5066 (Feb. 2018), *supra* note 11, at 6. Indeed, the IRS’s procedures for administering the EITC do not appear to reflect the reality that improper denial or delay of the EITC can have serious financial consequences for vulnerable populations. Megan Newman, *The Low-Income Tax Gap: The Hybrid Nature of the Earned Income Tax Credit Leads to its Exclusion from Due Process Protection*, 64 TAX L. 719, 720 (2011).

28. Leslie Book, *The Poor and Tax Compliance: One Size Does Not Fit All*, 51 U. KAN. L. REV. 1145, 1156-65 (2003) (noting that this high audit rate results from the combination of the EITC being an area of systemic noncompliance, low-income taxpayers having insufficient resources to mount challenges, stronger public hostility to cheating to obtain a benefit compared with other forms of tax noncompliance, and changes in the types of compliance tools that the IRS uses); Kate Leifeld, *Creating Access to Tax Benefits: How Pro Bono Tax Professionals Can Help Low-Income Taxpayers Claim the Earned Income Tax Credit*, 62 ME. L. REV. 543, 555-57 (2010) (noting that “[i]n a population where mobility is high and literacy is low, one would not expect a correspondence exam to be very productive” because of difficulties that the taxpayers would have in receiving notice and being able to have the necessary time and knowledge to substantiate their claim for the EITC). In addition, the IRS generally considers EITC returns to be “the proverbial low-hanging fruit,” towards which it can direct its limited enforcement resources because “low-income returns tend to be simple, with fewer items of income and few, if any, deductions; EITC claimants rarely respond to correspondence [sic] examination correspondence; nearly the entire process is automated and has limited Service personnel involvement; [and] EITC claimants are unlikely to be able to afford or even secure free representation.” Karie Davis-Nozemack, *Unequal Burdens in EITC Compliance*, 31 L. & INEQ. 37, 57 (2012) (footnotes omitted). Attempting to obtain political support for making sure that this high audit rate does not unjustly deprive too many eligible beneficiaries from obtaining the EITC is difficult because the EITC suffers from the taint of being considered a welfare program with high levels of fraud, making political support difficult. Book, *Preventing the Hybrid from Backfiring*, *supra* note 24 (arguing that the high error rates in EITC administration may weaken support for the EITC); Dorothy Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790 (2007); Davis-Nozemack, *supra* note 28, at 40; *see also* Drumbl, *Beyond Polemics*, *supra* note 24 (arguing for more up-front information reporting for the EITC, which could reduce both intentional and unintentional errors and perhaps lessen the need for as high of an audit rate).

the EITC run a significant risk of the credit being improperly denied if they do not have representation to help them navigate the process.²⁹ Compounding this risk are the potentially draconian penalties that will prevent eligible taxpayers from claiming the EITC for two years if the IRS believes that they claimed the EITC recklessly or for ten years if the Service believes the EITC was claimed fraudulently.³⁰

A summation from the Office of the Taxpayer Advocate of an actual case that an LITC resolved illustrates how potentially damaging EITC issues can be for taxpayers unless they are able to obtain representation:

For example, during 2016, an LITC represented a single father and helped him to obtain years of tax credits the IRS had improperly denied him. The taxpayer's former wife was deceased, and no one else had claimed any credits for his son, yet the IRS audited his claims for a dependency credit, Child Tax Credit (CTC), and Earned Income Tax Credit (EITC). The taxpayer was not fluent in English, and had difficulty explaining his circumstances to the IRS. During the examination, the taxpayer moved over 1,000 miles away. He asked the IRS to transfer his case to a closer office. The IRS refused. A relative drove the taxpayer more than 1,000 miles back to speak with the examiner. The relative was more skilled in English and was hoping to help the taxpayer explain the situation to the examiner. Because the taxpayer did not have an appointment, the examiner refused to speak with the taxpayer. The IRS denied the credits, assessed a liability of over \$17,000, and placed a ban on the taxpayer's account that prohibited him from claiming the EITC for an additional two years, finding that the taxpayer had acted with reckless disregard in making his EITC claim. The LITC requested the IRS conduct an audit reconsideration of the taxpayer's case. Af-

29. Davis-Nozemack, *supra* note 28, at 62; Stephen D. Holt, *Keeping it in Context: Earned Income Tax Credit Compliance and Treatment of the Working Poor*, 6 CONN. PUB. INT. L.J. 183, 190-91 (2007); Lipman, *supra* note 24, at 1190-96. While the IRS does support some free resources designed to help low-income taxpayers properly claim the EITC when they are eligible for it, such as the Voluntary Income Tax Assistance (VITA) program, these resources are underutilized by the population that would most benefit from them. Davis-Nozemack, *supra* note 28, at 56 (noting that "fewer than two percent of EITC returns are prepared by VITA sites").

30. Davis-Nozemack, *supra* note 28, at 49 (noting also that these penalties are much more severe than the noncompliance penalties associated with other social welfare programs). In addition, even the normal IRS penalties can be problematic for these taxpayers, because they are often good candidates for raising defenses to these penalties, such as a reasonable cause defense that might result in penalty abatement, but are not aware of this possibility without representation. Drumbl, *Those Who Know*, *supra* note 24 (arguing for a less punitive accuracy related penalty regime that better differentiates between inadvertent and intentional error so that only intentional noncompliance is penalized while taxpayers committing inadvertent errors are not put in a position where they receive a penalty to which they then have to assert a defense).

ter 18 months without an IRS response to the request, the LITC requested TAS assistance. TAS assisted the LITC in resolving one year. Because the IRS had by now disallowed dependency exemptions and credits for two subsequent years, the LITC filed a petition with the U.S. Tax Court. Ultimately, the LITC persuaded the IRS to reverse its position, eliminate the liability, refund approximately \$13,000 to the taxpayer, and remove the EITC ban. This taxpayer's perseverance along with the LITC's dedication to obtaining justice ultimately secured the right to pay no more than the correct amount of tax for this taxpayer. *See* IRC § 7803(a)(3)(C).³¹

LITCs' representation function also plays a critical role in mitigating the harm that unscrupulous return preparers cause to taxpayers, although admittedly LITCs are generally only able to remedy the harm after it has occurred on account of the fact that LITCs do not provide current year return preparer services for taxpayers.³² This harm most commonly takes the form of either a return preparer charging a fee to generate an artificially inflated refund for a taxpayer by claiming deductions or credits to which the preparer knows the taxpayer is not entitled, or it takes the form of outright refund theft in which a preparer will cause a refund to be routed into a bank account that the preparer controls, preventing the taxpayer from ever receiving the refunded amount.³³ If the refund was generated through an inaccurate return, by the time the IRS assesses the taxpayer for the deficiency, the taxpayer has commonly already spent the refund (or never received it in the first place in the case of theft), which makes paying the deficiency very difficult for a low-income taxpayer without much savings.³⁴ In particular, "[l]ow-income taxpayers with children are especially vulnerable because their return may include a sizable refund claim based on refundable credits."³⁵

31. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 3 (noting that "LITCs provided more than 2,500 free educational activities for more than 70,000 attendees during the 2016 grant year").

32. PUBL'N. NO. 3319 (May 2018), *supra* note 5, at 57, Example 2.

33. *See* Michelle Lyon Drumbl, *When Helpers Hurt: Protecting Taxpayers from Preparers*, 22 TAX NOTES 1365 (Dec. 22, 2014) [hereinafter Drumbl, *When Helpers Hurt*]; NAT'L TAXPAYER ADVOCATE, NATIONAL TAXPAYER ADVOCATE 2012 ANNUAL REPORT TO CONGRESS 68-69 (2012) [hereinafter NAT'L TAXPAYER ADVOCATE REPORT (2012)] (going into detail about the most common types of return preparer fraud).

34. NAT'L TAXPAYER ADVOCATE REPORT (2012), *supra* note 33, at 68 (noting that "[o]ften, the refunds are directed to an account in the preparer's control, leaving the taxpayer with no monetary benefit from the fraudulent filing but having to deal with the IRS in the aftermath").

35. Drumbl, *When Helpers Hurt*, *supra* note 33, at 1366.

B. Education

While individual representation is the most direct way in which LITCs help low-income taxpayers navigate the tax system, LITCs also practice “preventative medicine” in the form of education and outreach.³⁶ These educational programs will typically focus on tax issues that cause compliance problems for low-income taxpayers such as issues relating to the Affordable Care Act, the requirements for obtaining critical anti-poverty refundable credits such as the EITC, and information about steps that taxpayers can take to resolve a tax dispute.³⁷ In addition to focusing on issues pertinent to low-income taxpayers,³⁸ LITCs also, when they can, attempt to provide educational resources to communities of taxpayers who speak English as a second language.³⁹ These efforts provide a critical supplement to the IRS’s own efforts to educate the public because LITCs can reach out to taxpayers to answer questions in-person, thus providing a service that the IRS cannot provide to everyone, given its budgetary limitations.⁴⁰

C. Advocacy

The final component to LITCs’ work is systemic advocacy efforts undertaken in order to improve the tax system’s fairness, particularly in regards to low-income taxpayers.⁴¹ LITCs utilize a variety of mechanisms to engage in this work, including providing congressional testimony, litigating cases that might draw legislative attention to a particular issue negatively impacting low-income taxpayers, providing commentary on IRS rules and Treasury regulations, authoring amicus briefs in tax controversies that might impact low-income taxpayers,⁴² and raising systemic issues directly

36. PUBL’N NO. 5066 (Feb. 2018), *supra* note 11, at 11.

37. *Id.* (providing the following comprehensive list of issues typically explored in educational and outreach activities: “filing requirements, tax recordkeeping, family status issues, refundable credits, the Affordable Care Act, worker classification, identity theft, information about the audit and appeals process, and collection alternatives”).

38. *Id.* (these issues include “filing requirements, tax recordkeeping, family status issues, refundable credits, the Affordable Care Act, worker classification, identity theft, information about the audit and appeals process, and collection alternatives”).

39. *Id.*

40. *Id.*

41. *Id.* at 12.

42. The Philip C. Cook Low-Income Taxpayer Clinic and the Harvard Low-Income Taxpayer Clinic have recently illustrated how different clinics can come together to leverage their resources in writing amicus briefs on issues that could negatively impact low-income taxpayers. Not only does such work have the potential to influence a particular court, but it also has the potential to draw larger media attention to an issue that might inspire legislative change. See David Hansen, *Tax Court Ruling “Absurd,” Professors Tell 2nd Cir.*, LAW360 (Mar. 19, 2018), <https://www.law360.com/articles/1023535> [<https://perma.cc/M768-LFJG>]; Jimmy Hoover, *Feds Defend Full Payment Rule for IRS Penalties in 2nd Cir.*, LAW360 (Aug. 23, 2017), <https://www.law360.com/articles/956735> [<https://perma.cc/>

to the attention of the Taxpayer Advocate Service.⁴³ These systemic efforts are often reflected in the work of the National Taxpayer Advocate and the Taxpayer Advocate Service through reports both on the LITC program specifically and annual reports that the National Taxpayer Advocate issues to Congress in order to highlight systemic problems with the tax system.⁴⁴ The impact of these efforts can be significant, as evidenced by the IRS's concession of its position that innocent spouse equitable relief under I.R.C. section 6015(f) had only a two year limitations period in favor of the position that the limitations period extended throughout the ten year collection statute of limitations period under I.R.C. section 6502. This concession resulted directly from the coordinated litigation efforts of LITCs around the country, in what was "perhaps the greatest coordinated litigation effort of the LITC movement."⁴⁵

That, in a nutshell, is what LITCs do. That such work is important in providing needed assistance to taxpayers speaks for itself, but does it advance social justice? Or, rather, is it important work that should simply be left to the tax priesthood while advocates concerned about social justice focus their efforts and resources elsewhere? Answering that question first requires knowing what social justice actually is.

III. SOCIAL JUSTICE: WHAT IS IT AND DO LITCS DO IT?

While many in the LITC community view the connection between LITCs and social justice to be obvious,⁴⁶ this connection is not as apparent to those outside this community, many of whom do not inherently see a direct connection between low-income taxpayer clinic work and social justice work.⁴⁷ Remediating this misperception involves two steps: (1) defining social justice and (2) determining whether LITCs' work fits within such a definition (or, to be more accurate, within some or all of what turns out to be competing definitions).

HL2V-WJKF]; Bryan Koenig, *IRS Prepayment Demands Hurt Poor, Harvard Tells 2nd Cir.*, LAW360 (Jun. 29, 2017), <https://www.law360.com/articles/940035> [<https://perma.cc/T5LW-TB6Z>].

43. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 12-13.

44. These annual reports are mandated by statute under I.R.C. § 7803(c)(2)(B).

45. Fogg, *Taxation with Representation*, *supra* note 6, at 33.

46. For example, the ABA Section of Taxation has created the Christine A. Brunswick Public Service Fellowship in which fellows are typically placed in LITCs in order "to address the growing need for legal assistance and to foster a greater interest in tax-focused public service through funding and other support to young lawyers engaged in tax work for under-served communities." *Christine A. Brunswick Public Service Fellowship Application Process*, AM. BAR ASS'N. (Jan. 31, 2019), <https://www.americanbar.org/groups/taxation/awards/psfellowship.html> [<https://perma.cc/6FMM-YEQG>].

47. Tavis, *supra* note 3, at 457-58 (noting that the connection between tax and social justice still runs "[c]ontrary to popular belief" and that one of the purposes of the Brunswick Fellowship is to raise "the visibility of tax as a powerful antipoverty tool").

A. *Some Possible Definitions of Social Justice*

The definition of social justice as applied to the legal profession tends to be difficult to pin down with precision.⁴⁸ Some broadly define social justice synonymously with access to justice for low-income individuals, under which any low-income representation would be included in the definition.⁴⁹ Under such a model, the type of clients and cases taken on are irrelevant as long as they meet the fundamental criteria of providing legal services to those who cannot afford representation regardless of their point of view and further the goal of treating everyone equally under the law regardless of their financial circumstances.⁵⁰

Such a broad definition of social justice, however, often gives way to a definition that still considers access to justice as a necessary but not sufficient component of social justice. Under this narrower conception, social justice is inextricably tied to remedying specific injustices in areas in which traditionally subordinated groups are often vulnerable, such as poverty, access to housing, racial discrimination, hunger, and access to health care.⁵¹ These specific injustices are generally in what the American Bar Association's Commission on the Future of Legal Services considers to be "basic human needs."⁵²

48. Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39, 55 (2013) ("Throughout legal scholarship, with clinical scholarship as no exception, 'social justice' is a term that is commonly employed but not clearly defined." (citing Scott L. Cummings, *What Good Are Lawyers?*, in PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE 14-15 (Scott L. Cummings ed., 2011))); Steven Keith Berenson, *Preparing Clinical Law Students for Advocacy in Poor People's Courts*, 43 N.M. L. REV. 363, 383-84 (2013) (noting that the term "justice" by itself is difficult to define); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 S.M.U. L. REV. 1461, 1475 (1998); Julie Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?*, 50 IND. L. REV. 813, 818-19 (2017) (summarizing a variety of definitions of social justice that have been applied to clinical legal education and noting that "[d]efining social justice is a virtual impossibility as there are a multitude of definitions").

49. Lawton, *supra* note 48, at 818 (quoting Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 309, 316 (2001)).

50. Adam Babich, *The Apolitical Law School Clinic*, 11 CLINICAL L. REV. 447 (2005).

51. Michael Novak and Paul Adams, although rejecting the common definitions of social justice in favor of a more individualized virtue definition, classify these specific injustices into six broad categories typically viewed to constitute social justice under the more commonly used definitions: 1. fair distribution, 2. equality of outcome, 3. equality of opportunity, 4. advancement of progressive policy goals, 5. civil rights, and 6. compassion. MICHAEL NOVAK ET AL., SOCIAL JUSTICE ISN'T WHAT YOU THINK IT IS 30-36 (2015).

52. COMM'N ON THE FUTURE OF LEGAL SERVS., *supra* note 2, at 12 (describing basic human needs as shelter, sustenance, safety, health, child custody, immigration, education, employment, relationship dissolution, housing, and bankruptcy/consumer debt).

Still others swing the definitional pendulum the other way and advocate for a more Hayekian view of social justice as a more individualized virtue divorced from policy goals of ensuring particular outcomes.⁵³ Under this model, most recently advanced by Michael Novak and Paul Adams building off Hayek's formulation, advancing social justice is seen as being limited to enabling a framework in which individuals can exercise virtue in forming associations for the good of the community and that allows the individual to succeed or fail as a member of the community on his or her own terms, without favoring any particular policy outcome.⁵⁴ While this definition has not been applied directly to the legal profession, its overall critique of outcome-oriented definitions of social justice and proposition of an alternative formulation beyond simply improving access to justice conceivably could appeal to those who believe a social justice mission is important but who might be skeptical of overly outcome-oriented approaches to social justice.⁵⁵

In addition to disagreements about what a social justice mission is, there is a debate in the literature about how legal clinics can best pursue a social justice mission methodologically, particularly in regards to how much clinics should focus on individual representation.⁵⁶ Scholars have begun to view a legal clinical model focused primarily on individual representation as too limiting and have begun to argue that these social justice goals can only be pursued effectively with advocacy that facilitates commu-

53. NOVAK ET AL., *supra* note 51, at 38-50 (discussing and expanding on the concept of social justice as a virtue articulated in FRIEDRICH A. HAYEK, *LAW, LEGISLATION AND LIBERTY, VOLUME 2: THE MIRAGE OF SOCIAL JUSTICE* (1978)).

54. *Id.* at 19-50. This definition is summarized as the following formulation: Social justice rightly understood . . . is a specific habit of justice that is "social" in two senses. First, the specific skills which it calls into exercise are those of inspiring, working with, and organizing others to accomplish together a work of justice. These are the elementary skills of civil society, the primary skills of citizens of free societies, through which they exercise self-government by "doing for themselves" (without turning to government) those things that need to be done. The second characteristic of social justice rightly understood is that it aims at the good of the city, not at the good of one agent only. Citizens may band together, as in pioneer days in Iowa, to put up a school or to raise roofs over one another's homes or to put a bridge over a stream or to build a church or an infirmary. They may get together in the modern city to hold a bake sale for some charitable purpose, to build or to repair a playground, to clean up the environment, or for a million other purposes to which the social imagination of individuals leads them. To recapitulate, social justice rightly understood is that specific habit of justice which entails two or more persons acting (1) *in association* and (2) *for the good of the City*.

Id. at 50.

55. See generally Heather Mac Donald, *This is the Legal Mainstream?*, CITY J., Winter 2006.

56. Carpenter, *supra* note 48, at 55 (summarizing various approaches that clinicians have taken to addressing how clinics can best advance a social justice mission, ranging from individual case representation to impact litigation and legislative advocacy as well as training the poverty lawyers of the future).

nity-wide solutions.⁵⁷ Proponents of this community-centric approach for academic clinics, however, frequently advocate for its use in the context of achieving specific community-wide policy goals “of groups working to change the social order” and that these goals should fundamentally drive the decisions about how the clinic utilizes its resources.⁵⁸ This community-centered focus represents a shift from early concepts of clinical legal education, which tended to conceptualize social justice around a more individual client representation model.⁵⁹

57. The foundational work pioneering this view of academic legal clinics is GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992). For subsequent work advancing this view, see Sameer M. Ashar, *Symposium on the New Prosperity Law: Expanding Opportunity and Reducing Inequality Fifty Years After the War on Poverty*, 104 CALIF. L. REV. 201, 221, 223 (2016) (noting that clinics foster “democratic lawyering” in students that helps “form and support active publics—groups that come together to understand, confront, and attempt to gain some control over the forces and actors shaping their lives”); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008) [hereinafter Ashar, *Law Clinics and Collective Mobilization*] (critiquing the model of clinical legal education that focuses on individual client representation and lawyer-led litigation and reform efforts as being insufficient for public interest practice and advocating for approaches that focus more on collective mobilization); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 325-26 (2001) (noting that general purpose clinic, in addition to taking individual cases, “must work on broader solutions such as political activism, legislative reform, funding, economic development, community empowerment, collaborating with community social services, and work for adequate daycare”); Ascanio Piomelli, *Sensibilities for Social Justice Lawyers*, 10 HASTINGS RACE & POVERTY L.J. 177, 182-83 (arguing that social justice can best be achieved through “democratic lawyering” in which “social justice lawyers consequently focus on fostering clients’ and communities’ ability to act collectively with others in coordinated public efforts across legal, political, social, economic, and cultural spheres.”); Jeena Shaw, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 802-14 (2017) (describing how legal reform and international big case clinics can still be structured along rebellious lawyering principles).

58. Ashar, *Law Clinics and Collective Mobilization*, *supra* note 57, at 390 (“At the heart of this alternative approach is the conviction that clinics should select cases and projects that support the mobilization efforts of groups working to change the social order.”); Piomelli, *supra* note 57, at 183 (“The aim is not only to win particular rights or policy outcomes, but to pursue and win them in ways that enhance clients’ and communities’ power to win future struggles and to preserve those victories.”). Note, however, that it is not always supporters of specific policy outcomes who advocate for a community-centered model, and even supporters of an individual virtue-based model of social justice argue for a more community-centered approach as the best mechanism for realizing such a virtue:

The practice of the virtue of social justice consists in learning three new skills: the art of forming associations, willingness to take leadership of small groups, and the habit and instinct of cooperation with others. All three are needed in order to accomplish ends that no one individual can achieve on his or her own. At one pole this new virtue is a social protection against atomistic individualism, while at the other pole it protects considerable civic space from the direct custodianship of the state.

NOVAK ET AL., *supra* note 51, at 23.

59. Ashar, *Law Clinics and Collective Mobilization*, *supra* note 57, at 368-74 (describing the individual case-centered model that has historically been predomi-

The historical individual representation model and the more recent community impact model are often in tension with each other, which has led to an additional methodological approach that attempts to harmonize this tension by balancing the goals of service, reform, and values.⁶⁰ Under the service prong, clinics can engage in individual and/or community representation to help advance social justice by increasing direct access to representation for underserved populations.⁶¹ This representational work, however, should not prevent clinics from being engaged in pursuing systemic reform through impact litigation and larger community development work.⁶²

The differences in these definitions of social justice and methodological approaches to pursuing it have implications for whether LITCs advance social justice. Specifically, one can now start to wrestle with the question of what happens if the work of LITCs described in Part I is dropped into these definitions—do the pieces fit? In other words, can we see through the work of LITCs that tax justice is in fact social justice?

B. *LITCs Are Connected to Each of the Major Competing Social Justice Definitions*

Given the competing definitions of social justice as well as the differing viewpoints of how legal clinics can best advance social justice, whether any particular clinic is deemed to be advancing a social justice mission is often a function of the definition that is selected. While some definitions are more obviously applicable to LITCs than others, however, the varied types of activities that LITCs engage in as well as the far-reaching impact that tax controversies can connect LITCs to a social justice mission regardless of the definition that is used.

1. *Social Justice as Access to Justice*

Defining social justice as access to justice grounded in individual representation is certainly the definition that on its surface most obviously connects LITCs to advancing a social justice mission. This is because the lion's share of the work that many LITCs perform is individual representa-

nant in clinical legal education, and noting that “[b]ecause the individual lawyer-client relationship was regarded by proponents of the case-centered model as microcosmic, clinicians sought to advance social justice by accepting the case of a poor person and then adopting a paradigm of relation that accentuated client decision-making autonomy”). The historical model of legal clinics primarily focused on individual representation, however, does still have its defenders, such as Steven Berenson, who has argued that clinics have not been as effective in achieving broad societal changes as they have been in providing help to many needy individuals and in planting a seed for attorneys to be inspired to engage in pro bono practice in the future. Berenson, *supra* note 48, at 381-82, 396.

60. Carpenter, *supra* note 48, at 55.

61. *Id.* at 57.

62. *Id.*

tion for low-income individuals who could not otherwise afford help.⁶³ Through this work, vulnerable taxpayers gain critical access to representation and knowledge about the tax system.⁶⁴

The American Bar Association's Commission on the Future of Legal Services aptly described in its 2016 *Report on the Future of Legal Services in the United States* the challenges facing access to justice:

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans. Many who need legal advice cannot afford to hire a lawyer and are forced to either represent themselves or avoid accessing the legal system altogether. Even those who can afford a lawyer often do not use one because they do not recognize that their problems have a legal dimension or because they prefer less expensive alternatives. For those whose legal problems require use of the courts but who cannot afford a lawyer, the persistent and deepening underfunding of the court systems further aggravates the access to justice crisis, as court programs designed to assist these individuals are being cut or not implemented in the first place.⁶⁵

Although the Commission's report does not focus its attention on tax issues specifically,⁶⁶ LITCs nevertheless address many of the report's findings regarding shortfalls in access to justice by advancing the Commission's recommendations regarding how to remedy them. LITCs are particularly effective in increasing the availability of pro bono representation, assisting in streamlining litigation processes, increasing awareness of resources available to low-income individuals, serving as a critical bridge between the government and taxpayers in order to help leverage technological resources to make the delivery of legal help more efficient, and increasing the use of non-attorney judicially authorized legal service providers.

The Commission's first finding, that "[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need" succinctly describes the nationwide access to justice problem that exists for people who cannot afford representation.⁶⁷ LITCs nat-

63. See discussion in Part I.A., *supra*.

64. Note, however, that some commentators would possibly object to LITCs having a strong connection to an access to justice mission because they are a specialized clinic that, while admittedly providing pro bono representation, is limited in the type of representation that they provide. See Sedillo Lopez, *supra* note 57.

65. COMM'N ON THE FUTURE OF LEGAL SERVS., *supra* note 2, at 8.

66. The report references the Internal Revenue Service as an example of a federal agency that utilizes federally authorized legal service providers to increase access to justice but does not otherwise focus on tax issues. *Id.* at 20.

67. *Id.* at 5.

urally help to remedy the problem of taxpayers not being able to afford representation through their direct pro bono representation of taxpayers who cannot afford representation in their tax controversies. LITCs, however, are well situated to implement several of the Commission's specific recommendations that go beyond its first recommendation of having the legal profession supporting the goal of providing assistance to those who cannot afford an attorney.⁶⁸

LITCs' work in Tax Court helps realize the Commission's goal of "streamlining litigation processes through uniform plain-language forms and, where appropriate, expedited litigation procedures" by providing a bridge that connects low-income taxpayers to existing processes that the U.S. Tax Court has put in place to try to advance this goal.⁶⁹ The U.S. Tax Court has created a large amount of publicly available streamlined forms, beginning with a simplified petition that allows taxpayers to bring their actions in Tax Court.⁷⁰ This streamlined form system allows LITCs to leverage their resources and expertise to help clients navigate the Tax Court process without the need for formal representation in court. LITCs often are hesitant to enter an appearance on behalf of a taxpayer in Tax Court because of the concerns about difficulty withdrawing from representation if a taxpayer becomes nonresponsive or if the taxpayer seeks to take an unreasonable position.⁷¹ Accordingly, when advising taxpayers who are still able to pursue their cases in the Tax Court, LITCs generally prefer, at least at the initial stages of litigation, to help taxpayers preserve their rights in Tax Court by showing them how to file a petition pro se and then attempting to negotiate a settlement on their behalf with the IRS while the suit is pending.⁷² Such an approach to client assistance would be much

68. *Id.* at 6.

69. *Id.* at 46 (Recommendation 5.2).

70. These Tax Court forms are available at <https://www.ustaxcourt.gov/forms.htm> [<https://perma.cc/XW6G-2T6E>], and include the following forms: Admissions Information for Attorneys; Admissions Information for Nonattorneys; Application for Order to Take Deposition to Perpetuate Evidence; Application for Waiver of Filing Fee; Certificate of Service; Certificate on Return of Deposition; Entry of Appearance; Notice of Appeal; Notice of Change of Address; Notice of Intervention; Ownership Disclosure Statement; Petition (Simplified Form); Request for Place of Trial; Statement of Taxpayer Identification Number; Subpoena; Substitution of Counsel; and Unsworn Declaration Under Penalty of Perjury.

71. Keith Fogg, *Representing Your Client in Tax Court with a Power of Attorney*, PROCEDURALLY TAXING (Apr. 25, 2017), <http://procedurallytaxing.com/representing-your-client-in-tax-court-with-a-power-of-attorney/> [<https://perma.cc/D6JJ-K2FP>] (noting that Chief Counsel Notice CC-2017-006 allows a representative with a power of attorney to negotiate with the IRS on the client's behalf even when the representative has not entered an appearance in the Tax Court proceeding); Scott Schumacher, *How Not to Get Out of a Tax Court Case*, PROCEDURALLY TAXING (May 21, 2015), <http://procedurallytaxing.com/how-not-to-get-out-of-a-tax-court-case/> [<https://perma.cc/94MQ-9VT5>] (providing a detailed account of the difficulties that can present themselves when there is a breakdown of the attorney-client relationship after an attorney has entered an appearance in Tax Court).

72. *Id.*

more difficult without a streamlined form process in place in the Tax Court because of the challenges in assisting taxpayers in creating bespoke petitions, which would be much more time consuming and would hinder LITCs ability to assist the high number of taxpayers who proceed in Tax Court pro se.⁷³ At the same time, without the assistance of LITCs, many taxpayers might not be able to take advantage of the Tax Court's streamlined processes and forms entirely on their own because they may either lack the requisite technological resources or knowledge about how to properly navigate the Tax Court's website.⁷⁴

LITCs, the IRS, and the U.S. Tax Court also have forged a successful partnership that addresses the Commission's concern that a significant reason for the access to justice gap is that vulnerable individuals often do not realize when they have a legal issue and are also unaware of the resources that are available to assist them.⁷⁵ As with many legal issues, lack of awareness can be a problem in tax controversies as well. To combat this, the Taxpayer Advocate Service maintains *IRS Publication 4134, Low Income Taxpayer Clinic List*, which provides a list of every low-income taxpayer clinic in the IRS grant program.⁷⁶ More importantly, the Taxpayer Advocate Service ensures that the IRS includes this list in significant notices so that taxpayers receiving a notice are well-informed that this is a legal matter and that this matter may entitle them to free representation.⁷⁷ The Tax Court takes steps as well to make sure that taxpayers with a controversy in Tax Court receive notice of the availability of LITCs, through its "stuffer notice" program, in which LITCs can voluntarily choose to participate in order to increase their visibility to unrepresented taxpayers who have been able to file a petition in Tax Court.⁷⁸

The Commission also recognized that increased use of technology has been proving to be a valuable tool that has enabled mobile apps and on-line resources to bring legal information to a wider audience of people,

73. Panuthos, *supra* note 23, at 440 (noting that "[a]t a small tax case calendar, 95% of petitioners might be self-represented, whereas in a regular case calendar, approximately 50% of petitioners are self-represented") (footnote omitted).

74. For a discussion of the issues surrounding purely technological solutions for low-income taxpayer access to justice, see NAT'L TAXPAYER ADVOCATE, NATIONAL TAXPAYER ADVOCATE OBJECTIVES REPORT TO CONGRESS, FISCAL YEAR 2019 (June 2018).

75. COMM'N ON THE FUTURE OF LEGAL SERVS., *supra* note 2, at 14-15 (noting that "[w]hen asked why they do not seek out a lawyer, most individuals reply that they 'do not think of their justice problems as legal' and do not recognize their problems as having legal solutions" (quoting Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, 2014 ABA J. 1 (Aug. 2014))).

76. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 16.

77. *Id.*

78. *Id.* (noting that this "stuffer notice" program is in addition to information featured on the Tax Court's website, which, by itself would be insufficient because of the potential to overwhelm taxpayers).

particularly the poor and vulnerable.⁷⁹ In tax administration, the IRS has increased its use of technology to bring more of its services online, which theoretically helps make its services more widely available and also has the benefit of being a more cost-effective solution than in-person assistance, which is particularly critical to the IRS in light of its limited resources.⁸⁰ While there are indeed benefits to more resources being available online, the National Taxpayer Advocate has correctly recognized that this use of technology can also inhibit access to resources when taxpayers do not have the tools necessary to access the online services and do not have an in-person alternative.⁸¹

This lack of an in-person alternative threatens to counteract the potential efficiency advantages available through increased technology deployment because those benefits cannot be realized if taxpayers do not have access to the relevant technology. This is where LITCs can serve as a bridge between this group of taxpayers and the IRS. LITCs can play a critical role in allowing the public to receive the benefits of increased online resources from the IRS while still serving as a resource for in-person assistance to taxpayers who cannot receive such assistance from the IRS.⁸² Even though low-income taxpayers themselves may not have access to the technology needed to interact with the IRS's increasingly online-centered model, LITCs normally do have access to this technology and have the knowledge needed to use it successfully. Accordingly, the more eligible taxpayers that are connected to an LITC, the more likely it is that the IRS will achieve its goals of administering its services more cost-effectively and more broadly through online platforms.

79. COMM'N ON THE FUTURE OF LEGAL SERV, *supra* note 2, at 18-19.

80. NAT'L TAXPAYER ADVOCATE, NATIONAL TAXPAYER ADVOCATE 2017 ANNUAL REPORT TO CONGRESS 117-27 (2017).

81. *Id.* at 127 (going so far as identifying this as a most serious problem and noting that “[t]he least expensive method is not necessarily the best, and reducing current services without providing other methods for taxpayers to access those services creates a self-fulfilling prophecy—reduce service to the point that taxpayers can no longer easily access it, then declare the service unused and unnecessary and cut it completely”).

82. These cuts to IRS in-person assistance have been particularly felt in a reduction of walk-in Taxpayer Assistance Centers (TACs), which have seen the following decrease in capacity:

The IRS has closed 30 TACs since fiscal year (FY) 2011, a reduction of over seven percent.

In FY 2017, the first full year of the appointment system, the IRS served 3.2 million taxpayers at TACs compared to 4.4 million taxpayers in FY 2016.

The IRS has reduced TAC staffing from 2,254 employees in late February 2011 to 1,586 employees in late February 2017, a decline of about 30 percent.

111 TACs, approximately 30 percent of all TACs, have either zero employees or one employee, resulting in a closed or virtually closed TAC. *Id.* at 117 (footnotes omitted).

Finally, LITCs exemplify the Commission's finding that the growth of judicially authorized legal service providers is improving the public's ability to access appropriate levels of representation for discrete legal needs.⁸³ The IRS allows attorneys, CPAs, and enrolled agents to have full practice rights in front of the IRS.⁸⁴ In addition, law, business, and accounting students working in an LITC can receive special authorization to represent taxpayers before the IRS under the direct supervision of someone authorized to practice before the IRS.⁸⁵ The LITC Program Office has capitalized on this ability to authorize student practice by creating a process by which law, business, and accounting schools can have their students certified for practice, creating opportunities for direct supervised student representation of taxpayers.⁸⁶

This expansive list of individuals authorized to practice before the IRS allows LITCs to avoid having to rely solely on the work of attorneys to provide representation to low-income taxpayers. LITCs can also utilize CPAs, enrolled agents, and law, business, and accounting students, which makes it much easier to find more people able and willing to provide representation.⁸⁷ Further enhancing this benefit is the fact that low-income tax controversies typically involve many of the same procedural issues that one would encounter for higher-income individuals. This allows tax practitioners to volunteer in LITCs without having to have as much additional training as would be required, for example, for a commercial attorney volunteering in a legal service organization in a practice area that might differ significantly from that attorney's regular practice.⁸⁸

Given the positive impact LITCs have in achieving the Commission's access to justice goals, they illustrate a strong link between tax justice and social justice when social justice is defined synonymously with access to justice. Despite fitting comfortably within this definitional framework, however, LITCs cannot rely on this as the sole mechanism through which they connect to a social justice mission. Given the recent critiques of this type of access to justice based individual representation model as not hav-

83. See COMM'N ON THE FUTURE OF LEGAL SERVS., *supra* note 2, at 19-31 (specifically mentioning the IRS as an example of a federal agency that has federally authorized legal service providers).

84. INTERNAL REVENUE SERV., PUBLICATION 947, PRACTICE BEFORE THE IRS AND POWER OF ATTORNEY (Feb. 2018). In addition, limited representation rights are granted to enrolled retirement plan agents, enrolled actuaries, unenrolled return preparers, and individuals with certain special familial or fiduciary relationships with the taxpayer. *Id.*

85. *Id.*

86. PUBL'N NO. 5066, *supra* note 11, at 10 (citing Delegation Order 25-18 (Rev. 2), IRM 1.2.52.19 (Sept. 9, 2015)).

87. These representatives are also able to gain admission to practice before the U.S. Tax Court pursuant to U.S. Tax Court Rule 200(a)(3), which provides for non-attorney admission upon written examination.

88. See discussion in notes 170-174, and surrounding text, of the training efficiencies that result for both pro-bono and low-bono tax controversy representation when students are trained in LITCs.

ing a significant enough societal impact, an access to justice definition of social justice couched primarily in individual representation will potentially not be persuasive to those who want to see a strong social justice connection as a prerequisite for allocating clinical resources towards a particular legal issue and who have adopted this more modern view of how clinics can best advance social justice.⁸⁹

2. *Social Justice as Working to Improve Areas of Basic Human Need*

LITCs also advance a social justice mission when social justice is defined as being tied to accomplishing specific policy goals related to increasing equality of outcome in areas such as shelter, sustenance, safety, health, child custody, immigration, education, employment, relationship dissolution, housing, and bankruptcy/consumer debt.⁹⁰ The American Bar Association Commission on the Future of Legal Services' *Report on the Future of Legal Services in the United States*, which described these categories as "basic human needs," does not include unresolved tax liabilities in its list of "basic human needs."⁹¹ Such an omission is understandable, given that even tax attorneys and public interest attorneys can easily fall into this trap of not seeing the connection between tax issues and social justice until they are confronted with it directly.⁹² This omission is nevertheless misplaced because the tax issues that LITCs routinely handle often relate directly to these areas of basic human need. A few examples illustrate this connection.

89. See *supra* note 57 and surrounding text. For academic clinics in particular, this critique is amplified by the fact that academic clinics generally are perceived as having to carry small caseloads in order to fulfill their pedagogical goals. See *infra* note 165 and surrounding text. Although I believe that in the LITC arena higher caseloads are in fact possible without sacrificing pedagogical goals, as I discuss in *infra* notes 164-169, and surrounding text, I acknowledge that I am likely in the minority in this view.

90. See *supra* notes 51-52 and surrounding text.

91. COMM'N ON THE FUTURE OF LEGAL SERVS., *supra* note 2, at 12. This is not the only potential social justice-oriented issue that is not mentioned as a basic human need. For example, religious liberty is not discussed, despite it being a significant social justice issue requiring the resolution of "fundamental tensions—e.g., liberty and equality, toleration and accommodation, church and state" for highly vulnerable immigrant populations who may be practicing religions other than Christianity and who may come from cultures that are misunderstood in the United States. James A. Sonne, *Religious Liberty, Clinical Education, and the Art of Building Bridges*, 22 CLINICAL L. REV. 251, 255, 275 (2015) (citing Adam Babich, *The Apolitical Law School Clinic*, 11 CLINICAL L. REV. 447, 451-52 (2005)).

92. Book, *Academic Clinics*, *supra* note 3, at 449 (the author states: "I did not connect tax with broader issues of poverty law, nor did I think my work as a controversy attorney had a direct connection to low-income taxpayers in need of representation [However,] [w]ithin three months of my attending that presentation, I left my law firm and became director of a tax clinic"); Tavis, *supra* note 3, at 458 (describing how tax often gets overlooked as a social justice issue and noting that "many aspiring public-interest attorneys remain uninformed about the critical role of tax benefits in fighting poverty").

a. Sustenance

Successful resolution of tax controversies can be critical in helping low-income taxpayers meet their basic living expenses. Through its fresh-start initiative, the IRS expanded and streamlined the availability of installment agreements and offers-in-compromise for taxpayers who have an inability to pay.⁹³ Offers-in-compromise, which allow taxpayers to settle an existing liability with the IRS for an affordable amount (or even a nominal amount in the case of many low-income taxpayers),⁹⁴ are a particularly valuable tool for low-income taxpayers. These taxpayers may have past tax liabilities from when they earned higher incomes but now, due to a negative life event such as a loss of employment or significant illness, are unable to pay these past liabilities.⁹⁵ Offers-in-compromise based on doubt as to collectability, doubt as to collectability with special circumstances, or effective tax administration offer these taxpayers the ability to settle these liabilities in full for an amount that they can afford to pay, after taking into account all of their necessary living expenses and any other issues that may be creating a financial hardship.⁹⁶

In addition to being based on collectability, offers-in-compromise can also be based on doubt as to liability.⁹⁷ Liability based offers are useful to taxpayers who may have had a legitimate defense to the liability itself but who failed to petition the Tax Court before seeking representation (a frequent occurrence with low-income taxpayers who may have either ignored or may never have received their statutory notice of deficiency informing them of their right to petition the Tax Court).⁹⁸

Navigating the offer process, however, is complicated without representation. Taxpayers often require assistance in understanding the types of financial documentation that are required for a successful offer based on collectability and additional written and oral advocacy can significantly enhance the information that the taxpayer submits on the IRS's offer

93. See IRS Tax Tip 2013-57 (Apr. 17, 2013).

94. While a taxpayer cannot submit a \$0 offer, nominal offers, such as \$1 offers, are permissible even for significant tax liabilities. IRS Form 656 § 4 (last revised Mar. 2017).

95. It may not even take a significant life event to cause a financial hardship that renders taxpayers unable to pay their liabilities. Recent research has shown that for older Americans age sixty-five or older, there has been a significant increase in bankruptcy filings in recent years that can only be explained by declines in income, increased healthcare costs, and a decreased social safety net. Deborah Thorne et al., *Graying of U.S. Bankruptcy: Fallout from Life in a Risk Society* (Indiana Legal Studies Research Paper No. 406, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226574 [<https://perma.cc/XG9F-UEN5>].

96. Treas. Reg. § 301.7122-1(b) (2002); IRM 5.8.4 (July 18, 2018); IRM 5.8.5 (Mar. 23, 2018); and IRM 5.15.1 (Nov. 17, 2014) for a detailed description of the financial analysis that goes into determining whether the IRS will accept an offer-in-compromise.

97. Treas. Reg. § 301.7122-1(b) (2002); IRM 5.8.4 (July 18, 2018).

98. See Leifeld, *supra* note 28, at 555-57 (noting the difficulties that low-income populations might have in receiving IRS notices).

forms.⁹⁹ Doubt as to liability offers are even more enhanced through representation given that they depend on an understanding of complex areas of tax law that serve as the basis for a liability defense.¹⁰⁰

Furthermore, as discussed in Part I.A., *supra*, on top of the work that LITCs do to prevent tax obligations from financially crippling low-income taxpayers, the work that they do to help eligible taxpayers claim the EITC can be an even more critical component of helping low-income individuals be able to afford their basic needs such as housing and food. Given the efficacy of the EITC in reducing childhood poverty specifically as well as the priority of preventing childhood poverty in the hierarchy of social justice issues, LITCs play a direct role in reducing childhood poverty through the EITC assistance that they provide.¹⁰¹

b. Employment and Housing

Apart from the financial difficulties that can arise from the mere existence of a tax liability that a taxpayer cannot afford to repay, the collection techniques that the IRS employs can also compound these problems by preventing taxpayers from securing employment and obtaining housing. The most significant impediment is often the filing of a notice of federal tax lien, which makes the tax controversy public and can thus make it impossible to obtain employment in fields where the tax lien must be disclosed and may also result in termination from particular types of employment.¹⁰²

A notice of federal tax lien can also be an impediment in selling assets such as real estate, which might be an essential step that a taxpayer needs to take in order to secure more affordable housing. In addition, while

99. The pertinent forms for individuals are the IRS Form 433-A (OIC), on which the taxpayer must report detailed financial information, and the IRS Form 656, which is the primary form to submit an offer. These forms frequently require additional explanatory information that illustrates to the IRS that the taxpayer is a good offer candidate.

100. Section 5 of the IRS Form 656-L, the form used to submit an offer-in-compromise based on doubt as to liability, requires a specific explanation of why the tax that the IRS has assessed is incorrect, which most taxpayers without expertise in tax law are not able to know.

101. Lipman, *supra* note 24, at 1176 (noting that “[f]rom the perspective of social justice, prevention of childhood poverty is paramount because of the profound way in which it undermines the goal of establishing greater equality of life in the present and future Without the EITC, the number of children living in poverty would increase by one-third” (citing JIMMY CHARITE, INDIVAR DUTTA-GUPTA & CHUCK MARR, CTR. ON BUDGET & POLICY PRIORITIES, STUDIES SHOW EARNED INCOME TAX CREDIT ENCOURAGES WORK AND SUCCESS IN SCHOOL AND REDUCES POVERTY 6 (2012))).

102. Howard & Hutchens, *supra* note 19, at 11-15. Wage garnishments to collect a federal income tax debt can also serve as a barrier to employment if the taxpayer is already subject to a garnishment action for another debt because the Federal Consumer Credit Protection Act only protects the taxpayer’s employment rights if the taxpayer is being garnished for a single debt. See 15 U.S.C. § 1671, *et seq.* (2018).

credit agencies have recently made the decision not to report the existence of tax liens on credit reports,¹⁰³ landlords still have the potential to discover them if they are recorded publicly on specific assets and can still ask about them in a leasing application.¹⁰⁴ The discovery of a notice of a federal tax lien may make obtaining rental housing more difficult if the tax lien causes a potential tenant to be viewed as an unacceptable credit risk.¹⁰⁵ LITCs routinely assist taxpayers in pursuing various mechanisms available to minimize the damage of notice of federal tax liens by pursuing a collection alternative with the IRS such as an offer-in-compromise to satisfy the liability for an affordable amount and then have the lien released and, in some cases, withdrawn, which has the additional benefit of the lien being treated as if it had never been filed in the first place.¹⁰⁶

c. Healthcare

LITCs also assist low-income taxpayers in making sure that they are able to claim the Premium Tax Credit, a feature of the Affordable Care Act that subsidizes low-income taxpayers' ability to purchase health insurance.¹⁰⁷ One of the features of the Premium Tax Credit that allows low-income individuals to purchase health insurance is that it provides for advance credits to assist eligible taxpayers who may be experiencing cash flow problems in addition to income problems that prevent them from purchasing health insurance.¹⁰⁸ The disadvantage of the advance credits, however, is that some of them may need to be repaid when the taxpayer files his or her tax return.¹⁰⁹ While this repayment of the advanced credit can be minimized through regular reporting of income changes to the IRS, as Mary Leto Pareja observes in regards to taxpayers typically represented by LITCs:

In the author's experience working with low income taxpayers through a low income taxpayer clinic, this sort of diligence is likely to be the exception rather than the rule. Persons living in poverty typically have much more urgent matters that occupy their attention and time, such as finding food for the next meal (especially at the end of the month when the food stampshave

103. Andriotis, *supra* note 19; Fogg, *Credit Scores and the Federal Tax Lien*, *supra* note 19.

104. Becky Bower, *What Credit Reports No Longer Say*, UNITS MAGAZINE (June 2018), <https://www.naahq.org/news-publications/units/june-2018/article/what-credit-reports-no-longer-tell> [<https://perma.cc/7D2X-7EWN>].

105. *Id.*

106. Keith Fogg, *Withdrawing the Federal Tax Lien After an Offer in Compromise*, PROCEDURALLY TAXING (Apr. 29, 2015), <http://procedurallytaxing.com/withdrawing-the-federal-tax-lien-after-an-offer-in-compromise/> [<https://perma.cc/TMX6-CR6F>].

107. *See* Pareja, *supra* note 24, at 253-59 (providing an overview of the mechanics of the Premium Tax Credit).

108. *Id.* at 254.

109. *Id.*

[sic] long been exhausted), juggling bills to find the money to keep the lights or the heat on, or figuring out how to get the kids to and from school and mom and dad to and from work when the family car finally gave up the ghost.¹¹⁰

As a result, low-income taxpayers' efforts to obtain health insurance that is critical to the welfare of their families can often create tax liabilities that they cannot pay once they learn of them. This resulting tax controversy necessitates the assistance of an LITC to help them resolve the tax liability while educating them about how to claim the Premium Tax Credit in future years without creating a tax controversy.

3. *Social Justice as an Individualized Virtue*

LITCs advance a social justice mission even under an alternative conception of social justice that considers it to be more of an individualized virtue and that would reject the other models of social justice as seeking to engineer particular outcomes as opposed to creating equality of opportunity than its connection to the definitions discussed *supra*. Admittedly, the connection of LITC work to this definition is a bit more abstract. However, illustrating it is important in order to show that tax justice is still social justice even under a definition that is in considerable tension with the definitions previously discussed.

Under this model, LITCs help lay the foundation for social justice by focusing on leveling the economic playing field in regards to each citizen's financial obligation to support the state.¹¹¹ While the anti-poverty benefits described *supra* are indeed substantial, not all LITC clients necessarily have EITC, Premium Tax Credit, or tax lien issues—some simply have gotten behind in their tax obligations and are looking for a way to get back into the system and to become compliant going forward. In order to resolve the taxpayer's past liabilities successfully, LITCs generally have to assist their clients in meeting past compliance obligations (so that all past liabilities can be resolved) and, even if the liabilities are resolved for nominal amounts through the offer-in-compromise program, such a resolution will require the taxpayer to remain compliant for five years after the offer is accepted.¹¹² Thus, an important aspect of LITCs' work is not simply resolving tax disputes but also involves educating the client on how to satisfy compliance obligations going forward, which helps bring the taxpayer back into the tax system.¹¹³ When this work is successful, it helps instill in

110. *Id.* at 255.

111. *See supra* notes 53 and 54 and surrounding text.

112. IRS Form 656 Booklet, at 6 (Mar. 2017). Failure to remain compliant for this five-year period has the effect of defaulting the offer. *Id.*

113. In addition to the direct client education that occurs to bring people back into compliance, LITCs help foster a larger culture of compliance through various educational outreach activities, which the LITC Program Office recognizes are often activities particularly well-suited for academic LITCs given their overall educational mission. PUBL'N NO. 3319 (May 2018), *supra* note 5, at 23.

the taxpayer a positive attitude towards tax compliance, which enables that individual to engage in one of the most fundamental associations towards the common good—namely, contributing his or her fair share to the public for the good of the community as a whole.¹¹⁴

Even the more policy-based anti-poverty benefits of LITC work stack up well under this definition of social justice. For example, the EITC benefits that LITCs help taxpayers secure do not only provide a financial payment to assist financially struggling taxpayers but are also critical in helping taxpayers become more self-sufficient and become more active economic participants in the community because the benefit is tied to the taxpayer's ability to work to earn income.¹¹⁵ Because of the work-incentives that are part of the EITC, eligible taxpayers generally do not claim benefits for that many consecutive years, end up paying more in taxes over time than they receive in benefits, have the indirect benefits of increasing the earning capacity of the children of benefit recipients, and stimulate consumption spending in local economies.¹¹⁶

4. *Achieving Social Justice Through Individual Representation, Impact Advocacy and Community Wide Solutions*

Turning from a discussion of how tax justice is social justice under competing definitions of social justice, it is helpful to examine how LITCs advance social justice under both the individual representation and impact advocacy methodological models that are at the center of the debate about how clinics can most effectively advance social justice. Although the bulk of LITC work is individual representation, the social justice benefits of which have been described at length in this part, *supra*, LITCs also pursue social justice through larger impact advocacy and community engagement. Through the advocacy work discussed in Part I.C., *supra*, LITCs engage in systemic advocacy that helps provide for a more fair and just tax system for low-income taxpayers and helps to identify areas in which the IRS is not sufficiently protecting the Taxpayer Bill of Rights.¹¹⁷ Even LITCs' individual advocacy efforts can end up having much broader im-

114. See generally Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 FLA. TAX. REV. 599 (2007) for a discussion of how increasing the perception of tax compliance as a civic virtue can in turn improve compliance. Apart from being a civic virtue, paying taxes can be a religious virtue as well, which can have particular resonance for those ascribing to a definition of social justice as an individual virtue because that definition has been most recently articulated in Judeo-Christian terms by Michael Novak and Paul Adams as discussed in notes 53 and 54. Afield, *supra* note 10, at 103-12 (summarizing the literature in which tax compliance is discussed in moral and religious terms).

115. Lipman, *supra* note 24, at 1181-83.

116. *Id.*

117. Under I.R.C. § 7803(a)(3), the Taxpayer Bill of Rights provides for the following rights:

- (A) the right to be informed,
- (B) the right to quality service,
- (C) the right to pay no more than the correct amount of tax,

pacts (albeit not entirely systemic) because of the opportunities that such representation affords to LITCs to spot more community-wide harms that might otherwise go unnoticed.¹¹⁸ A recent success story that the National Taxpayer Advocate profiled effectively illustrates this type of ripple effect that an individual representation from one LITC can have:

Through years of hard work, one LITC successfully resolved tax controversies for more than 30 victims of a mass identity theft scheme, and this year saw the perpetrator brought to justice. A local minister swindled his congregants into divulging their social security numbers and other personal information by offering false promises of government stimulus payments. Instead, he filed tax returns using the ill-gotten information, claimed excess refunds, and then diverted the refunds to bank accounts he controlled. The IRS attempted to collect the excess refunds, which led one of the victims to seek assistance from an LITC. After speaking with the victim, a representative at the LITC determined what had occurred, and brought the matter to the attention of the Local Taxpayer Advocate (LTA). The Department of Justice investigated, charged, and convicted the minister for his participation in a scheme that claimed roughly \$4.8 million in false refunds. After more victims were identified, the LITC aided more than 30 people and helped them to resolve the effects of the theft on their tax accounts.¹¹⁹

These ripple effects have the potential to arise from any individual representation given that issues such as identity theft and tax fraud often will be part of a larger scheme to defraud a large group of vulnerable

(D) the right to challenge the position of the Internal Revenue Service and be heard,

(E) the right to appeal a decision of the Internal Revenue Service in an independent forum,

(F) the right to finality,

(G) the right to privacy,

(H) the right to confidentiality,

(I) the right to retain representation, and

(J) the right to a fair and just tax system.

I.R.C. § 7803(a)(3) (2018).

118. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 12 (“As representatives, counselors, and advocates for low income and ESL taxpayers, clinicians see first-hand how IRS policies and procedures affect their clients.”); Fogg, *A Brief History of Low-Income Taxpayer Clinics*, *supra* note 6 (noting that “[b]y having a group of legal advocates actively working the issues that confront low income taxpayers, those advocates are much better able to spot issues where systemic problems exist and take the steps necessary to resolve them”). The potential for any individual LITC to discover a systemic problem is further compounded by formal and informal systems of LITC networking, “which permits clinicians to gain a broader perspective on the extent to which taxpayers in other locales experience problems faced by their own clients.” PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 12.

119. PUBL'N NO. 5066 (Feb. 2018), *supra* note 11, at 12.

taxpayers and illustrate how even LITCs' significant individual representation work leads to broader societal impacts that go beyond the individual matter.¹²⁰

As the LITC example has shown, tax justice is social justice both under the primary competing definitions of social justice and competing methodologies for how best to advance social justice. That is not to say, however, that this connection could not be made even stronger. Again using LITCs as an example given that they are the primary advocates in advancing tax justice, the next part examines whether they could be empowered to advance social justice even more explicitly.

IV. BOLSTERING THE LITC CONNECTION TO SOCIAL JUSTICE

Thus far, this piece has demonstrated that tax justice is a social justice issue by connecting the work of LITCs to various approaches to advancing social justice, and its audience has very much been for those outside the LITC community who may initially not fully perceive this connection. Despite the already strong connection that LITCs have to a social justice mission, this connection could be made even more explicit through some reforms to the LITC grant program. As will be shown in Part IV, making this connection as strong as possible has important practical implications for ensuring future LITC growth that will increase access to tax justice. Five reforms would allow LITCs to serve a larger population of taxpayers and allow them to address a wider variety of issues that often serve as roadblocks to tax compliance for low-income taxpayers and would allow academic LITCs to provide a broader range of skills to students. In addition, these reforms would further strengthen the connection LITCs have to a social justice mission, which would help increase the growth of academic clinics. Accordingly, the audience for this part shifts to those within the LITC community and the Office of the Taxpayer Advocate, who are often looking for ways to strengthen and grow the LITC program nationally.

A. Consolidate the LITC Grant Program with VITA

Under the LITC grant program's terms, LITCs are permitted to prepare tax returns or an application for an Individual Taxpayer Identification Number (ITIN), or a claim for refund only "if such assistance is necessary to resolve a dispute with the IRS or is an ancillary part of the LITC's ESL education."¹²¹ In most other circumstances, LITCs are expected to refer tax returns to a free tax preparation site, such as a Volunteer Income Tax Assistance (VITA) site.¹²² The VITA program has a separate grant program that has been funded through the appropriations process since fiscal year 2008, although the National Taxpayer Advocate has requested that Congress authorize VITA funding through the tax-writ-

120. Drumbl, *supra* note 33, at 1366.

121. PUBL'N NO. 3319 (May 2018), *supra* note 5, at 56.

122. *Id.*

ing program in order to provide greater permanence to this funding.¹²³ While it is theoretically feasible for one entity to apply for both grants and to provide both services under the current regime, doing so would require complying with two complex sets of grant reporting and compliance obligations, which disincentivizes such an approach and the potential efficiency gains that go with it.¹²⁴

In one sense, it makes sense to keep VITA and LITC funding separated given the different skillsets involved and given that tax return preparation work could potentially overwhelm the LITC work because there are more low-income returns that need to be completed than there are controversies to resolve.¹²⁵ Despite the potential benefits of having separate programs, however, Congress and the National Taxpayer Advocate are forgoing other efficiency benefits that would be available if the programs were combined (or at least if the programs were given the opportunity to be combined). Having more flexibility to handle tax returns and resolve tax controversies would make it easier for academic institutions and legal service organizations to establish clinics that serve as “one stop shops” for tax compliance for the low-income taxpayer community. This approach lessens the risk that a taxpayer might become frustrated with having to go to separate locations for return preparation and controversy resolution and better enables clinics to perform “tax checkups” on a regular basis with clients who often have ongoing compliance obligations in order to avoid defaulting a controversy resolution, such as an offer-in-compro-

123. NAT'L TAXPAYER ADVOCATE, NATIONAL TAXPAYER ADVOCATE: PURPLE BOOK COMPILATION OF LEGISLATIVE RECOMMENDATIONS TO STRENGTHEN TAXPAYER RIGHTS AND IMPROVE TAX ADMINISTRATION 9 (Dec. 31, 2018) (arguing that Congress should “[e]nact a new IRC § 7526A to authorize the Secretary, subject to the availability of appropriated funds, to provide grants for the development, expansion, or continuation of VITA programs, particularly VITA programs that will use the funds to prepare tax forms and schedules that are common but currently designated as ‘out-of-scope’”). For the grant funding requirements of the VITA program, see INTERNAL REVENUE SERV., PUBLICATION NO. 4671, VITA GRANT PROGRAM OVERVIEW AND APPLICATION INSTRUCTIONS (Apr. 2018).

124. For example, my clinic in Atlanta is run through Georgia State University College of Law while United Way of Greater Atlanta provides VITA services for the area. While I cannot speak for United Way, from the perspective of my clinic, attempting to administer both the VITA and LITC grants would present insurmountable obstacles to running both programs under the current regime. See Susan E. Anderson & Christine C. Bauman, *Low-Income Taxpayer Clinics as a Form of Service Learning*, 6 ADVANCES IN ACCT. EDUC. TEACHING & CURRICULUM INNOVATIONS 117, 129 (2004) (describing the complexities of LITC grant program by itself as a potential impediment to greater academic adoption).

125. For academic LITCs, too much focus on return preparation could also potentially interfere with the LITC's pedagogical goals given that students should be exposed primarily to controversy resolution mechanics to get the educational benefits that will best equip them to be practitioners. Nevertheless, some return preparation does have pedagogical benefits in that it enables students to better understand how tax items are reported, which can enhance their ability to review returns as part of controversy resolution.

mise.¹²⁶ Reducing the number of touch points for low-income taxpayers to resolve tax controversies and to fulfill their compliance obligations lessens the chance that an issue will go unaddressed or overlooked. As a result, this approach would reduce the number of obstacles that low-income taxpayers face in accessing the resources that they need to remain compliant in the tax system, which further strengthens the social justice component of LITCs under an access to justice definition.

B. *Expand the Grant to Allow Funding of Multiple LITC Sites for One Organization*

The second possibility for reform also would strengthen the connection between LITCs and social justice under a broad access to justice definition by increasing funding for qualifying activity at multiple locations in order to reach a larger taxpayer population. While proposals for increasing the \$100,000 federal funding cap are nothing new, under this proposal, rather than a blanket funding increase, Congress could keep the funding cap unchanged but allow additional grants for separate grant sites for one grant receiving entity, which would allow well-resourced LITCs to staff a wider geographic area.¹²⁷ This approach to increasing grant funding would make it much easier for the government to track how much additional representation of low-income taxpayers occurred as a result of the additional funding because activities could be reported for each site separately. This approach could have more appeal than a blanket increase of the grant cap, in which it might be more difficult to ascertain if the increase specifically resulted in additional representation.

126. Currently, an LITC is explicitly prevented from assisting taxpayers in their ongoing compliance obligations that are required as a condition of an offer-in-compromise. PUBL'N. NO. 3319 (May 2018), *supra* note 5, at 57, Example 2. Even if concerns about return preparation overwhelming an LITC's ability to engage in controversy work effectively suggested that combining the VITA and LITC programs completely might be counterproductive, at least relaxing return preparation restrictions for taxpayers who have already had a controversy resolved would help ensure that the LITC's work in resolving the controversy was not quickly undone by a missed filing obligation.

127. This idea originated with the founding director of the Georgia State University School of Law's Philip C. Cook Low-Income Taxpayer Clinic, Professor Ronald Blasi, shortly before his retirement. Upon his suggestion, I raised the idea with the Taxpayer Advocate Service, which liked the idea in principal, but determined that it would violate the current limit on a maximum funding cap of \$100,000 per organization that is currently authorized by IRC section 7526(c)(2). *See also*, Book, *Academic Clinics*, *supra* note 3, at 418 (calling for an increase or elimination of the funding limitation). This approach could be particularly useful in states that the Taxpayer Advocate Service has identified as having insufficient LITC coverage. *See supra* note 2 and surrounding text.

C. *Increase the Range of Services that Can be Funded with Federal LITC Funding*

In regards to the representation activities that are available, *IRS Publication 3319* limits representation activities to “controversies,” that, while a broadly defined term, still does not capture the full range of services that an LITC could offer to the low-income taxpayer community.¹²⁸ Focusing on federal tax controversies is certainly understandable, given that the IRS is responsible for both collecting federal taxes and administering the LITC grant through the Taxpayer Advocate Service. This focus is nevertheless too restrictive. Limiting representation activities to federal tax controversies insufficiently accounts for critical services that LITCs could provide in regards to resolving state tax controversies¹²⁹ and to providing tax advice to assist nonprofit organizations and social enterprise clients that are attempting to provide a public service while balancing detailed compliance obligations that they are poorly equipped to handle.¹³⁰ Such expansion is

128. PUBL’N NO. 3319 (May 2018), *supra* note 5, at 6, 44. “Controversy” is a term of art in *Publication 3319* and is defined as follows:

Controversy with the IRS means a proceeding brought by the taxpayer under Title 26 or any dispute between an individual and the IRS concerning the determination, collection, or refund of any tax, penalties, or interest under the IRC. The definition is very broad and encompasses all types of disputes arising under the IRC, except criminal tax matters. For example, a controversy includes a dispute related to the tax provisions of the Affordable Care Act, a revocation or denial of a passport under section 7345, and certain civil actions arising under IRC §§ 7431 to 7435. The dispute may be pending in a federal court or in any tax administration function of the IRS (e.g., Examination, Collection, Appeals, Accounts Management). While representing a taxpayer in a controversy with the IRS, an LITC may also need to represent the taxpayer in a controversy with a state or local tax agency concerning the same or related tax matter. A controversy does not include a federal criminal tax matter, although it may include a state criminal matter. For example, a controversy may be considered a civil matter in the federal context, but a criminal matter under state or local law. If the LITC is already representing the taxpayer in the federal civil matter, it may be appropriate for the LITC to expand the scope of the representation to include the state or local matter.

Id. at 6.

129. LITCs are currently permitted to assist clients with state tax controversies only if the state tax controversy relates to a federal tax controversy. *Id.*

130. Robin Jacobs, *Building Capacity Through Community Lawyering: Circumstances of the Leaders, Small Community Associations, and Their Attorneys*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 29, 55 (2015) (noting explicitly that LITCs are well-positioned to address this need); Alina Ball & Manoj Viswanathan, *From Business Tax Theory to Practice*, 24 CLINICAL L. REV. 27, 31 (2017) (noting how a transactional tax clinic model representing for-profit social enterprise clients “also helps address the pressing but often unmet legal needs that mission- and profit-driven social enterprise clients face”); Letter from Christine Speidel, ABA Section of Taxation: Pro Bono and Tax Clinics Committee Welcome Letter (noting that, “[b]y their nature many start up and small exempt organizations lack funds to obtain necessary legal assistance in dealing with the process [of seeking tax exempt status]”).

justifiable even if it means that some grant and matching funds would be used towards state and local tax issues and federal compliance issues because state tax liabilities can be just as damaging as federal ones, if not more so.¹³¹ Further justifying this expansion is the fact that it helps counteract the fiscal federalism trends towards shifting social services from the federal to the state level where they end up receiving insufficient funding to be effective.¹³² In other words, if Congress is serious about wanting to use the LITC program to help low-income taxpayers truly get out from under crippling tax liabilities and take advantage of anti-poverty resources available to them, it has to let LITCs operate up to the full range of their potential at the state level and in the compliance arena.¹³³

D. *Require Grant Reporting of Social Justice Activities*

In addition to taking steps to expand LITCs' reach, the Taxpayer Advocate Service should capitalize on its already highly detailed grant reporting requirements to make it easier for the National Taxpayer Advocate to explicitly connect the work of LITCs to a social justice mission. Currently, as a condition of receiving their federal grant funds, LITCs submit two substantive reports each year that provide granular information about the LITC's financial expenses of both federal and matching funds, the types of issues that they are encountering in their cases, the types of activities in which they are engaged, and narrative information on clinic success stories.¹³⁴ In addition to using these reports to monitor that LITCs are properly utilizing federal grant funds, the Taxpayer Advocate Service also uses these reports to highlight the work of LITCs in an annual program report describing the level of services that LITCs provide nationally, highlighting particular success stories.¹³⁵ This report provides an excellent opportunity to collect data regarding the specific work that LITCs do that can be tied to social justice concepts, which can then be highlighted by the National Taxpayer Advocate. Taking advantage of this opportunity would be

131. For example, some states have collection statute of limitations that exceed the ten-year federal statute of limitations on collections provide for in I.R.C. § 6502, with some states, such as Oregon, having unlimited collection statutes that can cause the tax liability to follow the taxpayer indefinitely. See *50 State Regulatory Surveys: Taxation: Collection and Remedies*, 0130 REGSURVEYS 5 (Thomson Reuters July 2017).

132. David Super, *Rethinking Fiscal Federalism*, 118 HARV. L. REV. 2544, 2614-40 (2005).

133. For academic clinics, expanding the range of services offered, particularly to include transactional and compliance components, would enhance the pedagogical benefits of training law students early to provide pro bono representation in a wide variety of areas of needs that will enable them to use these skills to help remedy critical access to justice gaps throughout their careers. Ball & Viswanathan, *supra* note 130, at 61-64.

134. The reporting forms that LITCs use as well as instructions regarding how these forms should be completed can be found in PUBL'N NO. 3319 (May 2018), *supra* note 5 at 6, 44.

135. See, e.g., PUBL'N NO. 5066 (Feb. 2018), *supra* note 11.

relatively straightforward¹³⁶ and would simply involve adding a question to the grant reporting forms requesting clinics to highlight specific representation, advocacy, or outreach matters that advanced a social justice mission, however the clinic chooses to define social justice.¹³⁷ Indeed, perhaps an additional question would be unnecessary because this recommendation could be achieved by rephrasing an existing question in the grant application. Specifically, the current question that asks about additional activities that “contributed to ensuring the fairness and integrity of the tax system with regard to low income or ESL taxpayers” could be modified to directly inquire about social justice and to apply to all LITC activities rather than only to additional activities not discussed elsewhere in the grant report.¹³⁸

Asking a specific question regarding social justice work would have a number of benefits over simply asking LITCs to highlight success stories, in which LITCs may or may not tie their answers into specific social justice achievements, depending on how each LITC interprets the parameters of a success story. A specific question about social justice would cause LITCs to think about their work as more directly connected to social justice. In addition, given the importance of connecting academic legal clinics to a social justice mission,¹³⁹ the Taxpayer Advocate Service’s ability to more directly illustrate that LITC work is social justice work through the broader promotional efforts of the LITC program could help establish this connection more forcefully in the academic community. Combined with the financial appeal that already exists because of the LITC grant program, this

136. The only potentially complicating factor would be potential LITC pushback on having another question added to the grant form, given that the grant reporting obligations are commonly viewed in the LITC community as being onerous. Anderson & Bauman, *supra* note 124, at 129 (describing the grant reporting obligations and noting that the program’s complexity is already a drawback to participation). Given the potential benefits to LITC growth, discussed *infra*, however, this modest increase in reporting complexity seems justifiable.

137. Allowing the LITCs to define social justice rather than having a definition imposed upon them ensures that some valuable social justice contributions do not get overlooked through an overly restrictive definition, given the problems inherent in defining social justice, highlighted in Part IV.A., *supra* notes 140-160 and surrounding text. In addition, providing for the broadest definition of social justice possible mitigates any political concerns that might arise in LITCs continuing to receive congressional funding, given that “social justice” can be a potentially politically charged term. See *infra* note 171 and surrounding text.

138. PUBL’N NO. 3319 (May 2018), *supra* note 5, at 176 (the current question is found in IRS Form 13424-N, Part 2(ix)). While the question as it is currently phrased could arguably be viewed as having already accomplished the goal of giving LITCs an opportunity to characterize their work in social justice terms, it does not go far enough to make sure that all of this work will be captured. Readers might not automatically think of social justice concepts when they are thinking about issues that impact the fairness and integrity of the tax system. Furthermore, the question as it is currently written is meant to just capture additional work not described elsewhere as opposed to providing an opportunity for the responder to reflect and describe how all of the LITC’s work may further a social justice mission.

139. See discussion in Part V, *supra*.

explicit focus on connecting LITC work to social justice outcomes could make LITCs more attractive as new clinical programs in academic institutions, which, as discussed in Part IV, *infra*, are still very much a significant LITC growth market that has not been fully tapped and that could significantly enhance the reach of LITC services nationally.

V. THE PRACTICAL BENEFITS OF CONNECTING TAX JUSTICE TO SOCIAL JUSTICE: GROWING THE ACADEMIC LITC COMMUNITY

Thus far, this piece has demonstrated the strong connection between tax work and a social justice mission and has argued that this connection could be strengthened even further with some relatively minor changes to the LITC grant program. Making this social justice connection to tax work, and specifically to the work of LITCs, does not merely have theoretical benefits in correcting a misunderstanding of how issues of tax justice are also issues of social justice. There are also practical benefits to making this connection as visible and as strong as possible, in that this connection can help spur additional LITC growth that is essential to address areas of unmet taxpayer need. Because of a general consensus in the academic community that academic clinics should have a social justice mission, a strong sense of the social justice components of tax justice can help bolster the growth of academic LITCs, which are often best positioned in terms of both resources and expertise to have large impacts both on policy decisions impacting tax justice and on individual taxpayers.

A. *The Need for Continued Growth of Academic LITCs*

In order to understand why continued growth of academic LITCs is important, it is helpful to understand the important role that academic LITCs have played in the history of the LITC community. The first sustained low-income taxpayer clinic began at Hofstra Law School in 1974, and over the subsequent four decades, low-income taxpayer clinics have spread throughout the country.¹⁴⁰ Initially this growth was relatively slow and limited mostly to academic clinics.¹⁴¹ After Nina Olson and Janet Spragens convinced Congress in 1998 to enact IRC section 7526, which provided federal grant funding for low-income taxpayer clinics, both academic and legal service organizations continued to start low-income tax-

140. Fogg, *Taxation with Representation*, *supra* note 6, at 5-37 (providing a detailed history of the expansion of low-income taxpayer clinics). Technically, the first LITC was created at Harvard Law School in 1968, but it only survived eighteen months, before it was discontinued because of a perception that it did not benefit the law school or the IRS. Fogg, *A Brief History of Low-Income Taxpayer Clinics*, *supra* note 6, at 5 n.8 and surrounding text. Thankfully, in 2015 Harvard had a change of heart regarding the benefits of LITCs, and Professor Fogg re-established the LITC there. See *About Keith Fogg*, PROCEDURALLY TAXING, <http://procedurallytaxing.com/about-keith-fogg/> [<https://perma.cc/5LCJ-TL7X>] (last visited May 9, 2019).

141. Fogg, *Taxation with Representation*, *supra* note 6, at 18.

payer clinics, but the growth rate in legal service organizations increased significantly and resulted in legal service organizations outnumbering academic clinics.¹⁴² Currently, out of the 138 organizations that received grant funding in 2017, only forty-two are academic LITCs.¹⁴³ Out of these forty-two academic LITCs, all but two of which are housed in law schools.¹⁴⁴ Recent growth trends have shown signs of promise, with 29% of responding law schools indicating that they had an LITC during the 2016-2017 academic year compared with only 18% of reporting schools during the 2013-2014 academic year, which represents a higher percentage increase over any type of clinic offered in law schools during this period.¹⁴⁵ Indeed, this recent growth fortunately reverses prior trends in which LITCs were less popular clinical choices for law schools, as evi-

142. *Id.* at 26, 37-47 (describing this growth and noting: “By 2012, a near majority of LITCs existed in LSC-funded programs and a majority of LSC field offices had an LITC. Since the passage of section 7526, approximately 20 academic tax clinics opened as compared to over 60 LSC-funded programs.” (footnotes omitted)).

143. INTERNAL REVENUE SERV., PUBLICATION NO. 4134, LOW INCOME TAXPAYER CLINIC LIST (Jan. 2018).

144. Depending on the university, academic LITCs housed in law schools may still permit cross-enrollment from business students in the university. The current list of academic LITCs is: UALR Bowen School of Law, Pepperdine University LITC, Cal Poly Low Income Taxpayer Clinic (not a law school), University of San Diego LITC, Chapman University Tax Law Clinic, University of Denver Graduate Tax Program LITC, Quinnipiac University School of Law LITC, UConn Law School Tax Clinic, University of the District of Columbia David A. Clarke School of Law LITC, The Janet R. Spragens Federal Tax Clinic (American University), The Catholic University LITC, Philip C. Cook Low-Income Taxpayer Clinic (Georgia State University College of Law), University of Idaho College of Law LITC, Loyola University Chicago School of Law LITC, Notre Dame Tax Clinic, University of Baltimore School of Law LITC, University of Maryland Carey School of Law LITC, Bentley University Multi-Lingual Tax Information Program (not a law school), Legal Services Center of Harvard Law School LITC, University of Michigan LITC, Alvin L. Storrs Low-Income Taxpayer Clinic (Michigan State), University of Minnesota Ronald M. Mankoff Tax Clinic, Washington University School of Law LITC, UMKC-Kansas City Tax Clinic, Rosenblum Family Foundation Tax Clinic (UNLV), Rutgers Federal Tax Law Clinic, Syracuse University College of Law LITC, Fordham Law School Tax Litigation Clinic, Touro Law Center LITC, Hofstra Law School Federal Tax Clinic, North Carolina Central University LITC, Lewis & Clark Low Income Taxpayer Clinic, Villanova Federal Tax Clinic, University of Pittsburgh School of Law Taxpayer Clinic, University of South Dakota LITC, Texas Tech University School of Law LITC, Texas A&M University School of Law LITC, South Texas College of Law Houston LITC, University of Utah College of Law LITC, Washington and Lee University School of Law Tax Clinic, University of Washington Federal Tax Clinic, and Gonzaga University Federal Tax Clinic. *Id.*

145. ROBERT R. KUEHN ET AL., CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION 1, 9 (2017) http://www.csale.org/files/Report_on_2016-17_CSALE_Survey.pdf [<https://perma.cc/CYD7-RSL7>]. Note that these percentage figures are potentially elevated, given the fact that only 187 schools were profiled in the CSALE study for 2016-2017 and only 174 were profiled in 2013-2014, which does not capture all of the accredited U.S. law schools. Given that there are 203 ABA accredited law schools, forty academic clinics would represent a percentage of just under 20%. See *List of ABA-Approved Law Schools*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_

denced by the fact that tax clinics were the tenth most popular clinical offering during the 2007-2008 academic year but fell to the seventeenth most popular offering in 2010-2011 and the nineteenth most popular offering during 2013-2014.¹⁴⁶ Despite this positive recent growth, the fact that approximately 80% of ABA accredited law schools still do not have an LITC combined with the almost completely untapped market of business and accounting schools,¹⁴⁷ the potential for further academic LITC growth in many ways is indicative of a program still in its early stages in the academic community.¹⁴⁸

This untapped academic market is significant because additional LITC growth is still necessary due to unmet taxpayer demand for LITC services in high-population areas.¹⁴⁹ Further growth is also necessary in order to address the American Bar Association Commission on the Future of Legal Services' recommendation that legal aid and pro bono representation and outreach efforts be "vastly expanded," in the context of tax representation.¹⁵⁰

In addition, academic clinics are in many respects a better market for growth than legal service organizations because of academic institutions' ability to more easily provide the matching funds required to receive the federal grant by connecting the matching component to other critical aspects of their educational and research missions. Law schools in particular are ideal candidates for LITC growth given that the American Bar

education/resources/aba_approved_law_schools/ [https://perma.cc/B6AY-ZP U3] (last visited May 9, 2019).

146. KUEHN, *supra* note 145, at 8-9; ROBERT R. KUEHN & DAVID A. SANTACROCE, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., 2013-2014 SURVEY OF APPLIED LEGAL EDUCATION 7-8 (2014), http://www.csale.org/files/Report_on_2013-14_CSALE_Survey.pdf [https://perma.cc/L9SV-PU3S]; DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2010-2011 SURVEY OF APPLIED LEGAL EDUCATION 7-8 (2011), http://www.csale.org/files/CSALE.Report_on.2010-11.Survey.5.16.12.Revised.pdf [https://perma.cc/K3DF-TQLK]; DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., REPORT ON THE 2007-2008 SURVEY 8 (2008), <http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf> [https://perma.cc/RK5Z-Q2GU].

147. There are currently 529 business and/or accounting programs in the United States accredited by the Association to Advance Collegiate Schools of Business (AACSB). See *AACSB-Accredited Universities and Business Schools*, AACSB INTERNATIONAL, <https://www.aacsb.edu/accreditation/accredited-schools> [https://perma.cc/LZ43-XHQ5] (last visited May 9, 2019).

148. Anderson & Bauman, *supra* note 124, at 122 (describing the benefits of clinical education that law schools have recognized and observing that "[d]espite these benefits, the clinical teaching method has seldom been used by business school programs").

149. IRS News Release IR-2018-121 (May 16, 2018) (noting that coverage needs to be expanded because Hawaii, North Dakota, Puerto Rico, mid-Florida, northeast Arizona, northern Pennsylvania, and southeast New York [excluding New York City] do not currently have sufficient LITC coverage).

150. Leslie Book, *The IRS's EITC Compliance Regime: Taxpayers Caught in the Net*, 81 OR. L. REV. 351, 417 (2002); COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 2, at 7 (Recommendation 10).

Association has recently mandated that law schools offer more experiential opportunities to their students.¹⁵¹ Complicating this process is the fact that clinical education is generally (albeit, mistakenly) considered to be expensive, and law schools need to expand offerings at a time in which many law schools are experiencing budget shortfalls due to contractions in enrollment.¹⁵² Accordingly, continuing grant funding like the funding available to LITC clinics, particularly funding that can help defray operational costs, can provide a strong financial incentive for academic LITC growth in law schools.¹⁵³

What can be particularly appealing about this financial incentive is that, unlike other clinical legal education grants that are available for

151. See, e.g., ABA Accreditation Standard 303(a)(3) (requiring six credits of one or more experiential courses, defined to be “a simulation course, a law clinic, or a field placement”). State bars may also require additional experiential education for graduates to be admitted. Roy Stuckey, *The American Bar Association’s New Mandates for Teaching Professional Skills and Values: Impact, Human Resources, New Roles for Clinical Teachers, and Virtual Worlds*, 51 WAKE FOREST L. REV. 259, 261 (2016).

152. While most law schools may be able to guarantee clinical opportunities broadly defined to include externships and simulation courses to all their students without a significant budgetary impact, providing actual in-house clinical experience in which full-time faculty supervise students representing live clients (an experience that cannot be duplicated fully in other experiential contexts) is significantly more expensive. See Robert R. Kuehn, *Pricing Clinic Legal Education*, 92 DENV. U. L. REV. 1 (2014) (arguing that clinical education broadly defined is financially feasible for most law schools); Tamara L. Kuennen, *Missing the Value of Clinical Legal Education*, 92 DENV. U. L. REV. ONLINE 189, 191 (2015) (“As someone who teaches in an in-house clinic, I am worried that in our rush to provide as many experiential opportunities as we can, and as cheaply as we can, the value of the in-house clinic is missing in the discussion. This is particularly troublesome in the current debate over the cost of experiential education, where the in-house clinic is targeted as too expensive.”); Jeremy Speckhals, *A Reflection on Pricing Legal Education*, 92 DENV. U. L. REV. ONLINE 177, 178-79 (2015) (responding to Kuehn and noting that his statistical analysis should have taken into account the fact that clinics are likely more expensive than other experiential courses).

153. Book, *supra* note 3, at 450. While business schools can be viable candidates for LITCs, they do face an additional hurdle of needing to have at least one individual who can appear in Tax Court affiliated with the program, which tends to be easily satisfied by the presence of a law faculty member admitted to practice law, more commonly found in the legal academy. PUBL’N NO. 3319 (May 2018), *supra* note 5, at 6, 35 (requiring that “all LITCs . . . have a staff member or *pro bono* panel member who is admitted to practice before the United States Tax Court to handle litigation matters”). Pursuant to U.S. Tax Court Rule 200, attorneys admitted in any state are eligible to be admitted to practice in front of the U.S. Tax Court, while non-attorneys are also eligible for admission, but only through written examination and sponsorship. Non-attorneys, however, face an uphill climb, as the passage rate for the non-attorney examination has been below 20% during each administration from 2000-2016. *Statistical Information Non-Attorney Examination*, UNITED STATES TAX COURT, https://www.ustaxcourt.gov/NonAttorney_Exam_Statistics.pdf [<https://perma.cc/Q2NU-BYMR>] (last visited July 20, 2019). For a good discussion of the reasons and history of non-attorney admission to the Tax Court, see Keith Fogg, *Non-Attorney Admission to Tax Court*, PROCEDURALLY TAXING (Jul. 5, 2016), <http://procedurallytaxing.com/non-attorney-admission-to-tax-court/> [<https://perma.cc/TPW4-F5EN>].

launching costs,¹⁵⁴ the LITC grant program is a mature program that provides eligible clinics with an annual grant of up to \$100,000 with matching funds requirements.¹⁵⁵ Critically for law schools, both grant funds and matching funds can be used to fund ongoing operating costs such as faculty salaries.¹⁵⁶ This helps significantly defray the cost of an academic LITC given the fact that faculty costs are typically large portions of law school budgets and that clinical faculty are viewed (often mistakenly, given that their costs are similar to those associated with faculty teaching smaller enrollment seminars) as being expensive due to limitations on how many students can be enrolled in any particular clinic.¹⁵⁷

Law schools appear to have been responding primarily to this financial incentive, given that LITCs have been growing in the legal academy

154. For example, the FINRA Investor Education Foundation was instrumental in providing launching funds for Investor Advocacy Clinics but does not provide continuing funding annually to help support operating costs, which has caused investor advocacy clinics to run into funding challenges that threatened their viability after the initial grant funding was exhausted. See Securities and Arbitration Clinics comment on FINRA Special Notice: Engagement Initiative, at 6-7 (March 21, 2017) (discussing Jill Gross, *The Improbable Birth and Conceivable Death of the Securities Arbitration Clinic*, 15 CARDOZO J. CONFLICT RESOL. 597, 617-18, 621-22 (2013)).

155. IRC 7526 § (c)(2) (2018) (providing the statutory authorization for the LITC grant program and establishing a maximum annual grant amount of \$100,000); PUBL'N NO. 3319 (May 2018), *supra* note 5 (summarizing the grant funding and matching requirements).

156. PUBL'N NO. 3319 (May 2018), *supra* note 5, at 21 (noting that “[s]alaries, wages, and fringe benefits for services rendered by LITC employees” are an allowable use of both federal and matching funds (citing 2 C.F.R. § 200.430(a) and § 200.431)).

157. See Thomas M. Mengler, *Maybe We Should Fly Instead: Three More Train Wrecks*, 6 U. ST. THOMAS L.J. 337, 344-45 (2009); R. Michael Cassidy, *Strategic Austerity: How Some Law School Affordability Initiatives Could Actually Improve Learning Outcomes*, 17 CHAP. L. REV. 119, 131 (2013) (noting that “[c]linical programs are extremely expensive to operate on a cost-per-credit basis, due to the extremely low student-faculty ratio necessary to accomplish clinical pedagogical objectives (typically around 8:1)” (citing Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J. LAW & SOC. JUST. 309, 309 n.1 (2012))). The expense of a clinical faculty member can be further mitigated if that faculty member also teaches doctrinally and engages in scholarship and faculty service at the law school. Seeking out clinical faculty who can fulfill this dual role also has the additional benefit of making academic LITCs a model and a resource for other LITCs in that they are more likely to be led by experienced tax attorneys that have a richer depth of experience than is often the case in LITCs that may be staffed by less experienced attorneys. Fogg, *A Brief History of Low-Income Taxpayer Clinics*, *supra* note 6 (describing the disparity in experience levels across clinics and advocating for “measures [to] be adopted that will lead the strong to better assist the weak both in knowledge and in support”). Such an approach, however, does require university buy-in to be successful because of the time commitment associated with directing an LITC, which may take the faculty member away from other activities that the university prioritizes at a higher level. Anderson & Bauman, *supra* note 124, at 129 (in order to determine whether there is sufficient university buy-in up front, “[f]aculty advisers in the tax clinic should seek guidance on how administrators will consider clinic participation in performance appraisals”).

since 2014,¹⁵⁸ when law schools began to struggle with expanding experiential offerings despite working with reduced resources¹⁵⁹ (indeed, before this period of financial pressure, law school LITCs were decreasing).¹⁶⁰ This financial appeal is perfectly legitimate but is not sufficient to guarantee continued academic LTC growth into the future. The timing of the recent growth suggests that, in the absence of such a financial incentive in a time of economic necessity, law schools might be reluctant to prioritize LITCs in their clinical expansion plans. This leads to the conclusion that, while financial incentives are important, encouraging academic LTC growth also requires addressing institutional concerns regarding whether LITCs are connected to the core mission of advancing social justice found throughout the academy. While the general connection between LITCs and social justice has been established in Part II, cementing this connection for academic LITCs requires addressing additional social justice concerns that are unique to these LITCs.

B. *Addressing Social Justice Concerns Unique to Academic LITCs*

A significant obstacle to more rapid academic LTC growth is the perceived lack of connection between tax work and a social justice mission, regardless of which social justice definition is used. Failure to perceive this connection can hinder academic clinic growth because academic clinics are viewed either expressly or implicitly as being required to advance a social justice mission as one of their fundamental characteristics.¹⁶¹ Indeed, some law schools consider the connection to be so critical that they take it too far and view themselves as having satisfied a mission of promoting justice just by having clinics, in which the justice component is simply presumed, in lieu of having rigorous doctrinal instruction and research in justice concepts to help students understand what justice actually is.¹⁶²

158. See *supra* note 8 and surrounding text.

159. Eric A. Chiappinelli, *Just Like Pulling Teeth: How Dental Education's Crisis Shows the Way Forward for Law Schools*, 48 SETON HALL L. REV. 1, 4-5 (2017) (describing the significant law school enrollment declines that began in 2011 and accelerated through 2015).

160. See *supra* note 8 and surrounding text.

161. Kosuri, *supra* note 4, at 332 (critiquing the dominant view of academic clinics needing a social justice mission but acknowledging that “[r]arely, if ever, will you hear any comment about a clinic that does not at least presume social justice” (citing Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992))); Wizner, *supra* note 4, at 353-54 (noting recent expansion in the types of clinics that are offered and the types of activities pursued by clinical faculty but stating that “[n]otwithstanding programmatic innovations and the ‘professionalization’ of clinicians, the pursuit of social justice can and should continue to be a central mission of clinical legal education”).

162. John M. Breen, *Justice and Jesuit Legal Education: A Critique*, 36 LOY. U. CHI. L.J. 383, 395-97 (2005) (emphasizing that considering a social justice mission to be fulfilled solely through the presence of clinics “does not so much promote justice as it does promote an emotional response to injustice”). *But see* Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 45 (1995) (arguing that

This requirement that academic clinics be directly connected to social justice issues can be problematic for LITCs when institutional decisionmakers fall into the natural tendency to view tax controversy work as not being directly connected to social justice or public interest law.¹⁶³ While Part II remedies this misperception for the reader by illustrating that LITCs generally practice tax justice as a social justice issue, there are still concerns regarding whether academic clinics specifically are well-positioned to realize fully this social justice mission, or if such a mission is better left to legal service organizations.

One reason that academic LITC growth is not as robust as it could be comes from an argument articulated by the LITC community itself. Discussions of LITC growth within the LITC community often focus on expanding the number of nonprofit legal service organizations in the program, as opposed to expansion of academic law school clinics, under the theory that academic clinics cannot represent as many clients because of the demands related to student supervision and education and thus cannot have as large of an impact on improving access to justice.¹⁶⁴ This argument echoes broader academic calls to drive academic clinical education away from a predominantly individual representation based model due to the tension between academic clinics' ability to take on a high number of individual clients and their need to spend more time on each

“[g]iven law students' disproportionately high level of economically-privileged or at least non-poor backgrounds, it is simply impossible to expect student lawyers to achieve a true understanding of a poor client's situation . . . without significant exposure to the realities of social injustice faced by this country's poor”); C. Michael Bryce, *Teaching Justice to Law Students: The Legacy of Ignatian Education and Commitment to Justice and Justice Learning in 21st Century Clinical Education*, 43 GONZ. L. REV. 577, 593-601 (2008) (arguing that clinical education is one of the best ways to promote justice in legal education); Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231, 245-46 (2012) (arguing that clinics provide an ideal model for incorporating transformative learning theory into the curriculum to produce “justice ready” lawyers).

163. See COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 2, at 12 (describing the “basic human needs” typically considered to advance social justice principles, in which tax is not included); Fogg, *Taxation with Representation*, *supra* note 6, at 39-40 (noting that there were just a handful of academic LITCs, only three standalone LITCs, and no legal service organization field offices with an LITC prior to the authorization of grant funding through section 7526 in 1998, at which point the legal service organization LITCs grew at a quicker pace than academic LITCs). Even members of the tax bar are not immune from not always seeing a connection between social justice and tax work. Book, *Academic Clinics*, *supra* note 3, at 449 (in which the author admits to not seeing tax as an access to justice issue while he was a tax attorney in private practice). This misperception is shared by transactional clinics that are more commercially focused in which there is a tendency to focus solely on the commercial component and to disregard the component that provides social value. Ball & Viswanathan, *supra* note 130, at 53.

164. Book, *supra* note 150, at 414 (noting that non-academic non-profit LITCs “may potentially reach many more unrepresented taxpayers than academic LITCs”); Nancy S. Abramowitz, *Thinking About Conflicting Gravitational Pulls LITCS: The Academy and the IRS*, 56 AM. U. L. REV. 1127, 1130 (2007) (noting that academic clinics should not be high-volume clinics).

case than a legal service organization would in order to satisfy the clinics' pedagogical goals.¹⁶⁵ Compounding this concern is the fact that under a predominantly individual case model, constituencies from outside the academic clinic (particularly funding sources) may attempt to quantify the clinic's success under overly narrow terms, such as the total number of cases worked, while ignoring other aspects of the academic clinic's mission.¹⁶⁶

This emphasis on prioritizing legal service organization growth has certainly born fruit, as currently legal service organizations comprise the vast majority of the LITCs.¹⁶⁷ Nevertheless, believing that academic LITCs cannot have as much of an impact as legal service organizations is based on flawed assumptions about what academic LITCs are capable of doing and how they can harness synergies between their teaching and research missions and their clinical tax work.

There is certainly some truth to these concerns about caseload, given the pedagogical demands of educating students, many of whom arrive in the clinic with very little background knowledge of the federal income tax system and virtually no knowledge of the other skills inherent in representing a live client.¹⁶⁸ Nevertheless, the experience of the Philip C. Cook Low-Income Taxpayer Clinic at Georgia State University College of Law, of which the author is the director, illustrates that this concern is overstated. For many years, the Philip C. Cook LITC was the only LITC in the south-

165. Ashar, *Law Clinics and Collective Mobilization*, *supra* note 57, at 408 ("We maintain a low caseload to ensure that we have time and space to identify lessons from our fieldwork, but the cases and projects that we do take become our primary shared labor and provide our learning agenda each year, not coverage of a certain area of substantive law or a pre-ordained list of lawyering skills."); Abramowitz, *supra* note 164, at 1130 (noting that, due to "the short-term tenure (i.e., full and frequent turnover) of students each academic semester or year, the academic clinic structure is, as some of my colleagues would say, purposefully designed as the model of inefficiency. Academic clinics are not, and should not be high volume case processors"); Sonne, *supra* note 91, at 273 (noting that clinics focusing on individual cases can succumb to the temptation of spending "too little time to too many lawyering tasks" (internal quotation marks omitted) (quoting David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 *Clinical L. Rev.* 191, 203 (2003))).

166. Ashar, *Law Clinics and Collective Mobilization*, *supra* note 57, at 389 (noting that "[a]lthough clinics are increasingly accountable to foundations and government agencies through soft-money funding, those entities often use conventional auditing mechanisms that are inadequate in a pedagogical, low-caseload environment and that advance the notion that the work of the law school clinics and legal services offices should be measured wholly by the total number of cases completed").

167. Out of the 138 organizations that received grant funding in 2017, only forty-two were academic LITCs. IRS PUBL'N NO. 4134, *LOW INCOME TAXPAYER CLINIC LIST* (Jan. 2018).

168. At my clinic, students are able to enroll in the clinic starting in the summer following their 1L year, and the only other course prerequisite is that they either have taken or be simultaneously enrolled in Basic Federal Income Taxation.

eastern United States.¹⁶⁹ Accordingly, the clinic took the position that, if it did not accept a client, that client would be unlikely to receive effective assistance anywhere else. Thus, the clinic developed a practice of accepting as many clients as possible, which caused the clinic to have an active caseload of around 220-240 cases at any given time, which are handled by two clinic faculty members who also have teaching and service obligations outside the clinic, one clinic staff attorney, and twenty to thirty students per semester in the fall and spring and thirteen to seventeen students in the summer. While this clinic size admittedly is quite large, even a clinic with only one faculty member, ten students per semester, and at least one staff attorney can likely handle a caseload of 120 active cases at any given time, while still providing a sound educational experience for the students and effective representation for the clinic's clients.

In addition to being able to carry significant caseloads that can improve direct access to justice on the individual taxpayer level, even academic LITCs that may not wish to choose to represent a high volume of taxpayers are still uniquely suited to further several other recommendations from the Commission and thus improve access to justice. The American Bar Association Commission on the Future of Legal Services explicitly recognized that law schools can play a pivotal role in providing innovations that both train students to provide representation in a cost-effective manner and provide students opportunities to engage in pro bono representation directly.¹⁷⁰ LITCs help law schools further this role that the Commission identified due to the nature of tax controversy work. While some commentators critique academic clinics for focusing on practice areas that are not conducive to training lawyers to serve paying clients,¹⁷¹ tax controversies cut across economic levels. As a result, academic LITCs can produce efficiency benefits that extend beyond the direct pro bono representation that they provide to low-income clients. Because the tax specific skills that students acquire from an experience in an LITC can be directly applied to tax controversies for middle- and high-income clients, the students are able to acquire a skillset that allows them to provide representation in controversies to paying clients quickly after graduation in a much

169. It is now one of two LITCs in Georgia and one of multiple clinics in the southeastern United States. IRS PUBL'N NO. 4134, *LOW INCOME TAXPAYER CLINIC LIST* (Jan 2018). In addition, as of the date of this writing, a third LITC in Georgia has applied for funding.

170. COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 2, at 25-26, 49-50.

171. See Stephen Bainbridge, *Does Clinical Legal Education Really Have to be About Left-Liberal Politics?*, PROFESSORBAINBRIDGE.COM, [http://www.professorbainbridge.com/2012/12/does-clinical-legal-education-really-have-to-be-about-left-liberal-politics.html](http://www.professorbainbridge.com/professorbainbridge.com/2012/12/does-clinical-legal-education-really-have-to-be-about-left-liberal-politics.html) [https://perma.cc/M4CJ-2SK2] (last visited July 20, 2019) (discussing Mac Donald, McGinnis, and Olson). See generally Mac Donald, *supra* note 55; John O. McGinnis, *The Law is a Class; Law Schools Wield More Social Influence than Any Other Part of the American University. To what Effect?*, WALL ST. J. ONLINE (March 21, 2011) (reviewing Walter Olson, *SCHOOLS FOR MISRULE: LEGAL ACADEMIA AND AN OVERLAWYERED AMERICA* (2011)).

more cost-effective manner.¹⁷² As a result, the benefits of an LITC do not solely flow to low-income clients, but also to middle-income clients who may not be able to afford representation unless a less experienced (and thus more affordable) attorney can deliver it competently at a lower cost.¹⁷³ In addition, because of the similarity of the issues, academic LITCs are well-positioned to offer educational programs to the practicing bar on subjects that can provide training in areas that impact tax controversies at all income levels, which improves the quality of representation across a broad spectrum of taxpayers and expands the pool of attorneys capable of providing pro bono services to areas of need.¹⁷⁴

Furthermore, even if their caseloads do end up having to be less than what would be carried by a non-academic LITC, academic LITCs are also well-positioned to be leaders in identifying issues that may require legislative change.¹⁷⁵ In addition to seeing, like any LITC, what the impact is on low-income and vulnerable taxpayers of various tax provisions, academic

172. In addition to the general lawyering skills such as communication and written and oral advocacy skills that are hallmarks of many clinics and transferrable across multiple practice areas, LITC students significantly increase the core competency of tax research that is critical to all aspects of tax practice and can often drive up costs under a billable hour model when young practitioners lack experience in how to conduct it effectively:

Many of the LITC cases require students to conduct significant amounts of electronic tax research and improve their abilities in this critical functional competency. Through the LITC, students learn greater details and applications of the federal tax law. Students also must determine the state and tax consequences of any federal adjustment. They gain experience in decision making and problem solving related to IRS tax notices. Client cases often involve ambiguous facts and ethical dilemmas. . . . [W]e noted that the complexity of the real-world tax cases in the LITC allows students to become more open to uncertainty, recognize that each case involves multiple complexities, and apply tax research skills in problem resolution.

Anderson & Bauman, *supra* note 124, at 124 (citations omitted).

173. COMM'N ON THE FUTURE OF LEGAL SERVICES, *supra* note 2, at 14 (finding that "the need for legal assistance for moderate income individuals remains significant").

174. The ABA Section of Taxation is particularly good at incorporating its Pro Bono and Tax Clinics Committee into its programming so that LITC practitioners are able to help educate the larger practicing bar and the government on issues typically encountered in LITCs. See *Welcome Message by Christine Speidel, Chair of the ABA Section of Taxation Pro Bono and Tax Clinics Committee*, AM. BAR ASS'N, <http://apps.americanbar.org/dch/committee.cfm?com=TX330500> [permalink unavailable] (last visited Aug. 21, 2018). This support has existed since the earliest LITCs and has been critical to the success of the LITC program. Fogg, *A Brief History of Low-Income Taxpayer Clinics*, *supra* note 6 (notes 47-53 and surrounding text).

175. Book, *A New Paradigm for IRS Guidance*, *supra* note 27, at 529 (noting that LITCs can make valuable contributions to the IRS rulemaking process and proposing that such contributions be listed formally as a qualifying activity for LITCs, which the LITC program office eventually adopted in *IRS Publication 3319*). The LITC Program Office specifically notes the unique ways that academic LITCs can contribute to the LITC community:

Academic clinics that carry the additional responsibility of teaching and mentoring students may assist fewer taxpayers than non-academic clinics,

LITCs are also in a position to form synergies with doctrinal researchers (or to conduct academic research themselves) in order to identify areas of tax policy that adversely impact low-income populations.¹⁷⁶ For example, academic LITCs working in conjunction with critical tax theorists could help mitigate the “welfare taint” associated with the EITC by acquiring data that would illustrate the lived experiences of EITC recipients as well as some of the challenges they face and incorporate that data into tax scholarship to bolster academic arguments with empirical evidence.¹⁷⁷

Finally, even if one accepts the premise that pedagogical goals might limit social justice enhancing outcomes, academic LITCs, like other academic clinics, nevertheless compensate for this with the social justice norm enhancing effects of these instructional efforts. Nurturing this commitment is considered to be an essential component of academic clinics’ social justice mission because this impact can have a multiplier effect generationally as students continue to work to enhance social justice throughout their careers.¹⁷⁸ Students who participate in an academic LITC learn about ethical tax practice and about the importance of providing access to justice and committing to pro bono work, which they can carry with them through their careers.¹⁷⁹

however academic clinics can accomplish LITC Program goals in a variety of other ways, such as:

- Providing technical assistance;
- Training and mentoring other LITCs;
- Publishing articles about the LITC Program;
- Commenting on proposed Treasury regulations that affect low income or ESA taxpayers; and
- Monitoring graduates to determine whether they perform pro bono work on behalf of, or otherwise assist, low income taxpayers.

PUBL’N NO. 3319 (May 2018), *supra* note 5, at 31-32.

176. Raymond Brescia, *When Interests Converge: An Access-to-Justice Mission for Law Schools*, 24 GEO. J. ON POVERTY L. & POL’Y 205, 225-36 (2017) (describing how a specific access to justice mission in a law school could influence scholarship to focus on the needs of the public).

177. See Brown, *supra* note 28 as an example of scholarship that could serve as the basis for empirical collaboration with an academic LITC, in that she notes the “welfare taint” associated with EITCs and indicates that the best way to resolve it is active efforts to paint EITC recipients as being truly deserving of federal anti-poverty assistance.

178. Berenson, *supra* note 48, at 381-82, 396 (also noting that, in addition to these benefits, “the presence of law students in poor people’s courts may influence such courts in the direction of better practices”); Brescia, *supra* note 176, at 241 (“By embracing an access-to-justice mission that explores that role in society, educates students about that role, and produces students that can fill that role, law schools will regain their own critical place in society.”); Carpenter, *supra* note 48, at 57. This multiplier effect can make up for any quantity limitations that pedagogical issues impose on academic clinics’ advocacy outcomes.

179. Abramowitz, *supra* note 164, at 1136-37; Book, *Academic Clinics*, *supra* note 3, at 452 (noting how transformative this experience can be for law students because their “experience in a tax clinic is the first exposure to the power that legal representation can bring for those with fewer resources”). “The LITC students also learn to appreciate multiple family structures, living arrangements, and

In sum, rather than detracting from the social justice mission that all LITCs share, academic LITCs are uniquely suited to advance that mission precisely because of their academic characteristics. Apart from the already considerable financial incentives that law schools have to form such clinics, the social justice connection situates academic LITCs at the heart of the academic clinical enterprise advancing social justice. This connection to the institutional mission of the academic clinical community ideally will have the benefit of further incentivizing academic LTC growth even in the absence of financial considerations.

VI. CONCLUSION

Although social justice may be a difficult term to define with precision, enhancing tax justice is an integral part of advancing social justice under any of the most common definitions. Nowhere is this better exemplified than in the work of LITCs. Through their individual representation, educational outreach activities, and policy advocacy work, LITCs improve access to justice; remove tax barriers that often can hinder access to housing, healthcare and employment; enable individuals to become more integrated into the overall community of taxpayers so that tax problems do not hinder their ability to succeed on their own terms; and achieve systemic policy changes that advance tax fairness and the Taxpayer Bill of Rights.

This connection to a social justice mission often goes unnoticed, which can have the negative practical consequence of slowing LTC growth that is needed to meet low-income taxpayer demand. This problem can be particularly acute in the academic clinical community, given the importance of tying academic clinical work directly to a social justice mission. Making this connection between tax work and social justice outcomes as strong and as visible as possible is an important step in reversing this trend. Some programmatic reforms to the LTC program would help make this connection even more explicit and would expand the positive impact that LITCs can have. The absence of these changes, however, should not be a roadblock for academic institutions to appreciate the already strong connection that LITCs have to the mission of advancing social justice and to launch LITCs not just because of the financial incentives that federal grant funding provides, but as part of an overall mission of advancing social justice through their clinical work. "Tax justice is social justice" should not be a surprising statement—it should be a truism.

tax hurdles faced by society's low-income workers . . . [as well as] a better appreciation for cultural diversity and the difficulties facing new U.S. immigrants." Anderson & Bauman, *supra* note 124, at 124.