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## May Issue of Boston College Law Review Now Available

Boston College Law School

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## May Issue of Boston College Law Review Now Available

2016 NEWS ARCHIVE

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The May issue of the *Boston College Law Review* is now available. This is the fifth and final issue of the *Review* published during the 2015-2016 academic year. The May issue contains 13 scholarly works arising out of a symposium that BC Law hosted this past October in conjunction with the American College of Trust and Estate Counsel, titled "The Centennial of the Estate and Gift Tax: Perspectives and Recommendations." Summaries of all 13 pieces can be found below. Full versions of these works can be found at <http://lawdigitalcommons.bc.edu/bclr/vol57/iss3/>.

### [Michael J. Graetz, "Death Tax" Politics](#)

In his keynote address *"Death Tax" Politics*, from the October 2, 2015 Symposium, *The Centennial of the Estate and Gift Tax: Perspectives and Recommendations*, Professor Michael Graetz of Columbia Law School describes the fight over the repeal of the estate tax and its current diminished state. Professor Graetz argues that the political battle over the repeal of the estate tax reflects a fundamental challenge to our nation's progressive tax system. Professor Graetz concludes that a revitalized estate tax is important for managing the national debt and reducing massive inequalities in wealth.

### [James R. Repetti, \*Should We Tax the Gratuitous Transfer of Wealth? An Introduction\*](#)

In his commentary *Should We Tax the Gratuitous Transfer of Wealth? An Introduction*, Boston College Law School Professor James R. Repetti examines the controversial role of the estate tax within our system. Professor Repetti first analyzes the two principle reasons behind the adoption of the estate and gift tax, and addresses some concerns about the harmful effects of large concentrations of wealth. Professor Repetti then introduces three of the compelling papers from this Symposium issue and their discussions of whether it is desirable to tax gratuitous transfers of wealth. Professor Repetti's commentary provides a helpful primer to the major issues explored within the three papers, as well as their greater contributions to the debate over the role and impact of the estate and gift tax.

### [Paul L. Caron, \*The One-Hundredth Anniversary of the Federal Estate Tax: It's Time to Renew Our Vows\*](#)

In his article *The One-Hundredth Anniversary of the Federal Estate Tax: It's Time to Renew Our Vows*, Professor Paul L. Caron of the Pepperdine University School of Law revisits the federal estate tax's historical origins, its role in our government and society through the years, and its current and future place in our fiscal firmament. Professor Caron argues that the reasons behind the enactment of the estate tax in 1916—to raise revenue during a time of war, enhance the progressivity of the tax system, and curb concentrations of wealth—are even more compelling in 2016. Professor Caron concludes that revitalization of the estate tax should

[David Joulfaian, \*What Do We Know About the Behavioral Effects of the Estate Tax?\*](#)

In his article *What Do We Know About the Behavioral Effects of the Estate Tax?*, Dr. David Joulfaian of the U.S. Department of the Treasury explores how the existence of the estate tax in its present form can impact the decisions of those whose estates may become subject to it. Dr. Joulfaian discusses changes over time in the scope and budgetary importance of the estate tax and in how it relates to other taxes imposed on taxed estates. Dr. Joulfaian then investigates the economics literature to suggest how those whose estates may become subject to the estate tax may allow the tax to impact other economic decisions, such as timing of gifts to heirs, charitable bequests and contributions, and life insurance ownership.

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[Jennifer Bird-Pollan, \*Why Tax Wealth Transfers?: A Philosophical Analysis\*](#)

In her article *Why Tax Wealth Transfers?: A Philosophical Analysis*, Professor Jennifer Bird-Pollan of the University of Kentucky College of Law grapples with the many philosophical viewpoints that influence the debate over the estate tax. Rather than a simplistic “liberal” versus “conservative” debate, Professor Bird-Pollan focuses on liberalism, libertarianism, and utilitarianism to show that most philosophical belief systems support wealth taxation. Professor Bird-Pollan asserts that a robust wealth transfer taxation system is the best means of combating the current historic levels of economic inequality. Professor Bird-Pollan concludes that a tax system focused on recipients of wealth, such as an inheritance or accessions tax, would break up large concentrations of wealth and also be supported by most common philosophical beliefs.

[Ray D. Madoff, \*Considering Alternatives: Are There Methods Other Than the Estate and Gift Tax That Could Better Address Problems Associated with Wealth Concentration?\*](#)

In her commentary *Considering Alternatives: Are There Methods Other Than the Estate and Gift Tax That Could Better Address Problems Associated with Wealth Concentration?*, Professor Ray D. Madoff of Boston College Law School analyzes three articles published in this Symposium issue. She first explores the underlying purpose of the estate and gift tax: eliminating wealth inequality. Professor Madoff then considers the three articles’ proposed alternative tax systems—namely an accession tax and a wealth tax—that could more adequately address the problem of wealth concentration, and evaluates the merits of each.

[David G. Duff, \*Alternatives to the Gift and Estate Tax\*](#)

In his article *Alternatives to the Gift and Estate Tax*, Professor David G. Duff of the University of British Columbia Allard School of Law examines four prominent alternatives to the current tax: an annual wealth tax, taxing unrealized gains at death, including gifts and inheritances in income, and a lifetime accessions tax that would apply to the cumulative value of gifts and inheritances received by individuals over their lifetimes. Professor Duff reconsiders the reasons for taxing wealth transfers, arguing that the primary purpose of a wealth transfer tax is not to raise revenue or enhance progressivity, but to regulate intergenerational transfers of wealth in order to reduce unearned concentrations of wealth and power and promote fair equality of opportunity. Professor Duff concludes that a lifetime accessions tax is an attractive alternative to the current tax because it best serves the primary purpose of a wealth transfer tax to reduce the concentration of inherited wealth and power and ensure fair equality of opportunity. Furthermore, this alternative is more likely to attract political and popular support.

[Miranda Perry Fleischer, \*Divide and Conquer: Using an Accessions Tax to Combat Dynastic Wealth Transfers\*](#)

In her article *Divide and Conquer: Using an Accessions Tax to Combat Dynastic Wealth Transfers*, Professor Miranda Perry Fleischer of the University of San Diego School of Law argues that the current estate tax is ineffective at both raising revenue and furthering the social goals it purports to advance. As an alternative to the estate tax, Professor Fleischer proposes an accessions tax designed to minimize dynastic wealth transfers. Professor Fleischer argues that the tax system should be concerned with transfers of wealth large enough to confer unearned economic and political power, because those transfers contravene traditional democratic ideals. Professor Fleischer concludes that a transferee-focused accessions tax with a high per-recipient exemption, between ten and twenty million dollars, would discourage conveyance of power and influence while ensuring that recipients are still able to live luxurious lifestyles.

[David J. Shakow, \*A Wealth Tax: Taxing the Estates of the Living\*](#)

In his article *A Wealth Tax: Taxing the Estates of the Living*, Professor David J. Shakow of the University of Pennsylvania School of Law argues that after one hundred years of crafting an increasingly complex income tax system, the time has come to consider an alternative: a wealth tax. Professor Shakow has previously proposed a wealth tax characterized by a flat tax on wages and a flat tax on net worth. Professor Shakow argues here that the primary criticisms of his proposal—the difficulties of valuation and practicality—can be resolved. Professor Shakow first demonstrates how many different types of assets can be easily valued, and then goes on to explain how Nordic countries have solved the issue of distinguishing labor from capital. Professor Shakow concludes that, although there are difficulties inherent with a wealth tax and questions about its constitutionality, it is a proposal worth considering.

[Bridget J. Crawford, \*Valuation, Values, Norms: Proposals for Estate and Gift Tax Reform\*](#)

In her commentary *Valuation, Values, Norms: Proposals for Estate and Gift Tax Reform*, Professor Bridget J. Crawford of the Pace University School of Law introduces three persuasive articles from the Symposium. Professor Crawford describes each author's concrete proposal for improving the existing estate and gift tax system. Professor Crawford then explains how all three contributions provide a pragmatic—but not unified—approach to law improvement. For each proposal, Professor Crawford explores how it seeks to address the behavior of taxpayers in response to complex wealth transfer tax laws.

[Joseph M. Dodge, \*Three Whacks at Wealth Transfer Tax Reform: Retained-Interest Transfers, Generation-Skipping Trusts, and FLP Valuation Discounts\*](#)

In his article *Three Whacks at Wealth Transfer Tax Reform: Retained-Interest Transfers, Generation-Skipping Trusts, and FLP Valuation Discounts*, Professor Joseph M. Dodge of the Florida State University College of Law offers three sets of proposals to reform the existing federal wealth transfer tax system, the common theme being the link between the timing of the taxable transfer and valuation. First, Professor Dodge proposes taxing transfers with retained interests at the first to occur between the transferor's death or the date the interest expired. Next, Professor Dodge argues that the generation-skipping tax should only be imposed on taxable distributions to achieve accurate valuation, and the exemptions would either be the unused gift/estate exemptions of deemed transferors or separate per-transferee exemptions. Lastly, Professor Dodge suggests changes to valuation discounts of interests in family-held entities, including ignoring the lack-of-marketability discount for family investment-holding entities, and non-recognition of minority-interest discounts where minority status exists by reason of marital property rights or arises by gift or bequest.

[Wendy Gerzog, \*Toward a Reality-Based Estate Tax\*](#)

In her article *Toward a Reality-Based Estate Tax*, Professor Wendy C. Gerzog of the University of Baltimore School of Law argues in favor of reforming the estate tax rather than completely

replacing it. Professor Gerzog argues that the estate tax is a fundamentally good scheme, but that it suffers from correctable problems—namely valuation issues and marital and charitable deductions that do not reflect actual associated transfers. Accordingly, Professor Gerzog sets forth six proposals that she argues will prevent gaming of the current estate tax regime and transform it into a reality-based tax.

[Kerry A. Ryan, \*Marital Sharing of Transfer Tax Exemptions\*](#)

In her article *Marital Sharing of Transfer Tax Exemptions*, Professor Kerry A. Ryan of the St. Louis University School of Law analyzes portability and its antecedents in order to distill a positive account of marital sharing of transfer tax exemption amounts. Professor Ryan examines Congress's enactment of portability, which decoupled tax-free availability of a spouse's unified credit from the necessity of a prior intra-spousal transfer. Professor Ryan argues that a logical extension of this progression in the law, presaged by several early proposals by the American Law Institute and the U.S. Treasury, would be a regime that authorized elective sharing of estate and gift tax exemption amounts between spouses, in any proportion, during life or at death.