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Poverty Law, Policy and Practice

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POVERTY LAW, POLICY, AND PRACTICE

Juliet Brodie, Clare Pastore, Ezra Rosser, Jeffrey Selbin
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Preface

Poverty law as a distinct field of study and practice did not exist 50 years ago. By the late 1960s, however, lawyers were active participants in a robust and multifaceted war on poverty. With inspiration, example, and tools from their civil rights forebears—and support from the Ford Foundation—they flooded federal courts with lawsuits designed to establish constitutional protections and substantive rights for the poor. They achieved a string of high-profile victories, perhaps best exemplified by the U.S. Supreme Court's recognition of a due process right to welfare pre-termination hearings in *Goldberg v. Kelly* (1970). But almost as quickly as it arose, the era of constitutional antipoverty lawyering receded as the Court refused to extend *Goldberg's* procedural logic to recognize positive rights to social goods like welfare, housing, or education.

Law school curricula and casebooks during the time reflected the new antipoverty activism. As the tumult of the 1960s swirled outside their gates, law students demanded relevant courses and training. The first poverty law casebook was published in 1969, by which time law schools across the country were opening antipoverty clinics and offering more than 200 poverty-related courses. Responding to growing demand in this emerging area of law and practice, four more poverty law casebooks and a hornbook were published by 1976. But like the antipoverty litigation agenda, the poverty law movement in legal education began to wane almost as soon as it had begun. It would be more than 20 years before the next—and last—poverty law casebook was published, this time in the immediate shadow of welfare reform.

So, why a poverty law textbook in 2014?

First, although the Supreme Court has largely foreclosed an affirmative antipoverty avenue in the federal courts—and federal funding for legal services peaked in 1980—lawyers remain actively engaged in a wide range of antipoverty activities and initiatives. As they have for decades, lawyers for the poor continue to enforce and expand statutory rights, fight bureaucratic disenfranchisement, and challenge unjust policies in courts, legislatures, administrative agencies, and other settings. Relatively meager federal funding for legal services has helped to drive a more diverse and decentralized delivery system of experimentation and innovation at the state and local levels. Poverty lawyers have responded to the evolving needs of low-income clients and communities by promoting economic development, combatting the impacts of criminalization, and partnering with other professionals in multidisciplinary practices.

Second, in the wake of the Great Recession, wealth disparities in the United States are at their highest levels since the 1920s. Living wages, affordable housing, and other

basic needs are increasingly out of reach for tens of millions of Americans, including many working families and an eroding middle class. Government retrenchment and disinvestment from decades-old commitments to the poor, elderly, and disabled coincide with a global movement of labor and capital that reverberates throughout the domestic landscape. These developments raise important and troubling legal and policy questions, including the role of law, lawyers, and legal institutions in efforts to address the impact of persistent and deepening economic inequality.

Given the proliferation of substantive and methodological approaches in poverty law, this book is designed for a survey course. The first three chapters introduce foundational concepts about poverty, social welfare policy, and constitutional issues. With these tools in hand, the next seven chapters—which can be taught in any order—explore major antipoverty programs and sites of activity, including welfare, work, housing, health, education, criminalization, and access to justice. Each substantive chapter brings together a mix of data, doctrine, theory, policy, and practice issues. The final two chapters describe innovations and current debates, including market-driven and human rights-based approaches to poverty reduction.

The book includes a mix of case law, social science, and popular press readings from across the ideological spectrum. We hope it will provide students with a solid introduction to the evolving field of poverty law. More importantly, we hope it will encourage them to participate in ongoing efforts to combat the causes and conditions of poverty.

Table of Contents

CHAPTER 1:	INTRODUCTION TO POVERTY
CHAPTER 2:	SOCIAL WELFARE POLICY
CHAPTER 3:	POVERTY AND THE CONSTITUTION
CHAPTER 4:	WELFARE
CHAPTER 5:	WORK
CHAPTER 6:	HOUSING
CHAPTER 7:	HEALTH
CHAPTER 8:	EDUCATION
CHAPTER 9:	CRIMINALIZATION
CHAPTER 10:	ACCESS TO JUSTICE
CHAPTER 11:	MARKET STRATEGIES
CHAPTER 12:	HUMAN RIGHTS