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ESSAYS

PARTICIPATORY ANTIPOVERTY TAX COORDINATION

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*Blaine G. Saito**

INTRODUCTION

This symposium has shown how important the tax system is for fighting poverty. Taxation is a key locus for addressing poverty. Over the years more and more provisions to alleviate poverty have found their way into the tax system, whether out of political expediency, efficacy, or a mix of both.¹

This piece takes the idea of using the tax system to alleviate poverty as both a given and as something relatively useful. In many ways, the problems of poverty are distributional, but they are also relational. Too often those who are poor are pushed outside of society and put into a situation of marginalization.² Many of the antipoverty programs that exist feed on these narratives and are intrusive and often concerned that the poor cannot make decisions for themselves. They reek of a strong paternalism. In a sense,

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¹ For example, one of the earliest discussions of this effort is Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791 (2014). The eminent people who wrote for this symposium have also produced great pieces, see [list others in symposium and their seminal works]. On the political expediency of using taxes, see generally SUZANNE METTLER, *THE SUBMERGED STATE* (2011) (discussing the use of tax expenditures to address various social welfare issues and the peril of them), and CHRISTOPHER HOWARD, *THE HIDDEN WELFARE STATE: TAX EXPENDITURES AND SOCIAL POLICY IN THE UNITED STATES* (1999).

² IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 53–58 (2011) (discussing the idea of marginalization as one of the five faces of oppression).

poverty undermines key values of democratic equality. It does not treat the poor as standing in equal relation to others.³

But many of the tax programs themselves are different. For cash programs, the programs are relatively automatic.⁴ On the other hand, noncash tax programs often use private means to achieve public goals while allowing the poor to have access to goods that is more in line with the access that nonpoor people have or transforming the places where the poor live to supply otherwise missing opportunities.⁵

But often there are problems with implementation and integration of these tax programs. There are overlaps with other programs. These overlaps and the need to apply to multiple programs with similar requirements makes life even more enervating for the poor with multiple forms and recertifications. For many noncash tax programs, the Internal Revenue Service (IRS) and Department of the Treasury (Treasury) often lack the capacity and expertise to manage and implement these programs effectively, despite their potentials.⁶

The concept of agency coordination, which I have discussed in other work, guided by an understanding of purposes can help.⁷ Here, the IRS and Treasury need to discern within the context of the tax system, which itself has underlying values of progressivity, how various antipoverty programs work and how they interact with other policy areas and programs. Using that understanding, the IRS and Treasury should adjust their coordination with other agencies to reduce frictions, channel beneficiaries to additional programs, and work together to build expertise. The goal is to achieve better outcomes of these programs and to limit some of the marginalization and

³ See Elizabeth Anderson, *What's the Point of Equality*, 109 ETHICS 287, 289 (1999) (discussing the idea of democratic EQUALity as a relational matter).

⁴ Some examples discussed later are the Earned Income Tax Credit, I.R.C. § 32, and the Child Tax Credit, *id.* § 24.

⁵ Some examples discussed below are the Premium Tax Credit of the Affordable Care Act, *id.* § 36B, the Low-Income Housing Tax Credit, *id.* § 42, the New Markets Tax Credit, *id.* § 45D, and Opportunity Zones, *id.* §§ 1400Z-1 to -2.

⁶ Blaine G. Saito, *Tax Coordination*, 38 GA. ST. L. REV. 735, 739–42 (2022).

⁷ *Id.*; Blaine G. Saito, *Context, Purpose, and Coordination in Taxation*, 55 CONN. L. REV. 375 (2023).

oppression that arises from poverty and the traditional ways of operating our antipoverty programs.⁸

But coordination, because it is mostly an administrative matter, suffers from dark sides. There is concern that coordination may occur with the wrong agencies, like law enforcement, who would further marginalize the poor. There are also concerns about a lack of voice and input in such a strong administrative process. Any coordination effort needs to address these concerns, both to limit who can access information or work with the IRS and Treasury and to provide for means to hear the voice of beneficiaries. But coordination itself, especially on the matter of voice, can help through providing access to additional voices that the IRS and Treasury alone may not consider as they do not usually work with these populations directly in developing policy or program management.⁹

This Essay proceeds as follows. Part I briefly describes democratic equality and why poverty, and even many antipoverty, programs undermine that goal. Part II then talks about antipoverty programs in taxation, dividing them into direct benefits that flow to beneficiaries and indirect programs that really seek to transform other parts of the world around the poor to make their lives better. Part III then discusses contextualized, purpose-driven tax coordination, some dark sides, and ways to address some of these issues. The overall goal here is to see how the tax system can fight poverty not only in a distributional way but also in a way that leads toward greater relational equality, and how there are tools to improve that effort.

I. DEMOCRATIC EQUALITY AND POVERTY'S SCOURGE

While fighting poverty is often viewed as a distributional matter, this piece takes a slightly different view about poverty. It posits that a significant part of the harms of poverty are relational. Providing financial resources for people in poverty is a necessary but insufficient means of reaching the goal of democratic equality.

⁸ YOUNG, *supra* note 2.

⁹ Saito, *supra* note 7, at 378–87.

The notion of democratic equality stems from many thinkers but is most linked with Elizabeth Anderson.¹⁰ Unlike traditional notions of equality, particularly those in tax, which focus on distributional outcomes, democratic equality is a relational matter between people in society.¹¹ The idea of democratic equality is that people should be treated as equals, without oppression, in all aspects of civil society.¹² That means that people must stand as equals not only in the sphere of politics but also within the economy and in key parts of social relations. There should be no badges of honor or dishonor based on characteristics like race, class, gender, or disability status.¹³

Democratic equality thus has two key interrelated prongs. One is more procedural, and the other is more substantive. On the procedural side, when making policy, democratic equality requires the inclusion of all voices into the discussion.¹⁴ No voice can be privileged over others. Voices must have an equal stake and share. Even if the policies do not turn out exactly the way a particular voice wants, that policy needs to get publicly ventilated, and during that process, these voices must be given equal opportunity and consideration.

The substantive end is that people need to have the capabilities to access all parts of civil society as equals. That means basic needs must be met. But it also means that there need to be means to provide for the key capabilities to participate as equals in all aspects of civil society. Unlike traditional distributive justice theories, the idea of relational democratic equality does not necessarily condone unequal distributions of wealth.¹⁵ Democratic equality only condemns unequal distributions of wealth if they lead toward a disparate treatment of people in the parts of civil society.¹⁶ If the wealthy are honored and the poor are dishonored, that undermines the distributional

¹⁰ Anderson, *supra* note 3, at 289, 312–13.

¹¹ *Id.*

¹² *Id.* at 312–13.

¹³ *Id.* at 312.

¹⁴ *Id.* at 317.

¹⁵ *Id.* at 312–14, 331.

¹⁶ *Id.* at 334.

arrangement. Furthermore, if the wealthy have a greater voice and the poor less of a voice, that too runs counter to democratic equality.

Poverty in America today runs counter to both the procedural and substantive prongs of democratic equality. First, many of the poor do not have basic needs met, or struggle to meet them. As a result, they cannot participate as equals in civil society. Such basic needs then must be met to have that level of relational equality.

Second, poverty does come with a badge of dishonor. Those who live at the lower end of the spectrum are viewed by the culture as somehow deficient.¹⁷ They are often cast aside and treated with levels of disdain. That in turn shuts them out of access to many other goods in the social spheres of civil society. They are too often forced, partly because of a lack of funds but also culturally, into separate neighborhoods.¹⁸ People also tend to undervalue their views, while those who are wealthy are often lionized.¹⁹

Third, much of civil society—at least the political sphere—cuts out the poor. Many among the poor do not have the same kinds of access or ability to amplify their views as those who are rich.²⁰ If political actors do not undertake engagement actively and thoughtfully, they are denied this standing of equals in matters of the state, which is important as the binding force of society.

¹⁷ See MICHAEL E. GRAETZ, *THE POWER TO DESTROY: HOW THE ANTITAX MOVEMENT HIJACKED AMERICA* 11–12 (2024) (discussing the trope of the “welfare queen” and the antipoor and anti-Black views it generated); YOUNG, *supra* note 2, at 54 (noting how the poor are subjected to “patronizing, punitive, demeaning, and arbitrary treatment by the polices and people associated with welfare bureaucracies”).

¹⁸ See Blaine G. Saito, *Collaborative Governance and the Low-Income Housing Tax Credit*, 39 VA. TAX REV. 451, 467–71 (2020) (noting that LIHTC housing, which is often the only housing available for the poor who have housing vouchers, are mostly in low-opportunity census tracts and often there are no plans, as required, to meaningfully improve these tracts and increase opportunity).

¹⁹ See, e.g., James R. Repetti, *The Appropriate Roles for Equity and Efficiency in a Progressive Individual Income Tax*, 23 FLA. TAX REV. 522, 549–56 (2020) (noting the outsized role the wealthy play in politics); Joshua L. Kalla & David E. Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 AM. J. POL. SCI. 545, 545–56 (2016) (discussing how contributions lead to access more than anything else).

²⁰ Repetti, *supra* note 19.

Finally, related to the badge of dishonor, we tend to oppress the poor. As Iris Young wrote, one of the five faces of oppression is marginalization.²¹ We marginalize the poor in numerous ways. They are often treated with suspicion by state actors. Often, the very programs that they need to help them to develop the capacities to act as equals relationally in civil society or to provide for their basic needs make it difficult for them to receive these benefits.²² They are put through demeaning interviews and constantly forced to undertake efforts to recertify in person, taking them away from their already precarious jobs and other life duties.²³ In short, society marginalizes the poor and does it in the very programs that are supposed to help them.

The tax system can be a locus for addressing poverty, along with other programs. Society should develop tax policy and use the tax system in ways that enhance democratic equality.

II. TAX'S ROLE IN POVERTY REDUCTION

This part briefly outlines both the reasons for and concerns about the tax system playing a role in antipoverty measures. In the end, this part shows that the tax system is a helpful but incomplete means for addressing poverty.

A. The Positives of Tax Antipoverty Programs

Tax policy attempts to fight poverty through numerous means, and this symposium highlights its centrality. In many ways, the goal of having a progressive income tax itself aids in this end by collecting more from those who have more. But there are other specific programs in the tax system that specifically aim to fight poverty. They can be divided into cash and noncash programs, which are intermediated through other entities. Each has significant positives for addressing poverty.

²¹ YOUNG, *supra* note 2, at 9, 53–55.

²² *Id.*

²³ Tahk, *supra* note 1, at 828–29.

1. Cash Programs

The two biggest cash programs in the tax code that fight poverty are the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC).²⁴ The EITC is currently the largest cash transfer program for the working poor.²⁵ The CTC, on the other hand, has a broader reach into the middle class but helps to reduce child poverty.

One of the important aspects of the tax system in handling direct payments through the EITC and the CTC is their automaticity. The tax system gathers a great deal of information from people that help determine eligibility for these direct programs as well as other programs. People do need to file a tax return to claim these benefits, which can be a difficult endeavor.²⁶ But once they do file and claim the EITC and refundable CTC, they get the cash rather automatically.²⁷

This automaticity not only has efficiency gains but also helps to promote democratic equality. These programs are the largest cash transfer programs that remain in our safety net. As such, they are vital to providing the financial means for people to have the capability to access parts of civil society.

But these programs are also important because their relative automaticity helps to fight back against the badges of dishonor and puts, at least in these programs, the working poor in a stance of greater equal regard.²⁸

²⁴ I.R.C. §§ 32, 42.

²⁵ MICHELLE LYON DRUMBL, *TAX CREDITS FOR THE WORKING POOR: A CALL FOR REFORM 2*, 23–24 (2019).

²⁶ Often, those who qualify for direct antipoverty tax programs also qualify for free filing through VITA clinics. *IRS Tax Volunteers*, IRS (Aug. 22, 2024), <https://www.irs.gov/individuals/irs-tax-volunteers>. There is concern still about uptake, but while not great, uptake is not too different from other cash-like benefit programs like SNAP. *Compare EITC Participation Rate by States Tax Years 2014 Through 2021*, IRS (Aug. 9, 2024), <https://www.eitc.irs.gov/eitc-central/participation-rate-by-state/eitc-participation-rate-by-states>, with *SNAP Participation Rates by State, All Eligible People (FY 2018)*, USDA: FOOD & NUTRITION SERV., <https://www.fns.usda.gov/usamap> (last visited Aug. 14, 2024).

²⁷ *How to Claim the Earned Income Tax Credit (EITC)*, IRS (Aug. 19, 2024), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/how-to-claim-the-earned-income-tax-credit-eitc>.

²⁸ See Tahk, *supra* note 1, at 828–29.

These tax programs do not require the invasive interviews or home visits that often come with many other programs. Filing one's taxes is enough.

Furthermore, rather than an application that is often pegged as making one lesser, filing taxes is a common obligation for Americans.²⁹ This sort of universality removes a mark of shame that often accompanies other applications, much like how a universal free school lunch removes the mark of shame of poorer children who have free lunch.³⁰ Additionally, it builds in a dimension of what is called fiscal citizenship. Tying these two together moves those who are poor out from a marginalized shadow into fuller senses of citizens.

These programs also provide direct cash benefits rather than in-kind or limited benefits. This provides a sense of equal regard as well in that beneficiaries are the ones who make the decisions on how to spend the money, unlike, for example, Supplemental Nutrition Assistance Program (SNAP), which requires benefits to be spent on a limited set of items. Often this view is refracted through welfare maximization or libertarian ideals.³¹ But it also fits in with a democratic equality notion of equal regard because, when most people get wages or other payments, they can do what they want with the money without bureaucratic restraints.³²

2. Noncash Programs

The tax system also fights poverty through indirect programs. Rather than handing out cash benefits, these programs provide subsidies to private actors to do certain things to alleviate poverty. For example, the Premium Tax Credit (PTC) under the Affordable Care Act provides a subsidy to purchase insurance from private companies in a regulated marketplace.³³ But

²⁹ *Id.*; see LAWRENCE A. ZELENAK, LEARNING TO LOVE FORM 1040: TWO CHEERS FOR THE RETURN-BASED MASS INCOME TAX 3–5 (2013) (discussing the civic exercise of filing taxes).

³⁰ *America's School Lunch Crisis*, VOX (Mar. 2, 2023, 6:00 AM), <https://www.vox.com/the-goods/23618443/school-lunch-kids-pandemic-debt-shaming>.

³¹ Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 649–56 (2020) (discussing why cash transfers are better from a welfarist, resource-egalitarian, and libertarian view).

³² See *id.* at 653 (citing Elizabeth Anderson, *A Basic Income for All: Optional Freedoms*, BOS. REV. (July 17, 2000), https://www.bostonreview.net/forum_response/elizabeth-anderson-optional-freedoms/).

³³ I.R.C. § 36B.

more common are programs that seek to lift people out of poverty by providing them with economic opportunities that have often been closed off. These arise in the numerous place-based incentives that provide various incentives to develop neighborhoods or build housing, such as the Low-Income Housing Tax Credit (LIHTC), the New Markets Tax Credit (NMTC), and Opportunity Zones (OZ).³⁴

One reason to opt for indirect in-kind programs is that there is already an existing infrastructure on which to build. Thus, the ACA, rather than wholesale moving everyone into a government health plan, provided the PTC to some of the poor to help them purchase insurance on the regulated market like many middle-income and wealthier people do.³⁵ A positive here is that there is the potential to be less stigmatized. For example, while Medicaid is popular, often many providers do not accept Medicaid patients for numerous reasons.³⁶ Medicaid's highly restricted provider network then severely limits choices. By providing access to commercial insurance, the PTC opens the door to greater equity, because there are often more participating providers. The limits on the PTC also serve to protect people in the complex market of purchasing health insurance by ensuring that all plans have certain minimum standards.³⁷ Thus, here, the advantage is to bring various forms of equality to the poor without a complete redesign of the entire health insurance system.

Another major reason for some of these indirect programs is that they are often the only way to create various forms of opportunities for the poor. Given the fact that we live in a market economy, using market forces is often important. It does little to both help the poor either materially or relationally if supplies are too constricted and they cannot access certain goods like housing. Thus, LIHTC is vital not only because it provides housing at a lower cost but also because LIHTC properties are often some of the few places that

³⁴ *Id.* §§ 42, 45D, 1400Z-1 to -2.

³⁵ Under the ACA, those below 133% of the federal poverty line qualify for Medicaid. 42 U.S.C. § 1396a(a)(1)(A)(i)(VIII).

³⁶ Abe Dunn et al., *A Denial a Day Keeps the Doctor Away*, 139 Q.J. ECON. 187, 188–89 (2024) (noting that Medicaid patients are often denied through a combination of complex claims processing and lower reimbursement rates, as opposed to Medicare's simple billing but higher rates and commercial insurance's difficult billing and higher-than-Medicare rates).

³⁷ I.R.C. § 36B(c)(3); Treas. Reg. § 1.36B-1(c) (as amended in 2020).

must take people with rental vouchers as a source of income.³⁸ Additionally, the siting of some LIHTC projects should ideally give the poor a choice between moving to higher opportunity neighborhoods if they want or staying in place and seeing some changes in their old neighborhoods.³⁹

Some of the other incentive programs seek to transform and create opportunities. Place is important and can have major impacts on future generations, helping them to move up the socioeconomic scale. Making changes to neighborhoods through programs like the NMTC and OZ not only provides for material needs through jobs but also gives a sense that people who live in these communities are deserving and equal.⁴⁰ Because creating such opportunities requires private efforts, these tax programs are helpful to spur investments. Groups can often respond easily to these incentives, and there exists a well-developed means to take advantage of them. If done properly, these programs can help build communities and provide opportunities for mobility.⁴¹

Thus, the tax system can fight poverty and can often do it in ways that help ensure democratic equality. But there are some problems in both direct and even more so in indirect programs.

³⁸ Saito, *supra* note 18, at 471.

³⁹ *Id.* at 470–71.

⁴⁰ See, e.g., Michelle D. Layser & Andrew J. Greenlee, *Structural Inequality in the New Market Tax Credit*, 73 DUKE L.J. 800, 814 (2024) (discussing the NMTC as a way to provide financing for mission-based projects in poorer neighborhoods); Tracy A. Kaye, *Ogden Commons Case Study: A Comparative Look at the Low-Income Housing Tax Credit and Opportunity Zone Tax Incentive Programs*, 48 FORDHAM URB. L.J. 1067 (2021) (discussing how the OZ program can be leveraged for community redevelopment); Edward W. De Barbieri, *Opportunism Zones*, 39 YALE L. & POL'Y REV. 82, 84–92 (2020) (discussing both helpful and problematic uses of OZ to improve the lives of people living there). Of course, the discussion here is an ideal, but as these others show, there are problems.

⁴¹ See generally Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects*, 133 Q.J. ECON. 1107 (2018); Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility II: County-Level Estimates*, 133 Q.J. ECON. 1163 (2018) (set of papers that shows the effect of neighborhoods on intergenerational mobility); Raj Chetty et al., *Changing Opportunity: Sociological Mechanisms Underlying Growing Class Gaps and Shrinking Race Gaps in Economic Mobility* 1–7 (Nat'l Bureau of Econ. Rsch., Working Paper No. 32697, 2024), <https://opportunityinsights.org/paper/changingopportunity/> (finding community-level changes in things like overall employment rates can have an effect on the upward mobility of children).

B. Problems with Tax for Poverty Fighting

There are some problems in using the tax system to address poverty. Some of the problems are technical. As many have pointed out, the tax system runs on an annual basis. Information and tax returns are filed and processed once a year.⁴² But sometimes it may be more useful to have the money sooner rather than to have to wait for a return to be filed.⁴³

One of the ways around these issues is to adjust the design of the EITC and CTC to allow for more frequent or advanced payments without strong clawback provisions.⁴⁴ Furthermore, a move toward more contemporaneous wage and other income reporting, as happens in other countries, would help these internal problems to be removed.⁴⁵

But there are bigger, more external, and not always technical problems with using the tax system. First, there will never be a point where all social policy will ever be housed under one agency or system.⁴⁶ Indeed, the safety net itself arose somewhat ad hoc, with a myriad of complex rules and programs.⁴⁷ These are likely to stay. But with that comes numerous frictions and a complicated web of matters. Without thinking of these frictions in a meaningful way and just having the tax system address poverty creates a dangerous disservice that undermines the equal regard of the poor.

Second, the IRS and the Treasury do not always have the expertise for handling many of these programs, particularly noncash tax poverty programs.⁴⁸ While handing out money is something they can do effectively, trying to create supplies of affordable housing, providing health insurance

⁴² See DRUMBL, *supra* note 25, at 28–31 (discussing why there is annual, lump-sum delivery for administrative ease).

⁴³ See *id.* at 31–36 (noting that the lump sum often pays off debts, indicating that more frequent payments can be helpful in spite of a forced savings aspect).

⁴⁴ See *id.* at 161–68 (advocating for a quarterly payment structure based on either real-time reporting or estimated income, depending on capacities).

⁴⁵ See *id.* at 157–61 (discussing such reporting options or precision withholding).

⁴⁶ Saito, *supra* note 7, at 376.

⁴⁷ *Id.* at 378.

⁴⁸ See Saito, *supra* note 6, at 739–40.

and care, and broader economic development opportunities for those in poverty are outside of their ken.⁴⁹ The IRS and Treasury are also unaware of how even their direct cash programs overlap with other antipoverty programs.⁵⁰ And yet, all of these programs are important programs to address poverty's effects. The lack of expertise hampers these ends.

Additionally, when the IRS and Treasury manages noncash poverty assistance, not only does it lack expertise, but it may not also be able to effectively manage the collaborate effort between private parties and the poor that it seeks to serve.⁵¹ The problem is that some of these private parties, if not effectively monitored, may not meet the goals of the programs; to the contrary, they may even act in a way that immiserates and reduces the equal standing of the people that they are seeking to serve, putting them in a marginalized or an oppressed position.⁵² Because many of these noncash tax poverty programs do not have strong program management and a focus on these matters, this risk is high.

While noncash programs where third parties outside of the federal government provide poverty relief are poorly monitored, the beneficiaries of direct poverty measures like the EITC have traditionally been subject to heavy monitoring.⁵³ Indeed, for a while, EITC recipients were targeted with higher audit rates than the wealthy.⁵⁴ Here, too, there is an oppression of the poor through another level of marginalization. Rather than being treated with respect, they are seen, at best, as easy targets for hitting audit numbers or, at worst, as objects of suspicion.⁵⁵ Often, the poor are not undertaking some

⁴⁹ See *id.* at 740–41 (discussing how the IRS lacks the capacity to create expertise in other areas).

⁵⁰ Saito, *supra* note 7, at 395–96.

⁵¹ See, e.g., Saito, *supra* note 18, at 478–81 (discussing monitoring of various parties in LIHTC and the lack of capacity for the IRS to do that).

⁵² See, e.g., *id.* at 465–72 (discussing some of the problems with LIHTC that stem from inappropriate monitoring).

⁵³ Paul Kiel, *IRS: Sorry, but It's Just Easier and Cheaper to Audit the Poor*, PROPUBLICA (Oct. 2, 2019), <https://www.propublica.org/article/irs-sorry-but-its-just-easier-and-cheaper-to-audit-the-poor>; Paul Kiel, *It's Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%*, PROPUBLICA (May 30, 2019), <https://www.propublica.org/article/irs-now-audits-poor-americans-at-about-the-same-rate-as-the-top-1-percent>.

⁵⁴ Kiel, *It's Getting Worse*, *supra* note 53.

⁵⁵ *Id.*

massive fraud but rather making a misstep when grappling with complex tax rules.

Thus, while there are positives involved in using the tax system to address poverty, there are also problems. The goal then should be to find ways to harness the positives of using taxation and the tax system to aid those in poverty while limiting the problems. One of the ways to do that is to have effective administrative agency coordination between the IRS, Treasury, and other parts of the government that administer and focus on antipoverty programs.

III. COORDINATING TO FIGHT POVERTY

Some of the problems associated with tax antipoverty programs, whether cash or noncash, can be addressed with effective coordination between the IRS and other parts of the federal government. This part draws on some of my previous work on tax coordination and contextualized purpose and focuses them on the issue of fighting poverty.

A. Contextualized Purpose and Coordination

Contextualized purpose is the idea that programs in the tax system exist both within the context of taxation and within other policy spheres.⁵⁶ The tax system itself not only raises revenue but also has some distributive purposes based on its progressivity. Specific tax programs, too, may have other purposes.⁵⁷ Many of them aim to improve the lives of those who are poorer or to serve as part of a safety net. Additionally, this view requires the IRS and Treasury to examine how antipoverty tax programs, and the broader tax system overlap with other similar types of programs in the federal government.⁵⁸

The idea would be to have the IRS and Treasury articulate these purposes in how they go about administering programs, not only in formal

⁵⁶ Saito, *supra* note 7, at 389–91.

⁵⁷ *Id.*

⁵⁸ *See id.* at 391–98 (discussing how Treasury and the IRS should undertake this effort).

regulations but also in other areas of program management.⁵⁹ It should be done publicly so that others, including Congress, can engage in the discussion.⁶⁰

Most importantly, this exercise should reveal overlaps with other nontax programs, particularly those meant to develop the safety net and fight poverty.⁶¹ The IRS and Treasury could engage in outreach to these other federal agencies and engage in discussion. In these discussions, the agencies should determine what level of coordination is required.⁶² Not every program requires the existence of permanent joint teams to manage and monitor coordination or constant joint rulemaking exercises; sometimes procedures for information exchange and joint outreach may be enough. The goal then is to develop plans for coordination and to start to identify some necessary tools to use, as discussed below.

Most of this coordination comes through administrative guidance and public administration management. But Congress, in its oversight and legislative role, can encourage this discernment in outlining its views, and the President can also weigh in through various means as well.⁶³

B. Coordination Tools and Benefits

There is a wide array of tools that the IRS and Treasury can use in conjunction with other agencies to coordinate a more streamlined delivery of programs that fight poverty. Not every program or situation requires every tool, and again, the contextualized purposes help to highlight what and how many of these tools to use.⁶⁴

One of the most useful coordination tools, especially for cash antipoverty tax programs and other cash-like benefit programs, is

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 395–98.

⁶² *Id.*

⁶³ *Id.* at 392–93; Saito, *supra* note 6, at 792–96.

⁶⁴ *See* Saito, *supra* note 7, at 397–98 (showing that not all coordination tools are needed and that it is an iterative process to use them).

information sharing.⁶⁵ Most of these programs require some form of income certification to meet key requirements. The IRS collects a great deal of this information already, even if a person does not always file federal income taxes. Creating a means to share information in a controlled manner can help reduce frictions between these programs for beneficiaries and stop them from having to certify on multiple occasions.⁶⁶ If perhaps there is a sudden shift in income outside the annual tax-reporting and -filing cycle, other agencies can use other income verification systems in place, much like what currently happens on student loan repayments that are based on income. Such information sharing also brings people closer to being equals, valuing their time as members of civil society and not bogging them down in constant form and documentation chasing.

Furthermore, channeling can help as well. The IRS and Treasury can notify EITC beneficiaries about other programs outside of the tax system that can help them. For example, when filing a return that claims the EITC, the IRS could both issue the EITC payment and alert the taxpayer that they might qualify for other programs like SNAP.⁶⁷ Similarly, those on SNAP can be forwarded information in January about applying for the EITC through filing taxes along with information on Volunteer Income Tax Assistance (VITA) clinics that can assist them in filing a return.⁶⁸ Doing this can help reduce the frictions and show that, rather than marginalizing them, government is seeking to provide them with the tools they need to succeed.

Higher coordination is often called for when looking at noncash antipoverty tax programs. Programs like LIHTC, OZ, and NMTC are complicated because their purposes are more complicated. On the one hand, they do seek to alleviate poverty.⁶⁹ But on the other hand, they have broader goals of providing opportunities, changing areas, spurring growth, and supporting returns on investments.⁷⁰ Contextualized purpose reveals these

⁶⁵ *Id.* at 404–05; Saito, *supra* note 6, at 805–07.

⁶⁶ Saito, *supra* note 7, at 404–06.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Layser, *supra* note 40; see Saito, *supra* note 18, at 471 (discussing how a LIHTC project in a situated neighborhood should get a bonus only if it helps improve the neighborhood).

numerous goals and how they fit in with other federal policies like place-based intervention and economic opportunity.

Here, greater coordination tools are needed, because it is not just a safety net of benefit handouts that are at play, but rather a fundamental restructuring of places, markets, and human capacities. In this way, not only would there need to be information sharing or channeling but also a consistent need to draw on the expertise of various agencies in numerous ways. For example, while the IRS knows tax and certain finance issues, the Department of Housing and Urban Development (HUD) and the rural development parts of the Department of Agriculture (USDA) have other forms of expertise on housing affordability in urban and rural parts of the country.⁷¹ Coordination would require the development of joint rules, guidance, and policies to help these programs work effectively together and ensure that they meet the goals of development and service to those who are poor or even moderate income.⁷² Also, because many of these noncash tax programs require the delivery of services through other organizations, there is a need for consistent monitoring, feedback, and policy changes based both on what goes well and what does not. That, in turn, requires these agencies to pool resources together into joint teams to manage these programs to handle monitoring and spread good practices to those outside of government delivering the services.⁷³ Finally, these coordination efforts also need to aim to ensure that beneficiaries of the programs receive their benefits from outside providers effectively and in ways that do not subject them to demeaning processes of marginalization.

There are also other coordination tools that the government should always use. Social safety net and antipoverty tools in taxation should undergo Office of Information and Regulatory Affairs (OIRA) review of their regulations, because they almost always impinge on other policy spheres and

⁷¹ Saito, *supra* note 18, at 493–500.

⁷² *Id.* For a discussion regarding OZ, see Blaine G. Saito, *Agency Coordination and Opportunity Zones*, 48 FORDHAM URB. L.J. 1203, 1217–26 (2021).

⁷³ See Saito, *supra* note 18, at 501–05 (discussing in the LIHTC context how coordination could improve monitoring in this way). For more discussions on the panoply of tools, see Saito, *supra* note 6, at 789–807.

could use input from a broader range of experts.⁷⁴ While many in taxation tend to demean this review as slowing regulations down and politicizing tax, recent work has shown that it does not significantly slow down the promulgation of regulations.⁷⁵ Furthermore, the key point of OIRA review is to encourage collaboration and coordination among agencies with different expertise.⁷⁶ Having that formal review could help to improve these programs, but it could also create important connections between agency officials.⁷⁷ Often those informal connections are important as well.

So, coordination tools exist and should scale based on the programs' purposes, with cash programs requiring fewer tools and noncash programs requiring more. These coordination tools can lead toward greater benefits and improved outcomes that help those in poverty.

C. Dark Sides of Coordination

While coordination through contextualized purpose to address poverty both within and outside of the tax system has positives, there are some problems too.

Coordination through information sharing and channeling is important, but information can be leaky. There are concerns that taxpayer beneficiaries may have their tax information shared with certain law enforcement agencies, like immigration. Already, while the IRS claims it does not work with immigration authorities, it often coordinates with Immigration and Customs Enforcement (ICE).⁷⁸ Such improper coordination happens when the IRS's Criminal Investigation (CI) Division seeks to track down those who are not paying their employees' payroll taxes.⁷⁹ When raiding a workplace,

⁷⁴ Saito, *supra* note 6, at 794–96.

⁷⁵ Kristin E. Hickman & Bridget C.E. Dooling, *Competing Narratives on OIRA Review of Tax Regulations*, 19 J.L. ECON. & POL'Y 272, 277–86 (2024).

⁷⁶ Saito, *supra* note 6, at 794–96 (citing Cass R. Sunstein, *The Office of Information and Regulatory Affairs: Myths and Realities*, 126 HARV. L. REV. 1838, 1840–48 (2013)).

⁷⁷ Saito, *supra* note 6, at 795–96.

⁷⁸ Shayak Sarkar, *Internal Revenue's External Borders*, 112 CALIF. L. REV. 101, 113–23 (2024).

⁷⁹ *Id.*

CI often calls in ICE for agents to provide backup, which leads to civil rights violations and detention of U.S. citizens.⁸⁰ If that is the case, people are less likely to trust the tax system in its delivery of benefits. Furthermore, if there are connections between other programs and the tax system, beneficiaries may be concerned that they could also get caught in a dragnet by accessing a program that connects to tax information.

Additionally, it is of the utmost importance that the data shared with other social service agencies stay out of the hands of law enforcement unless there is truly strong evidence of fraud.⁸¹ The reason again is that too often those who are poor are already under a cloud of suspicion. Sharing information too easily would only enforce that perception. The IRS and agencies with which it coordinates need to adhere to strict rules as to when information gets shared with law enforcement and create protocols and tracking to ensure that these marginalized people are not further caught in dragnets.

Another concern unrelated to enforcement is a democratic deficit. Most of the coordination tools advocated here are agency-level tools. They involve issues of regulatory and other administrative guidance as well as public management ideas like joint teams. But like other administrative areas within a single agency's realm, there are problems that arise. And in the context of multiple agencies interacting together toward a certain end, these issues can get multiplied.

First, even if the agencies engaging in coordination have ideas that may improve the lives of beneficiaries, input from those beneficiaries can reveal important information and help lead to better outcomes. While government officials in the IRS, Treasury, and other agencies are experts, they often do not know everything. Part of the idea of having some democratic input is to have the beneficiaries of these programs provide information for the agencies to consider.

Second, failing to take beneficiaries' voices into consideration also creates another level of harm. It continues this marginalizing view of a state that is, out of its beneficence, giving something to those who are poor. It continues to treat them not as standing as equal to others but as outside of

⁸⁰ See *id.* at 123–32 (providing examples of two raids that led to severe civil rights violations).

⁸¹ *Id.* at 137–38. Blaine G. Saito, Granting Tax (unpublished manuscript) (on file with author).

society. It thus has a certain counterproductivity. While it helps poor people access civil society as equals by providing for their material needs, it also hinders them by treating them as wards.

Finally, failing to listen to beneficiaries' voices creates problems in how administrators and program managers view them. Rather than seeing them as equals with valuable sources of information but who need a bit of help, a lack of input can create a sense of otherness and dependency. Not only does that harm the ability to deliver services, but it can also create a sense that beneficiaries of antipoverty programs are looking for more than they deserve. And that, in turn, spurs the sense that fraud and other problems are rife in these programs and need to be tamped down. But that mindset not only treats the beneficiaries of antipoverty programs with unfair suspicion, but it also marks them with dishonor, as though those who are poor are somehow less worthy or less honest than others. Doing so furthers marginalization and oppression and departs from the key concepts of democratic equality.

Thus, contextualized, purpose-driven coordination is important, but it can go off the rails if not managed properly.

D. Avoiding Coordination's Dark Sides

There are important ways to avoid the dark sides of coordination, all of which undermine key values of democratic equality.

First is to have key information sharing protocols. Sharing information is vitally important for both the channeling and friction-reducing aspects of coordination. But information must still be controlled. Should coordination move toward allowing other agencies to see tax returns and tax return information, there must be specifications regarding what information may be shared. Furthermore, to avoid dragnets, information must be shielded from agencies that would undermine the purpose of these programs or deter people from filing, such as law enforcement and immigration authorities. Only if there is a strong suspicion of fraud should information be shared with law enforcement, and much of that sharing should take place initially with the IRS's own CI division as well as potentially another agency's enforcement division before sharing it with other law enforcement agencies like FBI and ICE.

Second, there needs to be a greater means for having beneficiaries of these programs participate in formulating policy and implementing these programs. A particular difficulty stems from the IRS and Treasury's lack of

contact with many in these communities. Coordination itself can provide a way to improve such outreach and feedback. Even a light level of coordination can lead to informal outreach processes with other agencies that have better contact with beneficiaries. Working in that way, the IRS and Treasury can not only help cross-promote programs but also have officials get some sense from some slice of the population how programs operate and what is working. It provides an informal means to gather information and to have the agencies reflect.

Additionally, the IRS and Treasury can work to improve antipoverty tax programs and improve coordination through their own forms of engagement. One idea that I am currently developing is the use of grant programs to reach out to organizations that serve underrepresented groups to give them greater voice in the development of tax regulations and administrative policies. Creating this capacity can help to provide another means for the IRS and Treasury to engage with and obtain comments from these groups. This engagement can happen outside of rulemaking as well, in ways that shield it from parts of judicial review and formal processes. Input here can help develop the tax forms that taxpayers fill out and other subregulatory policies and management ideas. These groups can gather information from their members and provide feedback not only on problems with program operation but also regarding what is working well and can generate other ideas to improve outcomes and perhaps even other overlaps for further coordination.

Both proposals focus on increasing the participation of beneficiaries of these programs. Obviously, the information and participation can provide insights and improvements to the program. But more importantly, they serve as a small, but still important means to create levels of relational equality. Too often in many of these programs, bureaucratic managers, while well-meaning, run the programs in a mechanical way that treats beneficiaries not as people in equal relation but rather just as transactions to address. Giving some level of voice in the process where there is currently limited voice pushes back against that. Even if not every idea or matter is followed, the ability to express shows some level of greater relational equality than the current system, where little is done except from on high. Furthermore, these actions move away from the view of the poor as helpless or lacking in key understanding. Inviting them in, and sometimes adopting their proposals, shows that people close to a matter have a perspective and can provide information as equals. While expertise is still helpful in the bureaucracy, it should work in a way that aids participation and informs it, not imposes on it.

The result of guiding coordination and other administrative parts of antipoverty tax programs through participation with information-sharing guardrails can help improve the delivery of these services and avoid some of the darker sides.

CONCLUSION

Using the tax system to fight poverty is important and useful. The political benefits and the underlying progressive structure all push toward the idea that taxation and the revenues collected play some role in stopping poverty. Viewing it through a lens of relational democratic equality also shows some of the promise of the tax system over other programs.

But to make the tax system work effectively, coordination may be necessary because of the complexities of poverty. And should these efforts happen, it is important for the IRS and Treasury to ensure that beneficiaries are also involved in the development of policies, processes, and management of the programs. Failing to do so not only cause relational harms but also undermines the efficacy of these programs. Future work should examine more ways to encourage participation of underrepresented voices in the development and operation of our tax system, including those of the poor.