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## THE EITC AND FEMINIZED POVERTY

*Nyamagaga R. Gondwe*



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## THE EITC AND FEMINIZED POVERTY

*Nyamagaga R. Gondwe*\*

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## I. INTRODUCTION

Tax policy is expressive. Through it, policymakers communicate their vision of what it means for the nation to be prosperous. As the tax system takes on more non-tax social policy, one question we should probably ask is: what does tax policy express about the state's orientation toward citizens at the margins of society? This Essay relates specifically to the tax system's orientation toward the physical, emotional, and psychological labor of caring for home and community (care labor).

In the labor market, care labor is predominantly performed by poor women of color and immigrant women.<sup>1</sup> Within that sphere, workers are among the lowest paid in our society. Outside the labor market, this labor principally falls to women and girls. In the non-market context, care labor is uncompensated. In modern welfare discourse, the *uncompensated* nature of private domestic labor is reframed as that labor having *no value*. Thus, policymakers argue that only what it terms the “working poor” should qualify for public assistance. But, by using wage—and not labor effort—to determine what constitutes work in American society, policymakers impose a disproportionate double-burden on women workers. Mothers, especially, experience this double burden through the difficulty of balancing responsibilities as a primary caretaker with the obligation to participate in an often-inflexible sector of the labor market.

Women's relative disadvantage in the economy should be seen as a part of the public and private infrastructure that seeks to maintain a supply of unpaid domestic labor.<sup>2</sup> Public economic infrastructure leverages women's disadvantage in attaining labor and fair wages to magnify the relative

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<sup>1</sup> “Unfortunately, the federal ideal of 1935–68, that AFDC should enable poor women to care for their children, was never realized in the lives of most welfare families. Explicit local rules conditioned AFDC upon mandatory requirements that mothers do wagework. Welfare caseworkers exercised enormous amounts of discretion in determining who worked and what they did, and often did not bother to ascertain whether adequate childcare was available.” Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1258 (1982).

<sup>2</sup> Eva Feder Kittay, *Welfare, Dependency, and a Public Ethic of Care*, 25 SOC. JUST. 123, 137 (1998); Reva B. Siegel, *Valuing Housework*, 41 AM. BEHAVIORAL SCIENTIST 1437, 1440 (1998) (“The doctrine of marital service gave a husband property rights in all products of his wife's labor, whether she worked for third-party compensation or for the direct benefit of family members.”).

economic benefit of marriage.<sup>3</sup> We should, therefore, not think of the uncompensated labor women disproportionately bear within private relationships as a *choice*.<sup>4</sup> Instead, we should evaluate women's disproportionate experiences of poverty and their disproportionate allocation of care work as part of a broader effort to relegate women's labor and fertility to the private family.

#### A. What Should Anti-Poverty Policy Accomplish?

Income-tested welfare aggravates women's experiences of social and economic strain. For unmarried mothers, this requires bearing the double-burden with very limited relief. For married mothers, this promotes labor "specialization" between spouses that ultimately triggers patterns of long-term poverty among women. Anti-poverty policy should be better tailored to address poverty as a structural obstacle to material stability in the United States. At present, too many policies rest on the premise that poverty is a problem of individual agency. Tax-based social policies are especially individualistic. Consciously, or not, policymakers do not leverage government's power and reach to diminish large-scale institutional obstacles to material wellness.

Anti-poverty policy in the tax system exemplifies how the state has aligned the public interest with market incentives in recent decades. It internalizes the kinds of market-based obstacles that underlie feminized poverty. That is, the state uses its considerable influence to back powerful capitalist institutions that profit from exploitative labor conditions.

Second, this Essay contends that to transform conditions of poverty we must not differentiate between market labor and domestic labor on the basis of wage-earning status. The latter policy only leads to producing a steady supply of low-wage workers who will always remain in poverty. I argue that

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<sup>3</sup> *Id.* at 127.

<sup>4</sup> Reva B. Siegel, "The Rule of Love: Wife Beating as Prerogative and Privacy," 105 YALE L.J. 2117, 2147 (1996) ("The erosion of authority-based conceptions of marriage can be understood as a part of the decline of status relationships associated with feudal and monarchical societies; but the conventional 'status to contract' story told about the nineteenth-century reform of marriage law obscures as much as it reveals about the evolution of the marital relationship in the modern era. Social contract theorists never applied concepts of individualism to the family with the confidence that they applied them to market and state relationships; instead, with the rise of liberalism, it became commonplace to define the family in terms of its differences from other social relationships.").

income, on its own, is insufficient to determine the prevalence and depth of poverty in the U.S. population. Material hardship—as identified by inability to access primary goods—would be a more concrete metric to identify and address poverty that Americans experience with and without wage income. But the tax system is not the place to assess questions of access to goods like food, shelter, clothing, or broadband internet.

To an extent, work-based anti-poverty policy promotes the idea that employment in the labor market signals a person’s commitment to contribute to national economic progress. That is, policymakers take for granted that in the realm of work, income and value are interchangeable. This effects two kinds of problems: first, it produces a state-backed policy that takes discrimination in the market [at face] value; second, it obscures the value of labor that is not captured by wages. Instead, this complex inquiry would almost certainly have to be administered by another body in the federal system.

Ultimately, characterizing poverty as a problem of idleness relieves policymakers of the responsibility to reform economic systems that have benefitted from exploiting un(der)paid laborers for centuries. Anti-poverty policy that holds the most powerful actors in our society accountable for supporting *even* people who do not participate in the labor market would align with a broader objective of redistributing power in the system.

### *B. Why the EITC?*<sup>5</sup>

The Earned Income Tax Credit (EITC) is an income-support policy that considers the number of dependent children a taxpayer claims and whether they are married. The EITC is an income support policy that operates through the tax system as a credit that offsets the Adjusted Gross Income (AGI) a taxpayer reports. The EITC is a refundable credit, which means that if the amount of credit a taxpayer is eligible for exceeds their total tax liability, they

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<sup>5</sup> In this Essay, I focus my discussion on the federal Earned Income Tax Credit (EITC) and exclude analysis of the Temporary Assistance for Needy Families (TANF) policy.

may receive the excess credit as a tax refund.<sup>6</sup> A taxpayer's credit amount is allocated according to the amount of earned income they report.<sup>7</sup> The allocable credit amount is divided into three parts: the phase-in rate, the maximum credit amount, and the phase-out rate.<sup>8</sup>

EITC considers the number of children a taxpayer claims and whether they file as an individual or Married Filing Jointly (MFJ). First, the credit permits a taxpayer to declare between zero and three qualifying children. The phase-in rate, maximum credit, and phase-out rate increase as the number of children a taxpayer declares increases. For income earned in 2024, taxpayers who file as individuals with no children are eligible for a credit of up to \$649.<sup>9</sup> By contrast, single taxpayers with three children may claim, at most, \$8,046.<sup>10</sup>

Second, the credit differentiates among eligible taxpayers based on their filing status.<sup>11</sup> The phase-in rates and maximum credit amounts are the same for individuals and MFJ taxpayers; those amounts vary only according to the number of eligible children they declare. However, MFJ taxpayers may claim

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<sup>6</sup> I.R.C. § 32. For a concise description of how a refundable credit operates, see Lily L. Batchelder, Fred Goldberg, Jr. & Peter R. Orszag, *Efficiency and Tax Incentives: The Case for Refundable Tax Credits*, 59 STAN. L. REV. 23, 33 (2006).

<sup>7</sup> I.R.C. § 32(a)(1), (c)(2), (f).

<sup>8</sup> The terms “phase-in rate” and “phase-out rate” describe the rate of change between declared income and credit amount. Algebraically, the phase-in rate is positive (the amount of credit the taxpayer can claim increases as their income amount increases). Conversely, the phase-out rate is negative (amount of credit decreases for as amount of income increases). There is an upper limit to the amount of income a taxpayer may declare to be eligible for the EITC. I.R.C. § 32(a)(2)(B). The term “maximum credit amount” describes the top credit amount that a particular taxpayer can claim. The phase-in, max credit, and phase-out rates vary according to the number of children a taxpayer declares and whether the taxpayer files as an individual or jointly with a spouse. See Center for Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit (Updated Apr. 28, 2023), <https://www.cbpp.org/research/policy-basics-the-earned-income-tax-credit>.

<sup>9</sup> Internal Revenue Service, Earned Income and Earned Income Tax Credit (EITC) Tables (updated Dec. 2024), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables>.

<sup>10</sup> *Id.*

<sup>11</sup> To apply the credit, taxpayers qualify as “unmarried individuals” if they file as single, I.R.C. § 1(c), head of household, I.R.C. § 1(b), married filing separately, I.R.C. § 1(d), or a surviving spouse, § 1(a).

the maximum credit with more earned income than an individual.<sup>12</sup> For example, in 2025, individuals and MFJ taxpayers with one child are equally eligible for up to a maximum \$4,328 credit.<sup>13</sup> Individuals may claim this maximum credit if they report earned income between \$12,730 and \$23,350.<sup>14</sup> For income greater than \$23,450, a taxpayer's credit amount decreases at a rate of 15.98%.<sup>15</sup> By contrast, taxpayers filing MFJ with one child are eligible for the maximum credit if they report income between \$12,730 and \$30,470. Their credit amount decreases at a rate of 15.98% for reported income greater than \$30,470 but less than \$57,554.<sup>16</sup>

I concentrate on the EITC and exclude similar non-tax work-tested policies. This commentary centers around the values that policymakers express through the tax system. More specifically, in the conversation about whether the tax system is a valid site for enacting anti-poverty policy, we should account for facets of policy that extend beyond technical economic considerations.

### C. Background

Tax scholars have been writing about the merits and deficiencies of the EITC for several decades.<sup>17</sup> At a high level, the tax scholarship discourse

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<sup>12</sup> I.R.C. § 32(b)(2)(B).

<sup>13</sup> Rev. Proc. 2024-40, § 6(1), 2024-45 IRB 1100.

<sup>14</sup> *Id.*

<sup>15</sup> An individual taxpayer with one child is eligible for the EITC with up to (but not including) \$50,434; taxpayers with measured income at or above that amount are ineligible for the EITC. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., Batchelder et al., *supra* note 6; Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. PA. L. REV. 1451 (2021); Charles Delmotte, *Tax Uniformity as a Requirement of Justice*, 33 CANADIAN J.L. & JURISPRUDENCE 59 (2020); Anne L. Alstott, *Updating the Welfare State: Marriage, the Income Tax, and Social Security in the Age of Individualism*, 66 TAX L. REV. 695 (2013); Susannah Camic Takh, *Everything Is Tax: Evaluating the Structural Transformation of U.S. Policymaking*, 50 HARV. J. ON LEGIS. 67, 74–81 (2013); Joan Williams, *Our Economy of Mothers and Others*, 13 J. GENDER, RACE & JUST. 386, 417 (2013); Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 L. & CONTEMP. PROBS. 285 (2010); Denis J. Ventry Jr., *Welfare by Any Other Name: Tax Transfers and the EITC*, 56 AM. U.L. REV. 51 (2007); David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955 (2004).



centers on the efficacy of advancing social policy using tax incentives or penalties to influence taxpayer behavior.

Past scholarship on the EITC has also differed according to the academic discipline or analytical framework that the scholar deployed. Economic analysis is the most prevalent framework used in tax scholarship. But, like other scholars in Critical Tax Theory<sup>18</sup> and Tax and Feminism,<sup>19</sup> I depart from that tradition. More specifically, I oppose the “conventional wisdom that tax policy is a neutral terrain” rooted in “technical, quasi-scientific debates about the optimally efficient distribution of the tax burden.”<sup>20</sup>

Instead, I assess tax policy as one-piece economic infrastructure that should be understood to express the preferences and values of wealthy, white men: the dominant group in American hegemony.<sup>21</sup> Using white male dominance as the central frame for tax policy helps to situate certain issues at the heart of my critique. For instance, I question the central role that income takes in assessing what poor people in the United States deserve from the government.

From my perspective, and that of other scholars, uncompensated care labor should be treated as though it contributes value to the American economy. As social reproduction theorists argue, the capitalist economy thrives on the wives’ uncompensated family support. Thus, it follows that those who benefit the most from the present distribution of wealth in the American economy have a significant interest in reinforcing women’s subservience. Market work and family labor are not diametrically opposed through some function of nature. Instead, the “work-life” conflict reflects a set of intentional choices with normative social/cultural objectives that are reinforced through policy.

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<sup>18</sup> See CRITICAL TAX THEORY (Anthony C. Infanti & Bridget J. Crawford eds., 2002).

<sup>19</sup> For a description of varying perspectives in Feminist tax literature, *see generally* Anne L. Alstott, *Tax and Feminism: Competing Goals and Institutional Choices*, 96 COLUM. L. REV. 2001 (1996).

<sup>20</sup> Bridget J. Crawford, *The Goals of Tax Policy*, in CRITICAL TAX THEORY, *supra* note 18, at 39.

<sup>21</sup> ISABEL WILKERSON, CASTE (2024).

## II. FEMINIZED POVERTY AND MATERIAL POVERTY

### A. *Feminized Poverty*

Feminized poverty is characterized by women’s structural obstacles to economic wellness. These obstacles can be observed in several areas, including: gendered inequality in the labor market; income inequality in the marital home; and the disproportionate distribution of unpaid care work to women. These should be regarded as reasons to *not* make welfare depend on labor market participation.

These obstacles are deeply embedded elements of the American market economy. They are the logical outcome of policymakers and private actors using the economy to enforce women’s second-class status in society. To that end, feminized poverty is part of a broader process of cultural definition. Persistent trends in feminized poverty support the idea that women should seek financial stability in marriage. Although there is no guarantee that marriage will improve a woman’s *individual* economic standing, the marital family is functionally the only option that remains when both the private sector and the public sector fail to redress market inequality.

#### 1. Defining Feminized Poverty

Diane Pearce coined the term “feminized poverty” in the 1970s.<sup>22</sup> She exposed contradictory, but parallel trends: women could increasingly attend university and attain positions with white-collar employers; however, during that period, women represented disproportionately represented a growing sector of the American poor.<sup>23</sup>

Feminized poverty describes a paradox: women—across racial categories—have made strides in education and white-collar work in recent decades. Today, women make up the majority of college students, for

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<sup>22</sup> Diane M. Pearce, *The Feminization of Poverty: Women, Work, and Welfare*, 2 URB. & SOC. CHANGE REV. 28, 29–30 (1978).

<sup>23</sup> *Id.*

example.<sup>24</sup> At the same time, however, over the same time span, women have been consistently overrepresented among the American poor.<sup>25</sup>

The trend that Pearce described, which persists today, was not new when she uncovered it.<sup>26</sup> Pearce describes the demographic shift in the labor market that corresponded with legal reforms in workplace policy and women's increased access to family planning tools, popularly called "the sexual revolution." But even prior to those high-level changes, in the mid-1950s, "women who worked year-round averaged not-quite two-thirds of the average income of men who worked full time."<sup>27</sup> Even prior to demographic shifts in the labor force in the 1960s and 1970s, women workers were concentrated in occupations where they earned substantially less than working men.<sup>28</sup> Women's relative disadvantage did not *begin* when Pearce theorized feminized poverty in the 1970s. Rather, Pearce outlined how the benefits of a more open labor market were not distributed equally among women.

Poverty is feminized when "the poverty population in the United States become[s] comprised increasingly of women, irrespective of race or age."<sup>29</sup> In addition, poverty is more likely to be a chronic problem in woman-headed households.<sup>30</sup> At the same time, women's degree of exposure to feminized

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<sup>24</sup> Michael T. Nietzel, *Women Continue to Outpace Men in College Enrollment and Graduation*, FORBES (Aug. 7, 2024 6:00 AM), <https://www.forbes.com/sites/michaelt Nietzel/2024/08/07/women-continue-to-outpace-men-in-college-enrollment-and-graduation>.

<sup>25</sup> Emily A. Schrider, U.S. CENSUS BUREAU, P60-283, *Poverty in the United States: 2023*, at 4 (Sept. 2024), <https://www2.census.gov/library/publications/2024/demo/p60-283.pdf>.

<sup>26</sup> U.S. CHILDREN'S BUREAU, WORKGROUP 29-30, THE EFFECTS ON CHILDREN AND YOUTH ON THE EMPLOYMENT OF MOTHERS OUTSIDE THE HOME, <https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/women-in-the-1950s/information-sheet.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2.

<sup>29</sup> Marjorie E. Starrels, Sally Bould & Leon J. Nicholas, *The Feminization of Poverty in the United States: Gender, Race, Ethnicity, and Family Factors*, 15 J. FAM. ISSUES 590, 590 (1994).

<sup>30</sup> *Id.* at 591. See also Schrider, *supra* note 25.

poverty may be different based on the socio-economic status of their parents, their racial/ethnic identity, level of education, and citizenship status.<sup>31</sup>

Women of nearly all racial and ethnic subgroups in the United States experience higher rates of poverty than men of their same race.<sup>32</sup> In addition, women across racial categories experience higher rates of poverty than white men.<sup>33</sup> In 2022, 7.3% of white non-Hispanic men lived in poverty—according to the official federal poverty measure.<sup>34</sup> By contrast, 16.6% of Black women, 16.8% of Latina women, 9.2% of Asian women, and 21.6% of Native American women lived in poverty.<sup>35</sup>

Disability also plays an important role in the distribution of poverty. Historically, disability status could relieve a potential worker from the putative obligation to participate in the labor market. In a sense, being a woman was considered a disabling characteristic suitable to justify excluding some women from market labor altogether.<sup>36</sup> Today, disability status compound the effect of gender identity on women’s economic prospects in adulthood. According to the report, 26.2% of disabled women aged sixteen to sixty-four lived in poverty, a figure “over two times more than non-disabled women (10.7%).”<sup>37</sup> Women of nearly all racial and ethnic subgroups experience higher rates of poverty than the men in those groups.<sup>38</sup>

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<sup>31</sup> See David Brady & Denise Krall, *Nearly Universal, but Somewhat Distinct: The Feminization of Poverty in Affluent Western Democracies, 1969–2000*, at 37 Soc. SCI. RSCH. 976 (2007).

<sup>32</sup> Robin Bleiweis et al., *The Basic Facts About Women in Poverty*, CTR. FOR AM. PROGRESS (Aug. 3, 2020), <https://www.americanprogress.org/article/basic-facts-women-poverty/>.

<sup>33</sup> SHENGWEI SUN, NAT’L WOMEN’S L. CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES IN 2022, at 3 (2023), [https://nwlc.org/wp-content/uploads/2023/11/National-Snapshot-Poverty\\_ACCESSIBLE.pdf](https://nwlc.org/wp-content/uploads/2023/11/National-Snapshot-Poverty_ACCESSIBLE.pdf).

<sup>34</sup> *Id.* According to a Census Bureau report, the average rate of poverty among men in the United States—across racial categories—was roughly 10.5%. Schrider, *supra* note 25, at 3–4.

<sup>35</sup> *Id.*

<sup>36</sup> See, e.g., Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 141 U. PA. L. REV. 1249, 1273 n.94 (1982) (describing the role disability played in welfare distribution in the mid-to late-twentieth century).

<sup>37</sup> SUN, *supra* note 33, at 3.

<sup>38</sup> Bleiweis et al., *supra* note 32.

## 2. Care Work and Women's Poverty

If feminized poverty is structural, what are some of the component parts of that structure? First, when women perform labor for a wage, they are paid disproportionately low rates. Second, women's fertility further reduces the value employers assign to their labor. Last, market labor and non-market labor are set up in the American economy as diametric opposites: the demands of domestic labor—especially mothering—are in direct tension to the expectations employers have in market labor. Altogether, these elements establish that women face disadvantage at the outset of entering the labor market. At the low-end of the income spectrum, women are siloed in some of the lowest paying work, discriminated against based on current or future childrearing responsibility that employers believe disrupts market productivity, and ultimately exposed to the difficulty of sustaining full-time low-wage work while raising children by the tension between the two.

Paid and unpaid care labor are dominated by women workers in American society. In *Welfare, Dependency, and an Ethic of Care*, Eva Feder Kittay calls the relationships between dependents—including children, disabled people, and elders—and their caregivers “dependency relations.”<sup>39</sup> She argues that although welfare programs tend to frame the recipient of welfare policy as the dependent child (e.g., Aid to Families with Dependent Children), those programs actually highlight the need to care for the person who cares for those dependents (“dependency workers”).<sup>40</sup> Yet, within American society, dependency workers are at significant risk of experiencing deep economic precarity. For example, “[p]aid dependency workers, such as childcare workers, are the most poorly paid workers relative to their level of education and skill.”<sup>41</sup> In the family context, “[f]emale-headed households account for the poorest families in the U.S.”<sup>42</sup> Policymakers condition us to believe that the problem is that women have children outside of marriage. That argument is deceptive: it directs us to believe that the root of feminized

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<sup>39</sup> Kittay, *supra* note 2, at 129.

<sup>40</sup> *Id.* at 129–30, 133.

<sup>41</sup> *Id.* at 138.

<sup>42</sup> *Id.*

poverty is individual-level maladaptive behavior. Policymakers should, instead, consider how economic design predetermines women's poverty.

Feminized poverty can only be meaningfully resolved if we address it as a structural impediment to women's autonomy in adulthood. If the problem were behavioral, we should expect to see that people who adopt the desired behavior experience better outcomes than those who do not. In a report on women's poverty metrics in 2021, the National Women's Law Center (NWLC) reported that "nearly half of women in the low-paid workforce (46.4%) work full time, and two in five (37.3%) work full time year round."<sup>43</sup> According to the NWLC, "even when they work full time, women in low-paid jobs and their families face a high risk of falling below or near the poverty line."<sup>44</sup> More specifically, "[m]ore than one in three women working full time in low-paid jobs in 2021 (34.8%) had household incomes below twice the poverty line, including 10.4% who lived in poverty."<sup>45</sup> For comparison, in 2021, the rate of poverty for women overall was roughly one in nine (11.1%).<sup>46</sup> The similarity in rates of poverty among women who work full time and women in the overall population should cause us to question whether work incentives are the correct lever for addressing women's poverty. Women working full time experience poverty at a similar rate to women in the overall population.

### 3. The Motherhood Penalty

Women's fertility is, universally, a threat to their economic stability as adults. Researchers find a greater difference between nonmothers' and mothers' economic status than that between working mothers and fathers. Moreover, parenthood does not equally disadvantage mothers and fathers.

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<sup>43</sup> JASMINE TUCKER & JULIE VOGTMAN, NAT'L WOMEN'S L. CTR., *HARD WORK IS NOT ENOUGH: WOMEN IN LOW-PAID JOBS* 12 (2023), [https://nwlc.org/wp-content/uploads/2020/04/%C6%92.NWLC\\_Reports\\_HardWorkNotEnough\\_LowPaid\\_2023.pdf](https://nwlc.org/wp-content/uploads/2020/04/%C6%92.NWLC_Reports_HardWorkNotEnough_LowPaid_2023.pdf).

<sup>44</sup> *Id.* at 14.

<sup>45</sup> *Id.*

<sup>46</sup> SARAH JAVAID & JASMINE TUCKER, NAT'L WOMEN'S L. CTR., *NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES IN 2021*, at 1 (2021), <https://nwlc.org/wp-content/uploads/2021/11/NationalSnapshotFS-1.pdf>.

Whereas mothers experience an earnings *penalty* when they have children, fathers experience an earnings bonus.

When compared to nonmothers and to fathers, mothers clearly experience child-bearing as a trigger for economic disadvantage. This result holds true regardless of marital status, but the state relies on the implied private transfers in marriage as an indispensable part of its social welfare infrastructure.<sup>47</sup> The state justifies its welfare austerity on the assumption that the marital family should be a self-contained site of economic redistribution.

Despite this assumption, married women are not *more free* than unmarried mothers, they are instead highly reliant on an uncertain, contingent form of income support under the aegis of their breadwinner partner. The negative effect of divorce on women's economic outcomes mitigates against interpreting *having children in marriage* as being more favorable than having children out of it. Instead, the relevant variable is having children and *staying married* (or becoming married once children are born) compared to having children without the shield of marriage to insulate from economic extremes.

Women experience discrimination when they seek to enter the job market. Potential employers are reticent to hire women because they perceive that their work will be disrupted by child-raising responsibilities. This motherhood penalty<sup>48</sup> manifests when employers refuse to hire women (perceive them to be unreliable workers), relegate women to positions with less opportunity for advancement,<sup>49</sup> and fire women at higher rates in periods of national economic recession.<sup>50</sup>

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<sup>47</sup> JESSICA CALLARCO, HOLDING IT TOGETHER (2024).

<sup>48</sup> See generally Nancy Folbre, *The Care Penalty and Gender Inequality*, in THE OXFORD HANDBOOK OF WOMEN AND THE ECONOMY 749 (Susan L. Averett et al. eds., 2017).

<sup>49</sup> Pearce, *supra* note 22 (asserting that employers view women as “permanent temporary workers,” imputing the potential disruptions of pregnancy childcare to them regardless of their known parenting status).

<sup>50</sup> CLAIRE EWING-NELSON, NAT'L WOMEN'S L. CTR., AFTER A FULL MONTH OF BUSINESS CLOSURES, WOMEN WERE HIT HARDEST BY APRIL'S JOB LOSSES 1 (2020), <https://nwlc.org/wp-content/uploads/2020/05/Jobs-Day-April-Factsheet.pdf> (illustrating that although women represented 49% of the workforce, they “accounted for 55% of job losses” that month); see Emily J. Martin, *Women and the Workplace—What We Learned from COVID*, 49 HUM. RTS. MAG. 20 (2023) (finding that three years after the onset of COVID in the United States, women re-entered the workforce at slower rates than men).

Women’s experiences of poverty also impact their capacity to withstand personal- or community-level economic shocks. The recession that accompanied the COVID-19 pandemic in 2020 and 2021 had a large and sustained negative impact on women in the workforce.<sup>51</sup>

A 2021 Federal Reserve Board study examined how the COVID-19 recession affected women’s labor force participation by motherhood, race, and ethnicity.<sup>52</sup> They found that, women and workers of color experienced the steepest initial employment declines during the early months of the pandemic.<sup>53</sup> This trend was more pronounced among women of color.<sup>54</sup> The studies’ authors further found that:

all women living with children under age 6 and women living with children aged 6 to 12 who were working low-wage jobs were more likely to exit the labor force during the pandemic than women without children even after controlling for education, earnings, and COVID-19 occupation and industry measures.<sup>55</sup>

In addition, women are more likely to work in the lowest paid positions at a firm, which often offers a lower degree of leniency for child-related disruption and absences from work.<sup>56</sup> The authors assert that the trend in mothers’ labor force exits corresponded to low childcare accessibility.<sup>57</sup> Their findings bolster the theory that “the cost of childcare” along with “the reliability and access to informal care can affect women’s labor force participation.”<sup>58</sup>

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<sup>51</sup> Claudia Goldin, *Understanding the Impact of COVID-19 on Women*, BROOKINGS PAPERS ON ECON. ACTIVITY 65, 68, 97 (2022).

<sup>52</sup> See generally KATHERINE LIM & MIKE ZABEK, WASH. BD. GOVERNORS FED. RSRV. SYS., WOMEN’S LABOR FORCE EXITS DURING COVID-19: DIFFERENCES BY MOTHERHOOD, RACE, AND ETHNICITY (2021), <https://www.federalreserve.gov/econres/feds/files/2021067r1pap.pdf>.

<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 10–12.

<sup>56</sup> Randy Albelda et al., *Gender and Precarious Work in the United States: Evidence from the Contingent Work Supplement 1995–2017*, at 52 REV. RADICAL POL. ECON. 542, 543–46 (2020).

<sup>57</sup> LIM & ZEBECK, *supra* note 52, at 2.

<sup>58</sup> *Id.* at 3.



The financial consequences of the motherhood penalty compound over the lifetimes of women who are active in the workforce throughout adulthood.<sup>59</sup> For example, lower lifetime earnings limit women’s capacity to save for retirement. Moreover, when women’s work requires strenuous physical labor, the onset of physical disability may stifle the length of time they are able to save *and* reduce their capacity to save even more.<sup>60</sup>

### *B. Material Poverty*

Income is insufficient to measure the net value a person contributes as a matter of civic participation. But even within the context of market factors— income, consumer prices, etc.—income as a measure provides an inaccurate picture of individual- or family-level economic wellness.

If federal policymakers measured poverty according to material hardship rather than level of income, the impact of work-tested policy in poor communities would look significantly less positive than present reports suggest. Research on the work patterns of low-income women suggest that despite working substantial hours in the formal labor market, many still struggle to make ends meet.<sup>61</sup> In a 2023 report, the NWLC published data showing that women in the low-wage labor market experience financial strain when their wages cannot support subsistence needs.<sup>62</sup>

If income is not sufficient to measure all of the dimensions that shape American poverty, then we must need additional metrics to capture the depth of need at the low-end of the economic scale. Income poverty “measures a family’s monetary resources against an established benchmark such as the US federal poverty level (FPL), which represents the estimated minimum

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<sup>59</sup> See RICHARD W. JOHNSON ET AL., URB. INST., WHAT IS THE LIFETIME EMPLOYMENT-RELATED COSTS TO WOMEN OF PROVIDING FAMILY CARE? (2023), <https://www.urban.org/sites/default/files/2023-05/What%20Is%20the%20Lifetime%20Employment-Related%20Cost%20to%20Women%20of%20Providing%20Family%20Care.pdf>.

<sup>60</sup> ANNE L. ALSTOTT, A NEW DEAL FOR OLD AGE: TOWARD A PROGRESSIVE RETIREMENT 29–35 (2016).

<sup>61</sup> TUCKER & VOGTMAN, *supra* note 43, at 5.

<sup>62</sup> *Id.* at 13.

income necessary to pay for basic needs.”<sup>63</sup> Material hardship “measures a family’s actual experiences of being unable to pay for certain basic needs.”<sup>64</sup> In recent years, scholars have criticized the official Federal Poverty measure by arguing that it undercounts the rate of poverty in the United States by a significant degree.<sup>65</sup> Although public officials responded by publishing an additional Supplemental Poverty Measure (SPM) that accounts for families’ capacity to afford certain material goods, federal policymakers still overwhelmingly defer to the Federal Poverty threshold to design and evaluate welfare policy.<sup>66</sup>

In *Longitudinal Patterns of Material Hardship*, Margaret Thomas finds that the correlation between income poverty and material hardship are “relatively weak,” supporting the conclusion that “income poverty does not universally predict experiences of deprivation.”<sup>67</sup> In a similar study, Iceland and Bauman propose that material poverty and income poverty can be distinguished according to various factors.<sup>68</sup> The claim that: (1) income poverty measures “transitory income deprivation;” (2) “some types of material hardship (such as neighborhood problems) are likely to be more affected by longer-term income;” and (3) material hardships such as food and housing insecurity “are more affected by very short-term income flows.”<sup>69</sup>

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<sup>63</sup> Margaret M.C. Thomas, *Longitudinal Patterns of Material Hardship Among U.S. Families*, 163 SOC. INDICATORS RSCH. 341, 341 (2022); JAVAID & TUCKER, *supra* note 46, at 2.

<sup>64</sup> Thomas, *supra* note 63.

<sup>65</sup> Areeba Haider & Justin Schweitzer, *The Poverty Line Matters, but It Isn’t Capturing Everyone It Should*, CTR. FOR AM. PROGRESS (Mar. 5, 2020), <https://www.americanprogress.org/article/poverty-line-matters-isnt-capturing-everyone/>.

<sup>66</sup> Lillian Kilduff, *How Poverty in the United States Is Measured and Why It Matters*, POPULATION REFERENCE BUREAU (Jan. 31, 2022), <https://www.prb.org/resources/how-poverty-in-the-united-states-is-measured-and-why-it-matters/>.

<sup>67</sup> Thomas, *supra* note 63; *see also* John Iceland & Kurt J. Bauman, *Income Poverty and Material Hardship: How Strong Is the Association?*, 36 J. SOCIO-ECONOMICS 376, 377 (2007) (finding a “moderate association” between poverty and hardship).

<sup>68</sup> Iceland & Bauman, *supra* note 67.

<sup>69</sup> *Id.*

### C. Women's Economic Precarity-Risk, Post-Dobbs v. Jackson

When the U.S. Supreme Court overturned *Roe v. Wade*<sup>70</sup> in 2022, it precipitated a dramatically transformed abortion-access landscape across the United States. In the immediate aftermath of the *Dobbs* ruling, latent anti-abortion rules in states across the country were reinstated and new restrictions on abortion access were set in place.<sup>71</sup> When states constrained women's access to affordable abortion, the rates of birth in those jurisdictions understandably increased among low-income women.<sup>72</sup> The dramatic rise in births among women who would otherwise have chosen abortion portends a rise in the prevalence and degree of feminized poverty in those states. Women become able to reproduce during adolescence. Pregnancy and birth during the period that follows is a significant risk-factor for their capacity to finish high school, attend college, and participate in the workforce.

In *Measuring Care*, Nancy Folbre assesses how an increased market income affects households headed by single women. She finds that, "single childless women and widows typically experience bigger gains in disposable income earned than mothers of young children."<sup>73</sup> Moreover, among single parents, single fathers experience disproportionately less poverty than similarly situated single mothers.<sup>74</sup> A 2016 study found that women are more likely to be single parents than men.<sup>75</sup>

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<sup>70</sup> See generally *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (overturning *Roe v. Wade*).

<sup>71</sup> See generally *id.*

<sup>72</sup> BECCA DAMANTE & KIERRA B. JONES, CTR. FOR AM. PROGRESS, A YEAR AFTER THE SUPREME COURT OVERTURNED *ROE V. WADE*, TRENDS IN STATE ABORTION LAWS HAVE EMERGED (2023), <https://www.americanprogress.org/article/a-year-after-the-supreme-court-overturned-roe-v-wade-trends-in-state-abortion-laws-have-emerged/>.

<sup>73</sup> Nancy Folbre, *Measuring Care: Gender, Empowerment, and the Care Economy*, 7 J. HUM. DEV. 183, 184 (2006).

<sup>74</sup> Karen Z. Kramer et al., *Comparison of Poverty and Income Disparity of Single Mothers and Fathers Across Three Decades: 1990–2010*, at 33 GENDER ISSUES 22, 23 (2016) (explaining the factors that contribute to differences in single parenthood between mothers and fathers).

<sup>75</sup> *Id.* ("In 2012 . . . 9.9 million [women out of 11.6 million single parents] were single mothers and 1.7 million [men] were single fathers." In addition, out of all U.S. families, "12.1 and 2.3% of all U.S. families [were] single mother or single father families, respectively.").

Work-tested anti-poverty policy is designed to support married people who are already at an advantage when it comes to managing childcare duties. Having two cohabiting adults means those families can either share childcare duties or delegate them to a primary caretaker. When the cost of childcare exceeds the value of the lower-earning spouse's income, families may decide to withdraw that person from the workforce into a full-time domestic role. But when women have children outside the context of marriage, work-tested policy exacerbates their material privation and their exposure to a child removal threat.

The trends in feminized poverty highlighted above persisted *despite* significant strides in women's access to fertility control. As abortion and contraceptive resources become more restrictive across the United States, we will see a corresponding increase in rates of women's poverty. The ancillary impact of anti-abortion policy across the United States will be the onset of staggering levels of material poverty that will most predominantly accrue to poor women and their children.<sup>76</sup>

### III. MARRIAGE AS ANTI-POVERTY POLICY

Historically, when colonial settlers in the U.S. territory transitioned from a subsistence economy to a cash economy, public perception of women's domestic labor became increasingly negative.<sup>77</sup> The early-stage subsistence economy was characterized by self-production of certain household necessities and trade among households for others. The cash economy developed in tandem with burgeoning industrialism, which introduced new tools for accomplishing household tasks. Changes from a subsistence to cash economy spurred women's dependency on wage-earning husbands to survive; in turn, policymakers justified excluding women from public economic (and political) life because of that dependency.<sup>78</sup>

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<sup>76</sup> Lauren Hoffman et al., *State Abortion Bans Will Harm Women and Families' Economic Security Across the U.S.*, CTR. FOR AM. PROGRESS (Aug. 25, 2022), <https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/>.

<sup>77</sup> Jeanne Boydston, *Home and Work: The Industrialization of Housework in the Northeastern United States From the Colonial Period to the Civil War 5* (1984) (Ph.D. Dissertation, Yale University) (on file with author).

<sup>78</sup> *Id.* at 165.

Importantly when public officials decry women's economic dependency, they refer specifically to dependency on government assistance. Their solution, as in the legislation that launched the Temporary Assistance for Needy Families (TANF),<sup>79</sup> is to divert that dependent status from public assistance to the private domain of the marital family. This kind of circular logic still underscores the high prevalence of feminized poverty.<sup>80</sup>

#### A. Weaponizing Single Motherhood

Throughout American history, the state has controlled mothers' access to public financial assistance by judging the conditions under which women become pregnant and raise their children. The patriarchal, capitalist nation-state has a vested interest in controlling reproduction. For example, under a capitalist system, property ownership is a source of power. To preserve that power (and maintain control over it *post-mortem*), owners need lineal descendants who inherit the property along with the prerogative to keep it in the family. Patriarchal capitalism has historically survived by depriving women of the means to establish economic autonomy. This system leverages women's pre-determined economic precarity to channel their reproductive capacity and domestic labor to the marital family.<sup>81</sup>

Single mothers who can survive without the financial benefit of marriage undermine the structural integrity of patriarchal capitalism. Moreover, women who can use contraceptives and abortion to defer child-rearing disrupt the patriarchal nation-state's primary lever of control. Thus, when policymakers have conceded that the state should support some women with children, they have limited access to those resources to "virtuous"

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<sup>79</sup> See generally CTR. ON BUDGET & POL'Y PRIORITIES, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (2022), <https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf>.

<sup>80</sup> Starrels et al., *supra* note 29 ("The feminization of poverty is the process by which the poverty population in the United States has become comprised increasingly of women, irrespective of race or age.").

<sup>81</sup> Carl E. Schneider, *The Channeling Function in Family Law*, 20 HOFSTRA L. REV. 495, 498–500 (1991) (describing how family law "channels" individuals into specific social relationships, such as marriage).

women who would conform to patriarchal family standards if not for circumstances out of their control (like spousal death or abandonment).<sup>82</sup>

The complex obstacles in modern anti-poverty policy are necessary to limit poor women's avenues for economic independence. For example, policymakers erect barriers to public assistance to limit women's capacity to opt out of marriage as their source of economic survival.<sup>83</sup> This is evident today in the ongoing prevalence of work-based welfare. Although programs like the EITC target single mothers, they also *openly* aggravate the tension between market labor and childrearing.

The struggle women face when they must balance work and childcare without support underscores the relative favorability/advantage of the marital family form. Income-tested policy represents how policymakers today use economic policy to channel women into the marital family form. On one level, single mothers face difficulty balancing dual obligations of parenting and work. On another level, married mothers' independent economic well-being is obscured within the singular framing of the household.

#### *B. Wives' Economic Vulnerability*

Income-tested anti-poverty policy exacerbates social and economic risks for single and married mothers. However, the nature of the risk to each group differs. The risk to single women stems from the demand of sustaining childcare and market labor. Wives risk becoming siloed in the home in order to supply domestic labor. When women exit the labor market to specialize in household production, they become increasingly dependent on their spouse to access primary goods. The time women spend specializing in domestic work generally does not apply to seek support through any work-tested social policies. As a result, married women who exit the workforce risk becoming completely untethered from many income-tested programs.

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<sup>82</sup> See Kittay, *supra* note 2, at 126 (describing how moral labels were assigned to determine eligibility for various public assistance programs).

<sup>83</sup> Anti-poverty policies have historically excluded able-bodied men from accessing public assistance. Poor men were bound by a civic obligation to work and should not receive state support as a negative incentive to sustain a job. See Margaret K. Rosenheim, *Vagrancy Concepts in Welfare Law*, 54 CALIF. L. REV. 511, 530 (1966) ("In the first place, the able-bodied male, even if fulfilling residence or settlement requirements, is not, in many states, entitled to any income maintenance whatsoever.").

Income-tested policies limit wives' direct access to public sector assistance. If policymakers wanted to increase wives' power in the marital household, they would use anti-poverty policies to limit the degree of control a wage-earning spouse could exert over the uncompensated spouse. Policies that promote access to essential goods and services limit the degree of risk women face from total dependence on their spouse for money. At present, anti-poverty policies serve the opposite purpose: they strengthen men's claims of dominance in the household by facilitating women's increased isolation from public life.

### 1. Wives' Domestic Labor

Domestic labor has not always been so disregarded as a contribution to the broader economy. When American households relied heavily on self-provision and trade to acquire goods, wives' efforts to craft clothes, feed the family, and maintain the home were regarded (under certain Protestant Christian doctrines) as reflections of their diligent virtue. Under those conditions, women could participate actively in a broader public economy by bartering skills and resources to meet their needs.

However, as cash came to dominate economic transactions, women's domestic labor fell in favor relative to wage labor. One scholar argues that the public-private distinction between men and women's spheres of labor established women's dependence on men for economic survival early in the development of American capitalism.<sup>84</sup> Not only did the distinction establish a hierarchy in public life—by excluding women from the public economy—it also lay the foundation for men to strengthen their dominance in the marital home. So long as wives could not participate in public economic life without deferring to their husbands for cash, men could use finances to control women in the household.

In the seventeenth and eighteenth centuries, economic life among colonial settlers shifted from household subsistence activity to public transactions of cash for goods.<sup>85</sup> This changed the way families accessed necessary supplies. It also changed how men—who held the dominant

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<sup>84</sup> Boydston, *supra* note 77, at 20–21.

<sup>85</sup> *Id.* at 58–60.

position in public socio-political hierarchy—regarded the household relative to the public market.

Along with that shift, public discourse increasingly favored preserving wage labor for men (but not enslaved men or men who were indentured servants).<sup>86</sup> Thus, the modern cash economy was born into a context that deprived women of access to public economic life. This deprivation is important because it established and sustained a pattern of women’s dependency on men to survive adulthood. In exchange, men could use their superior economic position to control women through marriage.

Today, the law does not formally support men using economic power to control their wives; instead, gendered disparities in wage and labor markets maintain men’s dominant position. Women entering the formal labor market face a number of obstacles to economic stability. For example, “although women make up just under half of the workforce in the United States, they represent nearly two-thirds (64.1%) of the workforce in the forty lowest-paying jobs[.]”<sup>87</sup> In addition, women are also overrepresented in precarious jobs.<sup>88</sup>

In a 2023 study of Contingent Work Supplement records between 1995 and 2017, Albelda et al. measured the distribution of precarious work among American workers. They used three subcategories: uncertain work, unprotected work, and economically insecure work.<sup>89</sup> The study found that there was a greater proportion of women than men in all three categories, and across the twenty-two-year period studied.<sup>90</sup>

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<sup>86</sup> See *id.* at 64–68.

<sup>87</sup> TUCKER & VOGTMAN, *supra* note 43, at 3–4.

<sup>88</sup> Albelda et al., *supra* note 56, at 544 (defining “precarious” work as “all works that are uncertain, unprotected, or economically insecure”).

<sup>89</sup> Uncertain work describes “work that may not continue into the future or jobs without regular hours.” Unprotected work is that which “lacks standard employment protections.” Economically secure work “provides insufficient hours or pay for social reproduction.” *Id.* at 550.

<sup>90</sup> *Id.* at 553–55 (Although Albelda et al. found some convergence in men’s and women’s rates of work in precarious jobs through 2017, they still find that women outpaced men in the distribution of workers in those jobs.).



One form of market discrimination that sustains feminized poverty is the diminished earning power women experience through occupational segregation and individual-level wage disparities. Many primary goods in the United States are only accessible as commodities; as a result, the buying power of an individual's earnings determines their relative degree of material (in)stability.<sup>91</sup> Here, the combined effect is that policymakers' overreliance on the market to determine each individuals' actual value and distribute essential resources has an especially negative effect on women in and out of the formal labor market.

## 2. Coverture in “Anti-Poverty” Policy

Through work-tested policy, the state can accomplish multiple objectives. It can disincentivize single motherhood by making that family form difficult to sustain through the dual obligation of childcare and market labor. It can also promote the patriarchal marital family as the solution to the difficulties of sustaining single motherhood. In this manner, anti-poverty policy expresses the socio-cultural view that marriage is obligatory for mothers' fiscal stability.

But studies of the connection between socioeconomic status and family structure have found multiple additional variables that might dictate why the traditional family has historically been more prosperous than households headed by single women with dependent children.<sup>92</sup> For example, middle-class families may be formed by two people who were raised in the middle class. That is, spouses in families that have historically been more prosperous have met in institutions—like college—that support and advance an individual's childhood socioeconomic status. Moreover, when two adults who were raised in middle-class families form their own family, under certain conditions they are also more likely to inherit financial instruments that support their capacity to grow asset-based wealth.<sup>93</sup> Thus, while it holds that there is clear correlation between the marital family unit and certain

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<sup>91</sup> For an in-depth description of this effect, see Alstott, *supra* note 17, at 302–08.

<sup>92</sup> See Erez Aloni, *The Marital Wealth Gap*, 93 WASH. L. REV. 1 (2018).

<sup>93</sup> See Kerwin Kofi Charles et al., *Marital Sorting and Parental Wealth*, 50 DEMOGRAPHY 51 (2013).

degrees of prosperity, it is not clear that *marriage* is the driving factor in generating *new* prosperity for previously low-income families.

Pepin et al. argue that wives' excess effort may derive from social pressures that demand high standards of married wives.<sup>94</sup> In their study, they found, that married mothers sleep less but perform more housework than never-married and divorced mothers.<sup>95</sup> The study's authors suggest that part of the difference in how these groups of mothers distribute their sleep and domestic labor time is a cultural expectation that wives will "keep house" to a standard that upholds their family's image.<sup>96</sup> Therefore, even if the never-married, divorced, and married mothers experience similar amounts of housework, the non-married mothers are, in theory, under less pressure to devote more of their time to that work than to sleep, leisure, or other pursuits. Part of this expectation derives from social norms that are policed within communities.

Still another part of this expectation derives from legal and economic institutions specifically designed to normalize women's subservience within the marital home as a tool for financial prosperity. This suggests that even where we see marriage promoting a family's success, part of that success derives from an economic policy apparatus that takes women's free labor within the marital home for granted. In this sense, when we talk about "household" prosperity today, we import the antiquated meaning of the patriarch as the target of the home's prosperity. Once, the system of coverture (upheld through law) explicitly gave the patriarch dominion over his wife's assets, labor, and reproductive capacity.<sup>97</sup> Today, the system of coverture is no longer the general rule for how families are organized; so, instead, we say, "If only poor women would get married before having children, they would not rely on the state for support." We thereby allude to a concept of patriarchal prosperity that relies on women's unrecognized free labor in the marital family home.

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<sup>94</sup> Joanna R. Pepin et al., *Marital Status and Mothers' Time Use: Childcare, Housework, Leisure, and Sleep*, 55 DEMOGRAPHY 107, 110 (2018).

<sup>95</sup> *Id.* at 5.

<sup>96</sup> *Id.* at 15–16.

<sup>97</sup> Vivian E. Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL'Y & L. 307, 363–64 (2004); Siegel, *supra* note 2, at 1440.

The problem single mothers have is not that they do not work—it is that their non-market work is regarded as having no real economic value. We accept policy that punishes women for mothering outside the context of the marital family because the economic role of the marital family is still to serve as a non-governmental custodian of women and the children they bear in the marriage. If non-wage domestic labor had real value in the national economy, we would not need a tax credit that “rewards work.” A person at home caring for their own child would be regarded as working to the same extent that we would say the same about a daycare worker watching another person’s child. The principal difference between these roles is the exchange of money for services in the daycare context. Similarly, we suggest that other housework like cleaning, cooking, and laundry have real economic value when we delegate them to external workers, but no value when they are performed in the context of the household as free labor.<sup>98</sup>

The value of uncompensated labor should be enough to justify publicly provided cash welfare or public services as a form of recognizing the uncompensated, but indispensable labor that domestic workers supply. It is that the labor of mothering only has value—and only symbolic value—in the context of marriage as a tool for promoting the patriarch’s status and legacy.

#### IV. BEYOND INDIVIDUALIST WELFARE POLICY

##### A. *Is the Answer in the EITC?*

As a policy that operates through the tax system, the EITC’s fundamental flaw is that earning an income in the market economy is a threshold requirement for access to the benefit it offers.<sup>99</sup> It fails as an anti-poverty program in two ways that disproportionately impact women living in poverty.

First, it *exposes* poor women with children to increased precarity. The work requirement of the EITC exposes single mothers to the stressors of balancing the complexities of childcare with sustaining sufficient work attachment to meet the EITC’s income thresholds. It places married mothers

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<sup>98</sup> I regard the question of whether household labor has economic value as distinct from whether that economic value should be taxed.

<sup>99</sup> Nyamagaga R. Gondwe, *The Tax-Invisible Labor Problem: Care Work, Kinship, and Income Security Programs in the United States*, 102 B.U.L. REV. 2389, 2401–02 (2022).

at risk of becoming isolated from the workforce if they have to reduce their work hours in order to increase hours of childcare (and decrease the cost-burden of market-based childcare on the household).

The second way the EITC places women in the workplace at risk rests on the difference between income poverty and material poverty. The EITC aims to address income poverty relative to the Federal Poverty Measure. To that end, reports that the EITC is successful at lifting poor mothers, often specifically single mothers, “out of poverty,” are only telling half of a story. But if those assessments do not account for mothers’ ability to pay for primary goods out-of-pocket (“material capacity”) relative to their earnings, they do not capture the full measure of economic well-being. In other terms, excessive commodification of essential goods and services will always limit the overall efficacy of “earning an income” in the American economy.

Arguments that the EITC presently works, regardless of the buying power of a low-wage income, apply a capitalist judgment based on individual prosperity to a collective problem. Money is only an end in itself to people whose financial profile includes capital assets. For those people, incentives to sit on capital assets and transfer them as gifts or bequests suggest that the monetary value of those assets is not relevant to their capacity to function from day-to-day. However, for people who are cash-dependent, earnings are only as useful as the things they can buy. It simply does not make sense to judge a welfare program that principally accrues to cash-dependent families as a success if the workers whose earnings meet or exceed the poverty threshold still cannot afford to meet their *complete* range of primary needs using only those earnings.

### *B. Bringing Women into the Polity*

Though this Essay is about the EITC specifically, it addresses points relevant to TANF and other forms of workfare policy. But the solution I ultimately propose must exist outside the framework underlying workfare policy. These programs fundamentally exacerbate women’s conditions of financial precarity because they use labor market participation as an obstacle to public assistance.

Women’s reproductive capacity is a known risk to their economic independence. Employers refuse to hire women because they *might* become pregnant and require leave for childcare. Women leave the workforce *because* the growing cost of childcare and their status as secondary earners

in their household mitigates against them earning a separate income. Pregnancy and childbirth undermine women's capacity to meet the life markers that facilitate future economic stability, including going to college and maintaining consistent employment that results in workplace advancement.

Many safety net resources are administered through the tax system, which requires women to manage the precarious balance of childcare and fulltime work *or* build an economic relationship with someone who can help to offset that burden. The tax code contains subsidies for housing, healthcare, food, transportation, and childcare. The principle catch, especially for excludable fringe benefits and itemized deductions, is that these subsidies accrue to people who already meet some measure of success in the capitalist economy. To those people, we establish a *right* to offset taxable income by consumption. To people living in poverty, however, we frame access to those same privileges as a *privilege* that is limited only to those who we deem worthy. For example, the entire compendium of deductions, credits, and exclusions for resources that are "employer-provided" is a sort of mockery to the working poor whose employers have no imperative or incentive from the public sector to supply those resources.

The process that instrumentalizes women's bodies and labor while also limiting their power in the public sphere underlies a more fundamental problem within a policy that "rewards work." Income-tested anti-poverty policy purports to lift poor women out of poverty, but alternatively consigns them to a lifetime of thankless, low-wage labor, subservient status in the marital household, or both.

Tax is an individual- or household-level intervention. Individual-level redistribution suggests that only *some* subsection of the poor deserves basic support from the public sector. But that assessment ignores the role the public sector plays in sustaining deep inequality. More importantly, the tax system cannot account for uncompensated labor that nevertheless produces value for the economy. Tax is a tool of social policy reform that is limited by its reliance on income as an interpretative resource. But, as we have seen, the very concept of a wage reflects deeply seated biases in the economic distribution about the value of different forms of labor. The tax system cannot radically reform poverty—the inputs for income taxation come from the same source as the gendered and racial biases that sustain modern poverty.

In anti-poverty policy, focusing on moral desert is a distraction. It places the greatest burden on those with the least capacity to elicit system-

wide, structural change. It insulates policymakers—who have the institutional power to oversee a more equitable distribution of resources and more comprehensive regulation of private industry—from taking responsibility for the failures of the anti-poverty policies they champion.

The EITC, as a concept, suggests that the best way to use our public sector resources is to try to eliminate poverty one person at a time. But this individual-level response has an inadequate impact on the deep, material poverty that characterizes American precarity today. As Kittay argues, our economic welfare apparatus would have to take a collective wellness approach to support citizens who support our economy in different ways.<sup>100</sup> For example, we would not have to worry about establishing a hypothetical value to administer EITC benefits to non-wage workers if the question we ask is not “what does each person deserve,” but instead, “what does each person need?” If the starting point for building a system of public welfare programs is need, not desert, we would have to directly confront facets of modern capitalism that create disparities in access to primary goods. For example, under this conception, the relative cost of housing in Brooklyn, New York and Biloxi, Mississippi is secondary to the question of whether the housing market in both jurisdictions supports universal access to decent housing.

Under a principle of universal provision, the public sector, which has much more power than individual citizens acting in siloes, would bear the responsibility for establishing a baseline standard of material access. Kittay addresses the philosophy that justifies reframing our methods of redistribution by alluding to the Rawlsian theory of the free and equal citizen.<sup>101</sup> She argues that “a conception of a just state must include an understanding of the citizen as having . . . three moral powers,” including: (1) “an ability to form and revise one’s conception of one’s own good;” (2) “a sense of justice;” and (3) “the capacity for responding to those in need with care.”<sup>102</sup>

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<sup>100</sup> Kittay, *supra* note 2, at 139.

<sup>101</sup> *Id.* at 132.

<sup>102</sup> *Id.*

Kittay proposes that these moral powers “give rise to the political and civil rights that are given prime consideration under liberal democracies.”<sup>103</sup> With respect to redistribution of resources in a liberal democracy, these principles aim to mitigate the “exigencies of life in a market economy” by giving priority to “the social rights not to have all of life’s interactions commodified.”<sup>104</sup> Ultimately, Kittay argues that for the state to promote principles of freedom and equality among its citizens, it has to be attentive to the material needs at the heart of modern inequality.<sup>105</sup> “Without additional support,” she says, “you cannot participate in the reciprocal arrangements of production and consumption, as defined within a market economy.”<sup>106</sup>

## V. CONCLUSION

Women’s vulnerability in the market economy is an artifice of a society that requires women’s unpaid private labor contribution to uphold its economy. It places a high burden on women to tightly control the circumstances under which they conceive, bear, and raise children, and they punish those women whose actions stray from their ideal.

If modern childcare costs are any indication, the market suggests that the labor of mothering is more valuable in the present economy than most forms of low-wage labor policymakers require single mothers to perform. Thus, a work requirement that excludes mothering labor from eligibility is not about promoting value-production through labor—that could be accomplished as easily by making it easier to choose domestic labor over market labor. Instead, it is a tool for social control that specifically targets women through the valence of their reproductive capacity.

To be clear, it is not for policymakers to decide whether women devote their labor exclusively to private domestic labor or public market labor; rather, policymakers should take on the role of clearing the way for women to make meaningful choices about how they balance their labor obligations.

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 131–34.

<sup>106</sup> *Id.* at 130.

When financial policy delimits women’s capacity to meaningfully direct their economic present and future, it risks becoming complicit in undermining their freedom, overall. If the definition of “work” excludes homemaking labor, then socio-cultural norms that still (in 2024) distribute domestic labor overwhelmingly to women mean they stand a higher risk of becoming exclusively reliant on a romantic partner for economic survival (especially during periods of child-rearing that require high labor inputs).