Do We Value Our Cars More Than Our Kids? The Conundrum of Care for Children

PALMA JOY STRAND*

ABSTRACT

Formal child care workers in the United States earn about $21,110 per year. Parking lot attendants, in contrast, make $21,250. These relative wages are telling: the market values the people who look after our cars more than the people who look after our kids.

This article delves below the surface of these numbers to explore the systemic disadvantages of those who care for children—and children themselves. The article first illuminates the precarious economic position of U.S. children, a disproportionate number of whom live in poverty. The article then shows both that substantial care for children is provided on an unpaid basis in households, predominantly by women, and that care for children is undervalued when provided through the market.

After presenting three distinct perspectives on market payments for care for children—(1) a public goods analysis, (2) a patriarchy analysis, and (3) a gift analysis—the article proposes a set of income tax breaks for jobs involving care for children.

I. INTRODUCTION

"Children are our most valuable resource." Herbert Hoover[1]

"If we don't stand up for children, then we don't stand for much." Marian Wright Edelman[2]

We say we value our kids but, as the traditional adage reminds us, talk is cheap. The harsh reality is that children are one of the most vulnerable and disadvantaged populations in the U.S. Children are substantially more likely than average to be poor, and very young children are most likely to be impoverished.

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* Associate Professor of Law, Creighton Law School. B.S. Stanford University (1978); J.D. Stanford University (1984); LL.M. Georgetown University Law Center (2006). Carla Spivack and the participants of the September 2011 Workshop on Critical Perspectives on Tax Policy at Emory University Law School offered useful comments. Nicole Herbers, Patrick McCann, Jennifer Arbaugh, and Mary Kate Millerd provided valuable research assistance. I very much appreciate the financial support provided by a Creighton Law School summer research fellowship in the preparation of this article. I am indebted to my daughter Elaine Strand Sylvester for the title of this article.

1. THE HOME BOOK OF AMERICAN QUOTATIONS 80 (Bruce Bohle ed., 1967) (stating: "A remark he made on numerous occasions (*New York Times* obituary of Hoover, 21 Oct., 1964, p. 42)").

2. Jone Johnson Lewis, *Women's History: Marian Wright Edelman Quotes*, ABOUT.COM (last visited Oct. 19, 2011), http://womenshistory.about.com/od/quotes/a/marian_edelman.htm.

Childhood poverty has two primary dimensions: its association with race or ethnicity and its feminization. Children are more likely than the norm to be members of historically marginalized racial or ethnic groups, and membership in these groups correlates to poverty. More dramatically, children who live in female-headed households are far more likely to be poor than children in households headed either by married couples or by single males.

Those who care for children[3] are also vulnerable. To begin with, much of the work of caring for children is unpaid; this work occurs in households and is usually performed by parents—predominantly mothers. Further, salaries for jobs involving care for children suggest a market devaluation of such care. Formal U.S. child care workers, for example, earn $21,110 per year on average.[4] In comparison, parking lot attendants, who look after cars, average $21,250.[5] The devaluation of care recurs in better paid occupations, including those of K–12 teachers who are paid less than jobs of "comparable worth."[6] Even child-oriented professional specialists such as pediatricians and family lawyers make less than most doctors and lawyers.[7]

This article proposes a sliding scale of tax breaks—income tax credits, exemptions, and lower tax rates—for people who earn market income from work involving significant amounts of care for children.[8] Child care workers would receive a credit, K–12 teachers an exemption, and professionals providing child-related services a lower tax rate. These tax breaks would address one manifestation of the systemic marginalization of care for children: the relatively low market wages associated with this care.

This tax proposal is grounded in the view that the market's devaluation of care for children is a fundamental social characteristic and that it can be understood from three distinct but overlapping perspectives. The first is that children are akin to public goods, economically speaking, and that the market does not adequately value their "provision" or care. The second is that the existence of substantial unpaid care outside the market diminishes market demand, resulting in lower compensation for this work. The fact that men traditionally have not performed this work also lowers its market value. The

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3. The word "care" in this article is used to describe the actual work/labor involved in taking care of children rather than caring in the purely emotional sense, though taking care of children does normally involve emotional care. *See infra* notes 218–21 and accompanying text.

4. *Occupational Employment and Wages, May 2010: 39-9011 Childcare Workers*, BUREAU OF LABOR STATISTICS, http://bls.gov/oes/current/oes399011.htm (last visited Oct. 19, 2011). The Bureau of Labor Statistics defines this care as follows: "Attend to children at schools, businesses, private households, and childcare institutions. Perform a variety of tasks, such as dressing, feeding, bathing, and overseeing play." *Id.* As discussed below, for child care workers overall, this average wage is likely on the high side. *See infra* notes 85-87 and accompanying text.

5. *Occupational Employment and Wages, May 2010: 53-6021 Parking Lot Attendants*, BUREAU OF LABOR STATISTICS, http://bls.gov/oes/current/oes536021.htm (last visited Oct. 19, 2011). This estimate may not include tips and consequently is likely on the low side.

6. *See infra* note 96 and accompanying text.

7. *See infra* notes 101–06 and accompanying text.

8. For the purposes of this article, "care for children" includes unpaid as well as paid care. Paid care, moreover, includes care performed by child care workers, whose work is entirely care, as well as care performed in the context of other occupations, particularly K–12 teaching and child-oriented professions such as pediatrics and family law practice.

final view is that not all of the value associated with care can—or should—be expressed through the market, which leads to lower market prices for that care.

The disadvantaging of children and their care is neither intentional nor actionable under current law. Rather, it is systemic and perpetuated by deep-seated institutional and cultural patterns and individual actions. The primary purpose of this article is to shed light on the connections between low market wages for care, unpaid care labor in households, and high rates of child poverty. Enhanced understanding of the interconnected institutions and cultural practices that comprise the system will provide insight into intervention points for change. This article also works to reject the law-story that tolerates the marginalization of children and those who care for them. The final purpose, which pulls together the first two, is to articulate a tangible initiative to address market undercompensation of care, the resulting disadvantage of those providing such care, and the negative effects of these on children.

In Part I, this article presents pertinent data on the status of children in the U.S. Then, after documenting patterns of unpaid care, Part I highlights selected income data that reveal the low value placed by the market on care for children. Part II explores the phenomenon of low market value for care from three distinct perspectives. Part III proposes a set of income tax breaks to address systemic market undercompensation of care for children and relates these tax breaks back to the issues of unpaid care and child poverty.

II. "MINI-REPORT"—KIDS AND THOSE WHO CARE FOR THEM

This Part presents a "mini-report" on children in the United States and those who care for them. It first provides a snapshot of how kids are faring economically. It then examines data on unpaid labor associated with care for children. Finally, it presents data, in the form of incomes from selected occupations, that illuminate how the market values care for children.

A. The Status of U.S. Children

i. Childhood Poverty

Relatively speaking, kids are poor: while the overall U.S. poverty rate in 2009 was 14.3 percent, it was 20.7 percnt for children under eighteen and 24.5 percent for children under five.[9] Children are also more likely to be members of racial or ethnic minority groups than the population at large,[10] and there is an

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9. CURRENT POPULATION SURVEY, ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT (2009): POV01: AGE AND SEX OF ALL PEOPLE, FAMILY MEMBERS AND UNRELATED INDIVIDUALS ITERATED BY INCOME-TO-POVERTY RATIO AND RACE: 2009, U.S. CENSUS BUREAU (2010), http://www.census.gov/hhes/www/cpstables/032010/pov/new01_100_01.htm (last visited Nov. 17, 2011).

10. In 2009, children in the U.S. were 56 percent non-Hispanic White, 15 percent Black only, and 22 percent Hispanic. *Racial and Ethnic Composition of the Child Population-Trends*, CHILD TRENDS (July 2009) http://www.childtrendsdatabank.org/sites/default/files/60_fig02.jpg. In addition, 4 percent were Asian, and 4 percent were "other." The 2010 population as a whole, in contrast, was 72.4 percent non-Hispanic White, 12.6 percent Black/African-American alone, and 16.3 percent Hispanic or Latino. *2010 Census Data*, U.S. CENSUS BUREAU (last visited Oct. 19, 2011), http://2010census.gov/2010census/data/.

increasing proportion of Hispanic children and decreasing proportion of non-Hispanic White children, with the proportion of Black children remaining fairly constant.[11] Projections for 2021 point to a bare majority of U.S. children being non-Hispanic White (51 percent), over a quarter being Hispanic (27 percent), and somewhat over an eighth being Black (14 percent).[12]

Among children who are poor, poverty is concentrated in Hispanic and Black communities. While 20.7 percent of all children live in poverty, a smaller proportion of White children, 14 percent, are poor (17.6 percent of those under five),[13] compared to 28.2 percent of Hispanic children (31.3 percent of those under five)[14] and 34.4 percent of Black children (40.7 percent of those under five).[15] Despite these statistics, there are almost as many White children living in poverty as Hispanic and Black children combined because of the greater number of White children overall.[16]

More acute than the racialization of childhood poverty is its feminization: over half of all poor children live with single mothers.[17] Living in a female-headed household with no husband present is a disturbingly accurate predictor of poverty: an astounding 42.9 percent of children under eighteen and 54.7 percent of children under five in such households live in poverty.[18] The situation is bleak for White children of single mothers: of all White children in female-headed households, 38.9 percent of those under eighteen (and 53.4 percent of those under five) live in poverty.[19] Hispanic and Black children of single

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11. CHILD TRENDS, *supra* note 10.

12. *Id. See also* Gretchen Livingston & D'Vera Cohn, PEW RESEARCH CENTER, THE NEW DEMOGRAPHY OF AMERICAN MOTHERHOOD 2 (May 6, 2010; rev. Aug. 19, 2010), *available at* http://pewsocialtrends.org/assets/pdf/754-new-demography-of-motherhood.pdf (noting that birth statistics in 2008 compared to those in 1990 show that births to Hispanic mothers rose over that period by 10 percent while births to White mothers fell by 12 percent; births to Black mothers remained essentially the same [down 1 percent], and births to Asian mothers edged up slightly, by 3 percent).

13. CURRENT POPULATION SURVEY, ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT: POV02 PEOPLE IN FAMILIES BY FAMILY STRUCTURE, AGE, AND SEX, ITERATED BY INCOME-TO-POVERTY RATIO AND RACE: 2007-BELOW 100% OF POVERTY-WHITE ALONE, U.S. CENSUS BUREAU (Aug. 26, 2008), http://pubdb3.census.gov/macro/032008/pov/new02_100_03.htm.

14. CURRENT POPULATION SURVEY, ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT: POV02 PEOPLE IN FAMILIES BY FAMILY STRUCTURE, AGE, AND SEX, ITERATED BY INCOME-TO-POVERTY RATIO AND RACE: 2007- BELOW 100% OF POVERTY-HISPANIC ORIGIN, U.S. CENSUS BUREAU (Aug. 26 2008), http://pubdb3.census.gov/macro/032008/pov/new02_100_09.htm.

15. CURRENT POPULATION SURVEY, ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT: POV02 PEOPLE IN FAMILIES 18 BY FAMILY STRUCTURE, AGE, AND SEX, ITERATED BY INCOME-TO-POVERTY RATIO AND RACE: 2007-BELOW 100% OF POVERTY-BLACK ALONE, U.S. CENSUS BUREAU (Aug. 26, 2008), http://www.census.gov/macro/032008/pov/new02_100_06.htm.

16. In 2007, 8.024 million White children, 4.360 million Hispanic children, and 3.853 million Black children lived in poverty. U.S. CENSUS BUREAU, *supra* notes 13–15.

17. Mark Mather, *U.S. Children in Single-Mother Families*, POPULATION REFERENCE BUREAU 2 (May 2010) *available at* http://www.prb.org/pdf10/single-motherfamilies.pdf. In 2009, 53 percent of these single mothers had been married previously. *Id.* at 1.

18. CURRENT POPULATION SURVEY, ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT: POV02: PEOPLE IN FAMILIES BY FAMILY STRUCTURE, AGE, AND SEX, ITERATED BY INCOME-TO-POVERTY RATIO AND RACE: 2007-BELOW 100% OF POVERTY-ALL RACES, U.S. CENSUS BUREAU, http://www.census.gov/macro/032008/pov/new02_100_01.htm (last visited Nov. 17, 2011).

19. U.S. CENSUS BUREAU, *White Alone*, *supra* note 13.

mothers fare even worse: of all Hispanic children living in female-headed households, 51.4 percent of those under eighteen (and 59.1 percent of those under five) are impoverished—as are 50.2 percent of Black children under eighteen in such households (and 58.5 percent of those under five).[20]

Consider, in contrast, children living in households headed by married couples. Of those children, a much lower proportion—8.5 percent of all children under eighteen (and 9.5 percent of those under five)—are impoverished.[21] The poverty rate for children living in such households is 8.2 percent for White children under eighteen (and 9.4 percent for those under five),[22] 11 percent for Black children under eighteen (and 12.3 percent for those under five),[23] and 19.3 percent for Hispanic children under eighteen (and 20.8 percent for those under five).[24]

Some of the correlation of poverty with female-headed households is due simply to the single income available in any single-adult household. But far fewer children are in households headed by single males than in those headed by single females (about one-fourth as many), and the poverty rates for male-headed households are significantly lower (by twenty to twenty-five percentage points) than those for female-headed households.[25] Overall, the feminization effect is substantially greater than the racial effect. The racial effect, in fact, appears to be due in large part to the relatively high proportions of Black and Hispanic children in households with single mothers.[26]

These statistics on childhood poverty represent tangible negatives. Poverty has life-and-death implications: "children in poverty are 3.6 times more likely than nonpoor children to have poor health and 5 times more likely to die from an infectious disease."[27] Childhood poverty is also associated with a host of additional undesirable outcomes, including other physical health problems, impairment of cognitive abilities, decreased school achievement, emotional and behavioral issues, increased financial costs, and higher rates of teen pregnancy.[28]

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20. U.S. CENSUS BUREAU, *Hispanic Origin*, *supra* note 14; U.S. CENSUS BUREAU, *Black Alone*, *supra* note 15.

21. U.S. CENSUS BUREAU, *All Races*, *supra* note 18.

22. U.S. CENSUS BUREAU, *White Alone*, *supra* note 13.

23. U.S. CENSUS BUREAU, *Black Alone*, *supra* note 15.

24. U.S. CENSUS BUREAU, *Hispanic Origin*, *supra* note 14.

25. U.S. CENSUS BUREAU, *All Races*, *supra* note 18 (noting 4,359 children (in thousands) of all income levels in single-adult, male-headed households versus 17,654 children (in thousands) in single-adult, female-headed households and poverty rates of 21.3 percent for children under eighteen and 27.9 percent for children under five for single-adult, male-headed households).

26. In 2007, 18.22 percent of White children under eighteen lived in female-headed households, while 26.45 percent of Hispanic and 55.31 percent of Black children under eighteen lived in such households. Percentages calculated from data in U.S. CENSUS BUREAU, *supra* notes 13–15.

27. THE CONNECTICUT COMMISSION ON CHILDREN, CHILDREN AND THE LONG-TERM EFFECTS OF POVERTY 2 (2004). *See also* MARILYN WARING, IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS 179 (1988) (stating: "In the United States, twelve times as many poor children die in fires as do nonpoor [sic] children. Eight times as many poor children die of disease as nonpoor [sic] children.").

28. KRISTIN ANDERSON MOORE, ZAKIA REDD, MARY BURKHAUSER, KASSIM MBWANA, & ASHLEIGH COLLINS, CHILDREN IN POVERTY: TRENDS, CONSEQUENCES, AND POLICY OPTIONS 4–6 (2009); THE CONNECTICUT COMMISSION ON CHILDREN, *supra* note 27, at 2–5. *See also* NANCY FOLBRE, THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES 129 (2001) (citing CONSEQUENCES OF GROWING UP POOR (Greg Duncan & Jeanne Brooks-Gunn, eds., (1997)).

Poverty, moreover, may lead to negative social outcomes by virtue of the fact that it signifies low social status in an economically stratified society. Research by social epidemiologists Richard Wilkinson and Kate Pickett, for example, connects income inequality generally with decreased well-being for society as a whole.[29] Relative poverty and income inequality correlate to higher rates of infant mortality, higher levels of obesity and mental illness, more teen pregnancies, and greater levels of violence; they also correlate to less education, reduced opportunity, and shorter lifespans.[30]

These are obviously undesirable social consequences. How is it, then, that such high levels of childhood poverty and inequality—which put at risk the most vulnerable members of our society—have come to exist? And why do we allow them to continue?

ii. Systemic Disadvantage

We as a society do not choose childhood poverty. Childhood poverty results from the actions people take within our institutions—formal and informal—and in response to our laws and customs. Childhood poverty thus exemplifies systemic disadvantage.[31]

The racialization of childhood poverty results from children deriving their socioeconomic status from the adults in their households. Higher levels of poverty for Black and Hispanic children thus reflect higher levels of poverty for Black and Hispanic households.[32] These levels result from several factors, including continuing racial disparities in income[33] and the higher proportion of Black and Hispanic children living with single mothers.[34]

The feminization of childhood poverty is even more indirect, as Joan Williams, law professor and head of the Center for WorkLife Law, explains.[35] Our economy is built around and best accommodates the "ideal worker," someone "who works full time and overtime and takes little or no time off for

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29. RICHARD WILKINSON & KATE PICKETT, THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER 15–45 (2009) (noting detrimental effects of poverty arising from the fact that it indicates income inequality and denotes social hierarchy and status).

30. *See id.* at 45–169.

31. *See, e.g.*, Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 OR. L. REV. 453, 465–68 (2010) (stating that systems of disadvantage consist of interlocking but uncoordinated interactions by "independent" actors from which emerge patterns of inequity).

32. The overall level of poverty for Whites is below the national average (9.4 percent compared to the mean poverty level of 14.3 percent in 2009) and much higher for Hispanics (25.3 percent) and Blacks (25.8 percent). Carmen DeNavas-Walt, Bernadette D. Proctor & Jessica C. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, U.S. CENSUS BUREAU, 166 (2010), *available at* http://www.census.gov/prod/2010pubs/p60-238.pdf.

33. *See Table 701., Median Income of People in Constant (2009) Dollars by Sex, Race, and Hispanic Origin: 1990 to 2009* , U.S. CENSUS BUREAU, *available at* http://www.census.gov/prod/2011pubs/12statab/income.pdf (noting that the median income for White men in 2009 was $33,748 compared to $23,738 for Black men and $22,256 for Hispanic men, and the median income for women was much less variable by race/ethnicity).

34. *See supra* note 26 and accompanying text.

35. JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 1 (2000).

childbearing or child rearing."[36] Market structures are geared to traditionally male roles and jobs,[37] and the prevalence of the ideal worker structure channels women into lower-paying, less prestigious, and less secure "women's work" that is more flexible in allowing workers to meet family responsibilities.[38] This structure is enabled by public policies and laws that themselves are grounded in and perpetuate the ideal worker paradigm.[39] The lack of public support for care and the absence of flexibility requirements in the workplace are examples.

The structure of the market rewards ideal workers. Because children need care and such care generally falls to mothers, mothers are rarely in a position to be ideal workers.[40] The result is that mothers who do not share in the economic benefits associated with being an ideal worker, sharing that usually comes with being married to such a worker, lose out economically. Williams observes, "[i]n an era when well over half of children will spend some time living in a single-parent household, overwhelmingly with single mothers, the assumption that all children will have steady access to an ideal worker's wage leads to widespread childhood poverty."[41] Where mothers lose out economically, so too do their children.

This disadvantage applies to the households of both divorced mothers and

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36. *Id.*

37. *Id.* at 66–81. In white-collar jobs, ideal worker norms (1) reward those who can work an "executive schedule" (either have no family responsibilities or have someone at home to meet those responsibilities); (2) penalize/marginalize part-time workers, including those who work part time for a limited period; and (3) reward those who are willing to relocate to advance professionally. In blue-collar jobs, these norms (1) result in the physical spaces and equipment of work being designed around men's rather than women's bodies; (2) are policed on the job through explicitly stated gender stereotypes; and (3) reward uninterrupted work in the form of seniority with breaks, overtime, and limited leave.

38. *Id.* at 81–84. The attraction of women's work is that it accommodates to care responsibilities: "Most women still work in jobs that are located near residential areas; are open to part-time workers; are easy to start, drop, and start again; and do not require skills that get stale with time." *Id.* at 81 (quoting RHODA MAHONY, KIDDING OURSELVES 16 (1995)).

39. *See* JOAN WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 33–41 (2010). *Cf.* Mildred E. Warner, *(Not) Valuing Care: A Review of Recent Popular Economic Reports on Preschool in the United States*, 15 FEMINIST ECON. 73, 73 (2009) (stating: "Among the OECD nations, the United States stands out as the country that most heavily relies on private-market forms of care with the lowest public investment in ECE [early care and childhood] services"). *See also* WILLIAMS, UNBENDING GENDER, *supra* note 35, at 84–138 (discussing ways in which policy and law might change to begin to dismantle ideal worker structures that disadvantage women, especially mothers, economically).

40. As shown below, *see infra* notes 76–78 and accompanying text, fathers generally pick up less than an equal share of child care responsibilities. Lest we be quick to blame fathers, however, it is important to note that fathers with children generally conform to the ideal worker role, which provides higher financial support to the household (assuming two parents are living together with their children). We have, in a sense, a vicious cycle in which parents, herded into committing one parent to being an ideal worker so as to receive greater economic benefits, make that "choice," which leaves that person (usually the father) with less time for household responsibilities, which are picked up by the other person (usually the mother), which leaves her with less time for being an ideal worker. As Williams points out, these may be "choices," but they are choices made in the face of specific institutional structures and constraints. WILLIAMS, UNBENDING GENDER, *supra* note 35, at 37–39.

41. *Id.* at 57. As noted above, a similar though lesser penalty accrues to households headed by single fathers. *See supra* note 25 and accompanying text.

mothers who have never married. Upon divorce, mothers lose access to the husbands' wages. This loss, in conjunction with women having marginalized themselves from ideal-worker status during marriage, leads to downward mobility for these mothers and their children.[42] Never-married mothers face a similar struggle in a market that seeks ideal workers unencumbered by care responsibilities.[43]

iii. Barriers to Change

Childhood poverty is both unintended and unwanted. We have myriad programs designed to help poor children, but somehow we do not seem able to carry through on these initiatives. Comprehensive change eludes us.

Head Start is the classic example. Head Start has few critics and enjoys substantial bipartisan support.[44] Yet it has never come close to serving all eligible children and is only a part-time program, which seriously undermines its value to working families and mothers.[45]

For various reasons, our political system has proven relatively unresponsive to issues of childhood poverty. Economist Nancy Folbre suggests that the primary reason for this lack of success in addressing childhood poverty is children's lack of political clout.[46] Children themselves cannot vote; nor can a substantial proportion of their parents.[47] Noncitizen immigrant parents are ineligible to vote,[48] and parents who have been convicted of a felony are disenfranchised in many states, in some cases for life.[49]

Further, among those who can vote, people with less education and less ability to contribute time and financial resources to political campaigns are less likely to actually exercise the right. These inhibiting characteristics are common among poor parents. In addition, Blacks, Hispanics, as well as Asians

> are concentrated in the South and West in densely populated states that are underrepresented by a political system that gives each state two senators regardless of population. Within many of these states, including California, Texas, and Alabama, adults of color represent large minorities whose numbers nonetheless fall short of majority status. About half of all children in the country live in the South and West, but about two-thirds of all low-income children and

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42. WILLIAMS, UNBENDING GENDER, *supra* note 35, at 3, 115 (finding "nearly 40 percent of divorced mothers end up in poverty").

43. *Id.* at 8.

44. FOLBRE, THE INVISIBLE HEART, *supra* note 28, at 131.

45. *Id.*

46. NANCY FOLBRE, VALUING CHILDREN: RETHINKING THE ECONOMICS OF THE FAMILY 162 (2008).

47. *Id.*

48. *See id.* (stating: "In 2000 about 33 percent of adult Hispanics and 36 of adult Asians were immigrants who had not yet attained citizenship and therefore lacked the right to vote").

49. *Id. See also* THE SENTENCING PROJECT: VOTING RIGHTS, (last visited Oct. 19, 2011), http://www.sentencingproject.org/map/map.cfm (2.4 percent of population overall and 8.3 percent of Black population cannot vote due to disenfranchisement of felons.). In one state, a survey of inmates showed that "69.8 percent indicated they have children." This overall percentage represents 72.2 percent of male felons and 85.5 percent of female felons. LINDA M. NUTT, DAYRON DEATON & THOMAS HUTCHINSON, CHILDREN AND FAMILIES OF INCARCERATED PARENTS: A DEMOGRAPHIC STATUS REPORT AND SURVEY 2 (2008) *available at* http://www.tn.gov/correction/pdf/famchild%202008.pdf.

over 71 percent of children of color live in those regions.[50]

In this view, a dearth of political influence on the part of poor children and their parents leads to a lack of successful political initiatives designed to address child poverty.

Comparing the lack of successful social welfare initiatives for children with the political achievements of the elderly (those over 65) is instructive. Programs that protect the elderly against poverty—primarily Social Security and Medicare—receive active political support from senior citizens and their advocacy groups. Senior citizens are proportionately Whiter than the population as a whole (82.8 percent versus 70.2 percent) and far Whiter than the under-eighteen population (82.8 percent versus 62.6 percent).[51] They are thus less likely to be immigrants precluded from voting; they are also at a racial and ethnic remove from the increasingly minority demographic of children. And senior citizens vote. While they comprise only about 12 percent of the population,[52] they cast 15 percent of all votes in 2008 and 21 percent in 2010.[53]

Key elder protections are, moreover, both federal and universal. Children's initiatives, in contrast, are more often undertaken by state or local governments, and they are more likely to be means-tested[54] or to vary according to the wealth of the local jurisdiction. A well-known example of the latter is the massive variability in public school funding depending on property values.[55]

Federal programs for the elderly have by no means eradicated poverty for that age cohort, especially for older women.[56] And the issue of means-testing payment of benefits to the wealthy elderly is a live one.[57] Nevertheless, with federal programs in place, the poverty rate for the elderly (approximately 12

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50. FOLBRE, VALUING CHILDREN, *supra* note 46, at 163.

51. *Id.* at 162 . These numbers reflect lower life expectancies for Blacks and Hispanics as well as earlier parenthood and slightly higher fertility rates for those groups. *Id.*

52. *Id.* at 161.

53. Gerald F. Seib, *Capital Journal: Voting Blocs to Watch as 2012 Nears*, WALL ST. J. (July 5, 2011), http://online.wsj.com/article/SB10001424052702303982504576425653594692390.html.

54. "Means-tested" programs are those in which the distributed benefits vary according to the means or financial resources of the distributees.

55. FOLBRE, VALUING CHILDREN, *supra* note 46, at 168–69 (stating: "Significant inequalities in educational spending per student were institutionalized at an early date by reliance on local property taxes. Affluent communities could spend generously on their schools, even with a relatively low tax rate, because of the high value of the property base to which that rate was applied. Good schools, in turn, increased the demand for housing in those communities, driving prices up . . . Low-income families can seldom afford to locate in [good school districts]"). These disparities in property values can be traced, in part, to racially segregated housing patterns reflecting historical governmental practices and present-day exclusionary zoning practices. *See* Strand, *Inheriting Inequality*, *supra* note 31, at 476; Peter W. Salsich, Jr., *Toward a Policy of Heterogeneity: Overcoming a Long History of Socioeconomic Segregation in Housing*, 42 WAKE FOREST L. REV. 459, 470–75 (2007).

56. In 2005, approximately 10 percent of the 65-and-older population was impoverished. *See infra* note 59 and accompanying text. And 2/3 of the elderly poor are women. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 26. *See also* FOLBRE, VALUING CHILDREN, *supra* note 46, at 165 (stating: "Many elderly women living alone have incomes only barely above the poverty level. In general, however, federal policy provides better protection for the old than for the young").

57. *See, e.g.*, John Rother, Editorial, *Don't Means Test Social Security*, U.S. NEWS & WORLD REPORT (Jan. 29, 2010) http://www.usnews.com/opinion/articles/2010/01/29/dont-means-test-social-security-lets-not-kill-the-golden-goose-.

percent of the population[58]) fell from 29 percent in 1966 to 10 percent in 2005.[59] Over the same time period, in contrast, the poverty rate has remained relatively constant at about 20 percent or a little under for the approximately 26 percent of the population that is eighteen or under.[60] With twice the population, children have far less to show in terms of positive outcomes from the political process than do the elderly.

B. Care and Caregivers

Those who care for children are also marginalized economically. This marginalization takes two primary forms: (1) no pay for care work performed in households outside the market, and (2) low pay for care work performed in the market. Though this article focuses on the latter, this section begins with the former as the two are inextricably intertwined.[61]

i. Unpaid Non-Market Care

The domestic complement of the market's ideal worker is someone who takes care of the family and household tasks supporting that worker. In our culture, the ideal worker role is more often filled by a man and the supporting role by a woman. This supporting work, often performed on an unpaid basis, is not directly compensated.

Time use data[62] highlight not only these distinctive gender roles but more textured patterns as well. These statistics rest on a general definition of unpaid household work: "all activities that can be accomplished using readily available market substitutes for a person's unpaid time are considered economically productive."[63] More specifically, this type of work consists of "four main activity categories: Household activities, which includes a wide array of activities done to maintain one's household, such as food and drink preparation, laundry, and lawn care; caring for and helping household members; purchasing goods and

58. FOLBRE, VALUING CHILDREN, *supra* note 46, at 161.

59. *Id*. at 165.

60. *Id. See also* DeNavas-Walt et al., *supra* note 32, at 14 (noting that children under eighteen are 24.5 percent of the total population, and 20.7 percent lived in poverty in 2009). In 1959, elder-poverty was actually higher than child poverty: 35 percent versus 30 percent. But elder-poverty fell dramatically especially in the 1970's in response to government social programs. *See* MOORE ET AL., *supra* note 28, at 3. *See also State & County QuickFacts*, U.S. CENSUS BUREAU (last visited Oct. 19, 2011), http://quickfacts.census.gov/qfd/states/00000.html; DeNavas-Walt et al., *supra* note 32, at 14 (noting that persons 65 and older are 12.9 percent of total population, and 8.9 percent lived in poverty in 2009).

61. Data on the amount of unpaid care versus the amount of paid care are limited, but it appears that "[m]ost of children's time is spent in unpaid family care or with friends and neighbors." Warner, *supra* note 39, at 80. Paid care takes place against a backdrop of unpaid care, which is thus a necessary part of the picture of paid care.

62. Time use data document how people spend their time. These data are collected through time diaries and telephone interviews and are based on self-reported designations of how time is spent.

63. Rachel Krantz-Kent, *Measuring Time Spent in Unpaid Household Work: Results from the American Time Use Survey*, MONTHLY LAB. REV., July 2009, at 46–47. This definition includes errands that a paid personal assistant might perform but excludes such activities as "[s]leeping, eating, watching television, [and] volunteering." *Id.* at 47.

services; and travel related to unpaid household work."[64]

From 2003 to 2007, the average time per week spent on unpaid household labor by individuals age fifteen and older was 21.5 hours.[65] Most of this time was spent on household activities (12.4 hours) with the remainder split almost equally among caring for and helping household members (3.2 hours), purchasing goods and services (3.1 hours), and travel related to unpaid household work (2.7 hours).[66] These data demonstrate that the time spent on unpaid household labor is substantial: the average is half of a full-time 40-hour work week.

These time use statistics display a high degree of gendering.[67] Women on average spent over 10 hours per week more than men on unpaid household work.[68] The tasks undertaken are also gendered. In terms of household activities, the 15.5 hours per week that women averaged clustered around daily activities, such as food and drink preparation and cleaning, that are closely related to care (for children and other family members). And, of particular relevance to the issue here, in the peak child-rearing years, women spent about three times as many hours as men caring for and helping household children.[69] The 9.2 hours per week that men spent, in contrast, focused on activities such as household and garden care, which are essential but more distant from direct care.[70] These jobs performed by men can often be time-managed to coincide with a weekend and thus performed with less interference with ideal worker requirements.

Considering both paid and unpaid labor, men's and women's overall work levels were comparable. Men averaged 47.4 total hours per week working while women averaged 47.7.[71] The breakdown of these totals into paid and unpaid work, however, differed dramatically for men and women: 31.4 hours paid versus 15.9 unpaid hours per week for men versus 21 hours paid and 26.7 unpaid for women.[72]

Parents living in a household with one or more children spent substantially more time on unpaid household labor—30.4 hours per week—than the average.[73] Reflecting the presence of children, these parents spent far more time caring for

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64. *Id.*at 47–48 (emphasis omitted).

65. *Id.* at 48–49.

66. *Id.*at 49.

67. I note, vis-à-vis the discussion that follows, that one study of women and men and household labor found that fathers "overreport their household labor by 149 percent." WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 82 (citing Annette Lareau, *My Wife Can Tell Me Who I Know: Methodological and Conceptual Problems in Studying Fathers*, in FAMILIES AT WORK: EXPANDING THE BOUNDS 32, 47, 52 (Naomi Gerstel et al. eds., 2002)).

68. Krantz-Kent, *supra* note 63, at 49 (noting 26.7 hours for women versus 15.9 hours for men).

69. *Id.* (noting 10.1 and 7.8 hours per week for 25- to 34-year-old and 35- to 44-year-old women versus 3.3 and 3.9 hours per week for men in the same age ranges).

70. *Id.* at 49, 50, 51 (Chart 2).

71. *Id.* at 49, 52 (Chart 3).

72. *Id.* at 49.

73. *Id.* at 55. *Compare supra* note 65 and accompanying text (noting a 21.5 hours-per-week average for all individuals age fifteen and older).

and helping household members (9.3 hours[74]) and only a bit more on household activities (13.8 hours), purchasing goods and services (3.4 hours), and travel related to unpaid household work (3.8 hours).[75]

Children also resulted in the total number of hours worked (paid and unpaid) being substantially higher for parents than for the population at large. Fathers worked 63.4 hours on average, and mothers worked 61.0 hours on average.[76] But, because almost all men—especially fathers—work full time and a substantial number of mothers work part time or not at all in the market, the gendered division of paid and unpaid work is particularly extreme for parents. Mothers, on average, spent 22.9 hours per week in paid and 38.1 in unpaid work (11.8 hours of that time caring for household children).[77] Fathers, on average, spent 42.5 hours per week in paid work and 20.9 in unpaid work (5.9 of that time in caring for household children).[78] Mothers, then, worked nearly twice as many unpaid hours as paid hours, while fathers worked nearly twice as many paid hours as unpaid hours.

Unpaid household labor accounts for the vast majority of care and supervision provided for U.S. children. Children under eleven in two-parent, two-child households spend only about 13 percent of their time in paid care.[79] Unpaid care for children thus represents an extraordinary amount of care work overall, given that there are 75.6 million children under eighteen in the United States.[80] Yet, despite the immense social contribution it represents, unpaid household labor, especially the care work of women, poses a challenge to standard economic measurement. Several decades ago, feminist economist and politician Marilyn Waring made the case for including this labor in analyses of

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74. This number and others given in the text include only hours in which the primary activity is care. For child care, this "primary child care" is augmented by "secondary child care," which refers to hours in which an adult is engaged in some other activity (food preparation or leisure, for example) but is watching out for children at the same time. Counting these "multi-tasking hours" is more recent but over time will help to offer an even more textured view of care for children. *See, e.g.*, *News Release: American Time Use Survey—2010 Results*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/news.release/atus.nr0.htm (last visited Oct. 19, 2011) (noting that adults with at least one child under six spent "an average of 5.6 hours per day providing secondary child care" and this care is concentrated on weekends rather than weekdays). *See also* FOLBRE, VALUING CHILDREN *supra* note 46, at 102–06 (redefining child care to include more active primary and secondary care but also more passive supervision, responsibility, and "on-call" time).

75. Krantz-Kent, *supra* note 63, at 55.

76. *Id. Compare supra* note 71 and accompanying text.

77. *Id.* As the number of children increase, the time use of fathers stays relatively constant. Mothers with more children, in contrast, devote more time to unpaid labor and less to paid work. *Id* at 53, 55. Even where both mothers and father work full-time, mothers spend more time caring for children and fathers spend more time at work, especially where they have young children. Melissa A. Milkie, Sara B. Raley & Suzanne M. Bianchi, *Taking on the Second Shift: Time Allocations and Time Pressures of U.S. Parents with Preschoolers*, 88 SOCIAL FORCES 487, 498, 501 (Table 3) (2009).

78. Krantz-Kent, *supra* note 63, at 55.

79. FOLBRE, VALUING CHILDREN, *supra* note 46, at 110–13. Alternatively, children in single-parent, two-child families spend 16 percent of their time in institutional care. *Id*.

80. *Population Tables*, CHILDSTATS.GOV, (last visited Oct. 19, 2011), http://www.childstats.gov/americaschildren/tables/pop1.asp (estimating the US population under 18 will reach 82.3 million in 2021).

economic productivity.[81] Although the conversation has progressed, public policy lags behind.[82] This article does not pursue this and related issues but notes them as reflections at the national level of the economic devaluation of individual care work described here.

ii. Paid Market Care

How is caring for children rewarded in the market? Not well. Caring for children may offer intangible rewards, but it is not the path to financial success.

This section examines three types of market occupations involving care for children. These three types all encompass a significant amount of care, but they also represent a range of levels of care. The first occupation is child care worker. This job consists entirely of caring for children—in daycare centers, in after-school programs, and in households for wages. The second occupation is K–12 teaching, which ranges from jobs requiring a large amount of care (kindergarten and elementary school teaching) to those requiring significantly less care (secondary school teaching). The third occupational category includes professional specialties relating to care for children, in particular pediatrics and family law.

For purposes of comparison, the mean annual wage in the United States in May 2010 was $44,410.[83] Those who offer care in its purest form, child care workers, earn a mean annual wage of $21,110—less than half the overall national mean.[84] This amount applies only to wage-earning, formal child care workers

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81. *See generally* WARING, *supra* note 27 (discussing balance-of-payment origins of current systems of national economic accounting and articulating rationales for including in measures of economic productivity all work—paid and unpaid—that contributes to national well-being).

82. The importance of ensuring that policy decisions reflect the reality of unpaid labor and the disproportionate involvement of women has been recognized at the state, national, and international levels, and alternatives to the traditional GDP approach have been proposed. At the international level, *see, e.g.*, JOKE SWIEBEL, UNITED NATIONS, UNPAID WORK AND POLICY-MAKING: TOWARDS A BROADER PERSPECTIVE OF WORK AND EMPLOYMENT, 1–2 (Feb. 1999) (estimating that women spend about two-thirds of their time on unpaid labor and about one-third on paid labor, while the ratio is approximately the reverse for men). Swiebel concludes that "men receive the lion's share of income and recognition for their economic contribution while most of women's work remains unpaid, unrecognized and undervalued." *Id.* at 2. Swiebel also notes the difficulty of accurately valuing unpaid labor. *Id.* at 7 (comparing the opportunity cost method with the market cost method). At the national level, *see* Warner, *supra* note 39, at 80–81 (discussing the Bureau of Economic Analysis's decision to develop overall estimates of national productivity using American Time Use Surveys). At the state level, *see, e.g.*, MARYLAND DEPT. NATURAL RES., THE GENUINE PROGRESS INDICATOR AS AN ECONOMIC AND WELL-BEING INDICATOR FOR OHIO: A SUMMARY, *available at* http://www.green.maryland.gov/mdgpi/pdfs/GPI-Ohio.pdf; *The Genuine Progress Indicator for Utah (GPI) 1990-2007*, Utah Population & Env't Coal. (last visited Oct. 18, 2011), http://www.utahpop.org/gpi.html; *Resource: Genuine Progress Indicator*, Minnesota Sustainable Cmtys Network, (last visited Oct. 18, 2011), http://www.nextstep.state.mn.us/res_detail.cfm?id=358; *What is the Genuine Progress Indicator?*, Maryland Smart Green & Growing (last visited Oct. 18, 2011), http://www.green.maryland.gov/mdgpi/whatisthegpi.asp. The GPI is an alternative to the Gross Domestic Product (GDP) that counts non-market contributions to human well-being—including unpaid household labor. *The Genuine Progress Index: A Better Set of Tools*, GPI Atlantic, (last visited Oct. 18, 2011), http://www.gpiatlantic.org/gpi.htm.

83. *Occupational Employment and Wages, May 2010: Economic News Release*, BUREAU OF LABOR STATISTICS (last visited October 19, 2011), http://www.bls.gov/news.release/ocwage.htm.

84. BUREAU OF LABOR STATISTICS, *supra* note 4. In addition, child care workers receive minimal

who work for schools, centers, businesses, or agencies.[85] A substantial number of additional child care providers are either self-employed (mostly offering family day care), employed directly by the households in which they work (e.g. nannies), or paid relatives, neighbors, or friends of the children for whom they care.[86]

Though statistics on the wages of these additional care workers are not available, it is unlikely that their wages equal those of formal child care workers. First, their wages are likely lower given that these providers are less "arm's length" and may have less bargaining power as individuals as compared to institutions. There are, moreover, a significant number of undocumented immigrant domestic caregivers: the Center for Migration Studies estimates that there are 300,000 undocumented caregivers in the U.S.[87] To the extent that the wages of both informal child care workers and undocumented caregivers are lower than those of formal child care workers, annual wages of $21,110 may be a generous estimate of the market price for child care.

At a maximum, then, child care workers get paid less than half the national mean annual wage. The value assigned by the market to this work is telling, especially when compared to the occupation of parking lot attendant, which is a similar position that requires minimal formal education. Parking lot attendants, who look after cars, are also paid less than half the national average. They are,

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benefits. *Occupational Outlook Handbook, 2010-11 Edition: Child Care Workers*, BUREAU OF LABOR STATISTICS (last visited Oct. 19, 2011), http://www.bls.gov/oco/ocos170.htm.

85. BUREAU OF LABOR STATISTICS, *supra* note 4. Some of these workers may care for children in private households, but their actual employers are not the heads of those households. *See* E-mail from Claudia Calderon, Economist, Bureau of Labor Statistics, to author (Aug. 3, 2011, 17:07 CST) (on file with author).

86. In 2008, the Bureau of Labor Statistics estimated that a total of 1.3 million workers provided child care for children of all ages. Of these child care workers, 33 percent were self-employed (most providing child care in their homes) and 19 percent worked in private households. BUREAU OF LABOR STATISTICS, *Occupational Outlook Handbook, supra* note 84. The 611,280 wage-earners whose mean annual income is $21,110 appear likely to constitute the large majority of the remaining approximately 48 percent of child care workers overall. BUREAU OF LABOR STATISTICS, *supra* note 4. The 1.3 million figure of the Bureau of Labor Statistics, however, does not appear to include paid relatives, neighbors, and friends. BUREAU OF LABOR STATISTICS, *Occupational Outlook Handbook*, *supra* note 84. A 2002 study by the Center for the Child Care Workforce, for example, estimates that there are *2.3 million* paid caregivers, 35 percent of whom are paid relatives, for children ages zero to five alone. *Estimating the Size and Composition of the U.S. Child Care Workforce and Caregiving Population: Key Findings from the Child Care Workforce Estimate: Preliminary Report*, CENTER FOR THE CHILD CARE WORKFORCE 2 (last visited Jan. 24, 2012), http://www.ccw.org/storage/ccworkforce/documents/publications/workforceestimatereport.pdf. Given that there are 20.2 million children under five in the U.S. today and that close to 65 percent of women with children under 6 work outside the home (giving a ballpark estimate of 13 million children under five requiring child care—a number that does not include older children requiring care), even the 2.3 million number seems, if anything, low. *Table 7. Resident Population by Sex and Age: 1980 to 2010*, U.S. CENSUS BUREAU (last visited Nov. 17, 2011), http://www.census.gov/compendia/statab/cats/population.html (20.2 million children under five in U.S. in 2010); LABOR FORCE PARTICIPATION OF WOMEN AND MOTHERS, 2008, BUREAU OF LABOR STATISTICS (last visited on Nov. 17, 2011), http://www.bls.gov/pub/ted/2009_20091009.htm. The difficulty in arriving at accurate child care numbers and the fact that the distinctions between formal, household, unpaid or discounted arrangements are often unclear highlights the inextricability of unpaid versus paid care for children.

87. *Private Households Market Report*, HIGHBEAM BUSINESS (last visited Oct. 19, 2011), http://business.highbeam.com/industry-reports/personal/private-households.

however, paid slightly more than formal child care workers. The message of these relative wages is that we value the work of caring for our cars more than we value the work of caring for our children.

As with unpaid care for children, women predominate in providing paid child care. In 2009, 95 percent of formal child care workers were women.[88] In comparison, less than 12 percent of parking lot attendants were women.[89]

K–12 teachers are paid substantially more than child care workers. Teacher salaries range from a mean of $51,550 annually for kindergarten[90] to $54,330 for elementary school[91] to $54,880 for middle school[92] to $55,900 for secondary school.[93] As with child care workers, teachers of young children are heavily female, but as the age of the students rises, so does the proportion of male teachers. Approximately 98 percent of preschool and kindergarten teachers and 82 percent of elementary and middle school teachers but only 55 percent of secondary school teachers are women.[94]

Though salaries increase incrementally from elementary school to secondary school, these differences do not appear significant enough to account for the differences in male participation in teaching at those various levels. Male participation may vary less with salary than with job description. As the age of the children taught increases, the occupation's ratio of care to academic interactions with children decreases. The standard care responsibilities of an elementary school teacher, for example, often prevent her from leaving her students unattended for even a few minutes, while middle and secondary school teachers have regular breaks throughout the day as their students, with only general supervision, pass from class to class. Older students require the least

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88. *Women in the Labor Force: A Databook (2010 Edition)*, BUREAU OF LABOR STATISTICS (last visited Oct. 19, 2011), www.bls.gov/cps/wlftable11-2010.htm. This workforce is also somewhat more Black and Hispanic than the national population: 16 percent Black (versus 12.6 percent population overall) and 16.8 percent Hispanic (versus 16.3 percent population overall). *Child Care Workforce*, NAT'L ASS'N OF CHILD CARE RES. & REFERRAL AGENCIES (last visited Oct. 19, 2011), http://www.naccrra.org/randd/child-care-workforce/cc_workforce.php (estimate based on 2.3 million workers). For overall population percentages, *see* CHILD TRENDS, *supra* note 10. A significant percentage of undocumented care workers are also likely of Hispanic origin. A 2005 report by the Pew Hispanic Center estimated Mexicans to be 57 percent of the undocumented migrants in the U.S. with about 24 percent from other Latin-American countries. JEFFREY S. PASSEL, ESTIMATES OF THE SIZE AND CHARACTERISTICS OF THE UNDOCUMENTED POPULATION 2 (2005).

89. BUREAU OF LABOR STATISTICS, *Women in the Labor Force*, *supra* note 88.

90. *Occupational Employment and Wages, May 2010: 25-2012 Kindergarten Teachers, Except Special Education*, BUREAU OF LABOR STATISTICS (last visited Oct. 19, 2011), http://bls.gov/oes/current/oes252012.htm.

91. *Occupational Employment and Wages, May 2010: 25-2021 Elementary School Teachers, Except Special Education*, BUREAU OF LABOR STATISTICS (last visited Oct. 19, 2011), http://bls.gov/oes/current/oes252021.htm.

92. *Occupational Employment and Wages, May 2010: 25-2022 Middle School Teachers, Except Special Education*, BUREAU OF LABOR STATISTICS (last visited Oct. 19, 2011), http://bls.gov/oes/current/oes252022.htm.

93. *Occupational Employment and Wages, May 2010: 25-2031 Secondary School Teachers, Except Special Education*, BUREAU OF LABOR STATISTICS (last visited Oct. 19, 2011), http://bls.gov/oes/current/oes252031.htm.

94. BUREAU OF LABOR STATISTICS, *Women in the Labor Force: A Databook (2010 Edition)*, *supra* note 88.

amount of care, which may contribute to more men teaching older children, given care's feminine gendering in our culture.[95]

Overall, then, rising pay and a higher proportion of male teachers correlate to older students and decreased "care content" in K–12 teaching. This correlation raises the issue of comparable worth—equivalent pay for jobs traditionally held by women compared to jobs traditionally held by men.[96] Is K–12 teaching subject to salary depression because of its performance by women, which is tied to its association with care and femininity?

Arguably, K–12 teaching is underpaid compared to similar male jobs because, until quite recently, teaching was one of the few jobs open to women, especially educated women.[97] As other higher-status and higher-paying occupations have become increasingly available to women, highly qualified women have been drawn away from teaching as a career. "In this new world, the brightest women go toward the best jobs."[98] And in this new world, "[t]hese jobs increasingly are not in teaching."[99]

Teachers' salaries are falling behind the salaries of educated women in other professions. "The wage premium for women who have some graduate education (as do most secondary school teachers, for example) and are not teachers is now 40 percent."[100] In this view, K–12 salaries undervalue teaching, work that has been traditionally performed by women and of which care is a substantial and essential component.

Data from professional occupations support the conclusion that care is undervalued financially and more likely to be undertaken by women. For doctors, general pediatricians are at the bottom of the salary scale with a mean annual wage of $165,720.[101] Family and general practitioners earn more, $173,860, as do internists (generalist doctors who focus on adults), who average an annual salary of $189,480.[102] At the high end of the range, OB/Gyn doctors

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95. *See* WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 78–79.

96. See PAULA ENGLAND, COMPARABLE WORTH: THEORIES AND EVIDENCE 1 (1992). Another term for comparable worth is "pay equity." *Id.*

97. Peter Temin, *Low Pay, Low Quality*, 3 EDUC. NEXT (2003), *available at* http://educationnext.org/low-pay-low-quality.

98. *Id.*

99. *Id.*

100. *Id.* One result of relatively low wages for K–12 teaching is a pool of teachers who are arguably not the best and brightest. *Id.* Temin discusses the vicious cycle that this phenomenon creates. He states: "Finding themselves with lower-quality teachers, school districts have imposed work standards on teachers to make sure they are doing their jobs." *Id.* As the job of teaching becomes more rote and teachers are required to "teach to the test," higher-quality teachers leave the profession and potential teachers choose never to enter it in the first place. *Id.* Other scholars argue, based on a comparison of weekly pay and hourly rates, "that teachers are *not* underpaid relative to other professions." *See, e.g.*, Richard Vedder, *Comparable Worth*, 3 EDUC. NEXT (2003), *available at* http://educationnext.org/comparable-worth. This analysis, however, is based on contract hours and not the actual hours worked by teachers. *See id.* (disregarding a key element of differential teaching loads when comparing public and private schools). *Cf. id. with* Marty Schollenberger Swaim & Stephen C. Swaim, *Teacher Time (Or, Rather, the Lack of It)*, AM. EDUCATOR, Fall 1999, at 1, *available at* http:www.aft.org/pdfs/americaneducator/fall1999/swaim.pdf.

101. BUREAU OF LABOR STATISTICS, *Occupational Employment and Wages, May 2010: Economic News Release*, *supra* note 83.

102. *Id.*

make $210,340, anesthesiologists make $220,100, and surgeons make $225,390.[103] Women are, moreover, heavily represented in pediatrics.[104]

For lawyers, family law is at the bottom of the compensation spectrum with a salary range of $38,751 to $105,112.[105] Salaries then range through criminal law ($39,368 to $126,983) and general practice ($39,707 to $124,957) to personal injury ($41,362 to $123,377) and real estate ($44,120 to $136,116), with litigation ($48,476 to $147,632) and corporate law ($49,184 to $164,195) at the top end.[106]

The data in this section reveal a correlation between jobs that require care for children, low pay in the market, and disproportionate performance of those jobs by women. The statistics in the previous section demonstrated that an enormous amount of unpaid time is spent on care for children.[107] This time is centered in households, disproportionately provided by mothers, and not compensated directly—though it may be compensated indirectly through an ideal worker spouse.

These data also implicate the devaluation of care in the high rate of childhood poverty—and especially its association with female-headed households. Children must be cared for. Most care for children is provided by women in households on an unpaid basis, with access to ideal worker wages the primary mechanism for supporting care financially. Care for children in the market earns women less, sometimes far less, than ideal worker wages. For women who are married, these lower wages for traditional "women's work" earn them flexibility to care for children on an unpaid basis at home. For women who are not married, such lower wages may earn them flexibility but also visit severe financial disadvantage on the households these women head—and the children within those households.

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103. *Id.*

104. *Statistics History: Women Physicians by Specialties,* AM. MED. ASS'N (last visited Oct. 19, 2011), http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/women-physicians-congress/statistics-history/table-5-women-physicians-specialties.page. In 2006, there were 256,257 women physicians in all specialties. *Id.* Of these, 49,541 were in internal medicine, 39,468 were in pediatrics, and 30,471 were in general practice. *Id.* Additionally, 18,520 were in OB/Gyn and 14,066 were in psychiatry. *Id.* According to the Bureau of Labor Statistics, 32.2 percent of "Physicians and Surgeons" were women in 2009. BUREAU OF LABOR STATISTICS, *Women in the Labor Force: A Databook (2010 Edition)*, *supra* note 88.

105. *Salary by Practice Area for Attorney/Lawyer Jobs*, PAYSCALE (last visited Oct. 19, 2011), http://www.payscale.com/research/US/Job=Attorney_%2f_Lawyer/Salary/by_Practice_Area. Data that correlate sex with practice area and salary are less available for lawyers than for doctors. According to the Bureau of Labor Statistics, the average annual wage for lawyers, without differentiating areas of practice, is $129,440. BUREAU OF LABOR STATISTICS, *Occupational Outlook Handbook*, *supra* note 84. And, as with doctors, the Bureau only gives overall data on women in the profession: In 2009, 32.4 percent of lawyers were women. BUREAU OF LABOR STATISTICS, *Women in the Labor Force: A Databook (2010 Edition)*, *supra* note 88. Unlike the AMA, the ABA does not appear to publish statistics on the sex distribution of lawyers in terms of areas of focus. This may be due to the fact that there are few specialties per se in law, though sex data from bar section membership also appears unavailable. *See* E-mail from ABA Commission on Women in the Profession, to author (July 29, 2011, 09:19 CST) (on file with author).

106. PAYSCALE, *supra* note 105.

107. *See supra* note 80 and accompanying and preceding text.

III. THE MARKET UNDERREWARDS CARE FOR CHILDREN

This Part builds on Part I's assertion that care for children is underrewarded in the market, examining both causes and implications of this devaluation.

A. The Market and Children

i. Children as Akin to Public Goods

It is always intriguing when—as with the quotations at the beginning of this article—people with radically different backgrounds express similar insights. Two military strategists known collectively as "Mr. Y" and feminist economist Nancy Folbre provide another pertinent example.

Recently, an article in the New York Times highlighted a *National Strategic Narrative* prepared by a U.S. Navy captain and a Marine colonel "which calls on the United States to see that it cannot continue to engage the world primarily with military force, but must do so as a nation powered by the strength of its educational system, social policies, international development and diplomacy, and its commitment to sustainable practices in energy and agriculture."[108]

The narrative or "story"[109] articulated by these officers is based on a major shift toward understanding world geopolitics as a "global system."[110] Continuing to pursue our values in this system "requires that we invest less in defense and more in sustainable prosperity and the tools of effective global engagement."[111]

A key aspect of the new narrative is new investment priorities: priorities that emphasize renewable and sustainable resources. In this regard, "[w]ithout doubt, our greatest resource is America's young people, who will shape and execute the vision needed to take this nation forward into an uncertain future."[112] Investing in children, "Mr. Y" concludes, should be our top national security policy: "Our first investment priority, then, is intellectual capital and a sustainable infrastructure of education, health and social services to provide for the continuing development and growth of America's youth."[113]

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108. Jim Dwyer, *A National Security Strategy That Doesn't Focus on Threats*, N.Y. TIMES, May 3, 2011, http://www.nytimes.com/2011/05/04/nyregion/a-strategy-for-national-security-focused-on-sustainability.html.

109. Anne Marie Slaughter, *Preface* to Mr. Y, *A National Strategic Narrative*, at 2, 4 (Woodrow Wilson International Center for Scholars, 2011). *Cf.* Palma Joy Strand, *Law as Story*, 18 SO. CAL. INTERDIS. L.J. 603 (2009) (describing expressive and norm-creating functions of law).

110. Slaughter, *supra* note 109, at 3.

111. *Id.* Slaughter summarizes the strategic shifts articulated by Mr. Y as follows: "(1) From control in a closed system to credible influence in an open system; (2) From containment to sustainment; (3) From deterrence and defense to civilian engagement and competition; (4) From zero sum to positive sum global politics/economics; and (5) From national security to national prosperity and security." *Id.* at 3–4.

112. Mr. Y, *A National Strategic Narrative*, *supra* note 109, at 7 (Woodrow Wilson Center, 2011).

113. *Id.* (stating: "Inherent in our children is the innovation, drive, and imagination that have made, and will continue to make, this country great. By investing energy, talent, and dollars now in the education and training of young Americans—the scientists, statesmen, industrialists, farmers, inventors, educators, clergy, artists, service members, and parents, of tomorrow—we are truly investing in our ability to successfully compete in, and influence, the strategic environment of the future"). It is highly unusual to see an allusion to the importance of supporting parents in such a

Feminist economist Nancy Folbre, though looking through a very different lens, offers a similar vision by characterizing children as akin to a "public good."[114] In economic terms, a public good is something that benefits the community or society at large but is unproduced or underproduced by the market because its benefits cannot be captured by private actors.[115] Clean air is a public good; national defense and safe neighborhoods are public goods; many roads have the characteristics of public goods.[116] As a result of the market abstaining or participating to only a limited degree, government is an important vehicle for acting collectively to provide public goods.

Public goods are often described as non-rivalrous, "joint," or "non-depletable."[117] My breathing clean air does not prevent you from also breathing it; safety and security benefit us all: you and I are not "rivals" in consuming these goods. Public goods are also, to a substantial degree, non-excludible:[118] it is difficult to restrict the benefits of clean air; the same is true of national security and safe streets. A final attribute of many public goods is that it is difficult to assign a monetary value to them because, in fact, they are to a significant extent not commodified.[119] Clean air, the Grand Canyon, Machu Picchu, political and economic stability, a human heart, and the life of a child all defy valuation to one degree or another.

Though the analysis seems odd at first impression, children do embody key characteristics of public goods.[120] Children provide a social benefit, a benefit so fundamental that it is difficult even to describe in these terms. Folbre quotes a report that makes the point in stark terms:

> It would be logical to treat the physical production of children—the 4 million infants who are born in the U.S. each year—as a component of the human capital produced in the home. If some are inclined to question whether these births represent real investment, they might consider the economic situation in year t + 20 in the event there were no births in year t.[121]

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context. Parents' work is often taken for granted socially and attention paid only when it is left undone. *See, e.g.*, *Making a Difference in the Lives of Parents and Children*, HAND IN HAND (last visited Nov. 17, 2011), http://www.handinhandparenting.org/news/ 33/64/Making-a-Difference-in-the-Lives-of-Parents-and-Children.

114. FOLBRE, THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES, *supra* note 28, at 111.

115. *See* J. RONNIE DAVIS & JOE R. HULETT, AN ANALYSIS OF MARKET FAILURE: EXTERNALITIES, PUBLIC GOODS, AND MIXED GOODS 35–36 (1977); Tyler Cowen, *Public Goods*, THE CONCISE ENCYCLOPEDIA OF ECONOMICS, http://www.econlib.org/library/Enc/PublicGoods.html (last visited Oct. 20, 2011).

116. Cowen, *supra* note 115.

117. *Id. See also* Anatole Anton, *Public Goods as Commonstock: Notes on the Receding Commons*, in NOT FOR SALE: IN DEFENSE OF PUBLIC GOODS 3, 9 (Anatole Anton et al. eds., 2000); DAVIS & HULETT, *supra* note 115, at 35–36, 63.

118. *See* Cowen, *supra* note 115, at 2.

119. *See* Anton, *supra* note 117, at 9.

120. *Cf.* Nel Noddings, *Education as a Public Good*, in NOT FOR SALE: IN DEFENSE OF PUBLIC GOODS, *supra* note 117, at 279, 290 (stating: "most people agree that education is a public good—that is, that an educated citizenry benefits everyone").

121. FOLBRE, VALUING CHILDREN, *supra* note 46, at 179–80 (quoting BEYOND THE MARKET: DESIGNING NONMARKET ACCOUNTS FOR THE UNITED STATES 80 (Katharine G. Abraham & Christopher Mackie, eds., 2005)).

Children are the taxpayers of tomorrow, the workers of tomorrow, and the citizens and leaders of tomorrow.

As with other public goods, the future benefits these children represent extend to us all and are not easily restricted. Further, the market currently underprovides for their care, though that vacuum is filled primarily not by government but by parents. "In our wage-based economy . . . parents voluntarily assume most of the costs of producing human workers. Employers pay only . . . wages."[122] Similarly, parents assume most of the costs of producing citizens and leaders; government picks up only a minority portion of the tab.[123]

Children do pose a challenge for public goods analysis: they must be treated as ends in themselves. Most economic goods, even public goods, are treated as instrumental to human well-being. Though children are akin to public goods in illuminating ways, we owe moral duties to them as other human beings and as ends in themselves.[124] We owe these duties despite the fact that the moral philosophy of intergenerational responsibility is not well developed.[125]

ii. Current Provision of Care for Children

We have already acknowledged the magnitude of unpaid care for children.[126] Government makes a significant, though lesser, investment, which is heavily concentrated in K–12 public education. In total, Folbre estimates $20,000 of parental investment in each U.S. child per year,[127] state and local government spending of $8,200,[128] and federal spending of $3,600.[129]

From a national investment or public goods perspective, the provision of care for children suffers from three deficiencies. First, for the most part, this public good is left to nongovernmental actors. The government does relatively little to support nongovernmental actors responsible for children through the provision of care services directly, mandated paid family leave, or support for those providing care.[130] Government's primary actions involve articulating parameters for others' care of children, such as "acts or omissions that constitute child abuse or neglect."[131] The government does step in to assume responsibility

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122. *Id.* at 25.

123. *See infra* notes 127–29 and accompanying text.

124. FOLBRE, VALUING CHILDREN, *supra* note 46, at 183. *See also infra* notes 173–76 and accompanying text.

125. *See* FOLBRE, VALUING CHILDREN, *supra* note 46, at 182–83 (discussing intergenerational reciprocity).

126. *See supra* note 80 and accompanying text.

127. FOLBRE, VALUING CHILDREN, *supra* note 46, at 184. *See also id.* at 121–35 (discussing the valuation of parental investment). Of course, parents often receive substantial benefits from having children—especially non-monetary benefits. But their children also provide social benefits generally, benefits that are to a large extent tied to essential parenting contributions. *Id.* at 179 (stating: "[I]f parents don't create and nurture children, schools can't educate them, employers can't hire them, and governments can't tax them").

128. *Id*. at 184. *See also id.*at 168–71 (discussing the distribution of public spending in education).

129. *Id*. at 184. *See also id.* at 165 (discussing sources of federal funding).

130. *See* WILLIAMS, UNBENDING GENDER, *supra* note 35, at 48–50 (discussing the lack of public day care in the United States); *id.* at 112 (pointing out the limitations of Family Leave and Medical Act); *id.* at 110–13 (discussing other statutory deficiencies).

131. *Definitions of Child Abuse and Neglect*, CHILD WELFARE INFORMATION GATEWAY, 5 (2011),

for children and their care in a small proportion of cases,[132] but its overall attitude is *laissez faire*.[133]

Where government does provide care, moreover, that care is haphazard and inequitable.[134] K–12 public education, for example, is universal but of highly variable quality.[135] Higher public education is increasingly difficult to access.[136]

Second, the limited care that government provides is decentralized, localized, and fragmented. Economists Claudia Goldin and Lawrence Katz have observed that the "United States has one of the most decentralized educational systems in the world at all levels . . . American states smaller than many European countries also have highly decentralized educational systems with regard to collection of revenue, expenditures, curriculum, and standards."[137] The message inherent in this institutional structure is that the children of each school district are primarily the public good of the district's citizens rather than of the region, the state, or the nation as a whole. If such a message were ever accurate historically, it is far from accurate in today's mobile world.[138] The most widespread provision of care by government—K–12 public education—thus encourages a constricted, balkanized, and balkanizing definition of the "public" benefited by investment in this public good.

This parsimonious definition of the "public good" of "our children" is reinforced by the funding of local school districts primarily through local revenues in the form of *ad valorem* property taxes. Such funding varies depending on the value of the property within the district, which often reflects historical racial segregation or present-day socioeconomic segregation in housing. The resulting disparities in jurisdictional funding and student-body demographics continue to persist.[139]

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available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf.

132. In 2006, 510,000 children were in foster care. *State by State* Facts, THE KIDS ARE WAITING: FIX FOSTER CARE NOW CAMPAIGN (last visited Dec. 2, 2011), http://kidsarewaiting.org/publications/statefacts?id=0053. This group constituted less than 1 percent of children under eighteen overall. *See Table 7: Resident Population by Sex and Age: 1980 to 2010*, U.S. CENSUS BUREAU (2010), *available at* http://www.census.gov/compendia/statab/2012/tables/12s0007.pdf (estimating that the U.S. was home to 74 million children under eighteen in 2010).

133. I am not suggesting that the government take over from parents. If we as a society expect, rely on, and benefit from socially valuable work by parents, however, we should acknowledge and support that work.

134. FOLBRE, VALUING CHILDREN, *supra* note 46, at 139–59.

135. *See*, *e.g.*, SCHOTT FOUNDATION FOR PUBLIC EDUCATION, LOST OPPORTUNITY: A 50 STATE REPORT ON THE OPPORTUNITY TO LEARN IN AMERICA (2009).

136. FOLBRE, VALUING CHILDREN, *supra* note 46, at 170–71. *See also* WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 163–64 (discussing class stratification of colleges).

137. CLAUDIA GOLDIN & LAWRENCE F. KATZ, THE RACE BETWEEN EDUCATION AND TECHNOLOGY 337 (2008).

138. *Cf.* FOLBRE, VALUING CHILDREN, *supra* note 46, at 184 (making a similar point vis-à-vis immigrants).

139. Raegan Miller and Diana Epstein, *There Still Be Dragons: Racial Disparity in School Funding is No Myth*, CENTER FOR AMERICAN PROGRESS (last visited Oct. 19, 2011), http://www.americanprogress.org/issues/2011/07/still_be_dragons.html. District boundaries and funding modes were originally created—and are currently preserved—by individual states. The possibility of using the federal Equal Protection Clause to force states to change their districts to achieve greater equity was essentially foreclosed in the 1970s with *San Antonio v. Rodriguez*, 411 U.S. 1

Finally, we lack legal and institutional structures that clearly articulate an overarching obligation to children as future generations of our society. We have instead a well-entrenched practice of public decision-making that explicitly discounts the value of the future. Standard cost-benefit analysis incorporating a social discount rate is based on the assumption that future costs and benefits should be discounted when compared to current costs and benefits.[140] This practice applies market assumptions to nonmarket situations and allows present considerations to trump future consequences. Cost-benefit analysis skews our view of present and future and leaves us groping to define our obligations to the future—to children, to our future selves, and to others.[141]

Despite these shortcomings, the fact that government expends substantial sums on children confirms a widespread view that investing in children makes social sense because their care and cultivation contribute to the common good. The essential social recognition that investing in children makes social sense and that children are akin to public goods is already present.

Overall, however, this recognition falls short. As with most public goods, the government does step in to provide care,[142] but the supporting interventions are limited and insufficient. Further, what limited governmental provision there is reflects and perpetuates a localized, divisive view of the "public" with whom children are associated. Finally, because this provision of care is partial, leaving a vacuum, the majority of care is provided by non-market, non-governmental actors—predominantly women.[143] A concerted public statement—in acts as well as words—of the value of care for children is missing.

B. The Market and Women (Mothers) and Men (Fathers)

i. Patriarchy and Care for Children

Folbre asserts, "[p]atriarchy was not simply a means of privileging men. It was also a means of ensuring an adequate supply of care."[144] The implications of

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(1973), and *Milliken v. Bradley*, 418 U.S. 717 (1974). Movement toward more evenhanded investment across districts has come through state courts' judicial decisions under state constitutional provisions, but actual progress has been slow. *See* FOLBRE, VALUING CHILDREN, *supra* note 46, at 169.

140. *See, e.g.,* ANTHONY E. BOARDMAN ET AL., COST-BENEFIT ANALYSIS: CONCEPTS AND PRACTICE 119–86 (1996); ROBERT J. BRENT, APPLIED COST-BENEFIT ANALYSIS 9–12, 267–90 (1996); AJIT K. DASGUPTA & D.W. PEARCE, COST-BENEFIT ANALYSIS: THEORY AND PRACTICE 136–56 (1972).

141. *See, e.g.,* Daniel Callahan, Letter to the Editor, *Invitation to a Dialogue: The Future of Medicare*, N.Y. TIMES, June 28, 2011, at A22; Frederick R. Lynch, Op-Ed., *How AARP Can Get its Groove Back*, N.Y. TIMES, June 23, 2011, at A25; *Sunday Dialogue: The Old, the Young and Medicare*, N.Y. TIMES, July 2, 2011, at SR10. *See generally* FRANK ACKERMAN & LISA HEINZERLING, PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING 179–203 (2004) (criticizing use of social discount rate in environmental decision-making).

142. *See generally supra* notes 128–29 and accompanying text.

143. With neither non-market, non-governmental (family) provision of care, nor with local school districts am I proposing that government assume in the one case or take to a higher jurisdiction in the other the care that is currently provided. There is high value to both the small, intimate scales that facilitate the nurture and attachment that children need and the diversity of approaches that such decentralization ensures. I do see a greater role for collective action through government, including especially national government, in *supporting* the care that such non-market actors and local units provide.

144. Nancy Folbre, *The Milk of Human Kindness*, in GLOBAL PERSPECTIVES ON GENDER & WORK:

this statement are profound. Folbre invites us to consider patriarchal social arrangements that favor males over females as adaptive. Care, and care of children in particular, is an essential component of group survival. The social group must arrange for continuous and reliable care for children because children require such care to survive.

Patriarchy is one social arrangement that fulfills this requirement. Through this "care for children" lens, patriarchy is a social system that assigns women the responsibility to care for children and excludes them from other socially validated activities. Men, conversely, are excused from responsibility for such care and assigned activities that receive social validation.

Biologist Mary Clark, in her comprehensive work *In Search of Human Nature*, concludes that the essence of human nature is a flexibility that is manifested in a broad array of cultural patterns.[145] Understanding patriarchy as one of many possible cultural variations illuminates its contingency, an attribute highlighted by historian Gerda Lerner.[146] Viewing patriarchy as a cultural variant enables us to see it as functional yet imperfect.[147]

Sociologist Elise Boulding asserts that the foundation of any human social structure is reproductive biology: "The basic fact that females give birth to and feed infants seems to establish the initial social patterning for animal societies."[148] Boulding describes what she refers to as the "breeder-feeder" role played by women in early human settlements (circa 10,000 B.C.E.), a description that is hauntingly evocative of women's roles and care for children even today:

> One very distinctive feature of the women's culture is the omnipresence of children and the continuing nature of responsibility for infants and very small children. There is no moment of the day or night when this responsibility wholly lapses . . . Additionally, pregnancy is a 24-hour-a-day "activity" and ought properly to be thought of as an activity, as the term *childbearing* suggests, because it requires energy and resources from the mother's body. Pregnancy merges imperceptibly into the continuing responsibility for infants after birth . . . The breast-feeding that begins after birth merges imperceptibly into the activity of preparing and serving food to children that extends for women to the activity of feeding all adult males in her household . . . The breeder-feeder responsibilities then form the backdrop for all other activities of women.[149]

READINGS AND INTERPRETATIONS 147, 155 (Jacqueline Goodman ed., 2010). The investigation in this section touches on "male privilege" but the focus is on the connections between privilege, the provision of care for children, and the exclusion of such care—and women—from markets. I use the term "male privilege" with caution, moreover, because privilege is all too often defined in male (autonomy) terms. As discussed below, I believe that patriarchy harms men as well as women, though in different ways. *See infra* notes 159–60, 171–72 and accompanying text.

145. MARY CLARK, IN SEARCH OF HUMAN NATURE 120–25 (2002).

146. GERDA LERNER, THE CREATION OF PATRIARCHY 42 (1986).

147. A minimum level of function cannot be gainsaid: we are here today. Few would contend, however, that our culture cannot be improved. Understanding patriarchy's functionality also facilitates seeing it as a co-creation of women and men. *See id.* at 36.

148. ELISE BOULDING, THE UNDERSIDE OF HISTORY: A VIEW OF WOMEN THROUGH TIME 36 (2d ed. 1992). *See also* LERNER, *supra* note 146, at 38, 40–42 (noting that the extended helplessness of human infants necessitated that women take on mothering as the initial division of labor).

149. BOULDING, *supra* note 148, at 113 (emphasis in original). *See also* LERNER, *supra* note 146, at 224.

Throughout human history, women have assumed not only the reproductive role but also auxiliary tasks associated with it.

As to men, Boulding expresses less certainty, though she and Lerner both point to the transition from hunter-gatherer societies to agricultural settlements as the historical moment at which male dominance emerged.[150] Societies in which women had more productive roles than men (one of which was reproduction) left men with excess time and "role deprivation."[151] Or, according to Lerner, "women were longer confined to species-essential activities [including reproduction and associated activities] than men and were therefore more vulnerable to being disadvantaged."[152] Nuances aside, "[b]ecause women were not among those entering the redistribution roles, the narrowing of access rights to resources immediately began to diminish women's status and opportunities."[153]

Once the initial steps toward patriarchy were taken, the "multiplier effect"—through which "a small evolutionary change in the behavior pattern of individuals can be amplified into a major social effect by the expanding upward distribution of the effect into multiple facets of social life"[154]—led to the expansion of a culture of patriarchy. Over time, "social drift"—"random divergence in the behavior and mode of organization of societies or groups of societies"—led increasingly from a more sex-egalitarian culture toward a patriarchal system.[155] Eventually, as patriarchy became entrenched, awareness of its original contingent nature faded.[156]

With the congregation of people in cities, patriarchy assumed physical form as separate "private" household spaces replaced communal areas for women and men assumed control of "public" spaces.[157] The result was the physical sequestration and marginalization of women. This marginalization accelerated when men's economically productive work moved away from the household.[158]

This transition to a patriarchal society reveals important aspects of the social assignment of care for children. To the extent that patriarchy relegated women to non-public spaces, children and care for children went with them. Care for children shifted from the social to the private. This essential pattern of women caring for children within the household is the bass line accompanying the more discernible tune of sex-differentiated roles and male privilege to this day. Historically, women were constrained from participating in public life because

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150. BOULDING, *supra* note 148, at 37; LERNER, *supra* note 146, at 50.

151. BOULDING, *supra* note 148, at 122.

152. LERNER, *supra* note 146, at 52.

153. BOULDING, *supra* note 148, at 128. Boulding continues: "The 'ancient managerial revolution' that made the great hydraulic works of antiquity possible took place with women standing on the outside, even though their own lands were involved." *Id.*

154. *Id.* at 34 (quoting EDWARD O. WILSON, SOCIOBIOLOGY: THE NEW SYNTHESIS 11 (1975)).

155. *Id.*

156. *See id.*

157. *Id.* at 165–66. Note, however, that what Boulding refers to as the "enclosure" or "containment" of women (as compared to the "launching" of men) had different effects for women in different classes, with elite women retaining more influence and lower class women more absolute freedom of movement. *Id.*

158. *Id.* at 9–10.

the role of caregiver was inconsistent with the role of defender. Today, the role of caregiver is inconsistent with the role of ideal worker. Cultural norms of femininity also enforce the caregiver role.[159] For their part, men are constrained from participation in care via ideal worker requirements and norms of masculinity. Women and men together are confined to a system of hierarchy and dominance.[160]

ii. Households and Markets

The provision of care for children in a patriarchal system can be described in two ways. From a female perspective, care for children is a predominant activity in household, non-public spaces where women provide the majority of their social contribution. From a male perspective, care for children is absent from public spaces, including markets, where men provide the majority of their social contribution.

The way in which care is provided has important effects on the market. As shown in Part I, substantial care for children occurs in household spaces that exist apart from and outside of the market, and women disproportionately provide this non-market, unpaid care work.[161] Further, even care for children in the market is provided disproportionately by women, with higher proportions of women working in jobs where more care is required.[162]

Conversely, care for children by men is relatively absent from the market: even when care for children is handled through the market, men work in other jobs. While men are underrepresented in care occupations such as those described in Part I,[163] they are overrepresented in traditional non-care jobs. For example, "In 1993 . . . [m]en were still 99 percent of auto mechanics; 97 percent of firefighters and airplane pilots; and over 90 percent of precision metal workers, surveying technicians, and sewage plant operators."[164] Moreover, men's ideal worker obligations constrain their ability to care for children in the household.[165] Care requires regular, frequent investments of time. Children must be dressed, fed, bathed, cared for, and supervised throughout the day and night. Men not only have less time available for care but less experience, fewer skills, and, consequently, often less inclination. A vicious cycle can result: men's withdrawal from care fuels investment in work, which compounds further withdrawal.

Overall, the market today reflects the traditional, essential task assignments of patriarchy through bifurcation of "women's work" and "ideal worker jobs." Women's work in the market accommodates unpaid care responsibilities in households, especially care for children. And market work that includes care is "women's work"—work disproportionately performed by women. Conversely, men occupy ideal worker jobs that are inconsistent with unpaid care

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159. *See infra* notes 171–72, 183–85 and accompanying text.

160. Hierarchy as a system has drawbacks for *all* those within it. *See* CLARK, *supra* note 145, at 250–62.

161. *See supra* notes 76–80 and accompanying text.

162. *See supra* notes 88, 94, 104 and accompanying text.

163. *Id.*

164. WILLIAMS, UNBENDING GENDER, *supra* note 35, at 81.

165. Along with norms of masculinity. *See infra* notes 214–16 and accompanying text.

responsibilities in households. And market work requiring care is not work generally undertaken by men.

iii. Women and Men

The female-male, household-market assignment of primary responsibility for care and non-care work has important—and distinct—effects on women and men.[166] Somewhat paradoxically, these differential effects derive from a shared, underlying human nature.

Biologist Mary Clark, though emphasizing the flexibility of humanity,[167] nonetheless identifies three universal human propensities: autonomy, bonding, and meaning.[168] The first two propensities are complements that result in a creative tension. Without social support and nurturing—without bonding—autonomous individual humans could not survive, let alone thrive. But individuals with distinct gifts, skills, and perspectives—with autonomy—provide the basis for bonding with others and for group strength and resilience. The quest for meaning, a peculiarly human enterprise that depends on consciousness and self-awareness, denotes our search for purpose or contribution in the larger world of which we are a part.[169]

Clark points to the cultural variability that results from human flexibility as our evolutionary trump card.[170] Because of social drift and the multiplier effect, this variability is immense. Within each distinctive culture, however, individuals bend toward the three universal propensities like flowers toward sunlight.

Different members of a society are often in different postures with respect to these propensities. In our patriarchal culture, for example, being female has traditionally meant (and still generally means) less autonomy but more bonding—especially with regard to children. Conversely, being male has traditionally meant (and still generally means, probably more rigidly than the female counterpart) more autonomy but substantially less bonding—especially with regard to children.[171] Being female or male offers women and men different

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166. The discussion here emphasizes universal human propensities, *human* nature, and the conditions necessary to nurture it. It is distinguishable from, though it is indebted to, works by feminists such as Carol Gilligan and Nel Noddings, that explore values and norms that have traditionally been gendered feminine. *See* CAROL GILLIGAN, IN A DIFFERENT VOICE (rev. 1993) (noting girls are less willing than boys to accept absolutist moral categories); NEL NODDINGS, CARING: A FEMININE APPROACH TO ETHICS & MORAL EDUCATION (1984) (noting relational ethics explicitly based on care).

167. *See supra* note 145 and accompanying text.

168. CLARK, *supra* note 145, at 58.

169. *Id*. *See also* Palma Joy Strand, *The Civic Underpinnings of Legal Change: Gay Rights, Abortion, and Gun Control*, 21 TEMP. POL. & CIV. RTS. L. REV. 117, 138–39 (2011).

170. CLARK, *supra* note 145, at 99 (stating: "Flexibility is the ultimate hominid adaptation."); *id.* at 124 (discussing "culture as *the* critical survival adaptation").

171. The lack of autonomy for women has been the subject of much political discussion and agitation, and it has resulted in more autonomy, at least for economically privileged women. In the view I am proposing here, autonomy is important as a human propensity, but bonding is also important. In our patriarchal culture, autonomy has been overvalued while bonding has been undervalued. And men have not agitated for bonding the way women have agitated for autonomy, which has redounded to their detriment: Social connection is associated with such fundamental indicators of well-being as longevity and improved mental health. *See, e.g.*, Teresa E. Seeman, *Social*

opportunities for developing their propensities—not so much because of the biological accoutrements of sex but because of the gendered cultural roles assigned to members of each sex.[172] These different opportunities constrain both women and men in fulfilling human propensities, though in different ways.

Philosopher Martha Nussbaum has articulated an approach to the conditions for human fulfillment that bears an intriguing resemblance to biologist Mary Clark's understanding. Nussbaum's approach, which owes much to Aristotle, Kant, Karl Marx, and Nobel Laureate Amartya Sen,[173] grows from the essential principle that each human being is an end in herself and "that there are universal obligations to protect human functioning and its dignity, and that the dignity of women is equal to that of men."[174] Nussbaum sees "the human being as a dignified free being who shapes his or her own life in cooperation and reciprocity with others."[175] This approach "contains . . . a reference to an idea of human worth or dignity . . . [and] makes each person a bearer of value, and an end."[176]

Nussbaum formulates a list of central human capabilities that, when ensured for all individuals, afford a "decent social minimum."[177] Several of these capabilities undergird or echo Clark's autonomy propensity,[178] others resonate with Clark's bonding propensity,[179] and several point toward Clark's meaning

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Ties and Health: The Benefits of Social Integration, 6 ANNALS OF EPIDEMIOLOGY 442 (1996). Meaning, which grows from the other two propensities, is constricted—though in different ways—for both women and men.

172. *See* LERNER, *supra* note 146, at 52. *See also infra* note 214.

173. *See, e.g.*, MARTHA C. NUSSBAUM, SEX & SOCIAL JUSTICE 34 (1999) (stating: "Unlike the type of liberal approach that focuses only on the distribution of resources, the capabilities approach maintains that *resources* have no value in themselves, apart from their role in human functioning") (emphasis added). *Cf.* AMARTYA SEN, DEVELOPMENT AS FREEDOM 3-53 (1999) (emphasizing human freedom rather than production of goods and services [GNP] as ultimate measurement of economic success).

174. NUSSBAUM, SEX & SOCIAL JUSTICE, *supra* note 173, at 30.

175. MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 72 (2000).

176. *Id*. at 73. *See also* NUSSBAUM, SEX & SOCIAL JUSTICE, *supra* note 173, at 34 (stating: "[T]he capability approach considers people one by one" [not as parts, for example, of a family or household]).

177. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 175, at 75.

178. Including life; bodily health; bodily integrity; senses, imagination, and thought; practical reason; and control over one's environment (political and material). Several of these are self-explanatory. Expanding on the senses, imagination, and thought listing, Nussbaum writes:

> Being able to use the sense, to imagine, think, and reason – and to do these things in a 'truly human' way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one's own choice, religious, literary, musical and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one's own way. Being able to have pleasurable experiences, and to avoid non-necessary pain.

Id. at 78–79. Practical reason is "[b]eing able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience.)" *Id.* at 79.

179. Such as emotions and affiliation, which encompasses both the ability to empathize, show

propensity.[180]

Nussbaum acknowledges that ensuring these capabilities gestures toward a loose level of equality, but she stops short of seeking actual equal functioning:

> It is perfectly true that functionings, not simply capabilities, are what render a life fully human, in the sense that if there were no functioning of any kind in a life, we could hardly applaud it, no matter what opportunities it contained. Nonetheless, for political purposes it is appropriate that we shoot for capabilities, and those alone. Citizens must be left free to determine their own course after that.[181]

Choice, then, is an essential aspect of being human—of being an end in oneself.[182]

Nussbaum's capabilities roughly track Clark's propensities, and her approach sheds a critical light on cultural practices that constrain both female autonomy and male bonding.[183] But Nussbaum's emphasis on choice also directs our attention to the failure to provide meaningful access to certain capabilities. Her analysis poses the question: What constrains the ability of females to access greater autonomy and males to experience greater bonding?

One answer is cultural norms, which can be addressed directly through changing personal, social, and legal stories.[184] Another answer is institutional arrangements. Williams's ideal worker analysis shows how our market economy, and the laws and institutions that shape and perpetuate that economy, presume that workers lack family responsibilities. At the same time, our social structures fail to acknowledge the essential contribution made by those caring for children, effectively casting those caregivers adrift.

This system constrains choices for both women and men.[185] For women with care responsibilities and little social support, the market's reliance on the ideal worker seriously constrains the choice of autonomy. For men with ideal worker responsibilities, the market's assignment of care to others seriously constrains the choice of bonding. Overall, our society assigns care for children to mothers in a non-market sphere of activity, the household. Fathers' contribution to care is primarily economic; secondarily, fathers perform subsidiary functions as permitted by the ideal worker role. Even when care is provided through market exchanges, the providers are predominantly women. Finally, cultural and institutional rigidity channels females into affiliative roles and males into autonomous roles. Women and men are pushed toward the extreme ends of a spectrum and given limited freedom to choose the other end or, most important,

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concern for, and engage with others and being treated by others with dignity. *Id.*

180. Including senses, imagination, and thought; practical reason; other species; and play. *Id.* at 79–80.

181. *Id.* at 87.

182. Ensuring the capabilities that put humans in a position to exercise such choice is "a central social goal" and "a moral claim." NUSSBAUM, SEX AND & SOCIAL JUSTICE, *supra* note 173, at 43.

183. *See id.* (stating: "[I]nequalities based on hierarchies of gender or race will themselves be inadmissible on the grounds that they undermine self-respect and emotional development"). Nussbaum's emphasis is on how women are shortchanged, but her approach applies to men as well.

184. *See generally* Strand, *The Civic Underpinnings of Legal Change*, *supra* note 169 (connecting personal stories, social norms, and law); Strand, *Law as Story*, *supra* note 109 (describing law as a story emerging from and immerging into social norms).

185. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 103–73.

to seek the balance of the middle.

C. The Market and Care

i. Gifts and Markets

Thinker and writer Lewis Hyde defines "gift systems" as an alternative social structure and mindset to the market system that dominates our own society.[186] While markets consist of exchanges, gift systems are comprised of conferrals of goods and services.[187] And while markets contemplate accumulations of capital, in a gift system "the gift must always move."[188]

The movement of gifts and the interactions involved in giving and receiving mean that "gifts . . . have the power to join people together."[189] Communities emerge from the circulation of gifts.[190] In particular, gift exchanges tend to create small-scale communities,[191] and gifts are often given between people who are related or know each other.[192] Such relatively intimate gift exchanges, Hyde asserts, are significantly different from markets, where decisions are made at arm's length.[193]

Hyde observes that there are realms of life that we understand in "gift" rather than "market" terms. We are discomfited by putting values on certain things for the sake of cost-benefit analysis. Human life is an obvious example of something that is "invaluable,"[194] but the natural environment[195] and art[196] share this quality. Responding to this discomfiture, we prohibit the sale of human organs, though donating them is acceptable.[197] Similarly, since the abolition of slavery,[198] human persons or lives cannot be legally bought and sold, though a child can be given up for adoption.[199]

Hyde's discussion is normative as well as descriptive. The overall purpose of his book is to offer an understanding of the creation of art as a gift activity and to suggest that, in a modern world in which the market is king, artists will feel "irreconcilable conflict."[200] More recently, Hyde has challenged the marketization and privatization of our society's collective heritage of art, music, and ideas and articulated the importance of a cultural commons—a shared

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186. LEWIS HYDE, THE GIFT: IMAGINATION AND THE EROTIC LIFE OF PROPERTY (1983).

187. *See id.* at 4–5.

188. *Id.* at 4 (emphasis omitted).

189. *Id.* at 70.

190. *See id.* at 45–46 (discussing Alcoholics Anonymous); *Id.* at 83 (discussing scientific knowledge).

191. *Id.* at 89.

192. *Id.* at 65–66 (citing kidney donation as an example).

193. *Id.* at 62–65 (citing cost benefit decision made regarding the Ford Pinto as an example).

194. *Id.* at 66.

195. *See, e.g.,* ACKERMAN & HEINZERLING, *supra* note 141, at 177–78.

196. *See, e.g.,* Louis-André Gérard-Varet, *On Pricing the Priceless: Comments on the Economics of the Visual Art Market*, 39 EUR. ECON. REV. 509 (1995).

197. HYDE, THE GIFT, *supra* note 186, at 95.

198. *See id.* at 66.

199. *Id.* at 95–96.

200. *Id.* at 273.

heritage akin to a public good that must be available to all.[201] But Hyde also recognizes that the market and its partner, law—which he regards as necessary to bind groups larger than those where gift exchanges may prevail—can and should co-exist.[202] He concludes: "[T]here can be no market if all wealth is converted into gifts . . . [though] there is a degree of commercialization which destroys the community itself."[203]

Though Hyde's primary interest is art and artists, he devotes a chapter to women as gifts in which he observes that in a traditionally patrilineal, patriarchal society women are given to other clans or family groups as brides and, in particular, as bearers of future children.[204] Here, a woman "is a kind of property, but the 'property rights' involved are not those to which the phrase usually refers. [The woman] is not a chattel, she is not a commodity; her father may be able to give her away, but he may not sell her."[205] Hyde suggests that while the reality of such an interaction has faded today, its flavor and some of its force is preserved: etiquette still contemplates that "the groom asks [the bride's father] for, and he agrees to deliver, his daughter's 'hand.' No parallel customs exist for the bride: no one gives the groom to her; she receives no hand from her future mother-in-law."[206]

The functionality of such an exchange is peace between groups—"an active and coherent network of cooperating kin."[207] The result is children who "belong to their father's clan (as, in a sense, they do in our own society, where they carry the father's name)"[208] and women who, by virtue of their movement from their birth family to their husband's family, become both gifts and tangible social bridges.[209]

Men can also be gifts but in a quite different context. Men serve and die for their country in war or military service. Their country calls and they give themselves; families give their sons, husbands, and brothers.[210] In this regard, "we still recognize that the power of a collectively held belief can be increased by the man who gives his life in its name."[211]

These distinct gift scenarios have important implications for women and

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201. *See* LEWIS HYDE, COMMON AS AIR (2010).

202. HYDE, THE GIFT, *supra* note 186, at 274.

203. *Id.*

204. *Id*. at 93–108.

205. *Id.* at 94. *Compare* HYDE, THE GIFT, *supra* note 186, at 93 (noting that the major difference between traditional property rights in women and property rights in slaves raises issues as to the applicability of jurisprudence eradicating slavery and its vestiges to jurisprudence eradicating patriarchy and its vestiges) *with* LERNER, *supra* note 146, at 46–48, 50, 213 (discussing the connection between the exchange of women and the "reification" of women and articulating the view that it is women's sexuality and reproductive capacities rather than women themselves that are commodified).

206. HYDE, THE GIFT, *supra* note 186, at 102. *See also id.* at 93.

207. *Id.* at 94. *See also id.* at 99; BOULDING, *supra* note 148, at 46-48 (stating: "Historically . . . marriage has been the major alliance mechanism of every society, and little girls are trained for roles as intervillage family diplomats").

208. HYDE, THE GIFT, *supra* note 186, at 96.

209. *Id.* at 93–97

210. *Id*. at 98.

211. *Id.* at 99.

men. In a patriarchy, "[i]f we take property to be a right of action and therefore an expression of the human will, then whenever a woman is treated as property, even if she is a gift, we know that she is not strictly her own person: her will is somewhere subject to someone else's."[212] This realization gestures toward the ultimate problem with the traditional patriarchal treatment of women:

> If . . . a woman does not receive the right of bestowal in herself, then she can never become an actor in her own right, and never an autonomous individual. . . . For where men alone may give and receive, and where women alone are the gifts, men will be active and women passive, men self-possessed and women dependent, men worldly and women domestic, and so on, through all the clichés of gender in a patriarchy.[213]

Women cease to be ends in themselves.

This practice adversely affects not only women but also men precisely because it calls on them to commodify women—other human beings. In fact, Hyde asserts, the "ability to act without regard to relationship has traditionally been a mark of the male gender."[214] Men are expected to commodify not only women but other men; this becomes both the mark of gendered masculinity and the norm of male spaces such as the market.[215] The "other human being as the means to an end" poison of patriarchy spreads from the treatment of women to the treatment of other men, and people become things, in practice if not in law.[216]

ii. A Gift Theory of Care

Hyde distinguishes between market "work" and gift "labor."[217] Work is "what we do by the hour; it begins and ends at a specific time and, if possible, we do it for money."[218] Labor, in contrast, "sets its own pace. We may get paid for it, but it's harder to quantify."[219] Historically, market work is gendered male, while gift labor is gendered female.

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212. *Id.* at 100–01.

213. *Id.* at 102. *See also* LERNER, *supra* note 146, at 214.

214. HYDE, THE GIFT, *supra* note 186, at 104. Note Hyde's definition of gender:

> By "gender" I mean to indicate the cultural distinctions between male and female—not the physical signs of sex but that whole complex of activities, postures, speech patterns, attitudes, affects, acquisitions, and styles by virtue of which a woman becomes feminine (a man "effeminate") and a man masculine (a woman "mannish"). Any system of gender will be connected to actual sexuality, of course, but that is only one of its possible connections. It may also support and affirm the local creation myth, perpetuate the exploitation of one sex by another, organize aggression and warfare, ensure the distribution of food from clan to clan—it may, in other words, serve any number of ends unrelated to actual sexuality.

Id. at 103.

215. *See also* WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 83–85 (describing transition on oil rig from traditional masculine culture of detachment and intimidation to "kinder, gentler" [and safer] culture).

216. In this regard, patriarchy and slavery are connected. *See* LERNER, *supra* note 146, at 83–100; ORLANDO PATTERSON, VOLUME I: FREEDOM IN THE MAKING OF WESTERN CULTURE (1991) (tracing the historical connection between slavery and patriarchy, which rests on early slaves being predominantly women).

217. HYDE, THE GIFT, *supra* note 186, at 50.

218. *Id.*

219. *Id.*

> [W]hat we take to be the female professions—child care [and] . . . teaching . . . — all contain a greater admixture of gift labor than male professions—banking, law, management, sales, and so on. Furthermore, the female professions do not pay as well as the male professions. The disparity is partly a consequence of a stratified gender system: women are still not paid on a par with men for equal work . . .
>
> But if we could factor out the exploitation, something else would still remain: there are labors that do not pay because they . . . require built-in constraints on profiteering, exploitation, and—more subtly—the application of comparative value with which the market is by nature at ease.[220]

Gift labor does not concern commodities and cannot be undertaken in an entirely "adversarial" or arms-length manner because, to a large degree, it necessitates and is inextricably intertwined with interpersonal intimacy and connection. This quality of gift labor leaves those who perform it at an obvious financial disadvantage because bargaining for higher wages in the market requires disengagement. The low pay for gift labor compounds the problem by sending a social message that the labor is of little value. This message is especially strong in a highly marketized culture such as our own.

Hyde's solution is simple but powerful: "We could—we should—reward gift labors where we value them . . . where we do so we shall have to recognize that the pay they receive has not been 'made' the way fortunes are made in the market, that it is a gift bestowed by the group."[221] In Hyde's view, we should recognize and value essential gift labor and express our appreciation with gifts in return.

In the case of care for children, however, the path to giving such gifts of appreciation is blocked by the current association of gift labor with women and the assignment to both of low social status—in conjunction with cultural norms relating to gender.

> To quit the confines of our current system of gender means not to introduce market value into these labors but to recognize that they are not "female" but human tasks. And to break the system that oppresses women, we need not convert all gift labor to cash work; we need, rather, to admit women to the "male," moneymaking jobs while at the same time including supposedly "female" tasks and forms of exchange in our sense of possible masculinity.[222]

Imagine, along with Hyde, a society that recognizes the crucial importance of gift labor—such as care for children—and offers social rewards to those who perform it, regardless of sex, with the result that both women and men consider such labor a realistic, valued choice in their lives.

Hyde's discussion of gifts and care is the counterpart to Mr. Y's call for investing in children as a national priority and Folbre's discussion of public goods. Both rest on the recognition that care is an essential human function that is not, cannot, and should not be fully marketized,[223] though social investment

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220. *Id.* at 106–07 (emphasis omitted).
221. *Id.* at 107.
222. *Id.* at 107–08.
223. *See generally* NOT FOR SALE: IN DEFENSE OF PUBLIC GOODS, *supra* note 117 (identifying other

may be called for. This insight, however, is obscured by the structures of patriarchy. Patriarchy has traditionally ensured that care is provided by women in households outside of the market. This assignment of care has been characterized by the absence of either clear recognition of the social importance of care or the commitment of public resources that would flow from that recognition.

Women are now repudiating the patriarchal tradition by moving into the market and declining to ally themselves with ideal workers.[224] A complementary, converse repudiation of patriarchy by men moving into care has been slower and of lower visibility. These trends put pressure on the system, but existing institutional and legal structures resist change.

IV. TAX BREAKS TO SUPPORT CARE FOR CHILDREN

This Part proposes a set of income tax breaks for occupations involving care for children. The purpose of these tax breaks is to counter the market—and social—devaluation of such care.

A. Tax Policy and Care for Children

The perspectives presented in Part II[225] lead to the following considerations to address the issues regarding care for children described in Part I.[226]

- First, the high poverty rate for children reflects in large part a lack of access to ideal worker wages earned by those who care for children, especially mothers.
- Second, provision of care for children is significantly underprovided and underrewarded by the market.
- Third, the idea of children as an essential national resource is severely underdeveloped, and actions that might follow from that idea are consequently scarce.
- Fourth, historical and cultural traditions—often denoted by the term "patriarchy"—assign care for children to women (mothers) in households and prevent men in the market from performing that function.
- Fifth, deep-seated qualms exist regarding treating care for children as a pure market commodity given both the priceless nature of children and the nature of care itself even though those qualms contribute to low remuneration for those who provide such care.

National tax policy is well-suited for addressing these issues. For the reasons below, this article proposes, generally, tax breaks for income earned in occupations involving care for children. Specifically, these breaks should be calibrated so that greater benefits are received by those whose jobs involve more care—and whose incomes are usually lower. Following this criterion, child care

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similar realms of human activity).

224. *Cf.* LERNER, *supra* note 146, at 218 (noting women's only "choice" under patriarchy was to seek male protection for themselves and their children).

225. *See supra* Part II.

226. *See supra* Part I.

workers would receive an actual tax credit for their work, K–12 teachers would receive their income tax-free, and professionals such as pediatricians and family lawyers would pay a lower tax rate than that which would otherwise apply to their income level. These tax breaks could fall under an umbrella denoted simply "We Care for Our Kids."[227]

This set of tax breaks would be easy to calculate and administer. Relevant occupations could be identified by the Bureau of Labor Statistics, with the tax treatment of each occupation determined administratively by the Internal Revenue Service. Tax forms could be readily revised so that those filing could claim a credit, complete tax forgiveness for certain income, or a lower tax rate.

Such a set of tax breaks represents a significant step in addressing the issues involving care for children described above.

- First, single mothers engaged in "women's work" involving care for children would experience greater financial stability, which would in turn flow to their children. This stability would not raise costs for individuals who currently pay for these services in the market, a concern that applies primarily to households paying child care workers.
- Second, higher effective salaries (market salaries plus credit or with tax breaks) would draw more individuals into occupations involving care for children.
- Third, these tax breaks would make a national statement that all children are valuable and that caring for them is an important social activity, thus creating a new "story" about children and care for children.
- Fourth, both the financial and the expressive aspects of these tax breaks would raise the status of these occupations, blurring the lines between low- and high-status work traditionally associated with women and men respectively, in both the household and the market.
- Fifth, because tax policy is often used in connection with socially valuable activity that is underproduced by or does not fit the market, tax breaks would communicate that care for children is distinctive "rewarded" behavior while supporting its "gift labor" quality.

B. Tax Breaks for Occupations Involving Care for Children

i. Tax Credits for Child Care Workers

Child care as an occupation, by definition, consists entirely of care for children. It contains, in Hyde's terms, a very high concentration of gift labor. Child care workers are overwhelmingly women who receive extremely low wages. Families generally pay the salaries of child care workers out of their own salaries so that they can work outside of the home. Public provision of child care is essentially nonexistent in the United States—and so are public salaries for that care.[228] More than any other occupation, child care is a "substitute" for unpaid

227. Consider, in this regard, the non-profit service program "Teach For America." In addition to the benefits it provides (benefits that address only a small portion of public school needs), it *links through its very name* the success of children in these public schools with the well-being of the country as a whole.

228. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 36–38.

household care provided by women.

The market message—the social story—is that this work is of little value. The story told by the wages for child care, as discussed previously, is that we value the work of caring for our children less than we value the work of caring for our cars. This relative value extends to the people who do that work and to the objects of their care: as far as the market goes, we do value our cars more than our kids. This combination of factors calls for a substantial break for child care workers. This article proposes the provision of an actual tax credit in addition to complete forgiveness of income tax.[229] This tax treatment acknowledges the valuable gift labor that child care workers provide for the national good and to our collective future.

ii. Tax Forgiveness for K–12 Teachers

As noted previously, the amount of care required by school-aged children decreases consistently from kindergarten through secondary school. An increase in pay and a shift from an almost entirely female workforce to a relative balance between male and female teachers accompanies this progression. The fact that K–12 teaching pays significantly more than child care is likely due to its being provided by the government as a public good, as well as the education and training that teaching requires.

The provision of teachers and payment of teacher salaries by local governments, however, makes a powerful statement about investment in children. For well-off school districts where students receive a top-notch education, institutional and legal structures reinforce the conviction that "our kids" are "these particular well-off kids." Concurrently, poorer districts are often left to their own devices, which depresses investment in schools and teacher salaries. The disjuncture—within the U.S., within states, within metropolitan regions—between well-off and poor sends a message that some children matter to our collective future while some do not. A larger social sense of promise and responsibility is stunted. Most parents want the best for their own children, but a sense that "our" kids' (and "our" own) future well-being is tied to that of other children's appears lacking.

Notwithstanding depression of salaries, K–12 teachers receive a respectable income, though likely less than jobs performed primarily by men and requiring comparable training. Salaries are further discounted by the presence of gift labor and the fact that women are heavily represented in these jobs. For K–12 teachers, this article proposes an income tax exemption for teachers' salaries. Such a tax exemption recognizes and rewards the substantial component of care for children involved in these jobs but also acknowledges that care is a lesser component here than for child care workers. And, as with child care workers, this tax treatment contributes to the story that children and the work of caring for them are of social value.

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229. I do not propose here a particular amount for such a tax credit. Given the level of gift labor involved, the historical devaluation of this work due to the availability of unpaid labor, and the demands of and discipline required by the job, however, I believe that a credit of even 100 percent of the income actually earned is not excessive.

iii. Lower Tax Rates for Child-Oriented Professionals

It may seem odd to even propose tax breaks for child-oriented professionals such as pediatricians and family lawyers. These professionals, and pediatricians in particular, make far more than the national mean annual salary.[230] At first glance, they appear to be doing just fine in market terms.

There are, however, two primary reasons for including child-oriented professionals in this tax initiative. The first is relative disadvantage: how we see the salaries of child-oriented professionals depends on whether we are comparing them to the annual mean wage or to the salaries of other professionals. Compared to the country as a whole, child-oriented professionals are doing quite well. Compared to other doctors and lawyers? Not so well.[231]

Second, women have a strong presence in these specialties, which require a substantial element of care for children, even if this element is small compared to the professional skills required. These facts suggest that a vein of patriarchy persists—perhaps in the form of norms of femininity and masculinity that draw relatively more women than men to these fields and perhaps in these occupations having more interaction with realms, such as families and households, in which women traditionally function. These facts also suggest that gift labor is present.

The resulting relative devaluation should be addressed. These child-oriented professionals should receive a reduction in their overall tax rate.[232] The inclusion of such professionals in this initiative is important because it constitutes explicit social recognition across the board that children are important and that those who care for them are doing essential and valued work. Again, their work and its treatment lie within the social story of the importance of care for children.

C. Care for Children and Children's Well-Being

Rather than illustrating a linear chain of causation, this article illuminates a web of interconnections between low market wages for caregivers; the high amount of unpaid labor devoted (predominantly by women) to care for children in households; the economic marginalization of women, especially single mothers; and the disastrous effects that marginalizing women has on children. Recognizing this, Human Services Planner Mildred Warner refers to "the nested context of child development in family environments, workplace policy, and public policy."[233] Such interconnections are characteristic of systems:

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230. *See supra* notes 83, 101 and accompanying text (noting that pediatricians average $165,720 annually whereas the national mean salary is $44,410).

231. *See supra* notes 101–06 and accompanying text.

232. Adjustments to the tax rate accommodate the ranges of income involved while preserving the acknowledgement that care for children is an important component of these occupations.

233. Warner, *supra* note 39, at 88. Warner concludes: "The complexity of the care economy requires attention to both market and household forms of care." *Id.* at 89. She warns, in this light, that "market approaches to childcare should be pursued with caution." *Id.* at 87. I believe that the tax proposals here, which represent indirect rather than direct public support, may be a politically possible step away from traditional United States "unwillingness to invest and take collective responsibility for care." *Id.*

interlocking practices support each other; the cloth as a whole is woven of many threads.

This cloth, the system of care for children, is severely frayed. The traditional solution to the essential social need for such care was, and is, marriage, with women assigned to domestic responsibilities. The astronomical rates of childhood poverty demonstrate that exclusive reliance on this solution is not working for children today. Moreover, even where the gendered division of labor is working for children economically, it restricts the choices of women and men through strong cultural gendering, institutional market structures, and cultural structures embodying the domesticity/ideal worker paradigm.

The constant in this system, the warp on the loom, is consistent allotment of inadequate economic value, resources, or support to care for children. As discussed above, there are multiple reinforcing reasons for economic undervaluation, scarce resources, and lack of support. Single parents, especially single mothers, have difficulty concurrently caring for children and achieving market success. These mothers may be channeled into work that better accommodates care, which pays less and results in lower household income. The large pool of unpaid care labor reduces market wages and demand for paid care. Unpaid care leads to the underprovision of care by both the market and government—and even its underidentification as an important public good. Heavy reliance on unpaid care also solidifies the ideal worker paradigm, which in turn circles back to reinforce domestic and lower paid "women's work." Because care is not fully commodified (even though there is social merit in retaining its gift nature and not fully commodifying it), care workers are at a disadvantage in bargaining for higher market wages.

The overarching point is that placing care for children in a precarious economic position places children in a precarious economic position. In our highly marketized society, this puts children in a precarious social position.

Change requires reweaving the whole cloth, the entire system. We must undertake the dual task of changing the ideal worker paradigm to accommodate women's movement into the market and facilitating men's participation in the unpaid work of care.[234] Accomplishing this task will lay the groundwork for transforming the market and reconfiguring households. Proposals to this end are generally accompanied by calls to extend the strong cultural link of care to men. Such proposals complement the tax break proposal in this article and should be actively pursued.

We must also push beyond antiquated and dysfunctional arrangements for public school funding. In this most significant area of governmental provision of care for children, care is dispersed so as to reinforce existing inequities. This is unconscionable. These are children, our collective future.

We must, as we do with military service, acknowledge and support gift labor in the form of care for children. Generous training and benefits packages

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234. HYDE, THE GIFT, *supra* note 186, at 108. *See also* WILLIAMS, UNBENDING GENDER, *supra* note 35, at 232–41 (stating: "Market and family work can be restructured by changing one or more of three possible axes . . . reallocation of family work within the household. . .shift[ing] some responsibilities from the *private* to the *public* sphere. . .*redefining the relationship between employers and employees*") (emphasis in original).

have been used to attract and reward quality members of the military. Although there are intrinsic as well as extrinsic rewards for military service, these packages are offered with the expectation that more people will volunteer to serve. Care for children, like military service, is not purely gift; it contains market elements. Explicit social recognition of the value of care contributions will benefit women immediately and will, over time, raise the status of care for children. Higher status will render provision of care a more attractive pursuit. Ultimately, a new story of the value of care will lead to more people, including more men, choosing it.

Finally, we must consider more radical measures to support care for children and to assert its social importance. Going beyond markets, for example, we could acknowledge the contribution to ideal workers in the market of unpaid household labor by giving an immediate equal property right in ideal worker wages earned by one spouse to the unpaid spouse. Understanding the contribution that domestic work makes to the market contribution of the ideal worker logically leads to a reconfiguration of property rights during—as well as upon dissolution of—a marriage.[235] And retelling the story of marital property rights in this manner leads to a transformed understanding of the social contributions made by those engaged in unpaid care labor in households, most frequently mothers.

Our touchstone with these and other actions should be providing those who care for children, and children themselves, a tightly woven and sturdy cloth that is close at hand. The tax proposal provided here highlights the value of care work without fully commodifying it and contributes one thread to this cloth. The pattern of this cloth, moreover, is a discernible one that illustrates the value of children and care for children. The pattern embodies the story of the social importance of children, of the care for children, and of those who do that work.

V. CONCLUSION

The proposed set of tax breaks offers economic relief to people who are paid to care for children, opens the door to greater interest in these occupations, and asserts the value and raises the status of this work. These tax breaks also protect the non-market, non-commodity aspect of children and their care.

In addition to pushing on the system that disadvantages care for children, these tax breaks articulate a value not only for care, but for children—all children—as our collective future. When we truly embrace such a cultural value, children will not be in the precarious state they are today, and the important work of those who care for them will be recognized as of immense social value.

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235. This goes beyond Williams's "Joint Property Proposal" that divorcing women have a property right in their former husband's ideal worker wage. *See* WILLIAMS, UNBENDING GENDER, *supra* note 35, at 124–38; WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 39, at 132–33. Given the high number of single mothers (and their children) in poverty, this proposal offers tremendous potential for bettering the economic status of children. *Cf.* Nancy E. Shurtz, *Gender Equity and Tax Policy: The Theory of "Taxing Men,"* 6 S. CAL. REV. OF LAW & WOMEN'S STUDIES 485 (1997) (proposing a "surcharge on full-time market income for married men" to account for the value of the support they receive at home, the proceeds from this surcharge to fund aid for women after divorce).

Changing the story about children is essential.

The cloth we have now is old and ragged. The system disadvantages caregivers as well as non-caregivers. It disadvantages children. Truth be told, it disadvantages us all.