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

Palma Joy Strand
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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 children in our society, with a disproportionate number living in poverty. The article then documents both that substantial care for children is provided on an entirely unpaid basis in households, predominantly by women, and that care for children is undervalued when it is 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 tax breaks for income from jobs that involve care for children.

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"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 old saw goes, talk is cheap. The harsh reality is that children are one of our most vulnerable and disadvantaged populations. They are substantially more likely to be poor than the average person in the U.S., and very young children are the most likely to be impoverished.

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 race or ethnicity correlates to poverty. More dramatically, children who live in households where there is no husband present are far more likely to be poor than children in either households headed by married couples or by single males.

The people who care for children3 are also vulnerable. To begin with, much of the work associated with caring for children is unpaid; this work occurs in households and is usually performed by parents—predominantly mothers. Further, the market incomes of people whose jobs involve caring suggest a market devaluation of such care. Formal U.S. child care workers, for example, earn $21,110 per year.4

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1 BRUCE BOHLE, ED., THE HOME BOOK OF AMERICAN QUOTATIONS 80 (Dodd, Mead & Co. 1967) (“a remark he made on numerous occasions” [N.Y. Times obit. (Oct. 21, 1964) p. 42]).


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 notes 193-195 infra and accompanying text.

attendants, who look after cars, make $21,250. The devaluation of care recurs in better paid occupations including those of K-12 teachers, who are paid less than jobs of “comparable worth.” Even child-oriented professional specialists such as pediatricians and family lawyers make less than most doctors and lawyers.

In this article, I propose a sliding scale of tax breaks—income tax credits, exemptions, and lower tax rates—for people who earn market income for work involving significant amounts of caring for children. 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 of the manifestations of the systemic marginalization of care for children: the relatively low wages in the market associated with this care.

This tax proposal is grounded in the view that the market systematically underrewards care for children, an overall view distilled from three distinct but overlapping perspectives. The first is that children are akin in key ways 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 of the market diminishes demand in the market with a resulting decrease in price. The fact that men traditionally have not performed this work also devalues it in the market. The final view is that not all of the value associated with care can—or should—be expressed through the market. In this view, low wages for care may reflect this awkward “fit.”

The approach in this article highlights that the disadvantaging of children and care for children revealed by the statistics reported here is neither intentional nor actionable under current law. Rather, it is systemic—the result of deep-seated institutional and cultural patterns and individual actions that perpetuate those patterns. The primary purpose of the 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 changing it.

A related purpose is 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

overall, this average wage is likely on the high side. See notes 73-76 infra and accompanying text.

address, at least in part, this disadvantage and the system from which it emerges.

In Part I, I present pertinent data on the status of children in the U.S. Then, after documenting patterns of unpaid care, I use selected income data to reveal the low value placed by the market on care for children. In Part II, I explore the phenomenon of low market value for care. In Part III, I propose a set of income tax breaks to address for systemic market undercompensation of care for children and relate these tax breaks back to the issues of unpaid care and child poverty.

I. “MINI-REPORT”—KIDS AND THOSE WHO CARE FOR THEM

In this Part, I present a “mini-report” on children in the United States and those who care for them. I first provide a snapshot of how kids are faring economically. I then examine data on the unpaid labor of caring for children. Finally, I present data on how the market values care for children in the form of incomes for selected occupations.

A. The Status of U.S. Children

1. Childhood poverty

Relatively speaking, kids are poor: While the overall U.S. poverty rate in 2009 was 14.3%, it was 20.7% for children under 18 and 24.5% for children under 5.6

Children as a group are also, again relatively speaking, more “minority” in terms of race and ethnicity than the population at large,7 and the trend toward a greater proportion of Hispanic children and a lower proportion of non-Hispanic White children, with the proportion of Black children remaining fairly constant. Projections for 2021 point to a bare majority of U.S. children being non-Hispanic White (51%), over a quarter being Hispanic (27%), and somewhat over an eighth being Black (14%).8

7 In 2009, children in the U.S. were 56% non-Hispanic White, 15% Black only, and 22% Hispanic. “Racial and Ethnic Composition of the Child Population—Trends” (http://www.childtrendsdatabank.org/sites/default/files/60_fig02.jpg). In addition, 4% were Asian, and 4% were “other.” The 2010 population as a whole, in contrast, was 72.4% non-Hispanic White, 12.6% Black/African-American alone, and 16.3% Hispanic or Latino. U.S. Census Bureau, “2010 Census Data” (http://2010census.gov/2010census/data/).
Within the group of children who are poor, moreover, poverty is concentrated in the Hispanic and Black communities. Overall, 20.7% of children live in poverty, but only 14.4% of White children (17.6% of those under 5) are poor,\(^9\) compared to 28.2% of Hispanic children (31.3% of those under 5)\(^\text{10}\) and 34.4% of Black children (40.7% of those under 5).\(^\text{11}\) Despite these percentages, because of the greater numbers of White children overall, there are more White children living in poverty than Hispanic and Black children combined.\(^\text{12}\)

More acute than the racialization of childhood poverty is its feminization: \textit{Over half of all poor children live with single mothers}.\(^\text{13}\) Living in a female-headed household with no husband present, in fact, is a disturbingly accurate predictor of poverty: An astounding 44.3% of children under 18 and 55.0% of children under 5 in such households live in poverty.\(^\text{14}\) The situation is bleak for White children of single mothers, of whom 38.9% of those under 18 (53.4% of children under 5) live in poverty.\(^\text{15}\) It is even more so for Hispanic and Black children: 51.4% of Hispanic children under 18 (59.1% of those under 5) in female-headed households with no husband present live in poverty, as do 50.3% of Black children.

\textit{See also} Gretchen Livingston and D’Vera Cohn, Pew Research Center, “The New Demography of American Motherhood” (May 6, 2010; rev. Aug. 19, 2010) (Birth statistics in 2008 compared to those in 1990 show that births to Hispanic mothers rose over that period by 10% while births to White mothers fell by 12%. Births to Black mothers remained essentially the same [down 1%], and births to Asian mothers edged up slightly [up 3%]) (\texttt{http://pewresearch.org/pubs/1586/changing-demographics-characteristics-american-mothers}).

\(^\text{9}\) U.S. Census Bureau, “People in Families with Related Children Under 18 by Family Structure, Age, and Sex, Iterated by Income-to-Poverty Ratio and Race: 2007—Below 100% of Poverty – White Alone: \texttt{(http://pubdb3.census.gov/macro/032008/pov/new02_100_03.htm)}.

\(^\text{10}\) U.S. Census Bureau, “People in Families with Related Children Under 18 by Family Structure, Age, and Sex, Iterated by Income-to-Poverty Ratio and Race: 2007—Below 100% of Poverty – Hispanic Origin” \texttt{(http://pubdb3.census.gov/macro/032008/pov/new02_100_09.htm)}.

\(^\text{11}\) U.S. Census Bureau, “People in Families with Related Children Under 18 by Family Structure, Age, and Sex, Iterated by Income-to-Poverty Ratio and Race: 2007—Below 100% of Poverty - Black Alone” \texttt{(http://pubdb3.census.gov/macro/032008/pov/new03_100_06.htm)}.

\(^\text{12}\) In 2007, 8.024 million White children, 4.360 million Hispanic children, and 3.848 million Black children lived in poverty. U.S. Census Bureau Reports, notes 9, 10, & 11 \textit{supra}.

\(^\text{13}\) Mark Mather, “U.S. Children in Single-Mother Families,” 2 (Population Reference Bureau, May 2010) (2009 data). In 2009, 53% of these single mothers had been married previously. \textit{Id}.


\(^\text{15}\) U.S. Census Bureau, note 9 \textit{supra} (2007 White Alone).
children under 18 (58.5% of those under 5) in such households.\textsuperscript{16}

Compare these statistics to children living in households headed by married couples. For those children, poverty rates are dramatically lower: 11.0% for all children under 18 (13.4% for those under 5).\textsuperscript{17} By racial/ethnic group, for children living in such households, the poverty rate is 8.3% for White children under 18 (9.4% for those under 5),\textsuperscript{18} 11.0% for Black children under 18 (12.3% for those under 5),\textsuperscript{19} and 19.3% for Hispanic children under 18 (20.8% for those under 5).\textsuperscript{20}

Some of the correlation of poverty with female-headed households is due to the simple effect of being in a single-adult household. But far fewer children are in households headed by single males than in those headed by single females (about one-third as many), and the poverty rates for such male-headed households are significantly lower (by 20 to 25 percentage points) than those for female-headed households.\textsuperscript{21} Overall, these data show that the feminization effect is substantially greater than the racial effect. The racial effect, in fact, is in large part due to the relatively high proportions of Black and Hispanic children in households with single mothers.\textsuperscript{22}

These statistics on childhood poverty represent tangible negatives. Most directly, such poverty has literally life-and-death implications: “[C]hildren 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.”\textsuperscript{23} Childhood poverty is also associated with a host of additional undesirable outcomes: other physical health problems, impairment of cognitive abilities, lower school achievement, emotional and behavioral

\textsuperscript{16} U.S. Census Bureau, note 10 supra (2007 Hispanic Origin); U.S. Census Bureau, note supra (2007 Black Alone).


\textsuperscript{18} U.S. Census report, note 9 supra (2007 White Alone).

\textsuperscript{19} U.S. Census report, note 11 supra (2007 Black Alone).

\textsuperscript{20} U.S. Census report, note 10 supra (2007 Hispanic Origin).


\textsuperscript{22} In 2007, 18.22% of White children under 18 lived in female-headed households, 26.45% of Hispanic and 55.34% of Black children under 18 lived in such households. Percentages calculated from data in U.S. Census reports at notes 9, 10, & 11 supra.

\textsuperscript{23} The Connecticut Commission on Children, “Children and the Long-Term Effects of Poverty,” (June 2004). See also MARILYN WARING, IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS 179 (Harper & Row 1988) (“In the United States, twelve times as many poor children die in fires as do nonpoor children. Eight times as many poor children die of disease as nonpoor children.”).
issues, future financial costs, and higher rates of teen pregnancy.\textsuperscript{24}

Nor is poverty alone necessarily the culprit. Research by social epidemiologists Richard Wilkinson and Kate Pickett connects income inequality with decreased well-being for a society as a whole.\textsuperscript{25} Relative poverty and income inequality correlate to higher 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 ultimately shorter lifespans.\textsuperscript{26}

These are obviously not desirable 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?

2. Systemic disadvantage

We as a society don’t choose childhood poverty; it happens because of the way our institutions and laws are structured and the actions people take within those institutions and in response to those laws. Childhood poverty exemplifies systemic disadvantage.\textsuperscript{27} Here’s how it works.

The racialization of childhood poverty results from the fact that children derive their socioeconomic status from the adults in the household in which they live. Racial and ethnic variations in childhood poverty thus reflect (more or less) overall levels of poverty, which is below the national average for Whites (9.4\% compared to the mean of 14.3\% in 2009) and much higher for Hispanics (25.3\%) and Blacks (25.8\%).\textsuperscript{28} These relatively greater levels of poverty among Black and Hispanic households are due to a


\textsuperscript{25} RICHARD WILKINSON AND KATE PICKETT, THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER (Bloomsbury Press 2009).

\textsuperscript{26} Id.


\textsuperscript{28} Carmen DeNavas-Walt, Bernadette D. Proctor, Jessica C. Smith, “Income, Poverty, and Health Insurance Coverage in the United States: 2009” 16 (U.S. Census Bureau) (Sept. 2010). These relatively greater levels of poverty among Black and Hispanic households are due to a variety of factors, among them continuing racial disparities in income.
variety of factors, among them continuing racial disparities in income\(^\text{29}\) and the higher proportion of single mothers who are Black and Hispanic.\(^\text{30}\)

The feminization of childhood poverty is even more indirect, as Joan Williams, law professor and head of the Center for WorkLife Law explains. Our economy, according to Williams, is built around and best accommodates the “ideal worker,” someone “who works full time and overtime and takes little or no time off for childbearing or child rearing.”\(^\text{31}\)

Market structures are geared to traditionally male roles and jobs,\(^\text{32}\) 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.\(^\text{33}\) *This structure*, moreover, *is enabled by public policies and laws that themselves are grounded in and perpetuate the ideal worker paradigm.*\(^\text{34}\) The lack of public support for care and the absence of requirements that workplaces be flexible are examples.

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\(^\text{29}\) See U.S. Census Bureau, “Table 700. Median Income of People in Constant (2008) Dollars by Sex, Race, and Hispanic Origin: 1990 to 2008” (median income for White men in 2008 was $37,409 compared to $25,254 for Black men and $24,003 for Hispanic men [median income for women was much less variable by race/ethnicity]) (http://www.census.gov/compendia/statab/cats/income_expenditures_poverty_wealth.html).

\(^\text{30}\) See note 22 supra and accompanying text.

\(^\text{31}\) JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 1 (2000).

\(^\text{32}\) Id. at 66-81. In white-collar jobs, these 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.

\(^\text{33}\) 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 don’t require skills that get stale with time.’” Id. at 81 (quoting RHODA MAHONY, KIDDING OURSELVES 16 (1995)).

\(^\text{34}\) See JOAN WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 33-41 (Harvard Univ. Press 2010). Cf. Mildred E. Warner, “(Not) Valuing Care: A Review of Recent Popular Economic Reports on Preschool in the US,” 15 Feminist Economics 73, 73 (2009) (“Among the OECD nations, the US 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, note 31 supra, 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).
As currently structured, the market rewards ideal workers. Because children need care and because such care generally falls to mothers, mothers are almost never in a position to be ideal workers. 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. This disadvantage extends to their children.

This disadvantage applies both to divorced mothers and to mothers who have never married. On divorce, mothers lose access to their former husbands’ ideal-worker wage, leading to downward mobility for themselves and their children, due to their having marginalized themselves from ideal-worker status during marriage. Never-married mothers face a similar struggle in a market that seeks ideal workers unencumbered by the caring responsibilities they must also shoulder. Williams observes, “In 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.”

3. Barriers to change

Childhood poverty is not only not intended; it is unwanted. We have myriad programs designed to help kids who are poor, but somehow we don’t seem able to carry through on these initiatives. Comprehensive change eludes us.

Head Start is the classic example of this. Head Start doesn’t have a lot of critics and in fact enjoys substantial bipartisan support. Yet it has never come close to serving all eligible children and in any case is only a

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35 As shown below, see notes 66-68 infra and accompanying text, fathers generally pick up less than an equal share of child care responsibilities. Lest we be too 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, note 31 supra, at 37-39.

36 WILLIAMS, UNBENDING GENDER, note 31 supra, at 3, 115 (“nearly 40 percent of divorced mothers end up in poverty”).

37 Id. at 8.

38 Id. at 57. As noted above, a similar though lesser penalty accrues to households headed by single fathers. See note 21 supra and accompanying text.

part-time program, which seriously undermines its value to working families/mothers.\footnote{Id.}

Economist Nancy Folbre suggests that the primary reason for this inability to make real headway in addressing childhood poverty is that children lack political clout.\footnote{Id., at 162.} They can’t vote, nor can a substantial proportion of their parents. Immigrant parents—even those with residency papers—often are ineligible to vote.\footnote{Id.  See also The Sentencing Project: Voting Rights (2.4% of population overall and 8.3% of Black population cannot vote due to disenfranchisement of felons) (http://www.sentencingproject.org/map/map.cfm). In one state for which data are readily available, “67.5% of male felons and 81.2% of female felons incarcerated in Tennessee’s state prisons have children.” Tennessee Department of Correction Planning and Research Section, “The Children and Families of Incarcerated Felons: A Status Report and Demographic Inquiry” 2 (April 1995).} Ineligibility may also attach to parents who have been convicted of a felony, which in many states bars people from voting for life.\footnote{FOLBRE, VALUING CHILDREN, note 41 supra, at 163.}

Even where parents can vote, people with less education and less voice in the form of time and financial resources in political campaigns—both of which often characterize poor parents—are less likely to exercise their right. Further, Blacks and Hispanics (and 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 over 71 percent of children of color live in those regions.\footnote{FOLBRE, VALUING CHILDREN, note 41 supra, at 163.}

For various reasons, the political system proves impermeable to parents—especially poor parents of color.

Comparing the lack of successful social welfare initiatives for children with the political achievements of the elderly 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). These senior citizens are Whiter than the population as a whole (82.8% versus 70.2%) and far Whiter than children (82.8% versus

\begin{footnotesize}
\footnote{Id.}
\footnote{NANCY FOLBRE, VALUING CHILDREN: RETHINKING THE ECONOMICS OF THE FAMILY 162 (Harvard Univ. Press 2008).}
\footnote{Id., at 162.}
\footnote{Id.  See also The Sentencing Project: Voting Rights (2.4% of population overall and 8.3% of Black population cannot vote due to disenfranchisement of felons) (http://www.sentencingproject.org/map/map.cfm). In one state for which data are readily available, “67.5% of male felons and 81.2% of female felons incarcerated in Tennessee’s state prisons have children.” Tennessee Department of Correction Planning and Research Section, “The Children and Families of Incarcerated Felons: A Status Report and Demographic Inquiry” 2 (April 1995).}
\footnote{FOLBRE, VALUING CHILDREN, note 41 supra, at 163.}
\end{footnotesize}
62.6%). And they vote: Voters are older and Whiter than the population as a whole—and than children to an even greater degree. With these elder programs, the poverty rate for the population that is 65 or over (approximately 12% of the population) fell from 29% in 1966 to 10% in 2005.

These key elder protections are, in addition, 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 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. With children’s programs, over the same time that elder-poverty decreased, the poverty rate has been relatively constant at about 20% for the approximately 26% of the population that is 18 or under.

Federal programs for the elderly have by no means eradicated poverty for that age cohort, especially for older women. The issue of means-testing payment of benefits to the wealthy elderly, moreover, is a live one. Nevertheless, with twice the population, children have far less...

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45 Id., at 162 (2000 statistics). These numbers reflect lower life expectancies for Blacks and Hispanics as well as earlier parenthood and slightly higher fertility rates for those groups. Id.


47 FOLBRE, VALUING CHILDREN, note 41 supra, at 161. In 1959, elder-poverty was actually higher than child poverty: 35% versus 30%. But such poverty fell dramatically especially in the 1970’s in response to government social programs. See Moore et al (Childtrends), note 24 supra, at 3. See also U.S. Census Bureau Quick Facts (http://quickfacts.census.gov/qfd/states/00000.html; DeNavas-Walt et al, note 28 supra, at 14 (persons 65 and older 12.9% of total population, 8.9% in poverty in 2009).

48 FOLBRE, VALUING CHILDREN, note 41 supra, at 168-169 (“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 them.”). 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, note 27 supra, 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, 470-475 (2007).

49 FOLBRE, VALUING CHILDREN, note 41 supra, at 161. See also DeNavas-Walt et al, note 28 supra, at 14 (children under 18 24.5% of total population, 20.7% in poverty in 2009).

50 WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, note 34 supra, at 26.

51 See, e.g., John Rother (AARP Executive Vice-President), “Opinion: Don’t Means
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 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, I begin with the former as the two are inextricably intertwined.  

1. Unpaid, non-market care

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

Time use statistics highlight not only these distinctive gender roles but more textured patterns as well. These statistics rest on an initial general definition of unpaid household work: “[A]ll activities that can be accomplished using readily available market substitutes for a person’s unpaid time are considered economically productive.”53 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 services; and Travel related to unpaid household work.”54

In 2003-2007, the average time per week spent on unpaid household labor by individuals 15 and older was 21.5 hours.55 Most of this time was spent on household activities (12.4 hours) with the remainder split almost

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52 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, note 34 supra, at 80. Paid care takes place against a backdrop of unpaid care, which is thus a necessary part of the picture of paid care.

53 Rachel Krantz-Kent, “Measuring time spent in unpaid household work: results from the American Time Use Survey,” Monthly Labor Review 46, 47 (July 2009). 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.

54 Id. at 47-48 (emphasis in original).

55 Id. at 48, 49.
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). These statistics demonstrate that the time spent on unpaid household labor is substantial: The average is half of a full-time 40-hour work week.

These statistics display a high degree of gendering. Women on average spent over 10 hours per week more than men on unpaid household work (26.7 hours versus 15.9 hours). In the peak child-rearing years, women spent about three times as many hours as men caring for and helping household children (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).

In terms of household activities, moreover, the 15.5 hours per week that women spent on average clustered around daily activities such as food and drink preparation and cleaning that are closely related to care (for children and other family members), while the 9.2 hours per week that men spent focused on activities such as household and garden care, activities which are essential but more distant from direct care. These jobs, moreover, can often be time-managed to coincide with a weekend.

When paid labor is added into the picture, I hasten to note, men’s and women’s overall work levels were comparable: 47.4 average hours per week for men across the population and 47.7 for women. The breakdown of these totals into paid and unpaid work, however, was dramatically different for men and women: 31.4 hours paid versus 15.9 unpaid for men versus 21.0 hours paid and 26.7 unpaid for women.

Parents living in a household with one or more of their children spent substantially more time than the average per week—30.4 hours—on unpaid household labor. Reflecting the presence of children, the adults in these households also spent far more time caring for and helping household members (9.3 hours) and only a bit more on household activities (13.8

56 Id. at 49.
57 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%.” WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, note 34 supra, 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 (Naomi Gerstel et al., eds., 2002)).
58 Krantz-Kent, note 53 supra, at 49 (Table 1).
59 Id.
60 Id. at 49 (Table1), 50, 51.
61 Id. at 49 (Table 1), 52.
62 Id. at 49 (Table 1).
63 Id. at 55.
64 This number and others given in the text include only hours in which the primary
hours), purchasing goods and services (3.4 hours), and travel related to unpaid household work (3.8 hours).  

The total number of hours worked (paid and unpaid) is substantially higher for parents: 63.4 hours on average for men and 61.0 hours for women. 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 even more extreme for parents. Mothers, on average, spent 22.9 hours per week in paid and 38.1 in unpaid work (11.8 of that in caring for household children). Fathers, on average, spent 42.5 hours per week in paid work and 20.9 in unpaid work (5.9 of them in caring for household children). Mothers, then, worked twice as many unpaid hours as paid hours, while fathers worked twice as many paid hours as unpaid hours.

This represents an extraordinary amount of care work overall given that there are 75.6 million children under 18 in the United States, and it accounts for the vast majority of care and supervision provided to U.S. children: Children under 11 spend only about 13% of their time in paid care. Despite the magnitude of this contribution, unpaid household labor, especially that of women, poses a challenge to standard economic measures of productivity. Beginning several decades ago, the case for the inclusion 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., Bureau of Labor Statistics, “News Release: American Time Use Survey—2010 Results,” 3 (June 22, 2011) (adults with at least one child under 6 spent “an average of 5.6 hours per day providing secondary child care” and this care is concentrated on weekends rather than weekdays) (http://www.bls.gov/news.release/atus.nr0.htm). See also FOLBRE, VALUING CHILDREN, note 41 supra, at 102-106 (redefining child care to include more active primary and secondary care but also more passive supervision, responsibility, and “on-call” time).

Krantz-Kent, note 53 supra, at 48, 52.
66 Id. at 55 (Table 3).
67 Id. As the number of children increase, the time use of fathers stays relatively constant. Mothers, in contrast, devote more time to unpaid labor and less to paid work as the number of children increases. 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) (Dec. 2009).
68 Krantz-Kent, note 53 supra, at 55 (Table 3).
69 “Population Tables” (2011 data) (http://www.childstats.gov/americaschildren/tables.asp) (estimated to grow to 82.3 million children in the U.S. in 2021); FOLBRE, VALUING CHILDREN, note 41 supra, at 110-113 (Table 6.2).
of this labor in economic analyses began to be made.\textsuperscript{70} Since then, the conversation has progressed, though public policy lags behind.\textsuperscript{71}

For the purposes of this article, I do not pursue these issues, though I note them as aspects of the devaluation of care work on a national scale—part of the system I am here describing. My point is simply that substantial care for children is provided on an unpaid basis outside the market and that this care is disproportionately provided by women—most often mothers. To the extent that there is an economic benefit that accrues to these carers for this work, it accrues indirectly via their attachment (usually through marriage) to an ideal worker and their access to the economic benefits he receives in that role.

2. \textit{Paid, market care}

How is caring for children rewarded in the market? Short answer: not well. Caring for children may offer intangible rewards, but it is not the

\textsuperscript{70} See, e.g., WARING, note 23 supra.

\textsuperscript{71} From the international to national to the state level, the importance of ensuring that policy decisions reflect the reality of unpaid labor and the fact that it is disproportionately done by women is starting to be recognized and alternatives to a traditional GDP approach proposed. At the international level, see, e.g., Joke Swiebel, “Unpaid Work and Policy-Making: Towards a Broader Perspective of Work and Employment,” (United Nations Department of Economic and Social Affairs—Discussion Paper No. 4, Feb. 1999) 1-2 (estimating total work time for men and women and concluding that women spend about 2/3 of their time in unpaid labor and about 1/3 in paid labor while the ratio is approximately the opposite for men). Swiebel concludes:

[T]wo tendencies seem to have been well established:

- On average, unpaid working time amounts to a comparable number of hours a week to the number of hours in paid employment.
- The burden of unpaid work and paid work respectively are distributed unequally between men and women.
- As a result, ‘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. \textit{Id.} at 2.

Swiebel also notes the difficulty of arriving at accurate economic values for unpaid labor. \textit{Id.} at 7 (comparing opportunity cost method and market cost method). At the national level, see the discussion in Warner, note 34 supra, at 80-81 (Bureau of Economic Analysis beginning to develop overall estimates of national productivity using American Time Use Surveys).

\textit{See also} Genuine Progress Index (GPI) initiatives in Maryland (http://www.green.maryland.gov/mdgpi/whatisthegpi.asp), Minnesota (http://www.nextstep.state.mn.us/res_detail.cfm?id=358), Ohio (http://www.green.maryland.gov/mdgpi/pdfs/GPI-Ohio.pdf), and Utah (http://www.utahpop.org/gpi.html). The GPI is an alternative to the Gross Domestic Product (GDP) that counts as positives non-market contributions to human well-being—including unpaid household labor (http://www.gpiatlantic.org/gpi.htm).
path to financial success.

I examine in this section three types of market occupations involving care for children. I have chosen these because they represent both a significant amount of care and 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, in households for wages. The second occupation is K-12 teaching, which ranges from a job requiring a large amount of care (kindergarten and elementary school teaching) to significantly less care (secondary school teaching). The third occupation is professional specialities relating to care for children; here I focus on pediatricians and family lawyers.

For purposes of comparison, the mean annual wage in the United States in May 2010 was $44,410. Those who offer care in its purest form, child care workers, earn a mean annual wage of $21,110—a bit less than half the overall national mean. Note that this amount applies only to wage-earning, formal child care workers who work for schools, centers, businesses, or agencies. A substantial number of additional child care providers are either self-employed (mostly family day care providers), 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.

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74 Bureau of Labor Statistics, “Child Care Workers,” note 4 supra. Some of these workers may work in private households, but their employers are not the heads of those households.
75 In 2008, the Bureau of Labor Statistics estimated that a total of 1.3 million workers provided child care; of these, 33% were self-employed and 19% worked in private households. Bureau of Labor Statistics, “Occupational Outlook Handbook,” note 73 supra. The 611,280 wage-earners whose mean annual income is $21,110 appear likely to constitute the large majority of the remaining approximately 48% of child care workers overall. (48% of 1.3 million is 624,000.) Even the 1.3 million figure of the Bureau of Labor Statistics, however, does not include paid relatives, neighbors, and friends. A study by the Center for the Child Care Workforce estimates the number of paid caregivers for children ages 0 to 5 only (the Bureau of Labor Statistics numbers cover workers providing care for children of all ages) at 2.3 million, of which 35% are paid relatives. Center for the Child Care Workforce, “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” (May 2002) (http://nccic.acf.hhs.gov/node/23025). Given that there are 21.3 million children under 5 in the U.S. today and that 70% of women with children under 6 work full-time, these numbers seem, if anything, low.) The difficulty in arriving at accurate child care numbers and the fact that several categories fade into more formal, household, unpaid or discounted arrangements highlights again the inextricability
Though statistics on the wages of these additional care workers are not available, I believe it unlikely that their wages exceed those of formal child care workers. I suspect that their wages are lower given that these providers are less “arms length” and may have less bargaining power as individuals as compared to institutions. There are, moreover, a significant number of undocumented immigrant domestic carers. One estimate puts this number at 300,000.\(^76\) Again, without available data, I suspect that this fact depresses the wages of child care workers not included in the official estimate. The $21,110, then, may be taken as a generous estimate of the market price for child care.

As with unpaid care, women predominate in providing paid care. In 2010, 95% of formal child care workers were women.\(^77\) (Note, in comparison, that only 12% of parking lot attendants were women.)\(^78\) At a maximum, then, child care work, performed overwhelmingly by women, is less than half of the national mean wage; even the occupation of parking lot attendant, which is performed overwhelmingly by men, pays more.

K-12 teachers get paid substantially more. Teacher salaries range from a mean of $51,550 annually for kindergarten to $54,330 for elementary school to $54,880 for middle school to $55,900 for secondary school.\(^79\) 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. While 98% of preschool and kindergarten teachers were women\(^80\) and 82% of elementary and middle school teachers were women,\(^81\)

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\(^76\) Highbeam Business: Private Households (referring to a study by the Center for Migration Studies) ([http://business.highbeam.com/industry-reports/personal/private-households](http://business.highbeam.com/industry-reports/personal/private-households)).


only 55% of secondary school teachers were women.\textsuperscript{82}

Though salaries are somewhat higher for secondary school than for middle school and higher for middle school than for elementary school, those differences do not appear significant enough to account for the differences in male participation in teaching at those levels. Male participation may vary less with salary than with job description. As the age of the children increases K-12, the occupation’s ratio of care to more academic interactions with children decreases. There is a substantial difference, for example, between the care responsibilities of an elementary school teacher, whose schedule provides few breaks and who cannot leave her classroom unattended for even a few minutes and those of a middle or secondary school teacher, who has regular breaks of a few minutes throughout the day as her students, with only general supervision, pass from class to class. The lesser amounts of care required for older students, given care’s feminine gendering in our culture,\textsuperscript{83} may contribute to more men teaching older children.

This pattern suggests effects relating to gender and the “care content” of K-12 work that raise the issue of comparable worth—equivalent pay for jobs traditionally held by women compared to jobs traditionally held by men.\textsuperscript{84} Is K-12 teaching subject to salary depression because of its performance by women, which is tied to its association with care and femininity?

The argument that K-12 teachers are underpaid compared to similar male jobs rests on the fact that until very recently teaching was one of the few jobs open to women, especially educated women.\textsuperscript{85} As other, higher-status and higher-paying occupations have opened up, highly qualified women have been drawn away from teaching as a career: “In this new world, the brightest women go toward the best jobs.”\textsuperscript{86} And in this new world, “[t]he wage premium for women who have some graduate education (as do most secondary school teachers, for example) and are not teachers is now 40%.”\textsuperscript{87} In this view, K-12 teaching salaries undervalue the work

\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} See WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, note 34 supra, at 79.
\textsuperscript{84} See PAULA ENGLAND, COMPARABLE WORTH: THEORIES AND EVIDENCE 1 (Aldine de Gruyter 1992). Another term for comparable worth is “pay equity.” Id.
\textsuperscript{86} Id.
\textsuperscript{87} Id. One result of relatively low wages for K-12 teaching is a pool of teachers who are not the best and brightest and who do not offer their students the best in terms of care, creativity, and instruction. Temin continues with a discussion of how this phenomenon creates a vicious cycle. “Finding themselves with lower-quality teachers, school districts
provided, work traditionally performed by women and work of which care is an essential component.

The conclusion that care is both valued less and more likely to be undertaken by women is supported by data from the professional occupations. For doctors, general pediatricians are at the bottom of the salary scale, with a mean annual wage of $165,720.\(^8\) Family and general practitioners earn more, $173,860, as do internists (generalist doctors who focus on adults), $189,480.\(^9\) At the high end of the range, OB/Gyn doctors make $210,340, anesthesiologists make $220,100, and surgeons make $225,390.\(^9\) Women are, moreover, heavily represented in pediatrics.\(^9\)

For lawyers, family law is at the bottom of the compensation spectrum with a salary range of $39,368 to $104,829.\(^9\) Salaries then range

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\(^{89}\) Id.

\(^{90}\) Id.

\(^{91}\) American Medical Association, “Statistics History” (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. Of these, 49,541 were in internal medicine, 39,468 were in pediatrics, and 30,471 were in general practice. Then came 18,520 in OB/Gyn and 14,066 in psychiatry. The Bureau of Labor Statistics does not break out its male/female occupational data on doctors by specialty. Overall, 32.2% of “Physicians and Surgeons” were women in 2009. Bureau of Labor Statistics, “Women in the Labor Force,” note 77 supra.

\(^{92}\) PayScale, “Salary by Practice Area for Attorney/Lawyer Jobs” (July 2011) (http://www.payscale.com/research/US/Job=Attorney_%2f_Lawyer/Salary/by_Practice_Area). Data correlating the sex of lawyers with practice areas and salaries are less available than for doctors. The Bureau of Labor Statistics gives an average annual wage, $129,440, for all lawyers without differentiating areas of practice (as it does with doctors). Bureau of Labor Statistics, “Economic News Release,” note 72 supra. And, as with doctors, the Bureau gives only overall data on women in the profession: In 2009, 32.4% of lawyers were women. Bureau of Labor Statistics, “Women in the Labor Force,” note 77 supra. Moreover, 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
through criminal law ($39,631 to $123,814) and general practice ($40,151 to $122,629) to personal injury ($42,125 to $121,374) and real estate ($45,732 to $137,151), with litigation ($49,003 to $147,539) and corporate law ($49,475 to $166,166) at the top end.93

The data in this section reveal a correlation between low pay in the market, jobs that require care for children, and female workers occupying those jobs. The statistics in the previous section demonstrated that an enormous amount of unpaid time is spent on care for children. This time is centered in households, disproportionately spent 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. Someone must care for children. Most such care is provided by women in households on an unpaid basis with access to ideal-worker wages the primary mechanism for supporting it financially. Care in the market earns the women who provide it less, sometimes far less, than ideal-worker wages, which disadvantages them and their children—if that is their sole income. Care wages, especially child care worker wages, are further depressed by being a private household expense.

II. THE MARKET UNDERREWARDS CARE FOR CHILDREN

In this Part, I assert that care for children is underrewarded in the market and examine both causes and implications of this devaluation.

A. The Market and Children

1. Children as akin to public goods

I am always intrigued when—as with the quotations at the beginning of this article—I see similar insights expressed by people with radically different backgrounds. Two military strategists known collectively as “Mr. Y” and feminist economist Nancy Folbre provide a pertinent example.

Earlier this year, my attention was caught by an article in the New York Times about 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.”

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

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.” This recognition points to proposed action. 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.”

Feminist economist Nancy Folbre, though looking through a very different lens, offers a similar vision when she characterizes children as akin to a “public good”—in economic terms, something that benefits the

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96 “Narrative,” note 95 supra, at 3.

97 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.

98 Id. at 7 (emphasis added).

99 Id. (emphasis added) (“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.”). I note, vis-à-vis this passage that it is highly unusual to see allusion in such a context to the importance of supporting parents. Parents’ work is often taken for granted socially and attention paid only when it is left undone.

100 FOLBRE, THE INVISIBLE HEART, note 24 supra, at 111.
community or society at large but that is unproduced or underproduced by the market because their benefits cannot be captured by private actors.\textsuperscript{101} As a result of the market abstaining or participating to only a limited degree, government provides an important vehicle for acting collectively to provide public goods. Clean air is a public good; national defense and safe neighborhoods are public goods; many roads have the characteristics of public goods.\textsuperscript{102}

Public goods are often characterized as being non-rivalrous, “joint,” or “non-depletable.”\textsuperscript{103} My breathing clean air doesn’t prevent you from breathing it also; 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:\textsuperscript{104} 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.\textsuperscript{105} Clean air, the Grand Canyon, Macchu Picchu, a Magritte painting, political and economic stability, a human heart, 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.\textsuperscript{106} 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.”\textsuperscript{107}


\textsuperscript{102} Cowen, note 101 supra.

\textsuperscript{103} Id. See also Anatole Anton, “Public Goods as Commonstock: Notes on the Receding Commons,” 3, 9 in ANATOLE ANTON, MILTON FISK, AND NANCY HOLMSTROM EDs., NOT FOR SALE: IN DEFENSE OF PUBLIC GOODS (Westview Press 2000); DAVIS & HULETT, note supra, at 35-36, 63.

\textsuperscript{104} See note 101 supra.

\textsuperscript{105} See Anton, note 103 supra, at 9. Non-commodification, moreover, flows from the nature of certain realms and the inapplicability of the market in those realms.

\textsuperscript{106} Cf. Nel Noddings, “Education as a Public Good,” 279 in ANTON ET AL, note 103 supra (discussing ways in which public schools serve the public good).

\textsuperscript{107} FOLBRE, VALUING CHILDREN, note 41 supra, at 179-180 (quoting Katharine G.
Children are the taxpayers of tomorrow, the workers of tomorrow, the leaders of tomorrow.

As with other public goods, moreover, the future benefits of these children benefit us all and are not easily restricted. Finally, the market currently underprovides for their care, though that care is undertaken not primarily 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.”

Similarly, parents assume most of the costs of producing citizens and leaders; government picks up only a minority portion of the tab.

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—as ends in themselves. We owe these duties despite the fact that intergenerational responsibility as a matter of social moral philosophy is not well developed.


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

The picture of provision of care for children points to three current deficiencies. First, for the most part this public good is provided by nongovernmental actors, and the primary governmental action involves first
anointing the individuals who will be responsible for child-rearing (biological mothers, fathers where paternity is proven, married spouses of mothers, domestic partners of mothers, adoptive or foster parents) and then creating minimum performance standards. The government does set outside parameters: Child abuse and neglect statutes are the most obvious example. But the government’s overall attitude is *laissez faire*.116

As described in Part I, the government does relatively little to support the nongovernmental actors who provide the public good of care for children—either through the provision of care or services directly or through mandated paid family leave or similar requirements that others accommodate care needs. Where support is provided, it is haphazard and inequitable.117 K-12 public education is universal but of highly variable quality.118 Higher public education is increasingly difficult to access.119

Second, the limited care that is provided is decentralized, localized and fragmented. In fact, the primary provision of care *by government*—K-12 public education—encourages a constricted, balkanized and balkanizing, definition of the “public” benefited by the provision of this public good. Though free K-12 public education is universal in the U.S., every state has delegated the implementation of this service to local school districts. The message inherent in this institutional structure is that the children of each school district are the public good of its citizens only rather than of the state as a whole. If such a message were ever accurate historically, it presents a far from accurate picture of today’s mobile world.120

This parsimonious definition of the “public good” of “our children” is reinforced by local school districts being funded primarily by 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. Wide disparities in jurisdictional funding and student-body demographics result and persist.121

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116 I am not suggesting that the government take over from parents. I do think, however, that if we as a society expect, rely on, and benefit from socially valuable work from parents, we should acknowledge and support that work, financially and by making the job as do-able as possible.

117 *FOLBRE, VALUING CHILDREN*, note 41 *supra*, at 139-159.


119 *FOLBRE, VALUING CHILDREN*, note 41 *supra*, at 170-171. *See also WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE*, note 34 *supra*, at 163-164 (class stratification of colleges).

120 *Cf. FOLBRE, VALUING CHILDREN*, note 41 *supra*, at 184 (making a similar point vis-a-vis immigrants).

121 Raegan Miller and Diana Epstein, “There Still Be Dragons: Racial Disparity in School Funding is No Myth,” Center for American Progress (July 5, 2011)
Finally, current law and institutional structures provide no clear articulation of an overarching obligation to children as future generations of our society as a whole. We owe intergenerational duties—just as we owe certain present moral duties. Yet our framework for translating this moral obligation into more tangible duties is weak.

We have instead a well-entrenched practice of public decision-making that 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.\(^{122}\) This practice applies market assumptions to nonmarket situations and leads to future considerations bowing to present ones. Cost-benefit analysis skews our consideration of present and future and leaves us groping to define our obligations to the future—to children, to our future selves, to others.\(^{123}\)

Despite these shortcomings, the fact that government expends substantial sums on children confirms a widespread view that investing in them makes social sense, that their care and cultivation contribute to the common good. Children are already seen as akin to public goods to at least some degree.

Overall, as with public goods, the market underprovides care for


children. The government does step in to provide care, but only to a limited extent, and what governmental provision there is reflects and perpetuates a localized, divisive view of the public good this benefits. This provision of care, then, is only partial. The care vacuum left by the market is filled by non-market, non-governmental actors, predominantly women. A concerted public statement—not just in words but in acts—of the value of care for children and a social moral duty to children as ends in themselves and as our social future, is missing.

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

1. Patriarchy and care for children

Folbre asserts, “Patriarchy was not simply a means of privileging men. It was also a means of ensuring an adequate supply of care.” The implications of 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 that care, and those arrangements must be continuous and reliable because children require such care to survive.

Patriarchy is one social arrangement, though not the only possible one, that fulfills this requirement. For the care focus of this article, patriarchy is a social system in which women are assigned responsibility for care for children, men are excused from responsibility for such care and assigned other activities that receive social validation, and women are excluded from those other socially validated activities.

Biologist Mary Clark, in her comprehensive work In Search of

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124 With neither non-market, non-governmental (family) provision of care nor with local school districts am I proposing here 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 actors and local units provide.

125 Nancy Folbre, “The Milk of Human Kindness,” in JACQUELINE GOODMAN, ED., GLOBAL PERSPECTIVES ON GENDER AND WORK: READINGS AND INTERPRETATIONS 147, 155 (Rowman & Littlefield 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 because the ability to develop that propensity is what is supported and valued in the traditionally male sphere. As discussed below, see notes 140-141, 150-151, 162-164 infra and accompanying text, I believe that patriarchy has harmed men as well as women, though in different ways.
HUMAN NATURE, 126 concludes that the essence of human nature is flexibility—a flexibility that is manifested in a broad array of cultural patterns.127 Understanding patriarchy as a cultural variant illuminates its contingency, an attribute highlighted by historian Gerda Lerner in THE CREATION OF PATRIARCHY.128 Viewing patriarchy this way enables us to step outside of our experience of it and look at it as functional, though certainly imperfect.129

Sociologist Elise Boulding, in THE UNDERSIDE OF HISTORY,130 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.”131 In this regard, she 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 of 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.132

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

126 MARY CLARK, IN SEARCH OF HUMAN NATURE (Routledge 2002).
127 Id. at 120-125.
129 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.
131 Id. at 36. See also LERNER, note 128 supra, at 38, 40-42 (the extended helplessness of human infants necessitated women taking on mothering as the initial division of labor).
132 BOULDING, note 130 supra, at 113. See also LERNER, note 128 supra, at 224.
As to men, Boulding expresses less certainty, though she—and Lerner—point to the transition from hunter-gatherer societies to agricultural settlements as the point at which male dominance emerged. Here societies in which women had more productive roles than men (one of which was reproduction) left men with excess time and “role deprivation.” Or, according to Lerner, “women were longer confined to species-essential activities [reproduction and associated activities] than men and were therefore more vulnerable to being disadvantaged.”

Nuances aside, the net result was that “[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.”

Once the initial steps toward patriarchy were taken, the “multiplier effect”—“a small evolutionary change in the behavior pattern of individuals [that is] amplified into a major social effect by the expanding upward distribution of the effect into multiple facets of social life”—led to its expansion. The result, over time, was “social drift”—“random divergence in the behavior and mode of organization of societies or groups of societies”—from a more sex-equalitarian culture toward patriarchy. Eventually, as a system of patriarchy became entrenched, awareness of its original contingent nature was lost.

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. The result was the physical sequestration of women as well as their marginalization from group matters. This marginalization of women accelerated when economically productive work for men moved away from the household.

This history 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 as a social function went with them. This essential pattern of women caring for children within the household is the bass line accompanying the more discernible tune of sex-

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133 Boulding, note 130 supra, at 37; Lerner, note 128 supra, at 50.
134 Boulding, note 130 supra, at 122.
135 Lerner, note 128 supra, at 52.
136 Boulding, note 130 supra, 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.
137 Id. at 34.
138 Id. at 165-166. 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.
139 Id. at 9.
differentiated roles and male privilege to this day. Women are constrained from participating in public life because of inconsistencies between the role of carer and that of defender (historically) and that of the ideal worker (today), as well as cultural norms of femininity that enforce those roles. 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.

2. 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 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. Further, even care for children in the market is provided disproportionately by women, with higher proportions of women where more care is required.

Conversely, care for children is relatively absent from the market as experienced by men. While men are underrepresented in care occupations such as those described above, 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. Even when care for children is handled through the market, men are elsewhere.

Men’s ideal worker obligations, moreover, constrain their ability to care for children in the household. Care requires regular, frequent investments of time. Children must be dressed, fed, bathed, and cared for and supervised throughout the day and night. Men end up with not only less time available for care but less experience, fewer skills, and

140 See notes 150-151, 162-164 infra and accompanying text.
141 Hierarchy as a system has drawbacks for all those within it. See CLARK, note 126 supra, at 250-262.
142 See notes 57-60, 67 supra and accompanying text.
143 See notes 77, 80-82, 91 supra and accompanying text.
144 WILLIAMS, UNBENDING GENDER, note 31 supra, at 81.
145 Along with norms of masculinity, see notes 190-192 infra and accompanying text.
consequently often less inclination. A vicious cycle can result, with men’s withdrawal from care fueling investment in work compounding further withdrawal.

Overall, then, the market today reflects the traditional, essential task assignments of patriarchy through bifurcation of “women’s work” and “ideal worker jobs.” Women’s work accommodates to unpaid care responsibilities in households, especially care for children. And market work that includes care is work that women do. On the flip side, men work at ideal worker jobs that are inconsistent with unpaid care responsibilities in households. And market work requiring care is not work that men generally do.

3. 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. Somewhat paradoxically, these differential effects derive from a shared, underlying human nature

Biologist Mary Clark, though emphasizing the flexibility of humanity, nonetheless identifies three human propensities that are universal: autonomy, bonding, and meaning. 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. 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.

Clark points to the cultural variability that results from human flexibility as our evolutionary trump card. Because of social drift and the

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146 The discussion here emphasizes universal human propensities, on 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, see CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (Harvard Univ. Press 1993) (girls less willing than boys to accept absolutist moral categories), and Nel Noddings, see NEL NODDINGS, CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION (relational ethics explicitly based on care) (Univ. of Calif. Press 1984), that explore values and norms that have traditionally been gendered feminine.

147 See text accompanying note 126 supra.

148 CLARK, note 126 supra, at 57-59.

multiplier effect, this variability is immense, yet within each culture individuals bend toward the universal propensities as flowers toward sunlight.

Different members of a society are often in different positions 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.\(^{150}\) Being female or male offers women and men different 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.\(^ {151}\) 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 Clark’s. This approach, which owes much to Aristotle, Kant, Karl Marx, and Nobel Laureate Amartya Sen,\(^ {152}\) grows from the essential principle that each human being is an end in her or himself, “that there are universal obligations to protect human functioning and its dignity, and that the dignity of women is equal to that of men.”\(^ {153}\) Nussbaum sees “the human being as a dignified free being who shapes his or her own life in cooperation and reciprocity with others.”\(^ {154}\) This approach “contains...a reference to an idea of human worth or dignity...[and] makes each person a bearer of value, and

\(^{150}\) The lack of autonomy for women has been the subject of much political discussion and agitation and has resulted in more autonomy, at least for economically privileged women. In the view I am proposing here, autonomy is important because it is a human propensity—not only because it happens to be valued in our society. Because of our cultural structure, bonding has been undervalued, and men have not agitated for it. This 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 Seeman, “Social ties and health: The benefits of social integration,” 6 Annals of Epidemiology 442 (#5 1996). Meaning, which grows from the other two propensities, is constricted—though in different ways—for both women and men.

\(^{151}\) See LERNER, note 128 supra, at 52. See also note 190 infra.

\(^{152}\) See, e.g., MARTHA C. NUSSBAUM, SEX AND SOCIAL JUSTICE 34 (Oxford Univ. Press 1999) (“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.”). Cf. AMARTYA SEN, DEVELOPMENT AS FREEDOM 3-53 (Alfred A. Knopf 1999) (emphasizing human freedom rather than production of goods and services [GNP] as ultimate measurement of economic success).


\(^{154}\) MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 72 (Cambridge Univ. Press 2000).
an end.”155

Nussbaum formulates a list of central human capabilities that, when ensured for all individuals, afford a “decent social minimum.”156 Among these capabilities are several that undergird or echo Clark’s autonomy propensity,157 others that resonate with Clark’s bonding propensity,158 and several that point toward Clark’s meaning propensity.159

While ensuring these capabilities points toward a loose level of equality, Nussbaum 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.*160

Choice is an essential part of humans being ends in themselves.161

Nussbaum’s capabilities roughly track Clark’s propensities, and her approach sheds a similarly critical light on cultural practices that constrain female autonomy on the one hand and male bonding on the other.162 But

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155 *Id.* at 73. See also *Nussbaum, Sex and Social Justice*, note 152 supra, at 34 (“[T]he capability approach considers people one by one” [not as parts, for example, of a family or household]).

156 *Nussbaum, Women and Human Development*, note 154 supra, at 75.

157 *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. On the others: *Senses, Imagination, and Thought* is “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.

158 *Id.* at 79.

159 *Senses, Imagination, and Thought; Practical Reason; Other Species; and Play. Id.* at 79-80.

160 *Id.* at 87 (emphasis added).

161 *Ensuring the capabilities that put humans in a position to exercise such choice is “a central social goal” — “a moral claim.” Nussbaum, Sex and Social Justice*, note 152 supra, at 43.

162 See also id. (“inequalities based on hierarchies of gender or race will themselves be
Nussbaum’s emphasis on choice also directs our attention to the failure to provide meaningful access to certain capabilities. The question becomes: What limits the ability of females to access greater autonomy and males to access greater bonding?

Cultural norms are one answer, and cultural norms can be addressed directly through changing personal, social, and legal stories.\textsuperscript{163} Institutional arrangements are another answer. Williams’s ideal worker analysis shows how our market economy and the laws and institutions that shape it presume workers without family responsibilities. This system constrains choices for both women and men, as Williams is quick to point out.\textsuperscript{164} Without significant changes to the ideal-worker-centeredness of the market, choice is seriously constrained. At the same time, our social structures fail to acknowledge the essential contribution of those caring for children and effectively cast those carers adrift. Without significant changes to patriarchy’s assumption that mothers will care for children without social support, choice is again constrained.

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 forced to the extreme ends of a spectrum and given limited ability to choose the other end or, most important, to seek the balance of the middle.

C. The Market and Care

1. Gifts and markets

Thinker and writer Lewis Hyde has defined “gift systems” and distinguished between such systems and markets.\textsuperscript{165} In a gift system, “the gift must always move,”\textsuperscript{166} and the movement of gifts and the interaction 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.

\textsuperscript{163} See generally Strand, note 149 supra (connecting personal stories, social norms, and law); Palma Joy Strand, Law as Story: A Civic Concept of Law, 18 So. Cal. INTERDISC. L.J. 603 (2009) (describing law as a story emerging from and immersing into social norms).

\textsuperscript{164} WILLIAMS, RE SHAPING THE WORK-FAMILY DEBATE, note 34 supra, at 103-173.


\textsuperscript{166} Id. at 4.
involved in giving and receiving means that “gifts [ ] have the power to join people together.” Communities emerge from the circulation of gifts, and gifts are often between people who are related or know each other. Such relatively intimate gift exchanges, Hyde asserts, are significantly different from markets, where decisions are made at arms length.

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 cost-benefit analysis: Human life is an obvious example, but the natural environment and art share this quality. Responding to this discomfiture, we prohibit the sale of human organs, though giving them away is allowed. And, since the abolition of slavery, human persons or lives cannot be legally bought and sold, though a child can be given up for adoption.

Hyde’s discussion is normative as well as descriptive. The overall project of his book is to make the case that the creation of art is a gift activity and that, in a modern world in which the market is king, artists will feel “irreconcilable conflict.” 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 heritage akin to a public good that must be available to all. But Hyde also recognizes that the market—and its partner, law, which is necessary to bind groups larger than those where gift exchanges may prevail—can, and even should, co-exist. He concludes: “[T]here can be no market at all if all wealth is converted into gifts...[though] there is a degree of commercialization which destroys community itself.”

Though Hyde’s primary interest is art and artists, he devotes a chapter to women as gifts. He begins by noting that human life can be

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167 Id. at 71.
168 Id. at 45 (Alcoholics Anonymous), 83 (scientific knowledge).
169 Id. at 89.
170 Id. at 65-66 (kidney donation as an example).
171 Id. at 62-65 (cost benefit decision made regarding the Ford Pinto as an example).
172 Id. at 66.
173 See, e.g., ACKERMAN & HEINZERLING, note 123 supra, at 177.
175 HYDE, THE GIFT, note 165 supra, at 95.
176 Id. at 66.
177 Id. at 95-96.
178 Id. at 273.
179 See LEWIS HYDE, COMMON AS AIR (Farrar, Straus and Giroux 2010).
180 HYDE, THE GIFT, note 165 supra, at 274.
181 Id.
given but not sold: We as a society recognize that property rights in people are limited. Slavery is against the law; babies cannot be sold to adoptive parents; human organs are donated. Property rights vis-à-vis people allow giving but not purchase and sale in the commodity sense.

Hyde notes 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. 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.”\textsuperscript{182} 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.”\textsuperscript{183}

The functionality of such an exchange is peace between groups—“an active and coherent network of cooperating kin.”\textsuperscript{184} 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)”\textsuperscript{185} and women who, by virtue of their movement, become gifts.\textsuperscript{186}

And what of men? Men can also be gifts, but the context is quite different. Men serve, and die for, their country in war or defense. Their state calls and they give themselves; families give their sons, husbands, and brothers.\textsuperscript{187} These gifts, even when involuntary, enhance the connection to and power of the state, as seen after the 9/11 loss of American lives.

These distinct gift scenarios have important implications for women and men. In a patriarchy, “[i]f we take property to be a right of action and therefore an expression of the human will, then \textit{whenever a woman is treated as property, even if she is a gift, we know that she is not strictly...}”\textsuperscript{188}

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\textsuperscript{182} \textit{Id.} at 94. Note the major difference here between traditional property rights in women as Hyde describes them and property rights in slaves. This difference raises issues as to the applicability of jurisprudence eradicating slavery and its vestiges to jurisprudence eradicating patriarchy and its vestiges. \textit{Compare} \textsc{Lerner}, note 128 \textit{supra}, at 46-48, 50, 213 (discussing connection between exchange of women and “reification” of women and articulating view that it is women’s sexuality and reproductive capacities rather than they themselves that are commodified).

\textsuperscript{183} \textsc{Hyde}, \textsc{The Gift}, note 165 \textit{supra}, at 102. \textit{See also} \textit{id.} at 93.

\textsuperscript{184} \textit{Id.} at 94. \textit{See also} \textit{id.} at 99, \textsc{Boulding}, note 130 \textit{supra}, at 46-48 (“Historically...marriage has been the major alliance mechanism of every society, and little girls are trained for roles as intervillage family diplomats.”).

\textsuperscript{185} \textsc{Hyde}, \textsc{The Gift}, note 165 \textit{supra}, at 96.

\textsuperscript{186} \textit{Id.} at 93-97.

\textsuperscript{187} \textit{Id.} at 98.
her own person: her will is somewhere subject to someone else’s.’”

Women, that is, cease to be ends in themselves.

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.

Men use women as a means to an end rather than women being ends in themselves. This practice has obvious detrimental effects on women, who lack acknowledgement of and support for their full humanity.

But this practice also adversely affects men, who are called on to commodify—at least to some degree—other human beings. In fact, Hyde asserts, the “ability to act without regard to relationship has traditionally been a mark of the male gender.”

Men are expected to commodify not only women but other men, and this becomes both the norm of male spaces such as the market and the mark of gendered masculinity. 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. People become things, if practice if not in law.

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188 Id. at 100-101 (emphasis added).
189 Id. at 102 (emphasis added). See also LERNER, note 128 supra, at 214.
190 HYDE, THE GIFT, note 165 supra, 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.

191 See also WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, note 34 supra, at 83-85 (describing transition on oil rig from traditional masculine culture of detachment and intimidation to “kinder, gentler” [and safer] culture).
192 In this regard, patriarchy and slavery are connected. See LERNER, note 128 supra, at 76-100; ORLANDO PATTERSON, FREEDOM IN THE MAKING OF WESTERN CULTURE, VOL. 1 (Basic Books 1991) (tracing the historical connection between slavery and patriarchy, which rests on early slaves being predominantly women).
2. A gift theory of care

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

[W]hat we take to be the female professions—child care… 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.

Gift labor does not concern commodities and cannot be undertaken in an entirely “adversarial” or arms-length manner because it is to a large degree about interpersonal intimacy and connection.

This leaves those who perform gift labor 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 is especially true 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. My point here is simply that 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.” In Hyde’s view, we should recognize and value essential gift labor performed 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:

A significant barrier to moving in this direction is the

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193 HYDE, THE GIFT, note 165 supra, at 50.
194 Id.
195 Id. at 106-107 (emphasis added).
196 Id. at 107.
current triple equation of gift labor with women with low status. 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.197

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 for all or part of their lives—and livings!

Hyde’s discussion of gifts and care is the counterpart to Folbre’s discussion of public goods. Both rest on a recognition that care is an essential human function that is not, cannot, and should not be fully marketized.198 The clarity of this insight, we can now see, is obscured by the structures of patriarchy, which traditionally ensured that care was provided (by women in households) without marketizing it—but also without a clear recognition of its social importance 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.199 These trends put pressures on the system, but existing institutional and legal structures resist change.

III. TAX BREAKS TO SUPPORT CARE FOR CHILDREN

In this Part, I propose a set of tax breaks for income from occupations involving care for children.

A. Tax Policy and Care for Children

The following considerations regarding initiatives to address the issues regarding care for children described in Part I emerge from the perspectives presented in Part II.

197 Id. at 107-108 (emphasis added).
198 See generally ANTON ET AL, note 103 supra (identifying other similar realms of human activity).
199 Cf. LERNER, note 128 supra, at 218 (women’s only “choice” under patriarchy was to seek male protection for themselves and their children).
First, the high poverty rate for children reflects in large part a lack of access to ideal worker wages on the part of those who care for children, especially mothers.

Second, provision of care for children is significantly underprovided by the market.

Third, the idea of children as an essential national resource is severely underdeveloped.

Fourth, historical and cultural traditions—often denoted by the term “patriarchy”—assign the function of care of children to women (mothers) in households and exclude that function from performance by men in the market.

Fifth, we have deep-seated qualms about 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 the issues presented here in a way that acknowledges these considerations. For the reasons below, I propose, generally, tax breaks for taxes on income earned by people engaged in occupations involving care for children. And I propose, specifically, that these breaks be calibrated so that more benefits are received by those whose jobs involve more care (and whose incomes are usually lower). Following this criterion, child care 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 lesser marginal rate than would otherwise apply to their income level. These tax breaks could fall under an umbrella denoted simply: “We Care for Our Kids.”

This set of tax breaks would be easy to determine and administer. Relevant occupations could be identified by the Bureau of Labor Statistics and the tax treatment of each occupation determined administratively. Tax forms could readily be revised so that those filing could claim a credit, complete tax forgiveness for certain income, or a discounted 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” would experience greater financial stability, which would flow through them to their children. This stability, a result of tax policy, would not raise costs.

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200 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.
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 all or part of current taxes received by the wage-earner) would draw more individuals into these occupations.
- Third, these tax breaks would make a national statement that all children are valuable and that caring for them is an important social activity.
- Fourth, both the financial and the expressive aspects of these tax breaks would raise the status of these occupations, which would contribute to the blurring of the line between low- and high-status work in this area, women’s and men’s work, household and market.
- Fifth, because tax policy is often used in connection with socially valuable activity that doesn’t “fit” with or is underproduced by the market, a set of tax breaks would communicate that this is distinctive, “rewarded” behavior and would not subsume it further into the market.

B. Tax Breaks for Occupations Involving Care for Children

1. Tax credits for child care workers

Child care workers engage in the occupation with the highest concentration of care. It contains, in Hyde’s sense, a very high concentration of gift labor. These workers are overwhelmingly women, and they receive extremely low wages. Referring back to the comparison to parking lot attendants above, the market message is that we value our cars more than our kids.

The salaries of child care workers are paid generally by families who pay those salaries out of their market wages so that members of those families can work. Public provision and thus public salaries for child care are essentially nonexistent in the United States. More than any other occupation, then, child care is a “substitute” for unpaid household care provided by women.

This combination of factors points toward a substantial break for child care workers. I propose the provision of an actual tax credit in addition to complete forgiveness of income tax. This tax treatment

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201 See notes 4-5, 78 supra and accompanying text.
202 WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, note 34 supra, at 36-38.
203 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
acknowledges the valuable gift labor that child care workers provide for the national good, to our collective future.

2. *Tax forgiveness for K-12 teachers*

As noted previously, there is a distinct progression from kindergarten through secondary school of more care to less care as a component of the job. Along with this goes increasing pay and a shift from an almost entirely female work force to a relative balance between women and men. K-12 teaching pays significantly more than child care, which is likely due to its provision by the government as well as the education and training it requires.

The local provision of teachers and payment of teacher salaries, however, makes a pointed comment about investment in children. For well-off school districts in particular, institutional and legal structures reinforce the conviction that “our kids” are “these particular kids.” A larger sense of promise and responsibility is stunted, and poorer districts are too often left to their own devices. This artificially depresses investment in schools and teacher salaries. Most parents want the best for their own children. What may be lacking is a sense that “our kids’” (and “our” own) future well-being is tied to that of other children’s.

Notwithstanding depression of salaries, K-12 teachers receive a respectable income, though likely less than jobs of comparable training for men and discounted by the presence of gift labor and the fact that women are heavily represented in these jobs. For K-12 teachers, I propose the forgiveness of income tax on teacher salaries. Such tax forgiveness 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.

3. *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, pediatricians in particular, make far more than the national mean salary. At first glance, they appear to be doing just fine in market terms.

I see, however, two primary reasons for including them in the tax initiative I propose here. The first is relative disadvantage. Here we have the old story of what comparison we are making: Should we compare the salaries of child-oriented professionals to the annual mean wage or to the salaries of other professionals? Compared to the country as a whole, child-

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credit of even 100% of the income actually earned is not excessive.
oriented professionals are doing quite well. Compared to other doctors and lawyers? Not so well.

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 factors suggest that a vein of patriarchy persists and that gift labor is present.

The resulting relative disadvantage should be addressed. For these child-oriented professionals, I propose merely a reduction in their marginal tax rate.204 The inclusion of such professionals in this initiative is important, however, 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.

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

Rather than a linear chain of causation, this article has illuminated a web of interconnections between low market wages for the work of caring for children; the high amount of unpaid labor devoted to such care in households, predominantly by women; the economic marginalization of women and especially single mothers; and the disastrous implications of this marginalization for children. Recognizing this, Mildred Warner refers to “the nested context of child development in family environments, workplace policy, and public policy.” Such interconnections are characteristic of systems: Interlocking practices support each other; the cloth as a whole is woven of many threads.205

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

The constant in this system, the warp on the loom, is consistent

204 Adjustments to the marginal tax rate accommodate the ranges of income involved while preserving the acknowledgement that care for children is an important component of these occupations.
205 Warner, note 34 supra, 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 U.S. “unwillingness to invest and take collective responsibility for care.” Id.
allotment of little or no economic value, resources, or support to care for children. As discussed above, there are multiple reasons for this, and those reasons reinforce each other. Single parents, especially mothers, have difficult concurrently caring for children and achieving market success; they may be channeled into more accommodating work, which pays less and results in lower household income. The large pool of unpaid care labor reduces market wages and demand for the public good care constitutes, resulting in not only its underprovision—by market and government both—but even its underidentification as an important public good. This large pool of unpaid care labor also reinforces the ideal worker paradigm, which reinforces domestic and lower paid “women’s work.” Because care is and likely should not be fully commodified, care workers are at a disadvantage in bargaining for higher market wages.

I do not map here all the interconnections. 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 them in a precarious social position.

Changing this will require changing not just one thread but the whole cloth, the entire system. Yes, we should undertake the two-part task of changing the ideal worker paradigm to accommodate women’s movement into the market and making men’s participation in the unpaid work of care more possible.206 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 as well as women. Such proposals complement the tax break proposal in this article and should be actively pursued.

Yes, we should push beyond antiquated and dysfunctional arrangements for public school funding. In this most significant area of governmental provision of the public good of care for children, care is dispersed so as to reinforce existing inequities. This is unconscionable. These are children we are talking about.

Yes, we should, as we do with service in the military, acknowledge and support gift labor in the form of care for children. Care, like military service, is not purely gift; it contains market elements. Generous training and benefits packages have been used to attract and reward quality service

206 HYDE, THE GIFT, note 165 supra, at 108. See also WILLIAMS UNBENDING GENDER, note 31 supra, at 232-241 (“Market and family work can be restructured by changing one or more of three possible axes…allocation 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).
members. The underlying assumption is that these packages affect who chooses to serve, though there are intrinsic as well as extrinsic rewards. Explicit social recognition of the value of care contributions will benefit women immediately and will, over time, raise the status and render provision of care a more acceptable pursuit for men—increasing the pool of available carers by 100%.

Yes, we should consider more radical measures to blur the socially constructed lines between households and markets. We could, for example, address the domesticity counterpart of the ideal worker and acknowledge the contribution to the ideal workers in the market of women’s unpaid labor by giving an immediate equal property right to the unpaid spouse in any ideal worker wages earned by the other spouse. Understanding the contribution that domestic work makes to the market contribution of the ideal worker leads logically to a reconfiguration of property rights during as well as on dissolution of a marriage.207

Our touchstone with these and other actions should be providing those who care for children, and through these carers children themselves, a tightly woven and sturdy cloth that is close at hand. The tax proposal here, which highlights the value of care work without fully commodifying it, contributes one thread to this cloth.

IV. CONCLUSION

The proposed set of tax breaks offers economic relief to people who are currently 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, while at the same time preserving the special non-market, non-commodity nature of children and of their care.

These tax breaks, in addition to pushing on the system that disadvantages care for children, articulate a value not only for care but for children. And not just our own children, but all children—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

207 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, note 31 supra, at 124-138; WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, note 34 supra, at 132-133. 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 SO. CAL. R. 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).
care for them will be recognized as of immense social value. Changing the

*story* about children is essential.

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