FEMINISM CONFRONTS HOMO ECONOMICUS

Gender, Law, and Society

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CHAPTER 10

The Politics of Economics in Welfare Reform

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The demise of Aid to Families with Dependent Children (AFDC), the federal income support program for single parents (primarily mothers) in poverty, has come to symbolize the power of a broad movement to weaken the welfare state, both in the United States and around the world. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 instituted major federal welfare reforms by replacing AFDC with the more restrictive and discretionary block grant program called Temporary Assistance for Needy Families (TANF). This reform legislation states that its purpose, in addition to assisting families with children, is to “increase the flexibility of States in operating a program designed to . . . end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; prevent and reduce the incidence of out-of-wedlock pregnancies . . . and encourage the formation and maintenance of two-parent families.”

Many feminists have analyzed how supporters of recent welfare reforms often have relied on ideologies of race-based and gender-based subordination and on rhetoric expressing overt hostility to welfare recipients. Arguments against AFDC invoked race and gender stereotypes to demonize single mothers of color in particular, and unmarried low-income mothers in general, portraying them as undeserving and destructive members of society whose unrestrained sexuality and fatherless children threaten the public good. Neoliberal (or “free-market”) criticisms of the welfare state, and of AFDC in particular, use purportedly neutral economic principles to justify cutbacks in antipoverty programs. This approach attempts to make social welfare restrictions a matter of sensible science rather than contentious politics or moral dictate.
Neoliberal ideology embraces neoclassical economics, which teaches that social needs are constrained by the inevitable reality of scarce resources. The Law and Economics school of legal theory has been particularly successful at promoting neoliberal ideas as solutions to contemporary policy problems. The primary focus of neoliberal policy is economic efficiency, the principle of maximizing aggregate gain given scarce resources by weighing the total costs and benefits of decisions. Neoclassical economics distinguishes efficiency (or economic growth) from redistribution (or social equity). In theory, efficiency is the objective and impartial question of how to increase the size of the pie, whereas distribution is the subjective and partisan question of how to divide the pie. AFDC is typically presented as a classic redistributive program that transfers wealth from taxpayers to help needy families.

This neoclassical economic framework is ostensively indifferent to the choice between equity and efficiency. In the conventional wisdom, economic analysis can objectively evaluate whether a policy is efficient, but not whether economic efficiency rather than equitable redistribution is the preferable policy goal. Nonetheless, this framework implicitly puts those who favor equity over efficiency in a double bind: its theory of efficiency predicts that the choice of equity over efficiency will tend to fail on both equity and efficiency grounds. According to neoliberal “free market” theory, choosing redistribution over efficiency tends to produce three interrelated kinds of unintended economic consequences: externalities, transaction costs, and moral hazard. These economic effects constitute reductions in efficiency, in the conventional neoliberal view, so that the choice of equity over efficiency is not just a noneconomic choice but is also an economically harmful choice. But according to the standard “free market” analysis, these harmful effects also end up reducing equity along with efficiency. Because redistributive policies are likely to reduce overall economic growth, in the long run they will hurt those they aim to help—because those who are supposed to benefit most from equitable redistribution are the ones most likely to be particularly vulnerable to harm from a shrinking economic pie.

To counter the double bind presented by these economic arguments, welfare advocates should not simply defend the social value of redistribution. Instead, they should also challenge efficiency’s status as a distinct and distinctly “economic” value. In this essay, I explore how the three supposed economic harms of AFDC—externalities, transaction costs, and moral hazard—depend on political and moral ideology, not on economic principle. In welfare policy discussions, efficiency arguments serve as a strategy by which proponents of welfare cutbacks distort debate about the fair division of resources with a false pretense to an economically correct division of resources. To challenge criticisms of social welfare programs, feminists must attack efficiency not just as the wrong goal but as a misleading and inherently political goal.
From Redistribution to Efficiency

AFDC's rise and fall tracks a change in prevailing economic ideology. AFDC originated as part of the 1935 Social Security Act, under the name Aid to Dependent Children (ADC), and then expanded substantially during the federal War on Poverty launched in 1964. These New Deal and Great Society periods that nurtured AFDC were times of strong (although strongly contested) political support for the idea that markets must be regulated to promote economic and social equality. A context of substantial popular and professional faith in the power of the federal government to shape a better society helped Presidents Roosevelt and Johnson expand national social welfare programs.

By the 1970s, however, this faith tended to be replaced by cynicism about government and its role in promoting social equity. Rising economic insecurity for many middle-class Americans (particularly male industrial workers) during the 1970s and 1980s contributed to resentment of government spending aimed at helping poor families, particularly women of color. Free-market, or neoliberal, ideology gained prominence, with help from sophisticated think tanks, foundations, and lobbying efforts funded by organized business and wealthy individuals. In this view, government intervention is the problem, not the solution: market risk, not government security, best helps the poor and society at large. The Reagan administration applied this ideology through policies aimed at de-regulating business and cutting taxes for the wealthy, explaining that increased investment in job-producing business would “trickle down” to benefit others. Throughout the 1970s and 1980s, mainstream media discussions of Great Society programs became increasingly critical.

By the end of the twentieth century, the idea that the market should be regulated to promote social values tended to be presented as “archaic” in mainstream commentary. Neoliberal ideology particularly directed its antigovernment criticism against the welfare state, which in the United States is identified disproportionately with AFDC. Even though AFDC was a relatively small portion of the federal budget (1.5%), and even though the Reagan administration’s military spending drove the huge increase in government debt in the 1980s, critics presented social welfare spending as the primary problem of unaffordable “big government.” For example, Heritage Foundation analysts promoted welfare reform through a publication titled America’s Failed $5.4 Trillion War on Poverty, which exhorted Congress to control the “soaring welfare costs which are slowly bankrupting the nation.” Although these high welfare spending figures included numerous programs other than AFDC, AFDC was virtually the entire focus of the Heritage Foundation’s discussion of the problems and solutions to welfare spending. Ending “welfare as we know it,” as President Clinton described his proposals to reform AFDC, became to many a sign of an important step forward into a newly triumphant...
free-market era emphasizing personal initiative rather than government protection. Both major parties rationalized and promoted the 1996 welfare reform legislation by asserting that policies promoting market efficiency should be the primary solution to poverty. Former House Speaker Newt Gingrich—a leader of efforts to end AFDC—explained the international movement to curtail government antipoverty programs as the result of the failure of policies promoting "wealth redistribution over wealth production." He concluded that "emphasizing redistribution is a dead loser in helping the poor, compared to focusing on the production of wealth. The objective, historic long-term fact is that societies that focus on getting rich bring everybody up at a dramatically faster rate than societies that focus on redistribution succeed in raising the bottom." At the 1996 GOP national convention, Colin Powell insisted that "government assistance is a poor substitute for good jobs," which come "from a faster-growing economy where the free enterprise system is unleashed to create wealth." He praised Republican Party policies for leading to "greater economic growth, which is the only real solution to the problems of poverty that keep too many Americans from sharing in the wealth of this nation." Speaking about the Democratic Party's strategy for political success in 1996, Democratic Leadership Council (DLC) director Al From explained that "[i]n 1980, we believed that the government drove the economy and economic redistribution was really the hallmark of our economic policy. ... In 1996, we recognize that economic growth in the private sector is the prerequisite for opportunity." News reports and commentators presented President Clinton's signing of the 1996 welfare reform law as the culmination of the Democratic Party's change in economic vision. Even Democratic Party leaders and liberals who defend a role for government regulation and income protection generally have agreed that redistribution must remain secondary and subordinate to the goal of market efficiency. In the 2000 presidential campaign, both major parties took credit for welfare reform as an example of the success of market opportunity over government protection. George W. Bush boasted about his leadership in moving welfare recipients from "dependence on public assistance to independence and employment." Speaking at the 2000 Democratic convention, presidential nominee Al Gore boasted that "I fought to end welfare as we then knew it. . . . Instead of handouts, we gave people training to go from welfare to work. And we have cut the welfare rolls in half and moved millions into good jobs." DLC leader Al From continued to highlight welfare reform as one of the "bold innovations" of Clinton's New Democrat approach that has brought what he describes as unprecedented economic prosperity. The Wall Street Journal cited the "stunning decline in welfare rolls," along with the overall increase in single mothers in the workforce, as evidence that "the
Republican welfare reform has done more for the poor than the Great Society ever imagined.\(^{31}\)

**Efficiency’s Double Standard**

This mainstream consensus embraces the neoliberal message that even for those who seek equity, efficiency is the best, or at least the primary, choice. Some acknowledge that the choice of efficiency will produce harsh effects on some poor families. For example, reports on the effects of welfare reforms show that many families who have left welfare nonetheless have serious problems feeding their families even with full-time jobs.\(^{32}\) But in the neoliberal reasoning, such sacrifices are necessary to promote both equity and efficiency in the long run. Those who defend redistribution as a secondary goal, out of compassion for those harmed by the new emphasis on market efficiency, remain squeezed by the double bind: because of redistribution’s harmful effects on economic growth, welfare programs and their recipients must be sharply constrained.

This dominant framework therefore presents impoverished single mothers and their advocates with a losing choice.\(^{33}\) We can choose efficiency, which means directing resources away from single mothers in poverty (restricting AFDC benefits) to promote economic growth. Or we can choose redistribution, which directs resources toward families in poverty at the expense of others on whom their long-term well-being depends.

Feminist theory, however, offers strategies for resisting such double binds. Traditional equality theory similarly presented a supposedly neutral trade-off between equal treatment and special treatment that nonetheless offered feminists a similar set of losing choices.\(^{34}\) In that theory, women could be “equal” at the cost of ignoring gender differences (social or biological) that justified women’s subordination, such as the particular demands of pregnancy or family caretaking.\(^{35}\) Or women could be “different,” and therefore deserving of remedies for gender-specific harm, at the cost of making women’s particular needs inherently deviant and dependent on special protection.\(^{36}\) With either approach to equality, women remain subordinate.

Feminists challenged that double bind, however, by showing that it rested on a double standard of “equality” and “difference.” Women’s reproductive or caretaking needs are “different” and in need of “special” treatment only if one assumes as the norm a person without these needs.\(^{37}\) It is the implicit standard of a stereotypical man that makes the choice of equal or different treatment so costly for women—and so beneficial for men.\(^{38}\) Men who conform to traditional stereotypes can be both equal and different—getting a double benefit instead of a double bind—because “equal” treatment is defined to privilege their specific needs not as “differences” but as unstated norms.\(^{39}\)
In equality doctrine, separating “equal” treatment from “special” treatment begs the question of whose differences should be considered the standard for equality. In welfare policy, separating “efficiency” from “redistribution” similarly begs the question of whose particular economic gains should be considered beneficial to the overall public and therefore the standard for efficiency. The unstated norm that distinguishes “efficiency-promoting” policies from “redistributive” policies is on closer examination a distributive vision that tends to incorporate race, gender, class, and sexual hierarchies.

Just like the double bind of equal treatment versus special treatment that skews the choices offered by equality doctrine, the double bind of efficiency versus redistribution skews the choices offered by the welfare reform debate by resting on a double standard of economic gain. Those who are economically successful under current market structures can benefit from economic policies designed to promote their interests under the guise of efficiency, because neoclassical economics assumes their particular economic interests are in the public interest. The concept of efficiency disguises a distributional norm that treats government-facilitated private economic gain by some—especially white men, wealthy individuals, and corporations—as publicly beneficial independence. In contrast, the prevailing view of efficiency assumes that government-facilitated economic gain by single mothers in poverty is a matter of dependency and irresponsibility that detracts from the public interest.

This double standard means that in predominant economic ideology, single mothers in poverty are caught in a double bind, whereas some others receive a double benefit. Wealthy capital owners, for example, can get protection from the government for their particular economic interests—such as tax cuts, or an increased supply of low-wage workers—in the name of efficiency. That is because policies viewed as distributing money to middle- and upper-class families and businesses, especially those headed by white men, are more likely to be viewed as “wealth-promoting.” In contrast, government policies viewed as distributing money to low-income women and men, single women and their children, and women of color are typically viewed as redistribute wealth.

Feminist scholars have analyzed how social welfare programs in the United States have tended to be stratified on the basis of race and gender status, so that first-tier programs geared toward white men offer less stigmatized and more generous benefits than do programs primarily benefiting white women and people of color. That stratification, however, often is rationalized through the distinction between efficiency and redistribution. For example, in the early years after the 1935 Social Security legislation that produced AFDC, federal administrators instituted a public relations campaign to promote the Old Age Insurance program by distinguishing it from AFDC as an individual contractual benefit rather than charity. Old Age Insurance was a program designed to disproportionately benefit white male workers and their dependents.
Similarly, workers' compensation, also a program originally identified with and designed for white male industrial workers, traditionally has been contrasted to AFDC as efficiency based. In the 1970s and 1980s, most states expanded their workers' compensation coverage and benefits to better compensate a broad range of workers and injuries beyond the male-dominated heavy industry paradigm. But in the 1990s, employers and insurers successfully argued that these expansions had distorted the system's original market goals and had turned it into a redistributive welfare program. In particular, they attributed this change to increased compensation of injuries and illnesses particularly associated (in popular opinion, if not fact) with women workers, such as carpal tunnel syndrome and psychological stress claims. In response, many states restricted compensation for such injuries and illnesses on the ground of restoring efficiency.

Unemployment Insurance, another social welfare program designed primarily to serve middle-class white men, has also traditionally been distinguished on efficiency grounds from welfare programs like AFDC. Even though more mothers have now entered the workforce, in recent decades most states have restricted eligibility for unemployment benefits so that it continues to exclude most unemployed women. However, efforts to modify Unemployment Insurance to better recognize the particular needs of women workers have been criticized for deviating from Unemployment Insurance's economic efficiency goals. For example, many business advocates argued that the Clinton administration's proposed regulations allowing states to use unemployment compensation funds to pay for childbirth or adoption leave would transform the program from a market-oriented “true insurance system” into a welfare entitlement aimed at “social income redistribution.”

In sum, this critical line between efficiency and redistribution seems to fall along gendered (and racialized) lines and serves to exclude many women from government support. Just as feminists moved from defending special treatment for women to criticizing the gendered assumptions underlying the division between equality and difference, feminists can move from defending redistribution for women to criticizing the assumptions underlying the gendered division between efficiency and redistribution.

Challenging the Efficiency/Redistribution Distinction

Most discussions of law and policy assume the line between efficiency and equity is an objective (if sometimes elusive) matter of fact, not a question of value or social status. On one level, this distinction rests on a determination of whether a given policy represents “the free market” or “government intervention” in that market. But because free markets depend on government structures, and real-world markets inevitably fall short of the free market ideal,
determining what government policies support the goal of a “free market” and what government policies deviate from that goal requires additional criteria for determining when markets are functioning freely.

To distinguish efficiency-promoting from redistributive policies, then, analysts often look for evidence of three harmful effects of redistribution: externalities, transaction costs, or moral hazard. Although each of these interrelated concepts appears to present a neutral economic measure for determining aggregate gain, each can be applied only by making value judgments about how resources should be distributed. By recognizing these concepts as contested moral judgments rather than economic facts, we can show that supposedly redistributive policies are harmful to neither efficiency nor equity but only to particular moral visions or political interests.

**Externalities**

First, neoclassical economic theory states that policies that reduce harmful “externalities” promote efficiency. Efficiency requires “internalizing” all costs and benefits of a decision to the individual decision maker so that her individual net costs are equivalent to societal net costs. In the ideal free market, market prices internalize costs. By fully calculating the total costs and benefits of a particular choice, a decision maker can make efficient choices—that is, choices that will maximize total net gains given scarce resources. In contrast, redistribution is about changing who gets how much rather than changing total net gains. By definition, then, redistribution means a nonreciprocal exchange in which one party’s gain brings a loss to another. It follows that redistributive policies are not necessarily cost-internalizing: part of the costs of one party’s gain will be borne by others, and those others will not receive benefits in return for bearing those costs.

In the conventional economic view, AFDC was a classic redistributive program because it transferred some of the costs of supporting impoverished single-parent families from those families onto taxpayers: taxpayers paid the government, and the government paid income to AFDC recipients. By “externalizing” rather than “internalizing” costs, to use the terms of Law and Economics scholarship, AFDC is inefficient. In this view, AFDC benefits constitute “externalities”—that is, whatever their value for social equity, they do not produce the cost-internalizing price signals that induce individuals, acting in their own self-interest, to make decisions that increase overall economic growth. Conventional Law and Economics reasoning asserts that by externalizing AFDC mothers’ costs to taxpayers without requiring reciprocal benefits, AFDC was likely to decrease taxpayers’ opportunities to devote their resources to transactions that would instead produce net overall gains—profitable investments in job-creating industries, for instance. In this view, the 1996 federal welfare reforms reduced AFDC’s inefficient externalities: by
imposing time limits on welfare benefits and by requiring reciprocal contributions for work in exchange for benefits, TANF aims to reduce income transfers from taxpayers to poor mothers and to ensure that society receives more offsetting returns from the income transfers that do occur.

Despite the technical terminology, however, calling a cost an "externality" simply amounts to saying that the cost should go to someone else. Cost-internalization is ultimately about who should be responsible for which costs—an inherently value-laden and controversial question of distribution that cannot be determined by objective economic calculation. The view that AFDC externalized the costs of caring for children from single mothers onto taxpayers rests on the assumption that the costs of supporting and caring for children are the responsibility of single mothers, not taxpayers.

Martha Fineman powerfully challenges this assumption in her work, arguing that dependency is a universal condition that demands public responsibility from the state and market, not just from the family. Despite the prominence of the idea that dependent care is a private responsibility of families, many long-standing and popular government policies treat support for dependents and for caretakers of dependents as a public responsibility as well—and assume the resulting increase in caretaking is good. For example, public funding for schools eases individual families' responsibility for child care on a regular basis throughout a substantial period of childhood.

**RECIproCAL BENEFITS OF CARETAKING**

If we take seriously the value to society of dependent care, and if the societal value of that caretaking is not reduced by the class, race, gender, or sexual status of the caretaker (or dependent), then government income support for non-earning single mothers instead could be viewed as cost-internalizing. Martha Fineman argues that public support for caretaking could help correct the current societal situation in which the public reaps gains from dependent care but externalizes the costs of that care to women in "private" families. Fineman explains caretaking as an unreciprocated subsidy by many women to the public in general, rather than as a private benefit to caretakers.

The view that private caretaking labor brings public benefits has a long history. For example, in 1935, the Committee on Economic Security explained its proposal for the federal income assistance program that became ADFC by describing the public benefits resulting from government support of single mothers' caretaking; it stated that such assistance is "designed to release from the wage earning role the person whose natural function is to give her children the physical and affectionate guardianship necessary not alone to keep them from falling into social misfortune but more affirmatively to rear them into citizens capable of contributing to society." AFDC developed out of earlier mothers' pension programs, which many advocated as a means of recognizing
the critical civic contributions of (implicitly if not explicitly white) mothers. As President Theodore Roosevelt explained, “when all is said and done it is the mother, and the mother only, who is a better citizen than even the soldier who fights for his country . . . the mother is the one supreme asset of national life.”63

More recently, feminist economists have used neoclassical economic arguments to explain that government support for unwaged parental child care can be cost-internalizing rather than redistributive.64 Neoclassical economics recognizes that governments may promote efficiency by correcting market “failures” that prevent the market from setting normal cost-internalizing prices. For example, economists explain that the problem of “public goods” occurs when the total societal benefits of particular goods or services are greater than the private benefits to the buyers of those goods or services—that is, where a transaction produces “positive externalities” not captured (internalized) in the normal market price.65 According to the conventional economic theory, the “public goods” problem happens because, for some goods and services, it is hard to limit the benefits to the individuals who pay the price of the goods or services. If the individuals who pay for the goods or services do not receive the full benefits, they may be unwilling to pay the full price. As a result, private-market decision makers may refuse to buy and sell as much of those goods and services as would be socially beneficial. Government subsidies that raise the individual buyer's private benefits to levels that recognize the societal benefits can therefore help correct this inefficient positive externality that is causing an undersupply, in the standard economic view. Following this reasoning, feminists have argued that raising children into productive adults is a public good: although parents pay much of the costs of this activity (and receive many personal benefits), additional benefits inevitably spread over onto society as a whole.66 In this theory, programs like AFDC that provide public support for parental child care partly offset private parenting costs—thereby better internalizing the benefits (positive externalities) of parenting—to ensure that society receives the efficient level of child care.

Whether expressed in terms of citizenship visions or technical economic concepts, such arguments assert that AFDC is not an unreciprocated transfer from taxpayers to impoverished mothers but a (meager) compensation for their socially valuable child-care services. The problem is that government support for dependent caretaking has tended to be viewed as providing reciprocal public benefits rather than negative externalities only when those it assists count as members of the “public,” not as subordinate “others.” The original version of AFDC was designed to primarily benefit white widowed mothers.67 As AFDC became less racially discriminatory and more open to never-married and divorced mothers, mainstream discourse was less likely to view it as providing benefits to the public and more likely to view it as providing unreciprocated gain.68 Legal scholar Dorothy Roberts shows that arguments for welfare
reform build on an ideology that denies African Americans full citizenship status. Legal scholar Martha Fineman describes how rhetoric criticizing AFDC draws on ideologies that construct women not attached to men as deviant threats to society. The neoliberal economic view of AFDC as an efficiency-reducing externality dominated the recent public policy debate over welfare reform not because its economic logic was superior to the feminist economic view of AFDC as an efficiency-promoting correction of an externality (the public good problem). Instead, the neoliberal economic arguments prevailed because they captured and helped legitimate prevailing moral judgments that AFDC mothers' unpaid caretaking labor is not socially valuable, given their class, race, gender, and sexual status.

In an attempt to defend opposition to AFDC on grounds other than explicit racism or misogyny, legal scholar Amy Wax argues that caretaking work alone does not constitute a public contribution sufficient to merit public income support. Although she concedes that impoverished non-earning single mothers engage in productive labor, she insists that this caretaking work produces “purely private benefits” to parents and children. Although accepting the “public goods” argument in general, she argues that in the specific case of caretaking by impoverished single parents, collective support for caretaking is likely to produce net social costs, that is, negative externalities. She distinguishes cost-externalizing caretaking by single mothers from economically efficient caretaking work performed by non-earning wives, arguing that married caretakers supported by breadwinner husbands are cost-internalizing and can even produce net social benefits. She claims (without support) that “most families consisting of mothers with employed spouses do indeed pay their own way” and that, as a unit, traditional breadwinner–homemaker families “are almost always self-supporting and able to live decently without public subsidy.”

Wax's bare assertion that traditional breadwinner–caretaker marriages thrive without public support ignores a substantial system of taxpayer subsidies for families with non-earning or low-earning wives—subsidies that particularly benefit the wealthiest families. Economist Nancy Folbre explains that families with sufficient income to pay federal income taxes benefit from implicit (although generally inadequate) government family allowances in the form of dependent care deductions (which increase as income increases) as well as from child-care credits that benefit most those who can afford to spend the most on child care. Folbre reports that in the 1990s, families in the top federal income tax brackets could take advantage of taxpayer subsidies for child care that “far exceeded” federal expenditures on AFDC combined with child-care programs aimed to serve low-income families. The home mortgage income tax deduction and tax deductions for health insurance provide huge public subsidies for wage-earning families' housing and medical costs, but these benefits are skewed to provide the most benefits to the wealthiest families.
Other federal programs give special subsidies not just to high-earning families but specifically to married parents who conform to traditional breadwinner–homemaker roles. The Social Security system’s old age and survivor’s benefits are structured so that non-earning wives of wage-earning husbands—but not single parents or dual-income spouses—receive subsidies for unpaid domestic labor.78 The federal income tax system’s income-splitting provision for jointly filing married couples subsidizes high-earning breadwinners married to non-earning or low-earning spouses at an annual rate of $33 billion in the mid-1990s79 (compared with $2.2 billion for AFDC).80 This huge tax break provides a system of implicit public support for unpaid family caretaking (and other unpaid labor or leisure) that goes mostly to families in which women forgo substantial wage work, again with the largest subsidies targeted to the wealthiest families.81 In contrast, the same system of joint taxation and income splitting famously imposes a “marriage penalty” on dual-earning spouses, a penalty that particularly burdens married parents who work for low or modest wages.82 Although legislation enacted in 2001 gradually phases out this “marriage penalty” for many dual-earner families, it retains the large tax bonus for high-earning breadwinners married to non-earning or low-earning caretaker spouses.83 By accepting AFDC’s subsidies for family child care as cost-externalizing redistribution, while erasing these lavish subsidies for wealthier, married parents as normal self-sufficiency, Wax reflects and reinforces traditional ideologies in which race, gender, and class status determine whether family caretaking deserves public support.

Like many welfare critics, Wax goes on to support her claim of negative externalities from AFDC’s caretaking subsidy by distinguishing impoverished single mothers as bad parents. She asserts that “single mothers, especially among the poor and poorly educated, produce a disproportionate number of dysfunctional children” who drain collective resources.84 Although pathologizing women’s (especially black women’s) sexual and economic independence and demonizing children born outside of marriage have a long history steeped in patriarchal (and white supremacist) ideology,85 Wax and others claim to rest their similar disparaging conclusions on objective evidence of actual harms.86 Of course, disproportionate poverty among families headed by single mothers (along with race and gender discrimination) is likely to cause many of the harmful disadvantages faced by children in these families.87 In countries that offer generous public support for caretaking and wage-working mothers (and where the generosity and stigma of family subsidies are less dependent on the race, marriage, and class status of the recipients), widespread parenting by unmarried mothers does not seem to correspond to widespread poverty or other social problems.88 Evidence of disadvantages of single parenting in the United States probably reflects this country’s particular policy of externalizing the costs of caretaking onto single mothers (especially onto
single mothers of color), not that single-parent families necessarily are more likely to externalize costs onto society.

Moreover, Wax's assumption that families with middle- and upper-class married parents are economically self-sufficient obscures the distribution of caretaking costs within families. Many feminists have argued that the legal system helps to externalize caretaking costs from breadwinning husbands onto homemaking wives and their children. For example, breadwinner husbands can reap unreciprocated gains because of divorce laws that fail to adequately recognize the value of their wives' caretaking, and because of legal doctrines forbidding enforcement of intra-marital contracts for compensating caretaking services. If we apply this feminist critique of marriage to welfare reforms aimed at restricting support for single mothers, we can understand that these reforms do not encourage cost-internalizing families. Instead, that feminist critique shows how the reforms help to replicate and protect the traditional family's systematic externalization of caretaking costs onto women and children.

Wax suggests that such systematic externalization of the costs of child care onto women through "restrictive gender customs" that "force women to sacrifice for the greater good" actually may promote economic efficiency by ensuring a supply of public caretaking benefits that solves the "public good" problem. However, policies that encourage women to devote their time to unpaid (and otherwise unreciprocated) caretaking labor typically have differed by race, class, and marital status. As a result, the supply of children for whom extensive caretaking investments produce high human capital is not simply a "public" benefit but a privilege distributed by (and reinforcing of) social caste. Moreover, the question remains whether a child-care system that relies on the sacrifice of women's economic interests is an efficiency-promoting societal gain or a redistributive private gain for men at the expense of women (and often their children). In her study of the economics of motherhood in late twentieth-century United States, journalist Ann Crittenden describes how the U.S. legal and economic systems still use systematic restrictions to provide a strong (and even increasing) supply of mothers forced to sacrifice their own economic well-being to raise children. Crittenden concludes that compared with European systems that better reward caretakers for their work, the U.S. system of unreciprocated maternal sacrifice encourages low-quality child care, high rates of child poverty, low-quality fathering, and reduced personal and public gains from mothers' noncaretaking activities.

RECIPROCAL BENEFITS OF WAGE WORK

Supporters of welfare reform often assume the change from AFDC to TANF internalizes "externalities" not only by reducing taxpayer assistance to single mothers but also by changing the form of that assistance. In some states at
some times, recent welfare reforms have been accompanied by increases in government support for wage earning by impoverished single mothers. Advocates of welfare reform often present this change to work-based welfare assistance as cost-internalizing on the theory that wage work gives taxpayers a reciprocal benefit in return for their assistance. For example, Wax argues that regardless of any public benefits from single mothers’ unpaid caretaking, the public can reasonably expect impoverished single mothers to make personal efforts to reduce the costs of their caretaking by combining care with wage work that improves their family’s economic self-sufficiency.

This argument, however, rests on the questionable assumption that wage work by low-earning single mothers contributes more net benefits to taxpayers than their unpaid caretaking. It is not obvious that taxpayers in general will reap greater gains from substituting a greater supply of unpaid parental caretakers with, for instance, a greater supply of telemarketers, fast-food servers, low-wage child-care workers, or cashiers—some of the jobs most likely to absorb former welfare recipients. The material gain to poor families from substituting parental caretaking for parental low-wage labor is often small, nonexistent, or temporary. Although many employers and investors may gain from an increased supply of low-wage labor, these gains are not necessarily passed on to consumers or the “public.” In addition, increased low-wage labor and unpaid “workfare” by welfare recipients may harm working poor or lower-middle-class families by creating downward pressure on wages that has ripple effects extending up the wage scale.

An increase in the number of single mothers who perform low-wage labor may not only fail to provide positive public gains but may also impose significant public costs. One of the leading original proponents of the economic theory of externalities, British political economist A. C. Pigou, highlighted the employment of pregnant women and mothers of newborns in factories as the most shocking example of the externality principle. Pigou thought it was obvious that such work caused grave harm to children’s health, producing overall social costs outweighing the private benefits of the mothers’ wages. It is not necessary to resort to Pigou’s essentialist views of mothers or women to find strong support for the theory that family well-being is improved by protecting parents from some of the stress and time demands of wage work, especially for newborn and young children. A survey of Americans’ opinions about welfare, for example, shows strong support for the view that mothers of young children should be able to refrain from wage work—except when those mothers are African American. The recent Family and Medical Leave Act is premised on the idea that reducing wage work to accommodate family caretaking demands is good policy, although the act’s support for unpaid leave is in practice limited to relatively affluent caretakers who can afford to forgo wage income. Indeed, many supporters of TANF’s work-based welfare reforms typically also supported the theory that unpaid maternal child care is generally
more beneficial to society than maternal wage work—as long as those mothers are not poor, single, or African American.\textsuperscript{102}

The idea that the public receives a reciprocal benefit from government subsidies for low-wage work rather than caretaking seems to rest less on an expectation of concrete material gain from increased wage work and more on a theory that low-wage work, not maternal caretaking, by a certain group of women (based largely on class, race, and marital status) produces moral discipline and self-esteem (or perhaps submissiveness) that will create better families and communities in the long run.\textsuperscript{103} One problem with this argument is that it ignores evidence that most AFDC recipients already have demonstrated these capacities through extensive participation in (generally unreported) non-caretaking work necessary to their families’ survival on below-subsistence welfare benefits.\textsuperscript{104} But even if not, judgments about welfare’s efficiency stray far from objective economics when they depend on faith in the intangible moral and spiritual superiority of low-wage work over parental child care. As legal scholar Dorothy Roberts explains, such beliefs about the moral virtues of diverting some women from caring for their children to supplying cheap labor for others have long been more about redistributing socioeconomic benefits along racial lines rather than about creating overall spiritual or material benefits.\textsuperscript{105} And even if one accepts arguments about intangible public benefits from increased low-wage work, the question remains how to balance these potential positive spillover effects against the potential negative spillover effects of low-wage work by impoverished single mothers that seemed obvious to many (in the case of white widows) at the time of AFDC’s beginning. Single mothers entering low-wage work may face increased risks of violence, health problems, erosion of self-esteem from abusive work environments, inadequate child care, pressure for drug and alcohol use, and inability to maintain continuous or adequate employment, all of which might bring long-term harm to their individual families as well as to society in general.

In theory, well-funded nonparental child care and other assistance to low-wage workers, such as subsidized health insurance, transportation, housing assistance, or job training, might alleviate some of the potential societal and personal costs of replacing parental child care with low-wage work and might also produce long-term economic benefits for families that exceed AFDC’s paltry benefits. According to this reasoning, states that use TANF to improve subsidies for low-wage workers may “internalize” externalities of low-wage work, for instance, by correcting for “imperfections” in the market for child care.

However, even the more generous government programs for low-wage workers that were instituted or expanded under recent welfare reforms fall far short of what many low-wage workers need to maintain the long-term well-being of themselves and their families. For example, most of this work-based assistance is short term, even though many if not most low-paid single mothers formerly on welfare are unlikely to move quickly into jobs that provide
wages or benefits adequate to cover their families' needs for health insurance, child care, and other living expenses. Even in states that have increased child-care spending, subsidized child care falls far short of the needs of many former welfare recipients and may not be available in the future, particularly during recessions.

Aside from the question of whether TANF's work-based welfare assistance can alleviate sufficiently the costs to society of single mothers performing low-wage work and in the end produce a net societal gain, the theory that work-based assistance increases efficiency is suspect from another perspective. By shifting government support from caretaking to wage-earning, TANF shifts government support from single mothers to employers. When government helps pay single mothers' costs of working, for example, by subsidizing child care or transportation, employers gain a more reliable and productive workforce (and a greater supply of workers) than they would have otherwise, and without raising wages (or other benefits).

As a result, work-based welfare assistance externalizes employers' costs onto taxpayers, unless we assume that employers are not responsible for paying wages adequate to make work affordable for parents. In fact, many supporters of recent welfare reforms assume that if jobs fail to pay single mothers a minimally livable wage, the responsibility falls not on the employers but on the single mothers (and perhaps their children's fathers). Conservative welfare critic Charles Murray, for example, argues that unmarried mothers unable to support their children should not get pregnant, should abort their pregnancies, or should give up their babies for adoption. This view leads to the conclusion that assisting working mothers with the costs of raising families creates inefficient externalities, despite recipients' reciprocal contribution of work. Legal scholar Vicki Schultz presents a contrasting approach to increasing the public benefits from wage work by mothers: rather than demanding more "reciprocal contributions" from poor single mothers, she argues for universal, comprehensive rights to livable wages in jobs structured to support both unpaid family care and leisure.

In sum, to determine whether work requirements in recent welfare reforms reduce "externalities" compared with the caretaking support of AFDC, we must decide which costs are "internal" and which are "external" to the employment relationship and to families. Furthermore, the goal of better internalizing the costs of public support for impoverished families cannot be pursued without making judgments about whose families are "external" to the public well-being and whose are integral to that public well-being.

Transaction Costs
One of the leading figures in neoclassical economic analysis of law, R. H. Coase, recognized the inherent subjectivity of the concept of externalities and
instead switched the focus of efficiency analysis to the supposedly more objective concept of transaction costs.\textsuperscript{110} In predominant Law and Economics theory, transaction costs are the costs of resource-maximizing transactions that are not included in the transaction's price,\textsuperscript{111} such as the difficulties of gathering information related to the transaction, and negotiating, implementing, and monitoring it. By definition, transaction costs constitute a deadweight loss that depletes the resources available for the productive transactions that maximize overall wealth. Reducing transaction costs therefore promotes efficiency.

In the conventional Law and Economics (and neoliberal) view, transaction costs provide another explanation of the unintended harmful effects of redistribution. According to this theory, government redistribution typically involves administrative costs that reduce overall societal gain (decreasing efficiency). For example, because redistributive benefits, in contrast to the benefits of free market exchanges, typically do not go to only those individuals who voluntarily pursue them, the government must establish a process for screening eligible recipients and for distributing and monitoring benefits. And because those who pay for the benefits do not do so voluntarily, the government must devote resources to enforcing and collecting the revenue to be redistributed. Furthermore, according to this theory, this administrative system inevitably distributes benefits not just to the intended recipients of redistribution but to “special interests,” who gain from expanded administrative jobs and who are likely to use political influence to siphon off more resources from intended recipients of redistribution for their own gain. In his classic Law and Economics textbook, Judge Richard Posner argues that federal welfare reform is supported by evidence that “of every $1 transferred by the government [for AFDC], 23 cents is dissipated, when all the social costs of the transfer are taken into account.”\textsuperscript{112}

The difference, however, between “transactions” and “transaction costs” is again a matter of perspective, not objective economics.\textsuperscript{113} For example, is paying a lawyer to help you negotiate a contract a transaction cost or a productive wealth-maximizing transaction? That depends on whether you are the lawyer. The distinction boils down to a question of which transactions are desirable and which are not, and to whom—a normative and distributive question likely to depend on social status and political power.

**TRANSACTION COSTS OF WAGE WORK**

Most advocates of welfare reform in the United States have not explicitly argued that replacing AFDC with TANF is efficient because it reduces transaction costs. Nonetheless, this argument is often implicit in descriptions of TANF as a more efficiency-oriented approach to welfare than is AFDC. In this view, many single mothers in poverty who desire to engage in wage work face numerous barriers to this transaction, such as difficulties getting information
about available work, searching for jobs, finding reliable transportation, and arranging child care. Rather than removing these transaction costs, AFDC's payment for non-earning caretaking accommodates them by replacing the desired wage income with welfare benefits, which then become an additional barrier to wage work. TANF, in contrast, allows states to shift welfare assistance to focus on directly minimizing the costs of wage work. In a report surveying work and welfare in the United Kingdom, the Organisation for Economic Co-operation and Development described that country’s welfare-to-work program as providing assistance with the “transactions costs” of work, such as transportation costs and the expenses of job searching.114

In this analysis, however, caretaking and children themselves become transaction costs that get in the way of work. If raising a family were instead the desired transaction, then AFDC rather than TANF could be viewed as the approach that better reduces transaction costs. To what degree work should be the purpose of life, and to what degree it is means to other goals, is a normative question—and one often applied differentially based on class, race, and gender status. Dorothy Roberts, for example, has explained how AFDC and other social welfare policies have been designed to treat black mothers’ caretaking of their own children as a socially unimportant, or even harmful, activity that gets in the way of the supposedly more important societal interest of maintaining a supply of black women for cheap labor—often as caretakers of white children.115 Political theorist Gwendolyn Mink shows that TANF’s work requirements reflected a prevailing moral judgment that mothering is a hindrance to wage work for poor, single women (and especially for black women), but that wage work is a hindrance to mothering for wealthier white married women.116

Indeed, some supporters of TANF’s reforms suggested that the costs of entering the wage labor market, such as child-care or transportation expenses, are not transaction costs external to the transaction of wage work but instead constitute part of the price internal to the transaction. In the view of many conservative advocates of welfare reform, those who lack the skills sufficient to earn wages capable of supporting a family (or who lack a spouse with such skills) should pay the price. That means those who cannot afford to combine work and family should forgo having children or should forgo raising any children they have by relinquishing them to foster care, adoption, or orphanages.117 And if a low-wage job does not pay enough to support transportation costs, that constitutes a price signal that should encourage workers, or aspiring workers, to develop skills adequate to secure a higher-wage job. Following that reasoning, if government assistance alleviates the costs of low-wage work, it will not promote efficiency but will instead create new deadweight losses as people fail to take advantage of market opportunities that would better meet their needs. In short, the question whether efficiency will be promoted by recognizing or by reducing the costs of sustaining working families in low-wage
work depends on normative judgments about who should have responsibility for recognizing or reducing these costs—employers, workers, or society in general.

**TRANSACTION COSTS OF BIG GOVERNMENT**

Supporters of the federal welfare reform legislation suggested that it would reduce transaction costs by devolving substantial responsibility for program design from federal to state (and sometimes local) governments. For example, 1996 presidential candidate Bob Dole argued that replacing federal entitlements with state block grants “would save $60 billion over seven years in increased efficiency and lack of federal red tape.” Advocates of decentralizing welfare policy to the states explained that this change would introduce competition that would deter waste and encourage innovation.

In addition, reform proponents often argued that federal control of AFDC resulted in inflexible bureaucracy that failed to tailor programs to local needs or to quickly respond to changing circumstances. Some take this devolution argument a step further, arguing that privatizing welfare will reduce waste and increase flexibility even more. “With government, you pay for process. . . . When you contract out, you pay for results,” explains an executive of Maximus, a private company in the lead of the welfare business. Following this reasoning, states have instituted welfare reforms that have opened up welfare administration to bidding by private for-profit companies and charities.

Again, whether this decentralization and privatization will reduce the costs of achieving the goals of welfare raises normative questions about what those goals are and who can be trusted to achieve them. Red tape can be unnecessary waste or necessary protection against waste, depending on one's perspective.

Reports on the effects of TANF's devolution show that states generally have not reduced the red tape from the perspective of welfare agencies or welfare recipients. Decentralization has tended to replace previously uniform administrative systems with complex and confusing variations by state, county, and agency that create ample opportunities for error by both welfare agency staff and by recipients. In addition, state and local authorities have used their new freedom from federal mandates to continue to follow federal requirements while adding new requirements on top of previous procedures. This new red tape may be successful in reducing caseloads and abuse of benefits, but it is also likely to increase poverty and administrative abuse.

For example, one report describes a county that requires welfare applicants to complete up to six in-person appointments with administrative staff before being approved for benefits and to produce at these appointments detailed paperwork documenting personal and financial facts, such as divorce records, birth certificates, statements from landlords proving their child's residence, financial records, and verification of termination by former employers.
Once a recipient is approved for benefits, some states' requirements for continuing those benefits are similarly onerous. To maintain welfare-to-work assistance payments, a TANF participant balancing work and family may have to comply with regular office visits and cumbersome monthly re-certification procedures involving several different agencies. Many eligible welfare recipients seem to be excluded from benefits as a result of the difficulty and high costs (such as transportation and child care) of satisfying these requirements.

Although some states have attempted to use their increased flexibility to reduce administrative costs for taxpayers, this may be a matter of shifting the costs of welfare transactions from governments to recipients and others. Some states have reduced administrative expenses by cutting back on welfare office staff and services such as outreach and information. Reports on the effects of recent welfare reforms suggest that many potential welfare recipients are not being informed about available benefits. Again, any transaction cost reduction for taxpayers may come at the expense of exacerbating poverty and administrative burdens for welfare recipients.

Moreover, states, local governments, and private welfare providers may use their new freedom from bureaucratic constraint not only to reduce the costs of welfare transactions but to redirect those transactions to benefit others. This new potential for waste and abuse in turn has increased pressure for new bureaucracies and procedural protections aimed at monitoring and controlling these potential problems. For example, some states have used their new “flexibility” to divert federal TANF funding from support for poor families to other purposes, such as funding general tax cuts. In response, the federal government has begun to monitor these practices.

In addition, private providers have capitalized on TANF's new opportunities for government-assisted profit. For example, welfare-to-work services are now one of defense contractor Lockheed's fastest growing lines of business. Some for-profit providers have sought to increase their earnings through anti-competitive bidding practices, such as making inside deals with government officials who are then hired to run the new welfare business. Some have reduced administrative expenses by replacing unionized, well-paying civil service jobs with low-wage jobs, perhaps contributing to the poverty that the welfare system is supposed to alleviate. Furthermore, government contracts with private providers are subject to abuse by providers who accept up-front payments and fail to deliver adequate services, or who meet contractual goals for caseload reduction by arbitrarily diverting eligible recipients from benefits, by skimming off the cream of recipients who would have moved off welfare quickly anyway, or by churning the same recipients in and out of benefits. To control this potential for private abuse, state and local governments have had to devote substantial new resources to negotiating, monitoring, and enforcing complex contractual protections.
In sum, looking to transaction costs to determine whether welfare programs promote net public gain rather than private redistribution leads back to the question of whose gains from less costly transactions should count as public benefits. The 1996 welfare reforms may have reduced some administrative costs, but those savings have probably come at the price of some increased transaction costs for welfare recipients and for taxpayers—and those savings have produced different transactions for both taxpayers and welfare recipients (such as less welfare and more low-wage office jobs, in some examples). Once again, welfare reforms cannot be distinguished as promoting efficiency without making assumptions about what distribution of resources is beneficial.

Moral Hazard

Moral hazard, the third concept used to measure efficiency, was perhaps the most prominent economic argument used against AFDC. Moral hazard, a term derived from the insurance industry, is the problem that people tend to be less careful to minimize costs when someone else pays the bill.135 By protecting people against market losses, redistribution risks producing the unintended consequence of moral hazard, thereby driving up overall costs.

For example, critics often argued that by giving needy families income support, AFDC made more families needy.136 In a common refrain accompanying recent welfare reforms, AFDC’s income protection reduced incentives for women in poverty to make decisions that would avoid or reduce the costs of single motherhood (such as staying in the wage labor market, avoiding pregnancy and child rearing, or marrying wage-earning men). The moral hazard argument is implicit in the claim that AFDC creates a “cycle of dependency” that discourages impoverished families from making efforts to escape their poverty.137 As a result of these “perverse incentives,” this view explains, in the long run welfare hurts both its beneficiaries and the public in general. According to this reasoning, the 1996 welfare reforms reduced this inefficient moral hazard by imposing a variety of restrictions designed to influence welfare recipients’ work, marriage, and childbearing behavior.138

The supposed harms of moral hazard, however, are social and political constructions, not economic truths. The moral hazard problem simply explains that shifting responsibility for costs may produce incentive effects that result in behavior changes. Whether these behavior changes count as inefficient moral hazard or instead as efficient resource-maximizing depends not on objective laws of economics but on moral judgments about whether the behavior is good or bad. Deborah Stone has coined the term moral opportunity to explain that behavior changes produced by social welfare protections can produce societal benefits instead of harm.139

For example, welfare systems in which benefit amounts increase according to family size typically appear to present a problem of moral hazard. The
theory is that protection from some of the economic burdens of caring for additional children encourages women to take less care to avoid having (or keeping) children whose care they otherwise could not afford. As part of recent welfare reform legislation, many states have adopted "family cap" provisions that prevent welfare recipients from receiving benefit increases if they have additional children while on welfare. According to supporters, these restrictions reduce inefficient moral hazard by correcting incentives for non-earning single mothers to engage in the costly behavior of having more children than they would without government support. Many critics of such restrictions dispute the empirical claim that welfare recipients' decisions to bear or raise children are in fact influenced by such incentives, arguing that it is doubtful that welfare benefits are sufficient to alleviate the economic burdens of additional children, or that women have control over the number of children they bear and would make that choice based on economic gain.¹⁴⁰

Regardless of the empirical evidence, however, a more basic theoretical problem with the moral hazard rationale for family cap restrictions is that there is no neutral economic ground for labeling a woman's interest in having more children as inefficient "moral hazard" rather than productive self-interest maximizing. During the recent period of welfare reforms for families in poverty, governments have dramatically increased their assistance for geographically mobile businesses—often called corporate welfare.¹⁴¹ If a corporation decides to hire more workers at a particular plant because of tax incentives, that decision to take advantage of the extra profit protection to increase jobs is often considered an example of productive economic development rather than unproductive moral hazard.

Even more fundamentally, the very existence of corporations arguably involves moral hazard: the grant of limited liability to business owners allows them to take risks that would be avoided if shareholders were held personally liable for the harmful results of a business.¹⁴² But of course the corporate form is predominantly considered a cornerstone of efficient wealth maximization, not redistribution that causes moral hazard. The difference between these corporate examples and the welfare example rests not on impartial economic principle but on moral judgments to value jobs over children and investor wealth over caretaker wealth.

If we make different assumptions about whose gains constitute public benefits, we can view welfare reforms as increasing, not reducing, harmful moral hazard. For example, reform advocates have justified the shift from AFDC's caretaker subsidies to TANF's subsidies conditioned on work as a means of correcting the moral hazard problem of recipients' disincentives for wage work. However, the change to work-based assistance and work requirements risks creating new moral hazard on the part of employers. TANF's increased incentives for wage work protect employers against labor costs by increasing labor supply (thereby reducing wage pressures) and, in the case of work-based
assistance, by protecting employers against some of the costs of maintaining a reliable, productive workforce.

TANF's protection against employers' labor costs, like AFDC's protection against single mothers' caretaking costs, could be criticized for producing a "cycle of dependency." If cheap and docile labor provides employers with an easy means of avoiding changes and innovations that would lower overall costs in the long run by providing better working conditions along with better profits, then that cost protection will encourage employers to choose investments and business plans that make such "high-road" production strategies even more difficult to achieve, locking them into behavior that arguably hurts society overall. Without such protection against labor costs, other things being equal, employers would have more incentives to reduce the costs of production in other ways, perhaps through lower executive salaries, lower investor returns, or more cost-effective operations, or even by forgoing certain lines of business that are unprofitable without cheap labor.

Inevitability of Efficiency's Double Standard

By challenging welfare's supposedly harmful externalities, transaction costs, and moral hazard effects as problematic value judgments, not as principles of nature or economics, feminists can escape the double bind that makes generous government support for mothers in poverty seem harmful to women and to society in general. Feminists have argued for rethinking the standard of equality to recognize women's particular needs (such as childbearing) as normal, not different. Similarly, feminists can argue for rethinking the standard of efficiency to recognize government support for the particular caretaking needs of many women as integral to public gain, not as harmful redistribution.

A fourth economic criticism of redistribution poses a more difficult challenge to feminists and welfare advocates. This argument holds that redistribution will not work because the market ultimately will swamp any government action aimed at redirecting resources to the poor. This fourth criticism seems to contradict the previous three criticisms of redistribution's harms, which assume the market is fragile and easily subject to government disruption. Instead, the fourth argument assumes the market is so strong and impermeable that government interventions will inevitably fail to produce their intended distributional changes.143

In this view, wealthy capital owners may be able to force others to support their private interests as necessary to the public well-being, regardless of moral legitimacy, and to impose public penalties if others seek government assistance. For instance, if governments support generous welfare policies that harm wealthy individuals or businesses by decreasing the availability of low-wage labor and by increasing taxes, then those wealthy capital owners may
threaten general economic stability, and those in poverty in particular, by withdrawing their investment and tax dollars.

Such a result, however, would not be determined by inevitable, natural market forces, as economic criticisms of welfare spending often assert. Just like the neoliberal argument that redistribution will destroy the market, the neoliberal argument that the market will destroy redistribution wrongly assumes a market that is fixed, pre-political, and distinct from government. Instead, market "forces" are produced by government policies and laws that shape the distribution of bargaining power.

For example, the 1996 welfare reforms devolving welfare policy to the states and localities increase the bargaining power of wealthy capital owners and taxpayers by increasing their ability to threaten withdrawal from states or localities that increase welfare spending. Supporters of welfare reforms have frequently invoked the need to maintain a favorable business climate as a reason to restrict welfare.144

At the international level, government policies have also recently contributed to increasing the market power of wealthy capital owners who benefit from restricting welfare and from an increased supply of poverty-stricken workers. For example, the International Monetary Fund and World Bank pressure developing nations to adopt structural adjustment programs that cut welfare spending in order to increase returns to global investors.145 As these international financial institutions make developing nations more attractive to investors, they increase competition for capital between developing nations and wealthier nations, thereby pressuring wealthier nations to hold down social spending as well. For example, even during a period of projected budget surpluses in the United States, political leaders of both major parties remained reluctant to substantially expand welfare programs.146 If instead the focus of international trade and financial policy shifted from protecting international investment to enhancing the global bargaining power of labor, the poor, and average citizens,147 national and local political leaders would face less pressure to reduce welfare spending.

Conclusion

The divide between redistribution and efficiency has a long history of undermining government support for women in poverty. Even during times of relatively strong political support for the idea of redistribution, that framework relegated AFDC to an inferior position in the social welfare hierarchy. Now that the predominant neoliberal ideology has discredited the idea of redistribution in mainstream discourse, those who advocate for welfare as a safety net for the newly triumphant market face even steeper challenges. Those who attempt to defend a place for welfare on egalitarian grounds separate from
efficiency must confront critics who argue that such redistribution will produce secondary effects—externalities, transaction costs, and moral hazards—that will distort the efficient market and frustrate egalitarian goals in the long run. Like “special treatment” in inequality doctrine, “redistribution” in economic policy tends to remain secondary and circumscribed, subject to stigma and suspicion.

However, just as defending special treatment is not the only logical strategy for reconciling support for women’s particular needs with equality, defending redistribution is not the only strategy for reconciling support for women’s particular needs with overall economic well-being. Just as feminists counter the supposed problems of special treatment by redefining the underlying concept of gender equality, feminists can redefine the concepts of a normal and beneficial market. Rather than defending economic support for women as an alternative to market efficiency, feminists can advocate alternative visions of publicly beneficial markets that better recognize the economic benefits of women’s caretaking (and of women’s wage labor). In practice, that would mean considering welfare policy as intertwined with policies affecting market structures, such as labor, employment law, corporate law, financial regulation, and trade policy. For example, feminist welfare policy should advocate corporate responsibility to communities, workers, and families as central to public morality and productivity.

In the contemporary United States, politics is widely disparaged as a matter of special interests, but neoclassical economics is widely worshiped as universal truth. In response, feminists should identify and resist the moral and political judgments that inevitably permeate dominant standards of market efficiency. By recognizing that politics and economics are inevitably inseparable, we can better challenge the message that policies protecting wealthy corporate and capital interests are “economically correct,” but that policies protecting impoverished women are merely “politically correct.”

Notes
1. For comments on drafts of this essay, I thank Terence Dougherty, Carl Nighingale, and participants in the November 1996 Feminism and Legal Theory Workshop at Columbia Law School. In addition, this essay benefited from conversations with Frank Munger.


15. Marmor et al., supra note 12, at 12.


20. See Duesterberg, supra note 2, at 44.


22. Id.


24. Id.


32. See Neil deMause, Turning the Tables: Welfare Reform Faces a Time Limit of Its Own, In These Times 16 (June 12, 2000) (summarizing findings of studies by the Urban Institute, the Welfare and Human Rights Monitoring Project, and the Washington Welfare Reform Coalition).
39. Id. at 39.
40. See McCluskey, Subsidized Lives, supra note 33, at 128.
41. Id. at 130-31 (discussing claims that tax cuts for the wealthy and deficit-cutting policies are efficient). See also Richard A. Posner, The Economics of Justice 81 (1989) (claiming that wealthier people promote efficiency more than others because they have “higher marginal products”).
44. See, e.g., Amanda Milligan, Fears over Family Leave: Critics Assail Government’s Proposed Expansion of Act, Crain’s Chicago Business 314 (Sept. 13, 1999) (quoting lawyer Claire Weiler as saying, “the proposal ‘seems to be taking a system that is a true insurance system and then expanding it for many... that looks more like a social income redistribution’”); Proposed Payments Could Raise Payroll Taxes, 4 Death Care Business Advisor (Jan. 31, 2000) (reporting that the U.S. Chamber of Commerce criticized this proposal as “a large new welfare entitlement”);
Robyn Blumner, *New Welfare in Everything But Name*, Times Union (Albany, N.Y.) A11 (July 22, 1999) (criticizing proposal on the ground that it would “transform unemployment benefits from a program that insures against joblessness into a new form of welfare”). See also Gillian Lester, *Unemployment Insurance and Wealth Redistribution*, 49 U.C.L.A. L. Rev. 335 (2001) (discussing modifications to meet caretaking women’s unemployment needs as problematic “redistribution” but counting the original design to satisfy some white men’s unemployment needs as principled economics and actuarial science).


57. See Lee Anne Fennell, *Interdependence and Choice in Distributive Justice: The Welfare Conundrum*, 1994 Wis. L. Rev. 235, 293–94, 298 n. 274 (summarizing and partly questioning efficiency concerns about AFDC’s “expropriation” of resources of those more well-off); Posner, *Economic Analysis*, supra note 7, at 500–507 (arguing generally that income transfers from the wealthier to the poorer may be inefficient because “the people who work hard to make money and succeed in making it are, on average, those who value money most, having given up other things such as leisure to get it”).


60. Id. (describing this “externality” as a debt owed by society to caretakers).

61. Id.


70. Fineman, Neutered Mother, supra note 5, at 101–22.


72. Id. at 278.

73. Id.

74. Id. at 276, 276 n. 61.

75. Id. at 276.


77. Id. at 118.

78. Id. at 98–99.


81. See Martha T. McCluskey, A Critical Analysis of the Treatment of Dependent Care and Household Expenses in Federal Income Tax Theory 55–56 (1988) (unpublished manuscript on file with author); Martha T. McCluskey, From "Affluent Husband Care" to Worker Care: Rethinking Support for Family Caretaking Labor (2004) (unpublished manuscript on file with author). Although this tax break is gender-neutral on its face and so is available to breadwinner/caretaker married couples regardless of gender division, the vast majority of the higher-earning couples who reap most of the gains from this tax break have male breadwinners and female non-earners or low earners. For example, in 1998, nearly half of upper-income marriages (with members earning $250,000 to $499,999) had just one wage earner, and 90 percent of those wage earners were men. Nancy Ann Jeffrey, The New-Economy Family, Wall St. J. Wf (Sept. 8, 2000), discussed in Ann Crittenden, The Price of Motherhood: Why the Most Important Job in the World Is Still the Least Valued 177, 291–92 n. 15 (Owl Books 2001) (citing statistics that at the very highest income levels, virtually all marriages conform to the male breadwinner/female homemaker model).


84. Wax, Welfare Rights, supra note 71, at 278–79.

85. See Neubeck & Cazenave, supra note 69, at 31–35.

86. See, e.g., William A. Galston, Civil Society, Civic Virtue and Liberal Democracy, 75 Chi.-Kent L. Rev. 603, 606–7 (2000); Wax, Welfare Rights, supra note 71, at 279 n. 69.

87. See Fineman, Neutered Mother, supra note 5, at 104–6; Joel F. Handler, The Poverty of Welfare Reform 36 (1995); see also Neil deMause, Father Knows Best, In These Times 8 (Feb. 7, 2000) (summarizing criticisms of statistics on single parenting’s harms).

88. See Karen Christopher, Family-Friendly Europe, 13 Am. Prospect 59–61 (Apr. 8, 2002) (citing data showing a poverty rate—before government assistance—of 42 percent of single mothers in the United States compared with 11 percent in Sweden); Sarah Lyall, For Europeans, Love, Yes; Marriage, Maybe, N.Y. Times 1 (Mar. 24, 2002) (reporting that, e.g., 62 percent of births in
Iceland and 49 percent of births in Norway are to unmarried parents but that policies focus on
supporting parenthood rather than marriage and that single parenthood in many European coun-
tries is not associated with stigma or poverty).

89. See June Carbone & Margaret Brinig, Rethinking Marriage: Feminist Ideology, Economic
Change, and Divorce Reform, 65 Tulane L. Rev. 953 (1991) (discussing a number of feminist pro-
posals for better accounting for the costs of caretaking at divorce); Crittenden, supra note 81, at
149–85 (discussing how family law makes married mothers who specialize in caretaking rather
than wage earning responsible for the bulk of child-care costs without sufficient reciprocal rights
to share in the wage earners’ income or property).

90. See generally Fineman, Illusion of Equality, supra note 35.

91. See Reva B. Siegel, The Modernization of Marital Status Law: Adjudicating Wives’ Rights
to Earnings, 1860–1930, 82 Geo. L.J. 2127 (1995) (discussing laws protecting husbands’ prop-
erty rights in wives’ family labor).

92. See Wax, Caring Crisis, supra note 65, at 342–43.

93. See Crittenden, supra note 81, at 98–103, 260–61 (discussing employment discrimination
against women and parents); 219–21 (discussing labor market restrictions on the immigration of
paid child-care workers); 115–18 (discussing tax laws discouraging maternal wage work); 153–61
(discussing divorce law’s failure to reward maternal caretaking). For discussions of how race and
sex discrimination in employment prevent women’s freedom to choose rewarding wage work over
family care, see Neubeck & Cazenave, supra note 69, at 193–95; Vicki Schultz, Life’s Work, 100

94. See Crittenden, supra note 81, at 4, 23–24, 213–14, 104, 50, 257, 125.

95. See Handler, supra note 87, at 62–75 (discussing pre-TANF state work incentive programs
providing employment assistance); Handler & Hasenfeld, supra note 18, at 74–77 (summarizing
more recent work support programs); Thomas L. Gais & Cathy M. Johnson, Welfare Reform,
Management Systems, and Their Implications for Children, 60 Ohio St. L.J. 1327, 1344–45
(1999) (discussing states’ expanded work support services following TANF).


97. See Kathryn Edin & Laura Lein, Making Ends Meet: How Single Mothers Survive Wel-


99. See David A. Moss, Socializing Security: Progressive-Era Economists and the Origins of

100. Id.

data showing that most Americans are willing to exempt work requirements for welfare mothers
with young children); 67–79 (showing that widespread perceptions that blacks lack a strong
work ethic drive opposition to welfare programs perceived as supporting blacks).

102. See Gwendolyn Mink, Welfare’s End 23–25 (Cornell U. Press 1998); Crittenden, supra
note 81, at 251–53.

103. See Gais & Johnson, supra note 95, at 1334–35 (discussing what they call the “environ-
ment theory” that work provides poor families with psychological and social benefits).

104. See Edin & Lein, supra note 97, at 6 (reporting that interviews with nearly four hundred
welfare-reliant mothers show that all but one engaged in income-producing activities).

105. See Dorothy Roberts, The Value of Black Mothers’ Work, 26 Conn. L. Rev. 871–73

106. See Handler & Hasenfeld, supra note 18, at 75–78.

107. See Peter Pitegoff & Lauren Breen, Child Care Policy and the Welfare Reform Act, 6
J. Affordable Housing & Community Dev. L. 113, 115 (1997); Jonathan Cohn, Child’s Play:
Why Universal, High Quality Day Care Should Be Elementary, 11 Am. Prospect 46–49 (June
Iceland and 49 percent of births in Norway are to unmarried parents but that policies focus on supporting parenthood rather than marriage and that single parenthood in many European countries is not associated with stigma or poverty).

89. See June Carbone & Margaret Brinig, Rethinking Marriage: Feminist Ideology, Economic Change, and Divorce Reform, 65 Tulane L. Rev. 953 (1991) (discussing a number of feminist proposals for better accounting for the costs of caretaking at divorce); Crittenden, supra note 81, at 149-85 (discussing how family law makes married mothers who specialize in caretaking rather than wage earning responsible for the bulk of child-care costs without sufficient reciprocal rights to share in the wage earners' income or property).

90. See generally Fineman, Illusion of Equality, supra note 35.


92. See Wax, Caring Crisis, supra note 65, at 342-43.

93. See Crittenden, supra note 81, at 98-103, 260-61 (discussing employment discrimination against women and parents); 219-21 (discussing labor market restrictions on the immigration of paid child-care workers); 115-18 (discussing tax laws discouraging maternal wage work); 153-61 (discussing divorce law’s failure to reward maternal caretaking). For discussions of how race and sex discrimination in employment prevent women’s freedom to choose rewarding wage work over family care, see Neubeck & Cazenave, supra note 69, at 193-95; Vicki Schultz, Life’s Work, 100 Colum. L. Rev. 1881, 1898-99 (2000).

94. See Crittenden, supra note 81, at 4, 23-24, 213-14, 104, 50, 257, 125.

95. See Handler, supra note 87, at 62-75 (discussing pre-TANF state work incentive programs providing employment assistance); Handler & Hasenfeld, supra note 18, at 74-77 (summarizing more recent work support programs); Thomas L. Gais & Cathy M. Johnson, Welfare Reform, Management Systems, and Their Implications for Children, 60 Ohio St. L.J. 1327, 1344-45 (1999) (discussing states’ expanded work support services following TANF).

96. Wax, Welfare Rights, supra note 71, at 276-77.


100. Id.

101. Martin Gilens, Why Americans Hate Welfare 186-87, and table 8.1 (1999) (giving survey data showing that most Americans are willing to exempt work requirements for welfare mothers with young children); 67-79 (showing that widespread perceptions that blacks lack a strong work ethic drive opposition to welfare programs perceived as supporting blacks).


103. See Gais & Johnson, supra note 95, at 1334-35 (discussing what they call the “environment theory” that work provides poor families with psychological and social benefits).

104. See Edin & Lein, supra note 97, at 6 (reporting that interviews with nearly four hundred welfare-reliant mothers show that all but one engaged in income-producing activities).


106. See Handler & Hasenfeld, supra note 18, at 75-78.


109. Schultz, supra note 93, at 1945-48, 1955-57. In addition, she proposes “vigorous anti-discrimination, affirmative action, and pay equity measures” to ensure equal access to fulfilling work. Id. at 1955-56.


115. Dorothy Roberts quotes a cartoon featuring a politician who explains that an AFDC recipient is a bad mother because she “hang[s] around the house taking care of the kids” and that she’ll be cut off welfare if she doesn’t take a job. “Doing what?” the welfare mother asks. “Taking care of someone else’s kids,” the politician answers. Roberts, Shattered Bonds, supra note 105, at 180 (quoting Wasserman’s View, Boston Globe 10 (Sept. 25, 1995)). See also Mink, supra note 102, at 129-31 (criticizing welfare-to-work requirements for “institutionalizing [poor and single] mothers as a caste of providers for other people—of goods, services, and care for other people and their children”).

116. Mink, supra note 102, at 23.

117. See Butler, supra note 108 (quoting Murray’s discussion comparing the decision to bear a child “even though you have very little money, very little education and are very young” to child abuse and neglect); Galston, supra note 86, at 603, 608 (criticizing births by poor, single teenaged mothers on the grounds that “it is wrong to bring a child into the world if one is not adequately prepared to raise the child”); Rickie Solinger, Beggars and Choosers: How the Politics of Choice Shapes Adoption, Abortion, and Welfare in the United States, 1998-99 (2001) (reporting on efforts to promote adoption and foster care as the solution to single mothers’ poverty). For critical discussions of such arguments, see Linda C. McClain, “Irresponsible” Reproduction, ch. 11, this vol.; Christopher Jencks & Kathryn Edin, Do Poor Women Have a Right to Bear Children? 20 Am. Prospect 47 (1995). Dorothy Roberts shows that recent welfare reforms have worked together with changes in child welfare policy to create a system particularly aimed at breaking up black families. Roberts, Shattered Bonds, supra note 105, at 173-200.


121. Id.


125. Id. at 44.
126. Id. at 42-43; see also Ted Kleine, The Shadow of Poverty in America: Allied Forces, in
These Times 17 (June 12, 2000) (reporting on welfare advocates' campaign that claimed "long and
cumbersome processes" were contributing to denying access to welfare benefits).
127. See Meyers, supra note 122, at 43-44; Kleine, supra note 126.
giving example of Texas).
129. Id.
130. Walters, supra note 120, at 34.
131. See Christopher Cook, Cozy Ties, Houston Press (July 10, 1997).
132. See Sharon Dietrich, Maurice Emsellem, & Catharine Ruckelshaus, Work Reform: The
133. See Melissa Kwaterski Scanlan, The End of Welfare and Constitutional Protections for
the Poor: A Case Study of the Wisconsin Works Project and Due Process Rights, 13 Berkeley
134. See Walters, supra note 120.
135. For thorough and excellent analyses of moral hazard, see generally Tom Baker, The Ge-
nealogy of Moral Hazard, 75 Tex. L. Rev. 237 (1996); Carol Heimer, Reactive Risk and Rational
136. Rector & Lauber, supra note 19, at 3.
137. Id.; see also Fineman, Neutered Mother, supra note 5, at 117 (criticizing examples of this
argument).
138. See Katz, supra note 80, at 326. For a discussion of similar welfare reform measures im-
plemented by states before the 1996 reform legislation, see Williams, Ideology of Division, supra
note 5, at 739.
140. See Handler, supra note 87, at 166; Williams, Ideology of Division, supra note 5, at
739-40; McClain, supra note 117, at 407-8.
141. See McCluskey, Subsidized Lives, supra note 33, at 140.
142. See Baker, supra note 135, at 273 and n. 179; Reiner H. Kraakman, Corporate Liability
143. See Frances E. Olsen, Family and the Market: A Study of Ideology and Legal Reform, 96
Harv. L. Rev. 1497, 1503 (1983) (making a similar point about apparently contradictory criti-
cisms of market "intervention").
144. See Gladwell, Remaking Welfare, supra note 119, at A01.
145. See McCluskey, Subsidized Lives, supra note 33, at 133-34.
146. See Robert B. Reich, Is Scrooge a Democrat Now? 11 Am. Prospect 96 (2000); Harold
Meyerson, Bill and Al's Excellent Adventure, L.A. Weekly 30 (Jan. 28, 2000); John B. Judis, Em-
147. For an example of one proposal to implement such a shift by increasing transparency and
democratic representation in the IMF and other international institutions, see U.S. Representative
global.asp.