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# The Coin of the Realm: Poverty and the Commodification of Gendered Labor

Naomi R. Cahn\*

## I. INTRODUCTION

This paper discusses poor women's work within the home. It examines issues involving the commodification of labor that has typically been identified as female and has, consequently, been uncompensated or undercompensated.<sup>1</sup> This household labor includes caring for one's own children, spouse and household and producing one's own child (whether through pregnancy or adoption). There has been an ongoing debate over whether to commodify these activities when they are performed by a parent, rather than through market labor. Each of these activities can be performed by other people who are compensated.<sup>2</sup>

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\* Professor of Law, George Washington University Law School. Thanks to Bill Bratton, June Carbone, Martha Ertman, Peter Margulies, Larry Mitchell, and Mike Selmi for their comments, and to GWU Law School for its support. Thanks also to the staff of Iowa's *The Journal of Gender, Race and Justice* for sponsoring the wonderful symposium at which this paper was initially presented.

1. There is a great deal of literature on the devaluing of women's household work. For some examples, see JEANNE BOYDSTON, HOME AND WORK: HOUSEWORK, WAGES, AND THE IDEOLOGY OF LABOR IN THE EARLY REPUBLIC 17-18 (1990); Dorothy Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEM. 51 (1997) [hereinafter Roberts, *Spiritual and Menial*]; Reva Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. & FEM. 1073, 1092 (1994) [hereinafter Siegel, *Home as Work*]; Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 82-83 (1996) [hereinafter Silbaugh, *Turning Labor*].

2. Some of the "care" for a spouse involving sexual services cannot legally be contracted out in most of the United States. See LINDA HIRSCHMAN & JANE LARSON, HARD BARGAINS: THE POLITICS OF SEX 280-83 (1998). And, adoption and surrogacy are regulated in various ways that distinguish them from baby-selling. See Jane Maslow Cohen, *Posnerism, Pluralism, Pessimism*, 67 B.U. L. REV. 105 (1987); Elisabeth M. Landes & Richard A. Posner, *The Economics of the Baby Shortage*, 7 J. LEGAL STUD. 323, 324 (1978); see also Ronald A. Cass, *Coping With Life, Law, and Markets: A Comment on Posner and the Law-and-Economics Debate*, 67 B.U. L. REV. 73, 81-83 (1987). But both housework and childcare are frequently contracted out.

I am going to focus on how the commodification debate—commodification<sup>3</sup> for my purposes means simply the application of market norms<sup>4</sup> to a particular task as opposed to the narrow sense of literal payment<sup>5</sup>—relates to the lives of poor women. If we make exchanges explicit, and pay women directly (although not necessarily in cash), our perceptions of poor women's household labor may change. Many scholars have addressed the potential benefits of commodification on the wages of the poor women who provide household labor for other women by acting as childcare workers or housecleaners.<sup>6</sup> Other scholars have addressed the potential for commodification to result in the exploitation of poor and African-American women through the use of surrogacy and related alternative reproductive technologies.<sup>7</sup> This paper addresses other issues at the intersection of poverty and commodification, examines women's work within their own home<sup>8</sup> and asks whether the application of market rhetoric can lead to improved social support for poor women.

For poor women, the commodification debate, which concerns financial value, seems perhaps, ridiculous; where there is not enough money to go around, commodification may be irrelevant. But the rhetoric, a belief in the value of household labor, and an acceptance that market understandings can co-exist with relational understandings, may ultimately help poor women in the following ways by: 1) increasing public welfare benefits; 2) changing how we think of public welfare; 3) promoting more flexible out-of-home work because if work inside the home is more highly valued, then there may be greater recognition that work outside of the home must be balanced against home-work; and 4) developing additional

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3. Margaret Radin defines commodification as "the social process by which something comes to be apprehended as a commodity, as well as to the state of affairs once the process has taken place." MARGARET RADIN, *CONTESTED COMMODITIES* xi (1996).

4. Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEM. 81, 84 (1997) [hereinafter Silbaugh, *Commodification*]. In this article, Professor Silbaugh defines the use of market understandings of home labor, arguing that "gender equality requires us to take the economics of home labor seriously." *Id.* at 83.

5. See RADIN, *supra* note 3, at 102-04.

6. See, e.g., Martha Ertman, *Reconstructing Marriage: An InterSEXional Approach*, 75 DENV. U. L. REV. 1215, 1249 (1998); Silbaugh, *Turning Labor*, *supra* note 1, at 82-83; Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER, RACE & JUST. 1 (1999). As Professor Silbaugh notes, "the wage of a paid domestic worker competes with a tax-subsidized unpaid houseworker." Silbaugh, *Turning Labor*, *supra* note 1, at 83.

7. E.g., April Cherry, *Nurturing in the Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood*, 10 TEX. J. WOMEN & L. 83, 117-18 (2001); Dorothy Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 247-48 (1995).

8. See Roberts, *Spiritual and Menial*, *supra* note 1.

opportunities for women to support themselves and their families through part-time work. It can also focus research on the different uses of money in the household and the different entitlements to that money.<sup>9</sup> For example, interspousal payments upon divorce can be classified as either alimony or child support, and the same person generally receives both payments. Nonetheless, while money itself is fungible, labelling the transfer of the money in different ways can cause the recipient to channel that money for a particular purpose and cause both the obligor and obligee to treat the money in a different way.<sup>10</sup>

Consider the treatment of child support for poor custodial parents.<sup>11</sup> The noncustodial parent pays child support, but not directly to the custodial parent; what the custodial parent receives is public welfare, not private child support. As a result, the recipient may view the money as “public” money rather than the child support that she is owed.<sup>12</sup>

I want to use the commodification discussion to figure out how to get poor single mothers more recognition for their work. Unlike middle class women, poor women have no private support system but are dependent on

9. For more on this concept, see Viviana Zelizer, *The Social Meaning of Money: “Special Monies,”* 95 AM. J. SOC. 342 (1989) [hereinafter Zelizer 1]. As Professor Zelizer explains, “We assign different meanings and designate separate uses for particular kinds of monies . . . a housewife’s pin money or her allowance is treated differently from a wage or a salary.” *Id.* at 343. Thus, paying someone \$100 to take care of a child may look different from paying someone \$100 in public welfare funds, even though the public welfare recipient is also taking care of a child. *Cf.* Silbaugh, *Commodification*, *supra* note 4, at 82.

10. The tax code certainly treats the money differently! Alimony is typically taxable to the recipient as income, and deductible to the payor; child support is after-tax income of the payor and not income to the payee. I.R.C. § 71.215. Upon divorce, the divorcing parties may bargain over how to treat the same pot of money and the label the code attaches to the money has various consequences.

11. See Paula Roberts, *Child Support Issues for Parents Who Receive Means-Tested Public Assistance*, 34 CLEARINGHOUSE REV. 182 (2000) [hereinafter Roberts, *Child Support Issues*]; Naomi Cahn & Jane Murphy, *Collecting Child Support: A History of Federal and State Initiatives*, 34 CLEARINGHOUSE REV. 165 (2000); Lisa Kelly, *If Anybody Asks You Who I Am: An Outsider’s Story of the Duty to Establish Paternity*, 3 AM. U. J. GENDER & L. 247 (1995).

12. See Kathryn Edin and Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (1997); Roberts, *Child Support Issues*, *supra* note 11. Professor Roberts discusses what is counted as “income” for public assistance recipients. For example, in establishing a child-support obligation, most, but not all states, exclude various means-tested public aid programs in determining what constitutes income. *Id.* at 188. Some parents without any income whatsoever will have income imputed to them. *Id.* at 189-90.

In examining monetary relationships in single mother, low income families, Viviana Zelizer summarizes the Edin and Lein findings as showing that men played an important role in the financial aspects of the households, a role that ranged from absent father to boyfriend to pimp; and that “the relationship defined the appropriateness of one sort of payment or another.” Viviana Zelizer, *The Purchase of Intimacy*, 25 L. & SOC. INQUIRY 817, 817-18 (2000) [hereinafter Zelizer 2].

public agencies and welfare.<sup>13</sup> The amount of money available to poor women reflects social arrangements.

In the first section of this paper, I will discuss the commodification of household labor. Next, I turn to examine its application to poor women. The final section will examine, more generally, perspectives on commodification, exploring the benefits and drawbacks of commodification rhetoric. While I do not advocate payment of actual wages to mothers, I believe that focusing on the valuation of household work can be useful in clarifying some of the contemporary dilemmas faced by poor women. Market understandings can enrich family law just as family understandings can enrich market laws. Thinking about how market valuation affects family work and thinking about how family work affects market valuation may promote a better balance between work and family and between poor women and public conceptions of welfare. My goal is not, however, to diminish the role of caretaking by suggesting that everything has a market price. Instead, I hope to show that the inadequate economic recognition of caretaking has a market cost that does not just depress the wages of household workers, but that also interferes with social policy directed towards public welfare recipients and other poor women. Although much care-work is already commodified, the values are inadequate; my paper seeks not to characterize the caretaking as a job, but simply to show the effects of a change in the valuation of this work.<sup>14</sup>

## II. WAGES FOR HOUSEWORK

Focusing first on housework, women's work within the household is uncompensated, unless the woman is not the child's parent (or some other close relative). Childcare and housework, when performed by the mother or wife, are unpaid services.<sup>15</sup> Indeed, even when the market sets a wage for domestic work, that wage is depressed. Women perform domestic work in the private sphere, regardless of whether it is a parent or paid worker that is

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13. See GWENDOLYN MINK, *WELFARE'S END* (1998); Sonya Michel, *Welfare's End*, 570 ANNALS AM. ACAD. POL. & SOC. SCI. 215-16 (2000) (book review). Of course, many middle class women are impoverished upon divorce, when they lose their private support system. Many of the joint property proposals discussed *infra* affect these women. See, e.g. Joan Williams, *Do Wives Own Half? Winning for Wives after Wendt*, 32 CONN. L. REV. 249 (1999).

14. For further discussion of this point, see Naomi Cahn, *Care Work Cost: The Financial Costs of Emotional Care* (2001) (unpublished manuscript, on file with author).

15. This is, of course, true of men's performance of such work as well. I focus on women's work for several reasons: first, it is still women who are much more likely to become homemakers; second, even when both husband and wife work, the wife still performs overwhelmingly more household work than the husband; and finally, the proposals discussed in this section are articulated in a sexed fashion. Nonetheless, the analysis applies to whichever parent is gendered female.

performing the task.<sup>16</sup> Women disproportionately perform housework, even when they are working, and women disproportionately work part-time. This section briefly reviews the work that women perform in the household, before turning to proposals on how that work should be recognized by and through the market.

### A. Women's Household Work

When women sought the right to keep their own earnings during the nineteenth century, they also sought payment for their in-home services. Although they were somewhat successful in the former, they still have not achieved the latter.<sup>17</sup> Within contract law, the assumption is that women perform housekeeping services for men with whom they live, or other relatives, without even the expectation of compensation.<sup>18</sup>

Women perform a disproportionate share of the household work, even when they work.<sup>19</sup> Upon marriage or cohabitation, the average woman increases her household work by 4.2 hours, while the average man decreases his household work by 3.6 hours.<sup>20</sup> Studies of the amount of time that men and women spend in parenting consistently show that women perform more childcare than men, although the data are somewhat conflicting on the size of the differential.<sup>21</sup> For example, some studies

16. See Banks, *supra* note 6, at 7-8. For a discussion of the public/private distinction see Fran Olsen, *The Family and the Market*, 96 HARV. L. REV. 1497 (1983).

17. Siegel, *Home as Work*, *supra* note 1, at 1133; Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930*, 82 GEO. L.J. 2127 (1994) [hereinafter Siegel, *Moderinization*]. Professor Siegel argues that women's rights activists viewed household labor as work that might appropriately be valued at a rate higher than how the market could measure it. Siegel, *Home as Work*, *supra* note 1, at 1133. During the pre-bellum era, arguments for the method of payment for women's services took the form of a claim to joint property. See *id.* at 1133.

18. *E.g.*, *Borelli v. Brusseau*, 12 Cal. Rptr. 2d 16 (1993) (refusing to uphold a contract whereby a wife agreed to care for her ill husband because the wife was already obligated to provide such care to husband); see RESTATEMENT (SECOND) OF CONTRACTS: PROMISE DETRIMENTAL TO MARITAL RELATIONSHIPS § 190 (1981).

19. See Silbaugh, *Turning Labor*, *supra* note 1, at 7; Kathryn Branch, *Are Women Worth as Much as Men?: Employment Inequities, Gender Roles, and Public Policy*, 1 DUKE J. GENDER L. & POL'Y 119 (1994); JOAN WILLIAMS, *UNBENDING GENDER* (2000).

20. See Sanjiv Gupta, *The Effects of Marital Status Transitions on Men's Housework Performance*, 61 J. MARRIAGE & FAM. 700 (1999). Another recent study found, however, that both men and women performed more housework per week than did their single counterparts: women performed fourteen more hours per week (a fifty-four percent increase), while married men performed ninety minutes more housework than did single men (a ten percent increase). Chloe Bird, *Gender, Household Labor, and Psychological Distress: The Impact on the Amount and Division of Housework*, 40 J. HEALTH & SOC. BEHAV. 32, 33, 37-38 (1999).

21. For a careful discussion of the data, see Amy Wax, *Bargaining in the Shadow of the*

suggest that the average father spends less than an hour per day with his children and that the fathers of the 1990s spent no more time on childcare activities than the fathers of 1965. The same studies indicate that mothers who did not work outside the home spent more than ten hours per day in solo childcare work.<sup>22</sup> On the other hand, some studies suggest that men are participating more in the family than their fathers did. Recent studies show a dramatic increase in men's childcare and housekeeping responsibilities proportionate to women.<sup>23</sup> Nonetheless, a recent review suggests that, notwithstanding the perception that men are doing more, they are actually overreporting in studies the amount of time they spend on this work, and are distorting the actual changes that may have occurred in their behaviour.<sup>24</sup>

Mothers continue to provide substantially more caretaking within the family than fathers, even under the most optimistic scenarios. A recent national survey of more than 1,000 children found that not only do mothers take primary responsibility for the physical and moral care of their children, but also that "mothers are still the primary emotional caregiver for their children."<sup>25</sup> Not surprisingly, mothers also continue to perform the lion's share of housekeeping chores.<sup>26</sup>

While women remain the household managers and planners, men are spending more time as caretakers and cleaners. Nonetheless, women still spend much more time than men in these activities. Even when parents share responsibilities, they generally do not completely escape the

*Market: Is There a Future for Egalitarian Marriage?*, 84 VA. L. REV. 509, 519-24 (1998). She notes that men and women in traditional marriages, where the wife stays home, work a comparable number of hours per week. *Id.* at 519. Of course, in these relationships, all of the woman's time is spent on home work.

22. See Krista Ramsey, *Dad's Value is Nothing to Kid About*, CIN. ENQUIRER, June 14, 1997, at B1; cf. Jerry Adler, *Building a Better Dad*, NEWSWEEK, June 17, 1996, at 58 (citing a study that found fathers spend about forty-five minutes per day caring for children by themselves, while mothers spend more than ten hours per day). Yet another study found that employed women spend 6.6 hours per week in "undivided childcare," compared to employed men's 2.5 hours. Laura Shapiro, *The Myth of Quality Time*, NEWSWEEK, May 12, 1997, at 62; see WHITE HOUSE COUNCIL OF ECONOMIC ADVISERS, *FAMILIES AND THE LABOR MARKET, 1969-1999: ANALYZING THE "TIME CRUNCH"* 12-13 (1999) (using the most recently available time-use diaries, employed mothers spent approximately 6.5 hours per week in childcare in 1965 and 1985, while employed men spent about 2.6 hours during the same time period).

23. SCOTT COLTRANE, *FAMILY MAN* 54 (1996) (summarizing recent studies which show that men contribute about one-third of the total household time to childcare). In most of these studies, it is not men performing dramatically more work; it is women performing less that leads researchers to conclude the gap is decreasing.

24. Julie E. Press & Eleanor Townsley, *Wives' and Husbands' Housework Reporting: Gender, Class, and Social Desirability*, 12 GENDER & SOC. 188 (1998)

25. WHIRLPOOL CORPORATION, REPORT CARD ON THE NEW PROVIDERS: KIDS AND MOMS SPEAK, <<http://www.WhirlpoolCorp.com/ics/foundation/part3.html>> (May 11, 1999).

26. *Id.*

traditional gender patterns. Scott Coltrane, in his study of shared parenting, found that women remained more likely to do laundry, plan meals, arrange for babysitters, and mop the floor, while men remained more likely to take out the trash and do household repairs.<sup>27</sup> Even when working class couples work split shifts, and the man is solely responsible for the children while his wife works, the man still ceded responsibility to his wife as soon as she returned because of the men's perceptions of the gendered nature of childcare.<sup>28</sup> The ideology remains traditional, even though the reality of worksharing is somewhat egalitarian.<sup>29</sup> It may be that the families are trying to convince themselves that they live in traditional families, even as their practice varies.<sup>30</sup> Somewhat ironically, many of the women in these couples, who are working because they need the money, also receive nontangible benefits from their market work.<sup>31</sup>

The gendered nature of caregiving is evident not just for young children, but also for the elderly. A recent study of informal, unpaid caregiving for the elderly found that more than seventy-two percent of the caregivers were women.<sup>32</sup> Almost seventy-five percent of the participants in the study provided care for more than eight hours per week.<sup>33</sup> Women's unpaid household work has costs for their current income and long-term employment.<sup>34</sup>

### *B. Proposals for Commodifying Women's Home-Work*

Turning more directly to the commodification issues, commodification

27. COLTRANE, *supra* note 23, at 65-66, tbl. 3.1.

28. See FRANCINE DEUTSCH, HALVING IT ALL: HOW EQUALLY SHARED PARENTING WORKS 171-75 (1999).

29. See Beverly Burris, *Employed Mothers: The Impact of Class and Marital Status on the Prioritizing of Family and Work*, 72 SOC. SCI. Q. 50, 63 (1991); Francine Deutsch and S.E. Saxon, *Traditional Ideologies, Nontraditional Lives*, 38 SEX ROLES 331-362 (1998).

30. DEUTSCH, HALVING IT ALL, *supra* note 28, at 184.

31. See *id.* at 186-87; ARLIE HOCHSCHILD, THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK (1997). Professor Vicki Schultz has recently argued that work can provide the opportunity for women's self-development. See Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1883-84 (2000).

32. NATIONAL ALLIANCE FOR CAREGIVING & AMERICAN ASSOCIATION OF RETIRED PERSONS, CAREGIVING IN THE U.S.: FINDINGS FROM A NATIONAL SURVEY 10 (1997).

33. *Id.* at 40. The study established five levels of care, but did not break down levels of care provided by gender. The study also found that more than half of the caregivers had made some work-related adjustment in order to continue providing the necessary care. *Id.* at 33.

34. See ANN CRITTENDEN, THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS THE LEAST VALUED (2001).



exists as background even in realms like the family that are typically thought of as non-commodifiable. It is evident in mechanisms ranging from prenuptial contracts to childcare providers, from take-out food to equitable distribution upon divorce.<sup>35</sup> For example, prenuptial contracts may have pay-out provisions that vary depending on the years of marriage, more money for greater duration, or they may provide for waivers of property rights and the maintenance of separate property. It is a given that the family cannot be, and has never been, completely separated from money.

Money has been an integral part of marriage law in our country, including issues such as who owns property acquired during the marriage and who is obligated to support whom.<sup>36</sup> The importance of breadwinning underlies the dependent nature of wives. Throughout the nineteenth century, aside from the limited property women were allowed to own pursuant to the Married Women's Property Acts, husbands maintained financial control over all property during the marriage.<sup>37</sup> Although men were supposed to provide the necessities for their wives, this obligation was extremely difficult to enforce if men failed to do so.<sup>38</sup> In order for a creditor to receive reimbursement for a woman's purchase of necessities, the creditor was required to prove that the item purchased actually was necessary, that the husband had not already provided the item, and that the wife could not pay for it herself.<sup>39</sup> Because the labor contributed by women to the family has historically had economic value, the woman's rights movement fought over

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35. As Professor Viviana Zelizer points out, "[p]eople invest a great deal of effort in creating monies designed to manage complex social relations that express intimacy but also inequality . . . [t]he point is *not* that these areas of social life valiantly resisted commodification. On the contrary, they readily absorbed monies, transforming them to fit a variety of values and social relations." VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* 204 (1997) [hereinafter Zelizer 3].

36. E.g., MARYLYNN SALMON, *WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA* (1986); *McGuire v. McGuire*, 59 N.W.2d 336 (Neb. 1953); NORMA BUSCH, *FRAMING AMERICAN DIVORCE: FROM THE REVOLUTIONARY GENERATION TO THE VICTORIANS* 102-14 (1999).

37. As discussed *infra* at Part II.B, although the Married Women's Property Acts allowed women limited access to some of their earnings during marriage, even these Acts supported the economic dependence of wives. The fathers of wealthy women could create separate estates for them, but this was a comparative rarity.

38. The generosity of the husband in supporting his wife became an issue in many divorce cases. See C. Robert Haywood, *Unplighted Troths: Causes of Divorce in a Frontier Town Toward the End of the Nineteenth Century*, 13 GREAT PLAINS Q. 211, 215 (1993) (in her cross petition explaining the falseness of her husband's accusations of adultery, one woman described him as "stingy and miserly").

39. See Michele Dickerson, *To Love, Honor, and (Oh!) Pay: Should Spouses be Forced to Pay Each Other's Debts?*, 78 B.U. L. REV. 961, 970 (1998); see generally Note, *The Unnecessary Doctrine of Necessaries*, 82 MICH. L. REV. 1767 (1984).

who owns the money realized from that labor.<sup>40</sup> The traditional obligations of husbands to support their wives shows how economic understandings have shaped our domestic relations laws.<sup>41</sup> During the nineteenth century, women fought for payment for their work within the home.<sup>42</sup> In 1915, a farmer's wife wrote to the Secretary of Agriculture explaining that "the first need of the rural wife is a state income . . . thereby saving her the humiliation of asking for the money we have earned but don't get."<sup>43</sup>

While many commodification proposals focus on divorce,<sup>44</sup> I think it is important to shift the focus to look at ongoing relationships and women's labor within those relationships. A second issue, which I do not explore here, concerns the effect of commodification not just on the person who is commodified, but also on the labor produced. Producing housework is very different from producing a child or from producing gender. In the great commodification debates, what happens to the product? Can we commodify the labor but not the ultimate result? Is there a distinction between selling gestational services for someone's embryo, selling a child, and selling an egg?

Or consider, as another result, that housework may produce gender. For example, doing housework and childcare results in the following: 1) the work actually gets done;<sup>45</sup> 2) the work is perpetuated as "feminine"; and 3)

40. See BOYDSTON, *supra* note 1; Siegel, *Home as Work*, *supra* note 1, at 1082-83; Richard Chused, *Married Women's Property Law: 1800-1850*, 71 GEO. L.J. 1359 (1983). Professor Zelizer notes: "While the labor contributions of colonial wives were recognized, the nineteenth century domestication of housewives placed married women outside the productive economy." Zelizer 3, *supra* note 35, at 41. She explores the meaning of women's money in the late nineteenth and early twentieth centuries, as women's rights advocates debated whether this money was an entitlement for domestic work or a gift. *Id.* at 42-61. As family historian Stephanie Coontz notes, the value of women's domestic labor was greater than the comparable value of her "market" labor until the late nineteenth century. JUNE CARBONE, FROM PARENTS TO PARTNERS: THE SECOND REVOLUTION IN FAMILY LAW 89 (2000) (citing Coontz).

41. The husband's role as primary breadwinner resulted in his obligation to support his wife. Indeed, failure to support by the husband was a leading cause of divorce in many states in the late nineteenth century. See Naomi R. Cahn, *Faithless Wives and Lazy Husbands: Gender Norms in Nineteenth Century Law*, 2002 U. ILL. L. REV. (forthcoming 2002).

42. See Siegel, *Home as Work*, *supra* note 1, at 1082-83.

43. Viviana Zelizer, *The Creation of Domestic Currencies*, 84 AM. ECON. ASS'N. 138, 138 (1994) (quoting a New York woman) [hereinafter Zelizer 4].

44. The focus on divorce leads to concerns about valuing equal contributions to marriage, but only at the end of the marriage. Why not try to value this work as it happens? Dorothy Roberts speaks of how housework performed by African-American women in their own homes has operated as a method of resistance to the dominant culture. Roberts, *Spiritual and Menial*, *supra* note 1, at 51. This domestic work is thus a form of power over and against a dominant culture, in addition to acting as a form of power over a home sphere. *Id.*

45. For further discussion of how game theory affects women's willingness to actually do the housework, see Cahn, *supra* note 41.

the woman performing it reinforces her identity as a mother. Which of those performances should be valued and how? If we commodify housework, then we may be able to decouple it from gender. Performing housework and childcare has utility to the person doing the work (she is not alienated from her labor); does that require not placing a monetary value on it?

In seeking work equality for women, most contemporary feminists have emphasized equal pay for equal work, or equal pay for work of equal value. The focus has been on workplace equality with men.<sup>46</sup> But some feminists have revisited the nineteenth century effort to value appropriately women's work within the household.<sup>47</sup> They have argued for wages for housework or for taxes on the value of housework in an effort to recognize the enormous contribution made by women's supposedly "unproductive" household labor. Their goal is to ensure that caregiving and housework are "counted" as economic contributions.<sup>48</sup> In the 1970s, there was a similarly revitalized demand of wages for housework.<sup>49</sup>

There are three different ways to view financial transfers for household work: as payment for direct services, as an entitlement based on an ownership share, or as a gratuitous gift.<sup>50</sup> Scholars have developed various approaches to valuing household work based on these categories. As an initial matter, Professor Katherine Silbaugh argues for the importance of increasing the status of housework in order to increase the status of women.<sup>51</sup> She carefully documents the contemporary legal approach, in divorce, tax and contract law, to the devaluation of housework, and to housework's valuation as "merely" affectionately based, and thus, not worthy of compensation. Accordingly, she argues that the law must view housework as "unpaid value-producing labor" whenever this is relevant to the decision-making process.<sup>52</sup> Professor Nancy Staudt believes that

46. See Silbaugh, *Turning Labor*, *supra* note 1, at 5-6.

47. For a discussion of this movement, see Siegel, *Home as Work*, *supra* note 1; Reva Siegel, "The Rule of Love": *Wifebeating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996) [hereinafter Siegel, "The Rule of Love"]; Siegel, *Modernization*, *supra* note 17; BOYDSTON, *supra* note 1, at 17-18; Chused, *supra* note 40.

48. SHIRLEY BURGRAFF, *THE FEMININE ECONOMY AND ECONOMIC MAN* (1996) (arguing for economic incentives to continue parental investment in children).

49. See Margaret Baldwin, *Public Women and the Feminist State*, 20 HARV. WOMEN'S L.J. 47, 84-85 (1997) (analyzing feminist accounts of public women and the suppression of the public lives of women); Ann Laquer Estin, *Maintenance, Alimony, and the Rehabilitation of Family Care*, 71 N.C. L. REV. 721, 803 n.307 (documenting history of claims of wages for housework back to Charlotte Perkins Gilman).

50. ZELIZER 3, *supra* note 35, at 42.

51. Silbaugh, *Turning Labor*, *supra* note 1, at 85-86.

52. *Id.* at 86.

imposing taxes on housework could help change the gendered nature of work.<sup>53</sup> Among other benefits, women would receive access to social security and other employee benefits that are tied to wage labor. To implement the tax, Professor Staudt would impute to women a wage based on the value of their household labor.<sup>54</sup> She bases her proposal on an implied wage for services. Professor Martha Fineman, using an entitlement theory, argues that society owes caretakers a societal debt for the work that they perform.<sup>55</sup> Although she does not argue directly for commodification, she does advocate recognition of this debt as a basis for providing social support for this work. In valuing the work of caretakers, she intends to “expand this notion of value beyond the labor theory of value to consider, as labor, things not previously considered as such. The value is measured in and by social policy, not market indicators and demands accommodation, as well as monetary subsidy.”<sup>56</sup> For her, valuation of this work is not simply measured pursuant to a wage-based concept, but envisioned as a woman’s entitlement.

A final set of proposals, outside of the work of Martha Fineman, that has received the most attention, protects women upon divorce by guaranteeing them some portion of their ex-husbands’ assets. Unlike the other suggestions, which provide ongoing support to the caretaking unit, these proposals only provide support once a marriage dissolves. While the form for guaranteeing women post-divorce support ranges from premarital security interests<sup>57</sup> to an entitlement to a certain percentage of the primary wage-earner’s post-divorce income,<sup>58</sup> their central goal is to protect the

53. Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1635 (1996).

54. *Id.* at 1642. Professor Kate Silbaugh similarly comments that a social security system that accounts for non-paying domestic work would be “far superior” to our current system. Silbaugh, *Commodification*, *supra* note 4, at 116. As a more realistic proposal, she suggests:

An economic understanding of the productivity of home labor could permit home laborers to stand on their own in the social security system just as wage laborers do. Contributions could be made to the social security system for being materially productive . . . But contributions from unpaid laborers cannot be assessed without some method of calculation.

*Id.* at 116. She recognizes that a mandatory system might be difficult for poor families. *Id.* at n. 139. Since poor families are the most likely to need the social security, however, this may be an insurmountable problem.

55. Martha A. Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER, SOC. POL’Y, & L. 13, 18 (1999); Twila L. Perry, *Caretakers, Entitlement, and Diversity*, 8 AM. U. J. GENDER, SOC. POL’Y & L. 153, 160-61 (1999).

56. Fineman, *supra* note 55, at 16 n.7.

57. Martha Ertman, *Commercializing Marriage: A Proposal for Valuing Women’s Work Through Premarital Security Agreements*, 77 TEX. L. REV. 17 (1998).

58. See Jana Singer, *Alimony and Efficiency: The Gendered Costs and Benefits of the*

primary caretaker's opportunity costs in forgoing market work and to compensate her for her work in the home (even if she is fully employed, the assumption is that women will perform most of the caretaking work). These proposals are rooted in entitlement theory, although, unlike Professor Fineman, the entitlement is within the private marital relationship, not from the state. Although this last set of proposals only takes effect upon divorce, the proposals have the power of changing the power allocation during marriage,<sup>59</sup> and they do provide recognition, albeit belated, of the labor performed by women during marriage. Moreover, unlike the other proposals, they have the benefit of not providing explicit encouragements to women to stay home with their children, thereby endangering their future income should they choose to return to the workforce.

### *C. Effectiveness of these proposals*

These various proposals attempt to provide support for caretaking through public or private means. This is an important means for drawing attention to the work that mothers perform in the household, and for recognizing the value of uncompensated household labor. The power that women exercise in the household is the subject of deep cultural ambivalence, and the caretaking support proposals seek to dissolve this ambivalence by providing affirmative support to women for household work. Fuller recognition of this work would help women's status within the family, and could provide greater security for them. Indeed, "[n]o self-respecting feminist could be against 'valuing housework,' and I'm no exception."<sup>60</sup>

Nevertheless, there are critiques of these proposals. First, the proposals

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*Economic Justification of Alimony*, 82 GEO. L.J. 2423 (1994); Cynthia Starnes, *Divorce and the Displaced Homemaker: A Discourse on Playing with Dolls, Partnership Buyouts and Dissociation Under No-Fault*, 60 U. CHI. L. REV. 67 (1993); Joan C. Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227 (1994).

59. See Ertman, *supra* note 57, at 33 (explaining that commodifying domestic work could help in equalizing marital roles and compensating women for their contributions to family wealth); see also ZELIZER 3, *supra* note 35, at 42 (stating that the entitlement theory recognizes women's power).

The whole concept of equitable distribution of property upon divorce, that title during marriage does not control disposition at divorce, was highly controversial when state legislatures began adopting it during the latter half of the twentieth century. Nonetheless, courts ruled decisively that such statutes could constitutionally be applied to property acquired and marriages contracted before the change in ownership rules. *E.g.*, *Rothman v. Rothman*, A.2d 496 (N.J. 1974); *McCree v. McCree*, 464 A.2d 922 (D.C. Ct. App. 1983). The inadequacy of equitable distribution to appropriately value women's household work has prompted, in part, some of these additional proposals.

60. See Schultz, *supra* note 31, at 1900.

may support women's continued power within the home at the expense of both the involvement of other parents in household activities and women's involvement outside of the home. This is, I think, an intended consequence for Professor Fineman, who gives the power to choose additional caretakers to the mother. But this is an unintended consequence for others seeking to value this work, who presumably want to encourage additional involvement from the other parent(s), and who are at least neutral on women's relationship to the world of market work. The taxation of household labor imposes additional costs on a family that are not offset by incoming money.<sup>61</sup> Even the post-divorce support proposals, which I generally support because they prevent the impoverishment of women upon divorce, may ratify a status quo in which women continue to provide primary caretaking.<sup>62</sup> These proposals grant women who stay home rights in the wages of the primary breadwinner, thereby recognizing the significance of the woman's role but not encouraging dual breadwinners. Wages or benefits for housework presupposes the primacy of the full-time parent over the other caretaker, thereby marginalizing the other parent.<sup>63</sup> It is possible to provide carework benefits in a dual breadwinning household; this is one method of recognizing the multiple contributions of each parent. Of course, for poor women in single-headed households, interspousal transfers are irrelevant. This is important, however, because many relationships exhibit this pattern.<sup>64</sup>

Paying explicitly for housework supports the continued privatization of childcare and household work. Such a regime encourages women to specialize in caring for their own children, and does not, for example, foster the development of quality public childcare.<sup>65</sup> Thus, explicit payments for housework could potentially limit a woman's ability to work outside of the

61. Professor Staudt does suggest that low-income taxpayers receive a credit to offset the additional taxes imposed. Staudt, *supra* note 53, at 1636-39.

62. The proponents of the post-divorce support mechanisms recognize this criticism. For example, Professor Ertman suggests that this support might encourage men to compete with women to become the primary caretaker and would encourage a revaluation of housework. Ertman, *supra* note 57, at 76, 86.

63. See Marion Crain, "Where Have All the Cowboys Gone?" *Marriage and Breadwinning in Postindustrial Society*, 60 OHIO ST. L.J. 1877, 1931 (1999); NANCY FRASER, JUSTICE INTERRUPTUS 55-59 (1997).

64. See, e.g., ANN CRITTENDEN, THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED 115, 131-32 (2001).

65. Studies repeatedly show that the quality of childcare which is available to upper income families has no deleterious impact on children, while lower quality childcare can have detrimental effects on child development. The NICHD Early Childcare Research Network found that poor and wealthier children receive the highest quality center-based care since working-class families cannot pay as much as affluent families and do not qualify for publicly subsidized care. DEUTSCH, *supra* note 28, at 282.

home.

A second criticism of these proposals is that there will remain a difference between market and domestic wages that will not easily disappear; domestic wages will still remain undervalued.<sup>66</sup> Even when the market values housework, this value does not measure the actual work that women perform. The recent reforms with respect to reporting wages for Social Security purposes, triggered by Zoe Baird, simplified tax issues for employers, but did nothing to help poor women by providing "comprehensive government regulation of wage and hour provisions for household workers."<sup>67</sup> Domestic paid workers have traditionally been excluded from the protections of many labor laws, reflecting not just the nature of who performs the work,<sup>68</sup> but also the nature of the work itself. Those seeking to value housework run the risk of reinforcing the devaluation of women's work by perpetuating the association of women with children and the household. This will also have long-term implications when the caretakers seek to return to work, and find few jobs available because they have been out of the labor market.<sup>69</sup>

Nonetheless, these proposals are not completely negative. Instead, the proposals offer interim steps to support primary caretakers. Under our current gender system, where non-poor women are typically the ones who forego full-time work in order to serve as the primary caretaker, explicit recognition of their services, tied to money, helps provide gender equity. Until both workplace and parenting opportunities are available to both men and women, until women do not, from an early age, learn to train themselves "down,"<sup>70</sup> until quality childcare is available, until public assistance for single mothers is de-stigmatized, then proposals to value housework give needed support to women caught in this gender trap.

66. If they are valued by use of a comparable wage method, this may achieve some rough equality. This valuation method seems unlikely. FRASER, *supra* note 63, at 57 (noting that even if caretakers receive a basic minimum wage, this is not income equality with men).

67. Banks, *supra* note 6, at 42. Professor Banks also points out that nowhere in the debate on domestic workers was the gendered nature of domestic work challenged. *Id.* at 21. Both affluent women and black feminists appeared to accept it. *Id.*

68. See Peggie Smith, *Regulating Paid Household Work: Class, Gender, Race and Agendas of Reform*, 48 AM. U. L. REV. 851, 854-55, 888, 916 (1999); see also Silbaugh, *Turning Labor*, *supra* note 1, at 115, 131-32.

69. See Katherine K. Baker, *Taking Care of Our Daughters*, 18 CARDOZO L. REV. 1495, 1521-22 (1997) (book review) (stating that when a woman "opt[s] out of the noncaretaking world . . . she seriously compromise[s] her ability to integrate herself back into a more public life"); Suzanne Walters, *Breaking Up is Hard to Do: Comments on Martha Fineman's Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 205, 214 (1999) ("Allowing women to be better paid caretakers seems a poor substitute for implementing socialized childcare.").

70. See RHONA MAHONY, *KIDDING OURSELVES* (1995).

Moreover, the larger concept of recognizing the value of housework has resonance even for the long term. An economic understanding of housework can coexist with noneconomic understandings of family life,<sup>71</sup> and with workplace support and better opportunities for women outside of the home.

### III. COMMODIFICATION AND POOR WOMEN

A final criticism of the commodification<sup>72</sup> of housework is that it applies only narrowly to poor families, where there may be no family wages and no ability to pay additional taxes. Even in working class families, where there is a divorce, the combined effect of child and spousal support may be financially overwhelming such that the non-primary caretaking worker has no extra income or capital.<sup>73</sup> For single mother families on public assistance, the state has already indicated its devaluation of mother's work by paying public welfare recipients less even than it pays foster care families.<sup>74</sup> This suggests that taking care of other people's children is financially valued more highly than taking care of one's own,<sup>75</sup> although, as discussed *infra*, the work involved in supervising children is not compensable even to foster care parents.

On the other hand, commodification appears to be irrelevant to poor women because no one is paying them to take care of their own children, and, if there is another breadwinner, that person's wages may be completely inadequate both during marriage and upon divorce. Note that public welfare has been called Aid to Dependent Children, Aid to Families with Dependent Children, and Temporary Assistance to Needy Families. None of the labels provide any public recognition of the caretaking that occurs within families; instead, the labels recognize and penalize the dependency of these families.<sup>76</sup>

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71. See also RADIN, *supra* note 3, at 103 (finding that "it becomes important to recognize both our social division over commodification and the non-market aspect of money transactions that can be conceived of in market terms").

72. There is, of course, an extensive body of work critiquing commodification. See, e.g., RADIN, *supra* note 3, at 16-29.

73. See Ertman, *supra* note 57, at 104-05 (responding to this criticism, suggesting, for example, that poor divorcing women receive a lower proportion of household debt).

74. See Catherine J. Ross & Naomi R. Cahn, *Subsidy for Caretaking in Families: Lessons from Foster Care*, 8 AM. U. J. GENDER SOC. POL'Y & L. 55 (1999) (examining the assumptions behind contemporary foster care).

75. At the same time, taking care of one's own children is "priceless." See VIVIANA A. ZELIZER, *PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN* (1985) [hereinafter ZELIZER 5].

76. See Fineman, *supra* note 55; Nancy Fraser & Linda Gordon, *A Genealogy of 'Dependency': Tracing a Keyword of the U.S. Welfare State*, in NANCY FRASER, *JUSTICE*



Upon divorce, women generally become poorer;<sup>77</sup> even a reallocation of debt is not particularly useful because of the lack of income many women experience. Nonetheless, the notion of valuing women's labor can help poor women. First, it might lead to changes in public welfare that recognize the value of providing care for children, of cooking, of cleaning, and of creating a family. Second, if jobs inside and outside of the home are valued, then the great divide between them may dissolve. That is, in recognition of the value of home-work, out-of-home work (traditionally waged work) may become more accommodating so that poor women have access to the job flexibility some wealthier women enjoy.

The devaluation of the poor, and particularly poor African-American women's work within the home is well documented.<sup>78</sup> Another example of the belief that childcare is not work is provided in the foster care context, where Congress debated the definition of the purpose of "Foster Care Maintenance Payments."<sup>79</sup> In 1980, the AACWA added the definition of such payments which remains in effect today.<sup>80</sup> The Act defined foster care maintenance payments to foster parents as "payments to cover the cost of (and cost of providing) food, clothing, shelter, daily supervision, school supplies, personal incidentals . . . ." Controversy focused on the inclusion of payments to cover the cost of "daily supervision" language drafted by the Senate. Although the House of Representatives ultimately agreed to the Senate language, it did so with reservations, underscoring that "payments for the costs of providing care to foster children are not intended to include reimbursements in the nature of a salary for the exercise by the foster family parent of ordinary parental duties."<sup>81</sup>

This debate over reimbursement for time spent on daily supervision, the most arduous and simultaneously the most rewarding part of parenting, suggests that members of the House of Representatives shared the popular assumption that parenting, even foster parenting, should be primarily an act of altruism. While parenting is generally an act of altruism, and foster

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INTERRUPTUS 121, 133-34 (Nancy Fraser ed., 1997) (stating that "[t]he conditions of [public assistance programs] made recipients view their dependence on public assistance as inferior to the supposed independence of wage labor").

77. E.g., Marsha Garrison, *The Economic Consequences of Divorce*, 32 FAM. & CONCILIATION CTS. REV. 10, 18-19 (1994) (discussing the extent to which divorce is responsible for women's poverty).

78. E.g., Roberts, *Spiritual and Menial*, *supra* note 1; Mink, *supra* note 13; Fraser & Gordon, *supra* note 76.

79. This discussion is drawn substantially from Ross & Cahn, *supra* note 74.

80. Adoption Assistance, Child Welfare Act of 1980 § 101, 42 U.S.C. § 675(4)(A) (1988).

81. Adoption Assistance, Child Welfare and Social Services, H.R. CONF. REP. NO. 96-900, at 49-50 (1980).

parents often explain their actions as altruistic, adequate financial compensation is certainly a recognition of the important work that they do. Unlike the House, the Senate may have believed that “caretaking” requires financial resources, whether regarded as pay for services rendered or as a subsidy to make the family system succeed.

The actual wage rate for this work would be hard, but not impossible, to estimate. In wrongful death suits, lawyers and accountants are accustomed to measuring the value of housework.<sup>82</sup> Economists have developed several different measures, such as the opportunity cost of the earnings foregone by the household laborer or the replacement cost.<sup>83</sup> The Cornell Report on the value of household work estimates a wage rate of \$32.39 per hour for non-black women caring for a child under the age of one,<sup>84</sup> although this estimate is not without its criticism as another economist deems this rate “nonsensical.”<sup>85</sup>

Public recognition that supervision of children, caretaking, is a valuable form of work could change the scale not just of foster care payments, but of public welfare payments. Certainly, the argument for publicly-provided support for full-time caretaking, while important rhetorically, is unrealistic in the current political climate in the United States.<sup>86</sup> And, as June Carbone argues, it may be almost impossible to subsidize welfare recipients to stay home to take care of their children, when the middle-class is itself unable to afford to do this.<sup>87</sup> As increasing numbers of mothers are forced to work outside of the home, it may seem unfair to support welfare mothers who stay at home.<sup>88</sup> But just think of the transformatory potential of the image of

82. ROBERT N. LEAVELL ET AL., *EQUITABLE REMEDIES: RESTITUTION AND DAMAGES* 899-906 (6th ed. 2000) (discussing of loss of consortium claims).

83. See Harvey Paul, *Critical Review: The New Cornell Report on the Value of Household Output*, 7 J. LEGAL ECON. 35 (1997) (discussing different proposals).

84. Keith Bryant et al., *The Dollar Value of Household Work*, Cornell University College of Human Ecology, Revised Edition, at 7, tbl.2.3. This value is based on the opportunity cost, excluding taxes and commuter costs, but including fringe benefits.

85. Paul, *supra* note 83, at 37.

86. See Ross & Cahn, *supra* note 74, at 68; Ertman, *supra* note 57, at 105.

87. But women remain the ones most likely to stay home because their wages are consistently lower. See Crain, *supra* note 63, at 1916 (“those in the caretaking-compatible jobs (typically women) are forced into primary caretaking roles because the larger income source (the breadwinning job) must be protected. . . . Over time, equal child-care contribution becomes impossible”).

88. See Alexia Pappas, Note, *Welfare Reform: Child Welfare or the Rhetoric of Responsibility?*, 45 DUKE L.J. 1301, 1311 (1996) (stating that “[i]t seems unfair to many Americans to give a subset of the population financial support in exchange for caregiving, when many mothers work outside the home and raise children”); Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 CONN. L. REV. 879, 882 (1994) (noting that “there is widespread resentment that

welfare recipients “working” at home to provide childcare and clean houses; they are not, as in the popular imagination, sitting around waiting for welfare payments, but actively involved with their children.<sup>89</sup> The equation of doing nothing with watching children completely misunderstands what is involved in childcare.

Moreover, many middle-class women are able to work part-time,<sup>90</sup> an option that is legally and practically unavailable to many poor single mothers, who, as primary wage-earners, are often paid just minimum wage, and Temporary Assistance for Needy Families (TANF) regulations may require to work full-time.<sup>91</sup> Even if many poor women do stay home, this activity is highly discouraged, and ultimately penalized, under our current social welfare policy.<sup>92</sup> In her study of the impact of class and marital status on how women think about work and family, Professor Beverly Burris found that many of the nonprofessional women “voluntarily ‘drop[ped] down’” by taking lower stress jobs and deferring long-term career plans.<sup>93</sup> Working and middle-class women may tailor their work shifts so that they can appear to be full-time mothers.<sup>94</sup> Because even a full-time, minimum wage job provides inadequate support for their families,<sup>95</sup> the option of part-time work, and the attendant loss of job-related benefits, is utterly moot. Recognizing the value of their work at home might justify additional public

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‘those people’ are allowed to stay at home through welfare while fifty percent of mothers with young children are to some degree or another connected to the labor market”).

89. See, e.g., Silbaugh, *Turning Labor*, *supra* note 1, at 67-72 (explaining the public attitude that “a person who works in the home caring for children . . . has no work ethic”).

90. See Cathy Young, *The Mommy Wars*, REASON, July 1, 2000, at 19-21 (noting that more than one-third of mothers of pre-school children are not employed outside the home). Slightly more than one-third of all mothers of preschool children work full-time. *Id.* Dana Mack, *Working Moms Still Find Time for the Children*, RECORD, June 14, 2000, at L11. Approximately twenty-five percent of all mothers work part-time. Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C. L. REV. 707, 733 (2000). None of these figures are broken down by class.

This paper focuses on mothers because they are the ones most likely to perform household care.

91. See *infra* notes 96-97.

92. See *infra* notes 96-98.

93. Burris, *supra* note 29, at 56. Her study, which included only 164 women, is nonetheless suggestive. She also found that when individuals interviewing married, working-class and middle-class women asked them to prioritize their three roles of wife, mother, and worker, the role of mother was the most important priority for all of the working-class and middle-class women. *Id.* Professional women were more likely to rank all of the roles equally or to rate work more highly than the working-class and middle-class women. *Id.* at 56-57.

94. See, e.g., DEUTSCH, *supra* note 28, at 190-91.

95. Joel Handler, *Low-Wage Work “As We Know It”: What’s Wrong/What Can be Done*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 3, 6 (Joel F. Handler & Lucie White eds., 1999).

support to enable them to stay home, at least part-time, an option that would be in accord with the lives of many middle-class women.

The part-time option is contrary to the letter (and intent) of TANF, which contains strict, virtually full-time, work requirements. By the year 2000, TANF required recipients to work thirty hours per week,<sup>96</sup> and at least twenty hours of that time had to be in one of nine approved activities.<sup>97</sup> TANF recipients in both single-parent and two-parent families are subject to the mandatory work requirements.<sup>98</sup> Accordingly, in compliance with the TANF mandate, many of the programs developed to help poor women leave public welfare are designed around a full-time work model. For example, the Manpower Demonstration Research Corporation recently evaluated three programs designed to decrease welfare dependency by providing cash benefits to working caretakers.<sup>99</sup> But the caretakers only received the benefits in these three model programs if they worked full-time. Intriguingly, although there was some improvement in child outcomes for younger children, adolescents may have been adversely affected because of the decreased amount of time that a parent was around the house.<sup>100</sup> These results suggest both the importance of childcare and of parental supervision. Part-time work facilitates both. Finally, increasing the work wages of poor women would, of course, provide critical support, and might allow them the option of part-time work. At this point, even full-time work at the federal minimum wage does not exceed the poverty line for a single parent with one child, much less two children.<sup>101</sup>

When middle-class mothers go to work, they generally have access to

96. H.R. 3734-25, § 407(c)(1)(A). Individuals with children under the age of twelve months may be exempted from this requirement. *Id.* at (b)(5).

97. *Id.* at § (c)(1)(A). The list of activities includes "vocational education," although for no longer than one year, as well as subsidized and unsubsidized private and public sector work. *Id.* at (d).

98. *Id.* at § (c)(1)(A), (B). In two-parent families, one adult must work at least thirty-five hours per week, and, if the family is receiving childcare assistance, the other adult must work at least twenty hours per week in one of six approved activities. *Id.* at § (B).

99. See Gordon Berlin, *Lesson from Three Experiments that Fight Dependency and Poverty by Rewarding Work*, 15 AM. PROSPECT 68 (2000).

100. *Id.* at 7.

101. See CDF Releases New Report on Hardships Faced by Low-Income Working Families Who Left Welfare Since 1996, PR NEWSWIRE, Dec. 14, 2000; see CHILDREN'S DEFENSE FUND REPORT, FAMILIES STRUGGLING TO MAKE IT IN THE WORKFORCE: A POSTWELFARE REPORT 25-26, 50 (2000) [hereinafter FAMILIES STRUGGLING]; see also <http://www.census.gov/hhes/poverty/threshld/thresh00.html>. At \$5.15 per hour (the federal minimum wage), a person earns \$10,712.00. The poverty line for a single mother with one child is \$11,689.

good childcare. When poor women go to work, they generally do not.<sup>102</sup> Because of their lack of money, poor women are unable to make the same work/family choices as higher income women. Many poor women cite the lack of adequate childcare as a barrier to employment.<sup>103</sup>

Finally, respect for this home-work might help state legislatures and public welfare administrators understand the need to continue to provide subsidies such as Medicaid and food stamps when low-income mothers are no longer receiving other forms of public support.<sup>104</sup> The emphasis on moving women off the welfare rolls is done at the expense of many things, including support for their family-work; this would be a tangible means of crediting them for that work. Of course, these subsidies could be extended to help middle-class women who would otherwise be unable to stay home with their children.

The second positive effect that commodification discourse may have for poor women is to change how we think of the workplace. Even to say the workplace conjures up an out-of-home workplace. Equal respect for work done at home, however, might lead to changes in the outside workplace to accommodate the needs of the home workplace. The outside workplace is least accommodating for working-class families because their jobs typically have the least flexible schedules<sup>105</sup> and may involve night shift work.<sup>106</sup> Building in more flexibility at the outside workplace—possible at least in some jobs—supports both employers and employees.<sup>107</sup> Providing childcare and childcare counseling, to decrease the separation of

102. See Walters, *supra* note 69, at 214 (advocating a reevaluation of individualized childcare in favor of more communal responsibility); CHILDREN'S DEFENSE FUND, THE HIGH COST OF CHILDCARE PUTS QUALITY CARE OUT OF REACH FOR MANY FAMILIES 1, 7 (2000) [hereinafter HIGH COST].

103. HIGH COST, *supra* note 102; FAMILIES STRUGGLING, *supra* note 101.

104. See Emily Bazelon & Tamara Watts, *Helping to Keep Families Afloat*, N.Y. TIMES, Aug. 1, 1999, § 14CN, at 14; see also FAMILIES STRUGGLING, *supra* note 101, at 48 (recommending that former TANF recipients remain eligible for food stamps, Medicaid, and childcare subsidies rather than being terminated automatically).

105. See Crain, *supra* note 63, at 1920-21.

106. See Burris, *supra* note 29, at 59 (Professor Burris found that professional women were able to design family-friendly workplaces through part-time work, generous benefits including maternity leave, and the ability to bring children to work).

107. See Crain, *supra* note 63, at 1956-65; Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989). See generally HOCHSCHILD, *supra* note 31.

A recent study on workplace flexibility concluded that it does not necessarily inhibit career advancement. See Melinda Ligos, *How to Scale Back the Hours, but Not the Career*, N.Y. TIMES, Jan. 14, 2001, at § 3, at 10; CATALYST WOMEN, TEN YEARS LATER PIONEERS OF FLEXIBLE WORK SCHEDULES SATISFIED WITH CAREER OUTCOME. Nevertheless, this and other comparable studies tend to focus on women in careers, rather than low-income women in minimum wage jobs. All of the women in the catalyst study held middle or senior level positions. *Id.*

work and home, recognizes a unity of identity such that workers can be parents at work and not negate this critical aspect of their identity.<sup>108</sup> Additional support for micro-enterprise development, which can provide women with needed flexibility and desired jobs,<sup>109</sup> will also allow for integration of these different aspects of mothers' identities.

The form and forum for recognizing women's labor within the home need not be through payment of actual wages. Indeed, given current welfare realities, it undoubtedly would not be. Instead, we can visualize the "payments" as investment in the futures of both the women and their children.<sup>110</sup> Thus, we could provide better incentives for education by changing TANF's stringent post-secondary education limitations and letting recipients attend vocational education courses for longer than one year. As a result of supporting poor women so that they can support their children, the families are ultimately more productive members of society because the women will earn more, their children will benefit from the increased earnings, and the children will earn more and be better students. Studies repeatedly show that parental investment in children helps children, and the more resources that poor women have access to, the more they can invest in their children.

Conversely, without education, poor women face severe employment barriers.<sup>111</sup> The increased support for the mothers' education should lead to higher wage rates while these women work part-time or when they begin working full-time. Investing in poor women by providing expanded opportunities for education and medical care diminishes the loss of human capital that results from child rearing.<sup>112</sup>

We can commodify the labor itself, or we can commodify the "product"—healthier and more productive poor women and children. This also limits public investment to those families who really need additional resources because of their inability to invest in themselves. Caretaking of

108. See Crain, *supra* note 63, at 1951.

109. See Susan R. Jones, *Self-Employment: Possibilities and Problems*, in *HARD LABOR*, *supra* note 95, at 76.

110. I am indebted to Professor June Carbone for her formulation of this point. E-mail from June Carbone, Professor, Santa Clara University School of Law, to Naomi R. Cahn, Professor, George Washington University School of Law (October 16, 2000) (on file with author).

111. See, e.g., *FAMILIES STRUGGLING*, *supra* note 101, at 116.

112. Let me be clear, although I am using economic terms, I do not believe that child-rearing is primarily an economic transaction motivated by financial considerations. Instead, I think that a conservative public, not otherwise inclined towards expanding social welfare, might accept additional welfare funding if the ultimate "result" is a more productive, more highly paid worker with better educated children.

children generates various forms of externalities,<sup>113</sup> whether these externalities are children capable of supporting themselves, children who remain on public welfare, or children sent to jail. Recognizing the value of these positive externalities, while discouraging the negative ones, is an appropriate role for the government, even under the scenarios of most economists.<sup>114</sup> Adequate support for part-time work might also encourage these women to invest in their own education. In a study of the post-TANF status of welfare recipients, the Children's Defense Fund found that education was a critical factor in helping women become and stay employed and in keeping them above the poverty line.<sup>115</sup>

#### IV. THE COMMODIFICATION DEBATE

Let me now turn to broader commodification issues. Allowing for the commodification of at-home work leads to two different things: first, it actually ascribes financial value to work that is otherwise assumed, and, in the process of commodifying it, leads to some recognition of its value,<sup>116</sup> second, and ironically, it appears to suggest—because it is the process of commodification—that self-interest is the partial, if not the dominant, reason for performing this work. In her influential book on commodification, Professor Margaret Radin observes that the mere exchange of money does not inevitably “contaminate human interactions of sharing, although the market culture pushes in that direction.”<sup>117</sup> But her comments provide a succinct summary of the debate—does commodification equal contamination?

Sociologists, feminist economists, and lawyers have begun to excavate the different meanings of money, questioning its allegedly essentializing nature. They have identified two different “discourses of money” that ascribe enormous power to the influence of money on social transactions. One discourse alleges that money leads to the debasement of whatever is measured in economic terms. A second discourse claims that money leads to liberation.<sup>118</sup> Clearly, both discourses have been used when it comes to

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113. See CARBONE, *supra* note 40, at 32.

114. See *id.*

115. See FAMILIES STRUGGLING, *supra* note 101, at 19.

116. Kathy B. Abrams, *Cross-Dressing in the Master's Clothes*, 109 *YALE L.J.* 745, 766 (2000) (book review) (noting that society may continue to view this work as affective unless it is valued in the same manner as other “work”).

117. RADIN, *supra* note 3, at 161.

118. Vivian Zelizer, *How People Talk About Money*, 41 *AM. BEH. SCI.* 1373 (1998) (discussing the work of Andrew Leyshon and Nigel Thrift) [hereinafter Zelizer 6].

housework. More importantly, the discourses have also begun to critique a focus solely on money as the instrument through which debasement or liberation occurs, suggesting instead that money interacts with social forces, and vice versa—that is, that money cannot be isolated as the only factor that determines value and meaning, debasement and liberation.<sup>119</sup> The mere introduction of money into a relationship does not necessarily remove intimacy. Instead, other social and contextual factors affect the perception of intimacy.

Further, money is not fungible. Money as payment for services seems to imply alienation of labor, while money as a gift seems to reward a voluntary undertaking and is not treated as consideration. Both can be rewards for the same conduct, although only the former is typically thought of as consideration.

The old sameness/difference debate in feminism, which has been caricatured as women wanting to be the same as men, versus women wanting to treasure relational values, is repeated in the commodification debate in complex permutations: first, does society value women's labor only when it looks like men's labor, that is, when it occurs outside of the household and produces goods and services that are not related to the laborer's domestic situation? Second, does society value women's household labor on the same basis, perhaps using comparable worth ideas, as men's non-household labor? Or third, does society simply accept household labor as an expression of women's relational orientation? For feminists, who value the nurturing in families, commodification of those services can be scary, contrary to feminist ideology. For women who want gender equality, it is also scary because, on the one hand, paying women might discourage them from non-home work, while not valuing those services seems, on the other hand, to devalue women's work. Then there is the valuation issue—how do we value the mothering services of a Wellesley-educated woman versus a retired teacher versus an immigrant who has not finished high school?<sup>120</sup> They are all providing the same services. Valuing the services on the basis of the market work of the breadwinning man (if any) in their lives may result in very different “payments” to each, and, correspondingly, make the value of their work dependent on the measure of a man's work.<sup>121</sup>

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119. See *id.*; Julie Nelson, *One Sphere or Two?*, 41 AM. BEH. SCI. 1467, 1468 (1998) (noting that economists who believe in efficient, rational self-acting and sociologists who condemn markets for objectifying social relationships are still reifying “The Market as a suprasocial entity”).

120. See Silbaugh, *Commodification*, *supra* note 4, at 120.

121. See Abrams, *supra* note 116, at 765 (suggesting that women's labor should be compensated without deriving its value from a husband's market work); Twila L. Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481, 2483-84 (1994)



First, the process involves re-ascribing value to that which society, in the nineteenth century, stopped valuing. The history of household work shows that women's labor had been recognized as productive prior to the nineteenth century.<sup>122</sup> Nonetheless, during the nineteenth century, there was a gradual loss of economic value even as its emotional value increased through its association with women as household angels.<sup>123</sup> Yet this very form of value—its emotional value—has led to its invisibility in much political theory and in the U.S. economy.

The ongoing effort to have household labor recognized as a contribution to marriage and to the accumulation of marital property upon divorce has been extremely difficult; the work is seen as only emotional work that does not contribute to capital accumulation.<sup>124</sup> While many states now, after a hard struggle, do legally recognize the contributions of a homemaker to marital property, courts are extremely skeptical of its additional value when the homemaker also works outside of the home.<sup>125</sup> These statutes generally require explicitly that the court consider the services of the home-worker when it comes to dividing property. Nonetheless, unless the caretaking spouse works outside of the home, the second shift of home-work is not considered as contributing to marital assets.<sup>126</sup> As the Oregon Supreme Court stated, "We find no legislative intent, however, that when a spouse works outside the home and, additionally, performs 'homemaker' duties, she or he should be able to rely upon the homemaker provision to establish that she or he contributed more than 50 percent to the acquisition of property during the marriage."<sup>127</sup> Housework was invisible when the homemaker was not a full-time stay-at-home "worker." For poor women who must work, their homemaking is also invisible or, even worse, condemned.<sup>128</sup>

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(objecting to alimony because it is determined by man's status).

122. E.g., BOYDSTON, *supra* note 1.

123. See *id.*; Siegel, *Modernization*, *supra* note 17; WILLIAMS, *supra* note 19, at ch. 1.

124. See Cahn, *supra* note 14.

125. *In re Marriage of Patus*, 327 N.E.2d 493, 495 (Ind. Ct. App. 1978). See Martha L. Fineman, *Societal Factors Affecting the Creation of Legal Rules for Distribution of Property at Divorce*, 23 FAM. L.Q. 279, 297-99 (1989) (critiquing this "simplistic" use of the partnership model).

126. *Matter of Marriage of Stice*, 779 P.2d 1020, 1027-28 (Or. Ct. App. 1989); see Silbaugh, *Commodification*, *supra* note 4, at 119.

127. *Stice*, 779 P.2d at 1027-28.

128. Poor women are regularly subject to a distinctive morality lens on their caretaking. From the mother's aid pensions, which went to deserving worthy widows to contemporary forms of public welfare, they have been carefully scrutinized for their moral worthiness. See THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN*

The prominent economist Oliver Williamson has argued that, if calculating a monetary value “is inimical to personal trust, in that a deep and abiding trust relation cannot be created in the face of calculativeness, and if preexisting personal trust is devalued by calculativeness, then the question is how to segregate and sever relations of personal trust.”<sup>129</sup> According to housework economic value might lead to its recognition, but would also challenge the dichotomy between personal caring relationships and financial value.

Second, perhaps somewhat paradoxically, to quote my colleague Larry Mitchell, “self-interest is a thin theory on which to build a social order.”<sup>130</sup> Engaging in caretaking work is, regardless of financial remuneration, partially self-interested. The cleanliness of one’s house seems to say something about you<sup>131</sup> and the success of one’s children often affects one’s own self-concept. Valuing this work in money merely provides one further way to recognize this self-interested action. To admit that one is motivated in part by money does not at all explain caretaking behavior.<sup>132</sup> Children are probably worth more, economically, once they are dead through life insurance or tort recoveries; I do not think this suggests anything at all about why people have children and nurture them.<sup>133</sup>

Nonetheless, and simultaneously with this understanding of the interrelationship between the market and the family, there has developed something identified as commodification anxiety,<sup>134</sup> or concern about placing economic value on activities, as a means of removing all of the emotional value associated with those activities. In a critique often associated with Karl Marx, commodification leads to a flattening out of

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THE UNITED STATES 424-79 (1992) (society’s failure to recognize the importance of black mothering is reflected in the government’s attempt to get single, black mothers off welfare and into the workforce); see Dorothy Roberts, *The Value of Black Mothers’ Work*, 26 CONN. L. REV. 871 (1994) (discussing the distinction between spiritual housework, primarily engaged in by “privileged white women,” and menial housework, primarily engaged in by “minority, immigrant, and working class women”); Roberts, *Spiritual and Menial*, *supra* note 1; Lucy Williams, *The Ideology of Division: Behaviour Modification Welfare Reform Proposals*, 102 YALE L.J. 719 (1992) (stating that the public welfare system allows for a very public policing of the behavior of poor women).

129. Oliver E. Williamson, *Calculativeness, Trust, and Economic Organization*, 36 J.L. & ECON. 453, 483 (1993) (attempting to define trust through calculative economic reasoning).

130. Lawrence E. Mitchell, *Understanding Norms*, 49 U. TORONTO L.J. 177, 232 (1999) (critiquing what the author labels “new norms jurisprudence”).

131. Witness the attention paid to Home Comforts by Cheryl Mendelsohn (a lawyer!).

132. See Mitchell, *supra* note 131, at 232 (“Even if self-interest is the initiating motivation to become (or remain) a member of a community and comply with its norms, it may not be sufficient to sustain compliance. . . . The conception of obligation. . . is intrinsically non-contingent because it is based on non-contingent factors of common humanity.”)

133. See ZELIZER 5, *supra* note 75.

134. See Williams, *supra* note 58.

social relationship and a reduction of everything to money. Scholars have also identified commodification anxiety as denying women economic value for the work that they do.<sup>135</sup> Indeed, the risk that commodifying familial behavior will turn the family into the market ignores the very real affectional differences between the two. The same objection was made to invading the privacy of the family when laws against domestic violence became widespread—how can we bring the government (or the market<sup>136</sup>) between two people? But, as a result of domestic violence laws, the family becomes a safer, more comfortable environment where greater trust is possible because of these default rules.<sup>137</sup> The question is not whether to commodify, but what to commodify and how to commodify it. Introducing economic concerns into the family does not necessarily “impoverish” family life by corrupting it with cold cash.<sup>138</sup> Money is already present in the family; to deny this buys into assumptions that, because caretaking is a labor of love, it is not labor at all.<sup>139</sup> This does not mean that many of us do not have a visceral reaction against quantifying every action that occurs within the family. Professor Milton Regan uses a scene from Amy Tan’s novel, *The Joy Luck Club*, to dramatize the awkwardness of autonomy without community in marriage. The mother of Lena, the main character, notices that her daughter and son-in-law have developed a careful accounting of expenses with a bottom line that her daughter will owe money to her son-in-law; Lena explains that she and her husband want to “eliminate false dependencies . . . be equals . . . love without obligation.”<sup>140</sup> As Professor Regan observes, this couple is missing the richness and interdependence of a relationship that is inherent in our cultural concept of family.<sup>141</sup> Keeping track of each expenditure, accounting for each caretaking activity, does seem contrary to the very notion of intimate relationships.

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135. *E.g., id.* at 2279-2283; Ertman, *supra* note 57; Silbaugh, *Commodification, supra* note 4.

136. Of course, the market is a non-governmental institution that is regulated like the family. But the parallel exists because we are bringing actors and concepts from “outside” of the family to bear on family relationships.

137. Domestic violence laws have not, of course, been a panacea. *See* Siegel, “*The Rule of Love*”, *supra* note 47. But many women are using the new domestic violence laws, and the advocacy has made a difference in many women’s lives. *See, e.g.,* ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000).

138. *See* Zelizer 1, *supra* note 9; ZELIZER 5, *supra* note 75.

139. *See, e.g.,* BOYDSTON, *supra* note 1.

140. MILTON REGAN, *ALONE TOGETHER: LAW AND THE MEANINGS OF MARRIAGE* 23 (1999).

141. *Id.*

In other family settings as well, we may wonder about the impact of commodification. Professor Margaret Radin asks: "If a free-market baby industry were to come into being, with all of its accompanying paraphernalia, how could any of us, even those who did not produce infants for sale, avoid measuring the dollar value of our children? How could our children avoid being preoccupied with measuring their own dollar value?"<sup>142</sup> The answer to that is simple: I buy life insurance, valuing my life (at my death) in a certain way that has relatively little to do with how I think of myself on a day-to-day basis.<sup>143</sup> That is, putting a price on something does not necessarily destroy its intrinsic (non-monetary) value or indicate that it is measured only by its economic price.<sup>144</sup> And, cash price is inevitably influenced by values outside of the market. Moreover, as Professor Radin also points out, it is possible for both market and nonmarket understandings to coexist.<sup>145</sup> Indeed, the literature on tort remedies as well as domestic relations concepts of equitable distribution and community property show how economic valuation of household services can exist simultaneously with non-economic understandings of caretaking and intimacy.<sup>146</sup> Commodification anxiety actually covers up the fact that many family services are already paid for, simply at an inadequate rate; it is only when we try to commodify work performed by parents or spouses themselves<sup>147</sup> that the anxiety suddenly appears.

## V. CONCLUSION

Money has different meanings, depending on the context. For instance, one could classify society's paying a woman to take care of children as domestic wages or a domestic gift, or an early payment by the children, or

142. RADIN, *supra* note 3, at 138

143. See ZELIZER 5, *supra* note 75, at 11, 21 (demonstrating that in the context of children's value, as children became less economically valuable because they were increasingly excluded from the workplace, there was a corresponding increase in their financial and emotional value). Financial value may be irrelevant to "market work" value. Although Professor Zelizer does not fully explain why children became more emotionally valuable, certainly part of the explanation must come from the declining birth rate, and the decreasing number of children in each family; the ideology of motherhood which exalted white middle-class stay-at-home moms also needed an appropriate object for their energy.

144. *Id.* at 21.

145. *E.g., id.* at xiii, 107. She does make clear that "incomplete commodification can sometimes substitute for a complete noncommodification that might accord with our ideals." *Id.* at 104; see Silbaugh, *Commodification*, *supra* note 4, at 86-87.

146. See generally Zelizer 2, *supra* note 12, at 832.

147. See Silbaugh, *Commodification*, *supra* note 4.

one gift in recognition of another.<sup>148</sup> Providing for economic recognition of childcare and housework services—without necessarily taking the form of paying directly for that work—does not remove the other motivations inherent in this work, and may serve only to reinforce the motives.<sup>149</sup> Even when people are paid to take care of someone else, this work requires some connection between the one providing the care and the one cared-for, or else it would not be “care” work.<sup>150</sup> Correspondingly, suggesting that people work only for the money (while certainly true in some cases) overlooks the other values that influence people’s choice of occupations. A job doing childcare may pay the same as, or even less than, a job at a McDonald’s, but each involves different choices and priorities.<sup>151</sup> Because of the requirements of caring work, many workers are not simply motivated by money, thus providing one alleged, ironic, and illegitimate justification for why their wages are depressed. They do not need to be paid as much because of the intangible rewards they get from their work.<sup>152</sup>

When we leave money out, when we refuse to value the work that is done, or when we reduce all work to money, we essentialize the complex transactions that characterize family, work, and life.<sup>153</sup> We fail to value appropriately the work that is performed in the household. Arguing that

148. See ZELIZER 3, *supra* note 35, at 27 (1994) (“Even when the sums earned may be comparable, different systems of payments are not equivalent forms of income: wages, for instance, differ from commissions”).

149. See Silbaugh, *Commodification*, *supra* note 4, at 120 (“In the context of phenomenon that are almost entirely non-market, however, the objection to commodification seems much weaker, because it fails to consider the potential benefits that economic understandings can bring to the social relations surrounding that non-market phenomenon”).

150. See Susan Himmelweit, *Caring Labor*, 561 ANNALS AM. ACAD. POL. & SOC. SCI. 27 (1999).

151. *Cf.*, Nelson, *supra* note 119, at 1470:

if we really believe that money is flattening, while only altruistic, gift interactions build social ties, we will tend to suspect that children in paid childcare are receiving something relationally second rate, if not debased. But few parents or caregivers perceive the market as purely an impersonal exchange of money for services. The actual child-care market tends to be a good example of a thick, or rich, market . . . . The specter of the all corrupting market denies that people—such as many child-care providers—can do work they love, among people they love, and get paid at the same time.

*See also* RADIN, *supra* note 3, at 106-07 (suggesting that work can be “personal”).

152. See Himmelweit, *supra* note 151, at 32-33; Silbaugh, *Commodification*, *supra* note 4, at 115.

153. *Cf.*, Julie Nelson, *Organizations, Occupations, and Markets*, 24 CONTEMP. SOC. 382 (1995) (book review) (When we do not give money to parents to care for their children, but “instead [offer] only verbal apologies or ‘moral support,’ this [leaves] the recipients bearing all the actual economic costs of their interrupted or heavily burdened lives”).

paying people adequately for their care-work would necessarily and completely commodify care-work overlooks the very definition of such work that requires the creation and fostering of a caretaking relationship.<sup>154</sup>

We should move past the debate on whether to apply market norms to family work and instead recognize the value of this labor; as a result, poor women should get credit for it, and poor women in many inflexible jobs should be benefitted by notions of the value of their home-work.

Interestingly enough, allowing payment for services and making the services quantifiable revisits the distinction between goods and services established by Article 2 of the Uniform Commercial Code: services are not covered, but goods are. In the domestic context, perhaps this distinction is backwards. We may be unable to value appropriately a “good” child or a “clean” house, and we probably should not, but we can attempt to value the services involved in producing these “goods.” Or, we could distinguish between the goods: children are not fungible, the cleanliness of a house is.<sup>155</sup> Can babies be sold? How much are children worth?<sup>156</sup> Is a surrogate selling gestational services or a child?<sup>157</sup> Radhika Rao suggests that body parts can be sold so long as the person does not have a relationship to the part; thus, spare embryos can be sold, but contested embryos, where both “parents” want “custody,” require heightened scrutiny.<sup>158</sup>

Debates about the impact of money, in a culture that values money, can have a real effect on poor people whom society often defines by their lack of money. Recognizing the value of work performed in their own homes by poor women can transform the controversies over public welfare while providing better care for the children of poor mothers. The movement to understand market relationships as more than economically-based, as social,<sup>159</sup> helps us in understanding that social relationships, such as the family, are not just socially-based but are economic as well. This does not mean transforming all care-work into paid labor that can be measured, quantified, and directly compensated, but it does mean recognizing that the

154. See, e.g., Himmelweit, *supra* note 151, at 37. Himmelweit uses the theories of Margaret Radin to argue that such work can be incompletely commodified: “Caring, therefore, may avoid the alienation of much other emotional labor because, even when caring is paid, it tends to be incompletely commodified. *Id.* This is because caring involves the development of sustained relationships between carer and caree, and these cannot easily be commodified.” *Id.*

155. Of course, art is not fungible either, and we allow the sale of that.

156. ZELIZER 5, *supra* note 75.

157. See RADIN, *supra* note 3, at 1927.

158. Radhika Rao, *Property, Privacy, and the Human Body*, 80 B.U. L. REV. 359, 458-59 (2000).

159. See, e.g. Lawrence E. Mitchell, *Trust and Team Production in Post-Capitalist Society*, 24 J. CORP. L. 869 (1999).

failure to adequately value this labor has an impact on poor women. The inadequate accounting for caretaking has a cost that not only depresses the wages of household workers, but that affects social policy toward public welfare recipients and all other mothers.