IMPOVERISHMENT BY TAXATION

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Viewed in the aggregate, the U.S. fiscal system is progressive, reduces inequality, and cuts poverty. The system improves on market outcomes by transferring income from rich to poor. Yet this bird’s eye view rings hollow on the ground, where millions of taxpayers across the United States are made poor or poorer by paying their state and federal taxes. In truth, while the U.S. fiscal system may be broadly equalizing and poverty reducing, for many struggling households, it is impoverishing.

This Article offers a new way to measure taxation of low-income households in the United States, presenting a concept called fiscal impoverishment. Taxpayers are fiscally impoverished when they are made poor or poorer by paying state and federal taxes, after accounting for certain antipoverty public benefits they are likely to receive. Distinct from the aggregate and anonymous measures by which we typically assess our tax and transfer system, fiscal impoverishment is dynamic and individualized. It highlights individual human dignity and implicates the economic responsibilities of the state vis-à-vis low-income taxpayers.

In addition to introducing the concept, the Article illustrates how fiscal impoverishment occurs throughout the United States and recommends adopting impoverishment analysis to guide tax reform at all levels of government. Using stylized households, it presents possible net tax burdens at various income levels across all fifty states. In combination with U.S. Treasury and Census data, this work reveals that fiscal impoverishment is significant—affecting millions of households—and highly variable—based on a patchwork of federal and state tax and transfer programs. Patterns of impoverishment track familiar safety-net fault lines based on family structure, employment, immigration status, and geographic location. The Article finishes with specific reforms and a framework for rethinking taxation of poor households.

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INTRODUCTION

The U.S. fiscal system is broadly progressive and reduces poverty and inequality.¹ These well-accepted goals of progressivity, inequality reduction, and poverty alleviation tell a certain story: The tax and transfer system improves on market outcomes by redistributing resources from rich to poor. The addition of state and local taxes complicates the narrative a bit,² but a general trend of progressivism and poverty alleviation remains essentially true.³

And yet, this story rings hollow to the millions of low-income people across the United States who contribute to public coffers despite being unable to satisfy their own basic needs.⁴ These households might pay sales taxes, payroll taxes, and perhaps even state or federal income taxes while receiving little cash support to offset the levies.⁵ The result is that these households are left poor or poorer after taxes and transfers. Thus, while the U.S. fiscal system may be equalizing and poverty reducing for the population as a whole, for many individual low-income households, it is impoverishing.

Scholarship on taxation and poverty in the United States is niche but robust.⁶ Researchers note, in particular, the heavy and regressive burdens that


⁴ See infra Part III.B for a description of these households and an estimate of the scope of impoverishment in the United States.

⁵ Part III.A, infra, describes the specific taxes and benefits programs that most affect low-income households.

⁶ See infra Part I.B for a survey of this work. Perhaps the best-known examples focus on the Earned Income Tax Credit (EITC). See, e.g., Anne Alstott, The Earned Income Tax
federal payroll taxes and state and local sales taxes impose.\textsuperscript{7} Despite this important work, and in contrast to the well-accepted criteria noted above, there is not a systematic measure of taxation of low-income households that succinctly captures the hardship caused by such costs.

This Article proposes such a measure, and in doing so makes three contributions to the literature on redistribution, fiscal policy, and the U.S. social safety net. First, it offers a formalized measure of taxation of low-income households, presenting a concept called “fiscal impoverishment.” The word “fiscal” here is used in the public-finance sense—as in “fiscal policy”—rather than the broader meaning that encompasses all things financial.\textsuperscript{9} Fiscal impoverishment means that certain individuals are pushed into poverty or further into poverty by paying taxes, even after accounting for certain antipoverty public benefits they are likely to receive.\textsuperscript{10} In other words,
certain poor and near-poor individuals bear a net positive tax cost. For some living just above the poverty line, the net tax cost is large enough to push them into poverty. For those already living below the poverty line, this net tax cost pushes them further into poverty.\textsuperscript{11} Importantly, this Article does not take a position on the proper way to measure poverty other than to assert that arriving at some threshold is possible and necessary.\textsuperscript{12}

It is worth mentioning a limiting principle of this analysis up front: Fiscal impoverishment does not take into account the value of every public good that people living in poverty receive. Likely no one would appear fiscally impoverished if every conceivable public good were included on the benefit side of the ledger. Doing so would also entirely miss the point of the exercise. Fiscal impoverishment seeks to capture the worsened deprivation that those living in poverty experience when they bear net positive tax costs.

\textsuperscript{11} The concept of fiscal impoverishment may be said to privilege market incomes by using before-tax income as the measurement baseline. Such an argument might posit that market income without government (and, by extension, without taxes) is a meaningless measure. See Liam Murphy \& Thomas Nagel, The Myth of Ownership 8 (2002) (suggesting that evaluations of tax fairness must take into account the system of property rights that taxes make possible). Moreover, without government and taxes, low-income households would be far worse off. Therefore, framing the problem as one of taxing people into poverty is misleading because it overemphasizes the importance of market distributions of income rather than, for example, achieving an ideal distribution of post-tax and transfer income. \textit{Id.} at 128 (“[J]ustice in taxation is a matter of securing certain outcomes.”).

This Article presumes that market incomes do matter, for at least two reasons. First, many people believe that market incomes matter, and this belief drives actions and outcomes. Voters, politicians, and so forth, all make important decisions based on a valorization of market distributions. Meaningful tax policy discussions must therefore engage with such a belief. Second, while certainly there is no affirmative right to government support, a person does have certain rights in entitlements and property that one already has, even if that property is created by the government. See, e.g., Goldberg v. Kelley, 397 U.S. 254, 254 (1970) (holding that the Social Security Act creates a statutory entitlement to assistance and requiring due process rights for the later denial of such assistance); Charles Reich, \textit{The New Property}, 73 Yale L.J. 733, 739-45 (1964) (describing how government action creates property rights in entitlements, licenses, and so forth); David A. Super, \textit{A New New Property}, 113 Colum. L. Rev. 1773, 1872 (2013) (arguing that, under Professor Reich’s framework, “the wholesale elimination of an individual’s only means of affording life’s essentials” may implicate the Takings Clause); Susannah Camic Tahk, \textit{The New Welfare Rights}, 83 Brooklyn L. Rev 875, 882, 899 (2018) (stating that recipients of cash public benefits have some property rights in those benefits). Even if one believes that the government creates market incomes, people may still have the right to defend that income, even from the very government that enabled it. Thus, while philosophical challenges to the prioritization of market incomes may exist, market incomes still matter both psychologically and legally.

\textsuperscript{12} See infra, text accompanying notes 59-66 and Part III.C.2, for further discussion of challenges associated with using and constructing a poverty threshold.
To offset this harm, a public good must directly ameliorate material deprivation by providing cash, food, housing support, or other basic needs. Certainly, someone living in poverty benefits from roads, military protection, parks, and other government spending. Nonetheless she is still considered poor and remains severely deprived even after her use of these public goods. For this reason, fiscal impoverishment analysis maintains a narrow focus on safety-net and antipoverty benefits that bear on basic needs.

The standard redistributive goals of progressivity, inequality reduction, and poverty alleviation fail to account for fiscal impoverishment. The Article refers to these three goals as the “standard criteria.” Their blindness to impoverishment occurs because they are based on aggregate, anonymous measures that cannot track changes in specific households’ financial situations over time. In contrast, fiscal impoverishment is a dynamic and individualized concept that captures the intertemporal trajectory of specific households from before taxes and transfers to after. It therefore offers a complementary alternative to the aggregate measures that have dominated the distributive justice discourse and analysis for so long.

The Article also explains why fiscal impoverishment merits attention. For one thing, fiscal impoverishment violates individual human dignity by exposing people to deprivation, degradation, and social exclusion, among other harms. Guarding human dignity requires tracking harms to all

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13 See infra Part II.B for further explanation.
14 See infra notes 74-79 and accompanying text for an explanation of the meaning and implication of “aggregate” and “anonymous” measures.
16 The importance of human dignity to legal and social rights is a topic that has filled many volumes, most recently in the context of same-sex marriage. See, e.g., Leslie Meltzer Henry, The Jurisprudence of Dignity, 160 U. Pa. L. Rev. 169, 171 (2011) (describing efforts to advance a “legal notion of dignity”); Noah B. Lindell, The Dignity Canon, 27 Cornell J.L. & Pub. Pol’y 415, 420 (2017) (stating that although dignity is not a constitutional right, it is a constitutional value); Danielle Keats Citron, Sexual Privacy, 128 Yale L.J. 1870, 1885-86 (2019) (describing human dignity as integral to autonomy and privacy); Maite D. Oronoz Rodriguez, Gender Equality and the Rule of Law, 95 N.Y.U. L. Rev. 1599, 1601 (2020) (describing Justice Brennan’s “doctrine of equality based upon the premise of human dignity as a cornerstone of our social values”). There is not space here for a full, nuanced discussion of the value of human dignity. It is a topic that others have ably tackled elsewhere, perhaps most notably Immanuel Kant, in, among other works, Groundwork of the Metaphysics of Morals 33 (Jonathan Bennett trans., 2017) (1785) https://www.earlymoderntexts.com/assets/pdfs/kant1785.pdf [https://perma.cc/LX5P-F4ZP]; see also Christopher McCrudden, Human Dignity and Judicial Interpretation of
individuals, which aggregate redistribution metrics cannot do, but fiscal impoverishment analysis can. Moreover, governments have both internally defined poverty-alleviation goals and a foundational duty to not harm their citizens and residents. Fiscal impoverishment makes satisfying those responsibilities impossible. It is thus a particularly grave harm for the government to make poor people poorer, over and above the social harms attributable to persistent poverty or inequality. In raising such concerns, and distinct from the aggregate and anonymous standard criteria, fiscal impoverishment foregrounds individual human dignity and implicates the economic responsibilities of the state vis-à-vis low-income taxpayers.

The Article’s second contribution is to illustrate how fiscal impoverishment occurs and to sketch its scope throughout the United States. To do so, it estimates net tax burdens for several stylized low-income households across all fifty states and the District of Columbia. For example, a childless worker in California earning poverty-level wages in 2019 would have paid approximately $2,300 in federal, state, and local taxes, pushing his after-tax income well below the poverty threshold. This work reveals that fiscal impoverishment is significant and highly variable. It affects millions of households, with costs distributed via a patchwork of federal and state tax and safety-net programs.

The distribution of fiscal impoverishment’s harm is not random or haphazard. Rather, the patterns reflect longstanding pathologies in U.S. safety-net programs, namely, the lack of support for individuals without children, nonworking households, families with extended-kinship and non-kinship care arrangements, and immigrants. The distribution almost

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17 See infra Part II.C.2.
18 See infra Part III.B.2, Example 3.
19 See infra Part III.B for details about how fiscal impoverishment is distributed throughout the United States.
certainly reflects racial disparities as well, since Black and Latinx families are more likely than others to be denied the refundable tax credits that protect most working families from fiscal impoverishment. Even within these disadvantaged groups, the degree of fiscal impoverishment differs greatly from state to state, reflecting the federal nature of our tax and transfer system.

The existence of fiscal impoverishment should not surprise us. Other legal systems also extract resources from struggling households—chief examples being the criminal justice and child support systems. Similar to fiscal impoverishment, these government extractions often track familiar fault lines of race and citizenship status. As merely one example, criminal court and carceral fees exert significant costs on low-income individuals and bear little relationship to public-safety goals. In following these well-worn patterns, fiscal impoverishment can be situated within a broader context of government predation of vulnerable American households.


24 See Ariel Jurow Kleiman, Nonmarket Criminal Justice Fees, 72 Hastings L. Rev. 517, 536-46 (2021) (explaining how and why criminal justice fees exploit vulnerable payors); Greene, supra note 23, at 758 n.17 (noting that legal processes have a disproportionate effect on African American residents).


26 See Bernadette Atuahene, Predatory Cities, 108 Cal. L. Rev. 107, 109 (2020) (defining predatory cities as “urban areas where public officials systematically take property from residents and transfer it to public coffers, intentionally or unintentionally violating domestic laws or basic human rights”).
After illustrating how fiscal impoverishment occurs, the Article’s third and final contribution is to explore what it means for U.S. tax and transfer systems, offering recommendations for policymakers, reformers, and anti-poverty advocates. The Article’s primary recommendation is that impoverishment analysis should be formalized and broadly adopted to guide policy reform alongside traditional, aggregate metrics. The Article also briefly outlines possible tax policy reforms to reduce fiscal impoverishment caused by income taxes, sales taxes, and property taxes.

The Article also considers how an awareness of fiscal impoverishment should guide evaluation of broad reform proposals. In particular, it considers the adoption of broad-based, regressive tax instruments—such as a federal value-added tax (VAT)—in order to fund expanded redistribution.27 The Article urges caution among those who advocate adopting regressive taxes for progressive ends. Increasing regressive taxes in the United States may worsen fiscal impoverishment even despite increased progressive spending, especially given U.S. policymakers’ tendency to deny support to certain groups.28 While such broad-based reforms are eminently worthwhile, policymakers should take care not to harm vulnerable households when adopting them. Tracking fiscal impoverishment would help them in this task. The Article finishes by briefly considering the complicated question of politics.

The Article proceeds as follows. Part I begins by describing the standard criteria by which we assess redistributive policies, including progressivity, inequality reduction, and poverty reduction. It also briefly surveys scholarship on taxes and poverty, which offers an alternative perspective to that presented by the standard criteria, yet lacks a formalized approach to describing fiscal burdens. Part II introduces the concept of fiscal impoverishment, explains why the standard criteria overlook it, and justifies

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28 See Katz, supra note 20, at 8-9 (discussing the denial of public benefits to the “undeserving poor,” which includes nonworking single mothers, certain immigrants, and young black men).
the need for a formal measure of net tax burdens on poor households. Part III illustrates how fiscal impoverishment occurs in the United States. Part IV offers policy considerations, giving particular attention to the adoption of broad-based regressive taxes to fund progressive spending. It also considers the political and rhetorical stakes of an explicit anti-impoverishment strategy.

I. THE STANDARD TAX POLICY CRITERIA

A. The Standard Criteria: Progressive, Inequality Reducing, Poverty Cutting

Few would quibble with the claim that progressivity matters to assessing how fairly a tax and transfer system distributes resources.\(^\text{29}\) Inequality-reduction and poverty-reduction are closely related goals.\(^\text{30}\) Scholars, economists, and government agencies rehash and recut the data, staking out novel claims about the extent to which our system does or does not pass muster under these goals,\(^\text{31}\) but most accept the worthiness of the goals themselves. This Article will shorthand the three aims of progressivity, inequality reduction, and poverty reduction as the “standard criteria.”

\(^{29}\) See Walter J. Blum & Harry Kalven, Jr., The Uneasy Case for Progressive Taxation, 19 U. Chi. L. Rev. 417, 417 (1952) (“Progressive taxation is now regarded as one of the central ideas of modern democratic capitalism and is widely accepted as a secure policy commitment which does not require serious examination.”); Lily L. Batchelder, Fred T. Goldberg Jr. & Peter R. Orszag, Efficiency and Tax Incentives: The Case for Refundable Tax Credits, 59 Stan. L. Rev. 23, 42 (2006) (explaining that there is “little debate” that distributional fairness in the tax system “requires a progressive tax system”); Manoj Viswanathan, Rethinking Progressive Taxation, Tax L. Rev. (forthcoming 2022) (manuscript at 3) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3465029) (“Progressivity assessments of tax provisions play an undeniably central role in both the detailed analytics of policy-making and the rhetorical arguments commonly used in public discourse.”).

\(^{30}\) See, e.g., Eric M. Zolt, Inequality in America: Challenges for Tax and Spending Policies, 66 Tax L. Rev. 641, 642 (listing “reducing inequality [and] reducing poverty” as concerns to prioritize when designing tax and spending policies); Ari Glogower, Taxing Inequality, 93 N.Y.U. L. Rev. 1421, 1423-25 (2018) (explaining the harms of economic inequality and positing that tax policies should seek to combat inequality); David Kamin, Reducing Poverty, Not Inequality: What Changes in the Tax System Can Achieve, 66 Tax L. Rev. 593, 593-94 (2013) (arguing that we should prioritize poverty reduction over inequality reduction when designing tax policies).

\(^{31}\) Compare, e.g., OECD, Growing Unequal? Income Distribution and Poverty in OECD Countries (2008), http://www.oecd.org/els/soc/growingunequalincomedistributionandpovertyineocdcountries.htm [https://perma.cc/2FPH-VZ8M] (describing the United States’ tax system as the most progressive among developed countries), with Huang & Frentz, supra note 2, at 1 (critiquing certain characterizations of the OECD report’s conclusions, noting that the U.S. does less to reduce inequality compared to peer nations).
Myriad philosophical frameworks, and good sense, support the pursuit of the standard criteria. Perhaps most prominently, welfarist theories of justice, which prioritize aggregate wellbeing, often support progressive redistribution on the grounds that it increases total wellbeing. Beyond welfarism, progressive taxes enable equal sacrifice, which improves perceptions of fairness of the tax system. Reducing the poverty rate lessens the suffering of large swaths of society, which many support for moral, philosophical, or emotional reasons. Although perhaps slightly more controversial, reducing inequality is seen as broadly desirable, either per se or to achieve various positive outcomes. By most mainstream accounts, pursuing some or all of these goals is vital to the fair functioning of a tax and transfer system.

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32 See Jurow Kleiman, supra note 20, at 7-10 (describing both welfarist and nonwelfarist distributive justice theories underlying progressive redistribution).
36 See, e.g., Peter Singer, Famine, Affluence, Morality, 1 Phil. & Pub. Aff. 229, 230-31 (1972) (starting from the premise that poverty is bad and should be rectified); Friedrich A. Hayek, The Constitution of Liberty 285 (1960) (“In the Western world, some provision for those threatened by the extremes of indigence or starvation due to circumstances beyond their control has long been accepted as a duty of the community.”); Milton Friedman, Capitalism and Freedom 191 (1962) (accepting the idea that poverty should be alleviated).
37 See Ronald Dworkin, What Is Equality? Part 2: Equality of Resources, 10 Phil. & Pub. Aff. 283, 285-86 (1981) (discussing the preference for fairness); Daniel Markovits, How Much Redistribution Should There Be?, 112 Yale L.J. 2291, 2294-98 (2003) (discussing the responsibility-tracking view of egalitarianism); Glogower, supra note 30, at 1441-42 (listing various harms of inequality, including undermining democratic governance, hindering economic mobility, and precluding equality of opportunity); Kamin, supra note 30, at 598 (“The first basic tenet underlying the Article is that inequality in itself is undesirable. This view is widely, though certainly not universally, held.”).
38 Even free-market adherents support the goal of poverty alleviation under certain conditions. See, e.g., Friedman, supra note 36, at 191 (supporting government intervention to alleviate poverty on market-failure grounds because “we might all of us be willing to contribute to the relief of poverty, provided everyone else did”).
The U.S. tax and transfer system fares relatively well under the standard criteria. The system is broadly progressive\textsuperscript{39} and reduces inequality.\textsuperscript{40} Looking at one measure of inequality, in 2019 the Gini coefficient in the United States was 0.51 before taxes and transfers compared to 0.40 after taxes and transfers.\textsuperscript{41} Moreover, safety-net transfers significantly reduce the poverty rate.\textsuperscript{42} According to 2016 data, public benefits reduced the poverty rate in the United States from 27% to 18%.\textsuperscript{43} While policymakers could certainly do more to reduce poverty and inequality, these are achievements worth celebrating.

And yet, the standard criteria miss something important.

**B. Accounting for Taxes on Low-Income Households**

Notwithstanding the positive outcomes described in the previous section, poverty scholars and experts concerned about taxes on poor households devote significant energy to measuring such taxes and their consequences.\textsuperscript{44} This literature complicates an understanding of the U.S. fiscal system that emerges from analysis under the standard criteria alone.

\textsuperscript{39} See Cong. Budget Office, \textit{supra} note 1, at 9 (illustrating the distribution of average federal tax rates). But see Jurrow Kleiman, \textit{supra} note 20, at 3-4 (arguing that regressive elements of the federal tax system reduce progressivity among households at the bottom of the income distribution).


\textsuperscript{41} Id. (compare figures for the United States by selecting “by country – INEQUALITY” from the left-hand menu, then selecting “United States” from the “Country” drop-down menu, and comparing figures for “Gini (market income, before taxes and transfers)” with “Gini (disposable income, post taxes and transfers)”). Of course, the United States could do better, and many other countries have. See \textit{Id}. However, that is not the point being made here.


\textsuperscript{43} Id. (using a poverty line equal to 50% of the population’s median household income).

\textsuperscript{44} As a brief survey of such work, which surely omits many important contributions due to space constraints, see Newman & O’Brien, \textit{supra} note 7, at 86-124 (estimating tax burdens on low-income families and showing a correlation between regressive taxes and poverty-related social and health problems); Williamson, \textit{supra} note 7, at 46-78 (describing sales and
It is important to note at the outset that the federal tax system provides significant support to poor families through refundable tax credits. The federal earned income tax credit (EITC) and child tax credit provide cash transfers to low-income working families, drastically reducing tax burdens on recipients. Many states offer their own EITCs as well, often piggybacking on the federal credit. More than just reducing taxes, these credits reduce the poverty rate and have been found to improve infant and maternal health, boost educational outcomes, increase work effort, and even increase earnings in the next generation, among other positive outcomes.

Nonetheless, benefit gaps and significant tax burdens remain, as scholars and researchers regularly note. Much research in this area focuses on state and local taxes, which are more regressive than federal taxes and sometimes lack offsetting transfers to low-income payors. One influential report repeatedly notes the significant burden that state and local taxes payroll taxes paid by low-income households); Greene, supra note 23, at 768-71 (describing state tax policies that burden low-income households and situating these policies within a broader legal framework that perpetuates poverty); Susan Pace Hamill, The Vast Injustice Perpetuated by State and Local Tax Policy, 37 Hofstra L. Rev. 117, 117 (2008) (arguing that state and local tax policies are oppressive to low-income people and evaluating state and local taxes under Judeo-Christian values); Seth Hartig, Curtis Skinner & Mercedes Ekono, Nat’l Ctr. for Children in Poverty, Taxing the Poor: State Income Tax Policies Make a Big Difference to Working Families 4-6 (2014) (describing state income tax policies affecting low-income taxpayers in each state); Francine Lipman, The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation, 9 Harv. Latino L. Rev. 1, 18-45 (2006) (describing unequal tax treatment of undocumented immigrant households).


46 I.R.C. § 32 (providing a tax credit for earned income); id. § 24 (providing a tax credit to families with children); Chuck Marr, Chye-Ching Huang, Arloc Sherman & Brandon DeBot, Ctr. on Budget & Pol’y Priorities, EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children’s Development, Research Finds 3 (2015), https://www.cbpp.org/sites/default/files/atoms/files/6-26-12tax.pdf [https://perma.cc/LH7Y-SLYL].

47 CBPP, supra note 45, at 1 (providing that twenty-nine states, the District of Columbia, and Puerto Rico have enacted subfederal earned income tax credits).

48 Marr, Huang, Sherman & DeBot, supra note 46, at 1-3.

49 See Frank Sammartino & Norton Francis, Tax Pol’y Ctr., Federal-State Income Tax Progressivity 1-2 (2016), https://www.urban.org/research/publication/federal-state-income-tax-progressivity [https://perma.cc/8CMJ-25E2] (noting that state income tax systems are less progressive than the federal income tax, and that state sales taxes may be regressive); id. at 4 (describing the distribution of state tax credits targeting low-income households); ITEP, supra note 7, at 3 (“The vast majority of state tax systems are regressive . . . ”).
impose on low-income households in all fifty states and the District of Columbia.\textsuperscript{50} Other research confirms these findings,\textsuperscript{51} and extends a similar critique to federal excise\textsuperscript{52} and payroll taxes.\textsuperscript{53}

Beyond tallying the cost of specific taxes, literature on the taxation of poor Americans is vast and varied. One strain of scholarship focuses on gaps in refundable tax credits that disadvantage certain subsets of low-income taxpayers.\textsuperscript{54} Another addresses the effect of federal tax policies on issues intrinsically tied to poverty, such as housing access or health policy.\textsuperscript{55}

\textsuperscript{50} ITEP, supra note 7; see also About Who Pays, ITEP, https://itep.org/about-who-pays [https://perma.cc/U8CZ-G2BG] ("[The Report's] major finding is that, on average, state and local tax systems require the poorest taxpayers to pay the highest effective tax rates").

\textsuperscript{51} See, e.g., Newman & O'Brien, supra note 7, at 87-93 (documenting state and local tax burdens on poor households); Hartig, Skinner & Ekono, supra note 44, at 3 (describing the burden of state income tax policies on poor taxpayers); Greene, supra note 23, at 768-71 (describing state and local taxes that burden poor households); Lipman, supra note 7, at 110 ("[S]tate and local tax systems are notably regressive.").


\textsuperscript{54} See, e.g., Anne L. Alstott, Why the EITC Doesn’t Make Work Pay, 73 L. & Contemp. Probs. 285, 288 (2010) (arguing that the EITC, by focusing benefits on fully employed workers, fails to adequately support low-wage workers); Noah D. Zatz, Supporting Workers by Accounting for Care, 5 Harv. L. & Pol’y Rev. 45, 47 (2011) (addressing the exclusion of informal child-care providers from the EITC); Marr, Huang, Sherman & Brandon, supra note 46, at 1 (advocating expansion of childless EITC benefits); Francine J. Lipman, The “ILLEGAL” Tax, 11 Conn. Pub. Int. L.J. 93, 100-01 (2011) (detailing the higher tax burdens that undocumented immigrants face); Stevenson, supra note 20, at 154-62 (describing unequal tax burdens that migrant workers face, whether documented or undocumented).

\textsuperscript{55} See, e.g., Terri L. Brooks, Billions Saved in Taxes while Millions Underserved--What has Happened to Charitable Hospitals?, 8 Hous. Bus. & Tax L.J. 391, 421-22 (2008) (arguing...
Intersectional issues related to race, gender, and disability draw continued and increasing attention as well. Related research addresses the impact of criminal justice fines and fees, including traffic penalties, on the fiscal and social wellbeing of low-income payors. Through these diverse entry points, poverty-focused tax scholars describe a fiscal system that neglects and burdens many vulnerable American households.

This brief background discussion has sought to show that the U.S. tax and transfer system looks relatively strong under our standard criteria for assessing tax fairness, and rightly so. The system is broadly progressive, poverty reducing, and equality enhancing. Yet, taxes imposed on poor taxpayers are frustratingly invisible under these standard criteria, despite experts’ keen awareness of them. As the next Part argues, research on taxation and poverty would benefit from a systematic approach to describing and measuring the taxation of poor households.

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57 See, e.g., Harris, supra note 25, at 65-73 (discussing the consequences and burdens of criminal justice debt for those who cannot pay); Colgan, supra note 25, at 286–90 (“The costs of administering the court system—from arrests to prosecution and sentencing—are increasingly borne by the indigent, who make up the vast majority of criminal defendants.”); Jain, supra note 25, at 1385 (“The costs, meanwhile, are disproportionately experienced by the poor and people of color, who are the most likely both to be arrested and to experience disproportionate penalties as the result of a criminal record.”).
II. INTRODUCING FISCAL IMPOVERISHMENT

A. Defining Fiscal Impoverishment

A fiscal system can be progressive and can reduce poverty and inequality in the aggregate, and yet still harm a significant number of people by pushing them below or further below the poverty line. This phenomenon is called fiscal impoverishment.\(^{58}\) Put slightly differently, fiscal impoverishment means that some low-income people pay net positive taxes, with their tax cost exceeding the value of the antipoverty public benefits they receive. For some living just above the poverty line, the net tax cost is large enough to push them into poverty. For those already below the poverty line, this net cost pushes them further into poverty.

The simplicity of the concept belies the complexity of measuring it with specificity. Doing so requires defining an acceptable poverty threshold, which is a fraught endeavor by every account.\(^{59}\) Briefly put, poverty is a state of deprivation in which a person cannot meet her basic needs.\(^{60}\) It can manifest in diverse deficits including hunger, unstable housing, social isolation, stigma, stress, and other suffering.\(^{61}\) Measuring the income threshold at which such deprivation occurs is complicated by differences in geographic cost-of-living, income sources, nutritional needs, health and disability circumstances, and so forth.\(^{62}\) Nonetheless, any productive discussion of antipoverty policies must accept that some poverty threshold will adequately capture the line between an acceptable and unacceptable standard of living.\(^{63}\)

To avoid getting mired in a complex debate, this Article does not take a position on the proper way to measure poverty, other than to assert that

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\(^{58}\) See Higgins & Lustig, supra note 8, at 64 (describing fiscal impoverishment as a system in which “some of the poor pay more in taxes than they receive in transfers”).


\(^{60}\) See Peter H. Shuck, One Nation Undecided: Clear Thinking About Five Hard Issues That Divide Us 33 (2017) (“Poverty...is best understood as a state of deprivation or suffering.”).

\(^{61}\) Id.

\(^{62}\) Further, poverty is an inherently relative concept. See Alstott, supra note 54, at 289-91 (describing and adopting a relative poverty measure).

\(^{63}\) I address the possible dubiousness of this assumption infra, Part III.C.2.
arriving at some threshold is possible and necessary. For simplicity, where a threshold is required, the Article uses the U.S. Census Bureau’s Poverty Thresholds,\textsuperscript{64} while acknowledging that alternative measures are likely superior, albeit more complex.\textsuperscript{65} An ideal poverty threshold would capture a level of wellbeing above which one experiences a generally acceptable standard of living. Further, while this Article uses household income to measure wellbeing, consumption or some other observable attribute might be more holistic and precise. Consumption, for instance, accounts for support from family as well as household savings.\textsuperscript{66}

It is worth acknowledging two limiting principles that help determine which public benefits to include and which to exclude from fiscal impoverishment calculations. First, fiscal impoverishment captures deprivation in the current period, that is, a household’s ability to meet basic needs \textit{today}. A concern with immediate deprivation counsels toward using a shorter accounting period, which means ignoring the value of past and future benefits. This Article uses an annual accounting period to align with income tax filing, but others, for instance, monthly, could be justified as well. The use of a longer accounting period that incorporates benefits received in the more distant past or future—such as past public education or future Social Security retirement benefits\textsuperscript{67}—would only obscure current-period deprivation.\textsuperscript{68} Additionally, a person living in poverty may discount the value

\begin{itemize}
\item \textsuperscript{65} For instance, the U.S. Census Bureau’s Supplemental Poverty Measure (SPM) improves on the standard poverty line by correcting for geographic cost-of-living differences, among other adjustments. Liana Fox, U.S. Census Bureau, The Supplemental Poverty Measure, 14-15 (2018), https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-265.pdf [https://perma.cc/P9ZH-9XVS].
\item \textsuperscript{67} While education can be a valuable tool of poverty reduction and an important progressive transfer, whether someone received a free education does not help her to buy food or shelter in the current period. The same logic holds true for future Social Security retirement benefits. See infra notes 120-122 and accompanying text for further discussion.
\item \textsuperscript{68} See ITEP, supra note 50 (“[L]onger time horizons obscure the impact of taxes at
of future benefits at a high rate for various reasons, leading to a low (even zero) present value of future benefits. For these reasons, this Article does not include the value of public benefits received in past or future years.

Second, fiscal impoverishment does not account for all benefits that people receive from government. Rather, it is narrowly focused on public benefits that bear on basic needs and corporeal deprivation. Not only would including all public goods make the analysis intractable but doing so would also miss the point of the exercise. Fiscal impoverishment seeks to capture the worsened deprivation that those living in poverty experience when they pay net positive taxes. To offset this harm, a public good must relieve material deprivation by providing cash, food, shelter, or other basic needs. Although someone living in poverty benefits from roads, military protection, parks, and so forth, he remains severely deprived even after considering his use of these public goods. That is, he is not pulled out of poverty because he has access to a beautiful public park. Thus, this discussion maintains a narrow focus on cash transfers and other safety-net benefits that bear on recipients’ basic needs.

critical moments in taxpayers’ lives, such as when they are new to the labor force or are recently unemployed and struggling to make ends meet.


70 Such broad analysis is related to the benefits principle of taxation, the idea that taxes paid should correspond to the value of public goods received. N. Gregory Mankiw, Principles of Economics 246-47 (6th ed. 2012). The benefits principle is particularly unhelpful in informing how government should tax low-income households in a redistributive system, since it would require that welfare recipients pay for the value of any transfers they receive. Of course, if they did so, the two payments would offset each other. See Joseph M. Dodge, Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles 58 Tax L. Rev. 399, 399 (2005) (noting the “incoherency of maintaining the benefit principle in a welfare state”).
B. The Standard Criteria Overlook Fiscal Impoverishment

This section will explore how a tax and transfer system can be progressive, equalizing, and poverty-reducing and yet still impoverish a significant number of individuals.\(^{71}\) In short, the standard criteria overlook fiscal impoverishment because they are based on aggregate, anonymous measures that observe the distribution of households’ incomes or tax rates across broad swaths of the population. These measures fail to account for the fiscal harm that the state visits upon particular households.

Consider Table 1, which shows the distribution of incomes, taxes, and transfers in a five-person economy. Assume that the poverty threshold is $10 for a one-person household, and that this threshold denotes a condition of serious deprivation below which a person cannot meet her basic needs.

<table>
<thead>
<tr>
<th>Pre-Tax/Transfer Income</th>
<th>Average Tax Rate(^{72})</th>
<th>Tax</th>
<th>Transfer</th>
<th>Post-Tax/Transfer Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$3</td>
<td>0%</td>
<td>$0</td>
<td>$2</td>
</tr>
<tr>
<td>B</td>
<td>$10</td>
<td>5%</td>
<td>$0.50</td>
<td>$0</td>
</tr>
<tr>
<td>C</td>
<td>$30</td>
<td>10%</td>
<td>$3</td>
<td>$0</td>
</tr>
<tr>
<td>D</td>
<td>$80</td>
<td>20%</td>
<td>$16</td>
<td>$0</td>
</tr>
<tr>
<td>E</td>
<td>$160</td>
<td>25%</td>
<td>$40</td>
<td>$0</td>
</tr>
</tbody>
</table>

The system in Table 1 is everywhere progressive, with tax rates that increase as income increases. It also improves equality by various easy-to-calculate measures. For instance, it improves the 20:20 ratio from 53 to 24, and the Hoover Index from 45% to 42%.\(^{73}\) Yet B is impoverished, paying 5%

\(^{71}\) Higgins & Lustig, supra note 8, at 64.

\(^{72}\) The tax rate figures in Tables 1 and 2 ignore the effect of transfers. A’s tax rate is actually -66% if the transfer is included.


The Hoover index provides the proportion of all income that must be transferred in order to achieve perfect equality in a given population. Id. In the pre-tax distribution, $126.80 must be distributed to achieve perfect equality, which is approximately 45% of the total income
of her income in taxes and dropping below the poverty threshold. Thus, neither progressivity nor inequality reduction precludes fiscal impoverishment.

The same is true of poverty reduction. A tax and transfer system can reduce the poverty rate by shrinking the portion of the population living below the poverty line, yet still impoverish some. Consider Table 2.

### Table 2: Poverty Reducing and Impoverishing

<table>
<thead>
<tr>
<th>Pre-Tax/Transfer Income</th>
<th>Average Tax Rate</th>
<th>Tax</th>
<th>Transfer</th>
<th>Post-Tax/Transfer Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$6</td>
<td>0%</td>
<td>$0</td>
<td>$5</td>
</tr>
<tr>
<td>B</td>
<td>$7</td>
<td>0%</td>
<td>$0</td>
<td>$4</td>
</tr>
<tr>
<td>C</td>
<td>$11</td>
<td>10%</td>
<td>$1.10</td>
<td>$0</td>
</tr>
<tr>
<td>D</td>
<td>$50</td>
<td>15%</td>
<td>$7.50</td>
<td>$0</td>
</tr>
<tr>
<td>E</td>
<td>$100</td>
<td>20%</td>
<td>$20</td>
<td>$0</td>
</tr>
</tbody>
</table>

Before taxes and transfers, the poverty rate in Table 2 is 40%, with both A and B falling below the $10 poverty threshold. After taxes and transfers, A and B have been brought above the poverty line, but C has been pushed below it, resulting in a new poverty rate of 20%. The transfer system has cut the poverty rate in half. And yet, C’s tax burden has pushed him into a state of deprivation.

The metrics underlying the standard criteria—progressivity, inequality, and the poverty rate—cannot capture fiscal impoverishment because they are anonymous, aggregate measures. Anonymity means that these measures do not follow specific households from one time period to the next. That is, they ignore changes in specific households’ financial circumstances from before to after taxes and transfers.74 Because of this anonymity, these measures fail to notice if households swap positions or if some households are poorer after paying taxes.75 With the underlying metrics of $283. In the post-tax and transfer distribution, $93.80 must be distributed, which is approximately 42% of the total income of $225.50.

74 See Higgins & Lustig, supra note 8, at 65 (anonymity measures “compare the pre- and post-fisc income distributions without paying attention to the specific pre-fisc to post-fisc trajectory of particular individuals’ incomes”).

75 This blindness to changes in households’ incomes from one time to another relates closely to the equal treatment condition in the welfarist reasoning that often scaffolds the standard criteria. See Kaplow & Shavell, supra note 33, at 25 n.16. Equal treatment means...
being blind to these changes, the criteria themselves are correspondingly unable to account for fiscal impoverishment.

Aggregation matters as well, albeit somewhat less so. Aggregation means that each measure observes the relative position or tax treatment of large groups of the population: progressivity typically looks to tax rates on income quintiles or deciles;\(^\text{76}\) inequality similarly compares relative income or wealth between income tranches;\(^\text{77}\) and poverty rates observe the proportion of all individuals below a certain threshold.\(^\text{78}\) If such metrics were to instead observe tax rates or relative incomes among disaggregated subgroups of the population—for instance, childless households or BIPOC families—the progressive story that the standard criteria relate would become significantly more complicated.\(^\text{79}\)

In contrast to these aggregate and anonymous measures, calculating fiscal impoverishment calls for disaggregation of fiscal data based on household characteristics and tracks changes in households’ incomes from before to after taxes and transfers. The observed downward movement encapsulates the harm of fiscal impoverishment: the fact that government action pushes some poor people into or deeper into a state of deprivation. The nature and normative implications of this harm are explored further in the next section.

This Article does not reject the standard criteria. These canonical goals ensure a humane fiscal system. The societies depicted in Tables 1 and 2 are more equal, and the society depicted in Table 2 is significantly less poor, because of progressive redistribution. These outcomes are unambiguously positive. And yet, the standard criteria miss something important. As the next Section explains, we need a new measure, one that observes changes in households’ incomes over time and foregrounds individual human dignity as well as the role of government in the lives of low-incomes households.

\(^\text{76}\) See, e.g., Cong. Budget Office, supra note 1, at 9 (providing 2016 tax rates by income quintile, with greater detail only for wealthier quintiles).

\(^\text{77}\) See id, at 13 (comparing incomes between income quintiles); Afonso supra note 73 (describing several inequality measures).

\(^\text{78}\) See, e.g., OECD, supra note 1 (measuring the U.S. poverty rate).

\(^\text{79}\) The imperative to disaggregate fiscal measures echoes a broader movement for expanded metrics of fiscal outcomes, including accounts from critical gender and race scholarship and equitable growth efforts. See, e.g., Jeremy Bearer-Friend, Should the IRS Know Your Race? The Challenge of Colorblind Tax Data, 73 Tax L. Rev. 1, 60-64 (2019) (exploring opportunities for increased collection of tax data by race in order to evaluate tax policies’ racially disparate effects); Boushey, supra note 15 (advocating GDP 2.0, which measures economic growth broken down into different income groups).
C. Why Consider Fiscal Impoverishment?

The need to measure and target fiscal impoverishment may not be obvious. Perhaps we need not concern ourselves when two people swap positions above and below the poverty line, especially if the elevated person is a child and the other a childless adult. Perhaps progressivity, inequality reduction, and poverty reduction are sufficient objectives. Table 2, above, helps explain this position. The system depicted there drastically reduces the rate and depth of poverty—which are challenging and laudable achievements. Under such conditions, perhaps also measuring and targeting fiscal impoverishment would be baroque, frivolous, or even counterproductive.

This Article argues otherwise. As this section will explain, human dignity is a fundamental social and legal value, and one that the standard criteria fail to sufficiently encompass. Guarding human dignity means protecting all persons from degradation and exclusion, as well as safeguarding individuals’ power to control their own lives. Doing so requires tracking individuals’ movements into or out of poverty, which fiscal impoverishment analysis allows. Additionally, governments have both internally defined poverty-reduction goals as well as a foundational duty to not harm citizens and residents. Fiscal impoverishment makes satisfying these responsibilities impossible.

1. Human Dignity

Dignity is an inherent human quality that makes one worthy of respect and is possessed equally by all people. Although a highly contested concept, different approaches share certain commonalities. It is often associated with free will, control over one’s body, and the freedom to determine and pursue one’s own destiny. Impoverishment’s dignitary harm rests in its erosion of a person’s freedom, as well as damage to a person’s social, emotional, and physical wellbeing.

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80 See Kant, supra note 16, at 33 (explaining the inherent nature of dignity and its origin in morality); Martha C. Nussbaum, Upheavals of Thought: The Intelligence of Emotions 405-06 (2012) (discussing compassion and dignity); Arthur M. Okun, Equality and Efficiency: The Big Tradeoff 16 (1975) (noting that an “assurance of dignity for every member of society” requires a minimum standard of living and access to essentials).


82 See id, at 26-31 (describing human dignity as understood by Immanuel Kant, Ronald Dworkin, and Jeremy Waldron).

83 See Okun, supra note 80, at 16 (“Starvation and dignity do not mix well.”); Barak, supra note 81, at 125 (quoting various sources that define dignity to be concerned with a
People in poverty live shorter lives, each day of which is significantly more likely to be marked by chronic illness, exclusion, and sadness. In these ways, living in poverty makes it more difficult for someone to pursue her best life, as a robust concept of dignity would require. Poverty also limits people’s freedoms—to consume, travel, live, learn, and work as they wish—and prevents people from realizing their goals. Poverty makes people dependent on others for basic needs, including friends and family, charities, and the state. Although one’s dignitary wellbeing surely
declines gradually as one slides toward poverty, the existence of a poverty threshold suggests that there is some resource level below which these deprivations becomes too severe for society to accept.

Protecting individual dignity thus requires shielding all persons from deprivation, degradation, and social exclusion, among other harms.\(^90\) Although there is no constitutional right to dignity, concern for human dignity scaffolds much legal and constitutional interpretation.\(^91\) Given the centrality of human dignity in defining the scope of constitutional rights in the United States, the government should not knowingly and repeatedly violate human dignity.

It may seem that existing poverty measures sufficiently safeguard human dignity. However, as explained above,\(^92\) the poverty rate only observes population-level pathologies and overlooks individual changes of status. If more people are pulled out of poverty than pushed into poverty, the poverty rate still falls despite any harm befalling impoverished households. In order to adequately guard human dignity, a measure must track individualized harm separate from improvements experienced by others. That is, the elevation of one person cannot erase dignitary harm caused to another.\(^93\) Measuring fiscal impoverishment thus forefronts human dignity by observing whether tax collection harms any individual, irrespective of the improved condition of others.

2. Governments’ Goals and Duties

Awareness of fiscal impoverishment is also important because impoverishment undermines governments’ avowed goal of reducing poverty as well as a fundamental duty to not harm citizens and residents. Notice, importantly, that these problems of fiscal impoverishment arise from the fact that the state is the agent of harm, in contrast to harm arising solely from a person’s own choices or another person’s actions.\(^94\) The government’s special


\(^91\) See Barak, supra note 81, at 13 (describing human dignity as an implied value in the U.S. Constitution); id. at 103-13 (exploring human dignity as a constitutional value).

\(^92\) See discussion supra Part II.B.

\(^93\) Cf. Abraham & White, supra note 83, at 326-29 (providing various examples of dignity in the context of human rights as prioritizing the rights of “every human” and protecting “any person” from dignitary harm).

\(^94\) See Adam Omar Hosein, Doing, Allowing, and the State, 33 L. & Phil. 235, 235
role in fiscal impoverishment distinguishes it from the standard criteria described above. Most notably, fiscal impoverishment implicates the economic responsibilities of the state vis-à-vis poor taxpayers.

Evidence of state and federal governments’ poverty reduction goals can be seen in the establishment of the Federal Poverty Guidelines, as well as the host of public benefit programs operating at local, state, and federal levels. Although the question of how best to mitigate poverty falls to political and bureaucratic processes, some version of a goal of helping low-income individuals is clear. If governments seek to elevate households above a pre-determined level of wellbeing, they surely should not push some below that level. Thus, recognizing fiscal impoverishment reveals governments’ violation of their own internal goals.

Even in the absence of such internal goals, however, fiscal impoverishment violates a fundamental governmental duty to not harm citizens and residents. This duty is one of its most basic. Were the harms of fiscal impoverishment divorced from taxes, governments would be authorized to inflict them only under very limited circumstances. Governments in the United States may impose corporeal harm up to capital punishment, restrict someone’s freedom via imprisonment or quarantine, and cause significant financial harm via fines or restitution. They may inflict these harms under a state’s police power on the grounds of punishment,

(2014) (arguing that the “doing/allowing distinction” should be applied to state action).

96 See infra Part III.A.2 for a description of several prominent federal and state antipoverty programs.
97 There are various ways to arrive at this principle. It could, for instance, arise from an affirmative duty on the part of the government to promote “the good” for its residents. See The Declaration of Independence ¶ 2 (U.S. 1776) (“It is the Right of the People to . . . institute new Government, . . . organizing its powers in such form . . . most likely to effect their Safety and Happiness”); Aristotle, Politics bk. I, at 25 (Benjamin Jowett trans., 1905) (“[T]he state or political community, which is the highest [community] of all, and which embraces all the rest, aims at . . . the highest good.”). Alternatively, it could arise from an affirmative duty on the part of government to protect its citizens from harm. See Thomas Hobbes, Leviathan pt. 2, at 128-29 (A.P. Martinich ed., 2002) (1651) (asserting that government protects citizens from the ills that emerge in the absence of any restraint); Steven J. Heyman, The First Duty of Government: Protection, Liberty and the Fourteenth Amendment, 41 Duke L.J. 507, 512-16 (1991) (discussing the legal foundations of the fundamental right to protection). By extension, a requirement to protect means that the government cannot cause harm itself.
98 Cf. Aristotle, supra note 97, at 25 (declaring that the state seeks the “highest good”); Heyman, supra note 97, at 512-16.
99 See, e.g., U.S. Const. amend. V (limiting takings); Id. amend. VIII (limiting cruel punishment and excessive fines).
100 See, e.g., U.S. Const. amend. X (granting certain powers to the states); see also Legal Authorities for Isolation and Quarantine, Ctrs. for Disease Control & Prevention, (Feb.
deterrence, or to protect society from further harm, but their ability to do so is strictly circumscribed, in some cases by the U.S. Constitution. Generally speaking, the harm caused must be reasonably justified by a greater good achieved, or a graver harm forestalled. For instance, imprisoning a violent offender or shutting down businesses to prevent the spread of a dangerous disease may cause harm, but the state does so to protect the public’s safety and health.

Legally speaking, tax policies need not be justified under such a restrictive calculus. This freedom makes good sense. A broad power to tax is necessary to enable the government to fund our collective pursuits, freed from the constant litigation that a more restrictive grant of power would allow. However, where tax levies push some households into severe deprivation, perhaps we should ask whether the tax revenue raised justifies the harm of impoverishment. Exposed to such scrutiny, it is difficult to imagine an answer in the affirmative. Where $100 or $1,000 taken from a poor family directly limits their ability to buy food or medicine, the gain to public coffers seems petty.

The gratuity of the harm is laid bare when one considers the dollars at stake and their relative value to poor and non-poor taxpayers. At the federal level, households earning less than $10,000 per year are projected to have paid 0.1% of federal tax revenue in 2019. The amount collected is nearly

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101 It is worth noting that such power is not expressly granted by the Constitution but may be implied. See Paul Fuller, Is There a Federal Police Power?, 4 Colum. L. Rev. 563, 565 (1904) (considering the federal government’s police power to protect and promote the good for its people and concluding that such power “must be under the doctrine of implied powers, to be inferred from the necessity which arises for its use”).

102 See, e.g., U.S. Const. amend. VIII (limiting excessive punishment and fines).


104 See McCulloch v. Maryland, 17 U.S. 316, 428 (1819) (“The only security against the abuse of [taxation], is found in the structure of the government itself.”); Eric Kades, Drawing the Line Between Taxes and Takings: The Continuous Burdens Principle, and Its Broader Application, 97 Nw. U. L. Rev. 189, 192 (2002) (“At times, judges and legal commentators have declared that Congress’ power to tax is beyond constitutional review.”).

105 Joint Comm. on Tax’n, Overview of the Federal Tax System as in Effect for 2019, 34 tbl.A-6 (2019). Note that this group likely includes many non-poor households that report low incomes on their tax returns due to business losses or other items that reduce gross
$2.2 billion, bespeaking a significant transfer away from poor taxpayers.\textsuperscript{106} Moreover, the Treasury could easily collect this 1/1,000\textsuperscript{th} of federal tax revenue from better-off households without worsening deprivation or overly hampering growth. For example, repealing bonus and accelerated depreciation of equipment would raise $71.5 billion in one year, more than offsetting the tax revenue collected from the lowest rung of the economic ladder.\textsuperscript{107}

Although pursuing the standard criteria is vitally important, this discussion has sought to show that such aggregate goals miss something important. Specifically, concern for human dignity as well as governmental responsibilities to individual low-income households justify increased attention on fiscal impoverishment. Shifting from normative to positive, the next Part illustrates the extent of fiscal impoverishment’s harm in the United States by sketching its scope across the fifty states and the District of Columbia.

III. FISCAL IMPOVERISHMENT IN THE UNITED STATES

We need not concoct a hypothetical tax system to see that fiscal impoverishment can occur in a progressive, equalizing, and poverty-reducing fiscal system. The U.S. fiscal system offers a prime example, as this Part details. First, this Part describes the various taxes and public benefits that low-income households in the United States are most likely to pay and receive. Then, using several stylized households, it explores pre- and post-tax and transfer incomes at various income levels to illustrate the scope of fiscal impoverishment across all fifty states and D.C. This analysis reveals a disparate distribution of fiscal burdens, with net costs diverging sharply depending on a taxpayer’s geographic location, family structure, and eligibility for a patchwork of federal and state public benefit programs.

\textsuperscript{106} Id. This revenue figure does not include amounts collected by state and local governments.

A. Specific Taxes and Transfers

Many others have detailed the taxes most burdensome to low-income taxpayers.\textsuperscript{108} This Article will not retrace those careful steps, only briefly describing such charges.\textsuperscript{109}

1. Taxes

\textit{Federal Income Tax}—Most people living in or near poverty will owe no federal income tax, or very little tax, because the tax filing threshold roughly tracks the federal poverty threshold.\textsuperscript{110} Exempting income below a certain level traces back to a longstanding and well-accepted notion that the state should only tax income above a subsistence level, sometimes referred to as “clear income.”\textsuperscript{111}

Although the tax-filing threshold—the dollar amount below which no income tax is owed\textsuperscript{112}—and federal poverty threshold are currently quite close, the gap between them has been wider in the recent past, as Figure 1 shows. Over the past forty years, the average (inflation-adjusted) gap between the tax-filing threshold and the federal poverty guideline is $1,733.\textsuperscript{113}

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\textsuperscript{108} See supra Part I.B.

\textsuperscript{109} For discussion of the challenges associated with determining and valuing the taxes and transfers included in fiscal impoverishment calculations, see infra Part III.C.1.

\textsuperscript{110} The EITC further ensures a low or even negative federal tax burden on low-income taxpayers. See infra notes 139-148 and accompanying text.

\textsuperscript{111} See 9 Edwin R. A. Seligman, Progressive Taxation in Theory and Practice 129–30, 160–62 (1894) (providing examples of several historical scholars who have recognized the concept of “clear income”).

\textsuperscript{112} 6 Borris I. Bittker & Lawrence Lokken, Federal Taxation of Income, Estates and Gifts ¶ 111.1.2, at 111-3 (“[A]n individual is required to file an income tax return for a taxable year if gross income equals or exceeds the sum of the ‘exemption amount’ . . .”).

Federal Payroll Taxes—Federal payroll taxes, which include Federal Insurance Contributions Act (FICA) and Self-Employment Contributions Act (SECA) taxes, represent the largest federal fiscal cost to low-income taxpayers. These taxes apply to the first dollar of wages or self-employment earnings. Employees pay a tax rate of 7.65% on wages; their employers pay an additional 7.65% on those same wages. There is broad consensus among economists that the employer’s portion of FICA taxes is passed on to workers through lower wages. Self-employed individuals—a category that includes freelancers, gig-economy workers, misclassified workers, and small-business owners—face a SECA tax rate of 15.3%.

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116 I.R.C. §§ 3101–3102 (outlining the tax on employees); I.R.C. §§ 3111–3113 (outlining the tax on employers).

117 See Don Fullerton & Gilbert E. Metcalf, Tax Incidence, in 4 Handbook of Public Economics 1787, 1821-22 (Alan J. Auerbach & Martin Feldstein eds., Alan J. Auerbach & Martin Feldstein eds., 2002) (discussing several studies finding that employees bear the burden of payroll taxes).

118 I.R.C. § 1401 (providing the rate of tax on income from self-employment).
Both FICA and SECA taxes contribute to the Social Security and Medicare trust funds. Because of this connection between the taxes and later benefits, many consider them more like insurance contributions than taxes. Others, however, refute this view for various reasons, including the fact that benefits are not directly related to the amount of taxes paid and the fact that payees have no legal claim to benefits merely for making payments, among other reasons. This Article takes the latter position, believing the burden that payroll taxes impose on low-income taxpayers should be evaluated in the current time period irrespective of future benefits that the taxpayers may or may not receive.

State and Local Sales and Excise Taxes—Sales taxes are the most important source of revenue in many states, and the most significant nonfederal tax for low-income taxpayers. The Institute for Taxation and Economic Policy (ITEP) reports that households in the bottom income quintile face an average state and local sales and excise tax rate of 7.1%.

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121 See, e.g., Michael Graetz, The Troubled Marriage of Retirement Security and Tax Policies, 135 U. Pa. L. Rev. 851, 868 (1987) (arguing that Social Security taxes’ regressive structure “violates principles of tax justice and cannot be defended . . . by reference to ultimate benefits that the working poor may expect to receive”); Sugin, supra note 114, at 152 (arguing that equating regressive payroll taxes with insurance contributions has deceived workers into accepting a regressive tax structure that unfairly overburdens wage earners).

122 Social Security benefits pull millions of senior citizens out of poverty. Kathleen Romig, Ctr. on Budget and Pol’y Priorities, Social Security Lifts More Americans Above Poverty Than Any Other Program 1 tbl.1 (2020), https://www.cbpp.org/sites/default/files/atoms/files/10-25-13ss.pdf (even so, the system is less progressive than many estimates assume in part because they fail to consider the direct correlation between income and life expectancy. See Coronado, Fullerton & Glass, supra note 69, at 24 (making this point)).

123 Although federal excise taxes are similarly regressive, they are omitted from the analysis because they apply only to a subset of goods, which some poor households may not consume. Major Federal Excise Taxes, supra note 52. Including an estimate for federal excise taxes would increase fiscal impoverishment.

124 See ITEP, supra note 7, at 12 (describing the regressive nature of state and local sales taxes).

125 Id. at 1-2, 4 (estimating a total state and local tax rate, including income, property, and corporates taxes, of 11.4% on the bottom income quintile, and 7.4% on the top income quintile).
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Table 8, in the Appendix, provides sales tax rates for low-income households in all fifty states and the District of Columbia.\footnote{126 Further information about ITEP’s methodology can be found in the Appendix, infra, at notes 354-357 and accompanying text, and in ITEP, supra note 7, at 134-37.}

Aside from the seven states that offer a sales tax credit to low-income taxpayers, generally there is no direct relief for sales taxes.\footnote{127 Id. at 16.} What’s more, low-income households pay a larger average consumption tax rate because they tend to consume all their income, or even more than their annual income.\footnote{128 Id. at 14.}

**State Income Taxes**—State income tax structures vary widely. Most states have progressive rates.\footnote{129 Id. at 14.} Nine states impose a flat income tax, levying the same rate on all taxpayers.\footnote{130 Id. (noting that Colorado, Illinois, Indiana, Kentucky, Massachusetts, Michigan, North Carolina, Pennsylvania, and Utah all impose a flat-rate income tax).} Many states’ income taxes begin to accrue on incomes well below any reasonable poverty threshold.\footnote{131 Fed’n of Tax Adm’rs, State Individual Income Taxes 1 (2022), https://www.taxadmin.org/assets/docs/Research/Rates/ind_inc.pdf [https://perma.cc/V3KE-LMH6] (listing all states’ tax rates, bracket ranges, personal exemptions and standard deductions). Pennsylvania is the only state that levies an income tax with no standard deduction or personal exemptions. ITEP, supra note 7, at 15. Pennsylvania offers a tax forgiveness credit that relieves qualifying low-income families of state income taxes. See Pa. Dep’t of Revenue, Rev-631 (PO+) 11-21, Tax Forgiveness for PA Personal Income Tax, https://www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/PIT/Documents/rev-631.pdf [https://perma.cc/X99M-JHBS] (describing eligibility for the state’s tax forgiveness program).} To offset these tax burdens, twenty-nine states offer income-based tax credits like the EITC, most of which are refundable.\footnote{132 ITEP, supra note 7, at 16.} These are discussed further in the next Subsection.

**Property Taxes**—Property taxes comprise the largest share of local governments’ own-source revenue.\footnote{133 See Judy A. Zelio, A Guide to Property Taxes: The Role of Property Taxes in State and Local Finances 6-9 (2004) (estimating that property tax revenue accounts for 20% of state and local own-source revenue on average).} Poor households pay such taxes directly if they own their own homes or indirectly via increased rent.\footnote{134 See Richard W. England, Tax Incidence and Rental Housing: A Survey and Critique of Research, 69 Nat’l Tax J. 435, 449-51 (2016) (describing recent empirical research on residential property tax incidence which finds that some portion of the property tax is borne by taxing jurisdictions’ residents via higher rents or reduced local wages); see generally Fullerton & Metcalf, supra note 117, at 1815-17 (discussing property tax incidence).} ITEP estimates that households in the bottom income quintile pay an average
property tax rate of 4.2% of total income.\textsuperscript{135} Table 8 in the Appendix provides rates for low-income households in all fifty states and the District of Columbia. Several states offer property tax rebates, some of which are refundable and available to renters.\textsuperscript{136} These programs reduce fiscal impoverishment in the handful of states in which they exist.

2. Transfers

Refundable tax credits and other public benefits offset taxes and protect many households from fiscal impoverishment. These supportive transfers operate via a patchwork of programs administered in complex and overlapping ways by federal, state, and local agencies, reflecting entrenched pathologies of our federalist system. Despite these complexities, there are enough similarities between states to draw generalizations about the various transfer programs throughout the United States. Most notably, working families with children, individuals with disabilities, and senior citizens receive the bulk of these benefits.\textsuperscript{137}

As explained above,\textsuperscript{138} when assessing fiscal impoverishment this Article considers only safety-net benefits that bear on basic needs in the current period. It ignores the value of many other government benefits, perhaps most notably that of universal in-kind public benefits such as roads, military protection, schools, and so forth. Although a low-income person benefits from roads or schools, she is still considered poor and remains severely deprived even after her use of these public goods. Moreover, any past or future benefit she might receive from, say, education or Social Security, does nothing to alleviate her deprivation in the current period.

\textsuperscript{135} See ITEP, supra note 7, at 12 (noting, also, that the top 1% face an average property tax rate of 1.7% of income).


\textsuperscript{138} Supra text accompanying notes 67–70.
Refundable Tax Credits—Refundable tax credits dramatically increase the progressivity of the federal income tax system. The largest of these are the EITC and child tax credit. Both credits provide cash transfers to low-income working families with children. Both credits impose a work requirement and phase in at low-income levels, meaning the credit amount increases as the recipient’s income increases until the credit reaches its maximum amount.

Congress originally enacted the EITC in part to offset federal payroll taxes among working families living in poverty. Although this effort was largely successful for recipient families with children, workers without children receive an EITC too small to fully offset payroll taxes. Nonworkers, as well as people earning ineligible or nontaxable income, are excluded from the EITC and child tax credit. Entire households are also excluded from the EITC if one parent lacks a work-eligible Social Security number. Additionally, families might be excluded from both credits because they fail to satisfy eligibility rules related to family structure and care arrangements.

139 Joint Comm. on Tax’n, supra note 107, at 28-29 tbl.1 (providing cost estimates for all federal tax expenditures, including the EITC and the “[c]redit for children and other dependents”).


141 I.R.C. §§ 32(b), 24(d) (West 2021). For 2021 only, Congress eliminated the phase-in structure for the child tax credit so that the lowest-income recipients could receive the full credit amount. Importantly, this expansion allowed the credit to reach non-working families with children. See American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 9611 (enacted). The expansion expired at the start of 2022. Id.


143 See Jurow Kleiman, supra note 20, at 21-24 (describing positive federal tax burdens on childless taxpayers). For 2021 only, Congress increased the EITC for childless workers so that it fully offsets payroll taxes for some workers living below the poverty line. I.R.C. § 32(b)(2)(A), (n)(4) (West 2021). This expansion expired at the start of 2022. Id.


145 Id. at 5.

Twenty-eight states and the District of Columbia offer state-level refundable tax credits that largely piggyback off the federal structure.\textsuperscript{147} Because these credits tend to cover the same households as the federal credit, they typically do not change who is most likely to be impoverished in most states.\textsuperscript{148}

**Social Security Disability and Retirement**—The most significant cash transfer program in the United States is Social Security,\textsuperscript{149} which ensures that elderly U.S. residents are protected from fiscal impoverishment. The Social Security Administration also runs the federal disability insurance program, which includes Social Security Disability Income and Supplemental Security Income (SSI).\textsuperscript{150} These programs provide varying levels of support, starting at $841 per month in 2022,\textsuperscript{151} to individuals with a qualifying disability.\textsuperscript{152} In addition to supporting disabled individuals, these programs also provide benefits to children with a deceased or disabled parent.\textsuperscript{153}

**Temporary Assistance for Needy Families (TANF)**—The other significant cash-transfer program for low-income households is Temporary Aid to Needy Families (TANF).\textsuperscript{154} Distinct from retirement or disability benefits, TANF benefits are means-tested, meaning they phase out as income rises.\textsuperscript{155}

\begin{itemize}
\item \textsuperscript{148} There are several exceptions to this. For instance, several states have recently extended benefits to families with members who lack Social Security numbers, including California, Colorado, Maryland, New Mexico, and Washington. See id. Additionally, some states offer benefits to childless households that are calculated as a greater percentage of the federal credit compared to credits for households with children, including Maine, Maryland, and the District of Columbia. See id.; Richard C. Auxier, District of Columbia Shows How to Expand the EITC For Childless Workers, Tax Pol’y Ctr. (Feb. 26, 2019), https://www.taxpolicycenter.org/taxvox/district-columbia-shows-how-expand-eitc-childless-workers [https://perma.cc/MVE5-964M].
\item \textsuperscript{152} Soc. Sec. Admin., supra note 150, at 1.
\item \textsuperscript{155} Robert A. Moffitt, The Temporary Assistance for Needy Families Program, in
As the name implies, TANF provides benefits only to households with children.\textsuperscript{156} Work requirements further restrict benefits in many states.\textsuperscript{157} Additional barriers to access are discussed below.\textsuperscript{158}

Aside from TANF, there are vanishingly few other cash support programs for struggling households. Some local governments run modest support programs for poor childless adults, sometimes called general relief.\textsuperscript{159} These programs tend to be limited to disabled adults who cannot qualify for federal disability benefits.\textsuperscript{160}

**Near-Cash and In-Kind (Nonmedical) Benefits**—Other benefit programs increase a household’s access to a specific essential need, like food or housing. The largest such program is the Supplemental Nutrition Assistance Program (SNAP), often called food stamps, which provides food support to tens of millions of individuals each month.\textsuperscript{161} In 2021, the U.S. Department of Agriculture recalculated the household food allotment for SNAP purposes, increasing benefits by 27% overall—\textsuperscript{162} the largest one-time increase in the program’s history.\textsuperscript{163} Other programs include the National School Lunch...
Program,\textsuperscript{164} housing assistance such as Section 8 vouchers,\textsuperscript{165} Child Care and Development Funding (CCDF) assistance,\textsuperscript{166} and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).\textsuperscript{167}

All of these programs provide means-tested benefits.\textsuperscript{168} Like TANF, in-kind benefits allocate scarce resources by prioritizing households with children as well as elderly and disabled individuals.\textsuperscript{169} For instance, of the 5 million people who receive Section 8 vouchers, 70% belong to families with children.\textsuperscript{170} Specific limitations and uptake issues are discussed in greater depth below.\textsuperscript{171}

\textit{Medicaid}—Medicaid addresses a vital need of low-income households by providing public medical insurance.\textsuperscript{172} States administer the program under federal guidelines.\textsuperscript{173} States are required to provide Medicaid coverage to low-income children, pregnant women, certain low-income parents/caretakers, and most elderly and disabled individuals receiving


\textsuperscript{167} 42 U.S.C. § 1786 (West 2021).

\textsuperscript{168} See generally Edgar O. Olsen, Housing Programs for Low-Income Households, in Means-Tested Transfer Programs in the United States, supra note 155, at 365-442 (discussing housing programs for low-income households); David M. Blau, Child Care Subsidy Programs, in Means-Tested Transfer Programs in the United States supra note 155, at 443-516 (discussing child care and early education subsidy programs); 42 U.S.C. § 1786(d)(2) (West 2021) (describing nutrition programs).

\textsuperscript{169} The federal government limits SNAP benefits available to unemployed able-bodied adults without dependents (ABAWDs) to three months in any three-year period. 7 U.S.C. § 2015(o)(2)-(3). A state can request a waiver of this limitation if an area has an unemployment rate higher than 10% or does not have a sufficient number of jobs. Id. at (o)(4).

\textsuperscript{170} Ctr. on Budget & Pol’y Priorities, United States Housing Choice Fact Sheet 1 (2017), https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous-factsheets_us.pdf [https://perma.cc/ZQX2-QPV6].

\textsuperscript{171} See infra sections III.B.1 (describing barriers to access for means-tested programs).


\textsuperscript{173} See id. at 2 (describing certain mandatory conditions for states to receive federal Medicaid funding).
Although the Affordable Care Act extended mandatory support to low-income childless adults, the Supreme Court in *National Federation of Independent Business v. Sebelius* allowed states to deny such coverage without losing federal support. At the time of writing, fifteen states have chosen not to expand Medicaid coverage to low-income childless adults.

Assessing the value of medical benefits is complex. Although it may free up household resources, Medicaid cannot be used to purchase other essential needs like food or housing. Moreover, the amount of income that Medicaid frees up differs from household to household. If a recipient is healthy, Medicaid may free up no additional resources. If a recipient is sick or disabled, the value of such benefits is significantly higher. Even so, acknowledging this fact does not tell us how much that recipient would have spent on care in the absence of free healthcare.

This Article adopts the U.S. Census Bureau’s approach to valuing Medicaid. Under this approach, the Census calculates the “fungible value” of in-kind medical services based on the market value of medical services and family-level food and housing costs. Most notably, where the household’s cash income is insufficient to meet its food and housing needs (which is true for all fiscally impoverished households), the fungible value of medical benefits is deemed to be zero. For additional comments on valuing Medicaid, see the Appendix.

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174 Id.
176 CBPP, supra note 172, at 3.
180 Id.
181 *Infra* text accompanying notes 366-373.
**B. How Fiscal Impoverishment Occurs**

This Section applies the foregoing reasoning to describe fiscal impoverishment for several stylized households in the United States. Whether a household is fiscally impoverished depends on the mix of taxes it pays and public benefits it receives. The public benefit landscape is complex, as the brief prior discussion demonstrates. Even so, it is possible to draw some general conclusions based on information about program eligibility rules and uptake patterns. In particular, families that do not receive refundable tax credits and individuals without custodial children (“childless” individuals) face possible fiscal impoverishment at certain income levels. Estimating net tax burdens for stylized examples of such households demonstrates how fiscal impoverishment occurs among U.S. households.

The skeletal analysis here reveals that fiscal impoverishment is significant and highly variable. Millions of households are likely fiscally impoverished, with fiscal burdens varying based on someone’s location and eligibility for the patchwork of federal and state benefits that make up the U.S. safety net. This variability tracks well-known patterns of exclusion and deemed deservingness in U.S. welfare spending. Those affected include households without children, nonworking households, families with extended-kinship care and non-kinship care arrangements, and immigrants. Fiscal impoverishment is also more likely to afflict households with income just above or below the poverty threshold, rather than those in deep poverty, due partly to the decline of means-tested benefits as income rises.

It is important to be transparent about something upfront: Most working U.S. citizen families with traditional care arrangements are protected from fiscal impoverishment due to refundable tax credits as well as antipoverty programs like SNAP. Elderly and disabled individuals are similarly protected from fiscal impoverishment due to Social Security benefits and state disability programs. This support should be celebrated. Yet it should not provide cover for the fiscal impoverishment that afflicts other taxpayers. This Article does not draw a deservingness boundary around traditional public benefit recipients. The harms detailed above call upon concerns about serious deprivation and social exclusion. These concerns apply as much to traditional families as they do to impoverished noncustodial parents, undocumented children and parents, childless individuals, and families with extended-kinship care relationships.

This Section offers these stylized calculations at the risk of getting mired in the technicalities that such estimates require. Virtually every input can be questioned. More fundamentally, using an income threshold to capture

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182 See supra Part II.C.1 (discussing the importance of human dignity and its relation to fiscal impoverishment).
a population-wide state of human deprivation is a highly dubious endeavor, as the debate around poverty thresholds illustrates. Even so, we should not abandon the calculative exercise. Numbers highlight scope and magnitude, they capture the interest of policymakers and journalists, and they reveal patterns to be addressed via policy reform.\(^\text{183}\) In the final Section, I address the challenges to and necessity of measuring fiscal impoverishment.

1. Families with Children

*Working Families.* Low-income families that are excluded from refundable tax credits likely face fiscal impoverishment. Working families with children might be excluded from the EITC, the child tax credit, or both, due to eligibility rules related to family structure or immigration status. Nonworking families are also excluded from both credits, aside from a temporary child tax credit expansion in 2021.\(^\text{184}\) This Section briefly describes these rules and their effect on families, focusing initially on working families. Because impoverishment depends on other benefits as well, this Section also explores such families’ access to non-tax benefits. It then offers a stylized example of a fiscally impoverished family that is excluded from refundable tax credits, estimating likely net tax cost across states. It concludes by considering fiscal impoverishment of nonworking families.

Some working families are excluded from refundable tax credits due to care arrangements that run afoul of eligibility rules related to family structure.\(^\text{185}\) Most importantly, a taxpayer must be closely related to a child and live with her for at least six months of the year in order to claim her for the child tax credit or the EITC.\(^\text{186}\) Only a child’s parent, grandparent, sibling, aunt, or uncle is eligible to claim her.\(^\text{187}\) If a child does not live with a sufficiently close relative for at least six months of the year, she cannot be

\(^{183}\) Cf. Bearer-Friend, *supra* note 79, at 38-46 (arguing that failing to gather data on tax outcomes by race both obscures and maintains racial inequality).


\(^{185}\) See Goldin & Jurow Kleiman, *supra* note 146 (manuscript at 21-23) (describing families that are excluded from refundable tax credits due to child-claiming rules).

\(^{186}\) I.R.C. §§ 32(c), 24(c), 152(c) (West 2021) (providing child-claiming rules). In certain cases, a noncustodial parent may be allowed to claim a child for the child tax credit, but not the EITC, if the custodial parent provides written permission for the other parent to claim the child. *See I.R.S., Pub. No. 501, Dependents, Standard Deduction, and Filing Information* 13 (2022), https://www.irs.gov/pub/irs-pdf/p501.pdf [https://perma.cc/3HET-YD55].

\(^{187}\) I.R.C. § 152(c)(2) (West 2021).
claimed by anyone. These child-claiming rules exclude households in which children are raised or informally fostered by family friends and more distant relatives, like cousins. They also exclude families that care for children for some portion of the year less than six months. Imagine, for instance, a child who lives with her mother for five months, her father for five months, and her grandparents for two months.

Although certainly the exception rather than the rule when it comes to families with children, the number of such households is nontrivial. Recent research estimates that over 330,000 children are excluded from the child tax credit due to relationship requirements. This number may increase over time because a growing number of children live with and are supported by non-parent relatives. Such ineligibility is likely disparately distributed by race, as Black and Latinx households are more likely to be deemed ineligible for the child tax credit compared to white or Asian households.

Refundable tax credit rules also exclude working families with mixed-immigration status. The EITC excludes families in which any member lacks a work-eligible social security number. The child tax credit is slightly more inclusive, only barring families from claiming children that lack an eligible social security number. The result is that a mixed-status family can receive the child tax credit for each child who has U.S. citizenship or some other status that confers social security eligibility, such as deferred action for childhood arrivals (DACA). It cannot, however, receive the EITC if even one parent in the household lacks such immigration status.

Research from the Migration Policy Institute finds that 4.1 million U.S.

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188 Goldin & Jurow Kleiman, supra note 146 (manuscript at 21-23).
190 Goldin & Michelmore, supra note 21, at 19, 29 tbl.3.
191 See Maag, Peters & Edelstein, supra note 189, at 1 (“In a small but growing number of households, children live with relatives other than parents either temporarily or permanently . . . .”); Natasha V. Pilkauskas & Christina Cross, Beyond the Nuclear Family: Trends in Children Living in Shared Households, 58 Demography 2283, 2283 (2018) (examining trends in shared households and finding that the rise in children living in shared households was driven mostly by an increase in multigenerational households).
192 Goldin & Michelmore, supra note 21, at 2-3.
193 See I.R.C. §§ 24(h)(7), 32(m) (West 2021) (providing social security number requirements).
194 I.R.C. § 32(m) (West 2021).
197 I.R.C. § 32(m) (West 2021).
citizen children live in mixed-status households and that three-quarters of these families live below 185% of the federal poverty threshold.\textsuperscript{198}

Additionally, administrative activity by the IRS might render certain families unable to receive the credits. For instance, the IRS might deny credits to an eligible family due to identity theft or the family’s inability to document custody of children.\textsuperscript{199} The IRS can also divert refundable tax credits (as well as overpaid income taxes) to satisfy debts for past-due taxes.\textsuperscript{200} And, some eligible families may simply fail to claim the credits, perhaps because they mistakenly believe they are not eligible.\textsuperscript{201} The threat of audit may also deter eligible taxpayers from claiming credits.\textsuperscript{202} The most recent IRS estimates provide that 22% of eligible taxpayers fail to claim the EITC, which totals approximately 5 million households.\textsuperscript{203} These underclaiming households reflect the significant costs imposed by rule complexity and IRS decisions regarding the administration of refundable tax credits.

\textsuperscript{198} Randy Capps, Michael Fix & Jie Zong, Migration Pol’y Inst., A Profile of U.S. Children with Unauthorized Immigrant Parents 1, 6 (2016), https://www.migrationpolicy.org/sites/default/files/publications/ChildrenofUnauthorized-FactSheet-FINAL.pdf [https://perma.cc/2EDN-RPE7].

\textsuperscript{199} See Drumbl, supra note 6, at 73-75 (discussing identity theft); id. at 77-79 (discussing IRS audit procedures that result in denial of tax credits to eligible taxpayers).


A family’s fiscal impoverishment depends on other public benefits as well, the landscape of which is somewhat more complex. Perhaps most importantly, these families are unlikely to receive other cash assistance simply because most low-income families do not receive non-tax cash assistance. Less than a quarter of families living in poverty received TANF benefits in 2020. Federal law requires that states enforce a five-year limit on receipt of benefits, and some states impose an even shorter eligibility period. Because eligibility varies drastically by state, low-income households may be especially disadvantaged merely because of where they live. These geographic differences may cause disparate distribution by race as well, as states with a greater proportion of African-American residents tend to have more restrictive eligibility rules. These access difficulties will be compounded for families with extended-kinship and non-kinship care relationships, unstable housing, or mixed-immigration status.

Other public benefits, such as housing vouchers and child-care subsidies, report similarly dismal coverage. Only about one-third of

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208 Shrivastava & Thompson, supra note 204, at 2 (noting “wide variation among state [TANF-to-poverty ratios], which range from 71 in California and Vermont to just 4 in Arkansas, Louisiana, Mississippi, and Texas”).


eligible households receive Section 8 housing vouchers.\footnote{212}{Families often sit on Section 8 waitlists for over a decade.\footnote{213}{Child-care support via the CCDF program is even less comprehensive. In 2015, the CCDF program provided support to about 14% of eligible children.\footnote{214}{Thus, the vast majority of low-income families receive no federal child-care support. And, once again, the characteristics that render these families unable to claim the EITC or child tax credit may also complicate their access to housing vouchers and child-care subsidies. SNAP benefits and subsidized school lunch programs are the exception to this low-coverage pattern. Both programs successfully reach most low-income households.\footnote{215}{SNAP household eligibility rules allow non-relative adults to claim children, provided that the children are under that adult’s “parental control.”\footnote{216}{Thus, households with extended-kinship and non-kinship care arrangements can qualify for SNAP benefits, even if they fail to qualify for benefits under other programs.\footnote{217}{Even so, SNAP benefits and school lunch alone may not be enough to fully offset taxes in all states, working poor households because “a substantial majority of poor families with children don’t receive such aid”).}

\footnote{212}{See id. at 6 (“[A]bout one in three [poor families with children] receive housing assistance.”).}

\footnote{213}{See e.g., Jake Blumgart, What an Affordable Housing Moonshot Would Look Like, Slate (July 1, 2016, 11:56 AM), https://slate.com/business/2016/07/its-time-for-universal-housing-vouchers.html [https://perma.cc/45DH-2UQE] (describing the program as “a lottery for the lucky few”); Julia Wick, The Waiting List for Section 8 Vouchers in L.A. Is 11 Years Long, LAist (Apr. 4, 2017, 12:00 AM), https://laist.com/2017/04/04/section_8_waiting_list.php [https://perma.cc/8LW5-4BMP] (“Low-income families struggling to pay their rent in Los Angeles who seek Section 8 housing assistance will have to wait for more than a decade for help.”).}

\footnote{214}{Linda Giannarelli, Gina Adams, Sarah Minton & Kelly Dwyer, Urban Inst., What If We Expanded Child Care Subsidies? 3 (2019), https://www.urban.org/sites/default/files/publication/100284/what_if_we_expanded_child_care_subsidies_3.pdf [https://perma.cc/F45W-TM3N] (providing that 1 in 7 eligible children receive support through CCDF in 2015, but that the number may be “somewhat higher” now).}


\footnote{216}{7 C.F.R. § 273.1(a)(3), (b)(1)(iii) (2021).}

\footnote{217}{Id.}
particularly for families living near and just above the poverty line, as *Example 1* demonstrates. Additionally, despite these programs’ widespread coverage, Census data from 2020 report that approximately 800,000 children living in poverty belonged to households that did not receive any means-tested assistance, including SNAP or school lunch programs.\(^{218}\)

The public benefit landscape for mixed-status families is particularly complex.\(^{219}\) Families in which all members are undocumented are generally not eligible for support under most benefit programs, including TANF, SNAP, and Medicaid.\(^{220}\) Only a few states fill these gaps with state public benefit programs.\(^{221}\) Although U.S. citizen children qualify for benefits under most federal programs,\(^{222}\) mixed-status families often fail to claim them.\(^{223}\) Qualifying for benefits can also be difficult for mixed-status families due to how programs calculate household income and expenses.\(^{224}\)

To summarize, despite the success of child-related tax benefits, some families are intentionally excluded while others slip through the cracks. Without refundable tax credits, these families often pay substantial taxes, including payroll taxes, federal income taxes, and state and local taxes. As *Example 1* illustrates, other public benefits may not suffice to prevent fiscal impoverishment.

\(^{218}\) Census data provide that 10,781,000 children living in poverty belonged to households receiving means-tested assistance, out of 11,607,000 total children living in poverty. U.S. Census, POV26: Program Participation Status of Household - Poverty Status of People: 2020, Below 100% of Poverty--All Races (2021) https://www2.census.gov/programs-surveys/cps/tables/pov-26/2021/pov26_2_1.xlsx (providing figures for all people “Under 18 years” living below “100% of Poverty”). These figures leave 826,000 children outside of households receiving means-tested assistance.

\(^{219}\) For a detailed discussion of mixed-status families’ eligibility for and access to public benefits programs, see Hammond, *supra* note 196, at 509-18.

\(^{220}\) See 8 U.S.C. § 1611 (“[A]n alien who is not a qualified alien . . . is not eligible for any Federal public benefit . . . .”).


\(^{222}\) See Hammond, *supra* note 196, at 517 (“Parental [immigration] status rarely affects children’s statutory eligibility or entitlement to [public benefit programs], but parental status nevertheless impedes access.”).

\(^{223}\) See Paula Fomby & Andrew J. Cherlin, *Public Assistance Use Among U.S.-Born Children of Immigrants*, 38 Int’l Migration Rev. 584, 593 (2004) (finding that U.S. citizen children with foreign-born caregivers are less likely to access various public benefits, including TANF and SSI, compared to those with U.S.-born caregivers).

\(^{224}\) See Hammond, *supra* note 196, at 516 (describing how the SNAP benefit program accounts for incomes of family members in mixed immigration status households).
Example 1\textsuperscript{225}: Abby lives in Alabama and cares for her cousin’s two children while her cousin is incarcerated. Abby supports the children financially, takes them to school, monitors their daily activities, and so forth. Although she is low-income, Abby cannot claim her cousin’s children for the purpose of the EITC or child tax credit because she is not their parent, grandparent, aunt, or sister.\textsuperscript{226} Abby’s annual income is $20,598.\textsuperscript{227} Although she pays no federal income tax,\textsuperscript{228} her employee portion of federal payroll taxes is $1,576.\textsuperscript{229} Her state income tax totals $555, and sales and property tax together total $1,751. Abby’s household receives SNAP benefits of $142 per month.\textsuperscript{230} The children also receive free school lunch worth approximately $104 per month total. With this bundle of taxes and benefits, Abby’s after-tax household income is $19,676—approximately $922 below the poverty threshold in 2019.

Whether or not Abby’s family is impoverished will depend upon their access to the patchwork of state and federal programs that support low-income families. As explained above, they may have less trouble receiving SNAP benefits and subsidized school lunch but have more difficulty obtaining housing benefits or subsidized child care. If they are a mixed-status family, their eligibility for these various benefits will be more complicated.\textsuperscript{231} Table 3 provides fiscal impoverishment estimates for Abby’s family in the least, most, and median impoverishing states. The expanded Table 5 in

\textsuperscript{225} Appendix Part A describes the calculation methods for these figures and Appendix Part B, Table 5 provides additional figures. The figures in the text are rounded for simplicity.

\textsuperscript{226} I.R.C. § 152(c)(2) (West 2021).

\textsuperscript{227} U.S. Census Bureau, supra note 64.

\textsuperscript{228} Although not eligible for the full child tax credit, Abby is currently able to claim a smaller, nonrefundable “partial child tax credit” of up to $500. I.R.C. § 24(h)(4) (West 2021). This amount can offset Abby’s income tax, but not her payroll taxes.

\textsuperscript{229} The total payroll tax amount, including her employer’s portion, is $3,262. Including the full payroll tax requires adding the employer’s portion to Abby’s income to arrive at her true pre-tax income, which here is $22,961. See Cong. Budget Off., The Distribution of Household Income, 2014, at 37 (2018), https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53597-distribution-household-income-2014.pdf [https://perma.cc/75TS-QKDT] (adding the employer’s share of payroll taxes to workers’ gross income to arrive at pre-tax labor income). Her after-tax income would be the same as above, even with the full payroll tax included in the calculation. The calculations in the text ignore the employer’s portion of payroll taxes for the sake of simplicity.

\textsuperscript{230} In 2021, her SNAP benefits would increase to $299 per month at this income level.

\textsuperscript{231} See Hammond, supra note 196, at 514-18. (discussing the inconsistent eligibility rules governing immigrants’ access to public benefits).
the Appendix provides figures for all fifty states and the District of Columbia. The figures are not intended to show how all families at this income level would fare, but rather to show how one such family might fare, given reasonable assumptions based on benefit rules and take-up patterns. The benefits included reflect information about the package of benefits that is most common for low-income households.

**TABLE 3: IMPOVERISHMENT OF FAMILY EXCLUDED FROM CHILD-RELATED TAX CREDITS AT 100% OF THE FEDERAL POVERTY THRESHOLD**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>$0</td>
<td>$0</td>
<td>$1,576</td>
<td>$1,421</td>
<td>$3,376</td>
<td>$2,023</td>
<td>$-7,220</td>
</tr>
<tr>
<td>Tennessee</td>
<td>$0</td>
<td>$0</td>
<td>$1,576</td>
<td>$2,142</td>
<td>$1,707</td>
<td>$1,253</td>
<td>$758</td>
</tr>
<tr>
<td>Washington</td>
<td>$0</td>
<td>$0</td>
<td>$1,576</td>
<td>$3,666</td>
<td>$1,707</td>
<td>$1,253</td>
<td>$2,282</td>
</tr>
</tbody>
</table>

As these calculations show, a family like Abby’s would face a large range of possible outcomes depending on the state in which they live. Perhaps most notably, Alaska pays all eligible residents a Permanent Fund Dividend, which was $1,606 in 2019.234 Like other transfer programs, eligibility depends on immigration status.235 The Permanent Fund Dividend is idiosyncratic, but it is worth noting because it demonstrates the power of a universal transfer to reduce fiscal impoverishment. Additionally, Alaska and Hawaii provide larger SNAP allotments and ascribe a larger value to school lunches compared to the forty-eight contiguous states.236 These higher amounts reflect the higher cost of food in both places.237 Otherwise, the range

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232 This amount is $20,598 in 2019. See U.S. Census Bureau, supra note 64.

233 This large net transfer reflects Alaska’s Permanent Fund Dividend, which is not included in any of the columns and equaled $1,606 per person in 2019. See ALASKA DEP’T OF REVENUE, PERMANENT FUND DIVIDEND ANNUAL REPORT 3 (2019), https://pfd.alaska.gov/docs/permanentfunddividendlibraries/annual-reports/2019-pfd-annual-report.pdf?sfvrsn=7a45aab2_3 [https://perma.cc/2PVY-TXHG]; Abby would be eligible to claim the Permanent Fund Dividend on behalf of unrelated children in her care under certain circumstances. See 15 ALASKA ADMIN. CODE tit. 15 § 23.113 (2021) (providing child eligibility rules). The amount included here reflects payments to all three people in the household, totaling $4,818 ($1,606 x 3).

234 Alaska Stat. Ann. § 43.23.005 (West 2021) (providing eligibility); Alaska Dep’t of Revenue, supra note 233, at 3.


236 See infra Appendix Part B tbl.5.

of outcomes is largely a function of state tax rates and standard deductions, as well as the availability of progressive state tax credits such as property tax or sales tax rebates.\textsuperscript{238} For example, Vermont offers a refundable “renter credit,” which operates like a property tax credit for renters.\textsuperscript{239} Many states also offer child care tax credits or deductions for qualifying child-care expenses.\textsuperscript{240} Some states’ child care credits are refundable, boosting their anti-impovery effect.\textsuperscript{241}

While state-level earned income credits improve the progressivity of many states’ income tax systems, these credits’ typically piggyback off federal credits\textsuperscript{242}—that is, they calculate the state credit as some proportion of the recipients’ federal EITC.\textsuperscript{243} Thus, Abby’s family would likely be ineligible for any state earned income credit alongside the federal EITC. However, several states have recently extended state earned income tax credits to families with undocumented family members, including California, Colorado, Maryland, New Mexico, and Washington.\textsuperscript{244}

In some states, taxes may exceed public benefits by only a few hundred dollars.\textsuperscript{245} Some may argue that this meager gap between taxes and benefits causes little harm to poor households. Yet even these small amounts can exert a significant toll on struggling families. Consider just one consequence of poverty that is greatly affected by marginal fluctuations in household income: evictions. Recent eviction data show that renters are most often evicted for being just a few hundred dollars in arrears.\textsuperscript{246} An eviction, in turn, can trigger a spiral of physical and emotional harms. Their aggregate effect ravages the fabric of low-income communities.\textsuperscript{247} If we take seriously

\textsuperscript{238} See supra notes 132, 136 and accompanying text.
\textsuperscript{239} See \textit{Renter Credit}, Vt. Dep’t of Taxes \url{https://tax.vermont.gov/individuals/renter-rebate} [\url{https://perma.cc/LC9N-KAZQ}].
\textsuperscript{241} Id.
\textsuperscript{242} Urban Inst., \textit{supra} note 147.
\textsuperscript{243} Id.
\textsuperscript{244} Id.; see also, e.g., Cal. Revenue & Tax’n Code, § 17052(p) (West 2021).
\textsuperscript{245} See infra Appendix Part B tbl.5.
\textsuperscript{247} See generally Matthew Desmond, \textit{Evicted: Poverty and Profit in the American City} (2016), (documenting the harms caused by eviction and describing their aggregate effect on low-income neighborhoods); see also, Williamson, \textit{supra} note 7, at 60 (describing the psychic toll of sales taxes on low-income taxpayers).
what it means to live in poverty, by definition, every dollar counts toward purchasing basic needs. Seemingly small costs can have major consequences.

**Nonworking Families.** Nonworking families cannot receive the EITC or child tax credit.

Although not subject to income taxes or payroll taxes, these households still bear state and local sales and property taxes. They therefore face possible fiscal impoverishment if they do not receive sufficient support from non-tax public benefit programs. Many nonworking families may be eligible for means-tested assistance through the various programs described above. However, on top of the barriers to access just described, many public benefit programs require that recipients work in the formal labor market. These work requirements bar nonworking families from support.

Outside of government support, nonworking families might receive income via child support, help from family members or charities, or other unstable sources. If nontax public benefits are insufficient to offset the state and local taxes they pay, nonworking families will be fiscally impoverished, as *Example 2* demonstrates.

*Example 2*: Beatrice lives in Wisconsin with her two children. She is not currently working. She receives child support of $1,716.50 each month, putting her at the federal poverty threshold of $20,598 in 2019. Although she does not pay income or payroll taxes, she still bears state and local sales and property taxes. In 2019, she may pay approximately $2,080 in such state and local taxes. Beatrice is ineligible for TANF for one of the reasons described below.

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248 See I.R.C. §§ 32(a), 24(d) (West 2021). Congress expanded the child tax credit to include nonworking families for the year 2021 only. American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 9611 (enacted). The expansion expired at the start of 2022. Id.

249 According to 2020 U.S. Census data, among nonworking adults living in poverty, 4.2 million needed to stay home for family reasons or could not find work. U.S. Census, POV24: Reason for Not Working or Reason for Spending Time Out of the Labor Force -- Poverty Status of People Who Did Not Work or Who Spent Time Out of the Labor Force: 2020, Below 100% of Poverty -- All Races (2021), https://www2.census.gov/programs-surveys/cps/tables/pov24-2019/pov24_100_1.xls (providing, among adults ages 18 to 64 who “[d]id not work last year,” that 3,423,000 stayed home for “[h]ome or family reasons” and 795,000 “[c]ould not find work”).


251 See Olga Khazan, How Welfare Reform Left Single Moms Behind, The Atlantic (May 12, 2014) (noting that income sources for low-income single parent families “isn’t clear” and listing several possible sources including help from family and illegal activity).

252 See Appendix Part A for methodology.

253 U.S. Census Bureau, *supra* note 64 (providing a poverty line of $20,598 in 2019 for a family of three with two children).
above. She is unable to access Section 8 housing support due to waiting lists. She receives SNAP benefits of approximately $39 per month. The value of school lunches will total approximately $104 per month. Based on these figures, Beatrice’s family will pay more in tax ($2,080) than they receive in benefits ($1,724), pushing them below the poverty threshold in 2019.

Beatrice’s stylized family will be fiscally impoverished in states where the combined rate of sales and property taxes exceeds 8.4% unless that state provides other offsetting benefits. According to sales and property tax rate estimates used herein, Beatrice’s family would likely be fiscally impoverished in all but eight states (Alaska, Delaware, Hawaii, Kentucky, Montana, Oregon, South Carolina, and Utah).

One might wonder how common households like Beatrice’s are. Census data suggest that the number is nontrivial. According to 2020 data, there are approximately 286,000 families with income just above and below the poverty line who receive neither labor earnings nor non-food public benefits.

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254 In 2021, SNAP benefits would increase to $196 per month at this income level.
255 Tbl.8 in the Appendix provides sales and property tax rate estimates for households in the bottom quintile in all 50 states and DC.
256 For instance, Alaska pays all eligible residents a Permanent Fund Dividend, which was $1,606 in 2019. See Alaska Dep’t of Rev., supra note 233, at 3. Alaska and Hawaii also provide larger SNAP allotments to offset the higher cost of food in those states. See Memorandum from Lizbeth Silvermann, Director, U.S. Dep’t of Agric., on SNAP--Fiscal Year 2019 Cost-of-Living Adjustments 2 (2018) (on file with author).
257 See infra Appendix Part B tbl.8. Although Hawaii’s state and local tax rates exceed 8.3% on average for households in the lowest income quintile, Hawaii also provides larger SNAP allotments, which would likely offset the tax amount. In Hawaii, Beatrice’s family would receive $495 per month in SNAP benefits. Like Hawaii, Alaska also provides larger SNAP allotments. In Alaska, Beatrice’s SNAP allotment would be $178 per month in 2019. See Appendix, Part A for the calculation methodology.
259 U.S. Census Bur., American Community Survey, tbl.S1101,
approximately 923,780 people in nonworking families that are at risk of fiscal impoverishment.

Together Examples 1 and 2 illustrate how families with children in the United States might face fiscal impoverishment despite the availability of safety-net benefits. A few patterns are worth noting. Families at risk of fiscal impoverishment are those excluded from major federal safety-net and antipoverty programs due perhaps to family structure, immigration status, or employment status. Families living near the poverty line are most at risk of fiscal impoverishment largely due to the phase-out of SNAP benefits. Additionally, there is a wide range of outcomes by state. This range partly reflects differences in states’ tax systems and in some cases idiosyncratic transfer programs such as Alaska’s Permanent Fund Dividend. With more individualized data, state-level variations would also reflect disparate access to public benefit programs across states.

2. Childless Individuals and Households

Childless taxpayers are also likely to face fiscal impoverishment due to the scope and coverage of refundable tax credits and other public benefits. Note that there is some definitional overlap between these childless households and the families just discussed. As the prior Section explained, many individuals care for children in ways that are not recognized by the refundable tax credits’ eligibility rules. These individuals are considered childless under such rules, although they are not. I cabin discussion of those caregivers to the prior Section. This Section addresses individuals who do not care for children for any significant portion of time.

Childless individuals are a diverse group. They include noncustodial parents, grandparents, single adult family members in multi-generational households, and people with no connection to children. The concerns raised above about dignity, deprivation, and governmental responsibility apply equally to households with and without children. Dignity does not turn on one’s proximity to a child.

Childless workers can receive the EITC. However, outside of a temporary expansion in 2021, for many childless workers living below the poverty line the amount is too small to fully offset the income and payroll taxes the worker will owe. Childless workers are categorically excluded

262 See Jurow Kleiman, supra note 20, at 122-23 (noting that a childless worker will still face positive average tax rates despite their poverty level earnings).
from the child tax credit and TANF.\footnote{I.R.C. § 24(a) (West 2021); Temporary Assistance for Needy Families, Benefits.gov, https://www.benefits.gov/benefit/613 [https://perma.cc/RH2Z-HAFJ].} Other safety-net programs, including Medicaid, are often similarly limited for able-bodied childless adults.\footnote{See e.g., 42 U.S.C. § 608(a)(1) (2018) (limiting TANF funding to families with minor children); 7 U.S.C. § 2015(o)(2)-(3) (imposing a three-month limit on SNAP benefits for non-working able-bodied adults without dependents). Note that Medicaid is an exception to this pattern in the thirty-eight states that expanded Medicaid eligibility pursuant to Affordable Care Act rules. See Rachel Garfield, Kendal Orgera & Anthony Damico, The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid, Kaiser Family Foundation (2021), https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid [https://perma.cc/6CWS-FWEG] (noting that Medicaid eligibility for adults remains limited in the twelve states that have not adopted the Medicaid expansion and that childless adults remain ineligible in nearly all of these states).} Example 3 describes the most likely taxes paid and transfers received for a stylized childless worker with income equal to the federal poverty threshold.

\textit{Example 3}\footnote{See Appendix Part A for methodology and Part B tbls.6-8 for additional figures.}: Clark is a noncustodial father in California, earning poverty level wages of $13,300 in 2019.\footnote{This amount is the Federal Poverty Threshold for a single individual under the age of 65 in 2019. U.S. Census Bureau, supra note 64.} His state and federal income tax combined with his employee share of the payroll tax is $824, which includes federal and state EITCs. His estimated sales tax burden is 7.2\% and his estimated property tax burden is 4\% of total income, for a total additional amount of $1,490. Because Clark does not care for his children in his home, he is ineligible for TANF benefits. In 2019 Clark would not have received any SNAP benefits at this income level.\footnote{In 2021, his monthly SNAP allotment at this income level would be $33.} Because he is not disabled, he will not receive any disability benefits. His net tax cost is therefore $2,314, leaving him well below the poverty threshold, with after-tax income of $10,986.

In most years, taxpayers like Clark will face fiscal impoverishment in all fifty states and D.C. In fact, even those earning wages above the poverty line may be pulled into poverty, as Table 4 and the expanded Table 7 in the Appendix show. U.S. Treasury data report just over 7.6 million taxpayers like
Clark in this income range in 2019 who face possible fiscal impoverishment.\textsuperscript{268}

Table 4 provides tax and transfer calculations for a taxpayer like Clark with income equal to 100% and 125% of the federal poverty threshold, with results from the least, most, and median impoverishing states. The expanded Tables 6 and 7 in the Appendix provide results for all fifty states and D.C.

### TABLE 4: FISCAL IMPoverISHMENT OF STYlIZED CHILDLESS WORKER IN 2019

<table>
<thead>
<tr>
<th>State</th>
<th>Fed. Inc. Tax</th>
<th>State Inc. Tax</th>
<th>Payroll Tax</th>
<th>Sales, Prop. Tax</th>
<th>SNAP</th>
<th>Net Tax\textsuperscript{269}</th>
<th>Impoverished?</th>
</tr>
</thead>
<tbody>
<tr>
<td>At 100% of the Federal Poverty Threshold\textsuperscript{270}</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>-$63</td>
<td>$0</td>
<td>$1,017</td>
<td>$318</td>
<td>$710</td>
<td>-$444\textsuperscript{271}</td>
<td>No</td>
</tr>
<tr>
<td>Mississippi</td>
<td>-$63</td>
<td>$90</td>
<td>$1,017</td>
<td>$1,303</td>
<td>$0</td>
<td>$2,348</td>
<td>Yes</td>
</tr>
<tr>
<td>Washington</td>
<td>-$63</td>
<td>$0</td>
<td>$1,017</td>
<td>$2,223</td>
<td>$0</td>
<td>$3,322</td>
<td>Yes</td>
</tr>
<tr>
<td>At 125% of the Federal Poverty Threshold\textsuperscript{272}</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>$443</td>
<td>$0</td>
<td>$1,272</td>
<td>$1,147</td>
<td>$0</td>
<td>$1,255\textsuperscript{273}</td>
<td>No</td>
</tr>
<tr>
<td>S. Dakota</td>
<td>$443</td>
<td>$0</td>
<td>$1,272</td>
<td>$1,862</td>
<td>$0</td>
<td>$3,576</td>
<td>Yes</td>
</tr>
<tr>
<td>Washington</td>
<td>$443</td>
<td>$0</td>
<td>$1,272</td>
<td>$2,959</td>
<td>$0</td>
<td>$4,674</td>
<td>Yes</td>
</tr>
</tbody>
</table>

These calculations allow for several observations. Childless taxpayers living just below and above the poverty threshold are likely those most at risk of fiscal impoverishment.\textsuperscript{274} Our childless taxpayer with income equal to the

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\textsuperscript{268} I.R.S., Pub. 1304, SOI Tax Stats—Individual Income Tax Returns Complete Report 3 tbl.1.2. All Returns: Adjusted Gross Income, Exemptions, Deductions, and Tax Items, by Size of Adjusted Gross Income and by Marital Status, Tax Year 2019 (Filing Year 2020) (2020), https://www.irs.gov/pub/irs-soi/19in12ms.xls (reporting 7.6 million single taxpayers with income between $10,000 and $15,000). Note that this figure will include individuals described above, in Section III.B.1, who care for children but do not satisfy the refundable tax credits’ child-claiming rules.

\textsuperscript{269} A negative value in this column denotes a net transfer rather than a net tax.

\textsuperscript{270} This amount is $13,300 in 2019. U.S. Census Bureau, supra note 64.

\textsuperscript{271} The final tally for Alaska reflects the Permanent Fund Dividend, which is not included in any of the columns and equaled $1,606 per person in 2019. See Alaska Dep’t of Revenue, supra note 233, at 3.

\textsuperscript{272} This amount is $16,625 in 2019, which is 125% of $13,300.

\textsuperscript{273} As above, the final tally for Alaska reflects the Permanent Fund Dividend, which is not included in any of the columns and equaled $1,606 per person in 2019. See Alaska Dep’t of Revenue, supra note 233, at 3.

\textsuperscript{274} According to calculations not included in this Article, if Clark lived in deep poverty—defined as below 50% of the poverty threshold—he would likely receive sufficient SNAP benefits to protect him from fiscal impoverishment in all fifty states.
federal poverty threshold is impoverished in all states except for Alaska (due to the Permanent Fund Dividend). This fiscal impoverishment occurs because the federal EITC and state tax credits are not sufficient to offset income and payroll taxes, and because SNAP benefits fall as income increases. Even taxpayers with income equal to 125% of the poverty threshold may be fiscally impoverished in certain states, as Table 4 and Table 7 in the Appendix show.

As above, the level of fiscal impoverishment varies widely between states. Childless taxpayers fare best in Alaska due to the Permanent Fund Dividend and higher SNAP allotment in that state. The District of Columbia also mitigates fiscal impoverishment somewhat by providing a relatively generous EITC for childless workers. At all income levels, and in fact for families as well, Washington state fiscally impoverishes low-income taxpayers the most. This impoverishment occurs because Washington imposes the highest sales tax amount on low-income households and offers no offsetting refundable tax credits or rebates.

These figures illustrate impoverishment for childless workers, but nonworking childless individuals face fiscal impoverishment as well. Although they will not pay income or payroll taxes, they will pay state and local sales and property taxes. Meanwhile, nonworking able-bodied childless adults are excluded from nearly all major public benefit programs, including refundable tax credits and, in most cases, SNAP benefits as well.

C. Addressing Challenges and Concerns

Some may take issue with certain methodological choices made herein while others may question the broader value of such calculations to the antipoverty discourse. This Section addresses these concerns and defends the exercise of estimating fiscal impoverishment. While a general awareness of fiscal impoverishment is valuable, awareness alone is not enough. Undertaking actual calculations is necessary to highlight the magnitude of the

275 See infra Appendix Part B tbl.6.
276 See Auxier, supra note 148 (reporting that the District of Columbia expanded its EITC for childless workers and noting that other states “should follow the District’s example”).
277 See ITEP, supra note 7, at 7 fig.4, 126-27; infra Appendix Part B tbl.8 (providing estimates of sales and property tax levels on households in the lowest income quintile across the United States).
278 See supra notes 248–257 and accompanying text for discussion of fiscal impoverishment of nonworking families with children.
279 See 7 U.S.C. § 2015(o) (providing a work requirement for able-bodied childless adults); I.R.C. §§ 32(a), 24(d) (West 2021) (imposing a work requirement by basing credit amounts on earned income); supra Part III.A.2.
problem, capture the interest of policymakers and journalists, and reveal patterns to be addressed via policy reform.\textsuperscript{280}

1. Defining and Valuing Fiscal Inputs

Reasonable estimators will disagree about which taxes and benefits to include as well as how to value those included. The stylized examples above include certain salient taxes as well as cash and near-cash benefits that bear on basic needs, but certainly other charges and benefits could be included. For instance, one might wish to include some value for public education received in the current period.\textsuperscript{281} Some may also wish to include an estimate for regulatory benefits, such as rent control laws or minimum wage. On the cost side, calculations could include non-tax government charges such as criminal court fines and fees, costs imposed by nuisance laws,\textsuperscript{282} or child support collection. Factoring in the complexity and time cost associated with accessing and redeeming benefits could also offset some of the value received.\textsuperscript{283} It is worth reiterating, however, that fiscal impoverishment seeks to account for current-period deprivation, so estimates should only include costs and benefits that bear on immediate basic needs.

Estimators must also decide how to value any non-cash benefits included in the analysis. The Appendix provides greater detail on the valuation methods used herein; other reasonable valuation methods are certainly acceptable. For instance, although these estimates value Medicaid at its “fungible value” of zero for households living below the poverty line, one could instead include some insurance value or an amount based on

\textsuperscript{280} Cf. Bearer-Friend, supra note 79, at 38-46 (critiquing colorblind tax data collection and analysis and discussing how this data conceals racial inequalities).

\textsuperscript{281} For instance, public school might be valued at its child-care equivalent for families with young children. However, as explained above, fiscal impoverishment calculations should not include the value of any benefit received in past years because it would not bear on current period deprivation. See supra Part II.A, notes 67-68 and accompanying text.

\textsuperscript{282} See Greene, supra note 23, at 768-74 (discussing the devastating impact of nuisance laws on those in poverty).

recipients’ willingness to pay.\textsuperscript{284} One could also offset Social Security payroll taxes with some insurance value to reflect the possibility of receiving Social Security disability or survivor benefits in the event of an accident.\textsuperscript{285} Although these approaches are reasonable, this Article does not adopt them because there is not a broadly accepted method for such insurance-value estimates.

Tax incidence raises another methodological choice. The calculations here primarily include taxes borne directly by the taxpayer. The largest exception is the property tax, which is borne directly by homeowners but indirectly by renters.\textsuperscript{286} One could also include the indirect incidence of other taxes remitted by third parties, which low-income individuals might bear through lower wages, higher prices, or in other indirect ways.\textsuperscript{287} Most importantly, estimates of an employee’s tax cost often include her employer’s portion of payroll taxes based on a general consensus that employees bear such taxes through reduced wages.\textsuperscript{288} However, for the purpose of this discussion, including the employer’s portion of payroll taxes adds some complexity and opacity to the calculations without appreciably improving the illustrative power of the examples.\textsuperscript{289}

This Article does not aim to establish the best possible way to calculate fiscal impoverishment. Rather, it seeks to establish the need for

\textsuperscript{284} See Amy Finkelstein, Nathaniel Hendren & Erzo F.P. Luttmer, The Value of Medicaid: Interpreting Results from the Oregon Health Insurance Experiment, 127 J. Pol. Econ. 2836, 2870-71 (2019) (finding that recipients’ willingness to pay for Medicaid ranges from $0.50 to $1.20 per dollar of net cost); id. (finding significant variation in recipients’ willingness to pay for the pure insurance component of Medicaid); see infra notes 366-373 and accompanying text.


\textsuperscript{286} State sales tax estimates also include the indirect incidence of certain business-level consumption taxes. See infra note 356 and accompanying text.

\textsuperscript{287} See Cong. Budget Off., supra note 229, at 38 (“[E]mployers appear to pass on their share of payroll taxes to employees by paying lower wages than they otherwise would.”).

\textsuperscript{288} Id. at 38 n.9; Fullerton & Metcalf supra note 117, at 1821-22.

It is worth noting that self-employed workers, independent contractors, and “gig” workers pay both portions of the payroll tax directly, at a total rate of 15.3%. I.R.C. § 1401 (West 2021).

\textsuperscript{289} Because workers bear indirect payroll taxes through reduced wages, including the employers’ portion of payroll taxes requires estimators to increase individuals’ pre-tax income by the amount of indirect taxes included. This is because, in theory, in a world without payroll taxes, employees’ wages would be higher by the amount of the payroll tax. See Cong. Budget Off., supra note 229, at 38 n.9. The result is that after-tax income is the same as it would be without such taxes included, while pre-tax income (and total tax cost) is greater. For a numerical example, see id.
fiscal impoverishment analysis and to illustrate how such impoverishment occurs for many low-income U.S. households. The examples here are stylized, but reflective. A more robust estimate would include individualized bundles of taxes and benefits that reflect household-level data. Although such estimates will differ from the skeletal examples here, they should be focused on individual or household-level deprivation in the current period. Within those boundaries, alternative valuation approaches may be justified.

2. Poverty Threshold Challenges

Using a poverty threshold is problematic for at least two reasons. First, there is tremendous disagreement over how to calculate poverty thresholds. Different approaches to poverty measurement might, for instance, adjust thresholds for geographic cost-of-living, base the threshold on consumption rather than income, or measure deprivation in relative rather than absolute terms. Although this Article uses the U.S. Census Bureau’s Poverty Thresholds, it does not endorse these thresholds or the methodology underlying them. The Article uses the federal government’s poverty measure for the sake of simplicity, setting aside the difficult question of how to arrive at an ideal poverty measure.

Second, and more abstractly, poverty thresholds are highly dubious no matter how exacting the methodology underlying them. To see why, imagine two people: the first earns income equal to the poverty threshold and pays $10 of tax, while the second earns income $11 above the poverty threshold and pays the same $10 of tax. These two cases are essentially identical. Even so, the first is unacceptable from a fiscal impoverishment standpoint, while the second is completely fine. At the very least, this concern counsels toward using a threshold high enough to cover all possible instances of deprivation—something the current federal threshold almost certainly does not achieve.

We may be tempted to throw up our hands and admit defeat in the face of such seemingly arbitrary line-drawing. Yet we should not give in to this temptation. Conceding the dubiousness of poverty thresholds should not lead to abandoning the exercise of measuring poverty—or fiscal impoverishment—if doing so would help to improve the lives of low-income households. Instead, we can draw upon principled reasoning to inform a

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290 See Alstott, supra note 54, at 289-91 (adopting a relative measure of poverty); Nicholas Eberstadt, The Poverty of “The Poverty Rate” 97 (2008) (“Consumption-based indices promise to provide a more serviceable, consistent proxy for material well-being . . . .”); Fox, supra note 65, at 14-15 (describing the methodology underlying the Supplemental Poverty Measure).
291 See supra Part II.A for additional discussion of this point.
decision of where to draw these lines. Although a poverty threshold is a rough tool, it is better than a tool too complex to easily wield, and certainly better than no tool at all.

3. Defending the Calculative Exercise

There are two additional dangers to offering numerical calculations. First, doing so invites technical debate that distracts from the larger point of the fiscal impoverishment endeavor—that aggregative thinking obscures the people who are left behind. Second, and perhaps worse, estimating households’ net tax costs can suggest a cost-benefit approach to taxpaying that undermines more generous notions of fiscal citizenship.

Notwithstanding these risks, the exercise of formally defining and estimating fiscal impoverishment is worthwhile. While a general awareness of fiscal impoverishment is valuable, awareness alone is not sufficient to reform the legal structures and rules that contribute to it. Undertaking actual calculations is necessary to highlight the magnitude of the problem and reveal demographic and geographic patterns, as the stylized examples herein illustrate.

To that end, the above calculations support the following conclusion: Millions of people in the United States are made poor or poorer by net positive taxes, using a standard measure of poverty and estimating safety-net benefits these taxpayers are most likely to receive. Fiscally impoverished households are among the most vulnerable, including families with extended-kinship and non-kinship care relationships, families with mixed-immigration status, childless workers, and nonworking families and individuals.

Further research might reveal additional patterns. For instance, demographic groups that tend to rely on extended-kinship care arrangements are more likely to be excluded from refundable tax credits and thus more likely to face fiscal impoverishment. If these practices diverge by families’ racial or ethnic background, fiscal impoverishment will have a disparate racial impact. Without undertaking specific estimates, substantiating these patterns of impoverishment will be difficult.

Numerical estimates also help to reveal which legal rules are most responsible for fiscal impoverishment. The analysis here suggests that tax credit eligibility rules related to child care arrangements and immigration status contribute to fiscal impoverishment, among others. Outcomes at the state and local levels depend in part on state income tax structures, the availability of refundable state tax credits, and levels of sales and property

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292 See supra Part III.B.1.
taxes. A more robust analysis would account for divergent access to public benefits across states as well.

In light of the harms wrought by fiscal impoverishment, policymakers and advocates ought to devote attention to reforming these fiscal structures. The next Part considers how they might do so.

IV. RETHINKING TAXES ON LOW-INCOME HOUSEHOLDS

This Part explores what fiscal impoverishment means for U.S. tax and transfer systems, addressing both policy and politics. The first Section offers reforms that policymakers should consider immediately, including adopting and formalizing a fiscal impoverishment measure at the federal, state, and local levels. The second considers how an awareness of fiscal impoverishment should inform how we evaluate broad-based fiscal system reforms. The final section raises the difficult question of politics and offers a word of caution for anti-poverty advocates concerned about tax burdens on low-income households.

A. Current Practices and Policies

1. Measure Fiscal Impoverishment

The Article’s primary recommendation is that fiscal impoverishment analysis should be formalized and broadly adopted so that it can guide policy reform at the local, state, and federal levels. Fiscal impoverishment should be another standard criterion by which U.S. governments, think tanks, academics, journalists, and others assess tax and transfer policies. Alongside measures of progressivity, poverty reduction, and inequality reduction, measuring fiscal impoverishment would deepen our understanding of fiscal burdens and redistribution in the United States.

A fiscal impoverishment metric could take several different forms. The most obvious is to simply measure the number of people or households made poor or poorer by the fiscal system. The result could be provided as an absolute number or as a percentage of all poor households.\(^{293}\) The latter has the added benefit of describing the portion of poverty that is worsened by government fiscal policies. Importantly, policymakers and advocates could also use diverse poverty definitions or thresholds when assessing fiscal impoverishment, including relative poverty measures.\(^{294}\)

\(^{293}\) Cf. Higgins & Lustig, supra note 8, at 70 tbl.3 (describing fiscal impoverishment in several ways, including per capita fiscal impoverishment as a percentage of the poverty line).

\(^{294}\) See Alstott, supra note 54, at 289-91 (describing absolute versus relative poverty measures).
There are several possible methodological approaches to tallying fiscal impoverishment. Ideally, a comprehensive accounting would estimate taxes and benefits for specific households based on national survey data. The U.S. Census Bureau’s Annual Social and Economic Supplement collects data on respondents’ income level and source, including public benefits. Such information would enable robust fiscal impoverishment estimates for individual households in the sample. Alternatively, analysts could undertake a more robust version of the type of analysis offered here—that is, calculations based on stylized households and informed by program eligibility rules. These calculations could be combined with U.S. Treasury or Census data about the distribution of households’ income, as well as tax credit and public benefit data to estimate an approximate number of impoverished households.

Qualitative data, such as interviews and stories from individual taxpayers, should augment numerical estimates. The Federal Reserve’s Beige Book offers a useful model for a formalized anecdotal approach, reporting on regional economic conditions based on interviews with businesses, economists, and market experts. Indeed, qualitative methods perhaps better capture the spirit of the fiscal impoverishment endeavor by foregrounding individual experiences.

Several different entities might undertake fiscal impoverishment analysis. At the federal level, the Congressional Budget Office could include fiscal impoverishment analysis in its regular reporting on the distribution of income and taxes in the United States. State legislative analysts’ offices could undertake such analysis at the state level, especially for proposed changes to state taxes or state-administered public benefits. The U.S. Census Bureau could offer detailed fiscal impoverishment analysis at the federal and state levels alongside existing poverty level estimates. Essentially, any project that undertakes analysis of poverty levels, distribution of public benefits, progressivity of taxes or benefits, income inequality, and so forth—

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297 See, e.g., Cong. Budget Off., supra note 1, at 3.

including work by academics and think tanks—could incorporate fiscal impoverishment assessments into its research.

2. Tax Policy Reforms

In addition to measuring it, governments should seek to address fiscal impoverishment through targeted reforms at each level of government. Inter-governmental transfers are not advisable. While federal benefits could offset both federal and sub-federal taxes, they would also allow states with more regressive fiscal systems to freeride on others. An impoverishment-based federal transfer would essentially subsidize regressive state fiscal systems by providing larger aggregate benefits to states with higher levels of fiscal impoverishment. Due to these complications, it is preferable and more feasible for each level of government—local, state, and federal—to separately consider how to reduce fiscal impoverishment within its own system.

Alleviating taxes on low-income taxpayers is a subject that can, and has, filled volumes. This section only briefly describes several piecemeal reforms to reduce fiscal impoverishment, and from a bird’s eye view. Certainly, one option is to provide a universal transfer similar to Alaska’s Permanent Fund Dividend. Because others have ably covered the topic of universal basic income, this discussion focuses its attention elsewhere.

Income and Payroll Tax—In general, an income tax system has at least two options to prevent fiscal impoverishment. The first is to ensure that income tax filing thresholds are roughly linked to adequate poverty-line indices, acknowledging that such thresholds will always be deeply contested. Aligning tax-filing and poverty thresholds relates to the notion that only “clear income” should be taxed, a precept that has informed tax system design from the beginning. While the federal tax system would require only minor adjustment, most states would need to drastically increase the standard deductions and personal exemptions that define their filing thresholds.

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299 For a brief survey, see supra Part I.B.
302 See supra Figure 1.
303 See Fed’n of Tax Adm’rs, supra note 131, at 1 (listing states’ personal exemptions and standard deductions).
Payroll taxes, which begin to accrue from the first dollar of earnings, would also require radical redesign.\textsuperscript{304}

Alternatively, policymakers could provide adequate offsetting rebates to low-income taxpayers who face positive tax burdens. For instance, the maximum childless EITC could be calculated as 15.3\% of the federal poverty guideline, which would account for both the employee’s and employer’s portion of federal payroll taxes. This calculation would yield a maximum credit of $1,970 ($2,665 for married couples) in 2021.\textsuperscript{305} At the state level, such a transfer might offset state disability and unemployment taxes, in addition to income taxes. Additionally, eligibility rules for the EITC and child tax credit should be expanded to include families with extended-kindship and non-kindship care arrangements, as well as families that care for children for less than six months of the year.\textsuperscript{306}

Providing rebates directly through the tax system ensures that they are specifically designed to prevent fiscal impoverishment. Relying on separate transfers administered outside of the tax system risks haphazard distribution plagued by programmatic and geographic divergence in eligibility, transfer amounts, filing processes, and so forth—as we currently see.

Sales Tax—Many states improve sales tax progressivity by exempting necessary items such as food, medicine, and utilities.\textsuperscript{307} However, to better prevent fiscal impoverishment and at lower cost, state and local governments should provide a sales tax rebate.\textsuperscript{308} A sales tax rebate could be means-tested—provided only to low-income households—or universal—provided to all households on poverty-level consumption. A universal rebate is more


\textsuperscript{305} This amount is 15.3\% of $12,880 (the one-person poverty guideline) and $17,420 (the two-person poverty guideline). Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732 (Feb. 1, 2021). Note that a more accurate calculation would account for the fact that half of the FICA tax is borne indirectly by the worker through reduced wages. See supra notes 229, 289 and accompanying text for further explanation.

\textsuperscript{306} See generally Goldin & Jurow Kleiman, supra note 146 (manuscript at 21-23) (describing which children are excluded from refundable tax credits).


costly but easier to administer. A state could finance the additional cost of a universal rebate via a slightly higher sales tax rate.

A sales tax rebate offers several advantages over piecemeal tax exemptions. First, and most importantly, a rebate can target low-income households or poverty-level consumption, rather than reducing taxes on all consumption of exempted goods. In fact, unlike rebates, sales tax exemptions provide a larger absolute benefit to wealthier households because they consume more than low-income households. Second, a rebate is less costly than sales tax exemptions, as it allows the government to continue collecting sales tax revenue on most consumption. Third, rebates avoid the complexity and distortions caused by different tax treatment of various items.309 Stories of such inane complexity abound—a Hershey’s bar is taxed, but a Twix is not; a bag of potato chips at the deli is taxed, but at the grocery store it is not.310 A rebate, which could be provided via debit card or through an income tax credit (as some states currently do311), obviates such complexity.

Property Tax—The property tax imposes direct costs on homeowners and indirect costs on renters.312 Not all homeowners are wealthy; Census data reveal that fifteen percent of homeowners have income less than half of their area median income.313 For these homeowners, local governments should enact or expand property tax relief programs to protect them from fiscal impoverishment.314 For instance, circuit-breaker programs provide means-tested property tax relief by preventing property taxes from rising above a certain percentage of income.315

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309 Loughead, supra note 307, at 1-3.
310 Id. at 1-2.
313 Lauria Goodman & Bhargavi Ganesh, Low-Income Homeowners Are as Burdened by Housing Costs as Renters, Urb. Inst. (Jun. 15, 2017), https://www.urban.org/urbanwire/low-income-homeowners-are-burdened-housing-costs-renters [https://perma.cc/TZ7N-G4RW]. However, it is also worth considering the imputed rental value of one’s home as well as the homeowner’s equity in it when calculating fiscal impoverishment. Such considerations might mitigate impoverishment concerns for many homeowners.
For renters, income tax renter credits can offset the indirect incidence of property taxes. Many states offer such credits, although some only do so for taxpayers over the age of 65. To improve their power to offset fiscal impoverishment, these credits should be made refundable.

B. Broad Fiscal Reform

More than any time in recent memory, policymakers face questions about the long-term viability of our current revenue-raising tools. As they consider the necessity of novel tax instruments to pay for spending programs, policymakers should be mindful of how proposed reforms might affect poor households. This section offers such an evaluation for a broad category of tax reforms that perennially resurfaces in the United States. Specifically, many tax experts advocate enacting regressive tax instruments, such as a value-added tax (VAT), in order to raise greater revenue for progressive redistribution. There is an ongoing debate on this issue, with one side advocating the adoption of broad-based regressive taxes to enable more progressive spending, and the other advocating continued prioritization of progressive taxes.

This Article urges caution among those who advocate adopting regressive taxes for progressive ends. Increasing regressive taxes in the

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317 See, e.g., Vt. Dep’t of Taxes, supra note 239 (describing Vermont’s refundable renter rebate).

318 See, e.g., Howard Gleckman, How Will We Pay for All the Coronavirus Relief, TaxVox (Apr. 3, 2020), https://www.taxpolicycenter.org/taxvox/how-will-we-pay-all-coronavirus-relief [https://perma.cc/42B5-B727] (“When we look back at the changes COVID-19 made to society and the economy, we may think about this as the time when the US began to look to sources of tax revenue that once seemed unthinkable.”).

319 A value-added tax is a consumption tax imposed on businesses throughout the production process and is often described as regressive. See generally Kaisa Alavuotunki, Mika Haapanen & Jukka Pirttilä, The Effects of the Value-Added Tax on Revenue and Inequality, 55 J. Dev. Stud. 490 (2019) (discussing and measuring VAT regressivity).

320 Lind, supra note 27; see also Burman, supra note 27, at 12 (advocating a VAT in order to fund EITC expansion).

321 See Lind, supra note 27; Burman, supra note 27, at 12; Slavov & Viard, supra note 27, at 1886; Edward D. Kleinbard, We Are Better Than This: How Government Should Spend Our Money 340-46 (2014) (arguing that progressives should loosen their commitment to progressive taxes in favor of increased spending); Sugin, supra note 27, at 1374 (questing Kleinbard’s conclusion that it would be politically easier to increase spending, since the “same forces that fight progressivity on the tax side also fight it on the spending side”).

United States may worsen fiscal impoverishment even despite increased progressive spending, especially given the United States’ history of excluding certain groups from redistribution.\(^{323}\) While such broad-based reforms are eminently worthwhile, policymakers should take care not to harm vulnerable households when adopting them. Tracking fiscal impoverishment would aid them in doing so.

There are at least two reasons to be concerned that increased progressive spending will not offset the impoverishment that a regressive tax would cause. Perhaps most importantly, a great deal of progressive spending does not ameliorate the corporeal deprivation of poverty. Even if regressive taxes fund broad-based progressive redistribution—such as schools, parks, and so forth—these public benefits do little to provide nutrition, shelter, medicine, or other basic needs to impoverished taxpayers. Thus, the system may indeed be made more generous and progressive overall, but still worsen impoverishment.

Second, the U.S. has a long history of antipathy to welfare spending.\(^{324}\) There is no reason to believe that implementing a VAT or other regressive tax instrument would change this sentiment. Advocates of such policies often point to the robust public spending of European nations—all of which levy VATs—as assurance of the greater antipoverty spending likely to follow such tax reforms.\(^{325}\) However, this thinking belies the fact that there is no guarantee of increased progressive spending in the U.S., and particularly no guarantee that such spending would adequately offset fiscal impoverishment. In fact, the century-long history of public benefits in the U.S. suggests that exactly the opposite is more likely, reflecting a deeply rooted aversion to welfare spending.\(^{326}\)

Fiscal patterns at the state level are suggestive on this point. Among states, more regressive tax instruments tend to be correlated with less addresses this point, questioning whether redistributive spending would occur in a system without progressive taxes. Id. He argues that “[i]t is likely that progressive tax rates have played a role in sustaining the ‘cultural force’ supporting redistribution through transfer payments (as well as through progressive taxes) because of their impact on our democracy.” Id. at 565.

\(^{323}\) See Katz, supra note 20, at 8-9.

\(^{324}\) See id. at 46, 194-202 (describing the decline of public assistance in the U.S.); Albert Alesina, Edward Glaeser & Bruce Sacerdote, Why Doesn’t the United States Have a European Style Welfare State?, 2 Brookings Papers on Econ. Activity 187, 188-89 (2001) (attributing American aversion to welfare spending to historical and sociological factors, as well as racial discord).

\(^{325}\) See, e.g., Lind, supra note 27.

\(^{326}\) Alesina, Glaeser & Sacerdote, supra note 324, at 188-89; see also Repetti, supra note 322, at 565-66 (suggesting the progressive tax rates contribute to redistributive spending by “ensuring that the voice of the poor is not entirely eclipsed by the wealthy”).
redistribution, not more. Specifically, those states that tax people in poverty most heavily are also those that redistribute the least to low-income residents. Thus, if current and historical U.S. practice offers any guide, adopting regressive tax instruments to fund redistribution is likely to exacerbate harms to households that are already impoverished.

The point here is not to discourage support for broad-based, regressive taxes like the VAT, which have much to commend them. Rather, I hope to alert policymakers and tax experts to the risks of such policies when adopted without concerted attention to vulnerable taxpayers. Increasing progressive spending is incredibly important, but so too is protecting struggling households from fiscal impoverishment. To do so adequately, a regressive tax must be coupled with rebates or offsetting transfers that are truly universal, not based on the presence of children, work, or other non-income criteria. Additionally, transfers must offset tax costs as they are incurred, rather than requiring low-income households to smooth consumption over long time periods in anticipation of future rebates. Many VAT advocates have proposed compelling and inventive progressive structures. These designs are worth considering. However, enacting any universal welfare program would require drastic redesign not just of our tax policies, but of our safety-net policies as well.

C. The Double-Edged Sword of Politics

Although the politics and optics involved here are complicated, they can only be ignored at the peril of harming vulnerable taxpayers. Perhaps most obviously, targeting fiscal impoverishment could offer a politically feasible anti-poverty strategy because policies that resemble tax cuts are more

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328 Id.
330 Cf. Brian Galle & Manuel A. Utset, Is Cap and Trade Fair to the Poor? Short-Sighted Households and the Timing of Consumption Taxes, 79 Geo. Wash. L. Rev. 33, 34-35 (2010) (explaining that a regressive carbon tax would reduce the standard of living for low-income households throughout the year, while a tax rebate at the end of the year would fail to address the whole year’s increased deprivation).
popular than direct spending. Targeting fiscal impoverishment might therefore have real political legs.

There is also, however, some political risk to pursuing an anti-impoverishment strategy because taxpaying and political rights are linked in the minds of many. Of course, voting in the United States is not overtly connected to taxpaying status. Nonetheless, in many subtle ways taxpaying and political power are indeed connected. Moreover, antagonism against perceived non-taxpayers fuels anti-welfare political positions. Even among low-income taxpayers themselves, contributing to our shared resources can be a point of pride. Explicitly seeking to end all net taxes on poor households could thus undermine support for welfare spending and erode both a public and personal sense of fiscal citizenship among low-income households.

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333 See, e.g., Batchelder, Goldberg Jr. & Orszag., supra note 29, at 66-67 (considering, and ultimately rejecting, the argument that all should pay taxes out of “civic duty”); Joseph J. Thorndike, Opinion: Soak the Poor to Make the Rich Happy?, Tax Analysts (Oct. 4, 2012), http://www.taxhistory.org/tp/reading/n/ArtWeb/B3F0ADFA1AAF506D85257AC6006BC240\OpenDocument [https://perma.cc/V8FC-GYB2] (quoting Andrew Mellon, who said that “[a]s a matter of policy, it is advisable to have every citizen with a stake in his country”).


336 Williamson quotes one survey respondent who wrote, “I am barely taking care of myself and having to take care of those who don’t pay taxes.” Williamson, supra note 7, at 47.

337 See Sarah Halpern-Meekin, Kathryn Edin, Laura Tach & Jennifer Sykes, It’s Not Like I’m Poor: How Working Families Make Ends Meet in a Post-Welfare World 17 (2015) (contrasting the EITC with welfare benefits and highlighting how the former can generate taxpayer pride when the latter might not); Zelenak, supra note 335, at 17-18 (offering historical and cultural examples of taxpayer pride during the New Deal era).
While these political risks should be acknowledged—and should inform the rhetorical framing of any anti-impoverishment effort—in reality, political rights do not and cannot depend on taxpaying. For one, there simply is no direct relationship. Some who pay positive net taxes lack robust political rights, such as undocumented workers, while others who receive net transfers have significant political power, such as farmers receiving agricultural subsidies. Further, the exchange of taxes for political rights is too nonspecific to inform the design of tax policies. Questions of proper valuation, accounting period, membership in overlapping political communities, and the incidence of indirect taxes all complicate any direct exchange of taxes for political membership.

This issue thus rests firmly in the world of rhetoric and optics. Yet, optics matter, especially for the vulnerable groups that face fiscal impoverishment. These groups are the same ones that face the most vitriol for so-called freeloading: nonworking families, undocumented immigrants, and childless workers.\(^{338}\) Consider the use of offensive epithets like “deadbeat dad” and “welfare queen,”\(^{339}\) which malign members of these groups as takers despite the fact that actual analysis reveals that they are anything but.\(^{340}\) There is a racial valence here as well, with perceived nontaxpaying being the flipside of the race-based anti-welfare sentiment that has defined America’s safety-net policies from the beginning.\(^{341}\)

An explicit anti-impoverishment strategy risks stoking these same racially charged attitudes and undermining support for welfare spending. Moreover, taking seriously such concerns requires antipoverty advocates to espouse two incompatible rhetorical positions: that poor households should pay no taxes, and that poor households do pay taxes and thus deserve political rights. But, poor households cannot pay both nothing and something.

This Article does not seek to solve this political problem. A simple solution may not exist. Rather, it seeks to flag the issue for consideration by anti-poverty advocates and bring the dilemma to the attention of scholars and

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\(^{339}\) Cammett, supra note 338, at 237-38 (describing the social histories and rhetorical roles of the metaphors “Deadbeat Dad” and “Welfare Queen”).

\(^{340}\) See supra Section III.B.

\(^{341}\) See Alesina, Glaeser & Sacerdote, supra note 324, at 189 (attributing U.S. antitax sentiment in large part to racial discord).
experts who write in adjacent areas. At minimum, perhaps these concerns call for highlighting the important *nonfiscal* role that all people play in our society.

**CONCLUSION**

This Article has offered a new way to assess taxation of low-income households in the United States. Measuring fiscal impoverishment allows us to tally the number of households that are made poor or poorer as a result of federal, state, and local taxes, accounting for the antipoverty public benefits they receive. Distinct from the standard criteria by which we assess our tax laws’ redistributive successes, fiscal impoverishment foregrounds human dignity and implicates the economic responsibilities of the state vis-à-vis low-income taxpayers.

This Article has also shown that fiscal impoverishment in the United States is significant and highly variable. The degree to which a household is impoverished depends on where they live, their family structure, and their eligibility for a patchwork of government transfers. Race and immigration status play an outsize role. Such factors ought not to determine one’s fortune—although surely few are surprised to see that they do.

We live in unprecedented times, facing doubts about the long-term viability of our current revenue-raising tools. Major changes loom. As policymakers consider the necessity of novel tax instruments, they should be mindful of the ramifications of such tax reforms for struggling households. A fiscal impoverishment metric can aid in this mindfulness. By taking seriously the contributions of poor taxpayers, we can build a fiscal system that advances the wellbeing and protects the dignity of all U.S. households.
A. Tax and Transfer Calculation Methodology

**Year of Calculations.** Most calculations herein use figures for 2019. Tax year 2019 is the most recent year in which there were no “recovery rebate” checks, which were one-off payments intended to offset the negative economic ramifications of the COVID-19 pandemic.\(^{342}\) Additionally, as explained above, Congress temporarily expanded the childless EITC and child tax credit in 2021.\(^{343}\) Using figures from a year that included rebate checks or the expanded EITC and child tax credit would misrepresent the fiscal impoverishment landscape in prior and future years.

In 2021 the U.S. Department of Agriculture recalculated the household food allotment for SNAP purposes, increasing benefits by 27% overall.\(^{344}\) This increase in SNAP benefits will reduce fiscal impoverishment going forward. Although the calculations herein use 2019 figures for the sake of consistency,\(^{345}\) 2021 SNAP calculations are also provided in the footnotes.

**Poverty Thresholds:** All poverty thresholds are based on the U.S. Census Bureau’s Poverty Thresholds for 2019.\(^{346}\) These calculations use thresholds for adults under the age of 65 and adjusted for the presence of children as necessary.\(^{347}\)

**Federal Income Tax and State Income Tax:** I calculated income tax amounts using the National Bureau of Economic Research Internet TAXSIM v32, which estimates households’ state and federal taxes based on survey data.\(^{348}\) For calculation of state renter credits, I assume that rent is equal to 30% of income, a figure often used by public benefits programs.\(^{349}\)

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\(^{342}\) See, e.g., I.R.C. § 6428 (West 2020) (providing each “eligible individual” with a $1,200 subsidy, plus more for taxpayers with dependent children); American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 9601 (enacted) (providing $1,400).

\(^{343}\) American Rescue Plan Act of 2021, §§ 9611, 9621.

\(^{344}\) Estimated Increase in SNAP, supra note 162.

\(^{345}\) Memorandum from Lizbeth Silbermann, supra note 256.

\(^{346}\) U.S. Census Bureau, supra note 64.

\(^{347}\) Id.

\(^{348}\) TAXSIM Related Files at the NBER, Nat’l Bureau Econ. Rsch., http://users.nber.org/~taxsim [https://perma.cc/2EQ3-QBLF]; cf. Williamson, supra note 7, at 251 n.6 (using TAXSIM to estimate tax burdens for survey respondents).

Federal Insurance Contribution Act Taxes (Payroll Tax): All employees pay FICA taxes at a rate of 7.65% of wages; employers pay an equivalent amount.\textsuperscript{350} Although TAXSIM calculates FICA taxes at the combined rate of 15.3%, the calculations here use only the employee’s portion.\textsuperscript{351} Using only the employee’s portion underestimates the degree of fiscal impoverishment because all self-employed workers, “gig” workers, and workers misclassified as independent contractors\textsuperscript{352} will bear the full tax amount of 15.3% via the SECA tax.\textsuperscript{353}

State & Local Sales and Property Taxes: I used rates from ITEP’s \textit{Who Pays?} 2018 Report, which provides estimated sales and property tax rates imposed on each income quintile.\textsuperscript{354} The rates used here are those estimated for the bottom income quintile. They are provided separately in Table 8. Purchases made using SNAP benefits are excluded from the calculations, as they are not subject to the sales tax.

Several factors drive the seemingly high sales tax incidence on the lowest income quintile in ITEP’s report. The first is that low-income American households consume (on average) more than 100% of their income.\textsuperscript{355} The second is that the estimates include the cost of sales taxes that businesses pay on their own purchases, the incidence of which is passed to consumers through higher prices.\textsuperscript{356} Finally, the estimates also include state and local excise taxes that apply to alcohol, tobacco, motor vehicle fuel, and sometimes soft drinks and recreational marijuana.\textsuperscript{357}

The calculations additionally include the property tax based on empirical evidence that renters bear much of the incidence of property taxes.\textsuperscript{358} Removing the property tax from the calculations would moderately reduce the degree of fiscal impoverishment.

\textsuperscript{350} I.R.C. §§ 3101, 3111 (West 2021).
\textsuperscript{351} See supra notes 288-289 and accompanying text.
\textsuperscript{353} I.R.C. § 1401 (West 2021).
\textsuperscript{354} ITEP, supra note 7, at 31-33.
\textsuperscript{355} See id. at 18 (“[T]he poor can rarely save at all . . . .”).
\textsuperscript{356} Id. at 135.
\textsuperscript{357} Id.
\textsuperscript{358} England, supra note 134, 448-51 (describing recent empirical evidence that residents bear some portion of property taxes); see generally Fullerton & Metcalf, supra note 117, at 1815-17 (discussing property tax incidence).
Supplemental Nutrition Assistance Program (SNAP) Benefits: SNAP calculations are based on the method provided by the U.S. Department of Agriculture.\(^{359}\) In order to calculate SNAP benefits at each income level, I calculated the taxpayer’s monthly income and reduced it by 20% of gross earnings (for working taxpayers) as well as the standard deduction to arrive at net income. Although applicants may take an “excess shelter deduction” for housing expenses in excess of 50% of adjusted income, I assumed that all stylized households pay housing expenses equal to 30% of gross income, which does not result in any excess shelter deduction.\(^{360}\) Monthly SNAP benefits equal the maximum monthly allotment amount minus 30% of net income. The method is the same for Alaska and Hawaii, using different amounts for the standard deduction and maximum monthly allotment. I used both 2019 and 2021 SNAP allotment amounts where appropriate, as noted throughout the text.

Slight differences between state rules may change the benefit amounts, but not significantly. Perhaps most notably, differences might arise via the interaction between SNAP and the Low Income Home Energy Assistance Program (LIHEAP).\(^{361}\) Certain states calculate SNAP benefits to ensure that recipients do not lose food support due to their LIHEAP support.\(^{362}\) Otherwise, state programs are more likely to differ based on broad categorical eligibility rules rather than specific inputs to the benefit formula.\(^{363}\)

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\(^{360}\) While 30% of gross income has been a rule of thumb metric for affordable housing, nearly half of all renters pay more than 30% of their income in housing costs. Herbert, Herman & McCue, supra note 349, at 2. Average housing costs are much higher for lower income households. See Mary Schwartz & Ellen Wilson, U.S. Census Bureau, Who Can Afford To Live in a Home?: A Look at Data from the 2006 American Community Survey 11-12 (2010), https://centeraffordablehousing.org/wp-content/uploads/2018/09/who-can-afford.pdf [https://perma.cc/L4X7-MGWG] (finding that households in the bottom income quartile often spend at least 50% of their income on housing). Housing costs also vary drastically by location. Herbert, Herman & McCue, supra note 349, at 6 (assessing housing costs in Cleveland, Philadelphia, and Los Angeles).


\(^{362}\) Id.

\(^{363}\) See Ctr. on Budget & Pol’y Priorites, supra note 161, at 1-2 (describing states’ discretion over SNAP eligibility rules).
National School Lunch Program: Each school lunch received a maximum reimbursement amount of $3.48 in 2019 ($5.62 in Alaska and $4.06 in Hawaii),\(^{364}\) which is assumed to be the meal’s value. School is assumed to be in session for 180 days of the year.\(^{365}\) Most families do not have access to school lunch programs during summer and holidays. These numbers are multiplied by the number of children in the household to find the annual value of the school lunch program.

Medicaid: As explained above, this Article uses the U.S. Census Bureau’s “fungible value” method, which ascribes a zero value to medical insurance the government provides to households living in poverty.\(^{366}\) Because nearly all the households included here are below the poverty line either before or after taxes and transfers, the value of Medicaid is deemed to be $0.\(^{367}\)

It is worth noting that other valuation methods might ascribe a greater value to Medicaid benefits and somewhat change the fiscal impoverishment landscape depicted here. Perhaps the most prominent alternative method is to include the actual cost of government-provided medical care, which the Congressional Budget Office does in its estimates.\(^{368}\) This Article does not adopt that method in part because doing so can cause strange results.\(^{369}\) For instance, someone who lives in deep poverty would seem to be pulled above the poverty line because she suffered a serious accident and received expensive medical care.\(^{370}\) This odd result would occur even if she otherwise


\(^{366}\) See supra notes 177-181 and accompanying text.


\(^{369}\) For a more robust discussion of problems with using cost-of-care to estimate the value of Medicaid to recipients, see U.S. Census Bureau, supra note 178, at 18-21.

\(^{370}\) See, e.g., Uwe E. Reinhardt, Assessing the Value of Medicaid to Its Enrollees, N.Y.
still lived in a state of extreme deprivation. A similar result occurs if a state decides to increase Medicaid fees paid to doctors, despite the fact that low-income Medicaid beneficiaries receive nothing from such a policy change.371 More generally, using some version of cost of services—whether as valued by the government or the recipient—would reflect the fact that sick and disabled individuals receive a more valuable benefit. Such individuals would thus appear to have more income than similarly situated healthy individuals despite likely being worse off in reality.

Although others have proposed alternative Medicaid valuation methods, the fungible-value method and cost-of-care method represent the two most prominent options.372 While both methods are inaccurate, this Article takes the position that the fungible value method is less inaccurate than the alternative.373

Net Cost: Net cost is total taxes minus total benefits. Benefits in Alaska include the Permanent Fund Dividend, a figure that is not reflected in the other columns or for other states. A negative value in the Net Cost column means that the household receives a net transfer.

---

371 Id.
372 See Finkelstein, Hendren & Luttmer, supra note 284, at 2837; Reinhardt, supra note 370 ("Economists really do not have a robust solution to this [Medicaid valuation] conundrum . . .").
373 Cf. U.S. Census Bureau, supra note 178, at 18-21 (excluding medical expenditures and benefits from poverty calculations, concluding that doing otherwise "would do more to distort the picture of the distribution of material well-being than to sharpen it, and that the distortions would be particularly great for low-income persons").
B. Expanded Fifty-State Tables

Table 5: Working Family Excluded from Refundable Family Credits at 100% of the Federal Poverty Threshold, 2019

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374 This family’s income is $20,598 in 2019. See U.S. Census Bureau, supra note 64 (providing 2019 poverty thresholds).

Additionally, these estimates assume that families are ineligible for the federal EITC and child tax credit as well as any state earned income credits, since state programs often overlap significantly with the federal credits. They do not assume ineligibility for any other state or federal tax credits.

375 This large net transfer reflects Alaska’s Permanent Fund Dividend, which is not included in any of the columns and equaled $1,606 per person in 2019. See Alaska Dep’t of Rev., supra note 233, at 3. The amount included here reflects payments to all three people in the household, totaling $4,818 ($1,606 x 3). Eligibility for the Permanent Fund Dividend depends on a person’s immigration status, as well as having a qualified adult to claim the dividend on a child’s behalf. See 15 Alaska Admin. Code tit. 15 §§ 23.113 (2021) (providing child eligibility rules), 23.154 (providing “alien eligibility” rules).
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### Table 6: Childless Worker at 100% of the Federal Poverty Threshold, 2019

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376 The worker earns $13,300 per year. U.S. Census Bureau, supra note 64.
377 The final net transfer for Alaska reflects the Permanent Fund Dividend, which is not included in any of the columns and equaled $1,606 per person in 2019. Alaska Dep’t of Revenue, supra note 233, at 3.
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Table 7: Childless Worker at 125% of the Federal Poverty Threshold, 2019

This amount is $16,625 in 2019, which is 125% of the Federal Poverty Threshold of $13,300. U.S. Census Bureau, supra note 64.

This column provides how far the taxpayer falls below the poverty threshold after taxes and transfers. A negative value means that the worker is not impoverished. Rather, their after-tax and transfer income exceeds the poverty threshold by the absolute value of the negative number.

The final net cost for Alaska reflects the Permanent Fund Dividend, which is not...
<table>
<thead>
<tr>
<th>State</th>
<th>IMPOVERISHMENT BY TAXATION</th>
<th>[19-Oct-22]</th>
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<tr>
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Included in any of the columns and equaled $1,606 per person in 2019. Alaska Dep’t of Revenue, supra note 233, at 3.
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<th>Property Tax</th>
<th>Combined Rate</th>
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Table 8: Sales and Property Tax Rates on Lowest-Income Quintile

381 ITEP, supra note 7, at 31-133.
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