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## Reclaiming Demographics: Women, Poverty, and the Common Interest in Particular Struggles

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## INTRODUCTION

# RECLAIMING DEMOGRAPHICS: WOMEN, POVERTY, AND THE COMMON INTEREST IN PARTICULAR STRUGGLES

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Advocates and scholars who work on poverty law issues confront the tension between general and targeted programs constantly. Institutional design choices are often driven by the political feasibility of broadening the base or alternatively reaching only those poor people who are deemed worthy. Proposals that might be “better” in theory—whether “better” is defined in terms of justice, empowerment, efficiency, or rights—may be simply dismissed because they are seen as unrealistic. Although it could be argued and imagined that poverty programs should be targeted to benefit the poor, with benefit levels set according to some understanding of basic needs, many of the most successful programs are both under- and over-inclusive. Line-drawing is always hard but it is made even more so in the context of anti-poverty work by the moral judgments associated with poverty, by the feeling that the poor are to blame for their own poverty. Such judgments have been particularly powerful in shaping policy when it comes to women and poverty.

The challenge for advocates can be to show that the seemingly “special” interests of particular groups or communities are matters that are, or should be, of general concern. The topic of “women and poverty” arguably invites both a narrowing and a broadening of readership and concern relative to articles on “women” or on “poverty” alone. Those who see themselves as primarily interested in women’s rights may, for example, be more drawn to read a poverty related article than is ordinarily the case. That seems all for the good. But the reverse is also potentially true: those who are passionate about poverty in general might be less inclined to read about the particular

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challenges and struggles of women in poverty.<sup>1</sup> The “women and poverty” label suggests that many—those who do not fall into the group (men) and those who assume they will not fall into the group (non-poor women)—can tune out.

The AALS panel—from which the articles that follow in this issue of the *American University Journal of Gender, Social Policy & the Law* were drawn—was titled “Theory and Praxis in Reducing Women’s Poverty.”<sup>2</sup> That is a good title. It emphasizes the best traditions of scholarship, the merger of scholarship with practice to help the vulnerable or marginalized. It also works well with the topics tackled in the subsequent articles. But the danger in such a topic and indeed in such a “specialty” journal is that it suggests that “reducing women’s poverty” is a special interest, which it is not. It matters, or should matter, to everyone. Poverty is not blind to demographics, nor do certain groups just “happen” to experience higher and different types of poverty and marginalization. Such demographic facts reflect everything from the continuing power of historic advantages and disadvantages to present day discrimination and ingrained social norms. Anti-poverty approaches that relegate studies on particular demographic groups, such as women, to sideways glances fail to account for the continued salience of demographic differences. Perhaps more troubling, pretending as if poverty is indifferent to such differences plays into the cultural norms that deemphasize social obligations and support in favor of blaming people as individuals for their poverty.

Strategically reclaiming demographics may be a way for advocates and scholars to better understand and work on poverty issues. The Census Bureau’s recent report on income, poverty, and health insurance certainly illustrates the continued salience of gender on earnings and connection to poverty.<sup>3</sup> Although the media reported heavily on the finding that the overall poverty rate in 2010 was 15.1%, the highest in decades, the female-to-male earnings ratio of 0.77 for full-time, year-round workers got less attention, in part because the gap is not new and therefore not news.<sup>4</sup> The overall poverty rate among families, 11.7%, not surprisingly varies

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1. To protect myself against offending the reader, let me just note that this seems undoubtedly true in another area of my research, Indian law, where Constitutional law scholars routinely ignore the third type of sovereignty in the United States and great work by others on the constitutional place of Indian tribes.

2. Poverty Law & Clinical Legal Educ. Secs., AALS, Theory and Praxis in Reducing Women’s Poverty, Joint Session at the 2012 AALS Annual Meeting in Washington, D.C. (Jan. 7, 2012).

3. See generally CARMEN DENAVAS-WALT ET AL., U.S. DEP’T COMM., INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010 (2011), available at <http://www.census.gov/prod/2011pubs/p60-239.pdf>.

4. See *id.* at 12, 14; see also Sabrina Tavernise, *Poverty Rate Soars to Highest Level Since 1993*, N.Y. TIMES, Sept. 14, 2011, at A1.

considerably by family type.<sup>5</sup> While only 6.2% of married couples were below the poverty line, that amount jumped to 15.8% of male householders with no wife present and reached almost one-third, 31.6%, of all female householders with no husband.<sup>6</sup> That female-headed households are disproportionately poor is also not news. Nor are the dramatic differences in poverty rates by racial group, which varies from a low of 9.9% for non-Hispanic Whites to 27.4% for Blacks and 26.6% for Hispanics.<sup>7</sup> These figures serve as important reminders of the different life experiences, opportunities, and struggles faced by women and by racial minorities.

Noah Zatz argues in a recent article that the longstanding rhetorical and conceptual divide between need and deservingness ought to be abandoned by advocates for the poor.<sup>8</sup> The argument that aid to the poor should not be subject to conditions where society does not impose similar decisions (such as whether to live with someone outside of marriage and as a consequence have public assistance reduced) on the non-poor has ample support in the literature.<sup>9</sup> This rationale against upholding deserving/undeserving distinctions even made it into the *majority* opinion in some of the more important welfare rights cases involving the obligations of co-habitants to household support.<sup>10</sup> By treating need as an objective standard, conditions could be challenged because the conditions did not lessen the needs of those receiving assistance, particularly children. This argument's success before the courts opened up the possibility of moving deservingness from conditions to how need is defined. Zatz shows how the definition of need includes ideas of deservingness, in much the same way deservingness underlies many of the conditions on aid that target employment and familial support.<sup>11</sup> Although emphasizing the split between "objective" need and imposed conditions has been a useful, and oft-repeated, lens for questioning the conditioning of poor support, according to Zatz, it is time to bring down the wall between need and deservingness.<sup>12</sup> Using an example drawn from unpaid childcare, Zatz claims that recognizing the ways need is tied to deservingness will allow a similar critical consideration of need.<sup>13</sup> Because treating need as something that should be

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5. DENAVAS-WALT ET AL., *supra* note 3, at 18.

6. *Id.*

7. *Id.* at 14.

8. Noah Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550 (2012).

9. *See id.* at 556-60 (discussing a variety of scholarly articles addressing the deserving/undeserving distinctions).

10. *See id.* at 566-70 (analyzing *King v. Smith*, 392 U.S. 309 (1968)).

11. *Id.* at 577-78.

12. *Id.* at 584.

13. *Id.* at 585-86.

understood objectively has been fruitfully used by advocates to push back on conditions, Zatz's argument is both provocative and likely controversial.

Somewhat similarly, asserting that demographic differences matter and should not be glossed over threatens to undo the efforts of advocates to highlight the universality of poverty. Just as many conservative politicians routinely suggest directly or indirectly that the poverty is all about poor, Black, single mothers, the progressive response—highlighting that the majority of the poor are White and that poverty affects many innocent children—is equally scripted and routine. The problem with supporting policies that take account of the demographics of poverty is that doing so risks being captured politically by those who object to so-called “entitlement” programs that aid the poor. In reclaiming demographics, advocates for the poor will need to show the general interest in demographically targeted assistance. Bringing attention back to demographics will help poverty be better understood and, hopefully, will help ensure public funding is used in ways that are effective. The standard response to conservative race and poverty baiting is well intentioned and uses sound arguments—there *are* more poor Whites overall than poor Blacks. But by responding in a way that treats poverty as something that affects all demographics evenly and being afraid to discuss race or the challenges of being a single mother, progressives have arguably conceded the rhetorical space of demographics and poverty to those opposed to poverty programs generally.

The first two articles illustrate the challenges of describing and understanding how men relate to reducing women's poverty. In *Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies*,<sup>14</sup> Daniel Hatcher argues that men's poverty is linked with women's poverty and that stereotypes regarding poor fathers ought to be avoided. Connecting state efforts to pursue child support from fathers and linked requirements that women on welfare identify the father of their children with the history of bastardy laws, the article shows how a negative perception of poor men can reduce the welfare of those poor women and children in whose name child support is collected. Hatcher provocatively ends by claiming that the essentialism surrounding the feminization of poverty construct vilifies poor men and treats poor women paternalistically.

Margo Lindauer's article, *Damned if You Do, Damned if You Don't: Why Multi-Court-Involved Battered Mothers Just Can't Win*,<sup>15</sup> focuses on

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14. Daniel Hatcher, *Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies*, 20 AM. U. J. GENDER SOC. POL'Y & L 775 (2012).

15. Margo Lindauer, *Damned if You Do, Damned if You Don't: Why Multi-Court-Involved Battered Mothers Just Can't Win*, 20 AM. U. J. GENDER SOC. POL'Y & L 797

how structural problems, particularly the inadequate coordination of overlapping court systems, serve to push battered women into dangerous and unworkable situations. Lindauer shows how the different goals and a basic lack of communication between the child welfare, civil, and family court systems frustrate the efforts of battered women to care for themselves and their children. Mothers who do not leave their batterers risk losing their children under “failure to protect” standards. Yet those who do leave and obtain protection orders are often subsequently required to facilitate continued contact with the batterer because of family court ordered visitation and/or joint custody. Lindauer argues that, given the harms to children associated with removal and the barriers to leaving abusive men, increased communication across court systems is needed to ensure these courts do not work at cross-purposes, to the detriment of battered women and their children.

The third and fourth articles urge advocates to approach women’s poverty from a new perspective. Bringing an interdisciplinary perspective to work with poor people and poor communities, Beth Caldwell argues that lessons of social work education and practice should be incorporated into anti-poverty work. *Addressing Intersectionality in the Lives of Women in Poverty: Incorporating Core Components of a Social Work Program into Legal Education*<sup>16</sup> embraces the practice-orientation shared by both law school clinics and the recent Carnegie Report on legal education. Social work norms grounded in critical race theory, Caldwell writes, can help lawyers avoid “false empathy” and better support social justice practice. The article presents many of the ways lawyers and law professors could learn from social work education and values through the example of women who were convicted of murdering their partners yet were not allowed to present evidence of abuse in their trials.

Turning from an interdisciplinary to a comparative approach, in *Rethinking the Neighborhood Watch: How Lessons from the Nigerian Village can Creatively Empower the Community to Assist Poor, Single Mothers in America*,<sup>17</sup> Dehlia Umunna argues that Nigerian norms of community assistance provide a model for how poor, single mothers should be supported in the United States. Umunna connects the brutal murders and murder-suicides committed by poor, single mothers against themselves and their children in part to the lack of social support for parenting. In

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16. Beth Caldwell, *Addressing Intersectionality in the Lives of Women in Poverty: Incorporating Core Components of a Social Work Program into Legal Education*, 20 AM. U. J. GENDER SOC. POL’Y & L 823 (2012).

17. Dehlia Umunna, *Rethinking the Neighborhood Watch: How Lessons from the Nigerian Village Can Creatively Empower the Community to Assist Poor, Single Mothers in America*, 20 AM. U. J. GENDER SOC. POL’Y & L 847 (2012).

contrast with the isolation and go-it-alone conception of motherhood in the United States, in Nigeria, Umunna writes, extended family and members of the community are expected to provide assistance automatically. The goal of the article is to bring a similar level of community support to poor, single mothers through publicly supported neighborhood organizations.

The final article from the AALS panel illustrates the dangers of classifying something as being of only “special” interest. Robin Runge’s *Failing to Address Sexual and Domestic Violence at Work: The Case of Migrant Farmworker Women*<sup>18</sup> focuses on a subset of women, but in addition to being of interest to those who care about poverty and women’s issues, it also relates to immigration, consumption, and worker rights. Drawing upon stories gathered in her work representing similar migrant farm worker women, Runge tells the story of a fictional worker first repeatedly raped by a supervisor and then not supported by her family when she finally reports the sexual assaults. As the article vividly demonstrates, migrant farm worker women are vulnerable, not only because of a rape culture that blames victims, but also because of inadequate legal protections against discrimination and retaliation.

Even though Douglas North famously showed that “institutions matter,”<sup>19</sup> given our current institutions and the legacies of prior institutions, we can also safely say that demographics matter. In a recent book that has gotten a lot of attention,<sup>20</sup> Charles Murray focuses almost entirely on whites as a way to not discuss race, much as he supposedly did in the story of Harold and Phyllis in *Losing Ground* that helped pave the way for welfare reform.<sup>21</sup> And while there can be value in trying to avoid complications—in Murray’s case, the complications of race—in order to make a point, much is also lost when demographic differences are glossed over or worse not included in our understanding of poverty. As the articles in this issue dedicated to the “Theory and Praxis in Reducing Women’s Poverty” demonstrate, formal and informal institutions often combine with demographic differences to marginalize in ways that are at once particular and general. Thus, while each article tackles a separate issue, when read

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18. Robin Runge, *Failing to Address Sexual and Domestic Violence at Work: The Case of Migrant Farmworker Women*, 20 AM. U. J. GENDER SOC. POL’Y & L 871 (2012).

19. See generally DOUGLAS NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990).

20. CHARLES MURRAY, COMING APART: THE STATE OF WHITE AMERICA 1960-2010 (2012).

21. CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980, at 156-62 (1984). But see THEODORE R. MARMOR ET AL., AMERICA’S MISUNDERSTOOD WELFARE STATE: PERSISTENT MYTHS, ENDURING REALITIES 104-14 (1990) (critiquing Murray’s account of the options and choices available to the fictional Harold and Phyllis).

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together, the articles collectively highlight the multifaceted, complex, and structural nature of women's poverty. Although working to reduce women's poverty might be associated with particularized programs, such a facial characteristic should not obscure the general interest in such anti-subordination efforts.