

The Journal of Contemporary Legal Issues

Volume 23 | Issue 2

Article 4

10-28-2022

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Inequality of Deservingness

ARIEL JUROW KLEIMAN*

TABLE OF CONTENTS

I.	INTRODUCTION	235
II.	TRUE DESERVINGNESS	238
	A. <i>Antipoverty Program Landscape</i>	239
	1. <i>Programs in the Tax System</i>	239
	2. <i>Programs Outside the Tax System</i>	241
	B. <i>Deservingness Norms in U.S. Antipoverty Programs</i>	244
	1. <i>Faultlessness</i>	244
	2. <i>Work Effort and Reciprocity</i>	246
III.	DEEMED DESERVINGNESS	247
	A. <i>Information Available to the IRS</i>	248
	B. <i>Who is Missing?</i>	251
	C. <i>Additional Context</i>	253
IV.	OUTCOMES AND ALTERNATIVES	254
	A. <i>Does Inequality of Deservingness Matter?</i>	254
	B. <i>What are the Alternatives?</i>	256
V.	CONCLUSION	259

I. INTRODUCTION

This Essay considers inequality of deservingness as both an organizing principle and a pathology of antipoverty program design in the United States. Antipoverty programs in the United States target specific types of

* © 2022 Ariel Jurow Kleiman. Associate Professor of Law, Loyola Law School, Los Angeles. Thank you to Larry Alexander and Steven Smith for inviting me to participate in the University of San Diego Institute for Law & Philosophy Conference on Inequality, to Bert Lazerow for insightful comments, and to all of the symposium attendees for engaging with the piece.

households and individuals, including families with children and workers engaged in the formal labor market.¹ Indeed, for the past quarter century, many public benefit programs have prioritized households that display both characteristics, that is, working families with children. These programs draw lines around those who do and do not “deserve” support based broadly on notions of faultlessness, reciprocity, and work effort.

The U.S. tax system delivers the bulk of federal antipoverty cash support via the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC). Unlike in traditional welfare programs, which entail lengthy application processes often administered by caseworkers, EITC and CTC recipients claim these refundable tax credits simply by filing an income tax return. Here arises the problem that this Essay explores: A federal income tax return is poorly equipped to evaluate recipients’ deservingness. The word “deserving” here means deserving of antipoverty support according to the distributive justice norms that most likely inform antipoverty program design. I am not commenting on people’s inherent value or worthiness.²

The Form 1040 Individual Income Tax Return can only ascertain a few pieces of information about a filer: Does she work in the formal labor market? Does she have closely related children who live with her most of the year? What is her earned income? Each of these questions is answered with a simple yes/no or a numerical value. There is little nuance. The tax return’s relative simplicity³ offers many positives both for recipients and for the government. Nonetheless, the information gathered does not perfectly map onto notions of deservingness that underlie U.S. antipoverty programs. These deservingness norms are more nuanced than the tax return allows. This mismatch leads to the exclusion of people who would be considered deserving under the normative principles that inform antipoverty program

1. I have written about these patterns in previous work. *See, e.g.*, Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. PENN. L. REV. (forthcoming 2022); Ariel Jurow Kleiman, *Low-End Regressivity*, 72 TAX L. REV. 101 (2018) [hereinafter *Low-End Regressivity*].

2. Moreover, a commitment to human dignity means that all people are worthy of respect and protection from degradation, which requires a minimum standard of living and access to basic needs. *See* ARTHUR M. OKUN, EQUALITY AND EFFICIENCY: THE BIG TRADEOFF 16 (1975).

3. A tax return is simple compared to applications for non-tax public benefits, such as Supplemental Nutrition Assistance Program (SNAP) benefits or Temporary Aid to Needy Families (TANF). These applications require documentary proof of income and expenses, as well as a telephone or in-person interview, among other potentially burdensome requirements. *See, e.g.*, 7 C.F.R. § 273.2 (requiring SNAP applicants to “have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter”). Of course, many have critiqued the complexity of the Form 1040 and the tax filing process generally. Jay A. Soled & Kathleen DeLaney Thomas, *Regulating Tax Return Preparation*, 58 B.C. L. REV. 152, 170–71 (2017). Relative to other public benefit applications, however, such a criticism is less fitting.

design, but who fail to demonstrate their deservingness in ways that are visible on a Form 1040 Individual Income Tax Return.⁴

This Essay explores how the U.S. tax system—the primary mechanism for distributing antipoverty cash benefits—is poorly suited to evaluating recipients’ deservingness. In doing so, it defines and formalizes the concept of inequality of deservingness, which is dyadic in nature. The first form of such inequality is that of “true deservingness.” True deservingness is somewhat abstract, arising from the distributive justice frameworks that underlie antipoverty program design in the United States. In Part II, the Essay briefly describes the major federal U.S. antipoverty programs, which mostly target support to families with children, people with disabilities, and workers. Working backwards, I then deduce various distributive justice norms that serve as organizing principles for U.S. antipoverty policy. These norms rest on notions of faultlessness, reciprocity, and work effort. The Essay does not defend these norms, but merely identifies them. Inequality of true deservingness refers to the fact that some people are considered deserving of support under these various norms, while others are not.

The second form of inequality of deservingness that this Essay considers is that of deservingness as determined by the public benefit system, which I call “deemed deservingness.” Focusing on tax-administered benefits, Part III starts by describing the information that a Form 1040 Individual Income Tax Return gathers about households. This information is necessarily limited; the tax return must be as simple as possible to ease filing for most taxpayers. For instance, while a taxpayer can show whether they are working—which is required to receive the EITC—those who are not working cannot explain why they are not working. Some individuals will thus be deemed deserving or undeserving without being able to provide full context for their actions. As Part III explains, true deservingness and deemed deservingness will not always align.

To provide greater texture to this discussion, I describe several taxpayers’ stories based on my former legal aid clients who were excluded from cash antipoverty support. These stories are anonymized, slightly altered

4. Over-inclusion is also possible. For instance, imagine someone who is highly capable, intelligent, and wealthy, but also lazy. She works very little during the year and receives poverty-level earned income. She is able to live extravagantly by spending her savings. However, she is eligible for the EITC because of her low earnings, despite the fact that she would not be considered “deserving” under traditional deservingness norms. (Assume she holds her savings mostly in cash, since investment income over \$10,000 would make her ineligible for the EITC. IRC § 32(i).)

amalgams of several clients I represented while directing the low-income taxpayer clinic at Bet Tzedek Legal Service in Los Angeles.⁵

Inequality of deservingness is not inherently problematic. Antipoverty programs often draw reasonable boundaries in order to incentivize certain behaviors, limit costs, and encourage public support. It is the incongruity of true deservingness and deemed deservingness that leads to negative outcomes, including unprincipled exclusion of “deserving” individuals, misaligned behavioral incentives, and reduced public support for antipoverty programs.

The Essay ends by briefly considering whether reform is necessary and discussing several alternative antipoverty program designs. I conclude that the tax system is ill-equipped to provide inclusive benefits to all people who fit deservingness norms. Policymakers should therefore expand non-tax antipoverty programs to ensure that diverse programs exist to cover the complex scenarios under which households might need support. In addition to federal non-tax programs, I explore several local program models capable of addressing highly individualized needs.

The Essay proceeds as follows. Part II describes the major federal antipoverty programs in the United States and deduces the deservingness norms that underlie their eligibility boundaries. It focuses on antipoverty programs administered through the tax system, as these are the largest means-tested cash transfer programs in the United States. Part III describes who is deemed deserving under the tax system and explores how this deemed deservingness fails to align perfectly with the deservingness norms described in Part II. Part IV finishes by discussing the possible negative consequences of such misalignment and considering several policy responses.

II. TRUE DESERVINGNESS

This Part explores various deservingness norms that serve as organizing principles for U.S. antipoverty programs. For readers unfamiliar with the safety net landscape, it starts by briefly describing the major federal cash antipoverty programs. This Essay focuses in particular on transfer programs administered through the tax system, since these are the largest means-tested cash programs in the United States. It then describes several distributional frameworks that justify the broad categories of deservingness that U.S. safety net programs seek to target. These frameworks include egalitarianism, specifically the choice-chance principle, and reciprocity norms based on work effort.

5. The details are sufficiently changed so that the individuals cannot be identified.

A. Antipoverty Program Landscape

The U.S. safety net is composed of a patchwork of programs each of which seeks to provide support to a certain group of people. Broadly speaking, the programs can be broken into two categories: antipoverty programs and social insurance programs. This Essay focuses on the former, since these programs are the ones for which deservingness plays a larger role. Social insurance programs—e.g., unemployment insurance and Social Security benefits—tend to reflect an insurance-premium model in which eligibility is based on having paid into the program. Antipoverty programs, on the other hand, target individuals and households based on certain characteristics, such as income or the presence of children.

Antipoverty programs can then be subdivided into two types of support: cash support and in-kind support. Cash benefits include the EITC and CTC, as well as Temporary Aid to Needy Families (TANF). Supplemental Security Income (SSI) provides means-tested cash support to people who are elderly, blind, or disabled.⁶ Some local governments also provide General Relief or General Assistance, although these programs are exceedingly rare and quite meager.⁷

1. Programs in the Tax System

The tax system delivers cash support to low-income American families through the EITC and CTC.⁸ The EITC is a refundable tax credit for working taxpayers. The amount of benefits it provides varies dramatically based on income and family size, with a maximum benefit in 2020 ranging from \$538 for taxpayers without qualifying children to \$6,660 for taxpayers with three or more qualifying children.⁹ Historically, childless workers have received such a small EITC that the benefit does not even

6. 20 C.F.R. § 416.202.

7. Liz Schott & Misha Hill, *State General Assistance Programs Are Weakening Despite Increased Need*, CTR. ON BUDGET & POL'Y PRIORITIES (July 9, 2015), <http://www.cbpp.org/sites/default/files/atoms/files/7-9-15pov.pdf> [https://perma.cc/TQ58-RPD] (noting the decline in size and scope of general assistance programs across states).

8. See Nada Eissa & Hilary Hoynes, *Taxes and the Labor Market Participation of Married Couples: The Earned Income Tax Credit*, 88 J. PUB. ECON. 1931, 1931 (2004).

9. I.R.S., PUB. 596, EARNED INCOME CREDIT 32–33 (2021), <https://www.irs.gov/pub/irs-pdf/p596.pdf> [https://perma.cc/E6FJ-Q2MU].

fully offset the federal taxes they pay.¹⁰ As a result, most EITC benefits are paid to working families with children.¹¹

Designed to encourage work, the EITC phases in based on a taxpayer's earned income. Taxpayers in the phase-in range receive a larger credit as their incomes increase; those with lower income receive a smaller credit. Recipients must work in the formal labor market in order to receive the EITC. The EITC also phases out based on a taxpayer's income and marital status.¹² The phase-out threshold is designed to target families living below and just above the poverty line. Approximately one-in-five taxpayers claim the EITC, including 44% of all taxpayers with children.¹³

The CTC provides a tax credit for taxpayers with children of up to \$2,000 per child in 2020.¹⁴ Like the EITC, the CTC's benefits phase in and out by income, but extend up to a much higher income level.¹⁵ Notably, the CTC is only refundable based on the amount by which a taxpayer's income exceeds \$2,500, and then only up to \$1,400 per child.¹⁶ This income threshold means that only working families are eligible to receive the CTC.

In 2021 only, Congress temporarily expanded both the CTC and the childless EITC.¹⁷ With regard to the CTC, Congress temporarily removed the credit's earnings threshold so that taxpayers with no earnings could receive the full credit amount.¹⁸ Congress also temporarily increased the credit amount in 2021 to \$3,000 per child, or \$3,600 for children under 6 years of age.¹⁹ For the EITC, Congress temporarily increased the maximum credit for childless workers to roughly \$1,500.²⁰ This expansion marked the first

10. *Low-End Regressivity*, *supra* note 1.

11. See Tax Pol'y Ctr, EITC Distribution by Number of Qualifying Children (2020), <https://www.taxpolicycenter.org/statistics/eitc-distribution-number-qualifying-children> [<https://perma.cc/SF7P-ZAZS>] (providing that 97% of EITC benefits are paid to families with children).

12. See I.R.C. § 32(b) (2021) (providing phase-in and phase-out percentages); CENTER FOR BUDGET AND POL'Y PRIORITIES, POLICY BASICS: THE EARNED INCOME TAX CREDIT 1-2 (2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-eitc.pdf> [<https://perma.cc/74ZE-RA3L>].

13. Hilary Hoynes & Jesse Rothstein, *Tax Policy Toward Low-Income Families 1* Nat'l Bureau of Econ. Research, Working Paper No. 22080, 2016, <http://www.nber.org/papers/w2208> [<https://perma.cc/L6WG-4V9E>].

14. I.R.C. § 24(a), (h) (West 2021).

15. *Id.* at § 24(b), (h)(3).

16. *Id.* at § 24(d), (h)(6).

17. American Rescue Plan Act, P.L. 117-2, § 9621.

18. I.R.C. § 24(i) (West 2021).

19. *Id.* at § 24(i)(3).

20. CHUCK MARR, KRIS COX & ARLOC SHERMAN, BUILD BACK BETTER'S CHILD TAX CREDIT CHANGES WOULD PROTECT MILLIONS FROM POVERTY—PERMANENTLY 7-8 (2021), <https://www.cbpp.org/sites/default/files/11-11-21tax.pdf> [<https://perma.cc/G9TJ-3HLP>].

time that the federal government provided significant cash support to childless households.²¹

Recipients generally claim the EITC and CTC by filing a federal income tax return each year.²² Taxpayers report two main informational inputs in order to receive the credits: earned income and number of “qualifying children.”²³ A claimant need not provide proof of income or children unless she is audited.

A taxpayer’s earned income tells the government both that the taxpayer works in the formal labor market and whether the taxpayer has income that is low enough or high enough to qualify for the credit. The child-claiming rules are designed to determine which taxpayers are best suited to claim which kids for purposes of the credits. In general, the rules require that a claimant be closely related to the child (i.e. parent, grandparent, older sibling, aunt/uncle), and that she live with the child for at least six months of the year.²⁴ Children who do not live with a close enough relative for a sufficient time during the year will be excluded from benefits under both credits.²⁵ Other factors are relevant to program eligibility as well, perhaps most notably, family members’ immigration statuses.²⁶

2. *Programs Outside the Tax System*

Outside of the Tax Code, TANF is the only other federal cash support program that targets low-income families. State governments administer TANF programs via the receipt of a federal block grant, pursuant to strict federal guidelines. A recipient must have children (or be pregnant) in

21. I discuss these changes and their significance in greater detail at *Revolutionizing Redistribution: Tax Credits and the American Rescue Plan*, 131 YALE L.J. FORUM 535 (2021).

22. The IRS expanded CTC availability to non-filers for tax year 2021 to enable them to claim the temporarily expanded CTC. See I.R.S., IR-2021-129, IRS Unveils Online Tool to Help Low-Income Families Register for Monthly Child Tax Credit Payments (June 14, 2021), <https://www.irs.gov/newsroom/irs-unveils-online-tool-to-help-low-income-families-register-for-monthly-child-tax-credit-payments>.

23. I.R.C. §§ 32(c), 24(b), (c) (West 2021).

24. I.R.C. § 152(c) (West 2021).

25. I address this problem in detail in Jacob Goldin & Ariel Jurow Kleiman, *Whose Child? Improving Child-Claiming Rules in Safety-Net Programs*, 131 YALE L.J. 1719 (2022).

26. E.g. I.R.C. § 32(m) (West 2021) (requiring EITC recipients to have a valid Social Security Number).

order to receive TANF benefits.²⁷ Additionally, all states must impose some form of work requirement on recipients.²⁸ In nearly all states a family becomes ineligible for benefits if one parent fails to work some minimum number of hours per week.²⁹ Thus, despite their various differences, TANF is similar to refundable tax credits in that it targets working families with children. Unlike the EITC and CTC, participation in training and education programs can qualify someone to receive benefits, although there are many restrictions on the extent of such eligibility.³⁰ Due to work requirements and other eligibility rules—such as a five-year federal cap on benefits—over three-quarters of families in poverty do not receive TANF benefits.³¹

The final major means-tested cash-support program is SSI. The Social Security Administration (SSA) administers SSI for low-income individuals who are aged, blind, or disabled.³² SSI provides vital support to millions of individuals who cannot otherwise support themselves.³³ SSI benefits totaled \$794 per month in 2021.³⁴ In order to receive SSI, claimants below the age of 65 who are not blind must have a documentable disability that prevents them from working.³⁵

All other federal antipoverty programs are administered as in-kind benefits, including the Supplemental Nutrition Assistance Program (SNAP, also known as food stamps), Special Supplemental Nutrition Program for Women, Infants & Children (WIC), and Medicaid.³⁶ For instance, SNAP provides funds that can only be used to purchase certain foods. Medicaid provides health insurance. These in-kind support programs are often larger and entail fewer restrictions than cash-support programs. For instance, both SNAP and Medicaid do not impose a work requirement for otherwise

27. See *Temporary Assistance for Needy Families*, BENEFITS.GOV, <https://www.benefits.gov/benefit/613> [<https://perma.cc/9XCN-AX4N>].

28. CENTER ON BUDGET AND POL'Y PRIORITIES (CBPP), POLICY BASICS: TEMPORARY ASSISTANCE TO NEEDY FAMILIES 5 (2021), <https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf> [<https://perma.cc/FF66-L2YB>].

29. *Id.*

30. See 64 C.F.R. § 261.30 (defining eligible work activities for TANF purposes to include certain job-related education and training activities).

31. CBPP, *supra* note 28, at 6 (providing that “in 2019, only 23 families received TANF for every 100 families in poverty”).

32. 20 C.F.R. § 416.202.

33. CONG. RES. SERV., IN FOCUS: SUPPLEMENTAL SECURITY INCOME 1 (2021), <https://crsreports.congress.gov/product/pdf/IF/IF10482> [<https://perma.cc/4U7R-8CAQ>].

34. *Id.*

35. *Id.*

36. Robert Greenstein, Examining the Safety Net, Testimony of Robert Greenstein, President, Center on Budget and Policy Priorities, Before the Human Resources Subcommittee of the House Committee on Ways and Means 17 (2015), <https://www.cbpp.org/sites/default/files/atoms/files/11-3-15bud-testimony.pdf> [<https://perma.cc/3Y3B-H2TT>] (listing safety net programs).

qualifying low-income families with children.³⁷ Childless individuals, however, may be categorically ineligible for these benefits or subject to work requirements, with specific rules differing between programs and states.³⁸

Distinct from the EITC and CTC, most antipoverty programs are operated as joint federal-state programs. As a result, application procedures differ from state to state, or even county to county. Generally speaking, non-tax antipoverty programs entail more onerous application processes compared to tax-administered benefits. For instance, the applications for SNAP benefits and TANF benefits often require information about market and nonmarket income from all household members as well as assets, savings, and household expenses.³⁹ A claimant must then provide documentation to prove her income and expenses as well as go through an interview process.⁴⁰ Applicants must also recertify periodically, often yearly but sometimes more frequently.⁴¹

Qualifying for SSI is a difficult and confusing process involving medical examination alongside proof of low-income status.⁴² Claims may take years to resolve with finality and often involve several levels of administrative review.⁴³ The SSA conducts periodic disability review once every 3–7 years to ensure that recipients remain eligible for benefits.⁴⁴

37. See U.S. Dept. of Agric., SNAP Eligibility (2021), <https://www.fns.usda.gov/snap/recipient/eligibility> [<https://perma.cc/VV2R-8PCM>] (last visited Nov. 22, 2021); CTR. ON BUDGET & POL'Y PRIORITIES (CBPP), INTRODUCTION TO MEDICAID 3 (2020), https://www.cbpp.org/sites/default/files/atoms/files/policybasics-medicaid_0.pdf [<https://perma.cc/34AA-555V>].

38. CBPP, *supra* note 37, at 2-3 (providing that childless individuals are ineligible for Medicaid in certain states); U.S. Dept. of Agric., *supra* note 37.

39. U.S. Dept. of Agric., *supra* note 37.

40. 7 C.F.R. § 273.2 (“To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified.”); L.A. County Dept. Health & Hum. Serv., Applying for Cash Aid During COVID-19, [https://dpss.lacounty.gov/content/dam/dpss/documents/en/calworks/Applying%20for%20Cash%20Aid%20\(Apps-Forms\)%20Eng1.pdf](https://dpss.lacounty.gov/content/dam/dpss/documents/en/calworks/Applying%20for%20Cash%20Aid%20(Apps-Forms)%20Eng1.pdf) [<https://perma.cc/3X2Q-6KJZ>] (last visited Nov. 22, 2021).

41. E.g., 7 C.F.R. § 273.2 (“[H]ouseholds must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter.”).

42. See Gay Gellhorn, *Disability and Welfare Reform: Keep the Supplemental Security Income Program but Reengineer the Disability Determination Process*, 22 FORDHAM URB. L.J. 961, 969–70 (1995).

43. *Id.* at 970–76 (explaining that the average successful SSI claim takes two years).

44. CONG. RES. SERV., *supra* note 33, at 2.

A few key takeaways from this discussion are important. For one, federal antipoverty programs tend to target benefits at families with children, workers, and people with disabilities. Tax-administered programs, namely the EITC and CTC, prioritize working families with children above other kinds of households. Non-tax cash programs, TANF and SSI, target working families with children and people with documentable disabilities. Non-tax in-kind programs, like SNAP and Medicaid, place less emphasis on work requirements for families with children but often still require work for non-disabled childless adults. Additionally, non-tax programs typically entail a more onerous application process compared to benefits provided through the tax system.

B. Deservingness Norms in U.S. Antipoverty Programs

This section offers a broad flyover of normative frameworks that may justify the current organization of federal antipoverty programs in the United States. It does not list all possible distributive justice frameworks. It also does not advocate for a particular framework.

Antipoverty programs in the United States target benefits to families with children, workers, and people with disabilities who are not covered under other disability insurance programs. Indeed, for many antipoverty programs, the households that receive the bulk of support both work *and* have children. Thus, deservingness norms that underlie this benefit structure must provide justification for supporting children (and their parents by extension), people with disabilities, and workers.

1. Faultlessness

Children and people with disabilities are the emblematic deserving poor.⁴⁵ There are various reasons for these groups' uncontroversial deservingness, but perhaps the largest is the fact that they lack control over their circumstances. They are innocent, or "faultless."⁴⁶

Limiting redistribution to only faultless individuals finds support in many theories of justice, perhaps the most prominent of which is resource egalitarianism or luck egalitarianism. Much egalitarian writing divides people's personal circumstances into those wrought by choice and those

45. MICHAEL KATZ, *THE UNDESERVING POOR: AMERICA'S ENDURING CONFRONTATION WITH POVERTY* 3 (2013).

46. Providing benefits only to faultless people avoids creating moral hazard. That is, limiting support to those who lack control over their circumstances does not create incentives for people to take unnecessary risks.

arising from luck—the so called “choice-chance” principle.⁴⁷ For instance, a young child living in poverty has no control over her position. There is essentially nothing she can do to change her financial circumstances. Contrast this with an able-bodied adult who is capable of working, but who lives in poverty because she chooses not to work, perhaps out of laziness. Many prominent egalitarian commentators agree that the government ought to redistribute to those in the first group but not to those in the second.⁴⁸ In other words, the ultimate distribution of resources in society can reflect people’s choices but should not reflect individuals’ bad luck.⁴⁹

Other distributive justice frameworks draw a similar distinction, including libertarian or sufficientarian theories of justice.⁵⁰ Eric Mack has argued that a minimal state may redistribute to the faultless poor.⁵¹ He likens such redistribution to an imperiled hiker breaking into private property to save himself from freezing to death.⁵²

With regard to children, it is worth mentioning that children do not receive most public benefits directly.⁵³ Rather, parents and other caregivers receive benefits that depend upon the fact that they care for children.⁵⁴ The expectation is that parents or caregivers will spend the funds to benefit their children in some way, even if indirectly. Research confirms this expectation.⁵⁵ Distributing benefits to parents makes good sense for practical administrative reasons.

47. See Daniel Markovits, *How Much Redistribution Should There Be?*, 112 YALE L.J. 2291, 2294–98 (2003); Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 643–44 (2020).

48. Markovits, *supra* note 47, at 2294–98.

49. See Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 HARV. L. REV. 469, 474–75 (2007); Fleischer & Hemel, *supra* note 47, at 643–44.

50. See Eric Mack, *Non-Absolute Rights and Libertarian Taxation*, 23 SOC. PHIL. & POL’Y 109, 109 (2006).

51. *Id.*

52. *Id.* at 114–15.

53. Certain in-kind benefits are given directly to children, like free education or free school lunch. However, except in highly unusual cases, cash or near-cash benefits are not given directly to children.

54. See generally Goldin & Jurow Kleiman, *supra* note 25 (discussing the rules that determine which adults can claim which children).

55. See Arloc Sherman & Tazra Mitchell, *Economic Security Programs Help Low-Income Children Succeed over Long Term, Many Studies Find*, CTR. ON BUDGET & POL’Y PRIORITIES 3–5 (2017), <https://www.cbpp.org/sites/default/files/atoms/files/7-17-17pov.pdf> [<https://perma.cc/4UG3-9NZ5>] (reviewing research on the long-term positive consequences for children of income-support programs paid to parents).

2. Work Effort and Reciprocity

Willingness to support low-income workers is more complicated than the choice-chance principle. Research finds that people are more sympathetic and generous to those described as “hard-working,”⁵⁶ and that Americans do not want to give others “something for nothing.”⁵⁷ Such sentiment is stronger for fungible benefits like cash.⁵⁸ This research suggests that people are more willing to support those who contribute to society and put forth some level of work effort. This sentiment can be described as a desire for reciprocity. Put short, Americans don’t want to feel like suckers.

One could define reciprocity in myriad ways. For instance, reciprocity might encompass any activity that contributes meaningfully to society, such as taking care of family or friends, volunteering for local community organizations, planting a public garden, and so forth. Alternatively, it might be defined more narrowly by looking to formal market relations.⁵⁹

In the context of work requirements built into antipoverty programs, formal market relations dominate. To receive the EITC, for instance, a claimant must have a job in the formal labor market. According to Lee Anne Fennell & Richard H. McAdams, American “[r]esistance to overt redistribution of income is often fueled by the belief that the market system reliably delivers distributionally fair outcomes to individuals, and that, therefore, any shortfalls in outcomes can be readily connected to personal shortfalls of character or effort.”⁶⁰ In other words, many believe that market income is a reliable proxy for effort and therefore that those who earn little or no market income are simply not putting forth sufficient effort or have some other personal flaw that prevents them from working.

Although not relevant to deservingness norms, it is important to note that work requirements are also justified as a way to avoid creating work disincentives.⁶¹ Whether or not work requirements are the best way to achieve this goal is an empirical question and beyond the scope of this discussion.

56. Andres Drenik & Ricardo Perez-Truglia, *Sympathy for the Diligent and Demand for Workfare* 10–11 (Nat’l Bureau Econ. Res., Working Paper No. 23659, 2017), <http://www.nber.org/papers/w2365> [<https://perma.cc/967U-FYDL>].

57. Greg M. Shaw, *Changes in Public Opinion about the American Welfare State*, 124 POL. SCI. Q. 627, 643 (2010).

58. *Id.*

59. See Elizabeth Anderson, *Welfare, Work Requirements, and Dependant-Care*, 21 J. APP. PHIL. 243, 244 (2004).

60. Lee Anne Fennell & Richard H. McAdams, *The Distributive Deficit in Law and Economics*, 100 MINN. L. REV. 1051, 1101 (2016).

61. See Dennis Ventry, *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969–99*, 53 NAT’L TAX J. 983, 995–96 (2000).

Finally, it is worth reiterating that one's work status alone is often not sufficient to deem her deserving. Most antipoverty programs in the United States only provide meaningful support to families with children or people with disabilities. These programs provide at most minimal support to able-bodied childless adults, even if they are employed.⁶²

* * *

To recap, antipoverty programs in the United States draw lines of deservingness around low-income recipients, prioritizing children, workers, and people with disabilities. These priorities find justification in theories of distributive justice based on faultlessness and reciprocity. Americans prefer to support those who are not responsible for their misfortune as well as those who put forth effort to support themselves and their families. By limiting support to these groups, the public can feel more confident that we are not supporting shirkers and free riders.

III. DEEMED DESERVINGNESS

Any non-universal redistributive program requires some way to determine whether one is eligible for support.⁶³ Eligibility rules broadly track the deservingness criteria described above. Actual eligibility, however, depends on the administrative realities of the distribution system. Perhaps most importantly, determining one's deservingness depends on the information a system can gather and easily corroborate about an applicant. Thus, true deservingness and deemed deservingness will differ.

The tax system relies on self-reporting of relatively sparse information in order to determine one's tax burden as well as eligibility for the EITC and CTC. This Part describes the information that taxpayers provide to the IRS via the Form 1040 Individual Income Tax Return, showing that there is limited overlap with notions of deservingness based on faultlessness and reciprocity. It then tells several anonymized stories based on former clients of mine who were excluded from cash support through the tax system because their unique circumstances could not be reflected on a tax return.

62. I have written about this before, e.g. *Low-End Regressivity*, *supra* note 1.

63. Mack, *supra* note 50, at 140.

I focus on the tax system because it is the largest distributor of non-disability-related cash antipoverty support in the United States.⁶⁴ Outside of the tax system, other antipoverty programs utilize a more holistic—and thus more onerous—application process. As explained above, state-administered SNAP and TANF programs collect significant information about applicants’ circumstances. They require proof of income and expenses as well as telephone or in-person interviews.⁶⁵ Depending on the specific rules that apply in each state or county, these programs might be better able to tailor distribution to households’ unique circumstances. However, they are also costlier to administer and more burdensome for applicants.

A. Information Available to the IRS

Deservingness is multifaceted and complicated. It depends on one’s effort, capacity, and intentions. Such things are difficult to discern even in close interpersonal interactions. Not only does tax return filing rarely entail human-to-human contact, but also the information provided by most people is extremely limited.

The Internal Revenue Service (IRS) knows only a few limited things about a household, including income, family size, work status, location, and so forth. What’s more, it perceives these items with limited nuance. For instance, although a tax return includes some information about family size, it does not capture the nature of the care relationships within the family. A parent might correctly list a child as a dependent even though in reality a grandparent provides daily care and financial support for the child.

This section describes the relevant information that the IRS is capable of gathering via a Form 1040 Individual Income Tax Return.

Income Amount and Source. A taxpayer reports the amount and source of income she earns each year.⁶⁶ Income sources include wages, self-employment income, passive income (interest, dividends, rent, etc.), capital gains, taxable retirement income, and Social Security benefits,⁶⁷ among other less common income sources. Taken all together, these figures provide

64. See JOINT COMM. TAX’N, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024, at 32–33 tbl.1 (2020), <https://www.jct.gov/publications/2020/jcx-23-20/> [<https://perma.cc/8EV8-RDJT>]; CBPP, *supra* note 28, at 2.

65. See *supra* note 40 and accompanying text.

66. IRS, Form 1040, U.S. Individual Income Tax Return 1 (2020), <https://www.irs.gov/pub/irs-pdf/f1040.pdf> [<https://perma.cc/JV3E-8W9S>] (requesting income information on lines 1–8).

67. Note that Social Security income is only subject to taxation if the taxpayer earns above a certain income level.

the amount of active and passive market income that a person earns in a given year.

Marital Status. If a taxpayer is legally married, she must file as married, although she can choose whether to file jointly or separately. There is only a limited exception for married taxpayers who are living apart from their spouse for the last six months of the year.⁶⁸ In nearly all cases, therefore, the IRS knows whether a taxpayer is married or unmarried.

Number of Children and Other Dependents. Taxpayers may report the number of children who qualify as their dependents for tax purposes. A taxpayer may do so in order to claim the CTC, the larger EITC for families with children, the Child and Dependent Care Tax Credit, Head of Household filing status, or other tax benefits that are based on how many dependent children one has. In order to qualify as a dependent, a child must be closely related to the taxpayer (i.e. their child, grandchild, sibling, or niece/nephew) and live in the taxpayer's home for at least six months of the year.⁶⁹ Note that a child's status as a dependent is not based on whether the taxpayer financially supports her or whether the taxpayer provides daily care for the child.

A taxpayer may also list other non-children dependents for various reasons, for instance, to receive a credit for dependent care or to file as Head of Household. Such "qualifying relative" dependents need not be closely related to the taxpayer.⁷⁰ In order to claim such dependents, the taxpayer must provide over one-half of the individual's support for the year.⁷¹

Other Information. A tax return might gather several other pieces of pertinent information. For instance, although personal expenses are not generally relevant to determining taxable income, taxpayers might report certain kinds of expenses that qualify for tax benefits. Taxpayers can report how much they spend on childcare, in order to qualify for one of the childcare tax benefits. They might also report how much they pay in student loans. If a taxpayer has significant medical expenses, she might report them to take the medical expense deduction. Most other informational

68. I.R.S., Pub. 501, Dependents, Standard Deduction, and Filing Information, https://www.irs.gov/publications/p501#en_US_2020_publink1000220780 [<https://perma.cc/9HXY-8AJA>] (last visited Nov. 23, 2021) (under the heading "Considered Unmarried").

69. IRS § 152(c). There is a limited exception that allows noncustodial parents to claim a child for certain tax benefits if the custodial parent allows him to do so. This exception does not apply for the purposes of the EITC.

70. IRC § 152(d)(2).

71. IRC § 152(d)(1)(C).

inputs on a tax return are related to business or investment income and are somewhat less relevant to a deservingness evaluation (apart from their role in creating or reducing taxable income).

Missing Information. There are several pieces of information relevant to deservingness that a Form 1040 does not gather. For instance, a taxpayer cannot report if she has received nonmarket income, such as intrafamily transfers or gifts.⁷² She also cannot report if she has savings or wealth that she can consume (aside from any realized gains). In-kind support is also unreported. For instance, if a taxpayer has wealthy parents who provide her with housing or food, this is invisible to the IRS. A tax return also does not gather information about imputed income—that is, consumption arising from a person’s assets or from their own nonmarket labor. Imputed income includes the rental value of a person’s home, or the market value of childcare provided by a stay-at-home spouse.

In addition to unreported income, a tax return does not—or perhaps cannot—gather more holistic information about a taxpayer’s financial circumstances. For instance, a taxpayer cannot explain why she is not working. The tax return does not distinguish between someone who chooses not to work and someone who cannot work for reasons outside of their control. Regarding children, a tax return does not seek to determine who is a child’s primary caregiver or their primary source of financial support.

A Form 1040 capably gathers the information necessary to determine taxable income. However, determining a person’s deservingness for public support is necessarily a more complicated evaluation. Because the information on a Form 1040 is sparse, the IRS must use certain pieces of information as proxies for deservingness. For instance, rather than undertaking an in-depth evaluation of whether someone is faultless, the IRS simply asks whether there are children in the home.⁷³ To ensure that the correct adult claims each child, the Form 1040 and Schedule EIC capture whether there are closely related children in the taxpayer’s home for at least six months.⁷⁴ Similarly, rather than undertaking an in-depth evaluation of reciprocity or work effort, the IRS can only observe whether someone works in the formal labor market. A person is deemed deserving if she works as an employee or if she is self-employed. Unpaid work in someone’s home or community does not count. Retraining or applying for work does not count.

72. Gifts over \$15,000 in 2021 must be reported on a gift tax return, but this is separate from the Form 1040 and therefore not used in determining eligibility for tax credits.

73. A child is someone under the age of 17 for the CTC, IRC § 24, or 19 for the EITC (24 for students), § 152(c)(3). For the EITC, a child can be any age if she is permanently and totally disabled. *Id.*

74. I.R.S., Schedule EIC, <https://www.irs.gov/pub/irs-pdf/f1040sei.pdf> [<https://perma.cc/XW3M-ELXX>] (last visited Nov. 23, 2021).

Based on this sparse information, only people who work in the formal labor market are deemed deserving of refundable tax credits. Those who live with closely related children for most of the year receive the bulk of support, as they are eligible for both the CTC and the larger EITC for working families with children. Working adults without children receive only the smaller childless EITC. Although these outcomes will significantly overlap with a “true deservingness” evaluation, there will be some misalignment, as the next section explains.

B. Who is Missing?

The tax system is well equipped to distribute cash to households, but it is not well equipped to determine deservingness based on all the characteristics that go into such an evaluation. As discussed above, deservingness is largely based on faultlessness as well as reciprocal effort. Therefore, if someone is faultless for their situation and puts forth significant effort, they should be considered deserving. Yet there are many people in the United States who would likely be considered deserving even under a relatively exacting deservingness evaluation, but who are excluded from tax-administered public benefits because their deservingness is not reflected on a Form 1040.

This section shares the stories of several individuals who were excluded from public benefits because their deservingness cannot be reflected on a tax return. These stories are anonymized amalgams of several clients I represented while directing the low-income taxpayer clinic at Bet Tzedek Legal Service in Los Angeles. The names and details have been changed sufficiently so that specific individuals cannot be identified.

These stories are obviously anecdotal. It is possible that the number of people who face similar circumstances is quite small. I am not seeking to argue that such exclusion is significant in magnitude. Rather, I only aim to show that the inputs to a deservingness evaluation and the information gathered on a Form 1040 misalign in meaningful ways. The necessary result of this mismatch is that some people who would be deemed deserving under a more holistic evaluation will be excluded from tax-administered public benefits.

Brenda worked for decades as an in-home health aide. Her last contract ended several years ago; she has been unable to find additional work. Because she worked as an independent contractor, she was not eligible for

unemployment insurance at the time.⁷⁵ Now in her mid-fifties, Brenda cannot undertake physically challenging work but is too young to begin receiving Social Security retirement benefits. Brenda also has a mild intellectual disability, but it is not severe enough to qualify her for disability benefits. Brenda volunteers at church. She also supports her adult son who was recently released from incarceration and has been unable to find work.

Brenda is not responsible for her situation. She has been a hard worker her entire life and wants to be working now. No one will hire her, despite her best efforts. Despite her faultlessness and efforts, Brenda will not be eligible for any antipoverty support delivered through the tax system.

Ivan is a legal permanent resident with a Social Security number valid for work in the United States. He moved to the United States as a child along with his family in the 1970s. Ivan's brother has a severe mental and physical disability that prevents him from being able to care for himself. Ivan is his brother's only close relative and his sole caretaker. Ivan owned a small corner market for many years, but he was forced to close his store in 2019 after losing customers to grocery-delivery apps. He cannot find more remunerative work because he must return home to feed, clean, and move his brother regularly. Unfortunately, Ivan's brother is undocumented and is therefore not eligible for any programs that provide financial support to individuals with disabilities.

By any reasonable interpretation of the theories of distributive justice that explain the organization of the U.S. social safety net, Ivan is deserving. He is not responsible for his brother's disability, nor his brother's immigration status. He is also a hard worker by any definition of the concept. He cares for his brother and is desperate for work. He simply has not been able to find a job that would allow him to care for his brother. Because Ivan does not work, he will not be eligible for any support delivered through the tax system.

Caitlyn and her cousin were raised in the same home and grew up like siblings. Caitlyn's cousin has been incarcerated for the past year, and Caitlyn is caring for her two children until she is released. Caitlyn supports her cousin's children financially, takes them to school, supervises their daily activities, and so forth. Although she is low-income, Caitlyn cannot claim her cousin's children for the purpose of the EITC or CTC because she is not their parent, grandparent, aunt, or sibling.⁷⁶

75. She may have been misclassified as an independent contractor but was not aware of her rights and did not challenge the decision at the time.

76. In some states, Caitlyn might be able to claim the children for the purposes of SNAP and TANF if she meets the programs' other eligibility requirements. *See* 7 C.F.R. § 273.1(b)(1)(iii); LINDA GIANNARELLI, CHRISTINE HEFFERNAN, SARAH MINTON, MEGAN THOMPSON & KATHRYN STEVENS, OFF. OF PLAN., RSCH. & EVALUATION, DEP'T OF HEALTH

In this case, both Caitlyn and the children should be considered deserving of support. Even so, the entire household will be excluded from the CTC and the larger EITC for families with children because the child-claiming rules are too restrictive to allow Caitlyn to claim the children. Caitlyn would qualify for the childless EITC, but this credit is so small that it does not even fully offset the federal taxes that Caitlyn will pay.

Ivan, Brenda, and Caitlyn's households should be considered deserving under an evaluation of true deservingness. None of them is responsible for his or her situation; all of them are hard workers. Yet, our primary mechanism for distributing cash antipoverty support—the tax system—cannot ascertain such deservingness. Rather, it uses market income as a proxy for effort and defines childcare relationships narrowly. As a result, it overlooks the deservingness of certain individuals and households, many of whom are particularly vulnerable.

C. Additional Context

When I describe stories such as these in an academic setting, colleagues sometimes voice versions of the following two comments. The first is skepticism over my clients' alleged inability to find work. The second is skepticism that anyone can truly live with no income. These are reasonable concerns. Indeed, I had them myself, which led me to interrogate my clients quite rigorously. As a brief digression, I offer here a few thoughts on these points.

Regarding the lack of employment, I noticed several common patterns among my clients who were unable to find work. Many were caring for relatives with disabilities who could not qualify for disability benefits, either because they were undocumented, or because the disabilities were difficult to substantiate. For instance, mental health conditions can be difficult to document. My clients' caretaking duties made looking for work difficult. Additionally, although my clients never mentioned it themselves, I am certain that ageism and racism played a role in many cases.

Regarding the question of how someone can survive with no income, there are three possible implications of such an inquiry. The first, and least charitable, is that my clients misrepresented their financial situations.

& HUM. SERVS., OPRE REPORT 2017-82, WELFARE RULES DATABOOK: STATE TANF POLICIES AS OF JULY 2016, at 68–69 tbl.I.B.9 (2017), https://www.urban.org/sites/default/files/publication/95251/welfare_rules_databook_state_tanf_policies_as_of_july_2016_1.pdf [<https://perma.cc/72EH-BT5N>].

Perhaps some of my clients did so, but it is unlikely that all my clients in similar circumstances lied about their situations. They had to provide me with extensive documentation of their financial circumstances, and I almost never found a discrepancy between what they told me and their financial records. If I had found a discrepancy, I would not have kept them as clients.

A second possible implication is that income is a poor proxy for wellbeing, and that we should look instead at their consumption. If someone has food and shelter, their consumption is not \$0, even if their income is \$0. For instance, although they were excluded from cash benefits, these clients were typically still eligible for SNAP benefits. For these reasons, some might feel that describing these clients' income as \$0 is misleading. This question could thus be another way of stating a preference for a consumption-based measure of human wellbeing.⁷⁷ Fair enough. I agree that their consumption could not have been \$0. Specifically, it's likely that my clients were able to obtain food, both because of SNAP benefits as well as food pantries.⁷⁸ Even so, I am certain that they lived in situations of extreme deprivation. The fact that they were not suffering from acute starvation did little to assuage my concern for their wellbeing.

Of course, the third possible intention is genuine curiosity and concern. In truth, most of my clients survived without income because they found themselves in unusually desperate, *temporary* circumstances. To get by, they sold their belongings. They took help from their churches or synagogues. They slept on friends' couches. They begged their landlords for mercy. Eventually, in the fortunate cases, something would give—they would find work, or perhaps qualify for SSI. If they had been able to receive some limited cash support, it likely would have partly ameliorated the long-term traumatic consequences of these periods of scarcity.

IV. OUTCOMES AND ALTERNATIVES

A. Does Inequality of Deservingness Matter?

This Essay has described two kinds of inequality of deservingness, one of “true deservingness” and the other of “deemed deservingness.” Inequality of true deservingness is something that exists in the abstract. It refers to

77. See BRUCE D. MEYER & JAMES X. SULLIVAN, AMERICAN ENTERPRISE INST., ANNUAL REPORT ON U.S. CONSUMPTION POVERTY: 2016 at 2 (2017), https://www.aei.org/wp-content/uploads/2017/09/meyer_sullivan_consumption_poverty_report_2016.pdf [<https://perma.cc/LJ76-5C6G>] (explaining why consumption offers a superior measure of wellbeing compared to income).

78. Bet Tzedek Legal Services operates in partnership with food pantries throughout Los Angeles. Many of my clients found my services by visiting such pantries.

the idea that some people are more deserving of support than others under various distributive justice norms. Looking to organizing principles underlying U.S. antipoverty programs, deservingness in the U.S. is primarily based on faultlessness as well as shared effort or reciprocity. Children are deserving; people with disabilities are deserving; workers may be deserving, depending on their work effort.

Does it matter that some people may be more “deserving” than others in abstract terms? Perhaps it does. Some might feel pride or shame if they internalize deservingness norms and if they fall inside or outside of the preferred group. Moreover, there might be some positive consequences of inequality of true deservingness. For instance, it might drive people to work harder, to contribute to the community, and to avoid bad choices that would make them responsible for their misfortune.

Inequality of deemed deservingness has more tangible outcomes: Some people will receive safety net benefits and some will not. In any non-universal benefit system, such an outcome is unavoidable. Does such inequality of deemed deservingness matter? Well, it certainly matters to those who are affected. It might also incentivize certain behavior, like obtaining formal employment. However, to the extent that these outcomes reflect the deservingness norms that broadly organize the distribution of antipoverty benefits, we might not be overly concerned. Excluding the undeserving is precisely what non-universal programs seek to do.

Thus, inequality of true deservingness and inequality of deemed deservingness, on their own, might only merit limited concern. Rather, it is the incongruity between inequality of true deservingness and inequality of deemed deservingness that matters. In other words, the larger problem is that those who receive or are excluded from benefits are not necessarily the correct people.

Why might such misalignment of norms and outcomes matter? For one, outcomes are somewhat unprincipled. Whether someone is deemed deserving under the tax system does not depend on their faultlessness or work effort, but rather on whether their deservingness is reflected on their Form 1040. This, in turn, depends on what information the IRS can readily see or assess. This information is necessarily limited to easily observable things like earned income and family size, rather than one’s character, effort, or behavior.

The misalignment between norms and outcomes might also create misaligned incentives. One possible reason to redistribute to deserving individuals is to incentivize virtuous behavior. Regarding reciprocity, for instance, we might hope to incentivize people to contribute to society in a

meaningful way, to make the world a better place. However, by looking only to formal employment, we incentivize only formal employment. Not all formal employment serves widely accepted public goals. Consider someone who works for a company that provides predatory lending services to low-income borrowers. A low-wage employee in such a company would receive work-linked tax credits, even though their work may cause more harm than good. Meanwhile, public benefit work requirements create disincentives for positive community engagement outside the formal labor market, like caring for children or parents, or volunteering, since these entail the opportunity cost of foregone formal labor.

It is worth noting that some might favor work requirements not because formal employment helps society but rather because they believe that it helps workers. Formal employment generates income, builds marketable skills, and might have more abstract effects on workers like imposing discipline. While these things may be true, other activities might have the same or better result. For instance, attending school also creates marketable skills and imposes discipline, but would not qualify someone for the EITC. Further, many low-wage jobs do not create marketable skills, and some might expose workers to labor abuses that outweigh other positives. More abstractly, deciding how someone should spend their time is paternalistic and fails to consider that people might know best how to maximize their own wellbeing and that of their family.

Lastly, the mismatch between norms and outcomes might undermine faith in government as well as public support for antipoverty programs. If someone sees deserving people excluded from support while undeserving people receive benefits, they might feel that government assistance is poorly managed, even corrupt. Such perceptions might lead to apathy, voter fatigue, or other outcomes that undermine democratic participation. More positively, however, such perceptions might merely encourage frustrated voters to oust incumbent politicians.

B. What are the Alternatives?

One way to equalize deemed deservingness is to provide universal benefits to everyone—such as via a universal basic income—or at least everyone below a certain income level. Another is to provide benefits to no one. Either solution would treat all possible claimants equally. Both solutions, however, ignore the problem of misalignment between true and deemed deservingness. Indeed, both solutions would exacerbate this misalignment.

The theoretically ideal solution to misalignment of true and deemed deservingness is to create an antipoverty program that accurately tracks true deservingness. However, designing eligibility rules for a single program

that anticipates all possible conditions of deservingness would be exceedingly challenging. To do so through the tax system using information simple enough to report on a Form 1040 would likely be impossible. The range of possible circumstances is simply too large. Moreover, true deservingness depends upon a person's personal history, capacity, and intentions, all of which would be impossible to report on a paper form with any degree of credibility.

Small improvements to the current rules are certainly possible. For instance, rather than using bright-line child-claiming rules based on blood relationships and residency, the EITC and CTC could provide benefits to claimants based on a care-giving standard. Such a standard would allow someone to claim a child for tax credits if she supervises the child's daily activities, transports the child to school and doctors' appointments, takes part in the child's educational activities, provides financial support to the child, and so forth.

Specific reforms notwithstanding, it would be difficult to design and enforce tax benefits based entirely on holistic standards rather than bright-line rules. In order to accommodate all circumstances of deservingness, both rules and standards would need to anticipate countless different possible circumstances. Additionally, standards are often indeterminate for claimants and costly for agencies to administer.

In truth, the current system as applied by the IRS may be a somewhat acceptable middle ground. Many deserving households are included, and at low administrative cost. Moreover, as I mentioned above, it is possible that there are relatively few excluded households, nearly all of which have complex and highly individualized circumstances. Some would-be claimants might care for disabled family members, have difficult-to-document disabilities themselves, or need job retraining.

Rather than designing a one-size-fits-all tax-based antipoverty program, perhaps this discussion counsels toward expanding non-tax antipoverty programs to ensure better coverage of the diverse circumstances of need. In recent years, policymakers have shown a penchant for distributing support through the tax system rather than via non-tax programs.⁷⁹ For instance, while Congress has expanded the EITC regularly over the past several

79. See *Low-End Regressivity*, *supra* note 1, at 125–26.

decades,⁸⁰ it has not increased TANF funding since 1996.⁸¹ Unfortunately, as this Essay has explained, the tax system's ability to determine need and deservingness is limited in fundamental ways. Meanwhile, programs like SNAP, TANF, and SSI already have the infrastructure to collect detailed information about claimants, including conducting one-on-one interviews. While certainly non-tax programs have their own drawbacks, these programs at least have the theoretical capacity to assess more complex individualized circumstances. For instance, SSI eligibility could be expanded to include a wider range of cognitive disabilities and mental health conditions. Doing so would likely provide significant support to nonworking individuals, both with and without children.

Local antipoverty programs can also work as a complement to (*not* a replacement for) federal programs. For instance, General Relief (GR) programs have historically supported struggling individuals who do not qualify under other federal and state programs.⁸² GR programs are operated locally, usually at the county level, and allow for more individualized determinations of need.⁸³ The number of states with GR programs has been steadily dropping over the past several decades, along with the amount of benefits the programs provide.⁸⁴ Expanding GR programs' reach and support is one piecemeal way to address the problems identified herein.

The COVID-19 pandemic led to the creation of new local public benefit programs that took individual circumstances into account. These local programs offered financial support to struggling households affected by the COVID-19 pandemic and its economic fallout. Their application processes often inquired into households' specific circumstances. For instance, LA County offered rental support to both renters and landlords affected by the pandemic.⁸⁵ Eligibility was based on income, and the program prioritized those most at risk of eviction.⁸⁶

Similar local support programs could target those who are ineligible for other forms of support, but who are actively seeking work, caring for family members, or are otherwise engaged in meaningful community activities. Local programs that operate through caseworker discretion might be particularly promising, as caseworkers can form relationships with claimants

80. *E.g.* American Rescue Plan Act, P.L. 117-2, § 9621.

81. CBPP, *supra* note 28, at 2. Because TANF program funding is not even adjusted for inflation, its real value has fallen by 40% over the past 25 years. *Id.*

82. Schott & Hill, *supra* note 7.

83. *See* L.A. County Dept. of Health & Hum. Serv., General Relief, <https://dpss.lacounty.gov/en/cash/gr.html> [<https://perma.cc/6S8A-YVK8>] (last visited Nov. 23, 2021).

84. Schott & Hill, *supra* note 7.

85. 211LA, L.A. County COVID-19 Rent Relief, <https://211la.org/lacounty/rentrelief> [<https://perma.cc/6MH6-W6NY>] (last visited Nov. 23, 2021).

86. *Id.*

and make determinations based on deeper knowledge of an individual's circumstances. Although decentralization can lead to disparate outcomes, as long as existing federal programs continue in their current form, outcomes among expanded local programs can only improve on the current situation.

V. CONCLUSION

This Essay has offered a framework for how to think about exclusion from antipoverty programs. By finding space between true deservingness and deemed deservingness, I have sought to show that not all those excluded from support ought to be excluded under the norms that broadly define the boundaries of such programs.

Throughout this Essay, I have assumed that redistributive norms should and do inform the administration of antipoverty programs. I fear, however, that the opposite is more accurate. Perhaps the administrative realities of antipoverty programs shape our collective redistributive norms. For instance, because only those with formal employment receive support, perhaps only formal job market participation is seen as true deservingness. Such a reversal of norms and design would lead to a meager notion of deservingness, shaped by a system that was not originally designed to evaluate such things.

Above all, I hope to have shown that the circumstances of need and deservingness in the United States are diverse. We do a disservice to each other when we forget this.

