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### Welfare on Fire: The Earned Income Tax Credit Is Not Enough To Extinguish Poverty

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## ARTICLES

# WELFARE ON FIRE: THE EARNED INCOME TAX CREDIT IS NOT ENOUGH TO EXTINGUISH POVERTY

CONOR COLASURDO<sup>†</sup>

INTRODUCTION .....	2
I. A MARXIST POPE? THE FRANCIS-RAWLSIAN FRAMEWORK FOR SOCIAL INSTITUTIONS BASED ON HUMAN DIGNITY .....	5
II. WELFARE WITHOUT STIGMA? THE EITC IN ACTION .....	9
A. Legal Aspects of the EITC .....	10
B. Political History of the EITC .....	11
C. Political Rhetoric and the Popularity of the EITC .....	13
III. AS THE BIG GUN IN THE WAR ON POVERTY, THE EITC IS A MORAL FAILURE .....	14
A. Understanding Our Poor Under the Francis- Rawlsian Framework .....	15
B. The Privatization of Social Welfare.....	16

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<sup>†</sup> The author earned his J.D. and B.A. from Fordham University. This material is his own and does not purport to represent the positions, strategies or opinions of his employer. The author would like to thank Professor Linda Sugin for her comments and guidance that were invaluable in the drafting of this Article. Finally, the author would like to thank the staff and editorial board of the St. John's *Journal of Catholic Legal Studies* for their comments and assistance in publishing this Article. A version of this Article was awarded the Class of 1911 Prize by Fordham University in 2014. The title of this Article refers to St. Ignatius of Loyola's instruction to St. Francis Xavier to "go forth and set the world on fire." Interestingly, this social justice imagery is interfaith. See Sara Rahim, *Mission Matters: Many Voices: Fan the Flames, A SLU Senior Reflects on Interfaith Solidarity and Working Together To "Set the World on Fire,"* ST. LOUIS U., Oct. 8, 2013, available at <http://www.slu.edu/mission-matters-107> ("Islamic Persian poet Rumi stated, 'Set your life on fire. Seek those who fan your flames.' [My Jesuit education] has helped me find and ignite that flame through my passion for social justice and service.").

C. We Are All American: The Importance and Misuse of Political Rhetoric .....	19
CONCLUSION.....	22

#### INTRODUCTION

Unfortunately, many Americans live on the outskirts of hope—some because of their poverty, and some because of their color, and all too many because of both. Our task is to help replace their despair with opportunity. This administration today, here and now, declares unconditional war on poverty in America.<sup>1</sup>

The project of this Article is to assess U.S. welfare policy as a social institution, particularly with respect to modern notions of equality and social justice. In particular, the Article evaluates the Earned Income Tax Credit (“EITC”) in its role as a major aspect of the U.S. social safety net. The Article draws upon the moral and philosophical teachings of Pope Francis and John Rawls to create a political and legal framework to examine the EITC as a social institution that should, but does not, promote human dignity.

Before delving in, however, it is important to first note the historical evolution of U.S. welfare policy. In his 1964 State of the Union Address, President Lyndon B. Johnson declared a national War on Poverty<sup>2</sup> (“War”). In the fifty years that have passed since this declaration, the United States has gone through a dramatic shift in welfare policy. Early efforts of the War included the creation of a host of social safety net programs, including Medicare, Medicaid, student loan programs, Head Start, and a permanent food stamp program.<sup>3</sup> Beginning in the 1970s, tax subsidies, in addition to direct spending programs, were used as tools to combat poverty.<sup>4</sup> In the 1990s, however, the political climate became such that “work and responsibility

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<sup>1</sup> President Lyndon B. Johnson, State of the Union Address (Jan. 8, 1964), [hereinafter LBJ’s SOTU], available at <http://www.presidency.ucsb.edu/ws/index.php?pid=26787>.

<sup>2</sup> *Id.*

<sup>3</sup> Howard Gleckman, *Taxes: A Big Gun in the War on Poverty*, FORBES (Jan. 16, 2014, 2:13 PM), <http://www.forbes.com/sites/beltway/2014/01/16/taxes-a-big-gun-in-the-war-on-poverty/>.

<sup>4</sup> *Id.*

[were] ‘in’ and traditional welfare [was] ‘out.’”<sup>5</sup> The result of the rhetoric of “individual responsibility” and “economic self-sufficiency” was a dramatic reduction in direct spending welfare efforts and the rise of the EITC as the big gun in the war on poverty.<sup>6</sup>

As such, tax policy scholars have begun to note that the sections of the Internal Revenue Code (“IRC”) have become the trenches of this War.<sup>7</sup> The EITC along with the Child Tax Credit are, in essence, the tools with which we have chosen to protect and promote our poor and marginalized.<sup>8</sup> It is therefore not only logical to examine the EITC as a large part of our social institution dedicated to poverty alleviation, but also a moral imperative. If the EITC fails to promote the human dignity of all, can society really claim to be fighting poverty to the best of its ability?

This Article examines the EITC through a Francis-Rawlsian framework for several reasons—both personal and academic. In the field of ethics, Pope Francis is undoubtedly a modern media celebrity.<sup>9</sup> He has renewed the global conversation surrounding society’s least advantaged and has shifted the conversation—though, regrettably, not yet the doctrine<sup>10</sup>—within the Catholic

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<sup>5</sup> Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 539 (1995).

<sup>6</sup> *Id.* at 537.

<sup>7</sup> See Gleckman, *supra* note 3.

<sup>8</sup> *Tax Topics: The Earned Income Tax Credit*, TAX POL’Y CENTER, <http://www.taxpolicycenter.org/taxtopics/earned-income-tax-credit.cfm> (last visited Aug. 10, 2015).

<sup>9</sup> See Howard Chua-Eoan & Elizabeth Dias, *Pope Francis, The People’s Pope*, TIME (Dec. 11, 2013), <http://poy.time.com/2013/12/11/person-of-the-year-pope-francis-the-peoples-pope/?iid=poy-main-lead>.

<sup>10</sup> See Nick Squires, *Pope Francis To Marry Couples ‘Living in Sin’ in First for His Papacy*, TELEGRAPH (Sept. 12, 2014, 4:51 PM), <http://www.telegraph.co.uk/news/worldnews/the-pope/11092718/Pope-Francis-to-marry-couples-living-in-sin-in-first-for-his-papacy.html> (noting that this group marriage of women and men with children born out of wedlock took place a few weeks before the beginning of an Extraordinary Synod of Bishops that touched on issues such as the “spiritual welfare of children adopted by gay couples, birth control and same-sex marriages”). Pope Francis sent shockwaves throughout the global media when it was suggested that the Pope had said that the Holy See may soon tolerate same-sex civil unions. Elizabeth Dias, *Pope Francis Willing To “Evaluate” Civil Unions, but No Embrace of Gay Marriage*, TIME (Mar. 5, 2014), <http://time.com/13161/pope-francis-willing-to-evaluate-civil-unions-but-no-embrace-of-gay-marriage/>. His actual words, however, seem to reflect more so on the health care and economic equality of same-sex couples, rather than a change in church doctrine. *Id.*

Church from the more contentious issues of Catholic social teaching—abortion and gay marriage—to something more palatable—service of and solidarity with the poor.<sup>11</sup> On a more personal level, much of my own understanding of social justice was informed by my Jesuit education at Fordham University and service-immersion projects in Guatemala, South Africa, and Ecuador.<sup>12</sup> Thus, this project is, in a sense, an attempt to levy practical criticisms of a social institution based on widely discussed and personally held notions of economic and social justice.

Although the media coverage of the Pope's recent remarks on social justice, economic policy, and self-governance has been wide,<sup>13</sup> very little commentary has been made about what these teachings mean for specific democratic policies or existing social institutions. To bridge the gap between academic philosophy and practical policy, this Article uses the philosophical teachings of John Rawls, a twentieth century liberal egalitarian and a man whom would likely find comfort in much of what the Pope is saying about equality—even if not about spirituality.<sup>14</sup> Rawlsian justice is widely discussed in tax policy literature,<sup>15</sup> and, thus, his teachings have an illuminating effect on this Article's discussion of the EITC as social welfare policy.

In Part I, this Article compares the teachings of Pope Francis to those of political philosopher John Rawls to demonstrate their shared goal of creating social intuitions based on human dignity. In Part II, this Article explores the EITC, its political history, and its effect on recipients. In Part III, this Article evaluates the

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<sup>11</sup> Squires, *supra* note 10 (“In an interview last September, the Jesuit Pope said the Church must move away from its ‘obsession’ with condemning homosexuality, abortion and contraception. It should become kinder and more merciful or risk collapsing ‘like a house of cards.’”).

<sup>12</sup> See *Fordham's Catholic and Jesuit Identity*, FORDHAM U., [http://www.fordham.edu/info/20276/fordhams\\_catholic\\_and\\_jesuit\\_identity](http://www.fordham.edu/info/20276/fordhams_catholic_and_jesuit_identity) (last visited Aug. 10, 2015) (“We believe that students have to be invited to wrestle with the great ethical issues of their time. We want them to be bothered by the realization that they don't know everything and bothered by injustice.” (quoting Joseph McShane, S.J., President of Fordham University) (internal quotation marks omitted)).

<sup>13</sup> See *Media Coverage of Pope Francis' First Year*, PEW RES. CENTER (Mar. 6, 2014, 12:01 AM), <http://www.journalism.org/files/2014/03/Pope-Francis-Media.pdf>.

<sup>14</sup> See John Rawls, *On My Religion*, in *A BRIEF INQUIRY INTO THE MEANING OF SIN AND FAITH* 259, 261–69 (Thomas Nagel ed., 2009).

<sup>15</sup> See, e.g., Linda Sugin, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 FORDHAM L. REV. 1991 (2004).

policies behind the EITC through a Francis-Rawlsian framework and concludes that by couching welfare in terms of “work and responsibility,” the United States has ignored and demoted the most crucial aspect of welfare—human dignity.

#### I. A MARXIST POPE? THE FRANCIS-RAWLSIAN FRAMEWORK FOR SOCIAL INSTITUTIONS BASED ON HUMAN DIGNITY

In March 2014, two months after the fiftieth anniversary of the War, U.S. citizens watched as President Barack Obama met with the new dynamic leader of the Catholic Church, Pope Francis.<sup>16</sup> While there is certainly a gulf of social issues that separate the U.S. President—as well as many lay Catholics—from traditional Catholic doctrine,<sup>17</sup> a mutual desire to alleviate the plight of the poor dominated this highly anticipated conversation.<sup>18</sup> The meeting, like many between world leaders, began with “a ritual as ancient as the conveyance across international borders of frankincense and myrrh: They exchanged gifts.”<sup>19</sup> In line with Pope Francis’ growing reputation for humility,<sup>20</sup> President Obama bestowed upon the Pontiff a box

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<sup>16</sup> Michael D. Shear & Jim Yardley, *In Vatican Meeting, Obama and Pope Focus on Shared Accord*, N.Y. TIMES, Mar. 28, 2014, at A10, available at <http://nyti.ms/1fmMcor>.

<sup>17</sup> See *id.* (noting the confrontation between the Obama administration and U.S. Catholic Bishops over abortion policy and the Affordable Care Act’s requirements that some religious organizations provide contraception to employees, as well as Obama’s endorsement of same-sex marriage). Since 2014, U.S. domestic policy has continued to shift from conservative Catholic doctrine. In 2015, Justice Kennedy led the U.S. Supreme Court in clarifying that the fundamental right to marriage applies to same-sex couples in the same way as to opposite-sex couples under the Due Process Clause of the Fourteenth Amendment. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). While Pope Francis famously stated, “Who am I to judge?” with respect to gay individuals seeking spiritual acceptance in the Catholic Church, the Holy See is still far from a decision that not only embraces the rights of same-sex couples, but one that suggests that the right to marriage is open to all—for example, opposite-sex couples, same-sex couples, and interracial couples. *Pope Francis: Who Am I To Judge Gay People?*, BBC NEWS (July 29, 2013), <http://www.bbc.com/news/world-europe-23489702>.

<sup>18</sup> See Shear & Yardley, *supra* note 16.

<sup>19</sup> Lisa Miller, *A Primer on Pope Francis’s Manifesto—The Book Obama Might Be Reading on Bad Days*, N.Y. MAG. (Mar. 27, 2014, 2:51 PM), <http://nymag.com/daily/intelligencer/2014/03/primer-on-pope-franciss-passionate-manifesto.html>.

<sup>20</sup> See, e.g., Faith Karimi, *Pope Francis’ Embrace of a Severely Disfigured Man Touches World*, CNN (Nov. 7, 2013, 6:43 PM), <http://www.cnn.com/2013/11/07/world/europe/pope-francis-embrace/>.

of seeds from the White House garden.<sup>21</sup> In return, the Pope gave President Obama a plaque and a bound copy of *Evangelii Gaudium*, the Pontiff's so-called manifesto.<sup>22</sup>

In this 2013 apostolic exhortation, the Pope renewed a global conversation and heated debate surrounding the poor and the marginalized.<sup>23</sup> Denouncing an “economy of exclusion and inequality,”<sup>24</sup> the Pope asked us, “How can it be that it is not a news item when an elderly homeless person dies of exposure, but it is news when the stock market loses two points?”<sup>25</sup> The Pope took issue with a global culture “where the powerful feed upon the powerless” and where some “continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world.”<sup>26</sup> Our culture of prosperity has “deaden[ed] us” and “[m]eanwhile, the excluded are still waiting.”<sup>27</sup> In the broadest of terms, the Pope has challenged the rich and well-connected to empower the poor, rather than to exploit them.

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<sup>21</sup> Miller, *supra* note 19. In contrast, President Obama gave Pope Benedict XVI an ivory stole, embroidered in gold, crimson, and blue. *Id.* (“Benedict, unlike Francis, had a predilection for the flamboyant garb to which his position entitled him.”).

<sup>22</sup> *Id.* Naomi O’Leary, *Pope Attacks ‘Tyranny’ of Markets in Manifesto for Papacy*, REUTERS (Nov. 26, 2013, 11:46 AM), <http://www.reuters.com/article/2013/11/26/us-pope-document-idUSBRE9APOEQ20131126> (noting that Massimo Faggioli, an Italian theologian, has described the document as a manifesto, and that John Thavis, a Vatican analyst, had called it the “Magna Carta for church reform” (internal quotation marks omitted)). While not the focus of this Article, Pope Francis has since released a new encyclical on the environment, entitled *Laudato Si’*. Even in this “green” paper, Francis ties an “intimate relationship between the poor and the fragility of the planet” and reminds us that “a true ecological approach *always* becomes a social approach; it must integrate questions of justice in debates on the environment, so as to hear *both the cry of the earth and the cry of the poor.*” POPE FRANCIS, ENCYCLICAL LETTER *LAUDATO SI’* ¶¶ 16, 49 (2015).

<sup>23</sup> It should be noted that, in addition to the poor and marginalized, the papal document touched on many issues, including: (1) a life of joy; (2) critiques of power-hungry clergy; (3) praise for the devoted; (4) the role of women in the church, and yet a recommitment to an all-male clergy; (5) a seemingly pro-environmentalist message; and (6) a reaffirmation of the church’s position on abortion. See Miller, *supra* note 19.

<sup>24</sup> POPE FRANCIS, APOSTOLIC EXHORTATION *EVANGELII GAUDIUM* ¶ 53 (2013) [hereinafter *EVANGELII GAUDIUM*].

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* ¶¶ 53–54.

<sup>27</sup> *Id.* ¶ 54.

Following the distribution of *Evangelii Gaudium*, many conservative U.S. political commentators cried foul. For example, Rush Limbaugh described the Pope's critiques of unfettered capitalism as "pure Marxism,"<sup>28</sup> while Sarah Palin was "taken . . . aback" because some of his statements "sound kind of liberal."<sup>29</sup> In response, liberal commentator Bill Maher sarcastically remarked, "Well, if [Sarah Palin] thinks Pope Francis is liberal, wait until she finds out what Jesus has been saying!"<sup>30</sup>

All kidding aside, Pope Francis hardly subscribes to the teachings of someone who felt that "[r]eligion is the sigh of the oppressed creature, the sentiment of a heartless world, and the soul of soulless conditions. It is the *opium* of the people."<sup>31</sup> Instead, Pope Francis' economic teachings in *Evangelii Gaudium* seem to be more in line with the late political philosopher John Rawls.<sup>32</sup>

Rawlsian justice is defined by two principles.<sup>33</sup> The first secures the most basic liberties compatible with similar liberties for others—namely, political liberties such as freedom of speech

<sup>28</sup> *The Rush Limbaugh Show: It's Sad How Wrong Pope Francis Is (Unless It's a Deliberate Mistranslation by Leftists)* (Premiere Networks radio broadcast Nov. 27, 2013), available at [http://www.rushlimbaugh.com/daily/2013/11/27/it\\_s\\_sad\\_how\\_wrong\\_pope\\_francois\\_is\\_unless\\_it\\_s\\_a\\_deliberate\\_mistranslation\\_by\\_leftists](http://www.rushlimbaugh.com/daily/2013/11/27/it_s_sad_how_wrong_pope_francois_is_unless_it_s_a_deliberate_mistranslation_by_leftists).

<sup>29</sup> *The Lead with Jake Tapper: Pope Francis Too Liberal for Palin?* (CNN television broadcast Nov. 12, 2013), available at <http://www.cnn.com/videos/politics/2013/11/12/lead-intv-sarah-palin-pope-francis-liberal.cnn>.

<sup>30</sup> *Real Time with Bill Maher* (HBO television broadcast Nov. 15, 2013). In fact, Catholic social justice activists cite verses from throughout the Bible regarding the poor. See, e.g., *Psalm* 82:3 (English Standard) ("Give justice to the weak and the fatherless; maintain the rights of the afflicted and the destitute."); *Proverbs* 31:9 (English Standard) ("Open your mouth, judge righteously, defend the rights of the poor and needy."); *Matthew* 19:21 (English Standard) ("Jesus said to him, 'If you would be perfect, go, sell what you possess and give to the poor, and you will have treasure in heaven; and come, follow me.'").

<sup>31</sup> KARL MARX, *Contribution to the Critique of Hegel's Philosophy of Right*, in KARL MARX: EARLY WRITINGS 41, 41–46 (T.B. Bottomore ed. and trans., 1963) (calling for the abolition of religion).

<sup>32</sup> In *On My Religion*, a posthumous essay published by the Rawls Estate, the philosopher detailed his upbringing as a conventional Episcopalian, his turn toward Orthodoxy while an undergraduate student at Princeton, and his eventual loss of faith during WWII. See Rawls, *supra* note 14. Unlike Marx, who denounced religion as an opiate for the masses, Rawls concluded that "atheism . . . is a disaster, but nontheism need not be feared . . . [and] is compatible with religious faith. *Id.* at 269. His central reasoning was that "the content and validity of reason should [not] be affected by whether God exists or not." *Id.* at 268.

<sup>33</sup> JOHN RAWLS, *A THEORY OF JUSTICE* 52 (rev. ed. 1999).



and assembly, freedom of the person, the ability to own private property, and the freedom against unreasonable search and seizure.<sup>34</sup> The second states that “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”<sup>35</sup> The second principle, which is subservient to the first, informs how institutional design should address economic inequality; government need not equalize income, but it must ensure that resources and inequalities are allocated for everyone’s advantage.<sup>36</sup> With these two principles in mind, Rawls contemplates the following: Even if modern social injustices are removed, citizens “starting out as members of the entrepreneurial class in property-owning democrac[ies] . . . have a better prospect than those who begin in the class of unskilled laborers.”<sup>37</sup> He concludes that this inequality is justifiable under his two principles only “if the difference in expectation is to the advantage of the representative man who is worse off, in this case the representative unskilled worker.”<sup>38</sup>

Through this framework, Rawls emphasizes the importance of the “social bases of self-respect” in the creation of public policy.<sup>39</sup> As defined, this “is not self-respect as an attitude toward oneself,” but rather the institutional recognition that each citizen has equal rights and the public recognition of the least advantaged of society.<sup>40</sup> Like Rawls, Francis exclaims that “[t]he dignity of each human person and the pursuit of the common good are concerns which ought to shape all economic policies” and that “[i]nequality is the root of social ills.”<sup>41</sup> The overall political lessons from both men are strikingly similar: When designing our social institutions, we must treat everyone’s rights equally, and to do this, we must take special care for those disadvantaged by our society.

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<sup>34</sup> *Id.* at 53.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 67.

<sup>38</sup> *Id.* at 68.

<sup>39</sup> JOHN RAWLS, JUSTICE AS FAIRNESS 59 (Erin Kelly ed., 2001).

<sup>40</sup> *Id.* at 60.

<sup>41</sup> *EVANGELII GAUDIUM*, *supra* note 24, ¶¶ 202–03.

These lessons are decidedly liberal, but we are far from talking about Marxism. While Francis cautions us that “[w]e can no longer trust in the unseen forces and the invisible hand of the market,”<sup>42</sup> he characterizes business as a good and moral vocation, so long as business professionals challenge themselves to a greater life meaning: “to increase the goods of this world and to make them more accessible to all.”<sup>43</sup> Like Rawls, Francis focuses on promoting the rights of all, with a particular emphasis on society’s most marginalized. Neither, however, is calling for the end of private ownership of property—a central tenet of capitalism. In Rawls’ principled hierarchy, the distribution of economic and social justice is subservient to property rights that are consistent with the other primary rights of all.<sup>44</sup> Likewise, Francis states that “private ownership of goods is justified by the need to protect and increase them, so that they can better serve the common good.”<sup>45</sup> Both Rawls and Francis are very concerned with the current state of income and wealth inequality but fall short of suggesting an equal distribution of resources.

In sum, the theological teachings of Francis and the political philosophy of Rawls share a common characteristic: Both implore us to create social institutions with a basis of human dignity and self-respect. With this background, one question must be asked as we celebrate the fiftieth anniversary of the War on Poverty: Have we done this? Is the purpose of the EITC and our broader welfare efforts to promote human dignity or something else entirely? The remainder of this Article explores this question.

## II. WELFARE WITHOUT STIGMA? THE EITC IN ACTION

In Part II, this Article explains the relevant aspects of the EITC to the discussion of politics and morality. It begins with a legal analysis of the EITC with a brief explanation of how the tax credit operates and serves our poor. It then explores the political beginnings of the EITC. Finally, Part II concludes by discussing political rhetoric and research that has been conducted among EITC recipients about the overall favorability of the program.

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<sup>42</sup> *Id.* ¶ 204.

<sup>43</sup> *Id.* ¶ 203.

<sup>44</sup> *See supra* note 36 and accompanying text.

<sup>45</sup> *EVANGELII GAUDIUM*, *supra* note 24, ¶ 189.

A. *Legal Aspects of the EITC*

In substance, the EITC is very similar to programs like Temporary Assistance for Needy Families (“TANF”) and Supplemental Nutritional Assistance Program (“SNAP”), as all three are characterized as “social welfare.”<sup>46</sup> Unlike TANF and SNAP, however, the EITC is implemented by the Internal Revenue Service (“IRS”) and, therefore, is similar to any tax refund in terms of administration and public perception.<sup>47</sup> This distinction between direct spending programs and tax refunds is, in a sense, moot, as both have the same effect on government revenue: They spend it.<sup>48</sup> In 2011, the EITC cost sixty billion dollars, and delivered this revenue to low-income earners through a refundable tax credit.<sup>49</sup> In comparison, direct spending through TANF cost the government a mere twenty-six billion dollars.<sup>50</sup> While spending on SNAP cost the government seventy-eight billion dollars in the same year, this figure was greatly inflated as enrollment surged in the wake of the Great Recession.<sup>51</sup> Indeed, in every year after the Clinton welfare reforms and preceding 2007, spending under both TANF and SNAP was dramatically lower than the amount redistributed through the EITC.<sup>52</sup> This disparity in funding has been justified by the conclusion that the EITC is more effective than direct spending programs at reducing the poverty level.<sup>53</sup>

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<sup>46</sup> *In re Searles*, 445 F. Supp. 749, 753 (D. Conn. 1978) (“Though it is given effect through the income tax laws, the earned income credit is in substance an item of social welfare legislation, intended to provide low-income families with ‘the very means by which to live.’”) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 264, (1970)); Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 530 (2013). SNAP is the successor program to the food stamp program. Len Burman & Elaine Maag, *The War on Poverty Moves to the Tax Code*, TAX POL’Y CENTER (Jan. 6, 2014), <http://www.taxpolicycenter.org/UploadedPDF/1001711-war-on-poverty-moves-to-tax-code.pdf>.

<sup>47</sup> Greene, *supra* note 46.

<sup>48</sup> Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 726 (1970).

<sup>49</sup> Burman & Maag, *supra* note 46.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*

<sup>53</sup> Steve Holt, *The Earned Income Tax Credit at Age 30: What We Know*, BROOKINGS INST. (Feb. 2006), [http://www.brookings.edu/~media/research/files/reports/2006/2/childrenfamilies%20holt/20060209\\_holt.pdf](http://www.brookings.edu/~media/research/files/reports/2006/2/childrenfamilies%20holt/20060209_holt.pdf).

The EITC works by awarding a refundable credit to tax filers who meet certain income and familial requirements.<sup>54</sup> Three legal aspects of the program have profound policy implications. First, as a refundable credit, the EITC operates as a constructive overpayment of tax, which is returned to filers in their refunds after offsetting the filers' actual tax liability, if any.<sup>55</sup> Second, because this program is implemented through the tax code, rather than through a direct spending program, recipients receive their payments as lump sums once-per-year.<sup>56</sup> Third, as the EITC's name implies, the credit is predicated on the fact that the filers already have some income, which provides a heavy incentive for the poor to work.<sup>57</sup> The result is that the unemployed—whatever the reason—are ineligible for the credit if they have no income for that year.<sup>58</sup> While the amount filers receive depends on their income level and how many children they have,<sup>59</sup> the average payment made through the EITC was \$2,250 in 2011.<sup>60</sup>

#### B. *Political History of the EITC*

The EITC was first proposed as a work-based alternative to President Nixon's Family Assistance Program ("FAP")—a program influenced by the idea of a negative income tax ("NIT")—and enacted in the Tax Reduction Act of 1975.<sup>61</sup> Milton Friedman first advocated for the NIT in his book *Capitalism and Freedom* in 1962.<sup>62</sup> According to Friedman, the NIT would solve the issue of the neighborhood effect for the perfect form of poverty alleviation—private charity.<sup>63</sup> According to the argument, everyone is "distressed" by poverty and "benefited" by its alleviation.<sup>64</sup> It does not matter, however, if someone pays for

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<sup>54</sup> I.R.C. § 32 (West 2014).

<sup>55</sup> *Israel v. United States*, 356 F.3d 221, 222–23 (2d Cir. 2004).

<sup>56</sup> Greene, *supra* note 46.

<sup>57</sup> *Id.* at 532.

<sup>58</sup> I.R.C. § 32.

<sup>59</sup> For a brief description of the income requirements and the operation of the phase-in, plateau, and phase-out ranges of the EITC, see Greene, *supra* note 46, at 531.

<sup>60</sup> *Id.* at 530.

<sup>61</sup> Tax Reduction Act of 1975, Pub. L. No. 94-12, § 204, 89 Stat. 26, 30–32 (codified as amended at I.R.C. § 32).

<sup>62</sup> MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 192, 194 (1962).

<sup>63</sup> *Id.* at 190–95.

<sup>64</sup> *Id.* at 191.

poverty alleviation—the effect is the same; therefore, nobody does anything.<sup>65</sup> Thus, Friedman argues, government action is needed to force everyone to contribute to this cause.<sup>66</sup> While he leaves the question of “how much” assistance is needed for the poor, he argues that a NIT is the best practical solution of “how” to provide the assistance.<sup>67</sup>

Friedman’s NIT would operate in a strikingly similar fashion to the EITC, with one major caveat. Under Friedman’s arrangement, every citizen would file a tax return with the IRS, regardless of income level.<sup>68</sup> If an individual’s income was lower than a floor set by the government dependent on what the community was able to afford, he would pay a “negative tax,” meaning that he would receive a payment from the government.<sup>69</sup> The negative rates would, just as the positive rates would, vary according to how much income the filer had.<sup>70</sup> What is different about the NIT advocated by Friedman and the EITC is, of course, that Friedman makes no mention of a work or income requirement in order to be eligible for the subsidy. In fact, Friedman defends his NIT concept by arguing that any distortion caused by this program would be negligible as everyone at the bottom of the income spectrum would be incentivized to keep working, regardless of the fact that the government is giving them some assistance.<sup>71</sup>

The centerpiece of Nixon’s FAP was essentially an attempt to enact Friedman’s NIT.<sup>72</sup> FAP, which was never passed, contained a requirement that the filer be looking for work but did not go so far as actually requiring the filer to work in order to receive the subsidy.<sup>73</sup> Senator Russell Long,<sup>74</sup> a fierce and

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<sup>65</sup> *Id.* This is an economist’s rational argument, and something could—and should—be said for the irrational human desire to give back to society. It, perhaps, does matter to one whether or not she is contributing to the assistance of fellow men and women, regardless of whether anyone else chooses to do so.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 191–92.

<sup>68</sup> *Id.*; Jodie T. Allen, *Negative Income Tax*, LIBR. ECON. & LIBERTY, <http://www.econlib.org/library/Enc1/NegativeIncomeTax.html> (last visited Aug. 10, 2015).

<sup>69</sup> FRIEDMAN, *supra* note 62, at 192.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *See* Greene, *supra* note 46, at 531–32.

<sup>73</sup> *Id.* at 532.

powerful Democratic opponent of FAP, later proposed the EITC with its work and income requirements.<sup>75</sup> The EITC, from its very beginning, had a form of bipartisan support.

From its enactment through the 1980s and early 1990s, the EITC remained a relatively small program.<sup>76</sup> The state of U.S. welfare programs radically shifted in 1996, however, when the expansive Aid to Families with Dependent Children (“AFDC”) became politically untenable and political support shifted in favor of work-based welfare policies.<sup>77</sup> The focus of welfare reform was defined by language highlighting the need for programs that induce work.<sup>78</sup> President Clinton likewise adopted this rhetoric and proclaimed that the EITC was real welfare reform in that it rewarded work.<sup>79</sup> Since the 1990s, the EITC has been expanded several times, most recently by the American Tax Payer Relief Act of 2012, which extended increased EITC benefits under the American Recovery and Reinvestment Act of 2009 through 2018.<sup>80</sup>

### C. *Political Rhetoric and the Popularity of the EITC*

Perhaps unsurprisingly, social science research suggests that the political rhetoric rejecting need-based welfare and proclaiming the virtue of work-based welfare mirror the mental impressions of present-day recipients of the EITC.<sup>81</sup> A study of EITC recipients published by Sara Greene in the *New York University Law Review* shows that low-income earners characterize direct spending program recipients as “lazy.”<sup>82</sup> On

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<sup>74</sup> Senator Long was the Democratic chair of the Senate Finance Committee from 1966 through 1981. JEFFREY H. BIRNBAUM & ALAN S. MURRAY, SHOWDOWN AT GUCCI GULCH 5 (1987). The Senator viewed the tax code as a way to cast his social vision for society. *Id.* at 15. He was later an opponent of the tax code and then instrumental in the passing of Reagan’s major tax reform in 1986. *Id.*

<sup>75</sup> Greene, *supra* note 46, at 532.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 533. AFDC was the precursor program to TANF, “which imposed strict time limits and participation requirements on beneficiaries.” *Id.*

<sup>78</sup> Alstott, *supra* note 5.

<sup>79</sup> *Id.*

<sup>80</sup> See American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 103, 126 Stat. 2313 (codified in I.R.C. § 32 (West 2014)); Greene *supra* note 46, at 536; see also American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1002, 123 Stat. 115.

<sup>81</sup> See Greene, *supra* note 46, at 542.

<sup>82</sup> *Id.* at 541–42.

the other hand, recipients of the EITC were “proud that they had worked hard, as higher-income families do, to receive their tax refund.”<sup>83</sup> Indeed, one recipient even noted that the EITC allowed him to feel like a “real American.”<sup>84</sup> While U.S. policymakers have abandoned much of this rhetoric today, this study shows that the effect of the 1990s discourse has remained embedded in current-day low-income communities.<sup>85</sup>

The important aspect of this rhetoric capitalization to our discussion of the design of social institutions is that these sentiments have affected the type of anti-poverty programs that low-income citizens actually receive. As Sara Greene noted, EITC recipients have been assuaged into comfort with the program, and, thus, roughly eighty percent of taxpayers who qualify for the EITC receive it.<sup>86</sup> On the other hand, only fifty percent of those that qualify for TANF actually receive any payments.<sup>87</sup> Indeed the stigma felt by traditional welfare recipients has not carried over to recipients of the EITC.<sup>88</sup>

This research shows that the recipients of the EITC have very favorable views of this program—though, it remains to be seen if it is in their best interest. It is important to note here that both our political elite<sup>89</sup> and those the program seeks to assist have generally favorable views of the EITC as an institution. The program has roots and favorability in both major political parties and, therefore, is unlikely to come under scrutiny.

### III. AS THE BIG GUN IN THE WAR ON POVERTY, THE EITC IS A MORAL FAILURE

Despite their broader messages of economic justice, Pope Francis has not yet written and Rawls did not write extensively on tax policy. In passing, Rawls seems to have endorsed a flat

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<sup>83</sup> *Id.* at 539.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 542.

<sup>86</sup> *Id.* at 543.

<sup>87</sup> *Id.*

<sup>88</sup> *See id.* at 539 n.115.

<sup>89</sup> In March 2014, President Obama made headlines by announcing a proposal to expand the EITC and the Child Tax Credit. EXEC. OFFICE OF THE PRESIDENT & U.S. TREASURY DEP'T, THE PRESIDENT'S PROPOSAL TO EXPAND THE EARNED INCOME TAX CREDIT 1-2 (2014), available at [http://www.whitehouse.gov/sites/default/files/docs/eitc\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/eitc_report.pdf).

consumption tax, which, at face value, is at odds with his concern for the least advantaged of society.<sup>90</sup> Francis' only mention of taxes is his denouncement of "self-serving tax evasion" as one aspect of the idolatry of money.<sup>91</sup> To bridge this gap between economic justice and tax policy, Professor Linda Sugin of Fordham University has argued that a Rawlsian framework should use tax policy as one element of an overall institutional design that guarantees the basic liberties of all and satisfies the concern for the least advantaged of society.<sup>92</sup> As both Rawls and Francis share this concern, this Article next evaluates the EITC in terms of Rawls and Francis' goal of creating social institutions that ensure human dignity. It does so by first examining who the EITC excludes. It then examines the pseudo-privatization effect of the EITC on welfare policy. It concludes with an examination of the effect of political rhetoric on welfare policy and the vernacular of the poor.

A. *Understanding Our Poor Under the Francis-Rawlsian Framework*

As an initial matter, some statistics about the poor in the United States over the past half-century are important to note. According to one study out of Columbia University, the U.S. poverty rate has dropped from twenty-six to sixteen percent between 1967 and 2012.<sup>93</sup> Furthermore, the average income of the lowest quintile has risen by seventy-five percent since 1964.<sup>94</sup> These are championed as major accomplishments<sup>95</sup>—and they

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<sup>90</sup> See Sugin, *supra* note 15, at 1994–95 (suggesting that any tax policy, other than an endowment tax, could be in line with Rawls' teachings, depending on the government's distribution of the revenues). Income taxes, unlike consumption taxes, tax changes in wealth—also known as savings. U.S. DEPT OF THE TREASURY, BLUEPRINTS FOR BASIC TAX REFORM 2–3 (1977). As they do not tax changes in wealth, consumption tax treatment is often thought to benefit the rich, where a wealth tax or a progressive income tax is thought to benefit lower-income taxpayers. Sugin, *supra* note 15, at 1994.

<sup>91</sup> *EVANGELII GAUDIUM*, *supra* note 24, ¶ 56.

<sup>92</sup> Sugin, *supra* note 15, at 1998.

<sup>93</sup> Sharon Parrott, *War on Poverty: Large Positive Impact, But More Work Remains*, CENTER BUDGET & POLY PRIORITIES (Jan. 7, 2014), <http://www.cbpp.org/sites/default/files/atoms/files/1-7-14pov.pdf>.

<sup>94</sup> *Id.*

<sup>95</sup> THE PRESIDENT'S PROPOSAL TO EXPAND THE EARNED INCOME TAX CREDIT, *supra* note 89, at 1–2.



are—but, are these accomplishments enough to say that we are winning our War on Poverty in line with promoting human dignity? This Article suggests that we are not.

Under a Francis-Rawlsian framework, income inequality is only justifiable when the least advantaged group is as well off as it could be.<sup>96</sup> While the EITC has been credited as our most effective anti-poverty measure,<sup>97</sup> it is only targeted at some of the poor and not the poorest of the poor. While forty-one percent of the EITC benefits go to the bottom quintile on the income-spectrum scale,<sup>98</sup> the fact that our biggest welfare program is predicated on work<sup>99</sup> means that we are inevitably leaving behind some of our most vulnerable citizens. These are precisely the citizens that Rawls and Francis instruct us to care about most.<sup>100</sup>

Therefore, at a very basic level, the EITC should concern us. Our idolatry of work has allowed us to forget the poorest of the poor—the unemployed. In a welfare system that prioritizes human dignity and self-respect above all else, including work, this should be unacceptable. Indeed, our fellow citizens are “still waiting” for us to realize that the choices we have made with our social institutions have left them behind.<sup>101</sup>

### *B. The Privatization of Social Welfare*

While the EITC indisputably leaves behind society’s least advantaged, other aspects of the program should also give us pause. Notably, these aspects have been colored by the increases in income insecurity—an inability to cope with large income losses—in the wake of the Great Recession.<sup>102</sup>

While income insecurity has affected many Americans across a broad spectrum of income levels, it has mostly affected those traditionally considered to be the least advantaged: “those with limited education, as well as [those] among racial minorities and

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<sup>96</sup> See *supra* note 38 and accompanying text.

<sup>97</sup> See *supra* note 53 and accompanying text.

<sup>98</sup> Burman & Maag, *supra* note 49.

<sup>99</sup> See *supra* note 56 and accompanying text.

<sup>100</sup> See *supra* Part I.

<sup>101</sup> See *supra* note 30 and accompanying text.

<sup>102</sup> JACOB S. HACKER ET AL., ECONOMIC INSECURITY AND THE GREAT RECESSION: FINDINGS FROM THE ECONOMIC SECURITY INDEX 1 (2011), available at <http://www.economicsecurityindex.org/assets/ESI%20Full%20Report%202011.pdf>.

younger workers.”<sup>103</sup> The rise in income insecurity among the poor is perhaps not-so-surprising, as Sara Greene’s research shows that about eighty-five percent of EITC recipients have experienced “trigger events.”<sup>104</sup> These are events such as unexpected car expenses or medical expenses that cause emergency spending by low-income people.<sup>105</sup> Prior to work-based welfare reforms, low-income families could turn to programs like AFDC to cope with these losses.<sup>106</sup> Now, however, even when individuals qualify for limited direct-spending welfare under programs like TANF, they still refuse because they feel that it is “embarrassing” to them and “meant admitting to themselves and others that they [had] failed.”<sup>107</sup>

If the poor are not seeking assistance from the government, how are they paying for such expenses? As the EITC refund only comes once a year and trigger events can happen at any time, low-income individuals are turning to credit cards.<sup>108</sup> Credit cards provide “stigma-free” access to emergency, quick cash.<sup>109</sup> The issue here, of course, is that we have effectively privatized the social safety net.

In the face of trigger events like sick-child daycare, divorce, or even job loss, often the only “stigma-free” option for low-income families is to charge the expense and wait for the EITC to pay it off.<sup>110</sup> What happens when a trigger event, such as a broken leg, leads to job loss, as many low-income workers are in professional fields in which their livelihood depends on physical labor? The worker makes no income, and as a result, loses eligibility for the EITC. She charges the expense to her credit card and accumulates interest without hope of ever paying it back. This is the face of desperate need. This is what society’s least advantaged look like.

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<sup>103</sup> *See id.* at 2.

<sup>104</sup> For a list of such trigger events, see Greene, *supra* note 46, at 544–45 (listing changes of employment, death of family members, and being the victim of a crime as common trigger events, among others).

<sup>105</sup> *See id.*

<sup>106</sup> *Id.* at 545.

<sup>107</sup> *See id.* at 546; *see also supra* notes 86–88 and accompanying text.

<sup>108</sup> Greene, *supra* note 46, at 547–51.

<sup>109</sup> *Id.* at 549 (“Using a credit card does not entail any stigmatization since respondents perceive that people of all income levels use credit cards.”).

<sup>110</sup> *Id.* at 544–45, 549, 551.

In the name of limited government, there are many political movements to privatize basic governmental services. While disagreement with privatization is beyond the scope of this Article, an important note should be made about the EITC's private form. Much of the proprivatization argument is grounded in getting government out of a certain function to save government funds.<sup>111</sup> Here, we have failed to eliminate the government's involvement in this service. The government is still spending billions of dollars on this program,<sup>112</sup> and the proceeds are simply flowing from the hands of recipients into the treasuries of Visa and MasterCard in the form of interest payments.<sup>113</sup> This is more than private welfare; it is poorly accomplished private welfare.

This private welfare timing issue was recently highlighted by a government error with respect to the implementation of the Patient Protection and Affordable Care Act ("Affordable Care Act"). In February 2015, 800,000 taxpayers received incorrect tax information regarding their medical insurance plans that were purchased on the federal insurance exchanges.<sup>114</sup> Because the Affordable Care Act requires that tax payers submit proof of medical insurance to avoid paying a penalty,<sup>115</sup> these taxpayers were told by the administration to "wait" to file their taxes,<sup>116</sup> nevermind the fact that many of the affected were EITC recipients that "count[ed] on those refunds to buy home heating oil, to pay for car repairs and to pay off credit card bills."<sup>117</sup> In a welfare system that effectively charges interest on low income Americans simply because they are poor, what is another month or so?

Francis and Rawls urge us to design social institutions with a special attention to the least advantaged in society.<sup>118</sup> By downplaying errors such as the one regarding the Affordable

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<sup>111</sup> *Id.* at 566–67.

<sup>112</sup> *See supra* notes 49–52 and accompanying text.

<sup>113</sup> *See* Greene, *supra* note 46, at 552.

<sup>114</sup> Robert Pear, *Tax Error in Health Act Has Impact on 800,000*, N.Y. TIMES, Feb. 21, 2015, at A10, available at [http://www.nytimes.com/2015/02/21/us/incorrect-tax-information-health-insurance.html?\\_r=1&gwh=3C717A431048DF791C46E7974FEF3FAC&gwt=pay&assetType=nyt\\_now](http://www.nytimes.com/2015/02/21/us/incorrect-tax-information-health-insurance.html?_r=1&gwh=3C717A431048DF791C46E7974FEF3FAC&gwt=pay&assetType=nyt_now).

<sup>115</sup> 26 U.S.C. § 5000A(b)(1) (2012).

<sup>116</sup> Pear, *supra* note 114.

<sup>117</sup> *Id.* (internal quotation mark omitted).

<sup>118</sup> *See supra* note 42 and accompanying text.

Care Act as “affect[ing] only ‘a very small fraction’ of taxpayers,” our social institutions are leaving behind some of our most vulnerable.<sup>119</sup> Those who receive EITC payments—part, though not all of society’s least advantaged<sup>120</sup>—are not as well off as they could be. By glorifying a work-based NIT and demonizing other forms of welfare, we have effectively barred access to the assistance that needy families deserve.

C. *We Are All American: The Importance and Misuse of Political Rhetoric*

If the EITC is to be considered the largest and most effective welfare program in the United States, how can it leave behind our society’s least advantaged? The reason is simple: The EITC is not a welfare program, and it is time that we stop pretending that it is. This program is exactly what the rhetoric surrounding its implementation suggested;<sup>121</sup> it is an incentive-to-work program. Perhaps as a policy goal in general, the EITC is not such a bad idea—as members of a society, we must be, in some sense, productive, and as individuals, one way to bring yourself out of poverty is to work your way out of it. As the United States’ big gun in the War on Poverty, however, the EITC is seriously lacking.

The EITC is not consistent with the need to protect our most vulnerable precisely because it operates in, and is derived from, a culture that values work and profit over human dignity.<sup>122</sup> This culture of exclusion has been capitalized into the mindset of the poor, which is the unacceptable result of rhetoric that demonizes the marginalized.

There is a sad implication from this reflection: The reason low-income workers feel “American” when they get their EITC refund,<sup>123</sup> as opposed to receiving payments from programs like TANF and SNAP, is because we have told them to. Catchphrases of the 1990s like “individual responsibility” and “economic

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<sup>119</sup> See Pear, *supra* note 114.

<sup>120</sup> See *supra* notes 96–99 and accompanying text.

<sup>121</sup> See *supra* notes 77–79 and accompanying text.

<sup>122</sup> Anne L. Alstott, *Why the EITC Doesn’t Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285, 287 (2010) (arguing that the EITC “does not, and cannot, ‘make work pay,’ because it operates in a legal context that creates deep disadvantage for low-wage workers and their children.”).

<sup>123</sup> See Greene, *supra* note 46, at 539.

self-sufficiency” have solidified a U.S. culture that devalues collective concern in favor of an economy in which the “excluded are still waiting.”<sup>124</sup> And the irony, of course, is that in terms of government spending, there is no actual difference: The EITC, TANF, and SNAP are all spending taxpayer money in the same manner.<sup>125</sup>

From a moral perspective, we are losing the War on Poverty because of the words we have chosen to wage it. We have chosen to describe self-reliance as “American” and instructed the poor along these lines. We have told them that earning money and paying taxes is what makes them citizens. Yet, in the American tradition, being a citizen used to mean so much more than that.

The words we choose to define ourselves with and the rhetoric we use to convince others are extremely important. The fact that our media spreads these words so widely is both beautiful and dangerous. We are benefited from the free flow of ideas and this is the very basis of our collective inspiration, but we also face the challenge of sorting through distracting language that can distort the public’s perception of reality.

For example, since 2002, the *Wall Street Journal* has run editorials describing the forty-seven percent of U.S. citizens that do not pay federal income taxes as “lucky duckies.”<sup>126</sup> In 2012, Mitt Romney renewed the conversation by stating that the forty-seven percent “believe that they are entitled to health care, to food, to housing, to you-name-it,” and that “[he’ll] never convince them they should take personal responsibility and care for their lives.”<sup>127</sup> Beyond an extreme oversimplification implying that this percentage of the population pays no income taxes at all, which, frankly, borders on academic dishonesty,<sup>128</sup> this

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<sup>124</sup> *EVANGELII GAUDIUM*, *supra* note 24, ¶ 54.

<sup>125</sup> *See supra* note 48 and accompanying text.

<sup>126</sup> *The Non-Taxpaying Class*, WALL ST. J. (Nov. 20 2002, 12:01 AM), <http://www.wsj.com/articles/SB1037748678534174748>.

<sup>127</sup> David Corn, *Secret Video: Romney Tells Millionaire Donors What He Really Thinks of Obama Voters*, MOTHER JONES (Sept. 17, 2012, 3:00 PM), <http://www.motherjones.com/politics/2012/09/secret-video-romney-private-fundraiser>.

<sup>128</sup> *Cf.* Linda Sugin, *Payroll Taxes, Mythology, and Fairness*, 51 HARV. J. ON LEGIS. 113, 113–15 (2014) (explaining that payroll taxes, which are levied equally on every dollar of wage income, are often ignored in the tax fairness debate); William G. Gale & Donald B. Marron, *Five Myths About the 47 Percent*, WASH. POST (Sept. 21, 2012), [http://www.washingtonpost.com/opinions/five-myths-about-the-47-percent/2012/09/21/57dc7bbe-0341-11e2-8102-ebee9c66e190\\_story.html](http://www.washingtonpost.com/opinions/five-myths-about-the-47-percent/2012/09/21/57dc7bbe-0341-11e2-8102-ebee9c66e190_story.html) (pointing out that much of the forty-seven percent pay payroll taxes, gasoline taxes, taxes on beer and

rhetoric says something deeply upsetting about our culture. We describe our poor as “lucky” because they do not pay income taxes—nevermind the fact that they may be struggling to feed themselves and their families. Where is the human dignity in this discussion? What is “American” about this suggestion?

This is not a new phenomenon, and it has been the subject of much study. Following the welfare reforms of the 1990s, Martin Gilens published a profound book entitled *Why Americans Hate Welfare: Race, Media, and the Politics of Anti-Poverty*.<sup>129</sup> In this book, Gilens argued that welfare had become a race-coded substitute word for “African American” due to media coverage that emphasized minority welfare recipients over white welfare recipients,<sup>130</sup> which was true despite the fact that most welfare receipts are white.<sup>131</sup> Americans of the time disliked the concept of the “welfare queen,” made popular by President Ronald Reagan,<sup>132</sup> who was “ignorant, fat, lazy, [and] black.”<sup>133</sup> She was also probably “crack-addicted” and “pregnant.”<sup>134</sup> This language sounds familiar because it is the same hate speech that has been used against African-Americans throughout American history. It is also the same vernacular now being used by EITC recipients to describe other welfare recipients.<sup>135</sup> We have strayed too far from

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cigarettes, and state and local taxes on sales, property, and income, all of which are less progressive than the federal income tax).

<sup>129</sup> MARTIN GILENS, *WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTI-POVERTY POLICY* (1999).

<sup>130</sup> *Id.* at 3–4.

<sup>131</sup> *Id.*

<sup>132</sup> See Josh Levin, *The Welfare Queen*, SLATE (Dec. 19, 2013, 12:41 AM), [http://www.slate.com/articles/news\\_and\\_politics/history/2013/12/linda\\_taylor\\_welfare\\_queen\\_ronald\\_reagan\\_made\\_her\\_a\\_notorious\\_american\\_villain.html](http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html). Although President Reagan is known for calling Linda Taylor, an African American welfare fraudster, a “welfare queen,” it was actually the *Chicago Tribune* that first used the name. *Id.* In that story, the *Tribune* truthfully detailed Taylor’s lavish collection of furs, jewelry, and Cadillacs. *Id.* Taylor was also under investigation for homicide, kidnapping, and human trafficking. *Id.* Indeed, “[w]elfare fraud was likely the least of the welfare queen’s offenses.” *Id.*

<sup>133</sup> Emma Coleman Jordan, *Black Women, Into the Light of History*, WASH. POST, Mar. 26, 1998, at B9.

<sup>134</sup> *Id.*

<sup>135</sup> Greene, *supra* note 46, at 542 (quoting EITC recipients describing other welfare recipients in that “they take their [welfare] check and spend it on drugs and addiction,” “I’m not lazy like that,” and “I just be like looking at these girls like, wow, you know all these kids . . . .” (internal quotation mark omitted)).

President Johnson's proclamation that "many Americans live on the outskirts of hope—some because of their poverty, and some because of their color, and all too many because of both."<sup>136</sup>

What about the rest of us? Is it really "American" to treat and describe the poor this way? Rawls and Francis call on us to promote the rights of the poor—and it is time that we do that. We must call the EITC what it really is: a work-incentive program. We must expand and change the perception of need-based welfare. We must recharacterize welfare from a program based in failure to a program about human dignity. We must care for the poor and the marginalized. It is time that we recapture the meaning of the word "American."

#### CONCLUSION

The purpose of this Article has been to criticize the United States' most popular anti-poverty program. It has done so by using the political and philosophical teachings of Pope Francis and John Rawls to show that the EITC, as an institution, fails to promote human dignity and self-respect. This Article does not offer meaningful and practical prescriptions for new welfare policies and programs. Yet, the framework presented and the criticisms levied against the EITC in this Article can inspire a new debate—especially as we enter the 2016 election cycle. Hopefully we are on the verge of the creation of a better and more effective program that promotes solidarity with the poor. The EITC has had some accomplishments in our War. We can do better.

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<sup>136</sup> LBJ's SOTU, *supra* note 1.