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THE MARKET CANNOT BE YOUR MOTHER

Meghan Boone*

THE FREE-MARKET FAMILY: HOW THE MARKET CRUSHED THE AMERICAN DREAM (AND HOW IT CAN BE RESTORED). By *Maxine Eichner*. New York: Oxford University Press. 2020. Pp. xxvii, 334. \$29.95.

INTRODUCTION

In *The Free-Market Family: How the Market Crushed the American Dream (and How It Can be Restored)*, Professor Maxine Eichner¹ argues that the American reliance on free-market policy fails to take into account that many of the things that human beings need to flourish simply cannot be distributed through markets (p. 196) and that some important things that are distributed through markets, like high-quality daycare, aren't affordable to many families.² As a result, she asserts, our singular pursuit of robust markets as the means to ensure that American families will succeed has resulted in an unqualified disaster.³ In meticulous detail, she walks the reader through the multitude of negative consequences for American families that have resulted from the government's embrace of the free market as the answer to almost every question.⁴ Although she focuses on families with young children (p. xxiv), the picture she paints of economic insecurity, a complete lack of work-life balance, failed educational policies, and families in turmoil will certainly resonate with many readers regardless of whether they have young children at home.

In many ways, this project is a continuation of Professor Eichner's work in her first book, *The Supportive State*, which argued for a reimagining of liberal theory to incorporate the realities of vulnerability and interdepend-

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1. Graham Kenan Distinguished Professor of Law, University of North Carolina School of Law.

2. P. 111 (“[C]hildcare fees for both an infant and a preschooler exceed housing costs for home owners with a mortgage in thirty-five states, as well as annual median rent payments in every state.”).

3. P. 195 (“It’s time that we lay to rest the misguided view that families can do it all by themselves if we just let the market work its supposed magic. Few ideas have caused as much harm as this one has.”).

4. Professor Eichner makes it clear that America takes a free-market approach to many things, not only family policy. Pp. 154–55.

ence.⁵ In this more recent project, however, she concretizes the theoretical framework laid out in *The Supportive State*, offering readers a comprehensive picture of how specific policy choices are reflective of the two basic approaches to family policy—pro-family and free-market—and how they create vastly different outcomes for families' wellbeing.⁶ Importantly, the tone and writing style of this book also make it considerably more accessible to a general audience that might lack the background necessary to fully grasp the sometimes dense political theory in a book like *The Supportive State*. This book allows readers from all backgrounds to engage with Professor Eichner's arguments about caretaking, the family, and the state—which are, in turn, a part of a larger conversation happening inside and outside of academia regarding how women and caretaking are either ignored or undervalued in law, economics, and feminism.⁷

The primary contributions of *The Free-Market Family* are twofold. First, it is a thorough and extremely detailed comparison of the American free-market system and its effects on families to the more family-friendly systems in place throughout most of Europe. Although not all of these arguments are novel, Professor Eichner marshals existing arguments and blends them with new ones to create one coherent narrative about the global failure of the American approach to ensuring families get the resources they need—to devastating effect. She is able to describe how a wide range of policies reflect an underlying commitment to either markets or families, and that U.S. policy inevitably preferences the former at the expense of the latter. Second, and perhaps more groundbreaking, are the connections that she draws between American free-market policy and the dysfunctional outcomes that result for

5. MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS* (2010). Her work in this area is related to Martha Fineman's work to reconceptualize the individual not as a completely autonomous actor but as one for which periods of dependency are a given. See MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* (2005). Professor Eichner, however, distinguishes her approach here and elsewhere from Fineman's in her articulation of the source of the state's responsibility to support caretaking. While Fineman frames state support as a debt that society owes caretakers, Eichner frames state support as a societal obligation to ensure that each citizen has the ability to flourish. See Maxine Eichner, *Dependency and the Liberal Polity: On Martha Fineman's The Autonomy Myth*, 93 CALIF. L. REV. 1285, 1287 (2005). Both Professor Eichner and Professor Fineman, in turn, are part of a much larger conversation within feminist theory about theories of justice that take into account the reality of dependency and caretaking. See generally JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1994); ROBIN WEST, *CARING FOR JUSTICE* (1997); JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (2001).

6. See chapters 2, 7, 10–11. In this way, she responds to criticism that *The Supportive State* lacked the concrete suggestions needed to actualize the framework she employs in that book. See, e.g., Nancy D. Polikoff, Book Review, 46 LAW & SOC'Y REV. 447, 448–49 (2012) (noting the lack of a concluding chapter that tackles implementation issues).

7. See, e.g., KATRINE MARÇAL, *WHO COOKED ADAM SMITH'S DINNER?: A STORY OF WOMEN AND ECONOMICS* (Saskia Vogel trans., Pegasus Books 2016) (2012) (charting how basing economic theory on the concept of the self-interested individual—almost invariably a male individual—disregards and undervalues the work of caretaking); see also p. xxiv.

families at both the top and the bottom of the income ladder.⁸ To be sure, much has been written about those struggling at the bottom—and the particular stresses that exist at the top—but *The Free-Market Family* paints a cohesive picture of how free-market policy has undermined the stability and vitality of every American family regardless of economic means. In this way, Professor Eichner illustrates that free-market family policy is problematic not only because of its failure to afford a good quality of life to those who cannot successfully compete in the open market but also because it creates negative outcomes even for those who are traditionally successful in a free-market system.

In addition to these significant contributions, however, there are places where the tension between Professor Eichner's animating theoretical framework and her practical, fact-intensive policy prescriptions can create uncertainty regarding the exact scope of her project. The final section of this Review will explore this theme and suggest ways that additional perspectives—including an increased sensitivity to issues of gender and race—can provide a more complete picture of potential problems and solutions. Professor Eichner's failure to apply an intersectional lens to the solutions she proposes is clearly not representative of a lack of care concerning these issues. She effectively employs such an analysis to the historical portions of her project, explaining how race and gender affected the development of free-market family policy throughout the twentieth century. My Review will simply suggest extending the intersectional approach Professor Eichner employs in the historical portions of the text by proposing how sensitivity to gender and race in family policy can further strengthen her proposals for change moving forward.

I. FREE-MARKET VERSUS PRO-FAMILY POLICY

Early in the book, Professor Eichner details two approaches to family policy—one she describes as “Free-Market” and one as “Pro-Family.”⁹ A free-market approach assumes that the role of government is to promote robust markets and that through these markets, families will be able to purchase what they need to thrive (p. 19). This approach assumes that everything a family requires can be met by the market—including the provision of quality childcare—and that workers can bargain for the wages, as well as the work hours and conditions, that will enable them to balance work and family obligations. While such an approach does contemplate some direct

8. See, e.g., p. xxiv.

9. Professor Eichner bases these models on Danish sociologist Gøsta Esping-Andersen's models of the “liberal” welfare state and the “social-democratic” welfare state. P. 230 n.1; see GØSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* (1990). In *The Three Worlds of Welfare Capitalism*, Esping-Andersen actually describes a third model, the conservative welfare state, that is distinguished by its emphasis on the role of the family and benefit programs that are often earnings related, administered through the employer, and geared towards maintaining existing social patterns. *Id.*

support of families, it does so only when families fail to provide even minimally for themselves in the marketplace—thus stigmatizing government assistance to families as a marker of the “failure” of that family (pp. 19–20).

In contrast, a “pro-family” approach insulates the family from market pressures and ensures that families have what they need to flourish through more direct regulation (p. 20). This approach recognizes the reality that not everything that humans need to flourish—including the nurturing care provided by parents—actually can be provided by the market (p. xix). Thus, government assistance to families in a pro-family framework isn’t stigmatized by an association with “failure” but rather reflects the belief that individuals and government are jointly responsible for ensuring that families have access to the basic necessities for a good life (p. 20). As Professor Eichner points out, such a system can take various forms. Some consistent features of the “pro-family” approach, however, are the regulation of the market for childcare to assure both quality and affordability, the availability of paid time off from work for parenting or other caregiving activities, and robust safety nets for families who cannot provide for their own basic needs (p. 20–21).

Of course, there is a considerable spectrum of approaches within these two poles, and no country perfectly employs “free-market” or “pro-family” policy. Nevertheless, Professor Eichner argues that the United States is considerably closer to taking a pure free-market approach than any comparable country—to our extreme detriment.¹⁰ One need only glance at the subtitle of the book—“How the Market Crushed the American Dream (and How it Can be Restored)” —to understand that Professor Eichner believes strongly that our free-market approach is the wrong one.¹¹ She does not, however, argue for the benefits of “pro-family” policy as a theoretical matter but instead provides compelling evidence of vastly improved outcomes in the countries that take such an approach. In contrasting the American free-market approach to “pro-family” policies in countries such as Denmark and Finland,

10. P. 21 (“[T]he United States comes closer than any other wealthy country to having a system of pure free-market family policy.”). She also employs a historical analysis to show how the current free-market family approach has not been a consistent feature of American life, and how over the last five decades America has been moving farther away from pro-family policies just as our peers in Europe have embraced them. P. 21 (“Our country has always fallen closer to the free-market end of the spectrum than many countries. In the past five decades, though, our nation has moved much further toward that end. Meanwhile, most wealthy European democracies cluster closer to the pro-family policy end of the spectrum.”).

11. Interestingly, Professor Eichner makes it clear throughout the text that the American reliance on the free market as the answer to ensuring family wellbeing is not motivated by a disdain for families. *See, e.g.*, pp. 19, 186, 191. Instead, it is simply based on an incorrect understanding of what will best help families. The problem, therefore, is not one of motivation but one of successfully operationalizing our existing values. P. 191 (“Ironically, with each further effort to undermine family supports, lawmakers have never retreated from touting the importance of families.”).

she demonstrates the social desirability of providing support to families.¹² This includes reductions in poverty generally and child poverty specifically,¹³ increases in academic achievement (pp. 6, 146–47), improvements in mental health and happiness (pp. 6–8, 147–52), more stable family units (pp. 69–81), and more economic mobility (pp. 8, 154–55).

The improved outcomes that occur in countries with a pro-family approach are no accident, Eichner argues, but result from the deliberate choice to ensure that families are not solely responsible for obtaining everything they need to thrive. By helping families get what they need through pro-family policy, government recognizes the extreme difficulty in balancing the requirements of paid work with the extensive caretaking needs of young children.¹⁴ By relieving parents of some of the responsibility for paid work in the early years of parenthood (through paid leave) and some of the responsibility of providing effective caretaking (through the provision of quality childcare), the government shoulders a portion of the responsibility that would otherwise fall solely on young families (pp. 97–113). The pro-family approach therefore relieves some of the tension young parents experience between market labor and caretaking that they would otherwise be left to navigate on their own. Conversely, under a free-market family-policy approach, there is no such shared sense of responsibility. And as a result, Eichner argues, it is almost certain that a large portion of families will simply not be able to successfully blend paid work and the caretaking requirements of children.¹⁵

But Professor Eichner also illustrates how it isn't necessary to go abroad to see how family supportive policies might work here in the United States. She also compares the paltry support offered to families with small children to the relatively robust policies that support older Americans—namely Social Security and Medicare (p. 41). By comparing the difference in policies de-

12. *E.g.*, chapter 2. The book also points out places where pro-family policy has more traditionally positive economic outcomes, but Eichner's focus is on how the economy should really be a tool to promote the social outcomes we want—not that economic benefit should be an end unto itself.

13. P. 202 (“A \$4,000 child benefit per year by itself would cut US child poverty by almost one-half, bringing our poverty rates down to roughly the norm among wealthy democracies.”); p. 208 (“The cost of raising all 5.7 million poor families with children and the 105,000 poor children not living with their families above the poverty line in 2017 was about \$64 billion per year in 2017 dollars. That is just one-third of 1 percent of the nation's GDP.” (footnote omitted)).

14. P. 102 (“[F]ree-market family policy's expectation [is] that parents will privately provide what their kids need without help from the government. Because of that, not only do parents have to orchestrate children's caretaking, they also need to generate the necessary cash to support their children. These two expectations—providing both caretaking *and* income—work at cross purposes in most families with young kids, since children in their early years have such high caretaking needs.”).

15. P. 93 (“[E]very family is trying furiously to put together a support system from scratch, patching together pieces that, with enough effort, manage to just about keep the family afloat.”).

signed to support older Americans with those meant to help young families, she also prevents what might be a knee-jerk reaction against the sort of policies she proposes as only politically palatable in small, Scandinavian countries.¹⁶ Indeed, she uses the fact that Social Security and Medicare enjoy broad political support in the United States as proof that such policies are possible and might even be popular with the American electorate. Her argument is therefore not only for government support of families generally but also for a shift in approach to make government support available at the beginning of life in some of the same ways we already do at the end of life (pp. 40–41).

As another example of how U.S. policies suffer from a failure to invest at the right time, Professor Eichner discusses how even investments that are made on behalf of America's children are not made in the timeframe that could maximize benefit. While America spends more per child in K–12 education than its peers, this spending isn't as effective in producing positive outcomes because many children don't have access to the resources they need to flourish in the important, early years (pp. 146–47). Therefore, many children show up to their comparatively well-funded kindergarten programs¹⁷ already at a disadvantage. And as Professor Eichner argues, “when kids don't get what they need in their first years, it's tough to impossible for them to make up for it later” (pp. 146–47). In sum, Professor Eichner concludes that it isn't only a failure to spend money—although she certainly argues for increased spending on children—but also a failure to spend in the manner and timeframe that makes the most sense. And these failures undermine Americans' ability to achieve the positive outcomes enjoyed by our peers in other wealthy countries.¹⁸ In her words, “[t]he real reason the United States trails other countries so badly on overall well-being isn't because of how many total dollars we spend. It's because of who we spend our money on and when we spend it” (p. 218).

She also delves into other reasons why the policies the United States *does* employ in an attempt to provide support for families are often ill-suited to the job. For instance, the main difference between the tax breaks that are favored in U.S. policy versus the social-safety-net policies in place in much of

16. It is worth noting, however, that Americans are increasingly likely to respond *positively* to ideas that, not that long ago, would have been rejected as “socialist.” See Geoff Nunnberg, ‘Socialism’ Isn’t the Scare Word It Once Was, NPR (Apr. 24, 2019, 2:04 PM), <https://www.npr.org/2019/04/24/716728643/socialism-isn-t-the-scare-word-it-once-was> [<https://perma.cc/RY6X-45D2>]. This perhaps strengthens Professor Eichner's argument that her policy proposals would garner popular support in the current political climate.

17. Additional funding, of course, would still likely improve outcomes, especially for low-income children. See Bruce Baker & Mark Weber, *Beyond the Echo-Chamber: State Investments and Student Outcomes in U.S. Elementary and Secondary Education*, 42 J. EDUC. FIN. 1, 24–25 (2016).

18. P. 218 (“The real difference between us and other countries isn't the total amount we spend, it's that Americans spend most of this money directly, out-of-pocket, on daycare programs, doctors, and so on.”).

Europe is, Eichner argues, that the latter work better. First, tax breaks are tied to a single tax-refund payment one time a year. Families with young children who are struggling financially, however, can't access these benefits throughout the year.¹⁹ Second, these tax breaks are tied to paid work in the labor force and are therefore inaccessible to the un- or underemployed.²⁰ While those who argue against social-welfare programs on the basis that such programs encourage dependency on the government, Eichner correctly points out that reliance on tax-expenditure programs is not functionally different than reliance on other types of government programs.²¹

In the end, Eichner argues that pro-family policy is desirable not only because it results in the practical outcomes that we should prefer but also because it is more aligned with our actual moral preferences. In her view, the goal of economic policy should be "enabling Americans to live good lives consistent with our values," instead of "enabling free markets regardless of the consequences" (p. xviii). Pro-family policy, she argues, permits us to do just that.

II. FREE-MARKET FAMILIES UP AND DOWN THE SOCIOECONOMIC LADDER

The harried pressures of middle- and upper-class families are often considered unrelated to the economic stresses of Americans of lower socioeconomic class. The pressures endemic to the economic elite have recently become the focus of a slate of books and articles that examine the question of why economic prosperity doesn't translate into reductions in stress or mental illness for most individuals—or for their children.²² The shrinking middle class is likewise the subject of both academic and political interest.²³ And one need not look far for evidence of the disastrous picture for socioeconomically disadvantaged American families, many of whom are struggling to survive

19. P. 134 ("Kids need consistent income provision.").

20. P. 24. Particularly, these tax policies are inaccessible to those performing unpaid caretaking and other domestic labor inside the family itself. This feature of the tax system disadvantages women, who still perform the majority of such labor. See Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571 (1996) (discussing how the tax code assumes a heterosexual, married couple and suggesting ways that women's domestic labor could be recognized).

21. P. 134 ("Does a family's reliance on tax expenditure programs make them any less dependent on government than their reliance on welfare programs? Not in any way that should make a difference.").

22. See, e.g., MADELINE LEVINE, *THE PRICE OF PRIVILEGE: HOW PARENTAL PRESSURE AND MATERIAL ADVANTAGE ARE CREATING A GENERATION OF DISCONNECTED AND UNHAPPY KIDS* (2006); Suniya S. Luthar, *The Problem with Rich Kids*, PSYCH. TODAY (Nov. 5, 2013), <https://www.psychologytoday.com/us/articles/201311/the-problem-rich-kids> [<https://perma.cc/6Y3E-KC3K>].

23. See, e.g., BARBARA EHRENREICH, *FEAR OF FALLING: THE INNER LIFE OF THE MIDDLE CLASS* (1989); ALISSA QUART, *SQUEEZED: WHY OUR FAMILIES CAN'T AFFORD AMERICA* (2018).

on almost no cash income.²⁴ These explorations all employ a mostly class-based analysis, however, by focusing on a particular slice of the American population. One of Professor Eichner's primary contributions in *The Free-Market Family* is weaving together a cohesive narrative about how the failure to enact effective pro-family policy in the United States is the underlying culprit for the negative outcomes that plague *all* families.²⁵ Despite herculean efforts, individuals at the bottom of the income ladder cannot manage to provide for the basic material needs of their families. Further, as a result of their near constant effort to do so, they also cannot meet their families' care-taking needs.²⁶ While the families at the top of the income ladder can provide the material resources essential to a thriving family, the extreme pressure to compete in an economic race that is devastating for the losers means that even those in an economically advantageous position feel chronic stress and work long hours.²⁷ As Professor Eichner persuasively argues, while the results of the failure to enact family-friendly policies might look different for different families, they all stem from the same basic unwillingness to place the needs of families—and not markets—at the center of government policy.²⁸ Thus, there are no real “winners” in a competition that ensures that everyone is constantly scrambling in the face of uncertainty.²⁹

Some of the difficulties that poor and working-class families face as a result of free-market family policy are more obvious, such as the acute financial distress that economically marginalized families experience due to the lack of a meaningful social safety net³⁰ or the sagging minimum wage that is no longer sufficient to support a family.³¹ Some of the negative impacts of

24. See, e.g., KATHRYN J. EDIN & H. LUKE SHAEFER, \$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA (2015); DAVID K. SHIPLER, THE WORKING POOR: INVISIBLE IN AMERICA (2004).

25. P. xvii (“The struggles that low-, middle-, and high-income American families are having today look very different, but they are all manifestations of the same problem: the increasingly large toll that market forces have been taking on families during the past several decades.”).

26. P. 128 (“[T]he low wages paid at the bottom of our economy mean that, no matter how hard parents work, most can provide *neither* the material support *nor* the caretaking conditions that enable children to flourish.”).

27. Pp. 47–49. Here, she points to the shocking statistic that top-earning U.S. couples actually work *double* the number of hours that the lowest-earning couples do. P. 47.

28. P. xvii (“[P]olicymakers’ continued elevation of markets over families . . . has deprived families of the conditions they need to flourish.”).

29. P. 49 (“Those who play the game by the current rules, winners and losers alike, are, to put it plainly, getting played.”).

30. P. 25 (discussing how U.S. safety-net policies have failed to protect the most vulnerable); p. 207 (advocating for more robust social safety-net policies).

31. P. 173 (discussing how the federal minimum wage, originally passed as New Deal legislation, was passed so that workers could earn wages that “could support their families”); p. 205 (arguing that raising the minimum wage would not only allow parents at the bottom of the income ladder to better support their children materially but also result in better parenting,

free-market family policy are less obvious, however, and Professor Eichner reveals some of these more hidden connections between the lack of pro-family policy and the ills that plague poor and working class Americans.³² For instance, she discusses at length how economic insecurity among poor and working-class people results in reduced rates of stable, long-term relationships (pp. 70–86). The failure to establish such relationships tragically results in even more adverse outcomes for these populations (pp. 80–86). These arguments are not only important in their own right but also a useful rejoinder to the arguments that it is actually access to government benefits that *causes* “fragile families.”³³

For those at the top of the economic ladder, Professor Eichner details how pro-family policy would enable working professionals to stop and enjoy their lives free from the threat of looming financial disaster. Economic insecurity is the “stick” that continues to drive workers to commit to ever more extreme work hours, even workers who are currently economically stable.³⁴ While free-market policy keeps directing workers back into the market and encouraging them to seek material wealth through paid labor, Professor Eichner points out the undeniable fact that more work hours cannot produce . . . fewer work hours.³⁵ Despite the desire for work-life balance and having the market power to negotiate for fewer hours (at least theoretically), those at the top of the economic spectrum can’t escape the pervasive sense of economic insecurity that creates intense pressure to work more.³⁶ Professor

and citing a study that suggests a one-dollar increase in the minimum wage would result in an almost 10 percent decrease in child abuse).

32. See, e.g., p. 69 (arguing that economic instability in turn creates the family instability that is partly to blame for the opioid epidemic).

33. See CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980* (1984). While noting that “[s]ome of [her] closest family law colleagues” will argue that single-parent families are simply a normal variation in family form that should be viewed neutrally by the state, Eichner nevertheless contends that the decline in marriage and marital families should be cause for alarm. See pp. 81–82. Her evidence in this portion of the text, however, seems only to underscore her larger point—that economic instability is terrible for everyone’s wellbeing and happiness—without persuasively arguing that the economic instability that is particularly associated with single parenthood is more (or less) the problem. In any event, according to Professor Eichner’s own theory of the case, decreasing economic anxiety and investing in a robust social safety net will naturally result in higher marriage rates and more stable marriages. Whether this is a desirable goal of family-friendly policies or simply a neutral outcome of a policy designed to improve human flourishing in other ways thus seems ancillary to the main argument.

34. P. 137 (“[O]ur free-market family policy deliberately uses poverty and insecurity as a stick to drive parents into the workplace and to force them to work for long hours.”).

35. Further, she problematizes the argument that high-wage workers are in a position to effectively negotiate for better working hours in the face of general economic inequality and insecurity. See pp. 55–59.

36. P. 47 (“All told, US couples in the top fifth of the earnings scale work more than double the hours of couples in the bottom fifth.”); see also p. 55–56 (describing the intense pressure to work long hours even in some of the highest paying professions, like investment banking).

Eichner undermines the notion that this pressure for long work hours is the product of some uniquely American work ethic, in part by revealing it as a relatively recent phenomenon.³⁷ Further, laws that ostensibly protect workers, like the Fair Labor Standards Act, don't apply in large part to professional workers (p. 52). Thus, even our protective workplace legislation creates incentives to require *more*, not less, work from high-salary workers.³⁸ A pro-family policy orientation, however, could ensure that even those in time-intensive, high-stakes professional roles are able—and even required—to take time off to spend with family or in leisure activities.³⁹ As Professor Eichner states, “[u]nlike free-market policy, pro-family policy would not tell workers just to get a job; it would help citizens get a life” (p. 199).

There are, of course, some differences in how particular features of pro-family policy would affect families from different economic circumstances. While limits on working hours and requiring employers to provide sick and parental leave would ease work-life balance issues across the economic spectrum, some of the policies contemplated by Eichner—like beefing up social-safety-net programs (p. 198)—would more immediately benefit poor and working-class families. Professor Eicher makes clear that the individuals across the economic spectrum who are most poised to benefit from a switch to a pro-family policy, however, are young children.⁴⁰ Indeed, three entire chapters at the heart of the book detail how free-market family policy is not providing young children with the “four caretaking circumstances” that are essential: (1) “caretaking by a parent for up to the child’s first year”; (2) “after the first year, caretaking either at home or in a high-quality daycare program”; (3) “attendance at a high-quality prekindergarten”; and (4) “high-quality time with a nurturing parent” throughout early childhood (p. 97). In many ways, the book is a clarion call to enact family-friendly policy for the benefit of children without regard to the economic circumstances into which they are born.⁴¹

Whether a reader is interested in easing the untenable economic conditions of the working class, supporting the middle class, or addressing the lack of work-life balance for professionals, *The Free-Market Family* argues that pro-family policy offers a solution for each of these goals. And although she doesn't specifically reference it in this book, Professor Eichner's worldview clearly reflects her earlier argument that liberal thought has failed to recog-

37. P. 50; *see also* chapters 8, 9 (discussing historical development of the modern American economic approach).

38. P. 52 (“Because the FLSA makes it expensive for employers to have hourly workers but not professionals work overtime, employers have an incentive to push their extra work onto professionals.”).

39. P. 209 (advocating for maximum-hour provisions similar to those in some European countries).

40. P. 95 (“[B]y far the biggest casualties of free-market family policy are our children.”).

41. *See* p. 119 (arguing that the failure to provide children with the basics they need “undermines the promise of the American dream”).

nize “inevitable dependence” as inherent in the human condition.⁴² By re-centering this dependence through a focus on the institution historically charged with caretaking—the family—Professor Eichner advances at once a traditional and a revolutionary proposal.

III. THE LIMITS OF THE FREE-MARKET VS. PRO-FAMILY FRAMEWORK

The value of Professor Eichner’s contribution in this book is undeniable. She is able to translate what was once a purely academic discussion about the state’s approach to economic and family regulation into a fact-based and engaging text that will speak to the experiences of a broad swath of the American public. I certainly found my own struggles and experiences as a young mother reflected in the text. There are, however, two areas where the framework the book contemplates could be (1) clarified to reflect what is inside and outside of its scope and (2) extended to more robustly address a potential omission.

This is a book about *both* the effect that specific government policies have on American families with young children *and* the fundamental (and theoretical) underpinnings of economic thought that undergird these policies. For the vast majority of the book, these dual foci build on, and mutually reinforce, each other. At other points, Professor Eichner’s more sweeping arguments on issues unrelated to traditional family policy can feel slightly out of step with her otherwise consistent focus on the particular, daily struggles of families with young children. As a reader, if you fail to keep her larger, theoretical framework in mind, the book’s pronouncements on such a wide range of social ills—from the high rates of divorce (pp. 15–18), to the opioid epidemic,⁴³ to teen suicide in Palo Alto⁴⁴—can feel a tad jarring. Non-academic readers (in whom this book will rightfully find an audience), in particular, will likely be unaccustomed to thinking about “family policy” in terms broad enough to include issues such as income inequality, the weakening of union protections, the failure of the minimum wage to keep pace with the cost of living, or the reversal of progressive tax structures—all of which are discussed in varying degrees of detail in the text. Professor Eichner argues, correctly, that all of these things are reflective of an economic approach that assumes individual independence and competition—assumptions out of step with the realities of the interdependence and vulnerability inherent to families (pp. 191–92). But this argument also raises the question of why some topics not traditionally included under the umbrella of family policy, like income inequality, are treated more thoroughly than are other topics that likely also ultimately affect the wellbeing of families—like the weakening

42. See EICHNER, *supra* note 5.

43. Pp. 69–70, 83 (arguing that free-market family policy results in economic inequality and that inequality creates family instability, which contributes to the opioid epidemic).

44. P. 151 (discussing the high rate of youth suicides in well-to-do Palo Alto, California).

of union protections.⁴⁵ As I am sure Professor Eichner would agree, even a childless single person laboring for minimum wage suffers from the failure of wages at the bottom end of the spectrum to keep pace with those at the top. And the head of a family household who isn't provided meaningful protection for union activities may experience harms that are at least similar in type to those that result from policies that cause income inequality. This is perhaps the inherent drawback of a project that uses the family as the lens through which to look broadly at American approaches to policy: while it is of course impossible to meaningfully examine *everything*, as a result of necessary line drawing there are invariably questions about why some topics are the subject of more sustained focus than others.

Perhaps further complicating the tension inherent in any attempt to both adequately describe a broad theory of economic policy and do the nitty-gritty work of proving how the specific policies that reflect that theory result in better outcomes for families is the basic problem of defining "family" for purposes of "pro-family" policy. In the introduction, Professor Eichner advocates for an expansive definition (p. xxiii). And at times, the policies she describes—like paid leave for caretaking responsibility—reflect this expansiveness through the inclusion of caretaking leave for loved ones who are neither biologically nor legally related (p. 211). But while this theme is developed extensively in Professor Eichner's earlier work,⁴⁶ *The Free-Market Family* does not consistently engage with the question of "who counts" for purposes of operationalizing the policies she proposes. Even recognizing the broad definition of family contained in the introduction, therefore, does not necessarily help the reader understand what such a broad conception of family would actually look like if it was employed across the range of policy proposals she discusses. Because of the book's consistent focus on more "traditional" families—namely parents with children (p. xxiv)—the exact scope of what her chosen proposals would look like for more nontraditional relationships and family structures remains unclear.

Critiquing the ambitious scope of the project is fraught because it is also one of the book's biggest strengths. There are many moments throughout the book where Professor Eichner successfully weaves together the theoretical with the practical, resulting in conclusions so persuasive that they feel almost inevitable. One of the things that makes the book compelling is the feeling that no sane person could rationally disagree with its major conclusions. But perhaps unavoidably in the context of such a large project, there

45. The weakening of union protections is discussed several times in the book, although never more than in passing reference. See pp. 51, 191, 206. Professor Eichner correctly points out that children increase income volatility, but strong unions might do as much to help to address this reality as direct regulation of wages or income inequality. P. 36.

46. See, e.g., EICHNER, *supra* note 5, at 53–55.

are also moments where her conclusions are less persuasive in part because the exact contours of her project feel uncertain.⁴⁷

Despite the broad scope of the project, there is one discussion missing from *The Free-Market Family* that would greatly improve both its central argument and its normative proposals. This omission is a robust and intersectional description of how gender and race continue to shape the state's role in supporting families. This is not to say that Professor Eichner fails to tackle these issues at all. The book includes a rich discussion of how these factors shaped historical debate about family policy.⁴⁸ This discussion, however, can sometimes fall into the background in the book's examination of our government's approaches to family policy in the current moment. Moreover, there is room to more critically engage with how issues of race and gender might complicate the desirability of even some "pro-family" policies.

Gender is both everywhere and nowhere in Professor Eichner's text. While it is mentioned periodically throughout, it is never a focal point. It is painstakingly clear, however, that while everyone feels the pinch of policies that don't support families, it is by and large women who feel it most acutely. Of course, the examples and stories used throughout the book to illustrate the difficulties facing families provide an unremarked-upon testament to this fact. The stories are primarily from the perspective of women, and more specifically mothers, many of whom are struggling to perform the dual roles of breadwinner and primary caretaker.⁴⁹ Despite their obvious efforts, they each struggle in ways that are both unique and universal as a result of un-supportive state policy. And while pro-family policy would certainly alleviate many of their burdens, such policies would not invariably result in a more egalitarian splitting of domestic responsibilities along gender lines. Indeed, and as Professor Eichner recognizes at points, if such policies are not carefully crafted, they can exacerbate existing inequalities based on gender.⁵⁰ The fact that gender isn't highlighted more is a departure for Professor Eichner,

47. For instance, at the beginning of the book, Professor Eichner posits that Americans have lost their belief in the American Dream—that each child will have the ability to live up to his or her full potential regardless of the circumstances of their birth—and that this loss “is responsible for Americans’ deep slide downward on so many measures, as well as their pessimistic view of our country.” P. 3. And while she is certainly correct that our failure to keep alive the promise of the American Dream for new generations is one source of Americans’ sense of pessimism, there are likely many other factors, too—including the negative externalities of globalization, increasing political polarization, global pandemics, and the looming and unanswered threat of the climate crisis. One might respond that such things are also, in a sense, the result of our failure to construct policies that help ensure human flourishing. Such a rejoinder has merit but also serves to further illustrate the difficulty in maintaining a balance between scope and specificity in a project such as this one.

48. See, e.g., p. 33 (discussing current and historical racial wealth gaps); p. 174 (discussing racism in New Deal policies); pp. 177–78 (discussing the racialization of welfare).

49. See, e.g., pp. xii–xvi.

50. See, e.g., p. 201 (discussing how parental leave policies, if not carefully crafted, can result in women taking all or mostly all of the available leave, thus reinforcing their traditional caretaking role).

whose previous work in *The Supportive State* was incredibly attentive to the ways that state support for caretaking should be careful to avoid reinforcing gender inequality. This distinction might be reflective of a conscious choice *not* to highlight gender in an effort to avoid the (mis)labelling of family policy as only a “woman’s issue” and thus preventing the book from getting the wider audience it so richly deserves.⁵¹

Regardless, one particular piece of context missing from Professor Eichner’s descriptions of pro-family countries is the sometimes nuanced reasons they have embraced these policies—not all of which are necessarily motivated by a sense that such an approach would enable their citizens to actualize the promise of “the American Dream”—or whatever the European equivalent. Instead, in many countries plummeting birth rates have led to the creation of family-friendly policies as necessary incentives to increase childbearing.⁵² Thus, these reproductive incentives are animated not only by an innate sense of pro-natalism or even a belief in equality but out of fear of the economic disaster that can result from an inverted population graph.⁵³ As Americans fail to meet replacement-level fertility and as the general fertility rate in the United States continues to decline,⁵⁴ state actors in the United States might awaken to the desirability of “pro-family” policies not for the reasons that Eichner identifies—regardless of her undoubtedly correct arguments for them—but simply because such policies might be effective in encouraging Americans to have more babies.

Similarly, while the book carefully catalogues the historical racial inequalities that resulted in increased rates of poverty for families of color,⁵⁵ it does not squarely address how continuing systemic racism might make some of her policy proposals potentially problematic. For instance, she advocates for “home visitation” for new parents, where a trained professional—paid for by the state—comes into a private home to educate parents on the caretaking of their new baby (pp. 203–04). Professor Eichner suggests these home visits might be especially beneficial for children of low-income parents, whose

51. Of course, just as a scholar of family policy such as Professor Eichner might have a tendency to see everything through the lens of the family, it is distinctly possible that this reviewer, a feminist theorist, might have an overdeveloped tendency to see everything as related to gender. *Mea culpa*.

52. See generally Robert Smith, *When Governments Pay People to Have Babies*, NPR (Nov. 3, 2011, 5:10 AM), <https://www.npr.org/sections/money/2011/11/03/141943008/when-governments-pay-people-to-have-babies> [<https://perma.cc/H75T-6BB9>].

53. See *Germany Passes Japan to Have World’s Lowest Birth Rate - Study*, BBC (May 29, 2015), <https://www.bbc.com/news/world-europe-32929962> [<https://perma.cc/7L2S-DQ22>] (discussing the damaging economic consequences of a low birth rate); *Japan Targets Boosting Birth Rate to Increase Growth*, REUTERS (Nov. 12, 2015, 5:42 AM), <http://www.reuters.com/article/us-japan-economy-population/japan-targets-boosting-birth-rate-to-increase-growth-idUSKCN0T113A20151112> [<https://perma.cc/2ESR-LM5A>].

54. Jacqueline Howard, *US Fertility Rate Falls to ‘All-Time Low,’ CDC Says*, CNN (July 24, 2019, 4:34 PM), <https://www.cnn.com/2019/07/24/health/fertility-rate-births-2018-cdc-study/index.html> [<https://perma.cc/A6NZ-ZAL2>].

55. See *supra* note 48.

children lag behind their high-income peers in metrics such as language development (pp. 203–04). And while the vision of a benevolent state actor checking in on a new family has a certain appeal, it fails to meaningfully engage with the reality that for many families—*especially* for low-income people and people of color—such state involvement is often anything but benevolent.⁵⁶ Indeed, for individuals at the margins, such state intervention is often defined by draconian and punitive policies.⁵⁷ Of course, there is no doubt that the version of the supportive state the Professor Eichner envisions and hopes for would be free from such race- and class-based discrimination. But the fact remains that our society is not free from such discriminatory animus, and state intervention *does* look different based on the type of family being regulated.⁵⁸ As a result, it is paramount that before policies that increase state involvement in families can responsibly be promoted, significant engagement with how such surveillance has been—and still is—used to unfairly burden communities of color, and how such issues can be overcome, is obviously critical. Hopefully, other scholars will take up the framework the book offers and use it to further explore the gender and race issues that are implicated.

CONCLUSION

The Free-Market Family is at once devastating and hopeful. It holds up a mirror to the United States' failure to protect its most vulnerable members and to meet its obligation to ensure that each baby born in America should have the chance to realize their full potential. It insists we do better. And yet, it offers practical solutions for improvement and new ways of thinking about seemingly intractable problems. In doing so, it reminds us that the solutions we seek already exist, if only we had the vision and political will to make them a reality. Professor Eichner exhorts society to “pay attention to the costs of having our lives so thoroughly dominated by the economic treadmill we’re all running on” (p. 67). And by paying attention, we will come to see that the path we are on does not lead to the life we want. And that a different path is available. And with that, I think I will go play with my children for a little while.

56. See generally Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317 (2014).

57. *Id.* at 322.

58. An argument on the opposite side of the ledger might be that, by making such programs available for all families, the potentially stigmatizing result would fade through the normalization of state support. As Professor Eichner herself points out, however, the cultural lens through which we view a practice can result in things that *should* be considered the same—like tax breaks and welfare payments—actually being viewed very differently as a result of the population that utilizes them. P. 134.

