

Kristopher Turner:

Hello and welcome back to Wisconsin Law and Action, a podcast where we discuss new and forthcoming scholarship with the University of Wisconsin Law School Professors. I'm your host, Kris Turner, and my guest today is Assistant Professor of law, Nyamagaga Gondwe. Professor Gondwe teaches tax law here at Wisconsin and her research focuses on tax policy, critical race theory and feminist theory.

Today we'll discuss Professor Gondwe's newest article, the Tax Invisible Labor Problem, Care Work, Kinship and Income Security Programs in the IRC, forthcoming in the Boston University Law Review. The article examines the shift from need based to income tested security programs and how this change undermines women's economic autonomy. Thank you for joining the podcast today, Professor Gondwe.

Gaga Gondwe:

Thanks for having me.

Kristopher Turner:

Absolutely. I've been looking forward to speaking with you for a long time. Let's start a discussion today by learning a bit more about your background. What is your professional experience and what led you to researching the change in Americans financial assistant programs?

Gaga Gondwe:

Coming out of law school, I clerked for a judge for a year, and then I did tax practice at Skadden Arps in Washington DC and after that I was a visiting assistant professor of tax law at New York University, which is where I got my first bit of experience teaching tax and also I had the opportunity to research tax in a very tax rich environment. I suppose, as far as my background for why I ended up getting interested in tax, I think when I was in law school, my first tax professor Ann Austin, really helped me to start to think about how tax is embedded in so many of the social issues that we have today and how many problem that we think of as very important problems of our time are being addressed through the tax system. And I think that made me interested in looking at how well the tax system is doing at dealing with those social problems. That curiosity is what sparked my interest in tax law as a field and has sustained me to get to this point.

Kristopher Turner:

It was clear to me that it was very passionate for you to get this out there and I really enjoyed reading the article. I'll probably say that a couple times, but I'll start saying it right now.

Gaga Gondwe:

I appreciate that.

Kristopher Turner:

Sure. Let's start the discussion of your paper with a few definitions. What is unpaid care labor and who normally performs it?

Gaga Gondwe:

Sure. I'll start by saying that there really is not a clear consensus among social science researchers about the definition of unpaid care labor. There is a broad variety that includes non-market work, any non-

market work like gardening in your house or fixing your own roof that could be counted as non unpaid care work under some definitions and some other definitions conceptualize unpaid care work as something like social reproduction, which is just meeting the needs of individuals and families. For the purpose of this piece, I'm adopting the definition that is discussed by Nancy Folbre in Measuring Care, an article that came out in 2006. Professor Folbre says, "Most people visualize unpaid care work as work done primarily by women, the care for family members, cooking, cleaning, and shopping, as well as care of children, the sick and the elderly." Within this contextualization of unpaid care work, I think Professor Folbre captures the kinds of activities that are at the center of the unpaid care work that I'm concerned about, which is basically the work that is done to keep the household going, the underground work that's done to keep the household going.

And importantly, Professor Folbre's point is that these activities are essential to the national economy, but because they're not accounted for as market labor, in the same way as market labor, they are not included in the gross domestic product. And that is literally a way of undervaluing the work that is done in that sphere.

Kristopher Turner:

Towards the beginning of your article, you mentioned the amount of money that is lost.

Gaga Gondwe:

Yes. It's something like 1.19 trillion or something like that.

Kristopher Turner:

Yeah, the trillion with a T is what just truly astounded me, but then when I started thinking about it while reading your paper, that makes absolute sense. Just the amount of sheer labor that it takes to keep households running.

Gaga Gondwe:

Yes, exactly. It's interesting to me because that even that figure, the one trillion figure, represents the value of that labor at minimum wage. That is the value of that labor at the lowest, at \$7 and 25 cents, which might not exactly be what people would be willing to pay for it in the market. Probably even in that figure, that's probably like an undervaluation of how much unpaid care labor contributes to the national economy.

Kristopher Turner:

The trillion is a conservative estimate? Wow. Considering the American tax system, how does the lack of inclusion of unpaid care labor adversely affect women?

Gaga Gondwe:

The lack of inclusion of unpaid care labor adversely affects women because as you know, many writers in sociology have pointed out, women are the demographic. Women in heterosexual relationships are the demographic that performs the majority of this labor. And in the last few decades as women have entered the marketplace, there hasn't been a similar shift in the division of household labor. Women have entered the marketplace, but at the same time kept up the amount of household labor that they were responsible for or that they were assumed to do when they were primarily homemakers as a class.

And what's interesting about that is that the lack of accounting for unpaid care labor, it underestimates, it deflates, it artificially deflates the amount of productivity that women are doing, the amount of labor that women are producing in a way that makes it seem like if you are working a 40 hour work week in an office and you then go home and you work another 40 hour week in your home, you are only given credit for that first 40 hours even though you've functionally performed 80 hours of work that has contributed to sustaining yourself, your family, and likely the community around you.

Kristopher Turner:

If you're working 80 hours per week as a new associate, people are saying, "Wow, that's a lot of work." But if you're working a 40 hour work week and then add additional labor at home 40 more hours, people say, "That's not it," which is very, very stark and it shows up in the tax, as you noted in your paper.

Gaga Gondwe:

Right.

Kristopher Turner:

Another aspect of tax law that you consider is marital status, or at least what is considered married under the law. How does the hetero patriarchal construct of labor and marriage affect income security?

Gaga Gondwe:

The hetero patriarchal construct of labor and marriage affects income security in the sense that the concept of marriage, the heterosexual concept of marriage between a man and the woman has a built in assumption about how resources are distributed between those people. In the development of law surrounding the taxation of individuals, when the tax code adopts the idea that the married couple should be taxed jointly, one of the assumptions that is being supported is that when income comes into the house or when somebody performs labor within the house, all of that activity all gets wound up and in the end there's distributed equally within the household. And this unquestioned norm of shared resources is one that I find very concerning because it can obscure very important private internal power dynamics within a marital household, especially with respect to money.

If we are thinking about families today and families in the past in which the person who does the majority of the market labor is the man in the heterosexual marriage and the person who does the majority of the home production labor is the woman, then we have this problem where the woman is very much beholden to whether or not her husband decides to share money with her. We can't just assume that every family has an egalitarian perspective on money. And the subsuming of women into this thing that we call marriage makes it difficult to assess their economic health as individuals because they are treated as though they are earning the same money that their partner is earning.

When I'm characterizing or problematizing the concept of the hetero construct of labor in marriage, I'm trying to ask the question, how does tax law, especially, reinforce oppressive power dynamics? How does it reinforce oppressive power dynamics even when those power dynamics are not oppressive by intent? It doesn't have to be that your husband is intentionally abusing you, but if you only get a hundred dollars a week in cash to go grocery shopping and you don't see anything else that comes from the labor, then you are not given the same autonomy as somebody who has equal access to the resources as the person who works out in the market.

Kristopher Turner:

The tax law seems like something that's so inert, but by default it is like you said, obscuring and oppressing the labor that is being done and the women, since they're being subsumed again, as you said, it's just not as clear the work that they're doing and it's not being shown in the tax law for income purposes.

Gaga Gondwe:

Right.

Kristopher Turner:

Can you explain some of the economic aspects of black kinship networks or BKN's?

Gaga Gondwe:

The conversation in the paper about black kinship networks stems from the conversation about marriage in the sense that because we support this assumption that the family is composed of the married heterosexual man and his wife and their marital children, that conception is limiting in how we understand how resources are shared within families. The concept of black kinship networks enters the story as the counter narrative to the isolated nuclear family story that dominates the law, the tax law especially. And with black kinship networks, what you have is family groups that distribute labor and resources according to relative need within the family group. And there's sociologic literature on this, starting with Carol Stack who first wrote about black kinship networks in her book, *All Our Kin*, in the 1970s, explains that black families will rely on each other for both cash assistance to do things like pay rent or fix a car in order to have transportation.

And they will do things that are more service oriented. They will watch each other's children, they will pick each other up for work in order to drive to work or to go to the hospital. They will care for the ill, they will care for the elderly. And many of these activities are not activities that they are going to be compensated for because you are doing it within the family context. And if it was within a married couple, that's accounted for because your husband is bringing in money and your economic unit is covered by that arrangement. But if it's happening outside of the arrangement of the marital couple, then you are not only not receiving money, and nor am I arguing that black kinship network should suddenly start trying to exchange money for services. But these activities that are taking place in order to help members of the community survive are non remunerative and they are invisible to the tax system, which is the crux of the issue in the paper.

Like the wife in the hetero patriarchal marriage, the family member in the black kinship network who watches her sister's children or who goes and cares for a sick aunt is not receiving an income and the labor that they're performing is valuable, is of value. If that person did not do it, the person would have to go out into the market and pay for it. But because it's invisible to the tax system, that person doesn't have access to many of the tax-based social income programs that exist. I can give a quick example of what a black kinship network is or looks like, if that would be helpful.

Kristopher Turner:

Sure, absolutely. Please do.

Gaga Gondwe:

Okay. A black kinship network is, more specifically speaking if you were to try and picture a black kinship network in pop culture, there are actually a few TV shows that reflect this dynamic.

One TV show that I like to talk about is The Fresh Prince of Bel Air where Will Smith is growing up in West Philadelphia with his mom. And as he gets older, his mom becomes concerned about him getting into the wrong crowds. And she sends him to live with her sister across the country who then takes him into her household and raises him in the same way that she's raising her own children. He simply becomes part of that family unit despite his only tie to them being as a nephew. That idea of family interdependence and ability to rely on each other encompasses black kinship networks. And you see it in many others black television sitcoms. You see it in Good Times with the neighbor Wilma. You see it in The Bernie Mac Show with Bernie Mac and his wife taking in his sister's kids when she is unable to care for them. It's almost unspoken agreement that exists and allows for families to be able to rely on each other when they do not have another alternative.

Kristopher Turner:

When the tax code was written and rewritten and codified, do you think that there was any malevolent intent behind it or was just an oversight that wasn't considered?

Gaga Gondwe:

No, I don't think there was malevolence, but I do think that the code was written by people who had a certain perspective. It was written by middle class white men whose perspective of the world was that if you perform labor and receive a wage, then you should contribute your wage back to the government in order for them to provide services. And what was missing from that conversation and that analysis is the question of how does the economic environment we exist in either create or reinforce power dynamics that are harmful to people we consider marginalized. Women in gender context and then people of color in the racial and ethnic context. I just don't think that the people who drafted the code were thinking about families like black families in rural Mississippi in 1913, even though those families would be impacted by the law in one way or another.

Kristopher Turner:

In your paper you give a review of economic solvency and tax visibility using three caregivers and three beneficiaries. And it was especially helpful to me to understand the dynamics at play here. How do these relationships obscure labor under the current tax policies?

Gaga Gondwe:

The concept of economic solvency comes out of the question of does a person have money to take out into the world to purchase things and engage in activities and buy services and goods? If you are engaging in unpaid care labor, by definition, you are not receiving money to do things out in the world, and you are going to have to find resources somewhere else. If you're not economically solvent, and then on the other hand you are tax invisible, which is the labor that you produce is not visible to the tax system because it is non-market labor, then you have this dual problem. You don't have money that you can spend, but you also have no way to access public resources. In the paper, I set this up as a problem because the only difference between the two women who are doing the care labor, who are doing it within the family context and the woman who's doing it out in the market is that the woman who's doing it in the market can exchange it for money that she can then go and spend for whatever she needs.

And this dynamic, the idea that somebody cannot receive money for the work that they're doing, it amplifies vulnerability, it creates this sense that you are going to be reliant on the person, your partner, for example, if they're the one who brings money home or you're going to have to work. And we see this, I think especially among women who are potentially single mothers who have to work, but then somebody has to watch their kids. Then that's when we see the black kinship network dynamic taking hold. I have to go work because I can't get the EITC unless I have a pay stub, but if I go to work, who's going to watch my child? Maybe I drop my child off at my mom's house and my mom's watching her while I'm at work, but my mom's not getting paid so she can't use the 40 hours a week that she's watching my child to herself get access to the EITC or social security income that shows that this person's labor over her lifetime demonstrates that she should get this much back in retirement.

I think that obscuring the non-market care labor by simply leaving it out of the record makes it so that women who are often already in a vulnerable position economically are worse into certain economic choices. I have to get a job, I have to get a job in order to have access to the earning of tax credit or whatever the social safety net instrument is, but if I get a job, then that means that I have to find someone to watch my children and childcare is expensive or difficult to find, so now I have to find a way to do it at less than cost and what that and what's that going to look like? I'm going to ask a family member to do it. And it kicks the bucket down the road without resolving any problems. I think that's how the economic solvency and tax and visibility issue work together. They amplify, I think the vulnerability, the economic vulnerability that many women experience.

Kristopher Turner:

It seems like a terrible cascading multiplier. Someone that's not working has to ask someone else, like a single mother that you illustrated, has to ask their family member to watch the kids. Now this is cascading outward to affect other people. On top of that, again, as you mentioned, this is multiplying the hardship on marginalized groups who are the ones that seem to be more tax and visible. Is that right?

Gaga Gondwe:

That's right. And I think what's important about policies that are tax centric like the earned income tax credit, is that they are designed for people to go out and get market labor, for people to go out and engage in market labor. The point of the earned income tax credit is that it rewards work. What kind of work? It rewards market work because the person who is sitting at home watching her own children is working. She is just not working out in the market producing an income by doing labor for somebody else. That is the assumption that is baked into this system is that when the word work is used, when the word labor is used, it is principally outside labor market labor, labor that can be accounted for with a pay stub or some other marker of a wage and not the again, unpaid unaccounted for care labor.

Kristopher Turner:

You discussed the role of intersectionality that plays a role in wealth disparity as well. How do black women in particular become affected by these tax policies?

Gaga Gondwe:

Black women are affected by these tax policies in a number of ways. The first way that black women are implicated in the system is that they're pointed to as the reason we need tax based income tested welfare. The very concept, the trope of the welfare queen, the black woman who is sitting at home collecting government checks and not contributing to society, that image was a powerful image that

caused American people to believe that people who are "Not working," are drained on society and should not be able to receive government benefits. The irony of that is that there has never, in American history, been a point at which black women have not worked, not any point in American history. Under the system of slavery, black women worked and were eventually treated as chattel as the people who bore the responsibility of bringing new enslaved people into the world.

When the system of slavery ended, white families in the South especially were accustomed to having black families, black people, enter their home and be in service to them. And even post emancipation, black women were subject to rules that they had to be in the labor market in order to serve white families. That's the irony of the welfare mother trope, is that there has never been a period in America's entire history where black women have not left the house to work. And there has been a significant era period of American history where the work that the black women did was in fact to go into the homes of white families and do the care labor often being underpaid for that labor. That's one way that intersectionality comes in playing in here. Then the next way is that when black women are working in the labor market, their labor is going to be undervalued in two ways.

It's going to be undervalued because of racism in the market and it's going to be undervalued because of sexism in the market. Black women earn a fraction of what white men earn for the same amount of work. That is an issue. But then they also earn less than both black men and white women. You see that there is not just a racial dynamic, but there's also a gender dynamic, which means that black women doing the same amount of labor for the same amount of time will enter their period of retirement at a deficit, at a significant deficit that they cannot recover except by continuing to work into their retirement years.

There's no way to make up the difference of the money that you've lost in a system that undervalues your work simply because of your race and gender. Intersectionality puts black women in this position where under the law, if you want to have access to the earned income tax credit, you have to work, I will go out into the market and I will get a job. But now I have this job and the income I'm earning is a fraction of the person who's sitting next to me and we're doing the same thing.

My labor is not being valued at the same level as the white man next to me, and I don't have a remedy for that. I will never recover that money that's lost, it's just gone. But that is the only way you can have access to something like the earned income tax credit, is to go into that work environment and to collect your check that is only a fraction of the person sitting next to you. Intersectionality, especially at the level of the black woman, when you look at a policy like the earned income tax credit from that perspective, it illuminates how the system would have to change in many significant ways in order to make a program like the earned income tax credit, not reinforce oppressive systems against marginalized people.

Kristopher Turner:

Just the idea that someone is going to work and they're making less money than the person next to them, but they still have to pay the same amount of money for childcare or home care or whatever it might be, is another way that black women are affected so adversely here, it's astounding me and eye opening. I appreciate the paper that's point this out to me. It's all very new to me.

Gaga Gondwe:

It's something that I've been puzzling over for a long time. I studied African American studies in college and I think that was when I started to think about disparities on a systemic level and try and think of what are the systems that are upholding these disparities? And I know that there are many actually very

prominent critical tax scholars who are looking specifically at how disparities are created within the tax system. And I'm just hoping to sort add to that literature by saying, "Look at this policy that is on paper." Fine. It's not deliberately harmful. It doesn't outright hurt anybody. But when you start to peel back the layers and you start to ask questions about who is going to be impacted by this policy in adverse ways, that's when you start to see the reproduction of social oppression with within the legal system.

Kristopher Turner:

In part two of your paper, you discuss how care work is ghettoized as having low values since it's often characterized as a woman's natural duty as you mentioned previously. Are there any steps that can be taken to better recognize this important work?

Gaga Gondwe:

Unpaid care work should simply be included in GDP as a way to bring it into the light, especially for the purposes of making policies that are responsive to the need of people who perform it.

Kristopher Turner:

Related to that, what changes, if any, do you foresee occurring in American welfare policies to address these gaps and what could be done?

Gaga Gondwe:

Given the current political climate, I don't foresee significant changes to welfare policy of the nature that would relieve the vulnerability of the people who engage in unpaid care work and don't have access to their own capital and can't get access to things like the earned income tax credit. I think that when I do this work, it's aspirational in the sense that it is important that people who have not conceived of these issues or ask these questions as they are formulating policies that they think are going to be beneficial to the American people, have questions like this in the back of their mind as they are drafting. In my ideal world, we would take social safety net programs out of the tax code together. They would not be premised on whether or not you are engaged in any kind of labor. They would be based on other metrics. Maybe need versus cost of living or some other way of measuring the health of the person who is receiving the assistance rather than whether or not they are contributing what we have established is the correct amount of labor to society.

Kristopher Turner:

What do you most hope readers take away from your article?

Gaga Gondwe:

I hope that readers take away the idea that power matters. That when policies are written, even if they're written in what feels like the least harmful or most neutral way, if what they do is reinforce power dynamics that exist in the society that the policies are being written for, then they might simply amplify the impact of those power dynamics. Just to be a little bit more concrete, if a policy is written and it's the perfectly neutral language, it's not like the law is full of racial slurs or gendered slurs or anything like that. It's just a law that says, "If X, then Y."

If that law is written in such a way that it reinforces existing gendered power dynamics in society so that it reinforces work that is traditionally done by men and deemphasize the work that is traditionally done by women, then it will amplify the dynamic in which men are more able to capitalize on their labor and

use that as a bargaining tool in relationships and women's labor is put on the back burner. Or as we see in tax law as well in a married couple, if two people are working and one of them is making just enough to put the couple into the next tax bracket, and usually the second person is the lower end earning person, which often ends up being the woman in the heterosexual marriage, if one of those two people had to quit their job, then it ends up being the woman.

And that's what I mean, thinking about how seemingly neutral tax policies can reinforce power dynamics that are harmful to people of different races, genders, and ethnicities.

Kristopher Turner:

And finally, where can researchers find more of your work?

Gaga Gondwe:

I'm on Twitter @NyamagagaRachel and UW Law Library follows me, if you need to find me, you can probably find me @UWLawLibrary. Is that your handle?

Kristopher Turner:

That's absolutely right. We'll retweet you and all that good stuff, of course.

Gaga Gondwe:

Its just the beginning of my career, I'm going to keep writing. That is something I'm excited about moving forward and I'm really happy that I am starting on this foot and I hope that I can grow from here, because I know I have a lot of growing to do.

Kristopher Turner:

I'm excited to see where we go next. I look forward to it. We'll link to Professor Gondwe scholarship and to her Twitter page on our podcast page. Thank you very much for joining the podcast today, Professor Gondwe, for an eye-opening and very powerful discussion of your forthcoming paper.

Gaga Gondwe:

Thank you so much for having me. I had a great time talking about it and I'm not usually great about talking about myself or things that I do, so this has been a great experience.

Kristopher Turner:

It's wonderful to hear that. Thank you again. I really do appreciate it. We've been discussing Professor Gondwe's newest article, The Tax Invisible Labor Problem Care Work, Kinship and Income Security Programs in the IRC, forthcoming in the Boston University Law Review. Again, you can find the full text of this article on SSRN, linked on our podcast page. Thank you all for listening. For a complete listening of Professor Gondwe's work, visit the University of Wisconsin Law School repository. Find these links in all of our previous podcasts at wilawinaction.law.wisc.edu. Stay up to date on Wisconsin Law School Scholarship by subscribing to this podcast via the Apple iTunes store, or follow, either @WisconsinLaw or @UWLawProf on Twitter for updates on faculty, news and publications. See you next time and happy researching.