

## Our most significant instrument to deliver social and economic policy

**Author :** Kim Brooks

**Date :** January 17, 2020

Ariel Jurow Kleiman, Amy K Matsui and Estelle Mitchell, [The Faulty Foundations of the Tax Code: Gender and Racial Bias in Our Tax Laws](#) (National Women's Law Centre, November 2019).

Many legal scholars who care about social and economic equality spend time focusing on constitutional, anti-discrimination, criminal, or private law subjects; yet, a country's tax code is the government's most substantial tool for advancing social and economic policy. Its ramifications for equality are substantial.

Many tax scholars have uncovered the gender and race bias embedded in tax law. (Just to illustrate, see the work of terrific people like [Dorothy Brown](#) or [Kathleen Lahey](#).) Yet, there has been surprisingly little change to codes around the world to bring them into conformity with the recommendations of those scholars. Perhaps Kleiman, Matsui and Mitchell's report, [The Faulty Foundations of the Tax Code: Gender and Racial Bias in Our Tax Laws](#), will help.

Kleiman is an assistant professor at the University of San Diego School of Law; she's joined by two co-authors, each of whom is affiliated with the National Women's Law Centre. The report is a model for how legal academics might work collaboratively with those in the policy space to advance evidence-based research with a view to promoting progressive change.

The report is divided into seven parts. The first four address design features of the US tax Code that disadvantage women and people of color. While the Code may appear to be neutral in its application, it creates a range of incentives and benefits that drive from underlying behavior and social structures that reflect women and people of colour's experience of systemic discrimination.

Readers from outside the US will have a sense of the idiosyncratic US-decision to allow joint filing by spouses. The report highlights two of the issues that arise from that practice – the reduced tax liability that results from marriage and the disincentive for women to enter the paid workforce. Most countries resolved those gender- and race-discrimination issues decades ago (if they ever had them).

Additional discriminatory provisions that are relied up to calculate taxpayers' income are also explained. For example, unpaid work in the home is not accommodated in the design of tax codes with the result that an incentive is created for women to provide substantial informal services to their families. All workers incur costs in order to work: the code generally allows the kinds of costs incurred by men (for example, by allowing the deductibility of luxury meals, travel, and accommodation), while denying or under-reflecting the kinds of costs incurred by women (for example, child care costs). Some kinds of employment-based compensation are taxed – for example, awards for workplace discrimination, which are more likely to be received by women and people of color, while other forms of compensation are exempt from tax — for example, worker's compensation, which is more likely to be received by men.

The report also looks at the implications of the taxation of savings and wealth. The benefit of reduced tax rates for savings accrue primarily to high-income earners (more likely to be white men) as do the benefits of a range of housing preferences. Inability to access housing preferences has particularly pernicious effects for people of color; an observation also [made by others](#).

The gender and race-based biases in tax codes around the world have been studied extensively. What makes this

report worth reading is the accessibility of the authors' approach.

Additionally, in Part V, the report makes a relatively unique contribution in its discussion of the gender and race-implications of tax administration. For example, the US relies extensively on the Earned Income Tax Credit as a means of raising the income of those in working households above the poverty line. The EITC plays a valuable (if inadequate) function in facilitating income security. However, the IRS devotes substantial tax administration and audit resources to policing EITC claims; that means, low-income people, women, and people of color are more likely subject to the attention of the IRS. This contrasts with the quite troubling decline of enforcement attention paid to high-net worth individuals and multinational companies.

Finally, in Part VI, the report turns to the question of process: how might policy-makers better inform themselves about and understand the implications of gender and race bias in the Code. The authors focus on the need for better disaggregated data and more robust reporting requirements.

If you have never turned your mind to the way our tax code intersects with equality aspirations, then this report is a must read. And if tax equality is an ongoing preoccupation, this report offers a few gems on the more neglected topic of differential tax enforcement.

Cite as: Kim Brooks, *Our most significant instrument to deliver social and economic policy*, JOTWELL (January 17, 2020) (reviewing Ariel Jurow Kleiman, Amy K Matsui and Estelle Mitchell, *The Faulty Foundations of the Tax Code: Gender and Racial Bias in Our Tax Laws* (National Women's Law Centre, November 2019)), <https://equality.jotwell.com/our-most-significant-instrument-to-deliver-social-and-economic-policy/>.