

Jumping on the Mommy Track: A Tax for Working Mothers

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INTRODUCTION

Recently, a professor of mine, who graduated from Harvard Law School ten years ago, told me she was the only one of her female friends from law school still working full time. Everyone else was raising children. As a female law student, the conversation depressed me. After all, law school is expensive and difficult. Apparently ten years later, this high-priced legal career is less valuable to most women than staying home with their children.

The phenomenon is not limited to Harvard law school's class of 1996. In high skill job sectors nationwide, women are leaving the workplace in favor of child rearing.¹ For the first time in history, women constitute a majority of secondary degree earners², and yet the current data show an increasing number of high skill women abandoning their full-time professional lives.³ At the same time, high skill women are having fewer children than their low skill counterparts.⁴ This balance is untenable. Investments of scarce economic and social resources are going to high skill women's human capital. This investment in women is appropriate, because these women are best qualified to utilize those resources.⁵ Compared to low skill women, who have fewer community investments in their human capital, high skill are the less likely to participate in the paid work force and are less likely to have children to whom they can pass on their personal resources.

Though it is hardly the only reason for this imbalance, the tax system discriminates

¹ See generally, Lisa Belkin, *The Opt-Out Revolution*, N. Y. TIMES, October 26, 2003; Claudia Goldin, *The Quiet Revolution that Transformed Women's Employment, Education, and Family* (January 2006) (unpublished 2006 Ely Lecture).

² Belkin, *supra* note 1.

³ *Id.*; Goldin, *supra* note 1.

⁴ See generally National Center for Health Statistics, *Birth and Fertility Rates by Education Attainment, United States, 1994*, http://www.cdc.gov/nchs/products/pubs/pubd/mvsr/supp/46-45/mv45_10s.htm.

⁵ At least to the extent admission to educational institutions is indicative of future productive potential.

against working mothers⁶ and accelerates the departure of high skill mothers from professional life. In addition, recent analysis of the National Youth Longitudinal Study of 1979 (NYLS79) indicates that motherhood triggers an arbitrary wage penalty. So the labor decisions of mothers are distorted by inequitable tax policy and discriminatory wage disparities. This Article argues that in order to neutralize the economic impact of parenthood between men and women, and to encourage high skill women to fully distribute their human capital in the paid work force and as parents, working mothers should be subject to a separate regressive rate schedule.

First, the Article provides an overview of women's current labor participation, fertility rates, education attainment, and tax treatment. Next the Article introduces and critiques the evidence of wage discrimination in "The Mommy Track Divides: The Impact of Childbearing on Wages of Women of Differing Skill Levels" by Ellwood, Wilde and Batchelder (2004) (hereinafter, TMTD). Specifically, the Article explores the tax implications of TMTD's findings. Finally, in response to this new data, the Article proposes taxing working mothers regressively and according to family size to minimize mothers' paid labor distortions.

I. THE PROBLEM

A. DISTRIBUTION: THOSE WITH THE MOST ARE DOING THE LEAST

Women's labor and education patterns changed dramatically in the last century.⁷ Many factors contributed to the change, including domestic labor demands, wartime labor needs, and the women's liberation movement. Traditionally women's labor had higher income elasticity

⁶ See generally, EDWARD J. MCCAFFERY, TAXING WOMEN: HOW THE MARRIAGE PENALTY AFFECTS YOUR TAXES (1999).

⁷ See generally, Goldin, *supra* note 1.

and lower substitution elasticity.⁸ In the past, financial need, rather than personal preferences, exerted the greatest influence on women's labor/leisure decisions. As it became more acceptable for women to continue to work absent economic necessity, the income effect decreased and the substitution effect increased.⁹ Today women seek personal satisfaction in addition to financial compensation from their careers.¹⁰ Although women's labor supply transformed significantly in the 20th Century, it is still substantially more elastic than men's. So in the last two decades, while women's labor elasticity halved from .85 to .4, men's remained fairly constant at about .05.¹¹

As significant as changes in women's market labor participation are, their educational attainment transformed even more dramatically. In the 1950's women went to college as much to meet a suitable husband as to prepare for a future career.¹² Less than ten percent of professional degree graduate students were women.¹³ Today fifty-eight percent of all higher education degrees go to women.¹⁴ In 2003 women earned sixty percent of associate's degrees, fifty-eight percent of bachelor's degrees, fifty-nine percent of master's degrees, and forty-seven percent of doctor's degrees. This educational attainment reflects women's burgeoning career aspirations.¹⁵ Increasingly, women seek an education for their future professional achievement.

⁸ See CLAUDIA GOLDIN, *UNDERSTANDING THE GENDER GAP: AN ECONOMIC HISTORY OF AMERICAN WOMEN* (1990).

⁹ Goldin, *supra* note 1, at 9.

¹⁰ See Gillian Lester, *In Defense of Paid Family Leave*, 28 Harv. J. of L. and Gender 1, at 29 (2005).

¹¹ See Francine Blau and Lawrence Kahn, *Changes in the Labor Supply Behavior of Married Women: 1980-2000*, (unpublished National Bureau of Economic Research, Working Paper No. 11230).

¹² Goldin, *supra* note 1, at 13.

¹³ Goldin, *supra* note 1, Figure 5: Fraction Female among First Year Students in Professional Programs (looking at M.D., J.D., D.D.S., and M.B.A. programs).

¹⁴ See National Center of Educational Studies, *2002-2003 Statistics*, <http://nces.ed.gov/fastfacts/display.asp?id=72>.

¹⁵ *Trends in Education Equality of Girls and Women* (2004)

<http://nces.ed.gov/pubs2005/equity/Section7.asp> ("Females currently have greater success than males in attaining postsecondary education. Females have higher aspirations than males while in high school, they are more likely to enroll in college immediately after graduating from high school, and they persist and

Not surprisingly then, women's majors "shifted from those that were 'consumption' related to those that [are] 'investment' related,"¹⁶ i.e. those that lead to future careers.

Despite these increases in education achievement and labor participation, high skill women do not experience equal professional advancement. Women account for just sixteen percent of law firm partners and corporate officers; only eight Fortune 500 companies have female C.E.O.'s; of 535 members of Congress only seventy-six are women.¹⁷ As Lisa Belkin wrote in a much-publicized article for the New York Times, women "start strong out of the gate. And then, suddenly, they stop."¹⁸ As many of the responses to Belkin's piece noted, the phenomenon she describes is largely limited to high income or high skill women. These are the population for whom the decreased income effect and increased substitution effect are most relevant. The population with the highest human capital investment is falling farther short of their professional abilities than their low skill counterparts. The Belkin article implied that these high skill women were leaving the work force to focus on raising children, but this same group of women is also the least likely to raise multiple children.

Among the participants in the NYLS79¹⁹, the average college graduate had 1.6 children by age forty, compared to high school dropouts who had 2.6 children.²⁰ If high skill women did have a child, they were much more likely to wait until the end of their child bearing years to conceive for the first time. Of the college graduates who had children by age forty, roughly a

complete degrees at higher rates than males. More than half of all bachelor's and master's degrees are awarded to females.").

¹⁶ Goldin, *supra* note 1, at 19.

¹⁷ Belkin, *supra* note 1.

¹⁸ *Id.*

¹⁹ The methodology of the NYLS79 will be discussed in the summary of TMTD in the second section of the Article.

²⁰ TMTD at 37, table 1.

third waited until they were over thirty to have their first child.²¹ This, compared to only five percent of high school graduates who waited until their thirties to start a family.²² In addition, high skill women were significantly more likely than low skill women to be childless at age forty (twenty-seven percent of college graduates compared to sixteen percent of high school graduates).²³ The National Center for Health Statistics²⁴ analysis of all birth certificates in 1994 also observed the growing tendency of highly educated women to delay or forgo motherhood.²⁵

A woman's ability to control the timing of motherhood and limit the size of her family is invaluable in ensuring her equal opportunity and choice in making life and career decisions. At the same time, there is a problem for society as a whole when the resource-rich are not having children. There is ample evidence that the children of high skill, high income parents generally go to better schools, receive better health care, better nutrition, etc. These privileged youngsters score higher on standardized tests and can afford to seek higher education in the future. All this opportunity and advantage sets them up to pursue high skill, high-income careers themselves, presumably passing the benefits they were born into on to another generation. That flow of resources is stymied, because among highly skilled women there is a falling birthrate. Society as a whole rewarded these women for their hard work and talent by subsidizing their education (either through public schools, tax credits for tuition payments²⁶ or loan interest deductions²⁷).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ A division of the Center for Disease Control.

²⁵ See National Center for Health Statistics, *supra* note 4. (Data highlights included the findings that “[b]irth rates differ considerably by educational attainment. In 1994 women with 0-8 years of education had the highest birth rates overall, while those who started but did not complete college had the lowest. Among women aged 25 years and over, unmarried women with less education had a much higher birth rate than unmarried women who attended school longer. For college-educated women, low first birth rates for women in their twenties and high first birth rates for women in their thirties point to the continuing trend of delayed childbearing.”).

²⁶ See, e.g., Hope and Lifetime Learning Credits, 26 U.S.C. §25A.

That investment is underutilized if the recipients are neither continuing to contribute to the market economy nor passing on the benefits of the investment to their children. The tax code should be encouraging these high skill women to be as productive as possible, either as professionals, as mothers, or both. Instead it does the opposite. Rather than mitigate social distortions, which cloud a mother's paid/domestic labor decisions, the tax code tends to amplify them.

B. THE TAX PROBLEM

The gender bias of the tax code is well documented, beginning with Grace Blumberg's groundbreaking work in *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*.²⁸ Nothing in the code is overtly gendered. However, because women are almost always a household's secondary earner, and because social norms favor women in domestic roles, the tax code contains practical biases. The current U.S. tax system discriminates against working wives in three principle ways.²⁹ First, the non-taxation of imputed income combined with societal norms that place heavier domestic labor burdens on women encourages women to stay out of the paid workforce. To demonstrate, compare two couples, one whose housework is performed by hired professionals, and another where housework is performed by the couple themselves. The first couple is spending after-tax income on something the second couple gets for free. Also compare two domestic workers, one is a stay-at-home parent who takes care of their own children, cleans their own house, and cooks their own meals, the second is paid to do the same tasks for someone else. The first worker is not taxed on the completion of their work (which has a value to the family equal to the second worker's compensation), while the second worker is. These examples were gender neutral, but the real

²⁷ See 26 U.S.C. §163.

²⁸ 21 Buffalo L. Rev. 49 (1972).

²⁹ See generally, MCCAFFERY, *supra* note 6.

life examples are not: domestic workers, paid and unpaid, are predominantly female.³⁰

The economics of many households are such that the non-taxation of imputed income makes it less expensive for a mother to stay home and take care of a family and house, rather than to go to work and earn a salary.³¹ As Edward McCaffery has explained, this tax treatment made sense a century ago, when all but the most desperate or most ambitious women did stay home. Today, working mothers are the norm, not the exception, and the distortion to their labor/leisure decision is unacceptable.³² The challenge in neutralizing the distortion is that imputed income is very difficult to evaluate, and its taxation would be politically unpopular.³³ Recently researchers at “Salary.com” calculated a market valuation for mothers’ domestic labor.³⁴ The results were striking: a stay-at-home mother might be earning as much as \$134,120 for her family; the market valuation for working mothers’ domestic labor came to \$85,876 in addition to her professional salary. Convincing a majority of Congress to tax a stay-at-home mom on a six-figure imputed income is unlikely. The “Salary.com” calculations were based on ten factors, including how much time moms spent driving, cooking, and cleaning. Even if Congress could find the political capital to impose a tax on imputed income, it is unlikely they

³⁰ See David H Demo & Alan C. Acock, *Family Diversity, and the Division of Domestic Labor: How Much Have Things Really Changed?*, 42 Fam. Rel. 323, 326 (1993); see generally, ARLIE RUSSELL HOCHSCHILD, *THE SECOND SHIFT* (1990).

³¹ See, e.g., MCCAFFERY, *supra* note 6, at 11 (explaining the situation of “women on the margin”).

³² See Blumberg, *supra* note 28; MCCAFFERY, *supra* note 6; and Nancy Stoudt, *Taxing Housework*, 84 Geo. L. J. 1571 (1996) for more in depth analyses of the problem with non-taxation of imputed income.

³³ *Id.*, at 1618 (proposing a method of imputed-income taxation focusing on “the productive aspects of household activities.” *Id.* at 1620). In the simplest scenario, evaluation of imputed income would have to take children, marital status, market participation, household income, and professionally performed household activities into account. Stoudt argues the benefits of quantifying household labor is worth this complication as well as the other costs associated with such a reform. She analogizes her proposal to the EITC. However, the complication of the EITC is very different from the complication of a mandatory imputed-income tax. First, the EITC is a voluntary program. If a tax payer does not wish to make the necessary calculations, they do not need to do so. Moreover, the EITC provides a substantial benefit to those who choose to participate. In contrast, a tax on impute income would require all households to endure the added complications in order to calculate an additional tax (not a new benefit).

³⁴ <http://mom.salary.com>.

could execute an accurate one given the difficulty and complication of calculating and confirming the imputed income.

In conjunction with the non-taxation of imputed income, the psychological “stacking” of income encouraged by joint filing exacerbates the gender bias. As with the treatment of imputed income, joint filing was introduced into the tax code sixty years ago when only a minority of married women worked full-time.³⁵ Like the non-taxation of imputed income, joint filing provides traditional families with a tax bonus. Instead of taxing each earner at their marginal rate, joint filing combines household income and then taxes each half equally. For a two earner couple with equal incomes, there is neither a benefit nor a penalty associated with filing jointly. For a couple with only one earner there is a benefit. For example, take Jack Highskill, who earns \$100,000 and is married to Jane, who has no income. Their household income will be split and taxed as if they were each earning only \$50,000. So Jack’s income is taxed as if he were earning half as much and Jane were earning an equal amount. In a system of progressive tax rates that translates to two times the amount of income taxed in the lower brackets.

The psychological stacking of income refers to the tendency to treat Jane’s income as a supplement to Jack’s. If Jane decides to go to work, her income is taxed starting at the marginal rate applicable to \$50,000 and above. So if Jane’s job pays \$75,000, the couple’s household income is \$175,000, taxed as if each spouse made \$87,500. Whatever additional tax is collected on the added \$75,000 will be thought of as coming entirely from Jane’s salary, when in fact it is a product of the spouse’s combined income. When people conceptualize their tax burden, the primary earner’s income is the base of the calculation, with the secondary earner’s income stacked on top. So the view is that the first \$100,000 earned by Jack gets the benefit of the

³⁵ See MCCAFFERY, *supra* note 6, at 45-57 for a brief history of the adoption of joint filing in response to the income splitting allowed under Seaborne in community property states.

income splitting, but Jane's earnings are taxed entirely at the higher marginal rates. This characterization reflects gendered thinking, which automatically describes a husband's income as primary, because the wife's labor/leisure decision is more elastic. One could just as easily think of a wife's earnings as primary and as enjoying the marriage bonus, while the husband's is stacked above, but since women are socially disfavored primary earners, this depiction is rare.³⁶

The third major gender bias in the tax code is imbedded in payroll and social security taxes. Because these taxes are effectively regressive³⁷, they discriminate against working women, who on average earn less than three quarters of their male counterparts' salaries.³⁸ In addition, because Social Security and Medicare benefits extend to spouses, working wives are paying payroll taxes for a benefit they would receive regardless of their contribution.³⁹ The combination of regressive payroll taxes, social insurance benefits to unemployed wives, joint filing, and non-taxation of imputed income creates a significant disparity in the code's treatment of working and stay-at-home wives. The over-taxation of working mothers' paid labor is a more powerful influence now than in decades past, because for the first time women's substitution effect is on the rise. As women choose between career and child rearing not just for financial stability but also for personal satisfaction, the undervaluation of their paid labor becomes a more important factor in ultimately deciding to stay home.⁴⁰

II. THE MOMMY TRACK DIVIDES

Women are not bringing home smaller after tax earnings solely because of an unfair tax

³⁶ See MCCAFFERY, *supra* note 6, 11-29.

³⁷ Payroll taxes are flat up to an income threshold, at which point they no longer apply, making them effectively regressive.

³⁸ See Blau & Kahn, *supra* note 11.

³⁹ See MCCAFFERY, *supra* note 6, at 89-106.

⁴⁰ This is not to say that over-taxation is not also a factor in the labor/leisure decision of women with only their family's financial need to consider. Rather it will induce such women to work more, not less.

burden. Despite greater education achievement and tremendous growth in workforce participation, women are making twenty-five percent less in pre-tax income than their male counterparts.⁴¹ The effects of motherhood are a primary explanation. Extended leaves of absence from work and compromised time commitments upon return have long been thought responsible, along with discrimination, for the continuation of the wage gap. Scholars surmise that because of the constraints motherhood places on working women, there may be a lower natural rate of labor force participation for women than for men.⁴² The contribution of Ellwood, Wilde, and Batchelder's *The Mommy Track Divides: The Impact of Childbearing on Wages of Women of Differing Skill Levels*, is to show how much of the wage gap is the result of the fact of motherhood itself, as opposed to the leaves of absence or diminished time commitment that childbirth requires.

A. DATA ANALYSIS

The Mommy Track Divides presents Ellwood, Wilde, and Batchelder's analysis of the National Longitudinal Survey of Youth 1979 (NLSY79). NLSY79 collected responses from more than 14,000 individuals, ages fourteen to twenty-one, beginning in 1979 and continuing for more than twenty years. The NLSY79 is a good source for this topic for a number of reasons. First, the sample sizes were such that complex regression analysis could still yield statistically significant results. This allows multiple factors, like race and marital status, to control for skill level more accurately. There is one significant exception to this with regard to the oldest women in the survey: as the analysis turned to increasingly longer term impacts (more than 10 years) there were decreasing numbers of survey respondents to analyze, and so those results are limited. In other words, at the time of TMTD only the oldest survey respondents had turned forty years

⁴¹ See Blau & Kahn, *supra* note 11.

⁴² See Goldin, *supra* note 1, at 25.

old. The authors were working with increasingly small survey sample sizes as they looked at older populations. The data set was also limited to women who had children after the age of twenty-one.⁴³

The longitudinal study was ideal because it allowed for an analysis of wage trajectories, i.e. wages over time, as opposed to static wage gap comparisons. This is a much more meaningful view of the effect of motherhood on careers, because it can follow women many years after childbirth to observe possible wage recoveries and the impact of leaves of absence and decreased labor force participation.

In addition, the NLYS79 is a particularly useful data source, because it has already been the subject of numerous other scholarly analyses. This provides Ellwood, Wilde, and Batchelder with a starting point and an automatic comparison of methodology and results. For instance, previous studies observed the static impact of childbirth on women's wages.⁴⁴ Other work further refined those results by introducing educational attainment and age-at-first birth variables.⁴⁵ TMTD expanded on these results.

Finally, the NLYS79 is an effective data source, because it comes at the right time. The survey sample represents the first generation of women for which this study makes sense. Born between 1958 and 1965, the survey respondents came of age during what Claudia Goldin

⁴³ Because all survey respondents took the Armed Forces Qualification Test (AFQT) at the beginning of the survey, women who either never had children or had children before the age of twenty-one were excluded from the data set to facilitate age normalization of their AFQT scores.

⁴⁴ See Jane Waldfogel, *The Effect of Children on Women's Wages*, 62 *Am. Soc. Rev.* 209-217 (1997); Jane Waldfogel, *Understanding the 'Family Gap' in Pay for Women with Children*, 12 *J. of Econ. Persp.* 137-156 (1998); Michelle J. Budig and Paula England, *The Wage Penalty for Motherhood*, 66 *Am. Soc. Rev.* 204-225 (2001).

⁴⁵ See Catalina Amuedo-Dorantes and Jean Kimmel, *The Motherhood Wage Gap for Women in the United States: The Importance of College and Fertility Delay*, Dept. of Econ., San Diego State University, Mimeo (2003); Hiromi Taniguchi, *The Timing of Childbearing and Women's Wages*, 61 *J. of Marriage & Fam.* 1008-1019 (1999).

characterized as “the quiet revolution.”⁴⁶ This was the first generation of women who expected to work after marriage. They were the first to pursue secondary education to prepare for a career path.⁴⁷ This is also the first generation of women in the last century whose labor participation growth slowed,⁴⁸ reflecting the increasing substitution effects at play. This generation has more women on the labor/leisure margin, choosing between career and family. This is also the first generation of women with such high rates of education attainment. Because of the survey sample’s unique position in the story of women’s education and labor participation, it is an appropriate subject for a skill-based analysis of childbearing wage effects.

Within the NLSY79, Ellwood, Wilde, and Batchelder used the Armed Forces Qualification Test (AFQT) as an indicator of skill level.⁴⁹ All NYLS79 survey respondents took the AFQT at age twenty-one. The AFQT tests for verbal expression by evaluating word knowledge and paragraph comprehension as well as arithmetic reasoning and mathematics knowledge. The authors used the AFQT instead of higher education as an indicator of job and life skills, because it is immune from endogenous changes (higher education may be attained at many points in a woman’s life, whereas the skills tested by the AFQT should have been substantially developed by the start of the longitudinal survey).⁵⁰ Once normalized by age, the authors divided the AFQT scores into thirds (low, medium, and high skill) for the regression analysis.

The regression analysis of working mothers’ wage trajectories by skill level controlled for fixed effects including age of first birth, race, marital status, work interruption, reduction in

⁴⁶ Goldin, *supra* note 1 at 15.

⁴⁷ *Id.* at 17.

⁴⁸ *Id.* at 15.

⁴⁹ TMTD at 18.

⁵⁰ The AFQT does have some endogeneity, because the skills it tests can be somewhat influenced by education, so the scores were normalized by age before they were used in the statistical analysis. *See* TMTD at 18.

hours worked, and change in employer. In addition to running the regression for working mothers of different skill levels, the study also compared the wage trajectories to those of women without children and to those of working fathers.

Generally the methodology behind the analysis is persuasive. There are, however, empirical and logical weaknesses that require discussion. The authors point out the greatest gap in the NLSY79 data: the next twenty years in these women's trajectories. While there is no reason to suspect they will shift dramatically, even slight movement would change the impact of currently insignificant variables. In particular, the timing of first childbirth among highly skilled women, which was found to be insignificant in the current analysis of wage trajectories, could prove much more important over a longer period of time.

The possibility of a development in this particular variable is indicative of a second shortcoming in the data. As already discussed above, there is only limited data on the oldest women in the study. The study did find that highly skilled women are more likely to delay motherhood. However, the study did not find that this delay had a significant impact on wages. Because only a small portion of the women in the survey are old enough to have delayed motherhood for very long, this conclusion may be a premature one. Therefore, any conclusions the study draws only pertain to the mid-career impact of childbearing. This period should be of primary concern anyway, after all it is the period in which these women are able to have children and are embarking on their careers. This is when they require financial stability to support their families. This is the period in which these women are making the life decisions with which this Article is primarily concerned. So the data limitations are not debilitating.

B. RESULTS, CONCLUSIONS AND LINGERING QUESTIONS

Given the methodological soundness of the regression analysis, this Article will treat the

regression analysis outcomes as conclusive. First and foremost, the study found that childbearing lowers a mother's wage trajectory absolutely.⁵¹ This result is not new, but it is important to keep in mind that regardless of any and all variables this remained true throughout the analysis. Having children lowers women's wages. Moreover, TMTD provides a useful explanation for contrary literature, which argue that mothers actually experience a wage increase upon childbirth. This analysis reveals that the surveyed women who never had children were on lower wage trajectories to begin with, which explains why other studies had found a motherhood wage boost when only comparing the static wages of women with and without children.⁵²

Though costs of childbearing are felt in the wages of all working mothers, the analysis revealed a greater negative impact on high skill women.⁵³ The wage trajectories of low skill women are flatter overall than high skill women.⁵⁴ Intuitively, it makes sense that, since high skill women have higher salaries, they have the ability to experience higher childbearing costs. Similarly it makes sense that a diminished wage trajectory would be harder to observe in a low skill woman making minimum wage with little hope of advancement. However, the losses high skill women experienced were significantly greater *relative* (i.e. as a percentage of their original gradient) to low skill women as well.⁵⁵ Low skill mothers had wage patterns that were fifteen percent lower ten years after having children. High skill mothers suffered a thirty percent decline, or double the penalty, in their wage growth trend in the ten years following their first birth. The wage trajectories for these high skill women clearly shift at the age of first birth, and rather than mitigating the impact of childbirth on wages, the passage of time only increased the disparity between high and low skill mothers. Low skill mothers typically experienced a "one

⁵¹ TMTD at 19.

⁵² TMTD at 19.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 20.

time, permanent fall in pay of perhaps [six percent] above and beyond any reduction in pay traceable to lost work experience.”⁵⁶ On the other hand, high skill mothers’ childbearing penalty, again above and beyond the impact of decreased working hours, increased over time from eight percent to twenty-one percent.

By controlling for fixed effects, the authors were able to allocate portions of the motherhood costs to different variables and rule out others altogether. So for instance, the regression analysis showed that high skill women experience these greater wage losses regardless of decreases in work experience or hours worked. For high skill women there was no making up for lost time in later years as their children grew older and they recommitted more time to work.⁵⁷ Although the wage dip cannot be attributed to a decrease in hours worked, it clearly does not occur until after birth, eliminating doubt as to the cause of the decrease.⁵⁸

Unlike diminished time commitment to work, extended work interruption is a significant cause of high skill mothers’ wage penalty.⁵⁹ Interruption in work and employment may account for almost half of the wage losses among affected women. Therefore, the women with the most to lose, like longer tenured women with the greatest firm investment, were far less likely to interrupt their careers with extended absences from work.⁶⁰ All high skill women experienced a statistically significant wage penalty from motherhood, only part of which could be explained by some mothers choosing to interrupt their careers for child rearing.

The regression model also controlled for occupation effects, like moving to a part-time

⁵⁶ *Id.* at 21.

⁵⁷ Note that the study only tracks these women into their early 40’s. It may be that a wage recovery occurs in their late career. However, even this argument seems weak, considering how much ground these women would have to cover (something along the lines of a thirty percent wage growth rate increase in the last half of their professional lives).

⁵⁸ TMTD at 21.

⁵⁹ *Id.* at 28.

⁶⁰ *Id.*

schedule or alternate employment for the sake of flexibility and found no real impact from those variables. The wage penalty for mothers who did not take extended leaves of absence, could not be explained either by their diminished work hours or by occupation effects. Nor could the impact on working mothers' wage trajectories be explained by their marital status⁶¹, race⁶², or the timing of motherhood.⁶³ This last conclusion is particularly intriguing, since high skill mothers consistently wait to longer to have children than low skill women.⁶⁴ TMTD found that high skill mothers of all ages experienced statistically similar wage penalties. One possible explanation, not explored by TMTD, is that a high skill woman's timing of motherhood is reflective of her chosen career path. Perhaps most women are mitigating their wage penalties by having children at their career's optimal time for interruption. A future exploration of the problem should focus not just on skill level, but also on field of occupation. Another possible explanation is that the timing of high skill women's childbirth may reflect expectations of future labor participation. It may be that younger mothers plan on taking a leave of absence and then returning full time, whereas older mothers plan to cut back to part time. The timing may still reflect women's strategic mitigation of motherhood costs, but because the data is limited to women under fifty, it will be a number of years before any such hypothesis can be fully explored.

In addition to analyzing the cost of motherhood, TMTD also investigated the impact of having children on the wage trajectories of high skill men. Generally fathers did not experience

⁶¹ *Id.* at 28.

⁶² *Id.*

⁶³ Analysis of the high skill mother sub-sample, did initially indicate that delaying motherhood could mitigate the resulting wage cost. However, when the sample of high skill women was separated into two data groups, one for younger mothers (twenty-seven and younger at first birth) and another for older mothers (twenty-eight and older at first birth) it became clear that each group experienced comparable declines in wage trajectories as a result of having children. *See id.* at 25.

⁶⁴ *See* National Center for Health Statistics, *supra* note 4.

a statistically significant wage penalty at any skill level upon having children.⁶⁵ Like women, those who never had children had consistently lower wage trajectories from the beginning of the study.⁶⁶ This result explains what previous scholars had described as a fatherhood wage boost. A less than ten percent decrease (less than a third of that experienced by high skill mothers) in wage trajectory could be observed ten years after the birth of a high skill father's first child, indicating that if men do suffer a parenting wage penalty, then like women it is cumulative.⁶⁷

Having concluded that reduced work hours, career interruption, firm changes, timing of motherhood, marital status, and race cannot account for the full impact of childbearing on high skill women's wage trajectories, the authors leave open ended the question of what does.⁶⁸ The authors suggest a conflict of time commitment to work, not captured by the study, or subtle discrimination could be to blame. Mothers may or may not lessen their commitment to their work after having children, but the perception that they do would be enough to dampen their wage trajectory as if they had.

Despite this thorough analysis, the authors under-treat a few seemingly important points. First, and most glaring, is the absence of any discussion of income. For all the discussion of mothers' wage trajectories and their relationship to skill level, the authors never relate these central factors to the one most people care about: how much they get paid. The authors write that "[a]n important part of the motivation for this work is the finding that more skilled women delay childbearing more."⁶⁹ The authors look for variables that could explain the costs of childbearing, which in turn may account for the decision to delay motherhood. The authors then chose the AFQT, as opposed to endogenous education variables, to measure skill level. What is

⁶⁵ TMTD at 29.

⁶⁶ *Id.*

⁶⁷ *Id.* at 30.

⁶⁸ *Id.* at 28.

⁶⁹ *Id.* at 13.

implicit in the analysis, but never fully addressed is that both education and skill level are rough proxies for income. High skill, educated women generally come from families with higher household incomes and go on to make more money than their low skill peers. A mother's income suffers from even more severe endogeneity than education. However, it might be useful to see how the timing of motherhood and the childbirth wage penalty are related to grandparents' income.

A curiosity about the impact of household income (both in a mother's childhood and adulthood) on timing decisions and wage effects leads to two other shortcomings in the analysis. The data from the NLYS79 does not include paid family leave or tax burdens.⁷⁰ Paid family leave was not a question in the NLYS79, but perhaps the authors could limit the data to Californians, who are guaranteed paid family leave by law, to glean some insights into its effects. NLYS79 did have an income variable, so it would have been possible to incorporate approximate tax burdens in the analysis, but the authors of TMTD have chosen not to do so.

C. TAX IMPLICATIONS

TMTD explored the wage penalty hoping to provide an economic explanation for the motherhood delay. Such an economic analysis is incomplete without a discussion of tax effects. Parenthood wage penalties which do not include tax penalties, understates the distortion on working women's family planning decisions, because tax burdens weigh heavier on working mothers than they do on working fathers.

Imagine Jack Highskill is thirty years old and makes \$80,000 on a wage trajectory to make \$100,000 in four years. His wife Jane Highskill is twenty-six years old and makes \$64,000 as a lawyer, on a wage trajectory to make \$80,000 in four years. The tax brackets for a married

⁷⁰ See The National Longitudinal Youth Study of 1979, *User's Guide*, 205 (2006), <http://www.bls.gov/nls/79guide/2002/nls79g4b.pdf>.

couple filing jointly in 2006 are:

- 10% on the income between \$0 and \$15,100
- 15% on the income between \$15,100 and \$61,300; *plus* \$1,510
- 25% on the income between \$61,300 and \$123,700; *plus* \$8,440
- 28% on the income between \$123,700 and \$188,450; *plus* \$24,040
- 33% on the income between \$188,450 and \$336,550; *plus* \$42,170
- 35% on the income over \$336,550; *plus* \$91,043

If Jane were unmarried⁷¹ she would owe \$12,558⁷², in taxes. In four years she would owe \$16,732 in taxes. Instead, because she is married, Jane's income, secondary and stacked onto Jack's, is taxed an additional \$16,609. Four years later, instead of bringing home \$63,268 in after-tax income Jane earns only \$58,311 after taxes. Meanwhile Jack brings home \$81,885. After taxes the difference between Jack and Jane's salaries is \$3,574 greater than before taxes, because Jane is paying a larger portion of her salary in taxes than Jack is.

⁷¹ Marginal tax rates for single tax payers for 2006 are as follows:

- 10% on income between \$0 and \$7,550
- 15% on the income between \$7,550 and \$30,650; *plus* \$755
- 25% on the income between \$30,650 and \$74,200; *plus* \$4,220
- 28% on the income between \$74,200 and \$154,800; *plus* \$15,108
- 33% on the income between \$154,800 and \$336,550; *plus* \$37,676
- 35% on the income over \$336,550; *plus* \$97,653

⁷² This does not include payroll taxes. For the purposes of this discussion payroll will not be included, and only basic federal income tax, without deductions will be calculated. In reality payroll taxes place an unequal burden on secondary earners, so to the extent the discussion here is incomplete, it errs on the side of conservatism: should the payroll taxes be included, the tax disparity between Jack and Jane would be increased.

		Salary	Tax	Childcare	Net
Unmarried	Jack	\$80,000	\$16,732		\$63,268
	Jane	\$64,000	\$12,558		\$51,442
	Household	\$144,000	\$29,290		\$114,710
Married, Yr 1	Jack	\$80,000	\$13,115		\$66,885
	Jane	\$64,000	\$16,609		\$47,391
	Household	\$144,000	\$29,724		\$114,276
Married, Yr 4	Jack	\$100,000	\$18,115		\$81,885
	Jane	\$80,000	\$21,689		\$58,311
	Household	\$180,000	\$39,804		\$140,196
Married, Yr 4, 1 Child	Jack	\$100,000	\$18,115		\$81,885
	Jane	\$76,000	\$20,569	\$10,000	\$45,431
	Household	\$176,000	\$38,684		\$127,316
Married, Yr 4, 1 Child, Part-time	Jack	\$100,000	\$18,115		\$81,885
	Jane	\$38,000	\$9,929	\$8,000	\$20,071
	Household	\$138,000	\$28,044		\$101,956
Married, Yr 8, 3 Children	Jack	\$125,000	\$24,404		\$100,596
	Jane	\$91,000	\$28,178	\$16,000	\$50,823
	Household	\$220,000	\$52,582		\$151,418
Married, Yr 8, 3 Children, Part-time	Jack	\$125,000	\$24,404		\$100,596
	Jane	\$45,500	\$13,300	\$13,000	\$21,200
	Household	\$172,500	\$37,704		\$121,796

Now imagine that during those intervening four years Jack and Jane have a daughter, Julie. Jane returns to work, while a sitter watches Julie for \$10,000 a year. Jack is making \$100,000, \$18,115 of which will go to the Internal Revenue Service. Jack is on a wage trajectory to be making \$125,000 in another four years. Jane on the other hand is now paying a motherhood wage penalty. Instead of earning \$80,000, Jane is on a twenty percent lower wage trajectory, so her salary has only risen to \$76,000. In the meantime Jane will have to pay \$20,569 in taxes.⁷³ That, together with the \$10,000 in childcare costs, leaves Jane with only \$45,431 to show for her year's worth of work.

The marriage and motherhood penalties on Jane are compounded by the incentives created by the non-taxation of imputed income. Jane may be feeling unsatisfied at work, possibly because she's there full time, but only seeing a fraction of her former earnings actually come to fruition. Also, she's not getting raises or promotions at the rate she once was. According to Ellwood, Wilde and Batchelder this is not because she is working less, but probably because of subtle discrimination. Meanwhile, she is paying a substantial portion of her take home pay in childcare costs, while wishing she could spend more time with her toddler. Many secondary earners do not earn as much as Jane does, and could actually save money by cutting back on work. Jane will not save money by cutting back, but because her husband also makes a high salary, the income effect does not increase her paid labor elasticity either. For a woman in Jane's position, the substitution effect becomes paramount. If she wishes she could spend more time at home, then she can. For a new mom juggling a career and a small child, it is

⁷³ Although the new family member will reduce the Highskills' tax burden as an additional dependent, the Highskills will not qualify for the child care credits because their income is too high. *See* 26 U.S.C. §21. If Jack or Jane's work participates in the program, they may be able to deduct a portion of their childcare expenses. *See* 26 U.S.C. §129.

easy to imagine wanting less to worry about.

So Jane decides to cut back on her hours. The move to part-time work is a slippery slope, because the marriage penalty and payroll taxes diminishes the economic contribution of a secondary earner. Jack and Jane will still have to pay for childcare, the cost of which does not get reduced in proportion with the reduction in salary Jane will incur by switching to part time work.⁷⁴ And Jane's tax burden remains disproportionately high because her income tax is based on Jack's high income. So if Jane switches to working part time, making \$38,000, or half her previous salary, she make \$47,500 in four years. Jack is making \$100,000, still on track to make \$125,000 in four years. Jane pays \$9,929 in income tax and \$8,000 in childcare, leaving only \$20,071 to bring home from a year's worth of part time work. At these wage and tax rates, Jack's raises will eclipse the take home value of Jane's entire salary in just four years. If Jack and Jane decide to have another child, the cost of the additional childcare will diminish Jane's take home pay even further. The economic incentives for Jane to keep working are extremely weak.

III. PROPOSING A SOLUTION

A. END JOINT FILING, BECAUSE WE CAN

As discussed in previous literature and demonstrated in the calculations above, joint filing penalizes secondary earners by encouraging the perception of their income as stacked on top of the primary earner's income. This characterization is not inherent in the concept of joint filing. Despite the fact that most Americans now live in two earner households, the gender gap in wages and allocation of domestic work means that the joint filing bias against women is difficult to avoid. Not only would abolishing joint filing simplify the tax code, it would be the

⁷⁴ Unfortunately day care costs do not decrease significantly when a parent stays home part time.

easiest way to change the way couples calculate the costs and benefits of their work. Shifting societal biases toward gender roles directly would be much more difficult.

Because women's labor supply remains much more elastic than their husbands', the change from joint to separate filing is likely to have a greater impact on women's paid labor decisions. Generally, as tax rises and income decreases, women, especially married women with children, participate less in the paid labor market. Men on the other hand have highly inelastic labor supplies, so as tax rises and income decreases men continue to work, even increasing their paid labor, to compensate for the tax. This greater elasticity is particularly true with respect to high skill women. Low skill women have higher income effects, and generally do not have the option of staying at home full time due to financial pressures. High skill women have much higher substitution effects, and when they decide to have both a family and a career it is for personal satisfaction as well as financial stability. Though these women may not be working out of financial need, they are still influenced by basic economics. The current penalties that joint filing inflicts on high skill secondary earners make their labor less valuable to them. If they are choosing between the personal satisfaction of career and income as opposed to time at home with family, a lower take home salary will distort the comparison. The motherhood wage penalty and tax biases compound this distortion.

An alternative to reinstating separate filing, is taxing imputed income. If imputed income is taxed like ordinary income, then the joint filing penalty on women undervalues their domestic and marketplace labor equally.⁷⁵ As discussed in the previous section, it is not clear that a tax on imputed income could be implemented effectively. If it were possible to tax imputed income, then it would necessarily involve a number of new complications. Moreover, it would allow the joint filing bias against women's income to remain.

⁷⁵ See Stoudt, *supra* note 32.

Separate filing therefore is the simplest, most effective method of eliminating gender bias in the tax code. By restoring individual filing, such a reform would also give tax policy makers the flexibility to target rate structures to eliminate the wage penalty distortions of mothers' labor decisions.

B. NEW RATE SCHEDULES

If shifting from joint to individual filing eliminates the marriage penalty's economic distortion to secondary earners, then the individual rates themselves can focus on eliminating the motherhood penalty's distortion. By targeting a special rate structure for working mothers, tax can neutralize labor supply choices. Taxing working mothers at low regressive rates reverses the motherhood wage penalty. In addition, tax can subsidize socially desirable behavior. Increasing regressivity with family size encourages high skill families to have more children. In order for the strategy to work, non-mothers and men must pay taxes at progressive rates, because the penalties and incentives at issue are all relative to the treatment of men and childless women. This heightened progressivity for the majority of taxpayers will also compensate for revenue shortfalls caused by mothers' new regressive rates.⁷⁶ Such a rate structure breaks down as follows:

⇒ General Individual Marginal Rates

- 0% on the income between \$0 and \$20,000
- 20% on the income between \$20,000 and \$40,000
- 35% on the income between \$40,000 and \$60,000; *plus* \$4,000
- 50% on the income between \$60,000 and \$80,000; *plus* \$11,000
- 65% on the income between \$80,000 and \$100,000; *plus* \$21,000

⁷⁶ Remember that a tax on a generally less elastic population (men and working women with no children) raises revenue without significantly distorting behavior.

- 80% on the income above \$100,000; *plus* \$34,000

⇒ Marginal Rates for a Mother of One or Two Children

- 25% on the income between \$0 and \$20,000
- 21% on the income between \$20,000 and \$40,000; *plus* \$5,000
- 17% on the income between \$40,000 and \$60,000; *plus* \$9,200
- 13% on the income between \$60,000 and \$80,000; *plus* \$12,600
- 9% on the income between \$80,000 and \$100,000; *plus* \$15,200
- 5% on the income above \$100,000; *plus* \$17,000

⇒ Marginal Rates for a Mother of Three or More Children

- 20% on the income between \$0 and \$20,000
- 16% on the income between \$20,000 and \$40,000; *plus* \$4,000
- 12% on the income between \$40,000 and \$60,000; *plus* \$7,200
- 8% on the income between \$60,000 and \$80,000; *plus* \$9,600
- 4% on the income between \$80,000 and \$100,000; *plus* \$11,200
- 0% on the income between \$100,000; *plus* \$12,000

Under such a system, Jack and Jane Highskill experience very different tax burdens once they have children. As long as they remain childless they are treated the same. In the first year, Jack makes \$80,000 and pays \$21,000 in taxes. Jane makes \$64,000 and pays \$13,000 in taxes. As a household Jack and Jane make \$144,000 and pay \$34,000 in taxes, leaving them with \$110,000 in after tax income compared to just over \$114,000 under the current treatment. A key difference is that, because of the adoption of individual filing, Jack and Jane pay the same as a household, whether they are married or not. More importantly, while the new rates do not drastically alter the household's tax, the perception of each earner's portion of the burden

changes dramatically. Under the current system, Jack appears to be paying less in taxes than Jane, even though he earns more. Under the proposed new rates Jack and Jane's share of the household's tax are in proportion to their earnings. There is no longer an unfavorable characterization of secondary earnings, because spousal income is no longer stacked. Over time, the difference in the perception of spousal contributions to household income grows. Under the current system the average tax on Jane's \$80,000 salary is more than twenty-five percent, while the average tax on Jack's \$100,000 is less than twenty percent because of secondary income stacking. Under the proposed rates Jack now owes nearly thirty-five percent of his salary in taxes, and his share of the household tax burden is in proportion to his share of the income. Overall, the household's tax burden has increased, because Jane is still paying just over twenty-five percent of her salary in taxes. The tax burden on the Highskills will continue to escalate as they earn more income, unless they decide to start a family.

		Salary	Tax	Childcare	Net
Unmarried	Jack	\$80,000	\$21,000		\$59,000
	Jane	\$64,000	\$13,000		\$51,000
	Household	\$144,000	\$34,000		\$110,000
Married, Yr 1	Jack	\$80,000	\$21,000		\$59,000
	Jane	\$64,000	\$13,000		\$51,000
	Household	\$144,000	\$34,000		\$110,000
Married, Yr 4	Jack	\$100,000	\$34,000		\$66,000
	Jane	\$80,000	\$21,000		\$59,000
	Household	\$180,000	\$55,000		\$125,000
Married, Yr 4, 1 Child	Jack	\$100,000	\$34,000		\$66,000
	Jane	\$76,000	\$11,280		\$64,720
	Household	\$176,000	\$45,280	\$10,000	\$120,720
Married, Yr 4, 1 Child, Part-time	Jack	\$100,000	\$34,000		\$66,000
	Jane	\$38,000	\$8,780		\$29,220
	Household	\$138,000	\$42,780	\$8,000	\$87,220
Married, Yr 8, 3 Children	Jack	\$125,000	\$54,000		\$71,000
	Jane	\$95,000	\$11,800		\$83,200
	Household	\$220,000	\$65,800	\$16,000	\$138,200
Married, Yr 8, 3 Children, Part-time	Jack	\$125,000	\$54,000		\$71,000
	Jane	\$47,500	\$8,100		\$39,400
	Household	\$172,500	\$62,100	\$13,000	\$97,400

The most potent impact of the new rates' on the valuation of Jane's work is triggered when she and Jack have children. Four years after the model began, if the Highskills had one daughter they would pay twenty percent less in taxes than if they did not. This discount would cover all of Jane's motherhood wage penalty and much of the incurred childcare costs. More importantly, while Jack is in a marginal rate bracket of eighty percent, Jane's marginal income is being taxed at only thirteen percent. If the Highskills decide that one parent should sacrifice career commitment for child rearing, it will be economically more efficient to have Jack cut back at work. This mitigates the social preference for Jane being the parent who compromises career for family.⁷⁷ In this way the new rates are encouraging not only parenthood, but also the equitable sharing of the new responsibilities it brings.

Because the current social and economic distortions pressure high skill, high-income women to have small families and to stay home to take care of them, the proposed rates increase the tax benefits to working mothers of multiple children. With three children and \$220,000 in before-tax income, the Highskills enjoy more than a twenty percent discount in their taxes because of their family size. This extra after-tax income covers Jane's wage penalty and a significant portion of the Highskills' childcare costs. Again this benefit comes to the household through the regressive taxation of Jane's wages, which are subject to a four percent marginal rate and are approaching the zero percent bracket. Meanwhile Jack is still in the eighty percent marginal bracket. Social norms and the economics of the non-taxation of imputed income increasingly pressure working women to leave the workforce as they have more children. Therefore, the disparity between the costs to the household of Jack versus Jane cutting back at

⁷⁷ I do not have an economic model demonstrating exactly what social cost is associated with reverse gender parenting roles. Ideally the new rates should be calibrated so to neutralize this distortion, rather than reverse its direction.

work must also increase to mitigate the distortion to Jane's paid labor supply.

By increasing the economic value of a mother's work, the new tax rates exploit modern women's increased substitution effect. Women are finally working for personal satisfaction. Societal biases and unfavorable tax treatment undervalue their paid labor. By lowering their taxes, the new rates increase the economic value of high skill mothers' paid labor. The personal satisfaction derived from staying home would have to be much higher to induce a high skill mother to stay home with her children. Meanwhile, the benefits a mother takes from her participation in the paid workforce only increase as her family grows, while a father's remain the same. As families like the Highskills have more children and need to spend more time at home, the new tax rates neutralize the pressure mothers' to make the majority of the adjustment.

C. CRITICISMS

The politics of enacting a new tax rate schedule are daunting.⁷⁸ The proposal raises marginal tax rates for most taxpayers, and it eliminates the marriage bonus. Just the economics are a difficult political sell. On the other hand, previous tax reforms which raised the majority of voters' share of tax revenues, have received public support in the past.⁷⁹ The proposal might be unpopular because in addition to raising progressive rates for men and women without children, it also imposes regressive rates on poor, working mothers. So even those who would be in favor of higher progressive rates for redistributive reasons would oppose the proposal's regressivity. However, the proposal could be implemented in conjunction with existing redistributive benefit

⁷⁸ See generally, Daniel N. Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process As Illustrated by Tax Legislation in the 1980s*, 130 U. PA. L. Rev. 1 (1990).

⁷⁹ See Larry M. Bartels, *Homer Gets a Tax Cut: Inequality and Public Policy in the American Mind*, 3 Pers. on Politics 15 (2005) (explaining why the 2001 tax cuts, which were correctly perceived as mainly extending a benefit to the rich, were supported by people of all income levels). One key difference between this proposal and the 2001 legislation is that this would not extend a benefit to all taxpayers, but only to those in households with working mothers. If the 2001 plan garnered support because it gave everyone a tax cut, however small, then the success of that plan does not necessarily support the hope that there would be success for this plan either.

programs like the Earned Income Tax Credit and Temporary Assistance (EITC) for Temporary Assistance for Needy Families to counteract the regressive impact on low-income families.

Because the proposal removes the marriage bonus, there may also be concerns that the reforms discourage marriage. If the concern is that low-income families, who experience greater income effects, will be particularly discouraged, one response might be to remove the marriage penalties in the EITC. A second counterargument to the concern that the elimination of the marriage bonus encourages cohabitation is that the proposal is specifically designed to eliminate the marriage *penalty*. To the extent the marriage bonus encourages couples to marry, the eradication of the marriage penalty should too.

There might also be an equal protection challenge to the proposal, because the tax rates are targeted to a specific class of people, i.e. working mothers. Legally, the equal protection challenge is probably not fatal, because the current jurisprudence on the treatment of people with children, which applies only rational basis analysis.⁸⁰ The specter of unequal treatment might be a more serious political problem. As with the response to the marriage incentives argument, framing the proposal in terms of its initial goals is crucial. The genesis of the reform scheme was in the unequal treatment of working mothers. The new tax rates treat working mothers differently, because the rest of the world does too. To the extent the benefit to working mothers exceeds the disadvantage they experience because of irrational discrimination, it is encouraging a more efficient utilization of communal resources. These arguments are more convincing politically than the ideal of unequal treatment in the abstract.

Even if the justifications for the proposal are politically acceptable, there may be further concerns that the proposal will fail to accomplish its goals. Women's labor supplies are decreasingly elastic. This makes women less influenced by marginal changes. While this is

⁸⁰ See *Parham v. Hughes*, 441 U.S. 347 (1979).

true, women are still far more elastic than men. So a gendered treatment should still have the desired impact on behavior, though admittedly to a lesser extent than when women were more elastic. The fact that women no longer work purely out of economic need, does not mean they are unaffected by economic factors. Now that working mothers are socially accepted, it should be easier to convince them to work with economic incentives. Women have an increased substitution effect, which means that if their work can be valued high enough, they will continue their labor participation.

There are also enforcement and compliance matters. The proposal creates new tax avoidance incentives. For example, a small family owned business could divert all income to the mothers in the family to incur only the benefits of the new plan without any of its costs. Large corporate entities could reduce their male executives' salaries, and make a practice of compensating those executives' wives for their contributions as "residential assistants." For revenue raising reasons these possibilities require careful consideration. However, for the purposes of this Article these situations are of lesser concern, because even here the tax rules have encouraged a greater valuation of mothers' work. Though only a pretext, the reality of such schemes is that mothers have more economic power in the household, which encourages an equalization of power everywhere else.

The discussion of these concerns about political practicality and effectiveness inevitably lead to a comparison of the proposed reform to alternative treatments. In many ways the proposal resembles an unlimited childcare deduction, secondary earner deduction, or a tax on imputed income. All these proposals encourage high-income women to engage in paid labor. What this proposal offers that the others do not is an explicit recognition of the unique economic disadvantages working mothers face. The tax code discriminates against working mothers

without ever identifying them openly. The response to the unequal treatment of women in general, and working mothers in particular, should begin by acknowledging that unequal treatment. The proposal is designed to equalize discriminatory forces in the tax code and in society. Gender-neutral alternatives fail to convey that message as effectively.

CONCLUSION

High skill mothers' diminished paid labor participation rates result from a combination of complex social and economic factors, which discourage high skill women from having multiple children and high skill mothers from working. To the extent that we unfairly over-tax secondary earners, specifically working mothers, through joint filing and the non-taxation of imputed income, the tax code can and should be reformed to eliminate those distortions. In addition, the tax code can target working mothers to mitigate the distortions created by other societal pressures that leave the brunt of unpaid domestic labor on their shoulders. By equalizing mothers' and fathers' paid labor compensation, this tax reform encourages an equalization of unpaid labor allocation.