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JUMPING ON THE MOMMY TRACK: A TAX FOR WORKING MOTHERS

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I. INTRODUCTION

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.

* I would like to thank UCLA School of Law Professors Kirk Stark, Eric Zolt, and Gia Lee for their thoughtful guidance and encouragement of my efforts. I also owe the dedicated staff of the UCLA Women's Law Journal a debt of gratitude for their diligence in editing this Comment.

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 my professor's class. In high-skill job sectors nationwide, women are leaving the workplace in favor of childrearing.¹ For the first time in history, women constitute a majority of secondary degree earners,² yet the current data shows 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-skill⁴ counterparts.⁵ This balance is untenable. Investments of scarce economic and social resources are going to high-skill women's human capital in the form of coveted spots in top academic institutions and private and public financial support. This investment is appropriate, because these women become qualified to put these resources to beneficial use. Nevertheless, the social investment remains underutilized. Compared to low-skill women, who have fewer community investments in their human capital, high-skill women are less likely to participate in the paid workforce 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 against working mothers,⁶ accelerating the departure of high-skill mothers from professional life. In addition, recent analysis of the National Longitudinal Survey of Youth 1979 (hereinafter, the National Youth Survey)⁷ indicates that motherhood triggers an arbitrary wage penalty.⁸ Thus, the

1. See generally Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES, Oct. 26, 2003, at 642; Claudia Goldin, *The Quiet Revolution that Transformed Women's Employment, Education, and Family* (Nat'l Bureau of Econ. Research, Working Paper No. 11953, 2006).

2. Belkin, *supra* note 1.

3. See *id.*; Goldin, *supra* note 1, at 27.

4. I use the terms "high-skill" and "low-skill" in this Comment to distinguish women whose careers necessitate high levels of formal education from those whose careers do not. The terminology is in no way meant to be a value judgment on women's employment choices.

5. See generally NAT'L CTR. FOR HEALTH STATISTICS, BIRTH AND FERTILITY RATES BY EDUCATIONAL ATTAINMENT: UNITED STATES, 1994 (1997), available at http://www.cdc.gov/nchs/data/mvstr/supp/mv45_10s.pdf.

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

7. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NATIONAL LONGITUDINAL SURVEY OF YOUTH (1979), available at <http://www.bls.gov/nls/nlsy79.htm>.

8. See discussion of Ellwood, Wilde & Batchelder's *The Mommy Track Divides*, *infra* Part II.

labor decisions of mothers are distorted by inequitable tax policies and discriminatory wage disparities. This Comment 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 tax rate schedule.⁹

First, this Comment provides an overview of women's current labor participation, family status, educational attainment, and tax treatment. Next, this Comment 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 & Batchelder (hereinafter, *The Mommy Track Divides*)¹⁰. Specifically, this Comment explores the tax implications of *The Mommy Track Divides*' findings. Finally, in response to this new data, this Comment proposes taxing working mothers regressively and according to family size in order to minimize mothers' paid labor distortions.

II. THE PROBLEM

A. *Distribution: Those with the Most Are Doing the Least*

Women's labor and education patterns have changed dramatically in the last century.¹¹ Many factors contributed to this change, including domestic labor demands, wartime labor needs, and the women's liberation movement.¹² Traditionally, women's labor had higher income elasticity¹³ than men's labor: women

9. "Regressive tax" refers to a tax structure that applies lower tax rates to higher income brackets so that the effective tax rate decreases as the amount to which the rate is applied increases. The term is applicable to taxes like Social Security and Welfare payroll taxes—taxes that are applied at an equal rate to a fixed amount of income—leaving income above that fixed amount untaxed and creating a decreasing effective tax rate for taxpayers whose income exceeds the fixed amount.

10. David Ellwood, Ty Wilde & Lily Batchelder, *The Mommy Track Divides: The Impact of Childbearing on Wages of Women of Differing Skill Levels* (2004) (working paper, on file with the Russell Sage Foundation), available at <http://www.russellsage.org/publications/workingpapers/mommytrack/document> [hereinafter *The Mommy Track Divides*].

11. See generally Goldin, *supra* note 1 (describing the ways women's labor and education patterns have changed in the last century).

12. *Id.* (dividing the development of women's economic role into four phases, beginning in the 1920s and culminating in the present day).

13. Income elasticity measures the responsiveness of a certain behavior with respect to change in income. For the purposes of this Comment, income elasticity refers to the effect that a change in income has on women's decision to engage in paid market labor. That women's labor decisions have traditionally had higher in-

worked out of economic necessity, not for personal satisfaction.¹⁴ In the past, financial need, rather than lifestyle preferences, exerted the greatest influence on women's labor/leisure decisions. As it became more socially acceptable for women to continue to work in the absence of economic necessity, the income effect decreased.¹⁵ Today, women seek personal satisfaction in addition to financial compensation from their careers.¹⁶ Nevertheless, although women's labor supply transformed significantly in the twentieth century, it is still substantially more elastic than men's. Thus, in the last two decades, while women's labor elasticity decreased by approximately 50% from .85 to .4, men's remained fairly constant at about .05.¹⁷

As significant as changes in women's market labor participation are, their educational attainment transformed even more dramatically. In the 1950s, women went to college as much to meet a suitable husband as to prepare for a future career.¹⁸ Less than 10% of professional degree graduate students were women.¹⁹ Today women earn about 58% of all higher education degrees.²⁰ In 2003, women accounted for 60% of associate's degrees, 58% of bachelor's degrees, 59% of master's degrees, and 47% of doctorate degrees.²¹ This educational attainment reflects women's burgeoning career aspirations.²² Increasingly, women

come elasticity than men's means that women were more likely to base decisions about market labor participation on economic need than men, who were likely to work no matter their socio-economic status.

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

15. Goldin, *supra* note 1, at 9.

16. See Gillian Lester, *A Defense of Paid Family Leave*, 28 HARV. J.L. & GEN. DER 1, 28 (2005).

17. See Francine D. Blau & Lawrence M. Kahn, *Changes in the Labor Supply Behavior of Married Women: 1980-2000* 2-3 (Nat'l Bureau of Econ. Research, Working Paper No. 11230, 2005).

18. Goldin, *supra* note 1, at 13.

19. *Id.* at 38 fig.5 (tracking percentages of female first-year students in M.D., J.D., D.D.S., and M.B.A. programs from 1955 to 2005).

20. NAT'L CTR. FOR EDUC. STATISTICS, POSTSECONDARY INSTITUTIONS IN THE UNITED STATES: FALL 2003 AND DEGREES AND OTHER AWARDS CONFERRED: 2002-03 14 (2005), available at <http://nces.ed.gov/pubs2005/2005154.pdf>.

21. *Id.*

22. NAT'L CTR. FOR EDUC. STATISTICS, TRENDS IN EDUCATIONAL EQUITY OF GIRLS & WOMEN: 2004 9 (2004), available at <http://nces.ed.gov/pubs2005/2005016.pdf> ("Females currently have greater success than males in attaining post-secondary 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 complete degrees at higher rates than males. More than half of all bachelor's and master's degrees are awarded to females.").

seek an education for their future professional achievement. Not surprisingly then, women's majors "shifted from those that were 'consumption' related to those that [are] 'investment' related,"²³ i.e. those that lead to future careers.

Despite such increases in educational achievement and labor participation, high-skill women do not experience professional advancement equal to that of men with comparable education and experience. Women account for a mere 16% of law firm partners and corporate officers, only eight Fortune 500 companies have female C.E.O.'s, and of 535 members of Congress only 76 are women.²⁴ 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."²⁵ As many of the responses to Belkin's piece noted, the phenomenon she describes is largely limited to high-income or high-skill women. This is 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 shorter of its professional abilities than its low-skill counterpart. The Belkin article portrayed these high-skill women as leaving the work force to focus on raising children, but this same group of women is statistically the least likely to raise multiple children. Among the participants in the National Youth Survey²⁶, the average college graduate had 1.6 children by age forty, compared to high school dropouts who had an average of 2.6 children and high school graduates who had an average of 2.0 children.²⁷ If high-skill women did have a child, they were more likely to wait until the end of their child bearing years to conceive for the first time. Among college graduates, 23% waited until they were over thirty to have their first child and another 27% still did not have children at age forty.²⁸ This is in stark comparison to the 84% of high school graduates who had children before their fortieth birthday.²⁹ The National Center for Health Statistics³⁰ analysis of all birth certif-

23. Goldin, *supra* note 1, at 19.

24. Belkin, *supra* note 1.

25. *Id.*

26. The methodology of the National Youth Survey will be discussed in the summary of The Mommy Track Divides in Part II of this Comment.

27. The Mommy Track Divides, *supra* note 10, at 37 tbl.1.

28. *Id.*

29. *Id.*

30. A division of the Center for Disease Control. NAT'L CTR. FOR HEALTH STATISTICS, *supra* note 5.

icates in 1994, also observed the growing tendency of highly educated women to delay or forgo motherhood.³¹ 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. Rather than mitigate social distortions in mothers' 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*.³² 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 principal ways.³³ 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 the children, cleans her own house, and cooks the meals; the second is paid to do the same tasks for someone else. Unpaid domestic workers are not taxed on the completion of their work while paid domestic workers are taxed.

31. See NAT'L CTR. FOR HEALTH STATISTICS, *supra* note 5. 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 older, unmarried women with less education have much higher birth rates 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.

Id. at 1.

32. Grace Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*, 21 BUFF. L. REV. 49 (1972).

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

These examples are gender neutral, but the real life examples are not: domestic workers, paid and unpaid, are predominantly female.³⁴

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.³⁵ As Edward McCaffery has explained, this tax treatment made sense a century ago, when all but the most desperate or most ambitious women stayed home. Today, working mothers are the norm, not the exception, and the distortion to their labor/leisure decision is unacceptable.³⁶ The challenge in neutralizing the distortion is that imputed income is very difficult to evaluate, and its taxation would be politically unpopular.³⁷ Recently, researchers at Salary.com calculated a market valuation for mothers' domestic labor.³⁸ The results were striking: a stay-at-home mother might be earning as much as \$138,095 for her family, while the market valuation for working mothers' domestic labor came to \$85,939 in addition to her professional salary.³⁹ 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

34. See David H. Demo & Alan C. Acock, *Family Diversity and the Division of Domestic Labor: How Much Have Things Really Changed?*, 42 FAM. RELATIONS 323, 326 (1993); see generally ARLIE RUSSELL HOCHSCHILD, *THE SECOND SHIFT* (1989).

35. See, e.g., McCAFFERY, *supra* note 6, at 11 (explaining the situation of "women on the margin").

36. See Blumberg, *supra* note 32; see generally McCAFFERY, *supra* note 6; Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571 (1996) for more in-depth analyses of the problem with non-taxation of imputed income.

37. Staudt, *supra* note 36, at 1618-20 (proposing a method of imputed income taxation focusing on "the productive aspects of household activities"). 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. Staudt argues that the benefits of quantifying household labor are worth this complication as well as the other costs associated with such a reform. She analogizes her proposal to the Earned Income Tax Credit (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 taxpayer does not wish to make the necessary calculations, she does not need to do so. Moreover, the EITC provides a substantial benefit to those who choose to participate. In contrast, a tax on imputed income would require all households to endure the added complications in order to calculate an additional tax (not a new benefit).

38. What is Your Mom Worth?, <http://mom.salary.com> (last visited Aug. 18, 2007).

39. *Id.*

how much time mothers spent driving, cooking, and cleaning. Even if Congress could find the political capital to impose a tax on imputed income, it is unlikely that they 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.⁴⁰ Like the non-taxation of imputed income, joint filing provides traditional families with a tax bonus. Instead of taxing each earner at his or her 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,⁴¹ this translates into 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. 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 spouses' 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. The view is that the first \$100,000 earned by Jack gets the benefit of the income splitting, but Jane's earnings are taxed entirely at the higher marginal

40. 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 *Poe v. Seaborn*, 281 U.S. 704 (1930), in community property states.

41. Progressive taxation refers to a tax structure that applies higher tax rates to higher income brackets so that the effective tax rate increases as the amount to which the rate is applied increases.

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 are stacked above, but since women are socially disfavored primary earners, this depiction is rare.⁴²

The third major gender bias in the tax code is imbedded in payroll and Social Security taxes. These taxes are effectively regressive,⁴³ because they discriminate against working women, who on average earn less than 80% of their male counterparts' salaries.⁴⁴ 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.⁴⁵ 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 childrearing 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.⁴⁶

III. THE MOMMY TRACK DIVIDES

Women are not bringing home smaller after-tax earnings solely because of an unfair tax burden. Despite greater educational achievement and tremendous growth in workforce participation, women are making around 20% less in pre-tax income

42. See Blau & Kahn, *supra* note 17, at 5; see also McCaffery, *supra* note 6, at 11–28.

43. Payroll taxes are flat up to an income threshold, at which point they no longer apply, making them effectively regressive. For example, in 2007, the first \$97,500 of wage income is subject to a 6.2% Social Security Tax. As a taxpayer's income exceeds \$97,500, her average payroll tax rate decreases. See I.R.S. Circular E, Publ'n 15 (Jan. 2007), available at <http://www.irs.gov/pub/irs-pdf/p15.pdf>.

44. See Goldin, *supra* note 1, at 40 fig.7.

45. See McCaffery, *supra* note 6, at 90–91, 95.

46. 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.

than their male counterparts.⁴⁷ 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 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.⁴⁸ *The Mommy Track Divides* quantifies how much of the wage gap is the result of the continuing responsibilities of motherhood itself, as opposed to the leaves of absence or diminished time commitment that child-birth requires.

A. Data Analysis

The Mommy Track Divides presents Ellwood, Wilde & Batchelder's analysis of the National Youth Survey. The National Youth Survey collected responses from more than 14,000 individuals, ages fourteen to twenty-one, beginning in 1979 and continuing for more than twenty years. The National Youth Survey is a good data 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 ten years), there were decreasing numbers of survey respondents to analyze, and so those results are limited.⁴⁹ In other words, at the time of *The Mommy Track Divides* only the oldest survey respondents had turned forty years 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.⁵⁰

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

47. See Goldin, *supra* note 1, at 40 fig.7.

48. See *id.* at 25.

49. See *The Mommy Track Divides*, *supra* note 10, at 26.

50. 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. See *id.* at 19.

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 National Youth Survey is a particularly useful data source because it has already been the subject of numerous other scholarly analyses, providing *The Mommy Track Divides* 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.⁵¹ Other work further refined those results by introducing such variables as educational attainment and age-at-first-birth.⁵² *The Mommy Track Divides* expands on these results.

Finally, the National Youth Survey 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 characterized as "the quiet revolution."⁵³ 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.⁵⁴ This was the first generation of women in the last century whose labor participation growth rate slowed,⁵⁵ reflecting the increasing substitution effects at play. This generation had more women on the labor/leisure margin choosing between career and family. This was also the first generation of women with high rates of educational 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 National Youth Survey, *The Mommy Track Divides* used the Armed Forces Qualification Test (AFQT) as an

51. See, e.g., Jane Waldfogel, *The Effect of Children on Women's Wages*, 62 AM. SOC. REV. 209 (1997); Jane Waldfogel, *Understanding the 'Family Gap' in Pay for Women with Children*, J. ECON. PERSP., Winter 1998, at 137; Michelle J. Budig & Paula England, *The Wage Penalty for Motherhood*, 66 AM. SOC. REV. 204 (2001).

52. See Catalina Amuedo-Dorantes & Jean Kimmel, *The Motherhood Wage Gap for Women in the United States: The Importance of College and Fertility Delay*, 3 REV. ECON. HOUSEHOLD 17 (2005); Hiromi Taniguchi, *The Timing of Childbearing and Women's Wages*, 61 J. MARRIAGE & FAM. 1008 (1999).

53. See Goldin, *supra* note 1, at 15–17.

54. See *id.* at 17.

55. See *id.* at 15.

indicator of skill level.⁵⁶ All National Youth Survey respondents took the AFQT between the ages of fourteen and twenty-one.⁵⁷ The AFQT tests for verbal expression by evaluating word knowledge and paragraph comprehension as well as arithmetic reasoning and mathematics knowledge.⁵⁸ The authors used the AFQT instead of higher education as an indicator of job and life skills, because it is relatively 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).⁵⁹ Once normalized by age, the authors divided the AFQT scores into thirds (lower, medium, and higher skill) for the regression analysis.⁶⁰

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 hours worked, and change in employer.⁶¹ In addition to running the regression for working mothers of different skill levels, the study also compared these wage trajectories to those of women without children and to those of working fathers.⁶²

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 National Youth Survey data: the next twenty years in these women's trajectories.⁶³ 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,⁶⁴ could prove much more important over a longer period of time.

56. See *The Mommy Track Divides*, *supra* note 10, at 18.

57. *Id.* at 18 n.8.

58. U.S. DEP'T OF DEF., POPULATION REPRESENTATION IN THE MILITARY SERVICES: FISCAL YEAR 2001 2-2 (2003), available at <http://www.defenselink.mil/prhome/poprep2001/pdf/chapters2001.pdf>.

59. 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 *The Mommy Track Divides*, *supra* note 10, at 18 n.8.

60. *Id.* at 18.

61. See *id.* at 20, 40 tbl.2.

62. See *id.* at 2.

63. See *id.* at 21, 26.

64. See *id.* at 25.

The possibility of a development in this particular variable is indicative of a second shortcoming in the data. As already discussed above,⁶⁵ 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.⁶⁶ However, the study did not find that this delay had a significant impact on wages.⁶⁷ 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, because it is the period in which these women are able to have children and are embarking on their careers. This period is also when these women require financial stability to support their families, and are making the life decisions with which this Comment is primarily concerned. Accordingly, the data limitations are not debilitating.

B. *Results, Conclusions, and Lingering Questions*

Given the methodological soundness of the regression analysis, this Comment will treat the regression analysis outcomes as conclusive. First and foremost, the study found that childbearing lowers a mother's wage trajectory absolutely.⁶⁸ 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. Simply put, having children lowers women's wages. Moreover, *The Mommy Track Divides* provides a useful explanation for contrary literature⁶⁹, which argues that highly educated 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,⁷⁰ which explains why other studies have found a motherhood wage boost when only comparing the static wages of women with and without children.

65. See *supra* note 49 and accompanying text.

66. *The Mommy Track Divides*, *supra* note 10, at 1.

67. See *id.* at 25.

68. *Id.* at 20.

69. See, e.g., Amuedo-Dorantes & Kimmel, *supra* note 52; Deborah J. Anderson, Melissa Binder & Kate Krause, *The Motherhood Wage Penalty: Which Mothers Pay It and Why?* 92 AM. ECON. REV. 354 (2002); Deborah J. Anderson, Melissa Binder & Kate Krause, *The Motherhood Wage Penalty Revisited: Experience, Heterogeneity, Work Effort, and Work-Schedule Flexibility*, 56 INDUS. & LAB. REL. REV. 273 (2003).

70. See *The Mommy Track Divides*, *supra* note 10, at 19.

Though the costs of childbearing are felt in the wages of all working mothers, the analysis revealed a greater negative impact on high-skill women.⁷¹ The wage trajectories of low-skill women are flatter overall than those of high-skill women.⁷² Intuitively, it makes sense: 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 via 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.⁷³ Low-skill mothers had wage patterns that were 15% lower ten years after having children.⁷⁴ High-skill mothers suffered a 30% decline, or double the penalty, in their wage growth trend in the ten years following their first birth.⁷⁵ The wage trajectories for these high-skill women clearly shifted 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.⁷⁶ Low-skill mothers typically experienced a "one time, permanent fall in pay of perhaps 6% above and beyond any reductions in pay traceable to lost work experience."⁷⁷ By contrast, high-skill mothers' childbearing penalty, again above and beyond the impact of decreased working hours, increased over time from 8% to 21%.⁷⁸

By controlling for fixed effects, the authors were able to allocate portions of the motherhood costs to different variables and rule out others altogether. For instance, the regression analysis showed that high-skill women experienced these greater wage losses independent of decreases in work experience or hours worked.⁷⁹ 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.⁸⁰ Although the wage dip can-

71. *Id.* at 20.

72. *Id.* at 18.

73. *See id.* at 20.

74. *Id.*

75. *Id.*

76. *See id.* at 19-20.

77. *Id.* at 21.

78. *Id.*

79. *See id.* at 21, 41 tbl.3.

80. *See id.* at 21. Note that the study only tracks these women into their early 40s. *Id.* at 26. 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

not 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.⁸¹

Unlike diminished time commitment to work, extended work interruption is a significant cause of high-skill mothers' wage penalty.⁸² Interruption in work and employment may account for almost half of the wage losses among affected women.⁸³ 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.⁸⁴ 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 childrearing.

The regression model also controlled for occupation effects, like moving to a part-time schedule or alternate employment for the sake of flexibility, and found no real impact from those variables.⁸⁵ 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 status,⁸⁶ race,⁸⁷ or the timing of motherhood.⁸⁸ This last conclusion is particularly intriguing, since high-skill mothers consistently wait longer to have children than low-skill women.⁸⁹ One possible explanation, not explored by *The Mommy Track Divides*, 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 prob-

have to cover (something along the lines of a 30% wage growth rate increase in the last half of their professional lives). See *id.* at 32.

81. See *id.* at 21.

82. *Id.* at 28.

83. *Id.* at 28, 47 tbl.9.

84. *Id.* at 27.

85. See *id.* at 27-28, 47 tbl.9.

86. See *id.* at 28-29.

87. See *id.* at 29.

88. Analysis of the high-skill mothers 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.

89. See NAT'L CTR. FOR HEALTH STATISTICS, *supra* note 5.

lem should focus not just on skill level, but also on the 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 on cutting back to part-time. The timing may still reflect women's strategic mitigation of motherhood costs, but because the National Youth Survey 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, *The Mommy Track Divides* also investigated the impact of having children on the wage trajectories of high-skill men. Generally, fathers did not experience a statistically significant wage penalty at any skill level upon having children.⁹⁰ Like women, those men who never had children had consistently lower wage trajectories from the beginning of the study.⁹¹ This result explains what previous scholars had described as a fatherhood wage boost. A less than 10% 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 man's first child,⁹² indicating that if men do suffer a parenting wage penalty, then, like women, it is cumulative.

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 Mommy Track Divides* leaves open the question of what does account for this impact.⁹³ The authors suggest a conflict of time commitment to work, not captured by the study, or subtle discrimination could be to blame.⁹⁴ Mothers may or may not lessen their commitment to work after having children, but the perception that they do might be enough to dampen their wage trajectory.⁹⁵

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. Throughout all of the discus-

90. See *The Mommy Track Divides*, *supra* note 10, at 30.

91. See *id.* at 18, 29.

92. *Id.* at 30.

93. See *id.* at 32.

94. See *id.* at 27.

95. See *id.*

sions 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."⁹⁶ The authors look for variables that could explain the costs of childbearing, which in turn may account for the decision to delay motherhood. They then choose the AFQT, as opposed to endogenous education variables, to measure skill level. What is 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 her education. This is to say that since there is a wage penalty associated with motherhood, a working mother's income is a variable that is determined in part by the timing of childbearing, and is therefore not a good indicator of the source of the motherhood wage penalty. 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 National Youth Survey does not include paid family leave or tax burdens.⁹⁷ Paid family leave was not a question in the National Youth Survey, 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. The National Youth Survey did have an income variable, so it would have been possible to incorporate approximate tax burdens in the analysis. However, the authors of *The Mommy Track Divides* chose not to do so.

C. Tax Implications

The Mommy Track Divides explored the wage penalty hoping to provide an economic explanation for the motherhood de-

96. *Id.* at 13.

97. See CTR. FOR HUMAN RES. RESEARCH, U.S. DEP'T OF LAB., NLSY79 USER'S GUIDE: A GUIDE TO THE 1979–2002 NATIONAL LONGITUDINAL SURVEY OF YOUTH DATA 203–13 (2004), available at <http://www.bls.gov/nls/79guide/2002/nls79g0.pdf> (describing the methodology of the income variable).

lay. Such an economic analysis is incomplete without a discussion of tax effects. Parenthood wage penalties that do not include tax penalties understate 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 on a wage trajectory to make \$80,000 in four years. The tax brackets for a married couple filing jointly in 2007 are as follows:

- 10% on income between \$0 and \$15,650
- 15% on income between \$15,650 and \$63,700; *plus* \$1,565
- 25% on income between \$63,700 and \$128,500; *plus* \$8,772.50
- 28% on income between \$128,500 and \$195,850; *plus* \$24,972.50
- 33% on income between \$195,850 and \$349,700; *plus* \$43,830.50
- 35% on income over \$349,700; *plus* \$94,601⁹⁸

If Jane were unmarried⁹⁹ she would owe \$12,423.75¹⁰⁰ in taxes. In four years she would owe \$16,510.75 in taxes. Instead, because she is married, Jane's income, secondary and stacked onto Jack's, is taxed an additional \$4,491.25. Four years later, instead of bringing home \$63,489.25 in after-tax income, Jane earns only \$56,955.00 after taxes. Meanwhile, Jack brings home \$83,652.50. The difference between Jack's and Jane's after-tax incomes is \$6,697.50 greater than the difference between their

98. I.R.S. Publ'n 17 sched. Y-1 (2007), *available at* <http://www.irs.gov/form-pubs/article/0,,id=164272,00.html>.

99. Marginal tax rates for single taxpayers for 2007 are as follows:

10% on income between \$0 and \$7,825

15% on income between \$7,825 and \$31,850; *plus* \$782.50

25% on income between \$31,850 and \$77,100; *plus* \$4,386.25

28% on income between \$77,100 and \$160,850; *plus* \$15,698.75

33% on income between \$160,850 and \$349,700; *plus* \$39,148.75

35% on income over \$349,700; *plus* \$101,469.25

Id. at sched. X.

100. 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.

before-tax incomes, because Jane is paying a larger portion of her salary in taxes than Jack is.

		Salary	Tax	Childcare	Net
Unmarried	Jack	\$80,000.00	\$16,510.75		\$63,489.25
	Jane	\$64,000.00	\$12,423.75		\$51,576.25
	Household	\$144,000.00	\$28,934.50		\$115,065.50
Married, Yr 1	Jack	\$80,000.00	\$12,397.50		\$67,602.50
	Jane	\$64,000.00	\$16,915.00		\$47,085.00
	Household	\$144,000.00	\$29,312.50		\$114,687.50
Married, Yr 4	Jack	\$100,000.00	\$16,347.50		\$80,952.50
	Jane	\$80,000.00	\$19,225.00		\$46,775.00
	Household	\$180,000.00	\$38,272.50		\$127,727.50
Married, Yr 4, 1 Child	Jack	\$100,000.00	\$19,047.50		\$80,952.50
	Jane	\$76,000.00	\$19,225.00	\$10,000	\$46,775.00
	Household	\$176,000.00	\$38,272.50		\$127,727.50
Married, Yr 4, 1 Child, Part-time	Jack	\$100,000.00	\$12,197.50		\$80,952.50
	Jane	\$38,000.00	\$15,435.00	\$8,000	\$14,565.00
	Household	\$138,000.00	\$27,632.50		\$95,517.50
Married, Yr 8, 3 Children	Jack	\$125,000.00	\$21,847.50		\$100,596.00
	Jane	\$91,000.00	\$29,952.50	\$16,000	\$50,823.00
	Household	\$220,000.00	\$51,800.00		\$151,418.00
Married, Yr 8, 3 Children, Part-time	Jack	\$125,000.00	\$19,415.00		\$105,585.00
	Jane	\$45,500.00	\$17,877.50	\$13,000	\$14,622.50
	Household	\$172,500.00	\$37,292.50		\$120,207.50

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, \$16,347.50 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 20% lower wage trajectory, so her salary has only risen to \$76,000. In the meantime, Jane will have to pay \$19,225 in taxes.¹⁰¹ That, together with the \$10,000 in childcare costs, leaves Jane with only \$46,775 to show for her one 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

101. Although the new family member will reduce the Highskills' tax burden as an additional dependent, the Highskills will not qualify for the maximum in childcare credits because their income is so high. See 26 U.S.C. § 21 (2007). If Jack's or Jane's employer participates in the program, the Highskills may be able to deduct a portion of their childcare expenses. See 26 U.S.C. § 129 (2007).

because she is there full-time, but only seeing a fraction of her former earnings actually come to fruition. Also, she is likely not receiving raises or promotions at the rate she once was. According to *The Mommy Track Divides*, this is might not be because she is working less, but possibly because of subtle discrimination.¹⁰² 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 can spend more time at home. For a new mother juggling a career and a small child, it is easy to imagine wanting less to worry about.

Thus, 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 diminish 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.¹⁰³ Moreover, 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 makes \$47,500 in four years. On the other hand, Jack is making \$100,000, still on track to make \$125,000 in four years. Jane pays \$15,435 in income tax and \$8,000 in childcare, leaving only \$14,565 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 additional childcare will diminish Jane's take-home pay even further. The economic incentives for Jane to keep working are extremely weak.

102. See *The Mommy Track Divides*, *supra* note 10, at 27.

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

IV. 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. Yet 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 easiest way to change how 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. Therefore, 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 domes-

tic and marketplace labor equally.¹⁰⁴ However, 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.

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 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.¹⁰⁵ Such a rate structure breaks down as follows:

General Individual Marginal Rates

- 0% on income between \$0 and \$20,000
- 20% on income between \$20,000 and \$40,000
- 35% on income between \$40,000 and \$60,000; *plus* \$4,000
- 50% on income between \$60,000 and \$80,000; *plus* \$11,000
- 65% on income between \$80,000 and \$100,000; *plus* \$21,000
- 80% on income above \$100,000; *plus* \$34,000

Marginal Rates for a Mother of One or Two Children

104. See generally Staudt, *supra* note 36.

105. Remember that a tax on a generally less elastic population (men and working women with no children) raises revenue without significantly distorting behavior, because inelasticity indicates that work will not decrease in response to lower income.

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

Marginal Rates for a Mother of Three or More Children

- 20% on income between \$0 and \$20,000
- 16% on income between \$20,000 and \$40,000; *plus* \$4,000
- 12% on income between \$40,000 and \$60,000; *plus* \$7,200
- 8% on income between \$60,000 and \$80,000; *plus* \$9,600
- 4% on income between \$80,000 and \$100,000; *plus* \$11,200
- 0% on income above \$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's and Jane's share of the household's tax are in proportion to their respective 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 25%, while the average tax on

Jack's \$100,000 is less than 20% because of secondary income stacking. Under the proposed rates, Jack owes nearly 35% 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 25% 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	\$10,000	\$64,720
	Household	\$176,000	\$45,280		\$120,720
Married, Yr 4, 1 Child, Part-time	Jack	\$100,000	\$34,000		\$66,000
	Jane	\$38,000	\$8,780	\$8,000	\$29,220
	Household	\$138,000	\$42,780		\$87,220
Married, Yr 8, 3 Children	Jack	\$125,000	\$54,000		\$71,000
	Jane	\$95,000	\$11,800	\$16,000	\$83,200
	Household	\$220,000	\$65,800		\$138,200
Married, Yr 8, 3 Children, Part-time	Jack	\$125,000	\$54,000		\$71,000
	Jane	\$47,500	\$8,100	\$13,000	\$39,400
	Household	\$172,500	\$62,100		\$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 20% 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 80%, Jane's marginal income is being taxed at only 13%. If the Highskills decide that one parent should sacrifice career commitment for childrearing, 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.¹⁰⁶ 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 stay home to take care of them, the proposed tax 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 20% 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 4% marginal rate and are approaching the 0% bracket. Meanwhile, Jack is still in the 80% 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 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 mothers' pressure to make the majority of the adjustment.

106. 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 as to neutralize this distortion, rather than reverse its direction.

C. Criticisms

The politics of enacting a new tax rate schedule are daunting.¹⁰⁷ The proposal raises marginal tax rates for most taxpayers, and it eliminates the marriage bonus. The economics alone are a difficult political sell. On the other hand, previous tax reforms that raised the majority of voters' share of tax revenues have received public support in the past.¹⁰⁸ 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 programs like the Earned Income Tax Credit (EITC) and Temporary Assistance for Needy Families¹⁰⁹ 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.¹¹⁰ A second counter-argument to the concern that the elimination of the marriage bonus encourages cohabitation is that the proposal is specifically designed to eliminate the marriage *penalty*. In other words, this proposal neutralizes a tax that currently discourages marriage between dual-earner couples, thereby encouraging such unions. To the extent that the marriage bonus

107. See generally Daniel Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s*, 139 U. PA. L. REV. 1 (1990).

108. See Larry M. Bartels, *Homer Gets a Tax Cut: Inequality and Public Policy in the American Mind*, 3 PERSP. ON POLITICS 15 (2005) (explaining why the 2001 tax cuts, which were correctly perceived as mainly extending a benefit to the rich, were nevertheless supported by people of all income levels). One key difference between this proposal and the 2001 legislation is that it 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 as well.

109. The EITC provides low-income families with a subsidy, which is phased out as the household income increases. See 26 U.S.C. § 32 (2007).

110. The maximum available tax credit available under the EITC for two single parent filers is significantly higher than for two married joint filers. Compare 26 U.S.C. § 32(b)(2)(A) with 26 U.S.C. § 32(b)(2)(B).

encourages couples to marry, the eradication of the marriage penalty should also encourage marriage.

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 only applies rational basis analysis.¹¹¹ 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 politically convincing 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 true, women are still far more elastic than men. A gendered treatment should therefore still have the desired impact on behavior, though admittedly to a lesser extent than when women's labor was 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 more 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 highly 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

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

require careful consideration. However, for the purposes of this Comment these possibilities are of lesser concern, because even in such situations, 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 of 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.

V. CONCLUSION

High-skill mothers' diminished paid labor participation rates result from a combination of complex social and economic factors, which discourage high-skill women both from having multiple children and 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 both paid and unpaid labor allocation.