

Do Taxes Affect Marriage? Lessons from History

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This Article investigates the effect of taxes on marriage. In *Poe v. Seaborn* (1930), the Supreme Court granted married couples in community property states a substantial tax advantage over single taxpayers. *Seaborn* allowed married couples in those states to split their income, blunting the progressivity of income tax rates and reducing the couple's taxes relative to how much they would have paid if they were single. But this advantage did not extend to married couples in other states; there marriage remained tax neutral. This difference persisted until 1948 when Congress extended income splitting to all states. This natural experiment presents an unusually good opportunity to study the impact of taxes on marriage because it offers substantial exogenous state-by-state variation in tax incentives for marriage. This Article first analyzes the legal history of *Seaborn* and its aftermath. Then, using data from the decennial censuses to create year-by-year measures of marriage, the Article shows that there is modest, but significant evidence that taxes affect marriage rates.

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Introduction

The U.S. tax system treats the family as the fundamental unit of taxation and uses marriage as a definitive signal that individuals are part of the same unit.² Because of this, marriage affects eligibility for dozens of transfer programs embedded in the tax code.³ Moreover, the most basic provision of the Internal Revenue Code—the actual levy placed on taxable income—is contingent on marital status.⁴ Under the current system, married couples with dissimilar incomes enjoy a “marriage bonus” (i.e., their tax bill is lower than their combined taxes would be if single). In contrast, couples with similar incomes face greater income taxes when they marry.

² See Boris I. Bittker, *Federal Income Taxation and the Family*, 27 STAN. L. REV. 1389 (1975).

³ See James Alm, Stacy Dickert-Conlin & Leslie A. Whittington, *Policy Watch: The Marriage Penalty*, 13 J. ECON. PERSP. 193 (1999).

⁴ I.R.C. §1.

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The tax system's focus on marriage raises important questions of equity and fairness. Anne Alstott recently argued that this focus on marriage is not only problematic because it can be inequitable, but is poorly suited to a society where increasingly "marriage is no longer the principal organizing institution for work and family life."⁵ These questions of equity and fit are critically important, but whether and how we should change the tax system's treatment of marriage depends in part on whether individuals react to the incentives created by the system.

This Article presents new evidence that people are more likely to marry when it is tax-advantaged, thereby adding to a thin body of literature showing that taxes affect marriage formation. It does so by examining how the Supreme Court's 1930 decision in *Poe v. Seaborn* and Congress' legislative response (18 years later) affected marriage rates. In *Seaborn*, the Court interpreted the Internal Revenue Code to compel a different tax treatment for married couples in "community property" states, where spouses each have an equal property right in all income, than in "common law" states, where each spouse owns what she earns and assets to which she has title.⁶ The Court found that in community property states, income must be split evenly among the spouses when they each filed their taxes.⁷ For well-to-do taxpayers in community property states *Seaborn* yielded a substantial tax incentive to get married. Due to the

⁵ Anne Alstott, *Updating the Welfare State: Marriage, the Income Tax, and Social Security in the Age of Individualism*, TAX L. REV. (forthcoming 2014).

⁶ Since the 1960s and 1970s, even in common law states legal ownership plays a smaller role in the division of property after a divorce under "equitable distribution" statutes. Such statutes tend to give the judge wide latitude to divide the assets regardless of the nominal owner. During the period in question, though, community property states differed significantly from common law states in how property was divided in divorces. For example, *Newsweek* reported that "[i]n [common law] states, if a husband left his wife or if a wife went home to mother, the best she could hope for was a nominal support allowance. In any community property state, the woman automatically came out with half the family bankroll." *Community Dilemma*, Oct. 13, 1947, at 64-65.

⁷ As a practical matter there was no joint filing until 1948. See *infra*, note 39.

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progressivity of the Code, splitting income lowers taxes.⁸ Marriage remained tax neutral in common law states until 1948, when Congress extended income splitting to those states as well.

These two changes present a very good opportunity to study the impact of taxes on marriage rates. In 1930, the Court modified incentives in community property states with no change to incentives in common law states. In 1948, Congress did the opposite. This sets up a natural difference-in-difference design using the unchanged states as controls. The empirical evidence shows that the 1948 change moderately increased marriage in common law states. Empirical evidence that *Seaborn* (and earlier Treasury rulings to the same effect) increased marriage rates is less strong, but this is not entirely surprising because the tax advantage was smaller and many fewer people paid the income tax when *Seaborn* was decided than under the 1948 Act. The evidence shows that taxes exerted some influence on marriage during the mid-twentieth century. This, in turn, suggests that it is important to pay attention to how taxes affect marriage incentives today,⁹ since people today are more likely to be sensitive these incentives because cohabitation is a much more socially acceptable substitute than in the past.¹⁰

The remainder of this paper is divided into four parts. The first reviews the relevant literature and explains the advantage of using *Seaborn* and the 1948 Revenue Act relative to other policies that have been studied. The second discusses the relevant background on community property and the history of how community property income was taxed by the federal government. At the time of *Seaborn*, the tax system used the individual as the

⁸ See Table 1, *infra*. Income splitting can never increase a couple's tax liability, but it is more valuable if their incomes are substantially different.

⁹ In economics it is often assumed that taxes have no impact on the decision to get married. For example, the most prominent theory article on joint taxation makes this assumption. See Henrik Jacobsen Kleven, Claus Thustrup Kreiner & Emmanuel Saez, *The Optimal Income Taxation of Couples*, 77 *Econometrica* 537 (2009). I thank Zach Liscow for pointing this out.

¹⁰ See ANDREW J. CHERLIN, *THE MARRIAGE GO ROUND* 70-71, 114-116 (2009)

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fundamental unit. The section details the problems the Treasury faced integrating an individual focused tax system with community property systems where the family represents the fundamental unit. The third discusses the data used in this study. The fourth offers results, possible extensions, and conclusions.

Literature

The earliest attempt to empirically identify the impact of U.S. income taxes on marriage used aggregate data on the U.S. marriage rate and the size of the marriage penalties and bonuses through time.¹¹ This paper found a relationship between taxes and marriage, but the reliability of such aggregate analysis is low because it cannot control for unobserved underlying variables that correlate with tax penalties/bonuses and affect marriage rates. For example, the loosening of social attitudes toward marriage starting in the 1960s correlates with increases in marriage penalties through time. Later papers are more convincing as they tried to estimate this relationship using micro data on individuals. The best identified of these papers showed that “notches” in the tax code (or transfer system) had an impact on the timing of marriage.¹² These notches are places where by slightly adjusting timing of marriage taxpayers can significantly change their taxes (or benefits). Those studies are useful in showing that couples are paying attention to taxes when deciding *when* to marry within a fairly short time frame, but the importance of these timing games is probably fairly limited.

¹¹ See, e.g., James Alm & Leslie A. Whittington, *Income Taxes and the Marriage Decision*, 27 APPLIED ECON. 25 (1995).

¹² See James Alm & Leslie A. Whittington, *Income taxes and the Timing of Marital Decisions*, 64 J. PUBLIC ECON. 219 (1997) (finding that marriage penalties often cause couples to delay marriage until the next year (e.g. from November to January) to avoid being taxed as though they were married for the entire year); Michael J. Brien, Stacy Dickert-Conlin & David A. Weaver, *Widows waiting to wed?(Re) marriage and economic incentives in social security widow benefits*, 39 J. Human Resources 585 (2004) (Widows lose claims on their deceased husbands’ social security spousal benefits if they remarry before 60 and the authors find this has a significant effect on the timing of remarriage around women’s 60th birthday.).

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Looking bigger policy issues, James Alm and Leslie Whittington also examine the overall effect of marriage bonuses and penalties on the age at first marriage using data from the Panel Study of Income Dynamics (PSID) survey.¹³ This study also finds a moderate impact of tax incentives on marriage. They find that a 10% increase in the marriage penalty reduces the probability a person marries in a year by 2.3%. Although this study design is a substantial improvement over the one using aggregate data, Alm and Whittington's paper still has some weaknesses. Most importantly, their estimates will be biased if there are unobserved differences between individuals who are predicted to face a marriage penalty and those who are predicted to face a marriage bonus. This seems likely; for example individuals who are more likely to face a marriage penalty are likely to come from different class backgrounds than those likely to face a marriage bonus.

In terms of endogeneity, this Article offers a potential improvement over that of Alm and Whittington because the difference-in-difference design. The identifying assumption here is violated only if:

- (1) There are unobserved variables that change affect higher income individuals (who are affected by the tax change), *differently* than lower income individuals (who are not affected by the tax change) AND
- (2) These forces affect common law and community property states differently AND
- (3) These forces vary through time and are correlated with the tax changes.

On the other hand, Alm and Whittington's study is better identified in some ways as well. It has a better measure of the size of the tax bonus/penalty as well as individuals' incomes than I have.

¹³James Alm & Leslie A. Whittington, *For love or money? The Impact of Income Taxes on Marriage*, 66 *Economica* 297 (1999).

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Alm and Whittington can also estimate the effect of taxes on marriages across the entire population whereas this study is limited to relatively affluent people.

Non-tax economic factors also substantially affect marriage rates. Mathew Hill, using data similar mine, has shown that marriage rates fell in areas harder hit by the Depression, as measured by retail sales activity. He attributes this to male unemployment and lack of disposable income.¹⁴ A number of other studies also document the import effect of wages and employment on marriage in the United States and elsewhere.¹⁵ Therefore, I control for county level retail sales in the 1930s and state level per-capita GDP in the 1940s. Moreover, I estimate a fixed effects model that will control for any other relevant economic factors, to the extent they do not change over time.

In addition to directly affecting economic incentives to marry, Congress' changes to the Code in 1948 also changed work incentives. From 1930 to 1948, a wife in a high income household in a community property state would be taxed at a high rate if she worked. Her marginal tax rate was driven up by her husband's income. In common law states this was not true; there a wife would start at the lowest bracket if she entered the workforce, no matter her husband's income. The 1948 Revenue Act extended income splitting to common law states.

¹⁴ See Matthew Hill, *Love in the Time of Depression: The Effect of Economic Downturns on the Probability of Marriage* (unpublished working paper) (2013). See also Namkee Ahn & Pedro Mira, *Job Bust, Baby Bust?: Evidence from Spain*, 14 J. POPULATION ECON. 505 (2001) (finding male unemployment decreases the probability of marriage); Humphrey Southall & David Gilbert, *A Good Time to Wed?: Marriage and Economic Distress in England and Wales, 1839-1914*, 49 ECON. HIST. REV. 35 (1996).

¹⁵ The literature is substantial. A few papers on the U.S. include: Michael C. Keely, *The Economics of Family Formation*, 15 ECON. INQUIRY 238 (1977) (finding all else equal in the 1960s men with higher wages married slightly sooner, while the opposite is true for women); Ted Bergstrom & Robert F. Schoeni, *Income Prospects and Age-at-Marriage*, 9 J. POPULATION ECON. 115 (1996) (evidence that the effect Keely finds is confined to men marrying under age 30, and the opposite effect for those who have not married by 30); Megan M. Sweeney & Maria Cancian, *The changing importance of white women's economic prospects for assortative mating*, 66 J. Marriage & Family 1015 (2004) (showing an increasing correlation between a wife's pre-marriage income and her husband's income for U.S. marriages).

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Thus, suddenly, a wife in common law state saw her marginal tax rate driven up by her husband's income. Using a study design similar to this one, Sara LaLumia examined the impact of the 1948 changes on labor force participation by women in wealthy households in common law states, with similar women in community property states as a control.¹⁶ She found that the 1948 changes moderately reduced women's participation in the workforce in common law states.¹⁷

Legal Background and History

Community Property

Two marital property regimes prevail in the United States: *community property* and *separate property* (the latter is followed in “common law states”).¹⁸ These regimes are very different. In common law states, income earned by each spouse remains her own separate property. The same holds for income derived from property legally owned by one spouse, even if the property was bought with funds from a joint bank account.¹⁹ In contrast, in community property states “spouses retain separate ownership of property brought to the marriage, but they own all earnings and acquisitions from earnings during the marriage in equal, undivided

¹⁶See Sara LaLumia, *The Effects of Joint Taxation of Married Couples on Labor Supply and Non-Wage Income*, 92 J. PUB. ECON. 1698 (2008).

¹⁷ It is worth noting that La Lumia's work shows that income splitting affects marriage incentives for two reasons. First, there is an income effect because a couple's total tax liability will be lower if they do not alter their behavior. Second, there will be substitution effects from the change in the after tax wage for each spouse—with the husband's after tax wage generally increasing and the wife's generally decreasing. This will induce its own changes to the labor leisure tradeoff. Outside of the income effect, some couples may find this new menu of after tax wages more appealing than others couples do and that could influence marriage incentives as well.

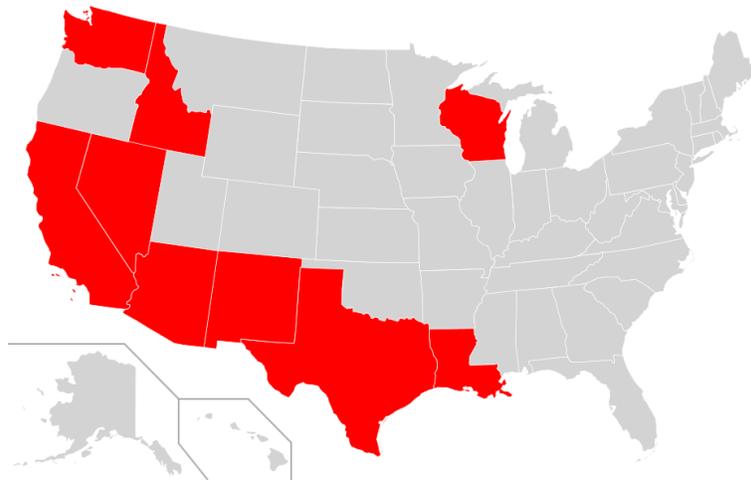
¹⁸ For basic background see JESSE DUKEMINIER & ROBERT SITKOFF, *WILLS, TRUSTS, AND ESTATES* 512-514 (9th ed. 2013). To avoid confusion I will use “common law states” rather than separate property to refer to this regime because separate property has its own meaning in the community property system.

¹⁹ Spouses can enter into various forms of joint ownership, e.g. joint tenancy, if they so choose.

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shares.”²⁰ Laws vary some across states within the common law and community property systems.

States have different property systems because of differing legal origins. Community property exists in states with marriage law based in French and Spanish settlement, while common law states derive their marital rules from England. In 1930 at the time of *Seaborn*, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington had some form of community property system. These states are highlighted in red in the map below.²¹



History of Income Taxation of Community Property Marriages

The (modern²²) income tax began its life “dominated by an individualistic approach” to family taxation.²³ Each spouse was taxed on the income she earned. This ensured “marriage neutrality,” i.e. that when two persons got married it would not change their total tax liability.

However, marriage neutrality also meant that two married couples with the same income could

²⁰ DUKEMINIER & SITKOFF, *supra* note 18, at 512.

²¹ In the 1980s Wisconsin adopted community property, but for all periods relevant to this paper it was a common law state. *See* Palma Maria Forte, *Wisconsin Marital Property Act: Sections in Need of Reform*, 79 MARQ. L. REV. 859 (1995).

²² The United States also had an income tax during the Civil War (though it collected little revenue) and 1895, but the latter tax had to be abandoned after the Supreme Court ruled large parts of it unconstitutional in *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1895).

²³ Bittker, *supra* note 2, at 1400.

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pay very different taxes. Two-earner couples would pay less tax than single-earner couples with the same income.²⁴

In 1913, Congress passed the first modern income tax under the newly approved 16th Amendment. The statute purported to tax “net income arising or accruing from all sources...to every citizen of the United States.”²⁵ The 1916 Revenue Act changed the language to tax the net income received by “every individual.”²⁶ This language of “every individual” persisted in each revenue act until *Seaborn*, in 1930.²⁷

The question of how to assign income to spouses in community property states proved thorny from the start. Until 1919 the Treasury held that the husband was taxable on all community property income.²⁸ In 1919 the Treasury adopted a compromise position. Income from what the Treasury thought of as genuinely belonging to the couple as a whole—e.g., bonds purchased after marriage—would be split 50:50 on each return. A husband’s salary, however, would be taxed to him despite the fact that the wife appears to have had an identical interest in the salary as in the income from real community property.²⁹ This treatment essentially mirrored what was allowed in common law states (and community property states before 1919). Salaries and wages could *not* be split between the spouse via intra-family gift or agreement,³⁰ but income

²⁴ See Alstott, *supra* note 5, at 5 (arguing that unequal treatment of equal income marriages is less of a problem when marriage is less central to family life).

²⁵ Act of Oct.3, 1913, ch. 16, §II(A)(I), 38 Stat. 166.

²⁶ Act of Sept.8, 1916, ch. 463, §I(A), 39 Stat. 463.

²⁷ *Poe v. Seaborn*, 282 U.S. 101, 101 n. 1 (1930).

²⁸ See Douglas Blount Maggs, *Community Property and the Federal Income Tax*, 14 CAL. L. REV. 351, 354 (1926). Maggs reports that “[u]ntil the latter part of 1919 none of the Treasury rulings were made public; for that reason references to specific rulings made before that time cannot be given.” *Id.*

²⁹ *Id.* at 355; Bittker, *supra* note 2, at 1406. Along with salaries and wages, income from property purchased before the marriage was to be taxed to the spouse that owned it. This interpretation was also likely tenuous in some states as—at least today—“[i]n Idaho, Louisiana, Texas, and Wisconsin, income from most separate property is community income.” See IRS, PUBLICATION 555 at 4 n.1 (2014).

³⁰ See *Lucas v. Earl*, 281 U.S. 111 (1930).

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from capital could be split using intra-spousal gifts.³¹ This equivalence, however, was short-lived. In 1920 and 1921 the Attorney General concluded that community property states, except California, gave the wife a vested interest in one half of *all* community income and thus required splitting *all* community income, including wages and salaries.³²

In 1926 the Supreme Court upheld California's exclusion in *Robbins v. United States*.³³ The Court, via Justice Holmes, agreed with the government that California's law gave the wife a "mere expectancy," thus validating California's exclusion from true community property treatment. But the Court went further and concluded that—even if the wife's interest were instead vested under California law—Congress could tax all income to the husband "if it so minded." The court highlighted the power of the husband to manage the property³⁴ and concluded that in fact "it was intended [by Congress] to tax him for the whole."³⁵ Contemporary commentators viewed the opinion as "in effect an invitation (or a command) to the Treasury to reconsider" its decision to split income in community property states other than California.³⁶

Following *Robbins*, the Attorney General withdrew his 1920 and 1921 opinions and the Treasury moved to tax all community income to the husband. This led to *Seaborn*, in which a

³¹ For example, a husband could use his after-tax salary to buy a bond in his wife's name. Such a gift would make the interest on the bond taxable to the wife rather than the husband. See Bittker, *supra* note 2, at 1401 and 1403. La Lumia finds a decline in women in common law states reporting non-wage income following the 1948 Act. This is consistent with couples previously shifting income to avoid taxes. However, even in relatively wealthy households, 90% of women reported (to the census) that they had less than \$50 of non-wage income, which suggests that the majority of wealthy couples did not make use of income shifting. La Lumia, *supra* note 16, at 1711.

³² See 32 Ops. Att'y Gen. 298; see also Maggs, *supra* note 28, at 355; Bittker, *supra* note 2, at 1406. In California, the Attorney General found that during her husband's life "the wife has no vested interest in the community property, her interest therein being a mere expectancy." 32 Ops. Att'y Gen. 435, 456.

³³ 269 U.S. 315 (1926).

³⁴ In Holmes' usual high rhetoric, the Court found that "for not only should he who has all the power bear the burden and [thus]. . . the husband [is] the most obvious target for the shaft." *Id.* at 328. Moreover, the Court observed that if the wife was unable or unwilling to pay, the government would apparently be unable to seize community property. *Id.* ("[B]ut the fund taxed, while liable to be taken for his debts, is not liable to be taken for the wife's . . . so that the remedy for her failure to pay might be hard to find.")

³⁵ *Id.* at 327.

³⁶ Maggs, *supra* note 28, at 362.

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Washington couple challenged the Treasury's ruling that the husband had to include all community income. There the Supreme Court reversed course and held that all community income should be split. The Court found that the "of" in "net income of every individual" must connote ownership³⁷ and that under the laws of Washington "the entire property and income of the community can no more be said to be that of the husband, than it could rightly be termed that of the wife."³⁸ Taking a more formalistic approach, the Court found that the husband's broad managerial powers were not relevant; the wife's *rights* in the property were equal to his. The opinion all but ignores *Robbins*, dismissing it as specific to California law (though without engaging in any analysis of the differences between the husband's rights in California and those in Washington).³⁹ In sister cases released the same day as *Seaborn*, the Court held that community income should also be split in Arizona, Texas, and Louisiana.⁴⁰ The Treasury quickly allowed the same treatment to Idaho, Nevada, and New Mexico. Following legislative changes to California's community property law, the courts allowed Californians to begin splitting community income starting in 1931.⁴¹

The disparity between community property and common law states persisted until Congress enacted joint filing in 1948.⁴² As enacted, joint filing extended community property

³⁷ *Poe v. Seaborn*, 282 U.S. 101, 109 (1930).

³⁸ *Id.* at 113

³⁹ *Id.* at 116. It is difficult to explain the Court's seemingly abrupt reversal. In *Robbins*, Justice Sutherland dissented (without opinion) and Justice Stone recused himself. Between the cases, Chief Justice Taft resigned, and Justice Roberts, who wrote the unanimous opinion in *Seaborn*, was appointed. In *Seaborn*, Chief Justice Hughes and Justice Stone (again) recused themselves. This means that 5 Justices, including Justice Holmes, joined both *Robbins* and *Seaborn*.

⁴⁰ See Bittker, *supra* note 2, 1408.

⁴¹ See *United States v. Malcolm*, 282 U.S. 792 (1931).

⁴² For a history of the 1948 Revenue Act and its impact on the taxation of the family see Stanley S. Surrey, *Federal Taxation of the Family: The Revenue Act of 1948*, 61 HARV. L. REV. 1097 (1948). Surrey called the enactment of joint filing the "one bright spot" in the Act. *Id.* at 1106. Technically we should say that the 1948 Act allowed for the first practical joint filing. Joint filing had been allowed since 1918, but because the tax-rates for joint filers were the same as for individuals this made joint filing very unappealing since progressive rates ensured that a couple's taxes would almost always be higher with a joint return.

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income splitting to common law states. Some in Congress had tried to reinstitute uniform income tax treatment for community property and common law states on a number of occasions, as early as 1920 and most notably during 1941,⁴³ but all attempts failed.⁴⁴ In 1939, Oklahoma passed an optional community property statute, attempting to get the same treatment as its neighbor Texas, to which Oklahoma claimed it was losing wealthy taxpayers.⁴⁵ The Treasury refused to recognize Oklahoma's law and was upheld by the Supreme Court in 1944 because Oklahoma's regime was optional.⁴⁶ Not to be deterred, Oklahoma passed another community property regime in 1945, this one mandatory. The Treasury thus allowed Oklahomans to begin splitting their income in 1946. It likewise recognized a similar law in Oregon in 1947. When Congress enacted the 1948 Revenue Act, Michigan, Pennsylvania, Nebraska and Hawaii had passed community property statutes that were as yet unrecognized by the Treasury.⁴⁷

It is important to note that the income tax changed substantially between the *Seaborn* decision in 1930 and the 1948 Revenue Act. In 1930 the income tax was paid only by the rich, as it had been since the income tax's inception in 1913. About 2.4 million relatively wealthy Americans filed returns in 1930.⁴⁸ The nation's insatiable need for revenue to fight World War II, however, turned the income tax into a mass tax. In 1939 the government collected about \$1

⁴³ See Bittker, *supra* note 2, at 1409. The proposed bill in 1941 would have enacted mandatory joint filing, but with rates for combined income the same as for single taxpayers. This form of mandatory joint filing would have created uniform taxation across community and common law states, but at the same time imposed a *very* substantial marriage penalty.

⁴⁴ Congress found it very difficult to pass any legislation removing the favorable treatment from the community property states. In hearings on the 1948 bill Senator Edwin Johnson stated in hearings on the Act that “[y]ou cannot take it away from the [community property states]; we have tried that.” (quoted in Surry, *supra* note 42, at 1105).

⁴⁵ Stephanie McMahon, *To Save State Residents: States' Use of Community Property for Federal Tax Reduction*, 27 L. & HIST. REV. 585, 593 (2009).

⁴⁶ *Commissioner v. Harmon*, 323 U.S. 44 (1944).

⁴⁷ These six states that had switched to community property quickly reverted after the 1948 Revenue Act. Carolyn Jones argues that concerns that community property gave women undeserved rights—undermining traditional gender roles—spurred the return to separate property. Carolyn C. Jones, *Split Income and Separate Spheres: Tax Law and Gender Roles in the 1940s*, 6 L. & HIST. REV. 259 (1988).

⁴⁸ See Annual Report of the Commissioner for Internal Revenue for 1930, 1931, 1932 (Tables displaying number of returns processed from each tax year).

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billion through the individual income tax, in 1945 it raised more than \$19 billion, an increase of more than 14 fold after adjusting for inflation.⁴⁹ The government achieved this increase in revenue by both increasing the number of people paying the tax (by lowering exemptions) and by substantially increasing rates. By 1947, nearly 55 million Americans were filing returns. In 1930 the Code imposed a 1.5% tax on the first \$4,000 of ordinary taxable income, and 3% on the next \$4,000. Those rates were 23% and 33% respectively in 1948.⁵⁰

Size of Community Property Tax Advantage

As a result of Treasury rulings active from 1920-1926 (“Treasury Rulings”) and *Seaborn*, residents of community property states were presented with significant tax incentives to get married, incentives that did not exist in common law states. In particular, the incentive for a high-earning man who lived in a community property state to marry could be substantial. Table 1, below examines the tax incentives across the relevant years (assuming a one-earner household).

⁴⁹ Annual Report for the Commissioner for Internal Revenue 1946, 1 (“individual income tax and withholding), both figures are nominal. The cumulative inflation rate between 1939 and 1946 was about 29%.

⁵⁰ Based on 1948 rates and using the CPI to update for inflation <http://data.bls.gov/>

Table 1
Federal Income Tax Due For a Married Couple
in Community Property States Relative to Common Law States

		Husband Earns Taxable Income of					
		\$100,000 (2013 dollars)		\$200,000 (2013 dollars)		\$1,000,000 (2013 dollars)	
		Percent Saved in Community Property States		Percent Saved in Community Property States		Percent Saved in Community Property States	
Year		of Taxes	of All Income	of Taxes	of All Income	of Taxes	of All Income
1917		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1918		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1919		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1920	Treasury allows income splitting in community	38.03%	2.66%	30.22%	3.02%	39.35%	11.06%
1921		38.81%	2.54%	30.80%	2.91%	38.50%	9.93%
1922		33.26%	1.99%	25.43%	2.04%	40.04%	9.42%
1923		33.84%	2.05%	25.41%	2.06%	40.14%	9.57%
1924		31.64%	0.93%	38.76%	1.85%	44.10%	7.80%
1925		32.21%	0.71%	44.44%	1.77%	38.79%	5.48%
1926		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1927	Robbins (Jan. 1926); Treasury forbids income	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1928		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1929		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1930		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1931		28.36%	0.59%	41.57%	1.49%	39.46%	5.07%
1932		24.79%	1.32%	27.33%	2.00%	39.14%	7.86%
1933		22.69%	1.17%	27.88%	2.00%	38.85%	7.50%
1934		23.93%	1.26%	30.56%	2.31%	36.39%	7.87%
1935		24.79%	1.32%	30.46%	2.33%	36.45%	8.00%
1936	Seaborn (Nov. 1930)	25.46%	1.37%	30.36%	2.34%	37.19%	8.34%
1937		27.17%	1.49%	30.07%	2.36%	37.54%	8.65%
1938		26.17%	1.42%	30.24%	2.35%	37.28%	8.44%
1939		25.46%	1.37%	30.36%	2.34%	37.19%	8.34%
1940		26.04%	1.41%	38.43%	3.38%	37.04%	11.59%
1941		19.47%	2.69%	31.05%	6.22%	25.46%	11.94%
1942		13.65%	3.21%	22.54%	6.84%	21.00%	12.34%
1943		14.60%	3.49%	23.58%	7.37%	20.77%	12.43%
1944		12.12%	3.30%	21.82%	7.61%	20.76%	13.49%
1945		12.44%	3.41%	22.20%	7.82%	20.57%	13.45%
1946		15.01%	3.76%	25.26%	8.46%	21.12%	13.52%
1947		16.40%	4.29%	26.90%	9.63%	20.44%	13.64%
1948	1948 Act; common law states get income splitting	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
1949		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Source: author's calculations based on historical rates.

On average, across the years when community property marriages received preferable tax treatment, a man earning \$100,000 of taxable income (in 2013 dollars) could save 25% on his taxes by marrying a non-working spouse in community property states. That would have saved him roughly \$2,100 per year. As noted above, these advantages increased substantially after Pearl Harbor. After 1941 the average tax incentive was \$3,750 for the same hypothetical man. The incentives for wealthier taxpayers were even higher. During and after WWII they averaged \$16,500 for a single individual making \$200,000.

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After 1948, the tax advantages for getting married remained equally substantial, except now they were available in common law states, as well as community property states. In 1947 the Treasury estimated that extending income splitting to common law states would cost \$743.5 million (or \$7.7 billion in 2013 dollars). This represented a 5% decline in the *total* individual income taxes collected from common law states.⁵¹ This prediction appears to have been roughly accurate: after the 1948 Act revenues declined 4 percentage points more than in community property states.⁵²

These advantages persisted until the Revenue Act of 1969, when Congress moved toward the current system. This meant reducing marriage bonuses for single earner couples, and actually introducing marriage penalties for couples with spouses with similar incomes.⁵³

These tax differences were not just economically important; they also had salience in the popular press. The *Wall Street Journal* featured an article on the results of *Seaborn*.⁵⁴ The *Los Angeles Times* featured a breathless front page story about *United States v. Malcolm*, which allowed married California couples to split incomes in 1931.⁵⁵ Similarly, Oklahoma and other states' attempts to obtain income splitting for their residents focused attention on the issue, garnering articles in articles in *Business Week*, *Colliers*, *Harper's*, *Newsweek*, and *Time* among

⁵¹ See Annual Report of the Commissioner of Internal Revenue for Internal Revenue for Fiscal Year Ended June 1947.

⁵² See Annual Report of the Commissioner of Internal Revenue for Internal Revenue for Fiscal Year Ended June 1949. This figure is derive from comparing revenues collected from June 1948 to June 1949 relative to June 1947 to June 1948—the January to June portion of 1948 should have been largely unaffected the Revenue Act of 1948 since 1948 taxes would not be collected until 1949. Even withholding would not have been affected much since the Revenue Act was not passed until April 2, 1948.).

⁵³ See *Druker v. Commissioner*, 697 F.2d 46, 48 (2d Cir. 1982) (detailing a history of the legal challenges to the “singles penalty/marriage bonuses).

⁵⁴ *Taxes on Community Income*, WALL ST. J., Dec. 22, 1930 at 2; see also *Income Tax Facts*, WASH. POST, Feb. 4, 1931 at 11.

⁵⁵ *Community Tax Ruling Studied: Married Man's Salary Held Property of Both*, L.A. TIMES, Jan. 21, 1931 at A1 (reporting the holding in *Malcolm* even before the full text of the decision had arrived on the West Coast).

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others.⁵⁶ Not surprisingly the 1948 extension of income splitting to all common law states garnered even more coverage, because it affected a much greater portion of the population, and the 1948 Revenue Act created much larger savings for those couples than did *Seaborn*. During the first tax season when residents of common law states could split incomes, numerous papers featured stories about the tax savings allowed by joint filing.⁵⁷

Data

The data used in this study are drawn from the decennial censuses, available thanks to iPUMS. In particular, the 1960 census asked each citizen who had married, when he or she wed. This allows me to build a year-by-year record of marriages around 1948 using publicly available data.^{58,59} Obtaining yearly data is important because it allows me to look at changes in marriage rates over a relatively short window around the 1948 Revenue Act, making my estimate more reliable than looking at changes between one decennial census and another. Similarly, I can construct year-by-year marriage histories for a portion of the 1940 census. The 1940 census only asked women receiving the long-form (2.5% of the population) about when they married, but

⁵⁶ See articles in *Business Week*, *Colliers*, *Harper's*, *Newsweek*, and *Time* among others cited in Carolyn C. Jones, *Split Income and Separate Spheres: Tax Law and Gender Roles in the 1940s*, 6 *L. & HIST. REV.* 259, 268 n.67 (1988).

⁵⁷ See, e.g., *Permit Marital Tax Split In All States In Filing: Results in Lower Levy in Most Cases*, *CHICAGO TRIBUNE*, Feb. 3, 1949 at C7; *Tax Angles: Joint Returns Save Money for Many*, *BOSTON GLOBE*, Feb. 4, 1949 at 18; *Suggestions On Income Tax Returns: Joint Report Works Out Nearly Always Cheapest Procedure*, *Hartford Courant*, Feb. 22, 1949 at 3. Interestingly, the instructions to the individual tax form from 1930 to 1947 do not appear to have discussed community property income splitting. Perhaps this was Treasury's small way of thumbing its nose at *Seaborn*.

⁵⁸The 1950 census only requested marriage dates from the 5% of citizens who received the long-form. Since the publicly available portion is only 1% of this 5%, there is not enough data to construct year-by-year measures for a large enough population. Moreover the effect of the 1948 Revenue Act is likely to have extended beyond 1950.

⁵⁹ Some individuals died between 1950 and 1960. However, this will primarily be a problem if there is differential mortality between common law and community property states and this differential mortality is correlated with changes in the marriage rate across income groups. I see no reason to think this is likely.

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because the full census is now available, there is enough data to examine the impact of *Seaborn* and the Treasury Rulings using yearly data.⁶⁰

I use a different estimation strategy on the 1940 data and the 1960 data because the censuses differed in whom they asked about marriage. For the 1960 data I have both income and year-by-year marriage information for men, so I estimate changes to the marriage rate among men.⁶¹ The marriage rate for women will of course be highly similar, but for simplicity I just use men.⁶² In contrast, in the 1940 data I have income information for men, but no way to construct year-by-year marriage information. I have year-by-year marriage data for women, but often no income information because most married women did not work.⁶³ Therefore, I cannot use the same estimation strategy. Instead I use a proxy to find individuals likely to be affected by the tax change.

Women who attended college were much more likely to marry a spouse whose income was high enough to be affected by the tax changes. Therefore, I estimate changes to the marriage rate among women who attended college between common law and community property states,

⁶⁰ In both sets of data, I can only observe year-by-year changes when people entered their first marriage, rather than all marriage behavior. Therefore when I refer below to “marriage rates,” I actually mean the percentage of the population who has ever married, rather than portion of adults who are married. However, because this era was an era of low divorce, these two figures should track each other very closely and this shorthand seems like a useful simplification.

⁶¹ Changes in marriage rates contain two different possible changes in behavior: (1) changes in the age at which individuals marry; (2) changes in whether people get married at any point. It seems very likely that most changes are driven by (1), but I have not yet attempted to distinguish these effects.

⁶² Most married women in 1960 did not work. Therefore, among married women, I cannot easily estimate who was likely to be affected by the tax change in 1948 and who was not. I could use a proxy like education, as I do for the 1940 data. However, given the similarity of the marriage rate to men, this did not seem necessary.

⁶³ I can calculate a year-by-year history for the husbands of sample line women. For these men I also have income, but using this pool will miss any changes in the composition of the men who do not marry.

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in response to the Treasury Rulings and *Seaborn*. This follows a strategy similar to LaLumia who looked at couples where at least one spouse attended college.⁶⁴

Table 2

<u>Woman's Education Level</u>	<u>Likelihood Husband Earned Enough to Make Income Splitting Relevant¹</u>
Did Not Complete High School	1.14%
H.S. Graduate	8.80%
Some College	14.40%
Bachelor's Degree or More	14.90%

Notes and Sources:

Data are from 1940 Census

¹ Husband earned at least \$4,000 in wage income in 1940.

Summary Statistics for 1948

Table 3 presents summary data on residents of common law and community property states immediately before the 1948 Revenue Act. Overall residents of the two kinds of states look quite similar in terms of age distribution⁶⁵ and education. Community property men were, however, noticeably more likely to earn enough income to benefit from income splitting.⁶⁶ But this there is still good reason to believe the common trend assumption. High income men looked very similar in both kinds of states, and the pre-1948 correlation in the *difference* between

⁶⁴ This design is less robust than the model applied to the 1960 data because variables affecting common law and community property states differently could bias the results. Since I do not find results for the 1930 period I am less concerned about this bias, although it is possible that such unobserved variables are obscuring the impact of *Seaborn*.

⁶⁵ It is worth observing again that the age distribution in my sample in 1947 is skewed relative to the actual population. I only pick up individuals who were alive in 1960. Thus people who were old in 1947 are more likely to be missing from my sample because they were more likely to die before 1960. As discussed in note 59, however, we should not expect this to bias the results, particularly since it seems unlikely joint taxation had much effect on marriage behavior of older individuals, except possibly widows.

⁶⁶ As noted in Table 3, this income measure is imputed based on 1960 income and therefore is measured with error. In future versions of this paper I plan to use a more sophisticated technique to impute income more accurately to account for patterns life-cycle patterns in income, broken down by profession. Likewise state domicile before and after 1948 is based on residence in 1960 and will therefore is also measured with error. If my measures are correct on average, then I will see attenuation.

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marriage rates between high and low income men is .97 across common law and community property states.

Table 3
Summary Statistics
Adults in 1947

	<u>Community Prop.</u>	<u>Common Law</u>
Whole Population		
% White	90.3%	90.4%
% Aged 16-19	10.3%	9.4%
% Aged 20-24	13.7%	12.8%
% Aged 25-29	13.9%	13.0%
% Aged 30-34	12.3%	12.2%
% Aged 35-39	11.2%	11.2%
% Aged 40-49	18.2%	18.8%
% Aged 50-59	12.3%	13.7%
% Aged 60 or more	8.2%	8.9%
% of Men High Income ¹	40.2%	33.4%
% Ever Married	76.4%	75.1%
Avg. Years of Educ.	9.99	9.65
N	173,144	750,783
Men	83,665	358,661
High Income¹ Men		
% White	97.8%	97.5%
% Aged 16-19	10.2%	8.9%
% Aged 20-24	16.6%	16.0%
% Aged 25-29	18.1%	17.4%
% Aged 30-34	16.0%	15.7%
% Aged 35-39	13.3%	13.3%
% Aged 40-49	17.8%	19.3%
% Aged 50-59	6.6%	7.8%
% Aged 60 or more	1.5%	1.6%
% Ever Married	72.1%	71.9%
Avg. Years of Educ.	12.04	11.78
N	33,628	119,938

Source: 1960 census iPUMs sample. Adults defined as persons 16 or older.

¹Defined as earning at least \$5,579 in 1960. This means that if a man's income grew at the same rate as per capita income, he earned \$4,000 in 1947 (after adjusting for inflation as well).

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Formal Model and Results

Treasury Rulings and Seaborn

Using the 1940 census, I estimate the following linear probability model for women with some college education, via OLS, while clustering standard errors at the state level. For an individual i , living in state j , in age-group k ,⁶⁷ in year (1918-1935):⁶⁸

$$\Pr(\text{Marr}'d_{i,j,k,t}) = \gamma_{j,k} + \beta_t * I_{[t=\text{year}]} + \beta_{\text{Tax-Break-Yr} * \text{Common}} * I_{[\text{Tax-Break-Year} * \text{Common-Law}=1]} + \mu_i$$

Where $I_{[\text{Tax-Break-Year} * \text{Common-Law}]}$ is equal to one if t is a year in which marriage was tax preferred in community property states and the person lived in a common law state and 0 otherwise. I use state-age group fixed effects so that I am comparing changes within each state-age group, thus controlling for cohort effects.⁶⁹ β_t are the coefficients for indicator variables for each year, representing national trends during that year. $\beta_{\text{Tax-Break-Yr} * \text{Common}}$ ⁷⁰ is the coefficient that represents the average change in marriage rates in common law states relative to community property states during years when marriage was tax-advantaged in the community property states.⁷¹ Thus we would expect a negative coefficient on $\beta_{\text{Tax-Break-Yr} * \text{Common}}$.

⁶⁷The age-groups are 16-19, 20-24, 25-29, 30-34, 35-39, 40-49, 50-59, 60+

⁶⁸ I do not control for state level economic conditions here because they do not extend back to the period covered by the Treasury Rulings. I run a separate unreported regression just around *Seaborn*, and there I do control for state economic variables.

⁶⁹ A cohort effect occurs when a demographic bulge causes statistics to shift because the composition of the population changes, even though similarly situated people are acting exactly the same way as they did in the past. For example younger individuals are less likely to be married. This means that while the baby-boomers were young the marriage rate was likely to fall, even if, at every age-level, people married as often as before. Using age-group dummies will control for this effect.

⁷⁰ The equation above is written in an unusual way for a standard difference in difference, but works out to the same thing. We would usually also have a $\beta_{\text{common}} * I_{[\text{common}=1]}$ and $\beta_{\text{tax-break year}} * I_{[\text{tax break year}=1]}$, but these are controlled for in the fixed effects for common law states, and the year dummies, respectively.

⁷¹ 1920-1926 and 1930-1935. The end point for examining the wake of *Seaborn* is arbitrary, but the results are not sensitive to this choice.

Table 4
Impact of Treasury Rulings and *Seaborn* on Marriage Rates

	Marriage Rate
Tax-Break-Year*Common State	-0.10%
	(0.72)
R^2	0.28
N	2,498,823

* $p < 0.05$; ** $p < 0.01$ (t-stats in parentheses)

Estimated State-Age Fixed Effects, Year Fixed Effects and Constant Not Reported⁷², Standard Errors clustered at the state level

$\beta_{\text{Tax-Break-Year*Common}}$ has the sign we would expect if taxes were affecting marriage rates.

However, it is very close to 0 and is neither economically nor statistically significant. The same remains true if we look only at the wake of *Seaborn* rather than the Treasury Rulings as well.

Perhaps our inability to detect an effect from *Seaborn* and the Treasury rulings is not too surprising as the portion of the population affected and the size of the tax break was small.

1948 Revenue Act

Using the 1960 census, I estimate the following linear probability model for men via OLS, with the standard errors clustered at the state level. For an individual i , living in state j , in age-group k , in income group l ,⁷³ in year t (1941-1955)

$$\Pr(\text{Marr}'d_{i,j,k,l,t}) = \gamma_{j,k,l} + \beta_t * I_{[t=\text{year}]} + \beta * I_{[\text{Post}'48*\text{Hi Inc}=1]} + \beta * I_{[\text{Post}'48*\text{Common}=1]} +$$

$$\beta * I_{[\text{Post}'48*\text{HiInc}*Common=1]} + \beta * X_{\Delta \text{ State-j Per Capita Inc}} + \beta * X_{\Delta \text{ State-j Emp}'t} + \beta * X_i + \mu_i$$

Again I use state-age-income group fixed effects so that we should only measure changes in marriage rates within each state-age-income group. I net out the national trend for each year (i.e.

⁷² To save space, I do not report the fixed effect or year effects, but they appear to be reasonable

⁷³ Divided into high income (=1) and not high income (=0) as described in Table 3.

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β_i). I also net out any national trends that influence high income cohorts relative to low income cohorts following the 1948 Revenue Act ($\beta_{\text{Post}'48*\text{Hi Inc}}$). I also control for the change in marriage rates in common law states after 1948 across income groups ($\beta_{1948*\text{Common}}$). $\beta_{\Delta \text{ State-j Per Capita Inc}}$ and $\beta_{\Delta \text{ State-j Emp't}}$ control for yearly changes in state per-capita GDP and employment, while the β 's associated with \mathbf{X}_i are fixed effects for race and education level.⁷⁴

Finally we come to our coefficient of interest $\beta_{\text{Post}'48*\text{High Inc}*\text{Common}}$, which tells us whether in common law states marriage rates changed differently than in community property states for high income individuals relative to lower income residents, who were not affected by income splitting.

Table 5
Impact of 1948 Tax Change on Marriage Rates

	Marriage Rate
Post 1948*High Income	2.69%
	(19.65)**
Post 1948*Common Law State	-0.2%
	(-2.12)*
Post 1948*Common Law State*High Income	0.53%
	(2.93)**
Percent Change in State Per Capita Real Income	-0.15%
	(-0.36)
Percent Change in State Unemployment	-2.28%
	(-0.85)
R^2	0.43
N	6,146,954

* $p < 0.05$; ** $p < 0.01$

T-statistics in parentheses. Estimated state-age-income fixed effects, year dummies, race dummies, and education dummies not reported.⁷⁵ Standard errors clustered at the state level

⁷⁴ I include separate dummies for each census defined race category. For education, I include a separate dummy for each possible value of years of schooling reported to the census.

⁷⁵ The year dummies range from about 0 in 1942 to about 4% by 1955 where 1941 is the base year. The education dummies range from 3% for 11th grade, to -4% for those with more than a bachelor's degree (presumably because more educated men marry later), where a high-school graduate is the base-education level.

Robustness of 1948 Result

Table 6
Impact of 1948 Tax Change on Marriage Rates

	End in 1953	End 1951	Drop Age>60	WWII cnt'l	State Specific Trends
Post'48*High Income	2.27% (15.34)**	1.92% (11.52)**	2.52% (17.54)**	2.67% (19.35)**	0.19% (0.76)
Post'48*Common Law	-0.21% (-1.81)	-0.14% (-1.17)	-0.21% (-1.86)	-0.17% (1.60)	0.25% (1.25)
Post'48*Common Law *High Income	0.54% (2.83)**	0.50% (2.62)**	0.52% (2.76)**	0.55% (3.06)**	0.43% (1.30)
Percent Change in State Per Capita Real Income	-0.18% (-0.39)	0.09% (0.20)	-0.15% (-0.32)	-0.28% (-0.64)	-0.34% (-0.71)
Percent Change in State Unemployment	-0.0208 (-0.74)	-2.23% (-0.96)	-3.17% (-1.12)	-2.02% (-0.75)	0.19% (0.06)
High WWII Mobilization* 1949				2.00% (2.32)*	
R^2	0.43	0.42	0.43	0.43	0.42
N	5,178,525	4,241,39	5,610,534	6,146,954	6,146,954

* $p < 0.05$; ** $p < 0.01$

T-statistics in parentheses. Estimated state-age-income fixed effects, year dummies, race dummies, and education dummies not reported. Standard errors clustered at the state level

Table 6 shows the results of various robustness checks. The first two columns show that ending our observation period in 1953 or 1951—instead of 1955—does not change the outcome of interest. The third column is designed to ensure the results are not being driven by older respondents, who are an implausible source of big changes in (first) marriage behavior but who might drive cohort effects.⁷⁶

⁷⁶ This should not have been an issue because of the age-group fixed effects, and indeed dropping older citizens does not affect the results.

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The fourth deals with some of the problems raised by the fact that some states sent a higher percentage of men off to WWII than others.⁷⁷ We would expect marriage rates to rise faster in states with higher mobilization⁷⁸ once the war was over. And indeed we do find that these higher mobilization states saw their marriage rates increase faster after 1948 than other states. Nevertheless, it does not substantially change our estimate of the impact of the 1948 Revenue Act. This should not be surprising because so long as the gap in mobilization rates among relatively affluent and less affluent men were the same across states, mobilization would be controlled for already.

Last, I examine what happens if we allow each state to have a linear trend in the difference between marriage rates among high and lower income men. Adding this control makes the effect of the 1948 change statistically indistinguishable from 0. Adding state trends does not substantially change the coefficient estimate, but rather substantially reduces the precision of the estimate. On the one hand, this regression makes it more likely that what we observed before is simply the continuation of trends prior to the 1948 Revenue Act. On the other hand, given that our best estimate of the impact of extending joint filing is roughly unchanged, this suggests that perhaps all we have added is a set of variables that are partially co-linear with the treatment.

Extensions

There are at least two areas in which this research could valuably be expanded. The first is to cut the 1940 data in a different manner. For example, we can pair men to their wives and pick out the husband's age at marriage if his wife received the long-form questionnaire. This

⁷⁷ See LaLumia, *supra*, note 16.

⁷⁸ High Mobilization states are defined as having had more than 50% of their men aged 18-44 register for the draft. See LaLumia, *supra*, note 16.

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would give us a better estimate of income and thus eligibility for the tax break, rather than relying on a proxy like women's education. The downside of using this method is that we will only pick up men who actually marry, meaning we could miss important information about who is not getting married at all.

The robustness of the 1948 results also needs to be examined in more detail. Estimating a hazard model would be useful in confirming the results above. Likewise improving the measure of income would make the estimate more reliable, and perhaps eliminate some attenuation. Moreover, a good deal more attention needs to be given to the size of the effect on different cohorts of the population and whether these are plausible in light of the size of the tax benefits.

Conclusion

This Article has detailed the history of how the U.S. tax system attempted to integrate a tax system based on the individual with community property systems where the family represents the fundamental unit. The inherent tensions in this process created an unusual series of tax breaks which sequentially affected married couples in some states, but not others. Empirically these tax incentives appear to have had a modest affect on marriage. This suggests that the effect of taxes on marriage cannot be entirely ignored as we think about redesigning the tax system. This is particularly true since Americans are probably now more sensitive to financial incentives relating to marriage than in the past because cohabitation is a viable and socially acceptable alternative. Thus Americans are more likely to have their marriage behavior shaped by tax incentives than their mid-twentieth century counterparts, who were already responsive.