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TAX EXEMPTIONS AND THE BIRTHRATE: THE SINGLEMINDED APPROACH TO PUBLIC POLICY

By Daniel C. Schaffer and Donald H. Berman***

The last decade has seen the rise and fall of overpopulation as a pressing domestic issue. In 1970, Congress established a Commission on Population Growth and the American Future,¹ which duly brought forth a report.² It is hard to imagine Congress doing anything of the sort today, because the birthrate in the United States has declined very rapidly over only a few years since then.³ More significant than the current birthrate, perhaps, is the fact that the Bureau of the Census, in questioning young wives on the number of births they expect over their lives, has found a sudden and dramatic decrease in expected births per couple, from 2.9 per wife in 1967 to 2.3 per wife in 1971 and 1972.⁴ The Bureau prepares projections of future population based on these surveys of expected births, and offers a high and low projection, each based on different assumptions about the future. The Bureau's high and low projections made in 1970 (based on the 1967 survey of birth expectations) and high and low projections made at the end of 1972 (based on the new survey) are given in Table I.⁵ The difference is striking.

TABLE 1
COMPARISON OF THE RANGE OF PREVIOUS
PROJECTIONS AND CURRENT PROJECTIONS:
1970 to 2020

(Population in thousands)

Year (July 1)	Previous projections, Series P-25, No. 470		Current projections	
	Series B	Series E	Series C	Series F
Estimates				
1970	204,800		204,879	
1972	(X)	(X)	208,837	
Projections				
1972	209,484	209,016	(X)	
1980	236,725	227,765	230,955	221,848
1990	278,570	251,431	266,238	230,084
2000	322,277	271,082	300,406	250,686
2010	381,169	290,712	344,094	259,332
2020	447,003	307,402	392,030	264,564

X Not applicable.

So the heat is off, although perhaps only for the moment. It is important to understand that predictions of future births over many years, by the method of extrapolating from today's birthrate, or the expectations of wives today, are utterly unreliable. This method (although no one has yet found a better one) would, if applied at almost any point in the past, have given a completely false prediction of today's population. The number of children which couples choose to bear has changed dramatically over relatively short periods in the past, and may do so in the future. Demographers know this, the shift in the Bureau's projections shows this well enough, and the Bureau is the first to so insist.⁶ The population boom may merely have paused, and not ended.

Yet even a pause has the happy effect of allowing the subject to be discussed more calmly. We wish to discuss only one small part of the subject: the place of income tax deductions for personal exemptions in a policy which aims to control population. What we hope to show is that one cannot manipulate the income tax for this social goal without first understanding why the income tax has its present shape. We also think that the difficulties inherent in using tax exemptions to induce birth control shed light on certain ethical problems which any attempt to control population growth through financial incentives or disincentives must face.

I. PRESENT LAW

The Internal Revenue Code today grants to a taxpayer a deduction of \$750 for each of his or her children, if the taxpayer provides half of the child's support.⁷ No deduction is permitted if the child is married and files a joint return with his or her spouse, or if the child's gross income is \$750 or more, but the latter restriction is waived for children under 19, and students.⁸ This deduction is called the "personal exemption." There is an exemption for each taxpayer; this article deals only with those for children.

II. THE ATTACK

The availability of this deduction has been constantly attacked by those who see population growth in the United States as a crucial problem. One would expect the attack from the zealots,⁹ but even moderate and judicious men¹⁰ say that if we want to reduce births, and if we find that merely helping those who want fewer children to help themselves does not do the job, we should get rid of the personal exemption.

The reason that population planners are attracted to financial

incentives and disincentives is not often articulated, but seems plain. Once one has tried family planning (helping parents to avoid unwanted children), the next step must be financial devices, or outright coercion. Now coercion is not only politically unpopular, morally repugnant, and possibly unconstitutional; it is also unenforceable. For example, suppose the law forbade any woman to have more than two children. Can anyone imagine an American policeman arresting, an American grand jury indicting, or an American jury convicting a woman who committed this "crime," especially if she testified that her contraceptive had failed and that her religious convictions forbade abortion?¹¹ No wonder there is interest in discouraging births through financial disincentives, including the repeal of the personal exemption for children.

III. THE CONVENTIONAL DEFENSE OF THE PERSONAL EXEMPTION

Those population planners who see no reason to repeal the personal exemption for children have so far merely said that the deduction is too small to affect the decision to have children. This was the conclusion of the Commission on Population Growth and the American Future.¹² Arguing from the same premise, Professor Rabin has criticized Senator Packwood's proposal to allow personal exemptions only for a taxpayer's first two children as too weak, and has suggested that instead *all* personal exemptions for children be withdrawn. "The actual financial hardship of raising two children without a deduction may effectively discourage production of a third . . ." ¹³ Professor Rabin's agreement with the Commission that the personal exemption is probably unimportant to the decision to conceive¹⁴ leads him to advocate a surtax on children, of which more later.

It may well be that the Commission is right, but the truth is that no one knows. The deduction was \$600 per child in 1969, and a family with the median income for that year would have had a marginal federal income tax rate of about 20%. Taking the deduction as worth \$120 per year (20% of 600), it would be worth \$2,160 over eighteen years, undiscounted. Considering that the Commission calculated the total cost of raising a first child at about \$98,000 (undiscounted) one can well imagine that a saving of \$2,160 would have little influence on parental choice.

The Commission's computation, however, is an oversimplification of a research report which it received.¹⁵ The Commission used \$32,830 as the out-of-pocket cost of raising a child, not including the cost of college education, the cost of giving birth, or a mother's

foregone earnings.¹⁶ The research report emphasized that families vary in the amount they spend to raise a child, with family income being the main determinant.¹⁷ (It also emphasized that available data was crude.) The cost chosen by the Commission (\$32,830) was that given in a research report as the cost for an urban family on a "moderate" budget, which at that time meant disposable income of \$10,500 to \$12,500.¹⁸ On a "low-cost" budget of between \$7500 to \$8000 of disposable income the research report found that the cost was \$21,630 (undiscounted).¹⁹

In other words, the Commission chose the highest figure from a study which insisted that the out-of-pocket costs of raising children varied greatly from family to family. (The report did not discuss expenditure figures for budgets above the "moderate" level.) Then the Commission added the cost of a college education but, unlike the report, did not mention that in 1971 only about one-third of the persons between the ages of 25 and 29 had attended college, much less graduated.²⁰ Finally, the Commission computed a mother's loss of earnings as \$58,437 (undiscounted), remarking in its text that the loss "might" be that high for a first child, but would be lower for later children.²¹ In the research report, these are the earnings foregone not by the average woman having her first child, but by the average woman who would have worked full time in the absence of children, who is having her first child. The average foregone earnings for all women, including those women who would not have worked in any case, in raising a first child are much lower: \$20,487.²²

The most misleading part of the Commission's statement of the cost of raising children is that it gives only the cost of raising a first child. Population booms result when families have several children. The research report submitted to the Commission was emphatic that a mother lost comparatively little in earnings in raising additional children after the first. The research report concluded that the total undiscounted cost of each child after the first, in 1969, including foregone earnings and college education, was \$48,793.²³ If we subtract the cost of college education, it was about \$43,000. The undiscounted value of the personal exemption for eighteen years (\$2,160) is about five per cent of this cost, a reduction in price which for some products has been thought to stimulate demand significantly. To make a crass comparison, the investment tax credit for the purchase of machine is set at seven per cent of the machinery's price. It is set at less than five per cent of the price of public utility machinery, and machinery with a useful life of less than seven years.²⁴

Nevertheless, we doubt that the exemption does much to increase the birthrate. We would guess that the decision to have a child is less likely to be influenced by price than a decision to purchase productive machinery, and, more importantly, that few people even know their marginal tax rates, or the cost of raising a child. But this is conjecture. No one really knows, and it would be difficult to design an experiment to determine the impact of such an incentive on one's decision to bear children.

The notion that tax exemptions do not affect the birthrate is especially vulnerable because, in the long run, small changes in the birthrate produce enormous differences in the size of the population. For example, Mr. Enke mentions that the population of this country in twenty-seven years would be five million fewer if the average woman bore 2.1 children over her lifetime instead of 2.2 children.²⁵ Such a change in birthrate would occur if out of every ten wives, one decides to have one less child. If great oaks from small acorns grow, an exemption which fosters the planting of even a few additional acorns can have remarkable results in the long run (and thirty years is not even the long run in demography).

If no one knows whether the personal exemption for children increases the birthrate, and if we want someday (or even today) to decrease the birthrate, why not eliminate the exemption? If it *may* help, why not try it? The Commission, and Professor Rabin, see nothing to lose, and it is this that leads Professor Rabin to reject Senator Packwood's plan (exemptions only for the first two children)²⁶ as too weak, and to put forward his own plans of withdrawing exemptions for the first three children, or of a tax surcharge on children.²⁷

IV. THE REAL REASON FOR KEEPING THE EXEMPTION

The real reason for letting the personal exemption stand is that it serves a vital purpose of present tax policy. Those who want to take away the personal exemption have never asked why it is there in the first place. One cannot speak of repealing the exemption as if there were nothing to lose: in fact, there is plenty to lose.

The personal exemption is today the main instrument for removing the poor from federal income tax rolls. A family of four is entitled to deduct \$3,000 in exemptions, plus the \$1,300 standard deduction (which does not vary with family size). Their income is therefore not taxed until it exceeds \$4,300, a figure deliberately set "to bring the tax-free income levels up to the 1972 poverty level in

almost all cases, and also to provide tax relief to lower income persons above the poverty level."²⁸ The reference to "lower income persons above the poverty level" is important: the "official" poverty level is generally admitted to exclude from the definition many who are in dire need.²⁹ The use of the exemption thus represents a deliberate and recent Congressional decision, not likely to be overturned lightly. For the poor, the personal exemption is the most important provision in the Internal Revenue Code.

The personal exemption is a method of providing a zero tax rate for the "officially" poor, and a very low tax rate for the near poor. The exemption is well-suited to its function because the income level at which a family is deemed officially poor increases with the number of its children. It was the use of the personal exemption that allowed the Senate Finance Committee to present this table, which is now law, to Congress.³⁰

TABLE 2 POVERTY INCOME LEVELS AND TAX-FREE INCOME LEVELS UNDER 2 LOW-INCOME ALLOWANCE LEVELS BY FAMILY SIZE

Number in the family	Estimated 1972 poverty level	Tax-free income level with \$750 exemption and—	
		\$1,000 allowance	\$1,300 allowance
1.....	\$2,170	\$1,750	\$2,050
2.....	2,810	2,500	2,800
3.....	3,350	3,250	3,580
4.....	4,290	4,060	4,860
5.....	5,050	4,750	5,060
6.....	5,680	5,500	5,800

The exemption is not the only possible method of relieving the poor of tax, but every alternative which we have seen recognizes that tax liability must decline as family size increases.

Under the Packwood proposal, a family of six which today would pay no tax because their income of \$5,800 is just cancelled by personal exemptions and the standard deduction would pay a tax of \$225 or 4% of its earnings. Under Professor Rabin's plan, a family of four earning \$4,300, which today pays no tax, would pay a tax of \$215 or 5% of its earnings. If there are those who doubt that the loss of this much income would be a hardship to a poor family which did not respond to the tax disincentive, let them remember that the purpose of taking away the income is to impose a hardship. It is only if the taxpaying couple feel the loss as a real threat that they are likely to respond to it by altering their family planning.³¹

These figures should make clear why those who, like Mr. Enke

and Mr. McCracken, think repeal of the personal exemption cannot affect the poor, since the poor pay no taxes anyway, are mistaken. The very reason that the poor pay no taxes is that they have the personal exemption, and many people who are poor by any standard except the official one do pay taxes, and would pay much heavier taxes without the personal exemption.

It is not only the poor who benefit from the personal exemption. A family of six with a gross income of \$10,000 and no deductions except personal exemptions and the standard deduction would today pay a tax of \$620. Reducing their personal exemptions by two would increase their tax by \$285, or 2.85% of their gross income. (Under Professor Rabin's plan the same would happen to a family of four.) A family of six with a gross income of \$100,000, and no deduction other than personal exemptions and the standard deduction would lose \$900 if two of its personal exemptions were taken away, but this would be only .9% of the family's gross income. Such a reduction in personal exemptions would not only tax the poor who now go untaxed, but would make the income tax generally less progressive.

So useful are exemptions in making the income tax progressive that an income tax which imposed the same rate of tax on all taxpayers, but gave each the same fixed exemption, would be progressive. This is in fact one of the strongest theoretical arguments for progression as a principle of taxation: almost everyone, including those who oppose graduated rates, agrees that some portion of income should be exempt from tax, if only to provide for bare subsistence. Yet once this is conceded, progression is inevitable, because an income tax with an exemption is progressive even if its rate on income above the exempt level is the same for all.³² There would be no loss of progressivity, however, if the personal exemption were replaced by a larger standard deduction which did not depend on family size.

An exemption which did not depend on family size, however, would have obvious faults. Here are the words of the nation's leading tax economists comparing the federal social security payroll tax with the federal income tax:³³

The payroll tax is grossly inferior to the individual income tax in its treatment of people with equal incomes . . . Income alone does not differentiate a man's ability to pay; his family responsibilities are also important. Making ends meet on an income of \$3,000 is much more difficult for a man with a wife and two children than for a single person without dependents . . . The individual income tax takes such differences into account through the personal exemptions . . . which are subtracted before arriving at income subject to tax.

By contrast, the payroll tax is levied on gross wages without any allowance for family size. Thus in 1968 a wage earner with earnings of \$3,200 paid \$243.20 as social security tax . . . whether he was a single or family man. For a couple with two children, the official "poverty-line" is \$3,335; that is more than twice the poverty-line income for a single person.

The incompatibility of the view held by many, that the tax laws should treat children as decreasing one's ability to pay, with the population controller's wish to penalize the bearing of children, is seen most clearly at low incomes. It may be that the personal exemption promotes births *most* among the poor, because the tax reduction for the poor is greater than for anyone else, not in dollar amounts, but in its ratio to taxable income. Yet it is just this disproportionate reduction in tax that makes the exemption useful in reducing the taxes paid by the poor.

The point is not that the Internal Revenue Code is a Jehovah, commanding us that "Thou shalt have no other gods before me."³⁴ It is that a population planner may get nowhere if he or she unwittingly proposes a law which undoes some other policy (such as income redistribution) which many others think crucial. Once the population planner sees the conflict, he or she may be able to reconcile competing interests, or to show that population control is so important that it should prevail. We do not say that the federal income tax may not be made less progressive and equitable in order to foster some other societal interests. On the contrary, Congress has done this many times. The favorable taxation of capital gains and the deductibility of interest on home mortgages are familiar examples. We concede that society may have to give up a great deal more than Section 151 of the Internal Revenue Code of 1954 if we are to survive, but those asking us to sacrifice the goal of income redistribution have an obligation to justify their request.

To govern is to choose, to give up one imperative to achieve another. The trouble with certain population controllers is they do not see that they are asking for a choice.³⁵ Myrdal tells of this kind of misunderstanding in India:³⁶

There have been many suggestions for creating a motivation for birth control by penalizing economically the families who have many children by rewarding those who have few. But they have never crept into any plan in the region. The reason is not difficult to understand. Since having many children is a main cause of poverty, such measures would penalize the relatively poor and subsidize the relatively well off. Such a result would not only violate rules of equity but would be detrimental

to the health of the poor families, and so of the growing generation.

The lesson to be learned is that population control, if it is important at all, is not all that is important to most people. Tails should not wag dogs; a great deal of the difficulty in law-making is in deciding which is the tail and which is the dog, and the worst law-maker is the one who does not even see the dog.

Professor Rabin, afraid that denial of exemptions is too *weak* a penalty to inhibit births, suggests an income tax surcharge instead. A family would have its income tax increased by, say, 5% for each child it brings into the world.³⁷ This would at least avoid taxing those who now pay no tax, and would impose the heaviest penalties on those who pay the most tax.

Who would pay such a tax? The poor would probably be exempt.³⁸ Yet the poor and near-poor have higher birthrates than the middle class.³⁹ Perhaps the failure to apply a tax on children to the poor is only a small loss to population planning because, as officially defined, they are only between ten and fifteen per cent of the nation. But there is no doubt that the majority of children are born into families whose incomes are below the median, or only moderately above it.⁴⁰ One would want a tax large enough to change behavior, yet small enough so that it does not work a hardship on this class. Is there such a middle ground? We have already belabored the importance of family size as a proper measure of poor peoples' ability to pay. Now we are suggesting that it is important in taxing the middle class, too, a view quite widely held.⁴¹

There may be those who believe that for a family earning \$6,000, \$10,000 or \$12,000, extra children do not reduce ability to pay. Undoubtedly there are those who believe that population control is so important that the question of ability to pay income taxes must not get in its way. Once again, we are not so much disagreeing with those who so believe, as reminding them that if they call for an income tax surcharge on children they must be ready to argue these points.

Professor Rabin's income tax surcharge for each child born might be thought to levy at least a tax related to ability to pay, so that the rich would pay more for their procreative sins. That is, if the income tax is progressive, surely an income tax surcharge for each child would bear hardest on those with ability to pay. Alas, this is not so. Although the federal income tax is moderately progressive when one plots the average effective rate (ratio of tax paid to all income, including income now exempt from tax) against the average

income of any income class, within each income class the effective rate varies wildly. There are taxpayers earning huge amounts who pay nothing, and taxpayers earning moderate incomes who pay heavily. The Treasury summarized this state of affairs in the following table in 1969,⁴² since which very little has changed:

TABLE 3 PERCENTAGE DISTRIBUTION OF RETURNS BY EFFECTIVE TAX RATE CLASSES: PRESENT LAW TAX AS A PERCENT OF AMENDED TAXABLE INCOME,¹ BY AGI CLASSES, 1969 LEVELS

AGI (in thousands of dollars)	Effective tax rate classes													
	0 to 5	5 to 10	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 55	55 to 60	60 to 65	65 to 70
0 to 3	68.0	0.5	1.5	6.0	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)
3 to 5	14.2	2.5	11.0	63.0	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)
5 to 7	3.6	2.1	22.5	71.5	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)	(²)
7 to 10	9	1.1	22.4	70.2	5.3									(²)
10 to 15	.5	.8	6.2	85.5	6.7									(²)
15 to 20	.5	.7	4.2	72.2	20.1	2.3								(²)
20 to 50	.4	.7	3.9	27.5	48.6	14.6	3.3	.7	.2					(²)
50 to 100	.3	.4	1.2	4.9	11.9	22.3	34.5	18.5	4.4	1.3	.3			(²)
100 to 500	1.0	.4	.5	1.6	14.1	15.5	11.2	15.3	19.4	12.2	5.5	2.6	.5	(²)
500 to 1000	1.8	.6	.6	.6	24.6	31.0	4.7	5.0	3.5	2.6	4.9	7.9	12.7	.8
1,000 and over	4.0	.2	.2	.2	31.0	27.2	5.2	1.8	2.4	4.0	1.8	2.7	12.3	6.9
All classes	21.5	1.1	10.9	52.7	8.4	2.0	.9	.5	.3	.2	.2	.1	.1	1.8

¹ Amended taxable income is taxable income after deduction changes plus excluded capital gains, tax-exempt interest, and excess of percentage over cost depletion. Amended taxable income is used to maintain a common base for the effective rate computation under present law and under the reform program.

² Nontaxable are 67.6 percent.

³ The percentages in these effective rate classes are not very meaningful because they reflect present law tax divided by a small amount of amended taxable income under the reform program. Amended taxable income for these taxpayers is much smaller than present law taxable income primarily because of the higher MSD under the reform program.

⁴ Less than .05 percent.

It may be that *as an income tax system* this is defensible (although we ourselves think not). For example, it may be that the exemption from income tax for interest from state and local bonds, or the preferential treatment of capital gains is so useful to society that it excuses the imposition of different rates of tax on persons with the same incomes. But is there any sense at all in making the amount of a financial disincentive to procreate turn on whether the procreator invests in such bonds, or has capital gain rather than ordinary income? Perhaps there is, but does Professor Rabin even realize that this is what he has proposed?

There may be those who think that giving birth to a large number of children is so anti-social an act that parents who do so *deserve* to suffer, or that, having imposed special costs on society, they should pay for doing so. On that ground there might be nothing wrong with increasing taxes on those who reproduced "unduly." But when one decreases the disposable income of a family as the number of children in the family increases, there is a strong possibility that the family will simply spend less on the care of each child. Even those who see nothing wrong with penalizing parents for having children ought to ask themselves if it is right to penalize children for being born.⁴³

V. A BETTER, BUT STILL UNSATISFACTORY, SYSTEM

There *is* a way to use the personal exemption to discourage births without making the income tax less progressive. The method is to

grant a larger dependency exemption for the first child, none for the second, and the same exemption as today's law provides for additional children. For example, the exemptions available for each child under current law and under our proposed scheme could be these:

	First Child	Second Child	Third Child	Fourth, etc. Child
Current Law	750	750	750	750
Proposed	1,500	0	750	750

Under this scheme, no family is worse off than under current law: unlike the Packwood or Rabin plans, it does not make the poor poorer for being fruitful. This system merely tells a family considering a second birth that the federal government's subsidy for the costs of raising its children will remain the same even though its costs of raising children will increase.

On the other hand, the family with only one child is clearly better off than under present law. This effect might be thought to undo the whole purpose of the plan, by providing an incentive to have a first child. The objection, however, is groundless, because an increase in the exemption for the first child can influence only those who now plan to have no children. The latest census data show that only 3.6% of wives in the age group 18 to 24 years fall into this category.⁴⁴

There is a special advantage in denying the exemption for the *second* child: more than half of all wives in the 18 to 24 year age group (the most fertile group) expect to have only two children.⁴⁵ It is precisely on a family with such an expectation that our scheme operates.

Notice that we have by this proposal only papered over the question of the right way to run a welfare state. One of the most common problems in the provision of government benefits is whether they should go to everyone or only to those in special need. If the present reason for the personal exemption is to measure need by family size, and to ameliorate that need to some degree, then to confer an extra exemption on a family with only one child is to grant a windfall. Once again, a serious issue of income distribution is disguised by treating the problem as purely one of population control.

The problem becomes clearer when we look at an even stronger incentive against births: an exemption of \$2,250 for the first child, and none for the second and third. Such a policy would be enormously expensive: it would grant three exemptions to every family which now has one or two children. The increase in exemptions

granted would be about 21 million⁴⁶ and about \$15,000,000,000 of tax base would be lost. This seems a large sum of income to exempt from tax to produce an incentive which, for all anyone knows, may not change anyone's behavior.

Even under the more modest system of granting every parent with one child an extra exemption, there will be a revenue loss, and it will be large. The 1970 Census found about 7,800,000 families with only one child under eighteen present.⁴⁷ (The Revenue Service's Statistics for 1969 show about 10,000,000 returns claiming three exemptions:⁴⁸ presumably many of these returns were from married couples with one child, but this group also includes couples with a dependent who is not a child, and divorced, widowed and single parents with two dependents.) The granting of an extra exemption to each of these families would, with today's exemption of \$750, remove about \$6,800,000,000 from the tax base. If one assumes an average marginal rate of 20% for these taxpayers (a conservative estimate) and disregards the fact that some do not pay tax, the revenue loss would be well over \$1,000,000,000. This is obviously a rough calculation, yet it seems likely to be of the right order of magnitude.

VI. FROM REVENUE LOSS TO SOCIAL JUSTICE

It might be asked why, if we are concerned with revenue loss, we should grant an extra exemption to a family with a high income and only one child, even if we are granting such exemptions to poor families, especially since the higher marginal rates of the rich make the extra exemption worth more to them in dollar amount. The reason is that whatever method of discouraging procreation we adopt, the last thing we want is to discourage only the poor, or only the middle class from having children. Whether we use an incentive or disincentive, we must be sure that we do not create one law of birth control for the rich and another for the poor,⁴⁹ or at least that we do so only with full understanding that that is what we are doing.

Indeed even the scheme we have proposed, if it affected anyone's behavior, would surely have most influence on those with incomes just high enough to be subject to tax. There is no easy way out of this dilemma. Since exemptions favor the poor, the *extention* of exemptions to induce birth control seems likely to push hardest on the poor to use birth control. Present law grants exemptions according to number of children on the premise that the larger the number of children, the less the ability to pay. As we move away from this use of exemptions, we move away from ability to pay as the measure

of liability (the essence of a progressive income tax) and towards ability to pay as a determinant of family planning. This is not the most happy of choices, and it would be all too easy to do it without realizing quite what we had done.

It might be possible to reduce the revenue cost by extending two exemptions to poor families with one child, and then phasing out exemptions as income increases, until they disappeared at some much higher income level. This plan has indeed been suggested as good tax policy since it would increase progression. The policy even has a name: "the vanishing exemption." The lowest brackets would be offered two full \$750 exemptions for one child, and none for the second; the higher brackets would be offered two small exemptions for one child, and none for the second; and the wealthiest no exemptions at all.

This proposal has its faults, too. The "vanishing exemption" is advocated by those who believe that as income increases the number of one's children eventually becomes irrelevant to one's ability to pay. In 1971, most exemptions for dependents (more than 75%) were taken by those with adjusted gross incomes under \$15,000.⁵⁰ We have already expressed doubt that family size is irrelevant to ability to pay at that income level;⁵¹ but if the exemption were to start to vanish only above that level, the revenue saving would be much less.

Worse, if there is a level of income so high that the number of one's children is unrelated to ability to pay, we again face the accusation, which we cannot answer, of having designed a system which will induce birth control more strongly at lower income levels than at high.

If, as we have been arguing, *any* system which relies on the manipulation of tax exemptions to induce birth control is likely to exert most influence on the behavior of those with the lowest incomes (or to harm them in a way which society has already decided not to do), and if, as we think, this would be unjust, the only alternative is a system of subsidies (not necessarily tax incentives) for the poorest who reduce their birthrate, phasing as income increases into taxes on the more wealthy who have "too many" children. Such a system has been forcefully advocated on the subtle, and quite correct, ground that economic inducements to birth control have some of the benefits of a market system.⁵² As in any market system, the method of allocation of a "resource" takes into account how much each "consumer" wants the resource. Compare, for example, a rule that no one can have more than two children (which we have already

condemned as unenforceable) with economic inducements calculated to reduce the birthrate to an *average* of two per couple over their lifetimes. Under the first scheme, two couples are treated alike although one couple may want very much to have three children, and the second may have only a mild desire for a second child. In a scheme of economic inducements, the first couple could have their three children (paying the price in lost subsidies or increased taxes) and the second would be nudged into having only the one they want. Both systems would produce four children (although under a coercive system, if it could be enforced, there would be more certainty as to the number of children born), but under a market-like system the children would be allocated to those who want them most.

The cost of raising children may already discourage the poor from bearing children, and the fact that they now have a high birth rate may be attributable to their inability to obtain methods of avoiding or aborting conception. (Indeed, this seems to be the official view.)⁵³ Requiring the poor to forego a subsidy if they have children can only make lack of income more important in discouraging procreation.

The problem, once again, is to what extent we are willing to allow inequality of income and wealth to produce an allocation which is based not merely, as now, on how much people want children, and on the extent to which their wealth allows them to disregard economic constraints, but also on the constraints of an official system of economic subsidies and taxes. There are some "rights" as to which we find market allocation intolerable because of income inequality. We now provide food, medical care, and legal counsel even to the poorest, and many feel that we should go further along this road. It seems likely that the "right" to have children is so personal and precious that we will be unwilling to leave its allocation to the market, once we make market constraints more stringent than today by a policy of subsidies for and taxes on birth. After all, even our Supreme Court finds procreation more worthy of protection than welfare payments or equality of expenditure on education.⁵⁴

There is a well-recognized way out of this dilemma: to reduce inequality of wealth and income. If it is outrageous to offer a starving couple a subsidy for using birth control, because they are so much more likely to be influenced by the subsidy than other couples, (to the point that "influence" becomes coercion),⁵⁵ why not first give each couple enough income so that they will not starve even if they choose to forego the subsidy? If a tax on childbearing by the rich is unlikely to affect their behavior unless it is steep, why not make it steep? And, indeed, the leading proponent of a

“market” in the right to bear children, created by subsidies and taxes, quite candidly says such a scheme would be fair only if the poor were first granted a “floor” income (the amount left unspecified) which would provide them with the necessities of life and if the “birth tax” on the rich were so high as to be perhaps confiscatory of both income, wealth, and even the expectation of inheriting wealth.⁵⁶ Here again, a major political and intellectual issue of our time—the redistribution of income—is treated as a trivial question, and the real problem seen as population control, but this time with an elegant microeconomic analysis added. We think it fair to say that if this country ever radically redistributes wealth it will not be in order to construct a microeconomically elegant system of population control.

Having used the question of revenue loss to lead us into the difficulty that financial inducements to control birth are all too likely to weigh more heavily upon some income classes than others, we can now return to the more simple point that one does not give up a billion dollars or so in tax revenue without asking if the goal is worth the money, and if it is, whether the money could not be spent on the goal in a more efficient way. The first question has no “right” answer, although it is worth noting that the United States Government has never directly appropriated anything like a billion dollars a year to restrain births,⁵⁷ and that we live in a country in which a good many people die prematurely for lack of medical care, or live out their lives in a state of malnutrition.

As to the best way to spend a billion dollars to restrain births, everyone recognizes that there are obvious advantages in using the money to help those who *want* to avoid conception. A dollar spent to teach contraception to those who want to use it is surely more likely to prevent a birth than one spent in the mere hope of inducing the recipient to want to use contraception. Even if this turns out not to be a *sufficient* policy, everyone seems to agree that it should be the first tried,⁵⁸ and that more along this line could be done if there were more money available.⁵⁹ This is usually called the “voluntarist” approach; the only question is whether it is, by itself, enough.

Suppose then, that we have fully funded every program which could help avoid unwanted births, and still find our birthrate too high. Should we then spend a huge sum on cash incentives not to have children? At this point, the question is purely one of cost-effectiveness. Earlier we have said that the elimination of exemptions *might* reduce the birthrate, but that there were costs to the progressivity and fairness of the income tax. Now we have to say that *our* scheme *might* work, without reducing that progressivity,

but that that is not much of a reason for spending a billion dollars. Of course, the federal government has spent large sums of money on just such untested and speculative ventures in the recent past, but the results have not been uniformly happy ones, and we would hope that a lesson has been learned from those experiences. The lesson, however, has special applicability to our scheme, because not only do we not know if it would work but, even after it was enacted, no one would ever know if it was working. Changes in birthrates are apparently affected by many variables, and we do not know what the variables are. Does this not mean that a tax incentive for the control of population is likely to be what in common parlance is called a boondoggle?



FOOTNOTES

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¹ 42 U.S.C. §4331 (1970).

² Commission on Population Growth and the American Future, *POPULATION AND THE AMERICAN FUTURE* (U.S. Government Printing Office, 1972) (hereinafter cited as *REPORT*).

³ U.S. Bureau of the Census, *STATISTICAL ABSTRACT OF THE UNITED STATES 51-54* (1973); U.S. Bureau of the Census, *CURRENT POPULATION REPORTS, POPULATION ESTIMATES AND PROJECTIONS, Series P-25, No. 497 at 1* (U.S. Government Printing Office, May 1973).

⁴ U.S. Bureau of the Census, *CURRENT POPULATION REPORTS, POPULATION CHARACTERISTICS, Series P-20, No. 263 at 8* (U.S. Government Printing Office, 1974).

⁵ U.S. Bureau of the Census, *CURRENT POPULATION REPORTS, POPULATION ESTIMATES AND PROJECTIONS, Series P-25, No. 493 at 20* (U.S. Government Printing Office, Dec. 1972).

⁶ *Id.*, at 7-8.

⁷ INT. REV. CODE of 1954, § 151(e).

⁸ *Id.*

⁹ Ehrlich, P., *THE POPULATION BOMB*, at 137 (Ballantine ed. 1968); Davis, *Population Policy: Will Current Program Succeed?* 158 *SCIENCE* 730, 738 (1967), reprinted in *THE AMERICAN POPULATION DEBATE* at 227, 251 (B. Callahan (ed.), 1971).

¹⁰ Enke, *Population Growth and Economic Growth*, 32 THE PUBLIC INTEREST 86, 96 (Summer, 1973); McCracken, *The Population Controllers*, 53 COMMENTARY No. 5 at 45, 47 (May 1972).

¹¹ Cf. Dyck, *Population Policies and Ethical Acceptability*, in THE AMERICAN POPULATION DEBATE 359 (D. Callahan (ed.), 1971).

¹² REPORT, *supra* n.2, at 158.

¹³ Rabin, *Population Control Through Financial Incentives*, 23 HASTINGS L.J. 1353, 1368 (1972).

¹⁴ *Id.* at 1368, 1370.

¹⁵ Reed and McIntosh, *Costs of Children*, in 2 COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE RESEARCH REPORTS 333 (E. Morse and R. Reed (eds.), 1972) (hereinafter cited as REED AND MCINTOSH).

¹⁶ REPORT, *supra* n.2, at 81.

¹⁷ Reed and McIntosh, *supra* n. 15, at 337.

¹⁸ *Id.* at 338.

¹⁹ *Id.*

²⁰ U.S. Bureau of the Census, STATISTICAL ABSTRACT OF THE UNITED STATES, Table 177 at 116 (1973); for current enrollment figures see U.S. Bureau of the Census, CENSUS OF POPULATION: 1970, SUBJECT REPORTS, Final Report PC (2)-5A, *School Enrollment*, Table 11 at 254.

²¹ REPORT, *supra* n. 2, at 81.

²² Reed and McIntosh, *supra* n. 15, Tables I and II, at 349.

²³ *Id.*, Table II, at 345.

²⁴ INT. REV. CODE OF 1954, §§46(a)(1), (c)(2), (c)(3).

²⁵ Enke, *supra* n. 10, at 87.

²⁶ S. 3632, 91st Cong., 2nd Sess. (1970).

²⁷ Rabin, *supra* n. 13, at 1371.

²⁸ S. REP. No. 92-437, 92nd Cong., 1st Sess. 54 (1971).

²⁹ See, e.g., Dodyk, *The Tax Reform Act of 1969 and the Poor*, 71 COLUM. L. REV. 758, 787-789 (1971); H. Miller, RICH MAN, POOR MAN 117-120 (Apollo ed. 1971).

³⁰ S. REP. No. 92-437, *supra* n. 22, at 54.

³¹ See Ketchel, *Fertility Control Agents as a Possible Solution to the World Population Problem*, in THE AMERICAN POPULATION DEBATE 279, 291 (D. Callahan (ed.), 1971). Mr. Ketchel suggests putting fertility control agents in public drinking water instead, which would leave those of us who drink imported beer free both to get drunk *and* to procreate.

³² See Kalven, H. and W. Blum, THE UNEASY CASE FOR PROGRESSIVE TAXATION, 90-100 (Phoenix ed., 1963). Kalven and Blum insist

that to concede the need for exemption is not to concede the general case for progression, but their reason—that exemptions do not imply a graduated marginal rate—while extremely important, is not relevant here, since they are interested in problems of disincentive to work and invest and the difficulty of constructing “correctly” graduated rate tables and we are not.

³³ Pechman, J., H. Aaron, M. Tussig, *SOCIAL SECURITY: PERSPECTIVES FOR REFORM*, 182-83 (1968).

³⁴ *Exodus* 20:3.

³⁵ Some refreshing exceptions are Berelson, *Beyond Family Planning*, 38 *STUDIES IN FAMILY PLANNING* (Feb. 1969); and Notestein, *Closing Remarks* in *FAMILY PLANNING AND POPULATION PROGRAMS* 828-829 (B. Berelson (ed.) 1966).

³⁶ G. Myrdal, 2 *ASIAN DRAMA* 1502-03 (Pantheon ed. 1968).

³⁷ Rabin, *supra* n. 13, at 1371.

³⁸ *Id.*

³⁹ Center for Family Planning Program Development, *NEED FOR SUBSIDIZED FAMILY PLANNING SERVICES: UNITED STATES EACH STATE AND COUNTY*, 1969 at 4 (1969); U.S. Bureau of the Census, *CURRENT POPULATION REPORTS, SPECIAL STUDIES, FERTILITY INDICATORS: 1970 Series P-23, No. 36* at 49 (April 1971); *id.* at 29.

⁴⁰ U.S. Bureau of the Census, *CENSUS OF POPULATION: 1970, VOL. 1, CHARACTERISTICS OF THE POPULATION, Part 1, United States Summary, Sec. 2, Table 251*, at 1-919-922.

⁴¹ Pechman, *Income Splitting*, 1 *TAX REVISION COMPENDIUM* 473, 481, (House Ways and Means Comm. 1959).

⁴² U.S. Treasury, House Ways and Means Committee, Senate Finance Committee, *TAX REFORM STUDIES AND PROPOSALS* 80, (91st Cong., 1st Sess.; Comm. Print 1969).

⁴³ Ketchel, *supra* n. 31, at 290-91.

⁴⁴ U.S. Bureau of the Census, *CURRENT POPULATION REPORTS, POPULATION CHARACTERISTICS, Series P-20, No. 240, Table 2* (September 1972).

⁴⁵ *Id.*

⁴⁶ U.S. Bureau of the Census, *supra* n. 40, Table 206 at 1-658.

⁴⁷ *Id.*

⁴⁸ Internal Revenue Service, *STATISTICS OF INCOME—1971 INDIVIDUAL RETURNS*, Table 2.7, at 118 (1973).

⁴⁹ See, e.g., *REPORT, supra* n. 2, at 159-160; Berman, D., *THE ROLE OF LAW IN POPULATION PLANNING* 17-18 (1972).

⁵⁰ Internal Revenue Service, *supra* n. 48, Table 2.7, at 116.

⁵¹ See discussion, *supra*, at n. 41.

⁵² The best discussion of this is *Note, Legal Analysis and Population Control: The Problem of Coercion*, 84 HARV. L. REV. 1856, 1903-06 (1971).

⁵³ Center for Family Planning Program Development, *supra* n. 39, at 3, 4-5.

⁵⁴ *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973); see especially footnotes 71, 72 and 76.

⁵⁵ Berman, *supra* n. 49, at 15 and 36; REPORT, *supra* n. 2, at 95; Callahan, D., ETHICS AND POPULATION LIMITATION 27 (1971).

⁵⁶ 84 HARV. L. REV. at 1904-05.

⁵⁷ REPORT, *supra* n. 2, at 108-09.

⁵⁸ See, e.g., Berelson, *supra* n. 35, at 1.

⁵⁹ REPORT, *supra* n. 2, at 108-09.