

*Challenging the Benchmarks in
Tax Law Theories and Policies
from a Gender Perspective—
The Swedish Case*

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GENDER EQUALITY IS a constitutional principle in the European Union. Solely on this basis, legislative bodies within the EU should consider gender equality when making tax reforms. However, gender-responsive tax reforms are not guaranteed by a constitutional framework for gender equality, but rather by qualitative analyses concerning the substance of the welfare state, the labour market and family structures—a common approach in most gender-sensitive policy analyses (see O'Connor, Orloff and Shaver 1999). Considering contemporary and future social risks that the European welfare states are facing in connection with income protection for wage earners,¹ it is no exaggeration to claim that gender equality is probably one of the most important prerequisites for future welfare reforms. Overlooking gendered patterns of social power in designing the financing of welfare regimes may very well turn out to have devastating consequences for the future sustainability of tax regimes in many welfare states. Put frankly, gender blindness in tax policy making is, in the light of welfare futures, an irresponsible political standpoint.

In this chapter, I will try to identify some of the underlying normative foundations of tax theories and policies that mirror and reproduce gender inequalities and to provide some examples of how these normative benchmarks are applied in Swedish national tax law. The chapter picks up on several major policy debates about tax system design that are particularly

¹ See, eg, the identification of new social risks made by Giuliano Bonoli (2005). Bonoli points out that transformations of the labour market and of family structures have created new social risks, such as difficulties in reconciling work and family life, single parenthood, having responsibility for an ageing or disabled relative and possessing low or obsolete skills.

relevant to the gendered dimensions of how welfare is produced and distributed in the triangular relation between the market, the state and the household (which in the following I will label the 'social welfare triangle'). To capture the whole gendered context of social welfare, one also has to consider the exchange of time, care and economic resources within the households. Nordic feminist scholars have successively developed a model for analysing both the public and the private side of welfare production and distribution. By adding the private relations of exchange of time, care and economic resources to the public relations of the exchange of money and work between the state, the market and the household, it is possible to see structural patterns through which tax law reproduces the division between the public and private spheres, which, in turn, mirrors the division between male and female lives (see Ketscher 1998: 60–68; Stang Dahl 1988; Gunnarsson 2003). From this perspective, I will explore the gendered impact that the choices of tax units, tax mixes, quotas and tax equity principles can have, and I will also show that the concept of the public/private division of labour fails to capture gender-equality concerns in the tax system.

THE NEED FOR A CRITICAL EPISTEMOLOGY BASED ON A GENDER PERSPECTIVE

A report from the Swedish Inland Revenue (*Skatteverket*), published at the beginning of 2007, can serve as an example of lack of gender competence in tax policy making. The report is not of great significance for tax policy processes in Sweden, but it is the first of its kind. The subject of the report was whether simplifications of tax regulations would increase gender equality (2007: 2). The basic conclusion was that Swedish tax legislation is gender neutral but that in some areas of taxation, the system's impact on women causes them to suffer significant substantive inequalities. This inequality emanates, according to the report, from gender-related differences in work performance, entrepreneurship and investments. On the basis of this conclusion, the report stated that it would be more interesting, from a gender-equality perspective, to investigate and measure whether complex tax regulations result in differential treatment of men and women.

The statement in the report is representative of a formalist legal perspective. Traditional legal frameworks such as this do not provide a set of general implications for theorizing about gendered dimensions in the tax system. The only frame of reference for formalist legal analysis is the normative model, according to which all citizens are equal under a neutral law. Using such a uniform approach, it is impossible to identify those legal structures or legal discourses in which the patterns of social power reside and which reproduce gender inequalities between men and women, together with stereotyped gender constructions. Using this approach, it is

also impossible to detect the possibility that the substantive preconceptions of legal forms, rules and principles can function to the social disadvantage of women (Young 2000).

By contrast, a more substantial and comprehensive gender approach may be taken to the questions of gender equality and taxation, based on international feminist revenue law research (see, for example, Apps 1984; Grbich 1990–91; McCaffery 1997; Staudt 1996; Young 1997 and 2000; Kornhauser 2005). According to this approach, a diversity of possible legal strategies for achieving gender equality (drawn from social, economic and political contexts) may be highlighted. The report touches upon three fundamental issues—work, entrepreneurship and investments—but it considers these issues as beyond the scope of law. In contradistinction to this perspective, a comprehensive gender approach recognizes that legal orders are not closed, normative systems; that legal research is about all aspects of legal norms; and that legal norms are not detached from the social and economic values that shape the conditions of life (see Gustafsson 2002, 84–87 and Hydén 2002).

A Matter for the Private Sphere

Mainstream revenue law scholarship that replicates the social meanings of productivity and wealth is based on economic rationalism, which represents the self-interested and socially isolated character of ‘economic man’ (Grbich 1993). Feminist legal studies about revenue law challenge the prerequisites for human agency imbedded in this approach. They also challenge a ‘blind spot’ in the mainstream perspective, which fails to take into account the fact that the gender relations shaped by the stratification of revenue and welfare arrangements prevents women from having equal access to the resources available to men (Liebert 2001: 268; Orloff 1996; Tronto 2001: 66–70).

One key factor in the elimination of this blind spot consists of analysing the context of the social location of the household (ie, the family). Women’s living conditions are largely bound up with family life—and the normative and structural patterns that shape these living conditions emerge from traditional gendered functions within the family, as well as from the way the family as an institution is organized in society. The general picture of unequal distribution of power and resources between men and women shows that women’s economic dependency resides in, and is reinforced by, the exchange of time, care and economic resources in the household, which in turn is replicated in the production of social welfare between the state, the market and the family. In other words, family life results in economic and social subordination for women, although in mainstream social and legal science and according to political notions of social justice, it is assumed that family institutions are just. However, the unequal distribution

of responsibilities, financial resources, powers and time within the family is closely related to inequalities that exist in society outside the family. According to gender analysis (which challenges traditional normative foundations), welfare is produced in a cyclical process throughout the state, the market and the family and in structural terms, it reinforces the dominance of men over women—from the home to work to the welfare regime and hence back home again (Gunnarsson 2003: 22–23; Nyman 2002: Article 3; Okin 1989: 21–22, 92, 95, 113).

A Matter of Tax Equity and Social Justice

Viewing the taxation of work, entrepreneurship and investments from a gender perspective challenges the complexity of tax fairness. Tax equity can be many ways, but the core issues are always related to the mix of tax levels and tax structures. Tax equity is also part of the much broader context of social justice in the welfare state, which is a fundamental democratic issue. As John Head, an internationally recognized expert on tax principles and policies concerning tax fairness, puts it, ‘The achievement of a fair tax system in a democracy is rightly regarded as a matter of high economic and social importance’ (1993: 4).

A basic political issue for every welfare state is the identification of sustainable and legitimate tax structures that will allow citizens to equitably share the burdens of paying for benefits—by means of social contributions and by means of collective and individual and direct and indirect taxes. In theory, the recognition of citizens’ social rights ought to correlate with an obligatory common responsibility to generate the public funding needed to pay for them. In that way, citizens’ obligations are based on the legitimate demand that they support certain basic needs. From this perspective, tax equity, on an aggregated, collective level, is related to a fair and just connection between burdens and benefits (Lacey 1998: 50–52; Sjöberg 2001: 17–18; Young 2000: 7–8).

The relationship between revenue law and social welfare/social security law has to be viewed as a broad concept that includes the aspect of social power within legal structures. It ought to include both the right to receive welfare and the obligation to participate in generating public welfare. The structuring of taxation and social security has therefore become closely intertwined in welfare state policies. For instance, in countries like the United States and Canada, many social security programmes are now delivered legislatively and administratively through the tax system. From the point of view of women’s economic equality and social security, it is therefore important to investigate both sides of the public budget by using theoretical and methodological concepts such as tax expenditures analysis (Young 2000) or gender budgeting analysis (Philipps 2006).

From the perspective of the social welfare triangle (the market, the state and the household) it is also important to investigate how revenue and social benefit regulations can promote gender equality by creating incentives and disincentives regarding central gender-equality issues, such as work decisions and family formations. The structures of entitlement to social provisions should be tested in terms of the way that social benefits and services contribute to women's autonomy or reinforce their dependency. Such a test ought to include the range of benefits and services, as well as underpinning criteria, such as coverage (including eligibility requirements), duration and benefit levels. In addition, the structures of revenue obligations should be tested in relation to the socio-economic realities of women's lives. The test could include both how social programmes are subsidized as tax expenditures through the tax system and how the mix of tax structures are constructed in relation to gendered patterns governing the exchange of time, care and economic resources in relation to the production and distribution of social welfare (see Orloff 2001: 135–36; Sainsbury 1996: 44–45; Young 2000).

THE IMPACT OF THE PUBLIC/PRIVATE DIVIDE ON TAX LAW

Our understanding of ourselves and the world around us is greatly influenced by the division of society into a public world and a private-domestic world. This division can also be found in various areas of research. It has a strong influence on philosophical thinking and on liberal ideas of justice (Okin 1989: 111–16; Svensson 1997: 312). One should not forget that the public/private dichotomy is of fundamental importance in the feminist movement and that it may even be, as Carole Pateman once expressed it, 'ultimate' (1983).

The theoretical framework of the public/private divide is based on gendered patterns governing the exchange of time, care and economic resources within the social welfare triangle, where the state and the market represent the public sphere and the household represents the private sphere. Feminist revenue law scholarship has pointed out the need for a wider explanation of gendered social relations in order to circumvent the mainstream gender analysis of the tax system, which feeds the public/private divide. This perspective is also relevant for interface issues concerning the interaction between the tax and benefit systems. By focusing on deconstructing the public/private divide from the perspective of the social welfare triangle (the state, the market and the family), it is possible to apply a method that can include women's care work and other domestic activities, part-time work and low wages as part of the analysis of tax equity and social justice (Apps 1984; Grbich 1987; McCaffery 1997; Staudt 1996 and Young 1997). Obviously, as shown by many of the authors in this book, this type

of analysis can contribute to a deeper epistemological understanding of the normative patterns in revenue law that reproduces gender inequalities.

The outcome of the public/private divide is evident in tax expenditures and tax structures that are openly or unconsciously designed to reproduce relational dependency in the family or traditional notions of the productivity of women's labour and their contribution to the economy (Grbich 1990–91 and Young 1997). Tax expenditures are normally defined as tax rules that are designed technically to raise revenue and tax rules that deviate from this benchmark are defined as tax expenditures (Young 2000: 9). The distinction between fiscal and non-fiscal purposes has often been made on the basis of a specific interpretation of the theory of optimal taxation. In the Nordic countries, the benchmark view among leading tax law scholars is that non-distorting taxation should be seen as neutral taxation because neutral tax minimizes welfare losses and promotes an efficient allocation of resources.²

Tax expenditures can serve political redistributive purposes, either in redistributing wealth or in reducing income inequalities. Expenditures that depart from the 'normal' tax structure can also serve regulatory and stabilizing functions in relation to the economy, such as fighting inflation, unemployment, budget deficits and the growth of the shadow economy. Environmental and social programmes and programmes that mitigate demographic problems are other examples of tax expenditures. Some of these tax measures are the result of a political process, while others are imposed as a result of exogenous factors (Messere, de Kam and Heady 2003).

A common view among feminist tax law scholars is that tax structures that are clearly related to a gender-biased notion of dependency and productivity are chiefly present in the construction of the tax unit and the tax base. Much of feminist revenue research has focused on the relative merits of the individual versus the spousal couple as the appropriate tax unit from an ability-to-pay perspective, as well as on the impact of the choice of tax unit as an incentive or disincentive regarding women's participation in the labour market. The marital tax unit has been seen both as a defective indicator of ability to pay (Apps 1984: 472–74; Chan 1993: 64–65) and as a disincentive to women's autonomy and women's participation in the labour market. Sweden abandoned the joint taxation of spouses long ago, but the structure still exists in many OECD countries and also affects the

² Two annual reports produced by researchers connected with the Nordic Tax Research Council are representative of this view. One was published in 1983, and the other was forthcoming in 2009 (*Rapporter vid Nordiska skattevetenskapliga forskningsrådets* (seminarium i Saltsjöbaden i oktober 1983). *Nordiska skattevetenskapliga forskningsrådets skriftserie*, NSFS 13 and Bolander (2009).

outcome of case law in the European Court of Justice (Gunnarsson 2003: 48–53, 61–63).

On the basis of normative, foundational tax policy principles and tax theories on income, consumption and capital, a plurality of ideals has developed concerning the construction of a tax base and the mix of tax bases. Even though pure ideals transform into hybrids in the political landscape, both principles and theories have great impact on the way in which tax systems are constructed. The problem, of course, is that any framework for tax law reform very seldom includes a gender-equality perspective. For instance, the traditional view of fairness in taxation does not consider remedies for the gender-structured division of labour, which is characterized by women doing the majority of household and care work, working part-time, working for lower salaries and having greater responsibility for maintenance support for children and other dependants in the household. Household production is regarded as non-taxable imputed income³ within the income tax base.

The Tax/Benefit Unit and Family Taxation

Family taxation can be defined in many ways, but among these different definitions, two normative positions are rather obvious. One is the taxable capacity approach and the other is the social welfare approach. The taxable capacity approach aims to preserve horizontal equity. It is based on principles such as equal treatment, non-discrimination, protection of the family and the ability to pay. Under the liberal, rule-of-law tradition, these are all recognized as outcomes of the state's obligation to protect citizens' freedoms and rights. In some states, these principles are established in the constitutions; in other states, they are considered to be fundamental general principles. One objective of the social welfare approach is to achieve vertical equity concerning socioeconomic issues of redistribution. According to this approach, taxation should be part of welfare programmes—in combination with social benefits or as a replacement for cash or in-kind benefits (Soler Roch 1999).

Compared with other European countries, Germany and France have extensive family taxation. In Germany, for instance, marriage and family are protected by the constitution (article 6(1) GG). One might think that this regulation would govern family taxation in the form of allowances for maintenance support and joint taxation in tax law. However, according to Joachim Lang, this type of family taxation is linked mainly to the

³ Imputed income should be understood as the value of work and services taxpayers provide for themselves.

constitutional rule that all people have the right to be equal before the law and not the protection and support of marriage and family. He argues that equality of taxation is expressed in the ability-to-pay principle, which in Germany is interpreted as a base for neutrality in the taxation of different forms of cohabitation. In order to avoid tax discrimination against marriage, an income-splitting tariff was introduced through a Federal Constitutional Court decision in 1958. Spouses are generally assessed jointly, and a progressive income tax schedule is applied on the aggregated total income of both spouses, divided into two (Lang 1999; Olsson 2006: 154–57). Lang's opinion is confirmed by both Scheiwe and Wersig in this volume. In contrast to Lang, however, they both emphasize that the 1958 Federal Court decision indirectly draws on the constitutional protection of marriage and family by underlining the fact that husband and wife are free to make decisions concerning the division of household labour. As described by Wersig and Scheiwe, in its decision, the Court even included a rather radical twist in its argumentation in relation to the principle of gender equality.

Public policy governing family taxation in France is renowned for its history of supporting large, male-breadwinner families through an extensive form of joint taxation, which can be defined as a family-splitting system (Hantrais and Letablier 1996, and see also Wersig in this volume). After the Second World War, the tax unit, called the *foyer fiscal*, was introduced. The original idea was to include everyone sitting around the 'fireplace', which symbolized economic dependency on the breadwinner. This view constituted an extreme version of joint taxation, whereby the breadwinner was permitted to split his or her (usually his) income with all members of the *foyer fiscal*. Today, the tax unit includes spouses, cohabitant partners recognized under the PACS⁴ and children and other family members claimed as dependants. Income splitting in relation to family size is called the *quotient conjugal* for income splitting between spouses and PACS partners, and it is called the *quotient familial* for income splitting between children and other dependent members of the household. Since French family taxation is based on a combined taxable capacity approach and social welfare approach, the *quotient conjugal* is based mainly on the same reasoning as the German joint taxation of spouses. That is, the primary objective is to ensure neutrality between single persons on the one hand and cohabiting partners on the other. The *quotient familial* (which is a form of extended joint taxation) has been linked to two objectives: one fiscal and one non-fiscal. The objective considered to be fiscal is to achieve neutrality between tax units with and

⁴ Since 2004, a family also includes partners who are considered to be in a French civil union (*le pact civil de solidarité* [PACS]). This means that civil law has extended the family concept to other forms of cohabitation than the so-called nuclear family. However, a contract regulating mutual rights and responsibilities in the partnership is required, and partners must cohabit for three years before they are considered to have the same legal status as a married couple.

without children, based on the ability-to-pay principle. The objective considered to be non-fiscal (David 1999; Gunnarsson 2003: 72–82; Thévenon 2008) is related to the social protection of families with many children, as the *quotient familial* has also been used as an instrument in the traditional concern about fertility rates in French family policy.

In Sweden, many arguments against joint taxation and family taxation were put forward over the years, but when joint taxation was replaced with individual taxation, it was the ability-to-pay principle, together with gender-equality objectives, that served as the rationale. Specifically, the abolition of joint taxation of spouses was based on knowledge of the correlation between the labour-market participation of women (married or living in partnerships) and the income of their husbands or partners. When individual taxation was first introduced, the incentives for wives and female partners to participate in the labour market increased. The effective marginal tax was generally higher for married men in relation to the marginal tax rates for women, so an increase in working hours for women was more beneficial for households. Since the 1970s, family taxation in Sweden has therefore been regarded as tax expenditure, but it has been replaced in part over the years with social benefits in cash or in kind (Gunnarsson 2003: 57–62). One explanation for the pragmatic use of the ability-to-pay principle in Swedish tax law reforms—used to argue both for joint and individual taxation in the name of fiscal neutrality—might perhaps be found in differences between Sweden on the one hand and Germany and France on the other, in relation to the legal status of family and marriage. In contrast to Germany and France, the only principles established in the Swedish Constitution that are relevant for this tax policy issue, are non-discrimination and equality of treatment.

The construction of tax units can be linked to how childcare costs are funded in the various countries, as joint taxation can also be part of how subsidies for childcare are delivered. Overall, one can say that there exist two normative models of welfare arrangements for how to subsidize childcare costs, which are mutually exclusive as they promote either gender equality or traditional life patterns for men and women.

Tax Bases and Quotas

In public finance, the concept of generating wealth is centred on the taxpayer's obligation to pay taxes and social contributions, constitute the main sources of revenue. In the OECD countries from 1965 onwards, the greatest share of revenues comes from personal income tax, which until the 1990s was far larger than any other revenue source. During the early 1970s and 1980s, social security contributions increased rapidly, and by the mid-1990s, they reached almost the same level as personal income tax as a revenue source. The share of total tax revenue raised from general consumption

taxes has also increased, while tax revenues from property tax and corporate income tax have remained fairly constant and at a low level (Messere, de Kam and Heady 2003: 36–37).

For many years, the total tax ratio⁵ in Sweden has, with few exceptions, been the highest among the OECD countries. Tax ratios among countries are difficult to compare for several reasons, of which various differences in the existence, levels and structures of social security contributions and taxes are the most pronounced (see, for example, Messere 1993: ch 3; Messere, de Kam and Heady 2003: 33; *Riksskatteverket* 2003). Even so, it is apparent that the tax ratio of the Swedish welfare state has been consistently high when the tax obligations of its citizens are measured.

Theoretically, the assumption is that the correlation between obligations and legitimate needs ought also to be strong in a country that wants to realize social justice through a hegemonic welfare state, expressed in the distributive principles of equality of opportunity and solidarity. However, such normative coherence does not exist between tax and social security law. In fact, the justification for tax fairness in relation to social security law is based on somewhat different distributive principles—ones that are duty oriented—and the source of taxation has an impact on how the need for distributive principles is articulated in theories and policies.

Taxation has many sources, including real estate, wealth, capital, beneficial transfers, consumption, goods, services, production, labour and income. The Swedish tax system draws, directly or indirectly, on all these sources, apart from beneficial transfers, which was recently abolished as a tax base. In effect, most economic activities are taxed. As a result, there is one basic problem: the tax system operates with a very diverse set of distributive principles, and the ways in which ‘tax citizens’ come to share a common tax burden is therefore not particularly transparent.

When a government structures taxation in relation to the economic activity within its jurisdiction, its income flow emanates from three main sources. Production is the original source from which income springs; the next step is transfer of income from production to households; and the third step is the use of incomes for consumption. The circle is then closed as income from consumption returns to production. On the level of production, the sum of gross incomes earned by a firm (the payroll of a company) constitutes the basis for assessing an employer’s social security contributions. These contributions are structured as payroll taxes for employers and could easily be classified as a tax on investment in the productive factor, labour. Incomes from employment also constitute the tax base for income tax, for which employees are the tax subjects. This is an individual, direct tax on the

⁵ The tax ratio expresses the total tax burden in a country calculated as total tax receipts to GDP at market prices.

basis of net income from earnings. The personal income tax base includes, in principle, all incomes and fringe benefits from the performance of work of all kinds. It also includes a large part of public social transfers. In general, benefits based on residence in a state and social assistance in the form of maintenance support are exempt from income taxation. Savings from earned income become capital, and income from that capital also constitutes a separate tax base. Certain capital possessions also constitute a tax base for a wealth tax. When using earned or saved income for private consumption, an indirect consumption tax is added to the consumer price for services or goods (SOU 2002:47, 53–56).

The multiplicity of taxation sources, the comprehensive use of broad tax bases and the combination of both direct and indirect taxation of individuals makes the concept of obligation to pay tax broader than qualifications for social entitlements in Sweden. In short, to become a taxpayer (tax citizen) is much easier than to become a social beneficiary (social citizen). There is no need for the subjects of obligations to meet demands for eligibility such as residence or work, which serve as qualification criteria for social entitlements under social security law (Gunnarsson 2007).

Economic Growth before Social Justice: A Disadvantage for Gender Equality

Commonly, the ability-to-pay principle has been used to express tax fairness in general, in terms of both tax equity and social justice. Tax equity is a formal aspect of tax fairness promoting impartiality in the treatment of taxpayers. Social justice has redistributive objectives, and when this principle is being applied, an individual's ability to pay should be assessed according to a progressive income tax rate schedule. In the 1991 Swedish tax reform, however, legislators changed the content of the ability-to-pay principle. Instead of applying a neutrality principle inspired by optimal tax theory or neoliberal economic ideas, it seems that the tax policy strategy was to keep the label but change the content. Ability to pay was transformed into a neutrality principle in order to legitimize the structuring of a uniform tax base for fiscal purposes. Social justice was also not served by the neoliberal tax ideology behind the restructuring of income tax during, inspired by the 1986 US tax reform. In that case, a line was also drawn between fiscal purposes and social justice.

The benchmark introduced during the 1991 Swedish tax reform stated that tax regulations with a social purpose were to be seen as political interventions in the market economy. According to the neoliberal economic philosophy of Friedrich A Hayek in particular, economic intervention creates excess burdens or welfare losses, which hinder economic growth (Hayek 1956; Korpi and Palme 1993). As redistribution of wealth and income is based on political

ambitions concerning economic equality, they are seen as interventions that create inefficiency in the economy. This standpoint has resulted in a normative standard that distributional neutrality is a part of the concept of fiscal taxation. The distribution-neutrality objective aims to preserve the status quo, whereby no income group should benefit or lose more in relation to any other income groups as an effect of income taxation (Prop 1989/90:110, 620–32).

This benchmark of tax neutrality justified broader income and consumption tax bases, less progressive income tax and a shift from the equality of treatment of income tax subjects to equal treatment of income tax objects. That is, the equality of treatment of tax subjects with equal economic capacity has been transformed into a principle of equal treatment of equal incomes. The shift from subject to object is manifested in the change from a global to a dual income tax. Global income taxation, also defined as the conventional personal income tax, is regarded as the ideal for the ability-to-pay version of tax equity, as all incomes from different sources are assessed for each tax subject and taxed at the same rate. In a dual income tax system, however, each source of income is treated under a separate tax regime (Gunnarsson 1995; 1999; 2001). One can, of course, ask what difference for tax equity and social justice these tax structures make at the end of the day, since in reality, all income tax systems become imperfect through deviations from the original theoretical idea. This is true, but if one abandons the possibility of assessing the individual tax subject's ability to pay, many options for creating a tax system that is fair from a socio-economic point of view are also abandoned.

The 1991 reform had multiple objectives, but the focus was on cutting effective marginal tax rates on earned income. Those income earners with the highest incomes had the highest effective marginal tax rates, as the income-tax-rate scale had a redistributive, progressive profile. Unfortunately, during this process, the significant crossover effect between the marginal costs for women's paid work and the income of their husbands or partners (a gender-equality problem) were not taken into consideration. Not surprisingly, the cuts in the effective marginal tax rates had a moderating impact on women's paid work, as the marginal net of taxed salaries increased for men (Aronsson and Palme 1994). The shift from income tax to consumption tax also had a side effect that contributed to moderating women's labour supply. For the first time, a 25 per cent value added tax (VAT) was introduced on several services that could be regarded as substitutes for the type of household maintenance that is traditionally carried out by women. It therefore became more expensive for households to buy these services than for women in the households to perform those services themselves (Wennemo 1997: 18–19).

The 1991 tax reform clearly stated that family taxation and social justice objectives were to be regarded as non-fiscal. Welfare state schemes were delegated to the transfer system of the public budget and were not to be carried out as tax expenditures. In this context, social justice included every

possible welfare state reform that could be based on a diversity of objectives in areas such as the labour market, the family, housing and infrastructure policies. To regard these objectives as non-fiscal is, again, political and normative. However, the inherent normativity of drawing the line between fiscal and non-fiscal was not recognized, and this may well be the reason why the Swedish strategy of avoiding unwanted welfare losses by cutting effective marginal tax rates (EMTR)⁶ and abolishing the non-fiscal, social dimensions of income tax law, has not succeeded. A high EMTR in a progressive income tax system is regarded as an excessive burden for the economy when it becomes a disincentive for high-income earners to work. Unfortunately, the 1991 tax reform also exacerbated an existing EMTR problem. This was the result of a poorly coordinated combination of income-tested social benefits and fees for social services, such as municipal fees for childcare, an income-related basic deduction for low-income groups and tax reductions for certain categories of taxpayers with little ability to pay. The combined effects of these tax and social laws gave the welfare system as a whole a progressive profile for low-income households. This EMTR problem created disincentives in the form of poverty traps, which influence work and study decisions related to income (Gunnarsson 2003).

The dimension of social power is obvious in the discourse concerning income tax cuts. According to the hegemonic understanding of the connection between economic growth and cuts in high marginal tax rates, it should also be recalled that optimal tax theory recommends that married women should be taxed less and married men more. This analysis is based on the observation that men are inelastic in their work patterns and married women have high income elasticity relative to their husbands' incomes. Efficiency and wealth maximization would improve if married men paid more income tax than their wives. In terms of gender equality, such a reform would increase women's participation in the labour market and would thus improve economic growth (McCaffery 1997: 164–87).

THE DICHOTOMY BETWEEN PAID AND UNPAID WORK

The tax system's non-recognition of household production is based on positivist methodologies that preclude analysis of the gendered character of home-based activities. Such methodologies generally understand household production as leisure, valued according to the price the individual would accept in order to substitute it with market-based labour (Grbich 1990–91). This view of productivity is very problematical from a gender perspective. It

⁶ Effective marginal tax rates (EMTR) can be defined as including both the tax paid on the last income earned and the loss of any social provision that occurs directly or indirectly because of an increase in gross income (St John 1993).

is based on a general assumption about non-market labour, shared by many around the world, that women are the ones who do the household work and that this work does not entitle them to wages or other economic benefits tied to traditional market employment (Staudt 1996: 1573). Consequently, women's unpaid labour in the home is ignored for tax purposes as being earned income in kind or a form of imputed income. As Claire Young has put it: 'The combination of the non-recognition by the tax system of household production and the low wages paid to women reinforces the sexual division of labour' (1997: 268). The tax equity issues raised in connection with this problem are contradictory. On the one hand, there are the market-oriented concepts of gender equality that argue for labour-market participation as the means for women to achieve economic autonomy and emancipation; on the other, there is the argument that by recognizing work in the home as valuable and productive (by, for example, taxing the value of imputed income), women's economic security would be improved (Staudt 1996).

In Sweden, there is a conflict between the normative model of gender equality and the real world for families with small children. The idea of gender equality in tax and social security law rests on two strategies: the combination strategy and the employment strategy. The combination strategy is Swedish family policy, and its purpose is to achieve welfare regimes that allow parents to combine work and family life when their children are small. (It is similar to what are called reconciliation strategies within family policy elsewhere in Europe.) The ideal nuclear family—mother, father and a couple of children—consists of two breadwinners, where work and family life have been reconciled for both parents, and where the parents are self-supporting individuals. In reality, the general structure of the exchange of time, care and economic resources within the triangular relation of state, market and family reveals that the life patterns of families with small children do not correspond to the normative ideal. The standard for a Swedish nuclear family consists of no more than one-and-a-half breadwinners, where normally the woman is not self-supporting in terms of money or time because of the unequal division of paid work and unpaid care work (Gunnarsson 2003). One of the basic obstacles to truly implementing a combination strategy is that the value of all productive work is not treated equally.

No tax system directly taxes the value of household labour. However, several tax reforms in various countries directly or indirectly address the issue. One such example is the Swedish tax credit for the employment costs of using household/domestic services (Lag (2007: 346) *om skattereduktion för utgifter för hushållsarbete*) which has its counterparts in many other countries. However, the tax credit in Swedish tax law has no connection with a theoretical framework for the valuation of women's household labour. The main policy objective is part of an employment strategy, with the task of stimulating certain branches of business.

From a gender perspective, the question of valuing and taxing household labour is extremely ambiguous. The dilemma resides in determining whether or not upgrading household labour so that it becomes an integrated part of a comprehensive income-tax base will actually help countries meet gender-equality objectives. Nancy Staudt has convincingly argued for the advantages of taxing household labour as a means of resourcing women. By pointing out the logic of tax neutrality for all productive work, she erases the distinction between the public and the private spheres and also recognizes all welfare produced in the social welfare triangle. In this way, care work, representing women's special contribution and relationship to the welfare state, is given economic value and also provides eligibility for social entitlements (1996: 1577). Obviously, many objections can be raised against Staudt's proposal. For instance, in a Swedish context, the strategy can be rather unpromising, in that married women are treated as autonomous individuals with economic rights to a much greater extent in Sweden than they are in the United States. In this volume, Philipps presents a different approach to the question of how tax reforms could contribute to providing economic support for the lower-earning spouse or cohabiting partner of the household who does most of the unpaid (non-market) work. This approach is much closer to the one followed in Sweden.

GENDER INEQUALITIES PERSIST

The normative structures reinforcing gender inequalities in tax law, expressed here in the context of the social welfare triangle, are not at all new findings. However, in this chapter, the aim has been to add to the common knowledge of feminist tax scholarship the realization that even a gender-egalitarian welfare state like Sweden, with advanced individualization of social rights and fiscal obligations, is trapped in the notion of a public/private division of labour. Thus, the benchmark of tax neutrality in the Swedish national tax system does nothing to promote gender equality. Conclusions that can be drawn are the need for gender sensitive analysis in how the taxation of capital, work, entrepreneurship and consumption constructs and reproduces gender relations in law and economy.

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