

Challenging Gender Inequality in Tax Policy Making

In early 2007 the Swedish Inland Revenue (Skatteverket) published a report that asked whether tax simplification would increase gender equality (*Enklare skatter för ökad jämställdhet*, Rapport 2007:2). The basic conclusion of the report was that Swedish tax legislation is gender neutral; however, in some areas of taxation women suffer significant substantive inequalities when compared to men in terms of the impact of the system on them. This inequality emanates, according to the report, from sex-related differences in work performance, entrepreneurship, and investment. On the basis of this conclusion, the report states that it would be more interesting from a gender equality perspective to investigate and measure if there are differences between men and women as a result of complex and complicated tax regulations.

Although the report originates in Sweden, it could have been prepared by the government of almost any country. Indeed, the report is a typical example of gender neutral tax policy making, and reflects a legal formalist perspective. Traditional legal studies do not provide for a set of general implications for theorising about gendered dimensions in the tax system. The only frame of reference for positivist legal analysis is the normative model that all citizens are equal under a neutral law. Such a uniform approach is incapable of identifying 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. Therefore, asking questions about gender inequalities in tax law neglects the more fundamental possibilities that the substantive pre-conceptions of legal forms, rules and principles can be to the social disadvantage of women (Young 2000).

In contrast, in taking a more substantial and comprehensive gender approach to the questions of gender equality and taxation, based on international feminist revenue law research (see for example Apps 1984; Grbich 1987; MacCaffery 1993; Staudt 1996 and Young 1997), highlights the diversity of possible legal strategies for achieving gender equality drawn from social, economic and political contexts. From this perspective it is clear that the Swedish report touches upon three very fundamental issues; work, entrepreneurship and investment. Instead of neglecting the issues, as something beyond the scope of law, a comprehensive gender approach recognises that legal orders are not closed normative systems (Gustafsson,

2003, 84-87), and that legal research is about all aspects of legal norms (Hydén, 2002). Legal norms are not detached from the social and economic values that shape the conditions of life.

The theoretical and methodological framework for this workshop strives to build gender into the analysis of tax law. It challenges the prerequisites for human agency in mainstream revenue law scholarship that replicate the social meanings of productivity and wealth drawn from the economic rationalism representing the self-interested and socially isolated character of the “economic man” (Grbich 1993). It also raises questions about the missing analysis of where the outcomes of living conditions do not change gender relations, which are shaped by the stratification of revenue and welfare arrangements in terms of equal or unequal access to resources (Liebert 2001, 268; Orloff 2001, 134-135; Tronto 2001, 66-70).

One key approach that assists in raising previously ignored questions about the implications of taxation for women is to analyse the context of the social location of the household, i. e. the family. Women’s living conditions are largely bound up with family life. Normative and structural patterns that shape these living conditions emerge from the traditional gendered functions within the family, in combination with how 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 and is reinforced in the exchange of time, care, and economic resources in the triangular relation of state, market, and family (Stang Dahl 1988; Ketscher 1998, 60-68). In other words, family life constitutes economic and social subordination for women, but in mainstream social and legal science, as well as in political notions of social justice, the presumption is made that family institutions are just. However, the unequal distribution of responsibilities, financial resources, powers and time within the family are closely related to inequalities in the society outside the family institution. Welfare is produced in a cyclical process across the state, the market and the family, that, in structural terms, reinforce the socio-economic dominance of men over women, from home to work, to the welfare regime, and thence back home again (Gunnarsson 2003).

The gendered implications of how work, entrepreneurship, and investment are taxed challenges the complexity of tax fairness. Tax equity can be addressed in many ways, but the core issues always concern the mix of tax levels and tax structures. The overall trends in tax mix among the OECD countries from 1965 and forward are that the greatest share of revenues comes from the personal income tax, which until the 1990s was far much greater than any

other revenue source. During the early 1970s and 1980s, social security contributions grew rapidly and that revenue source reached almost the same level as the personal income tax by the middle of the 1990s. The share of general consumption taxes has increased, while tax revenues like property tax and corporate income tax have remained on a fairly constant and low level of the total tax revenues (Messere et al 2003, 36-37).

Tax equity is also part of the much broader context about social justice in the welfare state, which is a fundamental democratic issue. A basic political question for every welfare state is to identify sustainable and legitimate tax structures for how citizens should share the burdens of benefits, through both collective and individual, direct and indirect taxes, and social contributions. Taxation and social security laws have therefore become closely intertwined in welfare state policies. In countries like U.S. and Canada, many social security programs are now delivered legislatively and administratively via the taxation system. From the perspective of economic equality and social security of women it is therefore important to investigate both sides of the public budget by using theoretical and methodological concepts like tax expenditures analysis (Young 2000) or gender budgeting analysis (Philipps 2006).

Possible topics of discussion:

- Under the surface of gender neutrality in revenue and social security law - the need for a critical epistemology based on a gender perspective.
- Contested meanings of gender equality in revenue and social security law scholarship.
- The influences of the public/private divide over tax and welfare policies.
- The intersections of class, race, sexuality and gender in tax and welfare policies.
- The impact of feminist scholarship on tax and social security policy making.

Publication

The Organizers intend to publish the results and papers of the seminar in the “Onati International Series on Law and Society, in collaboration with the Hart Publishing Company, U.K.