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SYMPOSIUM 1999
Women, Equity and Federal Tax Policy: Open
Questions

Foreword

Ann F. Thomas

Few economic and legal institutions have as pervasive and persistent an impact on the lives of Americans as do the federal income tax and the social security system. These two instruments of federal policy profoundly influence the individual budget as well as the national expenditure, determining rather directly the extent to which the financial rewards for our personal exertions accrue to our personal benefit. The concept of the taxpaying unit in both the present day income tax and in the social security system, although amended since then in other respects, took shape in the years between 1935 and 1948. Each of these systems treats marital status as an important determinant of tax liability. In the social security system it is also a crucial factor in determining old age benefits. In significant ways both the federal income tax and the social security system reflect the conventional social expectations of the mid-twentieth century concerning gender roles in work and marriage. Both offer financial rewards to sole earner married couples even as they impose additional taxes on dual earner couples who marry. Neither system has kept pace with the most tangible of the social and economic changes in the status of American women in the second half of the twentieth century — the emergence of the majority of married women in the United States from domesticity into paid employment.

When applied to the more multifaceted lives and varied work patterns of American women today, the tax structures created by earlier generations are producing tax outcomes that are increasingly seen as unfair and irrational. The new majority of married women in market employment see, and increasingly object to, the erosion of the economic return on their work effort as a result of the increased income tax burden that marriage brings them. With the Baby Boom generation beginning to contemplate retirement, dual earner couples are also learning about the meager returns on social security contributions that the system provides to working wives. The slogan

“marriage tax penalty” now widely used to describe the impact of the federal income tax and the social security system on working wives and dual earner marriages, is a pointed reminder that taxpayers will ultimately insist upon tax policy that is consistent with their broader social values and sense of social equity. The criticism that is encapsulated in the phrase “marriage tax penalty” constitutes a challenge borne up by a wave of demographic and social change that no tax system can afford to ignore.

The presence of so many American women in the labor force for the better part of their adult lives also calls into question the fairness of another feature of tax policy: the limited acknowledgement in the federal income tax of the burden on real earnings that the costs of child care represent for working mothers. While most American women have taken on the role of wage earner, they have not given up the role of mother. More than 60% of the mothers of young children under the age of six were in the work force in the 1990s. An even higher proportion, almost 80%, of the mothers of school age children have been working in paid employment during the last decade. Many of them spend a substantial portion of their wages on child care. Yet the federal income tax provides only very modest tax relief for the child care expenses of working parents, in general treating these costs as an item of personal consumption unrelated to business or employment. Women, despite the new employment patterns, continue to be expected to take on more of the responsibilities for home and children than do men and often pay the price of lower lifetime earnings for interrupting employment to meet family obligations. The after tax burden of child care tends to fall on mothers and hence the direct and implicit costs of child care choices continue to be of particular concern to women.

But as significant as the increases in the labor force participation of married women are, the impact of these changes on the financial well being of women should not be overestimated. It is not accurate to view the new majority of women in paid employment as having the same working lives or earnings as male workers. Women continue to earn less than men do and have fewer opportunities to participate in private pension plans. Whether they have been housewives, wage earner wives or single workers, women are disproportionately dependent upon the social security system in

their old age and disproportionately impoverished following the death of their spouses. Despite significant gains in longevity for men over the past seventy-five years, most wives still become widows and women live a greater proportion of their lives in the years after retirement age. Gender differences in patterns of work and mortality raise important and complex issues of equity for the social security system. Proposals for redesigning the social security system present both the opportunities to redress present inequities and the risk of undermining the retirement security of elderly women in new ways.

Making the federal income tax and the social security system equitable for women as well as for men is an important and urgent problem for our society. Equity is an essential although perhaps elusive goal in taxation. Perfect fairness in taxation is not possible, but a tax that is widely felt to be unfair or arbitrary quickly ceases to be viable. The need to adapt federal tax policy to the changed economic and social circumstances of women in the present day is increasingly apparent. The purpose of the Symposium has been to support and at the same time challenge the policy makers who are now beginning to address themselves to this important task.

The Symposium brought together for a day of debate and dialogue, twenty legal scholars, economists and opinion makers who have been in the forefront of research efforts focused on analyzing and illuminating the impact of tax policy on women. We were particularly honored to have as the Symposium's Keynote Speaker, Dr. June O'Neill, Wollman Professor of Economics and Director of the Center for the Study of Business and Government at Baruch College, City University of New York. Dr. O'Neill spoke here in her capacity as a scholar, having just returned at the time of the Symposium to academic economics after four years as Director of the Congressional Budget Office. Under her directorship, the CBO undertook the groundbreaking study of income tax marriage penalties and marriage bonuses published in 1997, which is now the standard reference for quantitative data on the impact of the federal income tax on married couples.

The two panels of the Symposium's morning session were devoted to evaluating current initiatives to redress the income tax marriage penalty and debating the theoretical and empirical bases for the taxation of married couples. Child care in federal income tax

policy was the subject of the luncheon address. The two panels in the afternoon session addressed the question of the impact of gender on outcomes in the social security system and also debated the implications for women of individual retirement accounts and other proposals for restructuring social security. Of note in both the afternoon and morning sessions were the discussions of distributional differences in penalties and bonuses across racial lines.

The work of Symposium is collected and presented in this volume, which is intended to be a resource for taxpayers, scholars and policy makers alike. Readers new to these subjects are directed to two articles that serve to introduce the issues. The article I contributed provides a primer on the subject of income tax marriage penalties and bonuses and an analysis of the trends in recent anti-penalty proposals in Congress. In addition, Professor Forman's article includes a thoughtful overview of the questions and complexities of gender equity in the social security system. Beginning with Dr. O'Neill's Keynote Address, the day's proceedings are presented in sequence. The presentations and discussions of the Symposium panelists have been edited by them to enhance the value of these materials for research and reference. Audience questions and comments are also included in this section. The luncheon address has been transcribed and edited as well. Finally, the four articles that follow the Symposium transcript develop a number of the issues presented in greater depth.

In closing, I would like to thank Dean Harry Wellington, Eileen Caulfield Schwab, who was my co-chair, Professor Stephen Ellmann and other colleagues at New York Law School who supported the development of this Symposium. To Kim C. Arestad, the *Journal of Human Rights'* Executive Topics Editor for 1998-99, under whose administration the plans for the Symposium day became reality, and to Celena R. Mayo, the Journal's Editor-in-Chief for 1999-2000, whose skill and diligence have brought this volume into being and enabled us to present the work of the Symposium to wider audiences, recognition of the professionalism with which they carried out their work is gratefully given, as well my deepest thanks. Christopher Solgan and the other editors and staff of the *New York Law School Journal of Human Rights* devoted substantial time and resources to this Symposium over a period of two years and should be

proud of the contribution that their hard work has made to developing answers to the open question of how to achieve tax equity for women.

