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TAXATION AND CIVIL RIGHTS :

THE RIGHT TO SUBSISTENCE

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1. Taxation and Political Rights

A free man is not liable to any (direct) tax. Only those men are free whose names do not show up on any tax register of the king. That is the ancient, medieval concept of liberty. Paying a head tax, a tax that was perceived as a personal liability - unlike the prevailing form of the land tax -, was tantamount to surrendering part of one's freedom to the king or the royal magistrates (cf. Grapperhaus 1989, 38 e.s.).

A citizen in the original sens of the word, the member of a local community, village or town, could be a free man and still pay personal taxes. But only as far as he was liable to taxation and service not as an individual, but as a member of the collectivity, and was paying his share as a member of that very collectivity. For centuries, (direct) taxes in Europe were assessed regarding the community, the village, the town, the province, not regarding the individual household or individual person, and were collected accordingly by the whole community, splitting and spreading the cost among its members. Contrary to conventional wisdom, the nobility and clergy were not exempt from all taxes everywhere and at all times, certainly not as a general rule. They taxed themselves, when summoned by their king, and so did the citizens of "free towns". In general, they enjoyed the privilege of debating the kings requests in public, of negotiating and consenting to fulfill them - normally in a way they found convenient regarding time, place, amount and mode of payment. In early modern times, this privilege passed to all estates as it was extended to include the merchants' and artisans' guilds of the free towns. Tax liabilities were first and foremost liabilities to the community to which one belonged, not personal liabilities to the "state".

With the turn towards liberal democracies, the whole pattern changed according to the new conception of individual, personal citizenship and personal freedom. To bear one's fair share of the general cost of the polity to which one belonged, and to do that on one's own, by one's own means, to pay one's taxes, became one of the first duties of every citizen. The liability was the personal liability of every free man, every citizen for himself - and for his dependents (wives, children and other members of his household who were not full citizens in their own right). The republic in the modern sense, combining the ancient concept of the "rule of law” with the new concept of individual political and civil rights, was to be built upon the willingness and ability of its members to do their share and to contribute to the costs and burdens of all common affairs fairly, that is according to their respective abilities. To be a full citizen, to enjoy the full measure of political rights, one had to be a taxpayer. Paying taxes was a right, even a privilege connected to other privileges, and an honour for every men aspiring to be a full member of the republic. Only those people not regarded as full citizens would be exempt from any tax - orphans, widows, the infirm, the people without homes (sans loi ni toit), that is people regarded as unfit to support themselves. Accordingly, they were not regar-ded as citizens, members of the republic enjoying the full range of political rights. As citizen-ship was conceived as conditional, it seemed quite natural to grant political rights only on condition of a minimum amount of taxes payed by every aspiring citizen for himself. Hence the standard practice in many European countries to couple the right to vote to the so called census, that is a minimum amount of direct taxes paid a year by everyone who aspired to become a member of the electorate. The United States of America formed the only large exception from this rule. But they mana-ged to live up to the tax ideal of the ancient Greek democracy - let the foreigners pay - financing the bulk of its tiny government apparatus from tariffs for more than 150 years and preserving direct taxation of its own citizens for the times of war.

When this new configuration of rights and duties was first debated, as in the French revolutionary Assembly in the years 1792/93, proposals for exemptions from direct taxes for the poorer members of the republic were submitted to the Convent as part of a general tax reform package. The Convent’s Left reacted with outrage. No citizenship without tax liability, no taxation without representation, no representation without taxation! In this sense, Robespierre’s outright rejection of any basic exemption to the direct tax is quite typical for the new concept of citizenship. To free the poorer citizens from all direct taxes by means of a generous personal allowance would be a disgrace as it would lower them to the level of second rate citizens (“sous-citoyens”); it would be an insult to the people and a narrowing of democracy (“une insulte au peuple, un amoindrissement de la démocratie”) (cf. Jèze 1931, 456).

In fact, the French revolution found a solution to this problem - in the guise of universal conscription. All able men should and could serve the republic and contribute their fair share to the common cause, even if they were too poor to pay direct taxes. Reviving a mediaeval conception - who cannot contribute to the common cause by his goods should contribute by his labour and blood -, universal conscription formed the legitimatory base for the demand for universal suffrage throughout the 19th century, sometimes honoured in military monarchies as the German Reich of 1871 e.s.

On the other hand, the ideal of liberal democracy remained small government, cheap government, that is low taxes and reduction of tax burdens for all citizens whenever possible. It is still in this sense that Marx ridiculed the ideals of "bourgeois socialism": The best tax is no tax at all, or even better, a tax that the members of the good society do not have to bear, because they can avoid or shift it. A state free of all charges, abolition of all taxes that is bourgeois socialism according to Marx (1851, 286). Still socialism, as the abolition of taxes would deprive the good citizens from the traditional means to exclude the mass of the poor and propertyless from full citizenship.

Even where something like restrictions of the right to vote based on the tax census did not exist, the link between citizenship and taxation was made clear to the newcomers, for instance by means of a special poll tax. The poll tax, a kind of fee that had to be paid in cash before anyone could appear on the electoral roll, existed in many guises in several countries for quite a long time. It was meant to exclude the poorer, especially the coloured citizens from using their right to vote. As such, it was quite effective. Its counterpart formed the possibility to buy oneself out of universal conscription - a standard practice not only in the French repu-blics (as well as in the 2nd Empire) but also in American republic during the Civil War.

2. Taxation and Civil Rights

Private property rights in the modern sense developed together with the codification of the early modern state's "power to tax". As mobile property, tradables and commodities at large, were relatively easy to control and to grasp, and as it was quite lucrative to tax them on a regular base, merchants were the first to acquire property rights. They did not bear the burden of the excises, they acted as middlemen for the tax authorities. For the tax state relying heavily on tariffs and excises, the compliance and cooperation of merchants was vital. That is why they were the first to acquire some kind of legal protection against outright confiscation, some kind of guarantee and legal registration of their highly mobile properties - valuable to them as they were to the tax authorities as a source of regular money income.

In historical terms, private property rights depend upon some kind of effective restriction of the state's "power to tax". In a system of rights and under the rule of law, such a restriction should be in the form of a legal "limit to tax" too, including a legal demarcation line drawn between what is "taxable" and what is "non-taxable" and should be left alone under all circumstances. From the taxpayer's point of view, it is not enough to rely on the wisdom of tax authorities, who were supposed to know better than to destroy the very sources of tax revenue. Administrative rules and, first and foremost, taxpayer's rights, properly stated and guaranteed, offered better protection. On the other hand, it was the early modern tax state who acquired priority among all creditors because it was the very same authority that granted and guaranteed privat property rights to individual citizens. Until today, it has preserved that priority position as it has preserved the conditional right to expropriation of private properties as stated in most constitutions. As the state's right to expropriation is coupled to the citizens' right to a fair compensation - at least, that is the general rule in all modern democracies -, so is the state's right to be first in line as a creditor of any citizen going bankrupt not unconditional: De facto and de iure, the modern tax state is bound to respect every citizens' basic right to subsistence. That right has been legally stated and codified in the laws regulating bankrupcy - the normalized case of social death in a bourgeois society - long before it has entered the income tax codes. The legal limitation of personal liability, often regarded as the very base of the modern form of private enterprise, is in fact a very early form not only of risk restriction but also of a right to subsistence for every good citizen. A right that gives every citizen a basic guarantee of a minimum income, independent from the vicissitudes of the market and the damage and loss brought forth by "free competition". As bankrupt and as indebted as he may be, the citizen of a modern republic will not loose his personal freedom nor his right to a decent life on a minimum standard level.

That pillage and confiscation of property lured under the guise of taxation was the conventional fear of the liberal age, as it is today. To defend one's property against state pillage one should hide it and keep the state authorities as ignorant as possible about the real amount of one's belongings, its whereabouts and its value. Hence the standard objection to income taxation: To implement it, tax authorities would have to poke their noses deeply into the private affaires of all individual taxpayers. That was not done and should never be feasible, according to the large majority of the political economists of the 18th and 19th century. In fact, the history of modern income taxation is the history of a long term struggle about what the state's tax authorities should know about the taxpayers' properties in order to assess and collect the direct tax fairly and properly and what they should better not know at all in order to resist taxation as far as possible. Not surprisingly, that history is beset with makeshift solutions - like the schedule taxes in the British or French style or the class taxes in the Ger-man (Prussian, Saxonian, Bavarian) style. All those income and property tax laws of the 19th century do comprise business or corporate income taxation, that were established as separate taxes only much later, in the first decades of the 20th century (the periode of modern "impe-rialism" and international trusts and cartels). All contain some kind of minimum standard for the subsistence of the taxpayer and his personal dependents - a form of right to "basic income" for all tax payers, more or less differentiated according to rank and/or source of income.

Curiously enough, that seemed to be the easiest part to regulate and standardize. As a rule, the basis "allowances", "deductions" or "exemptions", as we would call them today, are not stated explicitly as such but built into the lump sum schedules of these taxes - taking into account different "standards of living" for the different ranks of bourgeois society.

3. The Right to Subsistence - in its Contemporary Guise

When the rise of modern, integrated income taxation began, together with the separation of property taxes and business taxes from the income tax, in the 1890ties, rates were in general very low, far below the level of 10% that was regarded as the "natural" limit of taxation throughout the 19th century. In fact, they did not exceed some 4 to 5% of the income liable to tax. Of course, the definition of the "taxable" income as distinct from "non-taxable" income, was the crucial issue. In this respect, the first examples of a comprehensive or inte-grated income tax, conceived to include all forms of private income, were rather primitive.

They operated with one category of non-taxable income - a personal allowance for every taxpayer, only slightly differentiated according to civil (marital) status and the number of dependents (legal children), but sometimes even lacking that. Actually, the very first perma-nent income taxes started with astonishingly high basic exemptions: For instance $ 4.000 a year in the case of the US income tax of 1913 (Witte 1985). Everybody involved in the making of such tax bills knew perfectly well that with an basic exemption at that level, very few people would be obliged to pay anything. Such a design made the income tax quite popular - as a tax for the "rich" and the "very rich". By the same token, it turned it into a rather poor source of revenue and made it quite unpopular among the well-to-do citizens. Due to the basic personal allowance an element of progressivity was introduced into the income tax even when it came in the guise of a flat rate tax.

Accordingly, whenever a rise of rates was proposed and debated, the issue lowering the basic exemption - as the one and only means against "class legislation" against the "rich" - was put forward. Justice of taxation was conceived as inclusiveness - the absence of outright tax privileges and the universality of tax liabilities, as far as the good citizens were concerned. With some reason - as all the earlier forms of emergency and war income taxes had only affected a tiny fraction of the citizens. Still the sentiment that the poor and the poorest should not pay any income tax prevailed. But the new categories of affluent workers, the white collar workers, the highly qualified and relatively well paid black collar industrial workers should. They had claimed full citizenship and acquired it in most European countries at the end of World War I. Now they should pay their fair share.

As more and more working class and middle class members of bourgeois society became liable to income taxation, the basis exemptions and allowances had to be revised accordingly. The basic exemptions, first and foremost the personal allowances for everybody, have been extended and diversified many times. In its standard form, the personal allowances in the income tax laws of most capitalist democracies today, resemble very much a pattern invented in the 1890ties: A standard personal allowance for every single person, a markedly higher amount of personal allowance for a married couple, and several smaller, additional amounts of personal allowances according to the number of children in a family. Every good citizens' obligations to his dependents (that were once included in their masters' voice in political terms) are thus honoured by the income tax law. Which is why and how the basic right to subsistence has been changed into the basic right to support a family, that is an old style core family in the eyes of the tax authorities.

Mostly due to acute financial pressures in times of war and immediately after, when the real costs of war could no longer be shifted to the future or to the enemies to be defeated, the rates of the income taxes have been raised again and again. The most spectacular raises occur-red during or short after the end of World War II. Regularly, the basic personal allowances have been reduced - at least in real terms. The gradual shift from a tax for the rich and the super-rich to a mass tax for everybody, including the large majority of the affluent and the not so affluent working men, was already on its way in the 1920ties. Special allowances and de-ductions, some of them rather old like the highly popular deduction of interest paid, were introduced and reintroduced into the income tax code. As the income tax turned into a mass tax, the implicit right to long term and even permanent indebtedness as recognized in such regulations became a right for everyone.

Postwar inflations posed another problem as the nominal amount of the basic personal allowances. Inflation as it went on, undermined the right to personal and family subsistence as stated in the income tax codes, while rising nominal incomes dragged more and more citizens with modest and low incomes across the threshold of income tax liability. Series of belated adaptions could not help it: The limit between taxable and non-taxable income lost more and more of its original function to keep the real poor, the working and the non-working, free from direct taxation and to guarantee the average citizen a right to subsistence for himself and his family. Even the indexation of tax thresholds including personal allowances, although not to difficult to handle for today's tax authorities in most democratic countries, did not alter this. The device could be - and has been - manipulated too easily by governments that found themselves in financial distress. In most income tax systems the nominal amount of all basic personal allowances, added together stays far below the official poverty lines.

With nominal rates increasing and inflation rising, progression became steeper and more and more citizens were progressively taxes that were never meant to be. As the silent or creeping progression went on, the old distinction between working class tax problems and middle class tax problems withered away. Working class taxpayers became not only liable to income tax on a regular base once and for all - most spectacularly settled with the shift to the pay-as-you-go system that occurred in several countries during World War II - they became liable to progressive taxation either. Hence, a lot of special allowances and deductions, never conceived for them, came into their reach. Others, like the allowance for regular transport between home and work, were specially introduced for them. As progressive taxation became a mass phenomenon, some perverse effects of the income tax code that before only affected tiny minorities of tax payers came to enjoy the attention of a broader public. With a progressive rate schedule, the same amount of nominal allowances or deductions will produce rather different effects in different income tax brackets - the higher your nominal tax rate the larger the ease of your tax burden. The effect is much stronger with deductions than with personal allowances, but it is still there. Hence, the same child allowances in nominal terms have very different effects in terms of real tax relief for the average wage earner and for the rather well - to - do. Apparently, the state does value the "right to subsistence" for the rich man's children higher than the nominally equal right to subsistence for the poor man's children. To avoid this "perverse" effects, personal allowances, at least parts of them such as childrens' allowances have been turned into "tax credits" in many countries. Tax credits are paid back in equal nominal amounts to everybody after the individual tax liability has been accounted without any regard for the former personal allowance that has been replaced by the tax credit. So that every individual tax payer gets exactly the same amount of money that the tax state has defined as non-taxable income with regard to special purpose and the right to subsistence is the same in value terms for every citizen. Although the device of tax credits is rather well known and generally approved of, it has only reluctantly and incidentally been introduced into the income tax codes of advanced capitalist democracies where it still co-exists with various forms of personal allowances and deductions.

Property tax laws contain some kind of basic personal allowance too, defining a right to a minimum property for everybody liable to tax. In most countries, this basic allowance is differentiated according to marital status and number of dependents. Taken together, these personal allowances have been established on a nominal level far above anything that an ave-rage income tax payer could ever earn a year in the guise of wages or salary - even in his very best years. Accordingly, the vast majority of income tax payers is never liable to property taxes, his modest possessions protected as a “non-taxable” from the tax state’s covetousness. Income tax laws in some countries (Britain and the US being quite notorious examples) still go even further in defining a special exemption or allowance for certain kinds of income, espe-cially and typically property income from dividends, interests and profits from selling certain kinds of property like shares.

4. Poverty Traps

All existing welfare states have not one official poverty line, but several of them. They do not fit well, and that is the core of the problem known under the heading of “poverty traps”. If basic exemptions from tax as personal allowances are established markedly below the level of welfare or dole minimum income, the trap is set. Even with very modest rates in the first income tax bracket, the step from welfare or official unemployment into employment will under the conditions still prevailing in most capitalist democracies ensue an income loss instead of a gain. The lower the wages or salary in the new job, the larger the net income losses due to income (and social insurance) taxation. Hence, the shortest and most effective way to help the poorest category of taxpayers (the working poor), the unemployed and the welfare recipients alike, would be a marked raise of the personal allowance - at least for the combined sum of personal allowances, including family and childrens’ allowances. The larger the nominal diffe-rence between the official minimum (and maximum in some countries) levels of welfare payments and the basis personal allowances of the income tax code, the wider and deeper the poverty trap.

Social insurance is adding a further complication in most countries, but a complication that works in the same direction. Social insurance systems have been established more or less in the same period as the modern, comprehensive income tax, in some countries, as in Germany, several years earlier. In fact, they were the first form of flat rate direct tax on earned income that affected larger groups of the working class, although in the beginning only a minority was involved. Most social insurance schemes operated with a basic exemption, meant to exclude irregular, low paid and unqualified workers, the people who were not welcome in most working class self-help organizations as well. To fend them off, it was sufficient to establish the basic exemptions at considerably lower level than the basis personal allowances in the income tax codes. Although the minimum levels of wage and salary income not liable to social insurance taxation have been raised again and again, they are still today markedly below the official income tax thresholds, thus engraving the problem of the poverty trap. As long as you are living on and with welfare, the state will be generous enough to pay your contributions to health insurance and/or pension insurance; in some countries it will even do so for the long term unemployed. Once you get back to work, you are on your own from the very moment your official income surpasses the thresholds of social insurance and income tax laws. Which is very early under the regulations valid in most countries.

Of course, the income tax is not the one and only cause of the poverty traps as they exist in today's welfare states. But it is one and certainly not the least important, to put it mildly. Several other factors are adding to the predicament of people trapped in poverty, long term unemployment and the low and lowest-pay segments of the labour markets, among them the combined effects of income tax and social insurance regulations. Bill Jordan e.a. have described the working of this special part of the poverty trap regarding the way in which people "in the trap" try to deal with it in order to escape it or to survive in it (1992, 128 e.s.). As the evidence provided by several studies in several countries shows, those people are very well aware of what social scientists used to call "notch" effects; they try to avoid them quite systematically.

In Western democratic welfare states, the obvious difference between the official poverty lines and the definition of “non-taxable” or basic, subsistence income for every citizen has very seldom attracted any attention. For the large majority of taxpayers, who are not even aware of it, it is not a problem at all as long as their personal net incomes stay far above those official poverty lines. Even the experience of long term mass unemployment has not changed the matter. Maybe that the rise of irregular and precarious forms of employment will have some effect in the long run. For the time being, the case brought before the Supreme Court of the Federal Republic of Germany and the ensuing decision of the Court, compelling the German government to change the income tax law in order to bring the level of the basic personal allowances at par with the official poverty line, is quite exceptional.

5. The Quest for Reform

To this very day, the existing regulations in all welfare state regimes, including the most generous, make a difference between the deserving and the undeserving poor, the working poor and those people out of work. Most remarkably, the people on welfare or on the dole are not recognized and treated as equals regarding their property rights. Even as private property owners they are inferior, second rate citizens whose property is not protected as the property of other taxpaying citizens is. On the contrary, as a rule welfare recipients are forced to sell and consume their belongings, meagre as they usually are. In the real world markets, especially on the labour market, there is not much left of their individual freedom as market actors. The right not to work and the right to stay away from the labour market, any labour market is still a privilege linked to class. A rentier capitalist as anyone who happens to own a considerable fortune has it, the ordinary man and woman does not.

Hence the problem for ardent reformers. In principle, and technically speaking, we can do a lot, even implement highly complicated devices as tax credits instead of the existing mix of allowances, deductions, exemptions and the like. We might close down the poverty traps for a large part. We might end the prevailing practice of “fiscal welfare” for the rich and super-rich, again with the help of devices that look quite complicated. In order to do so, we will probably have to fight the prevailing secular religion of simplicity, especially the curious superstition that justice can be achieved by stone-axe like devices only. Still, the best we will get is the old and well-established “right to subsistence” for all good citizens and tax (and social insurance premium) payers. Remarkably enough, we are today in quite paradoxical situation where the political rights of all citizens are well respected and undisputed, at least in the old capitalist democracies, whereas their citizens’ rights to subsistence are not. A difference that bourgeois society can deplore, but not reconcile.

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