

Discourses in the Tampon Tax Campaign

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Abstract

The Tampon Tax Campaign is a global social movement that aims to abolish consumption tax on menstruation hygienic products and provide free universal access to them as the ultimate goal. In the campaign, there are different discourses supporting abolishing the tampon tax and discourses casting doubts on the campaign. Discourses supporting the campaign center around breaking the menstruation taboo, including eradicating menstruation poverty, ensuring menstruation health, pursuing human rights, and ending tax discrimination. Doubt-casting discourses include the revenue reduction and economics inefficiency in the market after abolishing tax on menstruation hygienic products. These doubt-casting discourses talk about money. I will use Foucault's discourse analysis approach, not only to analyze discussions from scholars, but also to compare legislation records of Australia, California and Scotland between 2017 and 2020 that are in response to the tampon tax campaign. The comparison demonstrates that all these conflicting discourses exist in all three jurisdictions. Furthermore, this essay also analyzes less-heard of or less-discussed discourses in response to the tampon tax campaign. These discourses are produced by non-profit organizations that receive subsidies from the tampon tax fund in the UK and by major hygienic products manufacturing companies in Australia via submitting their public consultation opinion. This essay argues that menstruation inequality is an intersectional issue, as well as the discourses around it. Focusing on 'tax' is a smart strategy for a movement, but there should be continuous efforts to address the menstruation taboo. The tampon tax campaign is not only about tax nor about tampons, but the power relations underlying the socially constructed menstruation taboo.

Keywords: *tampon tax campaign, discourse, intersectionality, menstruation capitalism, UK, USA, Australia, Scotland*



“The truth is that, if men could menstruate, the power justifications would go on and on. If we let them.”

If Men Could Menstruate, Gloria Steinem (Steinem 1978)

The Tampon Tax Campaign Background

‘The tampon tax’ campaign is a global movement¹¹ asking governments to abolish the consumption tax levied on menstruation hygienic products, such as pads, tampons, moon cups, etc. Activists see levying the tampon tax as evidence of gender inequality, because such tax will be effectively imposed on people who menstruate, i.e., women and transgender men.

Activists use ‘tax’ to raise public awareness strategically, and the tampon tax campaign actually has a long-term goal beyond abolishing the tampon tax; the ultimate goal is to provide free and universal (i.e., everyone who needs them, no extra income restrictions or extra administrative process) access to menstruation hygienic products. Therefore, although the tampon tax campaign uses ‘abolishing tax’ as its slogan, it aims to pursue menstruation equality. In this paper, I will not limit to discussions about abolishing the tax, but also other reactions, including ‘free access to tampons’.

The Thesis Statement, Research Question, Scope

This paper aims to discuss different discourses in the tampon tax campaign. My question is how these different discourses intersect and present in different policy options.

There are different policy options in response to the tampon tax campaign: keeping the tampon tax, while establishing a “Tampon Tax Fund” (UK); abolishing the tampon Tax (Australia and some states of USA); and providing free access to menstruation hygienic products (Scotland).

My thesis statement is: Breaking the taboo is often used to support the tampon tax campaign. In contrast, money-related discourses are used to cast doubts. Non-gendered discourse, such as the basic design of consumption tax, is very often used in tax law literature; but when the tampon tax campaign engages with such money-related discourses too, it is trapped by the “public fiscal interest”, which tends to maintain the status quo.

2. Theories Intertwined In the Tampon Tax Campaign

This section will introduce the theoretical framework of this paper, which supports the thesis statement. I will demonstrate how the discourses in the tampon tax campaign are intersectional.

2.1 Menstruation Taboo and Othering A Bleeding Body

The tampon tax campaign reflects the continued development of feminist theories and women’s political movements. The tampon tax campaign became globally known after 2015, led by activists such as Jennifer Weiss-Wolf¹² as well as tax law and discrimination law scholars

¹¹Alara Efsun Yazıcıoğlu, *Pink Tax and the Law: Discriminating against Women Consumers* (Routledge, 2018), p. 58

¹²Jennifer Weiss-Wolf, ‘US Policymaking to Address Menstruation: Advancing an Equity Agenda’ in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan, Singapore 2020), p. 539

Bridget Crawford and Carla Spivack.¹³ Reactions to the campaign are enormous around the world. It is quite successful globally, because more and more jurisdictions are considering abolishing or have already abolished the tampon tax.

The subject of the tampon tax campaign is menstruation hygienic products, which are directly related to menstruation. Menstruation is a biological fact for a specific group of people, mainly women as well as transgender men. However, discourses around menstruation are socially constructed. In many cultures, menstruation is a taboo; it is seen as unclean and unsafe.¹⁴

Based on existing literature, the menstruation taboo is a cross-cultural phenomenon that has existed for quite a long time.¹⁵ For example in Japan, people who are menstruating are not allowed to enter the temple because of being seen as “polluted”.¹⁶ In the USA, menstruation is also a taboo¹⁷ that people (even university law professors) feel uncomfortable publicly talking about.¹⁸

There are many social and structural restrictions for people who are in the menstruation period in the USA and Canada. According to the literature review from Amy Henderson Riley and others, social restrictions involve communicating about menstruation, bathing and swimming, interaction with males and modest dressing; structural restrictions including a lack of access to latrines, inadequate hygiene, and other structural restrictions including a lack of privacy, cost of menstrual supplies, etc.¹⁹

The menstruation taboo also mirrors the process of “othering,” as Simone De Beauvoir indicated.²⁰ “Othering,” in De Beauvoir’s original context, means that presuming men as the norm, and women as the other, as the second sex. In the context of menstruation, the non-bleeding male body is the norm; the body that menstruates and bleeds, is the other.

Although I have not lived (long enough) in the USA or Europe or Australia to feel the menstruation taboo there, in my personal experience of being born and spending my teenage years and early adulthood in Taiwan, I also witnessed menstruation as a taboo. In Taiwan a lot of people feel it is indecent to let menstrual blood on clothes, even accidentally. In daily conversation, we, teenage girls, usually did not directly use the term period or menstruation, but used “it comes” instead. I was told not to eat ice or drink coffee on my period, because such food might hinder fully bleeding and thus would not be healthy. Such hear-say common sense about menstruation has influenced me implicitly, with a negative disciplinary power. So I personally can affirm the existence of a menstruation taboo.

¹³Bridget J Crawford and Carla Spivack, ‘Tampon Taxes, Discrimination, and Human Rights’ [2017] Wis. L. Rev. 491; Bridget J Crawford and Carla Spivack, ‘Human Rights and Taxation of Menstrual Hygiene Products in an Unequal World’ in Philip Alston and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press 2019).

¹⁴Lea Hunter, ‘The “Tampon Tax”: Public Discourse of Policies Concerning Menstrual Taboo’ (2016) 17 HINCKLEY J. POL. 11.

¹⁵Rita E Montgomery, ‘A Cross-Cultural Study of Menstruation, Menstrual Taboos, and Related Social Variables’ (1974) 2 Ethos 137.

¹⁶Edward Norbeck, ‘Pollution and Taboo in Contemporary Japan’ (1952) 8 Southwestern Journal of Anthropology 269., p.271

¹⁷Lea Hunter, ‘The “Tampon Tax”: Public Discourse of Policies Concerning Menstrual Taboo’ (2016) 17 HINCKLEY J. POL. 11., p.12.

¹⁸Bridget J Crawford and Carla Spivack, ‘Human Rights and Taxation of Menstrual Hygiene Products in an Unequal World’ in Philip Alston and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press 2019).at p. 361, 363, 364

¹⁹Amy Henderson Riley and others, ‘Results from a Literature Review of Menstruation-Related Restrictions in the United States and Canada’ (2020) 25 Sexual & Reproductive Healthcare 100537, p. 3-4

²⁰Simone De Beauvoir, *The Second Sex* (Knopf 2010)., p.26

2.2 Discourses Regarding Menstruation From Institutions

Menstruation taboo is a discourse. According to Foucault²¹, a discourse means a way of “speaking” to construct knowledge and norms. Foucault especially focuses on the power relations of producing a discourse. The creation or existence of a discourse demonstrates the disciplinary power from authoritative institutions, such as religion, education, medicine, law.²²

It is not surprising that menstruation is a subject surrounded by discourse, because menstruation is part of sexuality. The concept of sexuality used in this paper is defined as “being related to erotic sex and reproduction”. Menstruation involves bleeding, so it looks like a disease and unclean. In a religious context, women who continue bleeding are seen as a curse from God according to the Christian Bible. The menstruation taboo is universal and cross-cultural.²³

Although both are menstruation hygienic products, tampons and pads have quite different social images. Tampons are sometimes seen as dangerous for users’ health. The serious disease Toxic Shock Syndrome (TSS) happens to tampon users far more often than pad users, and many medical research papers already indicate that it might have a relation to tampon absorbency.²⁴ This is the discourse from the authority of medical studies. It is also evidence that the dimension of health is embedded in menstruation-discourse. Menstruation is seen as an inconvenience and a problem (big or small) to solve, and therefore menstruation hygienic products are also referred to as “menstruation hygiene management” (MHM).

2.3 Intersectionality Of Gender And Class

Moreover, tampon tax has an intersectional dimension consisting of class and gender. “Intersectionality” is a concept developed by Kimberle Crenshaw.²⁵ Intersectionality is a theoretical framework recognizing that, a group of people can experience unique discrimination, and privileges due to multiple social and political identities intersecting. Multiple identities or classifications, such as gender, sex orientation, race, and class, can lead to unique types of repressions or suffering experiences. The intersectionality process is not additive but constitutive. Different identities have relationships with each other. When not being aware of the issue of intersectionality, it is possible to marginalize a group or an individual even when pursuing some good policy goals. A typical example of intersectionality is the different experiences of discrimination embodied by a black woman and a white woman; race is an extra factor in black women’s experiences, in addition to gender.

The Tampon tax is an intersectional issue involving not only gender, but also the class of people who menstruate. In other words, people of low-income, prisoners, the homeless, or people in shelters, suffer the burden of the tampon tax heavier than middle-class people. According to a survey²⁶ in New Jersey, USA, lower-income customers enjoy the benefit of abolishing the tampon tax more than middle-class customers. This corresponds to the

²¹Michel Foucault, *The History of Sexuality. Volume One: An Introduction* (1980), p.18

²²Michel Foucault, *The History of Sexuality. Volume One: An Introduction* (1980).p.28-29

²³Alma Gottlieb, ‘Menstrual Taboos: Moving Beyond the Curse’ in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan, Singapore 2020), p.145

²⁴PM Schlievert, ‘Menstrual TSS Remains a Dangerous Threat.’ (2020) 21 *EClinicalMedicine* 100316.

²⁵Kimberle Crenshaw, ‘Intersectionality and Identity Politics: Learning from Violence against Women of Color’ in Mary Lyndon Shanley and Uma Narayan (eds), *Reconstructing Political Theory: Feminist Perspectives* (Polity Press 1997), p.178.

²⁶Christopher Cotropia and Kyle Rozema, ‘Who Benefits from Repealing Tampon Taxes? Empirical Evidence from New Jersey’ (2018) 15 *Journal of Empirical Legal Studies* 620., p. 639.

theoretical perspective of Marxist feminism.²⁷ According to Marxist feminism, gender inequality or gender discrimination are largely due to economic circumstances and the lower class status.

Interestingly, menstruation taboo does not only influence the low-income women, but also can be used to influence the buying habits of the middle-class women. In the case of middle-class women, menstruation taboo is interpreted as the target to conquer and to show free choices. For example, menstrual hygienic products are interpreted by enterprises that manufacture these products as a tool of being independent and being empowered. Such messages are used in many commercial advertisements and marketing strategies. Scholars criticize such discourse as menstruation capitalism.²⁸ Using tampons/pads is re-interpreted as bringing women happiness, but menstruation capitalism already ignores the negative aspects of the experience of menstruating.²⁹

2.4 Remarks: Justifications Of Theory Selection

The tampon tax campaign is an intersectional issue and addresses the menstruation taboo. Due to menstruation taboo. It is not merely a dispute about “tax” or “gender inequality”, but a topic that leads to strong emotions like feeling ashamed and feeling disgusting.

I chose discourse theory and intersection theory as my theoretical framework, because I have witnessed that, in discussions about a (tax) law reform project, discussions revolving only around issues of taxation or discrimination in the legal discipline, lead to being distracted by economic concerns (such as reduction of revenue or creating extra costs) or endless debates on the meaning of “comparable” or “necessities” (such as comparing menstruation pads with other various hygienic products).

3. Comparing Discourses In Response to The Tampon Tax Campaign

3.1 Justifications of Selecting UK, USA, Australia And Their Policy Overview

There are several policy options in response to the campaign. In Section 3.2, I will analyze discourses that are used to support the tampon tax campaign. In Section 3.3, I will analyze discourses that cast doubts. In Section 3.4 I will analyze discourses from less-heard actors, such as charities and enterprises. Section 3.5 will present a concluding remark.

I selected the UK (including Scotland), USA (including California), and Australia to compare for two reasons. First, the tampon tax campaign started in the USA around 2015 and has influenced other countries, including Australia which has abolished the consumption tax from the 1st of January 2019 onwards.³⁰ Scotland does not (and also cannot) abolish VAT on menstruation hygienic products because of EU law restrictions³¹. However, Scotland has

²⁷Susan James, ‘Feminisms’ in Terence Ball (ed), *The Cambridge history of twentieth-century political thought* (Cambridge University Press 2003).

²⁸Elizabeth Arveda Kissling, *Capitalizing on the Curse: The Business of Menstruation* (Lynne Rienner Publishers 2006), p.21

²⁹Ela Przybylo and Breanne Fahs, ‘Empowered Bleeders and Cranky Menstruators: Menstrual Positivity and the “Liberated” Era of New Menstrual Product Advertisements’ in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan, Singapore 2020), p.388; Sara Ahmed, *The Promise of Happiness* (Duke University Press 2010), p.60.

³⁰ The official name of the legal instrument of abolishing the tampon tax in Australia is “A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018.”

³¹European Commission has summarized the EU VAT Directives, and explains why UK is not allowed to zero tax rates.

https://europa.eu/youreurope/business/taxation/vat/vat-rules-rates/index_en.htm#shortcut-10

passed its own legislation in 2020 to provide universal free access to menstruation hygienic products. In contrast, not every state of the USA is completely positive to abolish the tampon tax. For example, there is a sunset clause in California's new tax law³² abolishing sales tax on menstruation hygienic products. In other words, such abolishment of tampon tax is merely temporary as a political compromise and also demonstrates California's legislators' reluctance.

In Section 3, I intentionally did not use the writing style of the traditional comparative (law) method that separates each jurisdiction. The traditional writing style does have the advantage that readers could use this paper like a repository to check information from each jurisdiction; however, the purpose of this research is to explore the discourses related to the cross-cultural aspect of the menstruation taboo. Therefore, focusing on specific jurisdictions or specific legal systems does not answer the main research question.

I would like to demonstrate that in the different reactive policy options, there are similar discourses supporting the campaign or casting doubts. I have selected these three jurisdictions, because of my academic background as a (comparative) tax law student, rationales in different laws are the main focus of my discipline. While comparing differences, law also tries to see if there is underlying rationale in common or a trend emerges

In addition to literature discussing the theories, I directly analyzed legislative records and parliamentary debates. In addition to the explanatory statement, the Australian government has launched a public consultation, so there are contributions from stakeholders too. For Scotland, the parliament has a website to demonstrate the preparation documents as well as filmed debates and transcripts.

As to USA, the sales tax is regulated at the state level, and therefore it is not feasible to conduct a survey of all 51 states. However, the tampon tax campaign is greatly influenced by theorists and activists in the USA, so I still see the necessity to include the USA in the paper. As a feasible alternative while ensuring the research quality, I selected California as the state I focused on, because the California legislation abolished the tampon tax temporarily for a limited time (and can be extended annually). It demonstrates a political compromise, so it is worth analyzing.

3.2 Discourses Supporting the Tampon Tax Campaign

Discourses that support the tampon tax campaign are mainly around breaking the menstruation taboo and ensuring health. There are also discourses from law scholars or lawyer activists talking about human rights and discrimination.

Breaking The Menstruation Taboo by Signal Making

In the debate of the Scotland parliament on February 25th 2020 on "Period Products (Free Provision) (Scotland) Bill" (hereafter, the Scotland universal scheme), "taboo", "stigma", "embarrassment" or "shame" have been mentioned. This is a discourse of "breaking the taboo" put forth by Parliament members. In the 2 hour transcript of the Scotland parliament debate, "taboo" was used 7 times; "stigma" 25 times; "embarrassment" 13 times, "shame" 3 times; "breaking the taboo" or "breaking the stigma" 8 times.³³

Parliament members Gillian Martin and Annabelle Ewing mentioned that discussing menstruation hygienic products in the parliament seriously, is already making a signal to the society. I think such "signal making" constitutes an effort to break the menstruation taboo.

³²The official name of the California bill is AB-31 Sales and use taxes: exemption: menstrual hygiene products. (2019-2020)

³³Scotland Parliament Website, including plenary transcripts

<https://beta.parliament.scot/bills/period-products-free-provision-scotland-bill>

Moreover, when it comes to the issue of universal provision at schools, universities, “public bodies” such as the Parliament are the institutions with disciplinary powers and the authorities to produce knowledge. When these institutions provide free tampons/pads, it is a powerful signal to normalize menstruation and create a new discourse to replace the taboo.

Menstruation Poverty: An Intersectionality Discourse

“Menstruation poverty” is especially emphasized in the legislation explanation in the debate of Scotland parliament too. It is an intersectional discourse, taking into account the economic position of people who menstruate. A parliament member especially mentions: “it’s not only women’s problem but a social justice problem”.

“Menstruation poverty” was mentioned 61 times in the debate by Parliament members including references to interview respondents and activists, constituting the main theme of the bill. Menstruation poverty means that people cannot afford menstruation products, because of economic capacity or other social restrictions, such as being homeless, prisoners, or domestic violence victims. In the debate, they also discuss if “poverty” is too strong and provocative a term to shock the public.

During the debate, several Scottish Parliament members describe that, people do feel ashamed for being unable to buy tampons/pads. These Scottish Parliament members are aware that, menstruation taboo should be addressed in a nuanced manner, so a universal provision scheme should be in place, so people can have pads/tampons available when they need them, without having to apply for any medical prescription proof from their general practitioners.³⁴

In California, similar discourse on “poverty” is also recorded in the bill legal analysis: “Each year, California women pay over 20 million dollars in taxes on menstrual products. This is not insignificant to women, especially poor women on a tight budget who struggle to pay for basic necessities like a box of tampons or pads every month for their adult life.”

Menstruation Health (and Seeing Menstruation Hygienic Products as a Necessity)

Ensuring “health” is another discourse used to support the tampon tax campaign. In Australia, the Parliament in its explanation memorandum clearly indicates that the determination to grant consumption tax exemption to menstruation products, is to ensure women’s “health” in the title of the determination.

In the Scotland parliament debate, “ensuring health” is also raised many times. The leading member used an example of a university female student: because of worrying about costs, the student let a tampon stay too long in her body, and led to serious TSS. Not only physical health, but also “the mental health benefits of ending issues with body confidence and isolation” are mentioned.

As a side note, although menstruation health seems legitimate and attractive, some scholars also criticize this is a “white idea” of hygiene and health.³⁵ For the Western viewpoint, using old clothes to absorb blood is often described as not hygienic or problematic. Although

³⁴This is the argument between Scottish parliament members Graham Simpson and Monica Lennon. Graham Simpson is aware that some women need to spend more than healthy women on period products, even to £50, so he supports a wider medical prescription coverage for the to have free products. A universal scheme is then not necessary for him.

³⁵Alma Gottlieb, ‘Menstrual Taboos: Moving Beyond the Curse’ in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan, Singapore 2020), p. 153; Maria Carmen Punzi and Mirjam Werner, ‘Challenging the Menstruation Taboo One Sale at a Time: The Role of Social Entrepreneurs in the Period Revolution’, *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan, Singapore 2020), p. 840.

the discourse of health sounds quite positive for the tampon tax campaign, it can convey a quite Eurocentric perspective.

Human Rights Discourses: the Right To Health And the Right To Sanitation

“Human rights” is another popular discourse. In the Australian explanation statement, it clearly mentions that exempting the consumption tax on menstruation hygienic products is compatible with “Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) and other human rights conventions”. Article 12 (1) of ICESCR is the right to health. Similarly, in the Scotland Parliament debate, Alison Johnstone mentions “the right to sanitation” to support the bill.

And it is especially interesting to see that several Scottish Parliament members use “Scotland as the first world-leader to ensure right to sanitation” to encourage fellow Parliament members to support the bill. They use human rights discourse as part of Scottish national identity. Such a strategy is quite often used by politicians or governments because it can work very well. In other contexts, such as Sweden’s sex work policy³⁶ and the Netherlands’ homosexual policy³⁷, national governments used liberal and progressive narratives as part of the Swedish or Dutch national identity. In the Scotland parliament debate, such a strategy also appears. In the Scottish context, “ensuring universal provision of menstruation products” has become a part of “Scottish identity”, as a synonym of protecting human rights.

Tax Discrimination Against Menstruators

In the field of law, there are some works portraying the tampon tax as discrimination or unconstitutional.³⁸ Such discourse is put forth by (tax) law scholars, in this case.³⁹ Many activists cite these works to lobby and convince legislators and the public.

Traditional discourses in the tax law field are largely influenced by economic concepts. Despite showing their support to repeal the tampon tax, law scholars also express realistic concerns about some fundamental tax design issues. Therefore, these tax discrimination discourses intersect with economic theories about taxation, and therefore the tone of these tax discrimination discourses is not as enthusiastic as in the case of the “human rights” and “breaking the taboo” discourses.

Law scholars who support the tax law campaign, in my view, are not mainstream scholars. As law professor Waldman explains about her involvement with the tampon tax campaign, her first professional/academic instinct was reluctance to invoke discrimination:

... as a constitutional law professor—I was immediately intrigued when she mentioned that equal protection challenges had been filed. I wanted to understand more about them. In particular, I was curious whether the plaintiffs were arguing that the tampon tax (i.e., the failure to exempt menstrual hygiene products from the sales tax) was akin to a facial sex- based classification. I could see the potential for that argument. But I

³⁶Don Kulick, ‘Four Hundred Thousand Swedish Perverts’ (2005) 11 GLQ: A Journal of Lesbian and Gay Studies 205., p. 219. (Kulick 2005: 219)

³⁷Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Duke University Press 2016)., p. 113)

³⁸Victoria Hartman, ‘End the Bloody Taxation: Seeing Red on the Unconstitutional Tax on Tampons’ (2017) 112 Nw. UL Rev. 313.;Christina Do, Helen Hodgson and Nicole Wilson-Rogers, ‘The Tax on Feminine Hygiene Products: Is This Reasonable Policy’ (2017) 32 Austl. Tax F. 521.; Bridget J Crawford and Emily Gold Waldman, ‘The Unconstitutional Tampon Tax’ (2018) 53 U. Rich. L. Rev. 439.

³⁹Bridget J Crawford and others, ‘The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism’ (2019) 26 Mich. J. Gender & L. 341.

could also see the challenges, especially in light of *Geduldig v. Aiello*, where the Supreme Court held that unfavorable treatment of pregnancy didn't amount to a facial sex-based classification.⁴⁰

I can relate to Waldman's remarks. In the field of law, it is not that easy to argue some rule is discriminatory. As another example, Ooi also mentions⁴¹ that a levying tampon tax has the same effect of distributing wealth from women to men, and therefore a tampon tax is indeed discriminatory. However, Ooi also indicates that abolishing the sales tax on tampons might not be the whole solution⁴², because the effect of abolishing the tampon tax does not give extra assistance to low-income women. Moreover, it is also possible that tampon sellers will still keep the same price or will not lower the price of tampons/pads enough. This would mean that the benefits of abolishing the tampon tax would not be enjoyed by low-income women who need the benefits most urgently. Therefore, even though Ooi is not in favor of keeping the tampon tax, she points out the risk that even after abolishing the tampon tax people who menstruate might not benefit as much as expected.

In the Scotland parliament debate, a similar discussion on who bears the costs took place. Neil Findlay expressed that the Scottish universal scheme should indeed be free to everyone but should be paid by a "progressive" tax, which hopes that wealthier people (regardless of their sex) should pay more. This is influenced by the classical "ability to pay" tax principle.

In my view, tax discrimination discourses inevitably weaken support of the tampon tax campaign, because tax law theories are intertwined with economic arguments. Economic arguments are seen as more objective and scientific, having higher epistemology status traditionally due to being rooted in sound quantitative evidence.⁴³ This will be explained more clearly in the next section.

3.3 Discourses Casting Doubts on The Tampon Tax Campaign: Discourses Mainly Talking about Money

There are discourses implicitly against the tampon tax campaign. According to Hunter,⁴⁴ discourses that aim to keep the tampon tax or cast doubt on the universal access scheme of hygienic products, usually deploy gender neutral language. In other words, they imply that the tampon tax is not a gender issue, but an economic or financial issue. Such gender-neutral discourses also appear in the discussions in USA, Australia and Scotland and they are consistent with Hunter's previous analysis. These are gender neutral discourses and focus on the effect of abolishing a type of tax to the government fiscal policy. I especially agree with Hunter's remarks that rejecting the tampon tax campaign directly might be unpopular or create

⁴⁰Bridget J Crawford and others, 'The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism' (2019) 26 Mich. J. Gender & L. 341., p. 352

⁴¹Jorene Ooi, 'Bleeding Women Dry: Tampon Taxes and Menstrual Inequity' (2018) 113 Nw. UL Rev. 109., p. 128

⁴²Jorene Ooi, 'Bleeding Women Dry: Tampon Taxes and Menstrual Inequity' (2018) 113 Nw. UL Rev. 109., p. 128. P. 140-141.

⁴³Showing statistics or quantitative data to establish a seemingly objective argument is a often used approach in the academic debate. Such scientific neutrality is often appealing. It's similar to the criticism "the God's trick", see Donna Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14 Feminist studies 575., at p.584.

⁴⁴Lea Hunter, 'The "Tampon Tax": Public Discourse of Policies Concerning Menstrual Taboo' (2016) 17 HINCKLEY J. POL. 11., p.15

negative images to potential voters and therefore the Parliament members talk about revenue reduction or economics instead.

In other words, these discourses are formulated as “acknowledgment with a but”: while admitting the unreasonableness of tampon tax or menstruation poverty/inequality, there is another (stronger) justification to keep the status quo.

Tax Revenue Reduction Concern And Creating Extra Costs

The worry of losing tax revenue or the limitation of state budgets is also the main discourse that leads to a rejection of the tampon tax campaign in USA⁴⁵ and Australia. Proponents of such discourse are governments or Parliament members.

In Australia, the tampon tax was finally abolished from 2020/1/1 onwards. Between 2015 to and 2018, the proposal of abolishing the tampon tax was rejected several times. One main reason is the effect of revenue deduction. It was estimated that abolishing the tampon tax “would reduce revenue by \$35 million in 2017–18 and by \$480 million over a decade.”⁴⁶

In the USA, sales tax is still an important source of tax revenue for states, including California. Therefore, California only suspended the sales tax on menstruation hygienic products for two years. The government has to closely observe how much revenue is lost.

In the Scotland parliament debate, the extra administrative costs and extra financial burden to local governments are also at the center of the debate. For example, Graham Simpson said, although he agrees with the general principles of adopting the universal scheme and he empathizes with women with serious medical conditions that need to pay 50 pounds each month on tampons and pads, he still criticizes the proposal for being too broad. In the end he did not vote against or for the bill.⁴⁷

Economics Discourses: The Normal Design of Consumption Tax/Preventing an Inefficient Subsidy

Another gender neutral discourse used to cast doubts on the tampon tax campaign is related to economics. Supporters of such discourses are governments or legislators. For example, they might argue that the consumption tax base should be broad.⁴⁸ Being regressive, not progressive is the widely accepted and normal feature of consumption tax.

A relevant argument is that “the tampon tax is only a small amount of money and it is a superior alternative to complete abolishing any tax levied on menstruation hygienic products

⁴⁵ According to Ooi, “The reform does not come cheap-the Illinois Committee on Government Forecasting and Accountability estimates that Illinois residents spend \$14.7 million on menstrual hygiene products annually, translating to about \$1 million in lost tax dollars at the state tax rate of 6.25%.”

Jorene Ooi, ‘Bleeding Women Dry: Tampon Taxes and Menstrual Inequity’ (2018) 113 Nw. UL Rev. 109., p.120.

⁴⁶ Cook, Lauren, Removing GST on feminine hygiene products, The Australian parliament’s library, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2018/November/Removing_GST_on_feminine_hygiene_products

The Australia Treasury

<https://treasury.gov.au/consultation/c2018-t333064>

⁴⁷ Because he did not the vote, the bill is unanimity passed, according to the vote record on 24/11/2020 from the Scottish parliament website.

⁴⁸ Christopher Cotropia and Kyle Rozema, ‘Who Benefits from Repealing Tampon Taxes? Empirical Evidence from New Jersey’ (2018) 15 Journal of Empirical Legal Studies 620., p.626-627; Sumaiyah Safi Asmaljee, ‘An Examination of Tampon Tax and How It Effects the Social, Health and Economical Aspects of Countries Including a Comparative Analysis of How Some Countries Have Dealt with Tampon Tax’ (Master Thesis, University of the Witwatersrand 2019)., p. 14.

The assumption of these economic discourse is that the free market is inherently better than a market in which there is intervention by the government. Abolishing the tampon tax is seen as a subsidy, creating economic inefficiencies.

Combining the economic efficiency and revenue reduction arguments, the narrative becomes “abolishing the tampon tax will reduce the taxable revenue and create distortion in the market.” In other words, such discourse negates the urgent need to respond to start the reform by implying that abolishing any tax on consumption, including tampon tax, could lead to negative effects.

Tampons Are Not Necessities

A discourse that casts doubt on the tampon tax is to argue menstruation hygienic products are not real necessities. The concept of “necessity” is actually highly subjective.⁴⁹ California legislators had failed three times to abolish the tampon tax before 2019. One supporting argument in favor of maintaining the tampon tax is to classify tampons as non-necessities.⁵⁰ Legal scholars cannot explain why tampons are not seen as necessities by legislators.⁵¹ In my view, this is not only because legislators in the past were all men, but women and their menstruating body are not “the norm”. The legal concept of “necessity” was designed according to men’s social lives.

Tampon Tax Funds Alternative

The UK’s reaction to the tampon tax is intriguing. As indicated above, the VAT exemption is regulated by EU law, and therefore the UK does not have the ability to change it. This is why the Brexit party UKIP even used “abolishing tampon tax” as part of their Brexit campaign in 2015.⁵² From 1/1/2021, the UK will make period products VAT exempt.⁵³

In response to the tax campaign, in 2015 the UK government has set up “the tampon tax fund” whose source is from the VAT levied on menstruation hygienic products. The UK government makes use of the fund to subsidize gender-equality projects. The UK government states that “levying tampon tax is inevitable, but we make use of this money to pursue gender equality.”⁵⁴

3.4 Discourses from Less Heard but Powerful Actors

In addition to already examined discourses supporting or doubting the tampon tax campaign, there are some neglected speakers and their less discussed discourses. These speakers are tampon tax fund recipients and hygienic products manufacturing enterprises. They are not completely silent, but the mainstream media do not always focus on them. Although they are

⁴⁹Jennifer Bennett, ‘The Tampon Tax: Sales Tax, Menstrual Hygiene Products, and Necessity Exemptions’ (2017) 1 Bus. Entrepreneurship & Tax L. Rev. 183.; Jorene Ooi, ‘Bleeding Women Dry: Tampon Taxes and Menstrual Inequity’ (2018) 113 Nw. UL Rev. 109.

⁵⁰Arielle Percival, ‘California’s Tampon Tax: Will the Third Time Be the Charm’ (2019) 51 McGeorge L. Rev. 429.

⁵¹ Ibid.

⁵² Barnato, Katy, We’ll scrap ‘outrageous’ tampon tax: UKIP, CNBC (April 9th 2015), <https://www.cnbc.com/2015/04/09/well-scrap-outrageous-tampon-tax-ukip.html>

⁵³Antony Seely, ‘VAT on Sanitary Protection’ (The House of Commons Library, UK Parliament 2020) Research Briefing.

⁵⁴Karen Lorimer and Kelly Babchishin, ‘Diverting Tampon Taxes Will Not Solve the Issue of Violence against Women’ (2016) 354 Bmj i3952.DOI: 10.1136/bmj.i3952

less noticed, it does mean their points of view are less influential. Instead, their messages are strong and implicitly re-enforced by the governments.

Tampon Tax Fund Recipients: Promoting Gender Equality?

As indicated above, since 2015 the United Kingdom government has set up a fund to grant UK charities or individuals' projects that aims to pursue gender equality in the broad sense.

Based on the list of recipients of the UK tampon tax fund from 2016 to 2020 from protecting women from domestic violence to enhancing LGBT rights. However, only one project on the list directly addresses "period poverty".⁵⁵

Some criticize the bias problem in the tampon tax fund.⁵⁶ Most recipients are well-established big charities. The complexity and bureaucracy of the grant application process is more favorable to big charities than small charities, as they have higher administrative support and experience. Moreover, a recipient charity accused of promoting anti-abortion ideas, in the name of protecting homeless women.⁵⁷

In my view, the variety of these tampon tax fund recipients' projects demonstrates discursive explosion.⁵⁸ By accepting the subsidy funded by tampon tax, these projects do not directly address the menstruation poverty or menstruation taboo, but touch on many gender or women issues.⁵⁹ Moreover, these discourses are re-enforced by the authorities, because it is the UK government that is responsible for reviewing and selecting the beneficiaries. The group of people who suffer most from menstruation poverty, are not receiving assistance from these big charities. When the narratives and aims of the tampon tax fund recipients are irreverent to the people in need, the tampon tax fund has become an ineffective policy tool, even though the tax fund recipients are still organizing activities in the name of "gender equality".

Enterprises: Increasing the Tax Exemption Scope

In the Australian public consultation process, several manufacturing enterprises are invited to express their opinion as stakeholders because exempting consumption tax will directly influence the market. The question addressed by the consultation is about the scope and definition of "feminine hygienic products".

Exempting consumption tax on menstruation hygienic products will become a consumption incentive. So, it is interesting to see that different enterprises have submitted similar opinions to "increase" the exemption scope. Enterprises even suggest vagina cleaning

⁵⁵in 2018 list: Brook Young People - The 'Let's Talk. Period.' project will aim to address period poverty in England.

See United Kingdom Government Tampon Tax Fund Recipient List of 2018

<https://www.gov.uk/government/news/women-and-girls-set-to-benefit-from-15-million-tampon-tax-fund>

⁵⁶Olumide Adisa and others, 'Mapping the VAWG Funding Ecosystem in England and Wales' (Centre for Abuse Research Suffolk Institute for Social and Economic Research, University of Suffolk 2020), p.44.

⁵⁷in 2017 List: "Life Charity - £250,000.00 - Housing, practical help, counselling, emotional support and life skills training for young pregnant women who are homeless."

See United Kingdom Government Tampon Tax Fund Recipient List of 2017

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604984/Tampon_Tax_Fund_regional_list.docx

See also Quinn, Anger as tampon tax is used to help fund anti-abortion group, *The Guardian* (April 1st 2017),

<https://www.theguardian.com/politics/2017/apr/01/tampon-tax-anti-abortion-group-anger>

⁵⁸Michel Foucault, *The History of Sexuality. Volume One: An Introduction* (1980), p. 17.

⁵⁹Similar remarks on the current menstruation activism, Annie McCarthy and others, 'Bleeding in Public? Rethinking Narratives of Menstrual Management from Delhi's Slums', *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan, Singapore 2020), p. 17

products should be also exempted. The enterprises argue that every woman is different and therefore some hygienic products should not be classified as for “general hygiene” but for period hygiene.

The opinion from enterprises to increase the exemption scope is understandable from the perspective of business interest, because they could sell more goods when they are exempt from the consumption tax. In my view, it can be seen as a vivid example of “menstruation capitalism” that takes the opportunity of a tax law reform to exercise their commercial interests.

Their reactions are not surprising. They are stakeholders, and they are acting in accordance with their commercial interests. In the end the Australian government does not open up the exemption list, but the enterprises’ contributions are published for the public.

3.5 Remarks: Conflicting Discourses and Implications

To sum up, in different jurisdictions, the discourses observed in the tampon tax campaign have several features in common. Supporting discourses are related to the menstruation taboo, physical and mental health issues, human rights and discrimination. Doubt-casting discourses usually involve gender neutral arguments, such as economics or budget concerns.

When we are not fully aware menstruation as a taboo and the power relations involved, we could easily be distracted by the endless debates such as “scope of menstruation products” such as in Australia; or what organizations should benefit from “the tampon tax fund” in the UK; or even questioning tampons as a necessity or a luxury product in the USA and discussing features and classifications of various products. They can be classified as discourses that aim to distract from the oppression of the menstruation taboo and the needs of the people who suffer from it. Even though the phrasing of these arguments look neutral, scientific, well-argued and appealing, supported by quantitative and statistics, they are still missing the point. Furthermore, they lead us to accept that tampon tax debates are about “money” and can (and should) be easily solved by money. But, in reality, menstruation poverty and the related taboo go far beyond just a monetary issue. It is an intersectional problem.

4. Conclusion

This paper begins with Steinem’s quote, and now I would adjust her powerful quote as:

“The truth is that, *if the tampon tax is abolished*, the power justifications would go on and on.”

Power relations are not easily eliminated simply by abolishing the tampon tax or providing free tampons. Using abolishing tax as the campaign strategy is a smart move. As we all know, the independence of the USA started from arguing the tax without representation. Using taxation-related arguments as tools in the movement is not a bad idea *per se*.

However, conflicting discourses in the reactions to the tampon tax campaign have demonstrated that when deviating from the focus on breaking the menstruation taboo to engaging in “costs”, “economic efficiencies” or “necessities”, the non-monetary goal of breaking the taboo becomes compromised.

The tampon tax campaign is not merely about tampons nor taxation, but that a menstruating body has been related to socially constructed taboos. When making an effort to lift the taboos and empower the oppressed, it is important not to create new discourse that re-enforces the othering. Although legislative changes in Scotland, Australia and California constitute positive steps towards menstruation equality, we should still be cautious: Do we

unconsciously reinforce the idea of people who menstruate as naturally weak, by supporting the tampon tax campaign?

“The power justifications would go on and on. If we let them.” So the tampon tax campaign should not stop at universal free access to menstruation hygienic products or at the abolishment of the tampon tax.

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