

Essay

Commodification, Precarity, and Identity: A Review of Professor Bridget Crawford's *Taxing Sugar Babies*

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Early in her article, *Taxing Sugar Babies*, Professor Crawford nudges the reader to bring any preconceived notions or biases to the forefront of her mind. She writes:

In many ways, sugaring is simply a modern twist on relationships that have existed in one form or another for centuries, if not millennia. Paid companionate, non-sexual relationships are amply documented throughout history. Indeed, the compensated female companion is a well-known trope in nineteenth- and twentieth-century English novels. Paid companionate relationships are not merely vestiges of the past, either. In modern times, there are compensated companions for older adults or persons with disabilities, and even paid online “friends” Likewise, paid companionate relationships with a sexual component have an equally long and reported history. . . . Now, in the contemporary United States, there are an estimated one million to two million in-person sex workers, “an umbrella term for the provision of sexual services or performances by one person for which a second person, the client or customer, provides money or other markers of economic value (i.e., goods, services).” In short, paid companionship, both without and with a sexual element, is nothing new.¹

With this passage, Professor Crawford deftly pushes the reader to take seriously the tax treatment of relationships that are often the subject of ridicule.² Analogizing the relationships of the sugar babies to the ladies’ maids of Austen or Downton Abbey, Professor Crawford challenges the reader to see something more familiar or understood to be benign in what might

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1. Bridget J. Crawford, *Taxing Sugar Babies*, 109 MINN. L. REV. 737, 742–43 (2024).

2. For an engaging discussion of how the law shapes marriage and incentivizes transactional interpersonal relationships, see MARCIA A. ZUG, *YOU’LL DO: A HISTORY OF MARRYING FOR REASONS OTHER THAN LOVE* (2024).

otherwise be dismissed without consideration. This move is consistent with Professor Crawford's prior work as a leading critical tax scholar and *Taxing Sugar Babies* fits neatly within the critical tax literature.³ But its import extends beyond the usual boundaries of tax. By examining relationships that fall outside the binary of single versus married—exploring their formation and how the law can and should apply to them—Professor Crawford has written a helpful addition to the rich literatures on the law, commodification, and intimate relationships developed by feminist and family law scholars.

Taxing Sugar Babies investigates the tax treatment of “sugaring” relationships. Sugaring relationships are ones in which someone (usually a woman) provides companionship (often, though not always including sexual companionship) to another person (usually a man) in exchange for cash, in-kind benefits, or a mix thereof.⁴ Little detailed information exists on sugaring.⁵ To provide an overview of the relationships, Professor Crawford relies upon information gleaned from websites that help sugar babies and daddies/mommas connect, as well as a unique dataset she compiled and coded from sugaring community Reddit discussion threads.⁶ While Professor Crawford recognizes the limits of such data, she puts the imperfect corpus to excellent use, creating a detailed picture of a community that to many readers is likely essentially unknown.

Understanding the nature of sugaring is an important part of getting to Professor Crawford's more specific question: how should tax treat sugaring? Doctrinally, the key tax issue is whether the rewards of sugaring—the cars, the luxury hotels, the jewelry, and the allowances—are gifts or compensation.⁷ Compensation is clearly taxable.⁸ Gifts, by contrast, are excluded

3. See generally CRITICAL TAX THEORY: AN INTRODUCTION (Anthony C. Infanti & Bridget J. Crawford eds., 2009) (providing an overview of the field of critical tax theory).

4. Crawford, *supra* note 1, at 740 (“‘Sugaring,’ ‘sugar dating,’ and ‘sugar relationships’ are popular terms for arrangements whereby one partner makes cash payments or property transfers to or for the benefit of the other in return for companionship.”).

5. *Id.*

6. See *id.* Parts I.A & I.C.

7. Crawford, *supra* note 1, at 743–44.

8. Though this idea is well understood, the key Code provision that expressly identifies compensation as income is 26 U.S.C. § 61.

from taxable income.⁹ But to qualify as a gift, a transfer must proceed from “a detached and disinterested generosity.”¹⁰ Therein lies the issue. As Professor Crawford notes, it is easy to see sugaring as taxable compensation, particularly in the early stages of relationship formation: “both the economics and dynamics of sugaring relationships give rise to a reasonable inference, at least at the initial stages of a relationship, that transfers to a sugar baby are indeed compensation for services”¹¹ But then again, as feminist and family law scholars (and indeed many a feminist family law scholar) have noted, marriage may be understood as more transactional than we often admit.¹² Nevertheless, we do not treat transfers between spouses as taxable.¹³ Thus, the thorny nature of taxing similarly-situated taxpayers alike becomes clear. Should we conceive of sugaring as market work—a view which would push toward taxing its attendant payments and transfers as compensation—or as one of many forms of interpersonal relations—a view which would push toward thinking of the exchanges more as gifts than compensation?

To better consider this question, Professor Crawford looks to how the individuals in sugaring relationships think about their relationship and taxation. Doing so, she argues, takes us beyond the “first glance” doctrinal answer that would place sugaring alongside other taxable personal services (whether legal or not) to see that “sugaring relationships tend not to fit neatly into existing paradigms for understanding either work or taxable income.”¹⁴ What Professor Crawford finds is that those involved in sugaring relationships have a complex understanding of the nature of sugaring transfers. “The dominant refrain among sugar babies,” she notes, “is that sugar payments are gifts and thus not included in the sugar baby’s gross income for federal income tax

9. 26 U.S.C. § 102.

10. *Comm'r v. Duberstein*, 363 U.S. 278, 285 (1960).

11. Crawford, *supra* note 1, at 786.

12. See, e.g., Katharine T. Bartlett, *Feminism and Family Law*, 33 FAM. L. Q. 475, 500 (1999) (identifying issues of importance in feminist family law). See generally CAROL PATEMAN, *THE SEXUAL CONTRACT* (1988) (arguing that contractual submission in marriage maintains patriarchal structures). See also Gregory S. Alexander, *The New Marriage Contract and the Limits of Private Ordering*, 73 IND. L. J. 503, 503–05 (1998) (“Traditionally considered a status-based institution, marriage is now increasingly a matter of contract.”).

13. 26 U.S.C. § 1041. See also ZUG, *supra* note 2 (discussing the transactional nature of marital relationships).

14. Crawford, *supra* note 1, at 744 (citation omitted).

purposes.”¹⁵ But this sense exists alongside an understanding or concern that tax law may not accept or support the gift characterization.¹⁶ It is worth noting that, doctrinally, the *Duberstein* standard for a gift instructs courts to look to the donor’s intent, rather than the recipient’s understanding, for characterization.¹⁷ But Professor Crawford spends a good bit of the article closely considering why sugar babies may understand the tax implications of their relationships in the way that they do, and for good reason. The discussions that Professor Crawford has compiled help us think about a core question of critical tax: how and to what extent tax law both reflects and shapes our understanding of ourselves and our relationships with others.

One of the key premises of critical tax work is that ostensibly neutral tax laws both reflect and entrench societal bias.¹⁸ What is often harder to work out is how tax may shape how individuals think of themselves. Professor Crawford finds that the prospect of taxing sugaring as compensation does not sit well with many sugar babies.¹⁹ There is a sense that emerges from some of the conversations that the act of taxing—and the corollary decision to analogize sugaring to other forms of labor—would impact sugar babies’ sense of self.²⁰ There is, then, a resistance to commodification of the relationship. As Professor Crawford observes, “a sugar baby’s insistence that her receipts are gifts underscores a deeper resistance to characterizing her activities as a form of work and specifically as a type of sex work.”²¹ Insistence that one is “NOT an escort” and that “[a]ccepting gifts isn’t illegal” seems to resist commodification.²² Tax treatment ceases to be a sterile, technical question: “With the tax system’s marking of sugaring as taxable work, sugaring would be revealed as a form of paid companionship that often (but not only or always) includes a sexual element more typically

15. *Id.* at 785.

16. *Id.* at 780–84.

17. *Duberstein*, 363 U.S. at 286 (“What controls is the intention with which payment, however voluntary, has been made.”) (citation omitted).

18. See, e.g., Anne Bryson Bauer, *We Can Do It? How the Tax Cuts and Jobs Act Perpetuates Implicit Gender Bias in the Code*, 43 HARV. J.L. & GENDER 1, 4 (2020) (“The Tax Cuts and Jobs Act is the latest example of federal tax legislation to perpetuate gender bias in the Tax Code.”).

19. Crawford, *supra* note 1, at 768–70, 791–92.

20. *Id.*

21. *Id.* at 795.

22. *Id.* at 791.

associated with escorting.”²³ Crawford concludes that “[i]n other words, sugar babies who believe that they are not engaged in sex work would be confronted with a clear statement by the taxing authorities that this is paid work, not just a minor variation on a traditional dating relationship.”²⁴ Tax may not only reflect society but shape it as well.

But the negative views of understanding sugaring as taxable compensation are not universal. And consistent with her prior work on commodification, Professor Crawford seems to find more good than ill in commodification. Writing of the potentially productive outcomes of commodification:

In a larger social context, a public statement from the taxing authorities that sugaring is taxable activity could be understood, at least in some ways, as contributing to the destigmatization of sex work. That is, by taxing sugaring receipts, the law could make sugaring cognizable as dignified labor. Given the historic devaluation of intimate labor, taxing sugaring like traditional work marks it as important. On the other hand, taxing sugaring also could be understood as expressing a certain social disapproval, insofar as taxing sugaring likens it to other legal (but scorned) activity like smoking cigarettes, consuming alcohol, or other “sinful” activities. Yet taxation itself is not inherently an expression of disapproval; that income from employment as a teacher or a plumber, say, is subject to taxation does not mean that this work is devalued. Rather, taxation—in all its complexity—shapes the relationship between and among the government, its citizens, and social values. Thus, any hypothetical governmental statement about the taxation of sugaring receipts could not be understood as clearly expressing either approval or disapproval.²⁵

Herein, Professor Crawford’s argument extends ideas developed in her work elsewhere on one of the most hotly debated topics among commodification scholars: surrogacy. Considering the tax treatment of surrogacy, Professor Crawford writes:

Liberal supporters of surrogacy rely on concepts like bodily integrity and a woman’s right to be free from government interference in decisions about her body. But a right to be left alone need not be the only strain of discourse. If one inverts the paradigm, *inviting the government into women’s decisions might create new institutional pathways for securing women’s equality*. Governments can and should enhance the wellbeing of women, and taxation can be one way of accomplishing that. To tax an activity is to make it part of the public conversation about rights and responsibilities. *Bringing surrogacy out*

23. *Id.* at 808.

24. *Id.* at 808–09.

25. *Id.* at 807–08 (citations omitted).

*of the shadows and into the sunshine of the law is a step toward recognizing the value of reproductive work.*²⁶

Returning to sugaring, Professor Crawford sees real benefits in the formalization that commodification brings: “Ultimately, taxing sugaring could provide clarity and fairness in the tax system, ensuring sugar babies gain from social benefits tied to taxable income while addressing potential stigmas associated with their work.”²⁷ Nevertheless, Professor Crawford is not optimistic that clarity and destigmatization are around the corner. Tax, as she rightly notes, “has . . . a general reluctance to become involved (in a tax sense) in interpersonal, romantic, non-marital relationships.”²⁸

Despite her sense that formalization is unlikely, Professor Crawford’s arguments about how treating and taxing sugaring as work could shape society brings *Taxing Sugar Babies* into conversation with scholarship both within and outside tax on how the law may mitigate or entrench precarity of individuals in intimate relationships.²⁹ Deciding not to tax some forms of labor means that those who perform such labor may stay outside or on the fringes of our benefit and retirement systems that are bound up with formal employment.³⁰ To highlight that this is true of sugaring, Professor Crawford complements similar work of family law scholars on how current law privileges marriage, leaving members of unmarried couples at a disadvantage.³¹ Where a spouse may have a claim for support at the end of a marriage, for example, the unmarried individual, or sugar baby, has little power to hold her partner to his bargain. It may be unsurprising

26. Bridget Crawford, *Taxing Surrogacy*, in CHALLENGING GENDER INEQUALITY IN FISCAL POLICY MAKING: COMPARATIVE RESEARCH ON TAXATION 95, 106–07 (Kim Brooks et al. eds., 2011) (emphasis added).

27. Crawford, *supra* note 1, at 809.

28. *Id.*

29. See Jill Elaine Hasday, *Intimacy and Economic Exchange*, 119 HARV. L. REV. 491, 491 (2005) (“[A]nticommodification and pro-market scholars . . . agree that the law maintains a strict boundary between economic exchange and intimacy, and disagree only on whether to applaud or criticize that boundary.”). See also Edward J. McCaffery, *Taxation and the Family: A Fresh Look at Behavioral Gender Bias in the Code*, 40 UCLA L. REV. 983, 984–87 (discussing how marriage tax law affects the character of family life, particularly for women), and Nancy Staudt, *Taxing Housework*, 84 GEO. L.J. 1571 (1996) (offering a thorough consideration of the decision whether to tax household labor).

30. Crawford, *supra* note 1, at 805–06 (describing the potential effects of unreported sugar baby income that therefore remains untaxed).

31. See generally ZUG, *supra* note 2 (discussing the transactional nature of personal relationships and the privileged place of marriage in culture).

that tax shapes economic fortunes—it is an area of law that exists, in large part, to serve distributive justice ends. But Professor Crawford’s work makes clear tax rates are not the only part of the Code that influence financial security. With her careful and thoughtful attention to that which has been underappreciated or marginalized in tax, and often society, Professor Crawford has, then, written a piece that enriches legal scholarship across doctrinal lines. And while I cannot fault Professor Crawford for keeping her focus on sugaring relationships, I could not help but think of how her work in *Taxing Sugar Babies* could extend to the current trad wife/girlfriend phenomenon.³² Should we situate trad wives/girlfriends closer to sugar babies than not? Are they part of a different phenomenon altogether? Or perhaps she has already joined the r/tradwives Reddit thread and we can await her next set of insights.

32. See, e.g., Sophie Elhirst, *The Rise and Fall of the Trad Wife*, THE NEW YORKER (Mar. 29, 2024), <https://www.newyorker.com/culture/persons-of-interest/the-rise-and-fall-of-the-trad-wife> [<https://perma.cc/2STM-82KR>].