

## Morality and the 2017 Tax Act

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Linda Sugin, [The Social Meaning of the Tax Cuts and Jobs Act](#), 128 **Yale L.J. Forum** (Oct. 25, 2018).

I am on alert for tax law changes as I teach Federal Income Tax this semester for the first time since the passage of the 2017 tax act. They seem to appear out of nowhere, rather than as part of a predictable pattern. What can explain seemingly disconnected provisions, scattered throughout the Code and enacted without an explicit policy explanation?

[Linda Sugin](#) takes on this question in *The Social Meaning of the Tax Cuts and Jobs Act*, published in 2018 at the Yale Law Journal Forum. Her critical perspective makes an effort to divine the worldview embedded in the [TCJA](#) based on the content of the enacted law. Sugin's engineering effort shows the following "American priorities and values revealed by the TCJA:

1. The traditional family is best;
2. Individuals have greater entitlement to their capital than to their labor;
3. People are autonomous individuals;
4. Charity is for the rich; and
5. Physical things are important." (P. 404.)

Sugin reviews dozens of provisions to support her arguments. A sampling follows to offer a sense of her argument.

The TCJA, argues Sugin, reveals its traditional family bias through a number of provisions, including rate bracket changes and the replacement of the dependent care credit (helpful for two-working-parent families) with an increase in the generally-available child tax credit. Another change imposes a \$500 fine on a tax preparer who fails to diligence a taxpayer's claim of head of household status—a filing position designed to help low—and middle-income single-parent families. This last provision prompts tax preparers to be skeptical when a client says she is a single parent. No such incentive is presented when two clients say that they are married.

The TCJA's preference for capital income over labor income is revealed by a reduced corporate income tax, as well as by the Section 199A deduction for 20% of so-called "qualified business income" earned through certain passthrough entities and subject to income phaseouts. Sugin similarly objects to the TCJA's apparent preference for investments in physical capital rather than human capital, such as the provision for immediate expensing. She writes, "All of these changes favor things over people." (P. 430.) Sugin's point here is about morality, not about the efficiency problems that [others have pointed out](#). She objects to the TCJA's message that taxpayers have an inferior claim to the income from their own labor, relative to the claim to their income from physical or financial capital.

Sugin says that the people idealized and favored by the TCJA are autonomous economic units, not social humans embedded in networks of interactions like employment or state and local communities. Provisions including the passthrough deduction and the repeal of miscellaneous itemized deductions favor independent contractors over employers. Limiting the annual state and local tax deduction to \$10,000 communicates that these taxes are a form of private consumption, rather than a tithe to a common fund. Increasing the standard deduction exacerbates the result that only higher people will get any incremental benefit from charitable donations and "undervalues the types of institutions supported by the poor." (P. 426.)

Sugin is surely right to say that "efficiency is a value" (P. 405) and to point out that law cloaked in the garb of efficiency or

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competitiveness nevertheless has social meaning. This legislation has winners and losers, even if rhetoric about efficiency obscures this fact. Perhaps legislators did not willfully intend to favor swashbuckling primary-earner investors with stay-at-home spouses, rather than risk-averse single-parent employees. Nevertheless, Sugin shows results that are there, enacted in the statute. As Sugin points out, the law itself communicates values and reveals over time its embedded social meaning.

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