Telling the Middle Class How to Be Middle-Class: Tax Incentives for Saving

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Date : September 30, 2016

Lisa Philipps, *Registered Savings Plans and the Making of Middle Class Canada: Toward a Performative Theory of Tax Policy*, 84 **Fordham L. Rev.** (forthcoming 2016), available at SSRN.

Analyses of tax policy are typically based on a familiar cost-benefit framework. There are important debates about which costs and benefits should be included (and which are measurable), but the standard formula is simple: (1) Describe the policy goal; (2) Present the costs and benefits of a policy that is meant to achieve that goal; and (3) Conclude that the policy is good or bad, depending on whether benefits exceed costs or vice versa.

In her important new article, Professor Lisa Philipps uses a Canadian tax policy debate to show that this approach is fundamentally misleading. Standard cost-benefit analysis—even if it is focused on inequality or other social outcomes—ignores the effect that adopting policies has on, as Philipps puts it, "the range of policy options considered thinkable." (P. 102.) Tax policies can become embedded in the social system in a way that cannot be explained by standard cost-benefit analysis, and the resulting changes in social expectations can lead to self-defeating policy inertia.

Philipps's article, which is part of a symposium in the Fordham Law Review entitled "We Are What We Tax," adapts Judith Butler's important work in feminist theory to analyze a seemingly technocratic question about tax incentives for saving. To some readers, this might seem a jarring combination, but the intersection of feminist theory and tax policy has become a growing and vibrant area of scholarly inquiry over the past few decades. This line of research is providing important theoretical and practical insights into tax policy debates that helpfully move the conversation past the usual neoliberal framework.

As noted, Philipps focuses on the social impact of tax incentives for saving in Canada. Philipps looks at changes in Canada's tax policies over recent decades, showing how the government has increasingly relied on the tax system to encourage people to save for their retirements, through what are called "registered savings plans." This approach is, however, only one possible response to the broader policy question, which is how a society can allow people to spend the latter years of their lives living a dignified retirement rather than either working themselves to death or being reduced to poverty when they can no longer work.

Another possible answer to that question is known in the United States as the Social Security system. Although that system is often understood as a system in which people pay taxes while working and then "get their money back" when they retire, Social Security is in fact financed on a pay-as-you-go basis, and there are no "accounts" into which payroll taxes are deposited. Although it is beyond the scope of this essay to discuss the issue in detail here, the fact is that pay-as-you-go systems and systems of personal deposit accounts are analytically identical in the aggregate. In one way or another, workers at any given time are reducing their consumption in order to allow former workers to stay alive, and in turn those current workers will be allowed to live without working at some point in the future. The means by which that system is financed cannot change that fundamental tradeoff.

Being analytically equivalent, however, does not mean that the two systems are socially or politically interchangeable. As Philipps points out, Canada made the choice to have its workers build nest eggs for their retirement years, and Parliament has experimented with various methods by which to use tax incentives to encourage people to save sufficient funds to live in some comfort during retirement. In that sense, much of the political discussion followed the standard pattern: (1) We need to get people to save more money, (2) The policies that we are adopting have succeeded in various ways and failed in various ways, and therefore (3) The policies need to be tweaked, enhanced, abandoned, and so on.

The Canadian policy of relying on private decisions to save was justified by the neoliberal gloss of "promoting individual self-reliance and familial responsibility to address human welfare needs" (P. 109). Even when supplemented by various tax incentives, however, the Canadian system has had a (completely predictable) negative distributional impact. Philipps's insight, however, is not merely that private savings accounts have exacerbated inequality. She argues that the policy conversation is not merely a matter of saying, "Well, our current set of policies is not serving Canadians well in their retirement, so let's put all possible ideas on the table to see what would work better." Instead, the justifications for the private-saving approach to retirement became self-reinforcing, such that even the Canadians who are harmed by the system are now psychologically committed to its perpetuation.

How could that be? The idea behind the Canadian retirement system was not just a matter of telling middle class people that they had a personal responsibility to save for their retirement, but also of making retirement saving part of the very essence of middle class identity. Philipps writes: "To be an adult without a registered savings plan now threatens to place one on the margins of the social order" (P. 121). In other words, anyone who wishes to think of herself as a middle-class Canadian now automatically thinks that part of middle-class life will involve building retirement savings through registered plans.

This constructed social identity, however, has a surprisingly important impact on the policy debate. Because people aspire to be part of the middle class, and middle class identity includes being a rugged individual who saves for oneself and one's kin, middle class Canadians (and those who hope to achieve that status) are now highly unlikely to approve of any plan to move away from a savings-based system to a macroeconomically equivalent pay-as-you-go system that looks like a Social Security plan. That is, people have learned that "being middle class" means sinking or swimming on one's own, and because of that deeply embedded social expectation, any move to more explicitly acknowledge through policy that everyone is mutually dependent now somehow feels wrong.

This phenomenon is hardly limited to retirement savings. For example, basic financial principles make clear that the difference between owning and renting one's residence is ultimately a matter of form and not substance, because the legal category of property ownership can be replicated through contractual agreements. Nonetheless, in the U.S. and Canada part of "the dream" is to be a homeowner. It does not seem to matter that the particulars of home ownership can be devastating for people when their houses lose value (as in the housing bust of 2008-10), or that good financial management should discourage putting all of one's proverbial eggs in a single basket, because such cost-benefit considerations end up being overwhelmed by people's psychological commitment to home ownership. A politician who suggests that home ownership is not a meaningful or appropriate goal will discover quickly that citizens strongly disagree.

And so it is now in Canada with respect to individually oriented retirement savings. As Philipps concludes: "Registered savings plans will endure not because they actually deliver the benefits they promise to most people but rather because they have been assimilated into Canadian middle-class identity" (P. 122). What would be viewed as a flawed and counterproductive policy that harms middle-class Canadians thus stumbles onward, because people have been taught to believe that there is a "right" middle-class way to save for retirement. The existing policy regime becomes its own justification.

Cite as: Neil H. Buchanan, *Telling the Middle Class How to Be Middle-Class: Tax Incentives for Saving*, JOTWELL (September 30, 2016) (reviewing Lisa Philipps, *Registered Savings Plans and the Making of Middle Class Canada: Toward a Performative Theory of Tax Policy*, 84 **Fordham L. Rev.** (forthcoming 2016), available at SSRN), http://tax.jotwell.com/telling-the-middle-class-how-to-be-middle-class-tax-incentives-for-saving/.