VOL. 41 SYMPOSIUM ESSAY: TALKING ABOUT TAMPONS IN TAX CLASS

JEREMY BEARER-FRIEND

The following is a part of an essay series for the Volume 41 Symposium, "Are You There Law? It's Me, Menstruation."

Was I was taking too much of a risk by teaching about menstrual hygiene products in my tax policy seminar? It was my first semester as a Visiting Assistant Professor of Tax at NYU Law and, trusting my gut, I added Bridget Crawford and Carla Spivack's pathbreaking article on tampon taxes to my syllabus.[1] The article was such a hit with my students that I would continue to teach it for the next three semesters at NYU, and I continue to teach it at GW Law.

Crawford and Spivack's article, Tampon Taxes, Discrimination and Human Rights, effortlessly illustrates for my students how to apply normative standards to tax policy, and it does so in a refreshing way that goes beyond the ossified canon of equity, efficiency, and administrability. By arguing that the taxation of menstrual products violates multiple principles of human rights law, Crawford and Spivack deftly prepare my own students to make arguments about tax policy.[2] The article has also expanded the field of tax scholarship by legitimizing human rights law as a framework for analyzing tax policy, a shift in analysis that goes far beyond the scope of tampon taxes.[3] And most readers -- students and scholars alike -- are unfamiliar with the wide sweep of taxes on menstrual products they learn about through the article.

Including menstruation in my tax policy curriculum also elevates new voices in my classroom that I otherwise may not hear from. Students who menstruate typically have strong opinions about the tax treatment of menstrual hygiene products, and they are inspired to participate, even if they have been less engaged with other pieces of the curriculum. As someone who does not menstruate, I also believe it is important to model classroom discussions of menstruation. As noted by Crawford and Spivack, stigma around menstruation can be used as an instrument of subordination, and a professional discussion of menstrual hygiene products can help to erode that stigma.

My tax policy seminar challenges students to design tax policy solutions for deep societal problems. By the end of the course, students are expected to demonstrate an understanding of: (1) how tax policy shapes our society; (2) how society shapes our tax policy; (3) how to evaluate tax policy based on established and emerging tax policy principles; and (4) how to design tax policy to meet various civil priorities. Crawford and Spivack's article on tampon taxes is an indispensable tool for helping my students achieve all four of these goals.

[1] Bridget J. Crawford & Carla Spivack, Tampon Taxes, Discrimination and Human Rights, 2017 Wisc. L. Rev. 491 (2017).

[2] See id.

[3] See, e.g., Jeremy Bearer-Friend, Ari Glogower, Ariel Jurow Kleiman & Clinton Wallace, Taxation and Law and Political Economy (forthcoming 2021).

Keywords: law; gender; menstruation; symposia; Are You There Law? It's Me Menstruation