

MIRANDA PERRY FLEISCHER
Associate Professor
University of Colorado Law School
401 UCB
Boulder, Colorado 80309
303.492.6278
miranda.fleischer@colorado.edu

EMPLOYMENT

University of Colorado Law School, Associate Professor 2005-2007 and 2009-present
The University of Illinois College of Law, Associate Professor and Richard W. and Marie
L. Corman Scholar, 2007-2009
NYU School of Law, Acting Assistant Professor of Tax Law, 2003-2005
Shaw Pittman LLP, Associate, 2000-2002
Institute for Justice, Staff Attorney, 1998-2000
Wiley, Rein & Fielding, Associate, 1997-1998
Hon. Morris Sheppard Arnold, U.S. Court of Appeals for the Eighth Circuit, Law Clerk,
1996-1997

EDUCATION

NYU School of Law, LL.M. in Taxation, 2003

- Harry J. Rudick Memorial Award (for academic distinction)
- *Tax Law Review*, Student Editor and Merit Scholarship Recipient
- 3.96 GPA

University of Chicago, The Law School, J.D., 1996

- *University of Chicago Law Review*, Member
- *The Federalist Society*, President

Duke University, B.A., Economics, 1993

- 1992 Alice Baldwin Scholarship for Academic Achievement

PUBLICATIONS

Theorizing the Charitable Tax Subsidies (Part One): The Role of Distributive Justice, forthcoming, 83 Wash. U. L. Rev. ____ (2009).

Despite the starring role played by distributive justice in many fundamental tax policy debates, current tax scholarship on the charitable tax subsidies generally either ignores or explicitly disavows distributive justice concerns. Instead, it focuses on the efficiency and pluralism-enhancing advantages of having charities provide public goods. While identifying these advantages is an important contribution to our understanding of charitable giving policy, this emphasis ignores charity's very purpose: voluntary redistribution. As a result, current scholarship is incomplete, purposely under-theorizing "the good" in order to avoid making value judgments about which projects should be subsidized. In contrast, explicitly addressing distributive justice—in addition to pluralism and efficiency—will enhance our understanding of the subsidies for three reasons. First, existing scholarship is incomplete because it does not adequately identify which projects deserve a subsidy and is inconsistent because it contains unacknowledged value judgments that have distributive justice implications. Second, popular criticisms of the charitable tax subsidies raise distributive justice issues that have not been adequately addressed. And lastly, the law on the charitable tax subsidies is itself confused on the role of distributive justice.

Generous to a Fault? Fair Shares and Charitable Giving, 93 Minn. L. Rev. 165 (2008).

Given the vital role that charities play in our society, it is not surprising that the tax Code encourages philanthropy by allowing a deduction for charitable gifts. What is surprising is that it treats the most generous among us *less* favorably than those of average generosity. This stems from one of the most puzzling limits in the Code: the cap preventing someone from claiming a charitable deduction greater than 50% of her income, even if she gives more than that to charity. As a result, someone generous enough to donate all her income must still pay income tax. Few scholars have explored whether an individual who gives all her income to charity should still pay tax; those who have seem hard-pressed to satisfactorily answer that question. This Article begins to do so, relying on the literature conceptualizing the deduction as a way of overcoming market and government failure for various public goods by spurring non-profits to produce them. It argues that precluding taxpayers from zeroing out their tax liability via charitable gifts reflects a bargain between individuals whose preferred public goods are fully funded by the government and those whose projects are only partially subsidized, and that this bargain reconciles the private provision of public goods via charitable giving with our democratic process.

Charitable Contributions in an Ideal Estate Tax, 60 Tax L. Rev. 263 (2007).

Although charitable bequests have been fully deductible for estate tax purposes since 1918, few scholars have considered the normative question of whether the estate tax should have a charitable deduction, and if so, whether any limits should apply. This Article fills that void by exploring whether various conceptions of an "ideal" estate tax base should include a charitable deduction, and if so, what the deduction should look like. It concludes that while each of the most common rationales for the estate tax justifies some type of charitable deduction as a

normative matter, only one (furthering progressivity) potentially justifies an unlimited deduction. All other rationales for the tax suggest a more limited deduction.

Legal Essentials for Foundations, Association of Small Foundations, 2002.

Kids and Condoms: Parental Involvement in School Condom-Distribution Programs, 63 U. Chi. L. Rev. 727 (1996) (Student Note).

WORKS IN PROGRESS

Theorizing the Charitable Tax Subsidies (Part Two): The Implications of Distributive Justice

After making the case for considering distributive justice in *Part One* of this Series, *Part Two* will examine several common theories of distributive justice (utilitarianism, the leximin principle, the capabilities approach, egalitarianism, and libertarianism) and consider what each suggests for the structure of the charitable tax subsidies. Each may have different implications, for example, with respect to whether aid to the poor should be required, whether religion should be subsidized, and how charities that largely benefit the well-off should be treated.

TEACHING

UNIVERSITY OF COLORADO LAW SCHOOL

Estate and Gift Tax (Fall 2005, Fall 2006, Fall 2009)
Individual Income Tax (Spring 2006, Spring 2007, Spring 2010)
Non-Profit Law (Fall 2006)
Wills and Trusts (Fall 2009)

Future Courses: Tax Policy, Advanced Income Tax, Estate Planning

THE UNIVERSITY OF ILLINOIS COLLEGE OF LAW

Estate and Gift Tax (Fall 2007, Spring 2009)
Individual Income Tax (Fall 2007, Spring 2009)
Wills and Trusts (Spring 2008)

NYU SCHOOL OF LAW

Estate and Gift Tax (Fall 2004, Summer 2005)
Survey of Tax Procedure (Fall 2003, Fall 2004, Summer 2005)
Taxation of Property Transactions I (Spring 2005)
Tax Policy (Spring 2005)
Timing Issues and the Income Tax (Fall 2003, Spring 2004)

INVITED PRESENTATIONS

- [Theorizing the Charitable Tax Subsidies (Part Two), University of Michigan Law School Tax Policy Colloquium, April 2010]
- [Theorizing the Charitable Tax Subsidies (Part Two), University of Colorado Law School Faculty Workshop, February 2010]
- Theorizing the Charitable Tax Subsidies (Part One), Loyola-LA School of Law Tax Policy Colloquium, September 2009
- Theorizing the Charitable Tax Subsidies (Part One), Law and Society Panel on Distributive Justice, Tax Policy and Society, May 2009
- Theorizing the Charitable Tax Subsidies (Part One), Washington University School of Law Faculty Colloquium Series, April 2009
- Theorizing the Charitable Tax Subsidies (Part One), University of San Diego School of Law Faculty Colloquium Series, December 2008
- Taxation, Charity, and the Burdens of Social Cooperation: Preliminary Thoughts, Junior Tax Scholars Conference, June 2008
- Invited Participant, University of Illinois College of Law Program for Law and Philosophy Roundtable on Philanthropy, Morality and Distributive Justice, May 2008
- Theorizing the Charitable Tax Subsidies (Part One), Chicago-Kent College of Law Faculty Colloquium Series, February 2008
- Theorizing the Charitable Tax Subsidies (Part One), AALS Section on Philanthropy, January 2008
- Invited Participant, University of Illinois College of Law Program for Law and Philosophy Roundtable on The Morality of Debt Relief, September 2007
- Theorizing the Charitable Tax Subsidies: Preliminary Thoughts, Junior Tax Scholars Conference, June 2007
- Invited Participant, University of Illinois College of Law Program for Law and Philosophy Roundtable on Rationality, Distributive Justice and Happiness, March 2007
- Generous to a Fault? Fair Shares and Charitable Giving, UCLA Law School Tax Policy Colloquium, February 2007

- *Generous to a Fault? Fair Shares and Charitable Giving*, University of Colorado Law School Faculty Workshop, January 2007
- *Generous to a Fault? Fair Shares and Charitable Giving, Preliminary Thoughts*, Junior Tax Scholars Conference, June 2006
- *Charitable Contributions in an Ideal Estate Tax*, University of Colorado Law School Faculty Workshop, January 2006
- Invited Participant, University of California-Berkeley Workshop on Tax Policy and Public Finance, June 2004

SERVICE

SERVICE TO THE LEGAL PROFESSION AND LEGAL ACADEMY

Co-organizer, Junior Tax Scholars Conference (held at the University of Colorado Law School, 2006; Boston University School of Law, 2007; and NYU School of Law, 2008) (co-founded with Victor Fleischer and Lily Batchelder)

Organizer, University of Illinois College of Law Program for Law and Philosophy Roundtable on Philanthropy, Morality and Distributive Justice, May 2008

Co-organizer, AALS Section on Philanthropy Panel on Non-Profits and Democracy, January 2008

Assistant Editor, Tax Law Review, 2003-2005

LAW SCHOOL SERVICE

Technology Committee, University of Colorado Law School, 2009-2010

Admission and Scholarship Committee, The University of Illinois College of Law, 2009

Law Review Advisor, The University of Illinois College of Law, 2007-2008

Lectures Committee, The University of Illinois College of Law, 2007-2008

Academic and Student Affairs Committee, University of Colorado Law School, 2006-2007

Building Committee, University of Colorado Law School, 2005-2006

Faculty Secretary, University of Colorado Law School, 2005-2006