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TEACHING EXPERIENCE

George Washington University Law School August 2009--May 2010
Visiting Associate Professor of Law. Courses: Federal Income Taxation, Corporate Tax.

Georgetown University Law Center, Washington, DC July 2008--June 2009
Visiting Associate Professor. Courses: Tax I, Tax II, Law and Public Finance Seminar.

Florida State University College of Law, Tallahassee, FL July 2006-present
Assistant Professor. Courses include Federal Income Taxation, Corporate Tax II, Public Finance, Nonprofit Organizations, State and Local Tax.

EDUCATION

Georgetown University Law Center, Washington, DC. *L.L.M. in Taxation* with Distinction 2006
Graduate Tax Scholarship Program Fellow

Columbia University School of Law, New York, NY. *Juris Doctor* 2001
James Kent Scholar; James A. Elkins Prize (Outstanding Student in Criminal Law)
Columbia Law Review, Special Issues Editor; *Research Assistant* to Prof. Kent Greenawalt
Extern to the Hon. Chester J. Straub, U.S. Court of Appeals for the 2d Circuit

Harvard College, Cambridge, MA. *A.B. cum laude in Literature*, 1995
Harvard Humor Review, President; *Harvard Speech & Parliamentary Debate Soc.*, Exec. Board

PUBLISHED AND FORTHCOMING ARTICLES

Keep Charity Charitable, 88 TEX. L. REV. (forthcoming 2010)

This Article responds to recent claims, most prominently by Anup Malani and Eric Posner, that much of the work of the charitable sector should be farmed out to for-profit firms. For-profit firms are said to be more efficient because they can offer higher-powered incentives to cut costs. I argue, however, that because of the high costs of monitoring and the presence of externalities, low-powered incentives are preferable for firms that produce public goods. Further, allowing some for-profit firms to receive charitable subsidies would raise the cost of producing those goods in government or other firms, because it would diminish the “warm glow” workers enjoy from being recognized as self-sacrificing.

Hidden Taxes, 87 WASH. UNIV. L. REV. (forthcoming 2009)
(selected for 2009 Stanford/Yale Younger Faculty Forum)

In this Article, I survey and critique recent studies that claim to show that there are some taxes that can go unnoticed by those who pay them. I also develop the array of unanswered theoretical questions and policy implications that potentially follow from the studies’ results, and attempt to integrate with the tax literature some recent developments in our understanding of bounded rationality in consumers more generally.

Laboratories of Democracy?: Policy Innovation in Decentralized Government, 57 EMORY L.J. 1333 (2009) (with Joseph Leahy)

This paper reviews and critically assesses nearly three decades of literature on the relative strengths of policy innovation at the local and national government levels. We consider the possible grounds for believing that local officials may have incentives to innovate in the face of their own risk aversion and the temptation of free-riding on the efforts of others. We also compare alternatives, such as central provision of government experiment or contracting out to firms or NGO's.

Tax Fairness, 65 WASHINGTON & LEE L. REV. 1323 (2008)

Extending "Federal Fairness" (below), this paper argues that, contrary to the consensus of economists and many legal scholars, the norm of "horizontal equity" in taxation has independent meaning as a default rule in favor of existing arrangements. The Article explains the normative appeal of such a rule, and considers whether it can remain viable within a system that must accommodate the policy preferences of many quasi-independent sovereign states.

Federal Grants, State Decisions, 89 BOSTON UNIV. L. REV. 875 (2008)

This Article attempts to begin a truly in-depth study of the political economy of state decisions to accept federal funds. In particular, I focus on state officials' own incentives to preserve diversity and accountability, albeit for self-interested reasons. For example, I document and model the ways in which opportunities to impose hidden taxes, or to export taxes onto outsiders, may encourage officials to turn down federal grants.

Administrative Law's Federalism: Preemption, Delegation, and Agencies at the Edge of Federal Power, 57 DUKE L.J. 1933 (2008) (with Mark Seidenfeld)

This Article, selected after an open call for paper proposals, anchors the 38th Annual Duke Law Journal Symposium on Administrative Law. We argue that courts and leading modern scholars have wrongly assumed that federal agencies are poorly equipped to decide how to allocate power between states and the national government. Our main claim is that the structural features of agencies and the resulting political economy of decisions about the vertical allocation of power among governments counsels greater federal agency involvement in those determinations. We apply this reasoning to several prominent policy areas, highlighting preemption doctrine but also including federal regulation of tax, trade, and other aspects of the economy.

Federal Fairness to State Taxpayers: Irrationality, Unfunded Mandates, and the "SALT" Deduction, 106 MICH. L. REV. 805 (2008)

The first part of a larger project exploring the concept of fairness in taxation, this Article offers a close examination of how newly-understood limits on taxpayer mobility and rationality might affect individuals' choices of bundles of local taxes and local government services, which in turn informs our assessment of the fairness of those exchanges (as well as the fairness of tax regimes, such as the AMT, that deny deductions for expenditures on state and local taxes). While these results may be generalized to all consumption choices, I suggest here some factors to distinguish the choice of government from the choice of other services. Additionally, I attempt to track the true incidence of the economic benefits and burdens that flow between federal, state, and local governments.

Designing Interstate Institutions: The Example of the Streamlined Sales and Use Tax Agreement, 40 U.C. DAVIS LAW REV. 1381 (2007)

This Article presents a case study in designing cooperative interstate institutions. It takes as its subject the Streamlined Sales and Use Tax Agreement, a recently-developed compact among the States now awaiting congressional ratification. The SSUTA's primary goal is to bring uniformity to the field of state and local sales taxation, a regime in which sellers now confront thousands of different sets of rules. I predict here that the SSUTA as currently designed is unlikely to accomplish that goal, and attempt to suggest possible amendments that could improve its expected performance. From these efforts I extract larger lessons about the workings of many similar cooperative ventures.

A Republic of the Mind: Cognitive Biases, Fiscal Federalism, and Section 164 of the Tax Code, 82 IND. L.J. 673 (2007)

Section 164 of the Tax Code allows taxpayers to reduce their federal tax to account for the tax they paid to state and local governments. This Article considers whether that section can be defended as a worthwhile subsidy to states. The deduction is, in theory, supposed to further federalism, by shifting revenues - and therefore regulation - downwards from the federal government to states and their local subsidiaries. I argue here that using tax, rather than some other fiscal tool, for that purpose may have the perverse effect of undermining the efficiency, transparency, and even the democratic character of those local governments.

Interpretative Theory and Tax Shelter Regulation, 26 VA. TAX REV. 357 (2006)

In this Article I apply insights from the interpretive theory community to the problem of judicial enforcement of the tax law. I observe that textualist arguments pose a difficult challenge for judge-made doctrines, which rely on "purposive" interpretation of the Tax Code. I then weigh how best to respond to the policy arguments underlying the textualist critique. From these efforts, I synthesize a possible new form and substance for the tools used to combat undesirable tax avoidance.

The Justice of Administration: Judicial Responses to Executive Claims of Independent Authority to Interpret the Constitution, 33 FLA. ST. U. L. REV. 157 (2005)

This Article considers to what extent federal courts should permit executive actors to formulate policy based on readings of the Constitution that diverge from what courts themselves have held. The Article grounds these abstract claims by applying its conclusions to, among other issues, the question of IRS regulation of non-profit entities, an area where constitutional interpretation by the Service is currently very important.

Getting Spending: How to Replace Clear Statement Rules with Clear Thinking About Conditional Grants of Federal Funds, 37 CONN. L. REV. 155 (2004)

Drawing on interpretive theory, public choice analysis, and public finance economics, this Article claims that there is no good basis for the "clear statement rule" governing judicial interpretation of federal spending conditions.

Can Federal Agencies Authorize Private Suits Under Section 1983? A Theoretical Approach, 69 BROOKLYN L. REV. 163 (2003)

This Article uses a discrete doctrinal problem -- whether federal norms embodied in regulations, but not clearly set out in an underlying statute, can be privately enforced under 28 U.S.C. § 1983 -- as a lens through which to view more broadly the relationship between judicial review and new forms of “collaborative” regulation.

OTHER PUBLICATIONS

The Second-Best Efficiency of Non-Tax Local Redistribution, 65 NYU ANN. SURV. AM. L. (forthcoming 2009), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1416282>

In this invited symposium contribution, I suggest the surprising possibility that tort and contract law, when administered locally, might be more efficient tools of redistribution than the tax system.

The LDS Church, Proposition Eight, and the Federal Law of Charities, 103 NORTHWESTERN UNIV. L. REV. COLLOQUY 370 (2009), <http://colloquy.law.northwestern.edu/main/2009/02/the-lds-church-proposition-8-and-the-federal-law-of-charities.html>

This brief Essay considers the merits of the argument that the Mormon Church's support for Proposition Eight violated federal tax law. While the scope of current limits on political activity by charities is unclear, I argue that the best explanations for those limits, properly understood, imply that the Church's actions may have been problematic.

Can Discriminatory State Taxation of Municipal Bonds Be Justified? Thoughts on the Davis Topside Briefs, 117 TAX NOTES 153 (Oct. 8, 2007) (with Ethan Yale)

This Report continues our analysis of *Department of Revenue of Kentucky v. Davis*, a case later decided by the U.S. Supreme Court in May of 2008. In this installment we evaluate skeptically a number of possible state interests that might be offered to justify Kentucky's practice of taxing out-of-state municipal bonds while exempting its own from taxation. For example, we point out that Kentucky's assertion that the policy conserves state revenue is wrong. We also argue that, if the goal is to transfer revenues from the state to local governments, then exemption is inferior to direct grants.

Municipal Bonds and the Dormant Commerce Clause After United Haulers, 115 TAX NOTES 1037 (June 11, 2007) (with Ethan Yale)

This Special Report considers the constitutionality of discriminatory taxation of municipal bonds. In particular, we weigh the impact of a recent Supreme Court decision, *United Haulers*, on *Davis* and similar forms of state discrimination in favor of the state's own financial products. Both this piece and the October Report were cited in both sides' *Davis* Supreme Court merits briefs.

Note, *Free Exercise Rights of Capital Jurors*, 101 COLUM. L. REV. 569 (2001)

This Note combines jurisprudential theory with novel readings of free exercise and criminal procedure doctrines in arguing that jurors with religious qualms about the death penalty should not be presumed to be unable to “follow the law” when sitting on a capital jury.

WORKS IN PROGRESS

Foundation or Empire? The Role of Charity in a Federal System, available at

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1473107>

Extant defenses for government support for the charitable sector argue that charity provides public goods not demanded by the median voter. However, this explanation fails in light of the fact that individuals can easily obtain different baskets of public goods simply by moving or by forming interest groups to lobby for them. In this project, I lay out this critique of all existing explanations for government support for the charitable sector, and then go on to offer a series of other potential justifications new to the literature. In general, the argument is that there remains space for charity, but only in the interstices of federalism and interest-group advocacy: places where government can't, or shouldn't, play a role in the production of public goods.

State Finance in Times of Crisis (with Jon Klick), available at

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1477515>

This paper examines the role federal tax policy plays in state efforts to stabilize the business cycle. We survey the weakness of states' tools for cushioning macroeconomic shocks, concluding that what is needed is a federal subsidy that is itself countercyclical, turning off automatically in fiscal boom times. We offer original empirical evidence showing that the federal Alternative Minimum Tax performs this function. Finally, we suggest tweaks to existing federal tax law that would improve the AMT's performance as automatic stabilizer.

Tax Incentives and the Judicial Role in Interstate Trade

This draft considers the political economy of local incentives to attract mobile capital in the context of U.S. constitutional limits on state power to distort the national economy. Current doctrine in this area has been widely criticized as a hopeless quagmire. I argue that there is a defensible synthesis, and then explore the consequences of this approach for important controversies, including the question whether there ought to be any judicial oversight of interstate taxing and trading.

SELECTED PRESENTATIONS

Foundation or Empire? (AALS Section on Nonprofits, Jan. 8, 2010)

Foundation or Empire? (Loyola of Los Angeles Tax Policy Series, Oct. 18, 2009)

Foundation or Empire? (Harvard Law School Tax Policy Colloquium, Oct. 7, 2009)

Hidden Taxes (Stanford/Yale Younger Faculty Forum, Stanford Law School, May 29, 2009)

Hidden Taxes (American Law & Economics Association Annual Meeting, University of San Diego Law School, San Diego, CA, May 15, 2009) (refereed)

The Role of Charity in a Federal System (Georgetown University Law Center, April 21, 2009)

Hidden Taxes (Michigan Law School Tax Policy Colloquium, March, 2009)

Preemption and Fiscal Federalism (NYU Annual Survey of American Law Symposium, "Tort Law in the Shadow of Preemption," Feb. 27, 2009)

Laboratories of Democracy? (Vanderbilt Law School, Feb. 23, 2009)

Do Hidden Taxes Increase Welfare? (National Tax Association Annual Conference, Nov. 20, 2008) (refereed)

Interpretative Theory & Tax Shelter Regulation (U.S. Dep't of Justice Tax Division Roundtable, Oct. 15, 2008)

Do Hidden Taxes Increase Welfare? (Georgetown Univ. Law Center, Oct. 2, 2008)

Do Hidden Taxes Increase Welfare? (Junior Tax Scholars Conference, NYU Law School, June 4, 2008)

Federal Grants, State Decisions (American Law & Economics Association Annual Meeting, Columbia Law School, New York, NY, May 17, 2008) (refereed)

Administrative Law's Federalism (Duke Law Journal Administrative Law Symposium, April 15, 2008)

Do Hidden Taxes Increase Welfare? (Critical Tax Conference, FSU College of Law, April 5, 2008)

Tax Fairness (Loyola of Los Angeles Law School, March 6, 2008)

Tax Fairness (NYU Colloquium on Tax Policy and Public Finance, February 21, 2008)

Tax Fairness (U.C. Davis Law School, Nov. 16, 2007)

Policy Innovation in Centralized and Decentralized Government (Canadian Law and Economics Association Annual Meeting, Toronto, Canada, Sept. 26, 2007) (refereed)

A Republic of the Mind (National Tax Association 99th Annual Meeting, Boston, MA, Nov. 17, 2006) (refereed)

TEACHING AND RESEARCH INTERESTS

Federal Income Taxation, Behavioral Law & Economics, Tax Policy, Corporate Tax, State and Local Taxation, Fiscal Federalism and Public Finance, Administrative Law, Legislation, Corporate Governance, Taxation of Exempt Entities, Constitutional Law (separation of powers and federalism).

JUDICIAL CLERKSHIPS

The Hon. Robert A. Katzmann, U.S. Court of Appeals for the 2d Circuit, New York, NY **2002-03**
The Hon. Stephen M. Orlofsky, U.S. District Court, District of New Jersey, Camden, NJ **2001-02**

OTHER LEGAL EXPERIENCE

U.S. Dep't of Justice, Tax Division, Criminal Appeals & Tax Enforcement Policy Section,
Washington, D.C. **Oct. 2003-July 2006**

Attorney. Served as lead counsel for the United States, briefing and arguing appeals in criminal tax cases. Analyzed federal tax enforcement measures, preparing policy recommendations for political and professional leadership of the Tax Division. Drafted policy documents, including recommendations for Congress and the U.S. Sentencing Commission, as well as congressional testimony for the Assistant Attorney General. Prepared oppositions to defendant petitions for *certiorari*. Advised the U.S. Solicitor General on the wisdom of pursuing appeal or a petition for *certiorari* in criminal tax cases decided adversely to the Government. Litigation experience included nineteen merits briefs and twelve arguments before U.S. Courts of Appeals.

U.S. Department of Justice, Office of Legal Counsel, Washington, D.C. **May-July 2001**
Law Clerk.

U.S. Department of Justice, Antitrust Division, New York, NY **July-Aug. 2000**
Summer Law Intern.

Office of the White House Counsel, Washington, D.C. **May-June 2000**
Legal Intern.

National Housing Law Project, Oakland, CA **Summer 1999**
Human Rights Intern.

National Alliance of HUD Tenants, Boston, MA **1997-98**
*Americorps*VISTA.*

MEDIA & PRESS

John O'Connor, *Sanford Urged to Prevent Chaos*, THE STATE, Mar. 27, 2009

FLORIDA PUBLIC RADIO, Feb. 1, 2008, *available at*
<http://publicbroadcasting.net/wfsu/.jukebox?action=programs&sortBy=program&browseProgramId=203240>

NATIONAL PUBLIC RADIO, *Marketplace*, Nov. 5, 2007, *available at*
http://marketplace.publicradio.org/display/web/2007/11/05/instate_bonds_may_fall_out_of_favor/

Matthew Posner, *Davis v. Kentucky Case, TOBs Affecting Tax-Exempt Funds*, THE BOND BUYER, Sept. 12, 2007

Joe Mysak, *Scholars Say Top Court May Dismantle Muni Bond Taxes*, BLOOMBERG NEWS, July 3, 2007, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=absJcbrn_joc

PROFESSIONAL ASSOCIATIONS

American Law & Economics Association (Area Organizer/Referee, 2009 Annual Meeting);
National Tax Association; AALS Sections on Administrative Law, Philanthropy, and Taxation;
ABA Section of Taxation

BAR MEMBERSHIPS

New York; U.S. Courts of Appeals for the First, Second, Fourth, Seventh, Ninth, and Tenth
Circuits.