

Reforming the Charitable Tax Deduction to Pursue Distributive Justice

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Social entrepreneurship and social enterprise have taken hold in the cultural imagination. The idea that an entrepreneur can pursue profit while also promoting the common good has tremendous appeal in capitalist America, shaped as it is by both the Protestant ethic and the lure of the frontier. Out of this idea, a period of experimentation to create new corporate forms for social enterprise has emerged and, along with it, a national movement to change corporate law, state by state. To date, more than 28 states—including Delaware and Connecticut—have passed legislation enabling the incorporation of a Benefit corporation, which, by law, must benefit not only its shareholders, but also society generally.

But don't we already have a non-profit corporate form designed to benefit society? What limitations of the non-profit form and the charitable sector does the emergence of these new corporate forms reveal? And what should the charitable sector learn from this cultural inflection point?

With these questions as the starting point, my project focuses on the charitable tax deduction, the financing mechanism upon which the charitable sector has depended for almost 100 years. I contend that the charitable tax deduction is in need of reform. It has failed to deliver a non-profit sector capable of addressing the social ills we expect it to ameliorate in large part because it is steeply regressive—and incentivizes the wealthy to donate to non-profits that largely benefit the wealthy. Moreover, this failure costs tens of billions of dollars annually in government tax expenditures. The growing inequalities in our society, with a widening gap between the rich and the poor, only exacerbate this problem. Hoping new, untested corporate forms can successfully pursue profit and a social mission is one way to try to deliver social benefit; reforming the almost century-old charitable tax deduction is another, more promising avenue.

My normative commitment is to distributive justice, a model of progressive resource redistribution that considers here the role of the charitable tax deduction. Despite a historical understanding of “charitable” as meaning aid to the poor, and the expansion of the non-profit sector in recent decades to provide increased social services, the charitable tax deduction is not structured to attain these goals. Instead, organizations that do aid the needy face the continuous challenge of swimming upstream to finance their efforts, hamstringing their ability to provide curative, and not simply palliative, care. And it's a zero-sum game: non-profits that benefit the poor struggle with funding, while at the same time organizations that benefit the wealthy capture the lion's share of donor dollars, reflecting what Robert Reich has called a plutocratic bias. This plutocratic bias is built right into the tax code—which means it can also be built right out of it.

It is my intention with this project to emphasize the disconnect between society's notions of philanthropic giving and who actually benefits from charitable donations—and to propose a tax-based policy solution grounded in distributive justice to bridge this gap. Furthermore, this policy solution addresses limitations of the charitable tax deduction that created the space for social enterprise's new corporate forms to attempt to fill.

To begin, I explore the history of the charitable tax deduction and the contours of the “charitable” sector today. This exploration takes notice of the long-standing criticisms of the sector as failing to meet the needs of the neediest in our society, especially in light of the billions of dollars the sector costs in annual government tax expenditures.

Finally, I lay out a blueprint for reform of the charitable tax deduction that incentivizes donors to give to organizations serving the neediest. This reform serves two main objectives: correcting for the existing plutocratic bias in charitable giving and recalibrating the charitable sector to distribute social benefit more justly.