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BLACK CHARITY: RETHINKING THE SUBSIDY OF BLACK CHARITABLE DONATIONS

Samuel D. Brunson



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*Samuel D. Brunson**

I. INTRODUCTION

The popular story of “big philanthropy” in the United States starts with wealthy white robber barons at the beginning of the twentieth century.¹ They set up foundations to solve big problems and to improve the human condition, but critics accused the foundations of Carnegie and Rockefeller of laundering their wealthy founders’ reputations in an attempt to sanctify the dirty money these robber barons had amassed.²

By focusing on big (white) philanthropy, though, we erase the contributions of philanthropists of color. While Andrew Carnegie funded institutions dedicated to education and international peace,³ his was not the only model of philanthropy in the United States. Decades earlier, Mary Ellen Pleasant became one of the first Black women in America to amass a fortune comparable to that of wealthy white men.⁴ Like many Black women, Pleasant was involved in charity work, helping white and Black people in California.⁵ But her philanthropy had a decided focus on racial equality absent from the

* Associate Dean for Faculty Research and Development and Georgia Reithal Professor of Law, Loyola University Chicago School of Law. Thank you to the participants at the Federal Income Tax: Racially Blind but Not Racially Neutral conference for their comments, suggestions, and inspiration.

¹ Joanne Barkan, *Plutocrats at Work: How Big Philanthropy Undermines Democracy*, 80 SOC. RSCH. 635, 635 (2013).

² *Id.*

³ *Andrew Carnegie: Pioneer. Visionary. Innovator*, CARNEGIE CORP. OF N.Y., <https://www.carnegie.org/interactives/foundersstory/#/> [https://perma.cc/X5FY-LJ57].

⁴ Kellie Carter Jackson, *Mary Ellen Pleasant, Nineteenth-Century Massachusetts and California*, in *AS IF SHE WERE FREE: A COLLECTIVE BIOGRAPHY OF WOMEN AND EMANCIPATION IN THE AMERICAS* 312, 313 (Erica L. Ball et al. eds., 2020).

⁵ Roger D. Hardaway, *African-American Women on the Western Frontier*, 60 NEGRO HIST. BULL. 8, 9 (1997).

big philanthropists' vision: She worked to free Black people illegally enslaved in California.⁶ She worked to ensure that California state courts allowed Black people to testify.⁷ She sued a streetcar company that would not allow her and other Black Californians to ride, eventually winning in the California Supreme Court.⁸ She gave \$30,000 to fund the 1859 raid on Harper's Ferry.⁹ Not only did Pleasant's philanthropy predate the robber barons', but she also employed a different model of philanthropy, one that directly addressed issues affecting the Black community, issues which may have been invisible to white philanthropists. Her philanthropy filled gaps where government and for-profit enterprises could or would not act.¹⁰

II. FUNDING THE PUBLIC GOOD

Generally, taxpayers in the United States get no direct say in how their tax dollars are spent.¹¹ Indirectly, of course, they have some influence: they elect the people who pass and sign tax and spending bills into law. Taxpayers cannot, however, refuse to pay their taxes if the government does not fund the services they want or if it funds things they oppose. Neither philosophical nor religious objection to government spending relieves taxpayers of their obligation to pay taxes.¹²

For some taxpayers, charitable giving represents an exemption from their general inability to direct the use of their tax dollars. Taxpayers who

⁶ *Id.*

⁷ *Id.* at 10.

⁸ *Id.*

⁹ Sarah Papazoglakis, "Feminist, Gun-Toting Abolitionist with a Bankroll": *The Black Radical Philanthropy of Mary Ellen Pleasant*, 12 NEW GLOB. STUD. 235, 236 (2018).

¹⁰ See, e.g., Ofer Lion, *Private Foundations—Using Program-Related Investments to Help Fight COVID-19*, SEYFARTH (Mar. 23, 2020), <https://www.seyfarth.com/print/content/41731/private-foundations-using-program-related-investments-to-help-fight-covid-19.pdf> ("It is time for the charitable sector to step boldly into the breach, filling gaps that private enterprise and government cannot.")

¹¹ Some local jurisdictions provide for participatory budgeting, where residents get to directly vote on how some tax money is spent. Gianpaolo Baiocchi & Nicole Summers, *Controversies, Authority, and the Limits of Participation: Chicago's 49th Ward*, 40 POLAR: POL. & LEGAL ANTHROPOLOGY REV. 311, 311 (2017).

¹² See, e.g., *Muste v. Comm'r*, 35 T.C. 913, 919 (1961).

itemize can deduct their qualifying charitable donations.¹³ The charitable deduction means that a donor does not bear the full after-tax cost of their donation; rather, the government makes up the difference out of its foregone revenue.¹⁴ Effectively, donors who itemize not only have their donations subsidized, but they also direct a small amount of government spending toward the charitable institution of their choice.

Imagine a taxpayer in the top marginal tax bracket who makes a deductible \$100 charitable donation. The taxpayer will deduct that \$100, reducing their tax liability by \$37.¹⁵ After taxes, the charitable donation cost the donor \$63. The charity, however, received \$100. Where did the additional \$37 come from? The federal government. Effectively, charitable deductibility forces the federal government to make a matching grant to charitable organizations. As a result, when a taxpayer makes a deductible charitable donation, that taxpayer controls how the government spends a small portion of its money.

While Congress did not create the charitable deduction to allow taxpayers to allocate a portion of their tax payments,¹⁶ commenters have highlighted this as one benefit of deductibility.¹⁷ It provides wealthy taxpayers with a sense of ownership over their participation in the tax system.

There is a significant problem with this allocation of tax dollars, though: it is only available to taxpayers who itemize. In 2020, less than 10% of

¹³ I.R.C. § 170(c).

¹⁴ Deborah S. Kearns, *For the Treasury Charity Starts at Home: The Treasury's New Interpretation of the Fiduciary Income Tax Charitable Deduction*, 33 VA. TAX REV. 313, 323 (2013).

¹⁵ The top marginal tax rate in 2023 is 37%. I.R.C. § 1(j)(2). Thirty-seven percent of \$100 is \$37.

¹⁶ Congress first enacted the charitable deduction in 1917; as tax rates rose significantly to fund U.S. involvement in World War I, Congress worried that the additional tax would squeeze wealthy taxpayers, ultimately causing them to give up their charitable donations in favor of other expenses they had to meet. Samuel D. Brunson, *"I'd Gladly Pay You Tuesday for a (Tax Deduction) Today": Donor-Advised Funds and the Deferral of Charity*, 55 WAKE FOREST L. REV. 245, 250 (2020).

¹⁷ David M. Schizer, *Subsidizing Charitable Contributions: Incentives, Information, and the Private Pursuit of Public Goals*, 62 TAX L. REV. 221, 242 (2009) ("In subsidizing charitable contributions, we delegate significant influence over this decision to individual donors, who allocate not just their own contribution but the matching government subsidy as well.").

taxpayers itemized,¹⁸ and these itemizers were not spread evenly through the income ladder. In 2019, the Tax Foundation estimated that while nearly all of the top 1% of income earners itemize, only 1.2% of the bottom quintile, only 2.5% of the second quintile, and only 5.3% of the middle quintile do.¹⁹ The benefits of subsidized charitable donations and the benefits of directly allocating some amount of government spending disproportionately accrue to the wealthiest taxpayers.

The regressive nature of the charitable deduction does not just create inequity based on income, however. It also disproportionately benefits white households. In part, this is the result of the wealth gap between white and Black households. The median white household has ten times the wealth of the median Black household.²⁰ The wealth gap means that Black households have less money to give. In fact, Black households give about 25% more, relative to their income, than white households.²¹ Because of the economic disparity between Black and white households, however, that larger proportionate giving represents less total giving. In 2012, Black donors made about \$11 billion of charitable donations,²² but total charitable giving amounted to approximately \$229 billion.²³

While the wealth gap hurts Black donors, so does the design of the federal income tax. At every income quintile, itemized deductions benefit

¹⁸ INTERNAL REVENUE SERV., DEP'T OF TREASURY, PUB. NO. 1304, INDIVIDUAL INCOME TAX RETURNS: COMPLETE REPORT 2020, at 21 (2022), <https://www.irs.gov/pub/irs-pdf/p1304.pdf>.

¹⁹ Scott Eastman, *How Many Taxpayers Itemize Under Current Law?*, TAX FOUND. (Sept. 12, 2019), <https://taxfoundation.org/standard-deduction-itemized-deductions-current-law-2019/> [<https://perma.cc/CS6E-8LBN>].

²⁰ DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* 18 (2021).

²¹ W.K. KELLOGG FOUND., *CULTURES OF GIVING: ENERGIZING AND EXPANDING PHILANTHROPY BY AND FOR COMMUNITIES OF COLOR* 5 (2012), <https://www.d5coalition.org/wp-content/uploads/2013/07/CultureofGiving.pdf>.

²² *Id.*

²³ *Giving USA: Charitable Donations Grew in 2012, but Slowly, Like the Economy*, IUPUI: LILLY FAM. SCH. OF PHILANTHROPY (June 18, 2013), <https://philanthropy.iupui.edu/news-events/news-item/giving-usa-charitable-donations-grew-in-2012-but-slowly-like-the-economy.html?id=92#:~:text=The%203.5%20percent%20year%20over,positive%2C%20others%20were%20negative%2C%20but> [<https://perma.cc/YE46-CUVB>].

white households more than Black or Hispanic households.²⁴ With respect to the charitable deduction specifically, Treasury Department research suggests that, within income deciles, the share of families benefiting from the charitable deduction does not differ substantially based on race or Hispanic ethnicity.²⁵ But upper-middle income Black households get a higher average tax benefit than upper-middle income white and Hispanic households, which makes sense if Black households are donating a higher percentage of their income to charity.²⁶

The problem, then, is not that Black taxpayers are not charitable, nor is it that Black taxpayers with enough money do not benefit from itemized deductions. The problem facing Black donors is that too many cannot itemize in the first place, eliminating both the federal subsidy for charity and the ability of Black households to direct their tax dollars. Meanwhile, recent research indicates that lower-income households' giving is more responsive to tax incentives than higher-income households' giving.²⁷ If the purpose underlying the charitable tax deduction is to encourage charitable donations, its design as an itemized deduction is inefficient.

This design also means that the charitable deduction is inefficient and unjust when it comes to taxpayers of color. While Black and Hispanic households made up about 27% of households in 2018, they only made up 12% of households with income in excess of \$200,000,²⁸ making them less likely to itemize than white taxpayers. And this is a real problem. With a

²⁴ Benjamin R. Page et al., *Providing Changemakers the Data They Need to Tackle Racial Inequities in the US Tax Code*, TAX POL'Y CTR.: TAXVOX (Feb. 13, 2023), <https://www.taxpolicycenter.org/taxvox/providing-changemakers-data-they-need-tackle-racial-inequities-us-tax-code>.

²⁵ Julie-Anne Cronin et al., *Tax Expenditures by Race and Hispanic Ethnicity: An Application of the U.S. Treasury Department's Race and Hispanic Ethnicity Imputation* 38 (Off. of Tax Analysis Working Paper 122, 2023), <https://home.treasury.gov/system/files/131/WP-122.pdf> [<https://perma.cc/U9R8-TV84>].

²⁶ *Id.*

²⁷ Ross Hickey et al., *The Effect of Tax Price on Donations: Evidence from Canada*, 76 NAT'L TAX J. 291, 311 (2023).

²⁸ *Racial Disparities and the Income Tax System*, TAX POL'Y CTR. (Jan. 30, 2020), <https://apps.urban.org/features/race-and-taxes/#standard-and-itemized-deductions>.

smaller base of potential Black donors, Black charities in many cases need to appeal to white donors to raise sufficient money to operate.

This need to rely on white donors is nothing new—in the early twentieth century, Booker T. Washington’s “power resulted from the largess of white philanthropists.”²⁹ But Black charities’ need to rely on white donors may undercut the gap-filling that Black charities would otherwise do. Black charities risk having to compromise their goals to appeal to white ideas of philanthropy. As Stokely Carmichael explained, “The goal of black people must not be to assimilate into middle-class America.”³⁰ Donors of color have unique insight and knowledge of what their communities need³¹ and, to the extent charities have to appeal to donors who lack that insight and knowledge, the communities may not receive the benefits they need most.

On top of the inequity toward Black donors, nonprofit boards are disproportionately white. Nearly 80% of board chairs and executive directors of nonprofits are white.³² Fifty-eight percent of rural nonprofits lack any board members of color, and 16% of nonprofits that serve primarily communities of color have all-white boards.³³ But nonprofit boards need to have the “skills, knowledge, networks, experience, and personal backgrounds to fulfill their roles.”³⁴ To meet their responsibilities, nonprofit boards need to have, among other things, the racial, ethnic, and gender diversity that allows them to understand the communities they serve.³⁵

The lack of diversity on nonprofit boards may not result directly from the reduced ability of Black donors to claim the charitable deduction. But it may be related. Many nonprofits expect their board members to be donors

²⁹ JULIET E.K. WALKER, *THE HISTORY OF BLACK BUSINESS IN AMERICA: CAPITALISM, RACE, ENTREPRENEURSHIP* 222 (1998).

³⁰ ALAN PETIGNY, *THE PERMISSIVE SOCIETY: AMERICA, 1941–1965*, at 258 (2009).

³¹ LILLY FAM. SCH. OF PHILANTHROPY, IUPUI, *EVERYDAY DONORS OF COLOR: DIVERSE PHILANTHROPY DURING TIMES OF CHANGE* 19 (2021).

³² Faith Mitchell, *Nonprofit Leadership Is Out of Step with America’s Changing Demographics*, URB. INST.: URB. WIRE (Dec. 9, 2021), <https://www.urban.org/urban-wire/nonprofit-leadership-out-step-americas-changing-demographics>.

³³ *Id.*

³⁴ Atinuke O. Adediran, *Nonprofit Board Composition*, 83 OHIO ST. L.J. 357, 361 (2022).

³⁵ *Id.* at 421.

and to have social connections with potential donors.³⁶ If Black households face systemic impediments to donating, they are less likely to be recruited for board membership and thus less likely to provide the intimate knowledge that could guide a charitable organization in helping communities of color.

III. SO WHAT DO WE DO?

Ultimately, the problem detailed here is systemic. To increase the funding Black charities receive from Black households requires increasing the wealth and income of Black households.³⁷ While making systemic changes to eliminate this gap is critical, it is also complicated and beyond the scope of this Essay.³⁸ Rather, I recommend a number of changes that Congress could make to our current charitable deduction regime.

Charitable giving is elastic, meaning that as it becomes less expensive to give, donors give more.³⁹ The elasticity of giving is, perhaps, less important here. Black households are already generous, even with less access to the benefits of itemizing. And the degree of elasticity of giving depends on the recipient of the donation.⁴⁰ Even without any effect on the degree of giving, fairness suggests that Black taxpayers should receive similar benefits as white taxpayers, and Black charities should have similar access to donated capital.

A regressive itemized deduction that benefits white households more than Black households is not the way to accomplish this goal. But there are other ways to subsidize charitable giving, ways which would benefit Black households to the same extent as they benefit white households. I will suggest

³⁶ See, e.g., Kristine Ensor, *10 Key Responsibilities of Nonprofit Board Members*, DONORBOX: DONORBOXBLOG, <https://donorbox.org/nonprofit-blog/nonprofit-board-responsibilities> (last updated Nov. 29, 2022) (“Many nonprofit bylaws require board members to make personal donations.”).

³⁷ Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

³⁸ However, one critical component would be to increase the estate and gift taxes, both to increase social safety net funding and to decrease the compounding advantages of inherited wealth. See *id.*

³⁹ Arthur C. Brooks, *Income Tax Policy and Charitable Giving*, 26 J. POL’Y ANALYSIS & MGMT 559, 605 (2007) (“This is the point at which most studies conclude that tax policy is fairly effective at changing giving incentives.”).

⁴⁰ *Id.*

several potential reforms—which is best depends on an empirical analysis of cost and benefit.⁴¹ Subject to that analysis, I will suggest the reform I find most compelling.

One simple solution would be to replace the charitable deduction with a matching grant. Some evidence suggests that the elasticity of a matching grant is less variable than a deduction and that matching grants have a larger incentive effect on donors.⁴² The government could set a matching grant at a rate that is not too costly and that is consistent for all donors. This would eliminate both regressivity and implicit racial inequity. Moreover, a matching grant is not a new idea—the United States could look to the experience of the United Kingdom, which already offers a charitable matching grant.⁴³

Direct grants may not, however, be viable in the United States. The Supreme Court has recognized that direct payments to religious organizations create “special Establishment Clause dangers.”⁴⁴ A significant portion of Black donors donate to religious organizations,⁴⁵ and if the government could not match those donations, a direct grant would not benefit a sizeable portion of Black donors.

Alternatively, the tax law could shift from a charitable donation to a (refundable or nonrefundable) tax credit for charitable gifts. Like a matching grant, the government could set the credit at a rate that would not unsustainably reduce revenue. A charitable tax credit would treat donors across the income spectrum the same. If refundable, it would be beneficial even to donors who do not owe taxes. And there is some evidence that certain refundable credits are more valuable to households of color than to white

⁴¹ That analysis would be valuable for future research.

⁴² Kimberly Scharf & Sarah Smith, *The Price Elasticity of Charitable Giving: Does the Form of Tax Relief Matter?*, 22 INT’L TAX & PUB. FIN. 330, 331 (2015).

⁴³ *Id.* at 330.

⁴⁴ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 842 (1995).

⁴⁵ MARK ROVNER, *DIVERSITY IN GIVING: THE CHANGING LANDSCAPE OF AMERICAN PHILANTHROPY* 6 (2015).

households.⁴⁶ If those benefits held for a charitable giving tax credit, the idea may be worth exploring.

A third option would be to shift some or all of the charitable tax deduction from an itemized to an above-the-line deduction, available to all taxpayers. Making the charitable deduction purely above-the-line would presumably be tremendously expensive—the charitable deduction was the largest itemized deduction in 2019, costing the government about \$43 billion in uncollected revenue.⁴⁷ Moreover, a significant portion of the benefits would continue to accrue to a wealthier, probably whiter, group of taxpayers.

The above-the-line portion of the deduction could be capped, however. In 2020 and 2021, Congress allowed a temporary above-the-line deduction for charitable contributions of \$300 (in 2021, \$600 for married couples).⁴⁸ I believe that making this temporary deduction permanent is an intriguing option, albeit with a cap somewhere around \$2,650. Why \$2,650? The two-thirds of households that currently donate to charity donate, on average, 4% of their income, for an average donation of \$2,650.⁴⁹ Setting the cap on the above-the-line portion of charitable deductions at this amount would provide benefits to many generous Black households that currently do not itemize, while not providing extra benefits to wealthier households that already do itemize.

IV. CONCLUSION

Current law subsidizes big-philanthropy-style charitable giving through an itemized deduction. While that model reflects and benefits white giving, it fails when it comes to treating Black donor households equitably, even where those Black households are disproportionately generous with their charitable giving. This inequitable treatment of Black households may mean that Black charities risk either being underfunded or compromising their missions to appeal to white donors.

⁴⁶ Cronin et al., *supra* note 25, at 1.

⁴⁷ CONG. BUDGET OFF., THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019, at 21 (2021).

⁴⁸ Adine S. Momoh, *Give a Little Bit: Making Permanent a Universal Charitable Giving Deduction to Capture Wealth Transfer*, 33 TAX'N EXEMPTS 14, 17 (2022); I.R.C. § 170(p).

⁴⁹ *Statistics on U.S. Generosity*, PHILANTHROPY ROUNDTABLE, <https://www.philanthropyroundtable.org/almanac/statistics-on-u-s-generosity/> (last visited Sept. 22, 2023).

To support both Black donors and the charities they favor, the current charitable deduction needs to be rethought and reworked. There are several potential options, but a promising one would be an above-the-line deduction, capped at a rate that benefits Black households without giving disproportionate subsidies to white and wealthy donors.