

[Links: Subscribe ~ Unsubscribe | Distribution | Network Directors | Submit ~ Revise Your Papers](#)

Table of Contents

The Promise and Challenges of India's Corporate Governance Reforms

[Afra Afsharipour](#), University of California, Davis - School of Law

Portraits of Women at Nuremberg

[Diane Marie Amann](#), Professor of Law & Martin Luther King, Jr. Hall Research Scholar, University of California, Davis - School of Law

Critical Corporate Law, Colorblind Constitutional Law

[Anupam Chander](#), University of California, Davis - School of Law

The Admissibility of Prosecution Evidence that the Defense Had the Opportunity to Retest the Physical Evidence that Was Analyzed by a Government Expert

[Edward J. Imwinkelried](#), University of California, Davis - School of Law

[Rockne P. Harmon](#), Senior Deputy District Attorney, Alameda County, California (retired)

Charitable Waste: Consideration of a 'Waste Not, Want Not' Tax

[Evelyn A. Lewis](#), University of California, Davis - School of Law

Technology Assessment 2.0: Revamping Our Approach to Emerging Technologies

[Albert Lin](#), University of California, Davis - School of Law

Too Close to Home: Disallowing the Charitable Deduction for Transfers that Benefit Donors and Their Family, Friends and Neighbors

[Shannon Weeks McCormack](#), University of California, Davis - School of Law, Harvard Law School

Recent Developments in Federal Income Taxation: The Year 2009

[Martin J. McMahon](#), University of Florida - Levin College of Law

[Ira B. Shepard](#), University of Houston Law Center

[Daniel L. Simmons](#), University of California, Davis - School of Law

[^top](#)

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

UC DAVIS SCHOOL OF LAW

"The Promise and Challenges of India's Corporate Governance Reforms"

Indian Journal of Law & Economics, Vol. 1, 2010

UC Davis Legal Studies Research Paper No. 223

AFRA AFSHARIPOUR, University of California, Davis - School of Law

Email: aafsharipour@ucdavis.edu

This Article examines India's initial corporate governance reform efforts as well as reforms adopted in the aftermath of the Satyam scandal. An evaluation of India's corporate governance reforms demonstrates that although extensive reforms have been instituted, there remain significant lapses in implementation and enforcement. Moreover, many of the reforms that have been adopted fail to address fundamental areas of concern such as the relationship between controlling and minority shareholders, the role of promoters, the limited activism of shareholders, including institutional investors, and issues with director independence. This Article expresses concerns that these challenges may prevail because they have been shaped by unique political and social forces. These forces include the traditional closed ownership structures of Indian firms, an ineffective institutional framework to support enforcement efforts, weaknesses in investor access to the courts, and political pressures

related to government ownership of certain industries.

"Portraits of Women at Nuremberg"

American Society of International Law, Forthcoming
Third International Humanitarian Law Dialogs
UC Davis Legal Studies Research Paper No. 225

DIANE MARIE AMANN, Professor of Law & Martin Luther King, Jr. Hall Research Scholar, University of California, Davis - School of Law

Email: dmamann@ucdavis.edu

This essay reflects ongoing research that investigates women who played roles in war crimes trials at Nuremberg, Germany, and situates those women within the context of social developments during the post-World War II. Based on an autumn 2009 presentation at the Third International Humanitarian Law Dialogs, the essay builds upon the "Women at Nuremberg" series posted at IntLawGrrls blog. The essay mentions women who were defendants, journalists, or witnesses; however, it focuses on some of the women, mostly Americans, who served as prosecutors at Nuremberg.

"Critical Corporate Law, Colorblind Constitutional Law"

Yale Law Journal, Vol. 118, 2008
UC Davis Legal Studies Research Paper No. 221

ANUPAM CHANDER, University of California, Davis - School of Law

Email: achander@ucdavis.edu

Should minority status be a relevant datum for judicial decision? That is the question motivating my paper, *Minorities, Shareholder and Otherwise*, published a handful of years ago in the *Yale Law Journal*. This short essay published in the *Yale Law Journal Online* introduces an online symposium revisiting that work, with responses from Stephen Bainbridge, Richard Delgado, and Kevin Johnson, and a final rejoinder from me.

In *Minorities, Shareholder and Otherwise*, I demonstrate that corporate law recognizes the relevance of minority status, even while constitutional law more and more insists on minority-blindness. I argue that this is precisely backwards – that the constitutional domain should require greater judicial vigilance with respect to minority status than the corporate domain. The difficulty of exit from a polity and the inability to negotiate (or at least select among) terms of entry into a polity, not to mention a history of grave injustice, call for special attention to minorities in the constitutional context.

By juxtaposing the colorblind aspirations of current constitutional law doctrine with the minority-mindfulness of corporate law, I reveal a fundamental incoherence in the law.

Minorities, Shareholder and Otherwise identifies this puzzle, and suggests that corporate law has a grip on real world relations that constitutional law increasingly abjures.

"The Admissibility of Prosecution Evidence that the Defense Had the Opportunity to Retest the Physical Evidence that Was Analyzed by a Government Expert"

New England Journal on Criminal and Civil Confinement, Forthcoming
UC Davis Legal Studies Research Paper No. 222

EDWARD J. IMWINKELRIED, University of California, Davis - School of Law

Email: EJIMWINKELRIED@ucdavis.edu

ROCKNE P. HARMON, Senior Deputy District Attorney, Alameda County, California (retired)

The use of DNA evidence is widespread. In a recent years, more than two thirds of the prosecutors' offices in the United States resorted to DNA evidence either in plea negotiations or at trial. The basic principles underlying DNA testing are so well settled that many courts now judicially notice the validity of those principles. Today, rather than attacking the government expert's theory or technique, the defense is much more likely to challenge the manner in which the test was conducted. The defense typically calls an expert who criticizes the test protocol used by the prosecution expert.

In response, prosecutors have attempted to introduce testimony that although the defense had the opportunity to examine and retest the DNA sample, the defense did not do so. Defense counsel have objected to such testimony on various grounds, and there is a growing body of case law on this issue. The issue is likely to arise even more frequently in the future. Since the advancing DNA technology permits the testing of smaller and smaller sample, there is often remaining, uncontaminated sample for the defense to test. Moreover, in DNA cases legislatures and courts have expanded defense discovery rights, notably recognizing a right to inspect and retest. Unfortunately, to date most courts have been content with a conclusory analysis of the admissibility of evidence that a portion of the DNA sample was available for defense retesting. The courts rarely explain why the evidence is logically relevant to begin with, and most courts have summarily disposed of the defense objections to the introduction of the evidence.

The first part of this article addresses the question of whether the evidence possesses logical relevance. This part of the article initially considers three theories - the evidence impeaches a defense expert's credibility, the defense failure to retest is an admission by conduct by the accused, and the evidence is a rational comment on the state of the record - and finds each theory wanting in one or more respects. The article then proposes a theory only hinted at in the cases: The testimony shows that the government expert followed good scientific methodology, and the expert's realization that the sample would be available to the defense gave him or her a stronger incentive to follow correct test procedure.

Positing the last theory of logical relevance, the second part of the article turns to the constitutional objections advanced by the defense. This part of the article examines objections based on the privilege against self-incrimination as well as objections resting on the constitutionally mandated allocation of the burden of proof to the prosecution. The article concludes that while the other possible theories of logical relevance might be vulnerable to defense objection, the fourth theory passes constitutional muster.

Airing these issues will hopefully give the bench and bar a better understanding of scientific methodology. In reality, there are two reasons to trust a scientifically validated proposition. One is the quality of the original empirical testing of the hypothesis. The other is the openness of the scientific tradition: facilitating the replication of the original testing to expose flaws. The opportunity for retesting is one of the greatest strengths of the scientific method. The controversy over the admissibility of testimony of the availability of DNA samples for defense retesting may help the legal community develop a deeper understanding of one of the fortes of the scientific process.

"Charitable Waste: Consideration of a 'Waste Not, Want Not' Tax"

Virginia Tax Review, Vol. 40, 2010

UC Davis Legal Studies Research Paper No. 210

EVELYN A. LEWIS, University of California, Davis - School of Law
Email: ealewis@ucdavis.edu

Lavish expenditures by charities occur regularly, even in today's depressed economy. Many are unwarranted and foolish while some prove to be extremely beneficial and valuable over time. But even the best of charitable splurges involve government waste since all charities are substantially supported by significant government subsidies. Unfortunately, most taxpayers don't respond to charitable luxury-type waste with the same degree of outrage they do to other forms of government waste. This article first reveals the probable reasons for this different taxpayer reaction and posits that it'll be difficult to change taxpayer response given the complexity of the perception problems. As an alternative, this article proposes a tax solution to the problem, after describing how existing laws are currently inadequate to the task of preventing or curbing lavishness by charities. Moreover, the article articulates why flat prohibitions or oppressive sanctions are unwarranted and proposes taxing only the excess amount of charitable expenditures without threat, judgment or blame about a charity's worthiness for general tax-exemption. A chief difficulty is in defining wastefulness. This article offers criteria for the tax's design that tackles this issue as well as other considerations.

"Technology Assessment 2.0: Revamping Our Approach to Emerging Technologies"

UC Davis Legal Studies Research Paper No. 226

ALBERT LIN, University of California, Davis - School of Law
Email: aclin@ucdavis.edu

Emerging technologies such as synthetic biology and nanotechnology promise to solve many of humanity's most serious problems, but they also pose the risk of adverse health effects, environmental degradation, and even dehumanization. Given the transformative yet destabilizing potential of such technologies, it is critical to maximize our understanding of them and their effects and to engage the public in their management early on. Predicting the course of a technology's development and its consequences may not be realistic, but ongoing and methodical evaluation can help us to anticipate, avoid, and manage adverse consequences. In addition to carrying out technology assessment more effectively, we must broaden the assessment process beyond technical experts to involve the general public, whose lives are deeply affected by technology decisions. This Article recommends tools for carrying out more open, effective, and encompassing technology management.

"Too Close to Home: Disallowing the Charitable Deduction for Transfers that Benefit Donors and Their Family, Friends and Neighbors"

UC Davis Legal Studies Research Paper No. 224

SHANNON WEEKS MCCORMACK, University of California, Davis - School of Law, Harvard Law School
Email: swmccormack@ucdavis.edu

The charitable deduction allows taxpayers to deduct amounts contributed to organizations deemed to create broad societal benefits from their otherwise taxable income. By lowering the cost of giving, the charitable deduction provides a subsidy to these organizations. This Article uses subsidy theory, which seeks to determine circumstances in which the subsidy (i.e. the charitable deduction) is needed to encourage desirable giving that

would not occur in its absence. Subsidy theory posits that a charitable deduction should be granted only when the donee-organization provides a public good, the transfer from the donee-taxpayer to the donor-organization is efficient, and finally, the public good would be underfunded in the absence of the deduction. This Article focuses on the underfunding prong of the analysis. Subsidy theorists concentrate on collective action problems, in which free riders will not donate to fund a good, in hopes of benefiting from the goods funded by the donations of others. Subsidy theorists posit that the charitable deduction should be used to solve these problems by shifting the cost of donations from donors to free riders. This Article suggests an expansion to subsidy theory's underfunding analysis by identifying another way in which goods and services can be underfunded. Goods and services may be underfunded because donors fail to fully internalize the utility increases of the potential beneficiaries of their donations. It is, of course, impossible for these problems to be corrected with precision, as it would require the collection of unobservable information. In response, this Article identifies practical ways to determine organizations unlikely to suffer from the underfunding caused by collective action problems and non-overlapping utility curves. Collective action theory is used to show that when organizations have privileged or quasi-privileged donor pools or are able to offer step-goods providing direct benefits to donors, free rider problems may be surmounted. Further, this Article suggests that when donations benefit the donor and those with whom he shares a close relationship, such as family, friends and neighbors, it is likely the utility curves of the donor and beneficiaries possess non-negligible overlap, so a charitable deduction may be unneeded. As such, the Article argues that current law allows deductions that fund goods that are not underfunded, resulting in the waste of finite public resources. Specifically, it suggests a charitable deduction should not be granted when contributions are used to fund benefits remaining too close to home.

"Recent Developments in Federal Income Taxation: The Year 2009"

Florida Tax Review, Vol. 10, p. 79, 2010

University of Florida Levin College of Law Research Paper No. 2010-12

UC Davis Legal Studies Research Paper No. 220

MARTIN J. MCMAHON, University of Florida - Levin College of Law

Email: mcmahon@law.ufl.edu

IRA B. SHEPARD, University of Houston Law Center

Email: ishepard@central.uh.edu

DANIEL L. SIMMONS, University of California, Davis - School of Law

Email: dlsimmons@ucdavis.edu

This article discusses, and provides context to understand the significance of, the most important judicial decisions and administrative rulings and regulations promulgated by the Internal Revenue Service and Treasury Department during 2008 – and sometimes a little farther back in time if the authors find the item particularly humorous or outrageous. Most Treasury Regulations, however, are so complex that they cannot be discussed in detail and, anyway, only a devout masochist would read them all the way through; just the basic topic and fundamental principles are highlighted. Amendments to the Internal Revenue Code generally are discussed to the extent that (1) they are of major significance, (2) they have led to administrative rulings and regulations, or (3) they have affected previously issued rulings and regulations otherwise covered by the outline. The outline focuses primarily on topics of broad general interest – income tax accounting rules, determination of gross income, allowable deductions, treatment of capital gains and losses, corporate and partnership taxation, exempt organizations, and procedure and penalties. It deals summarily with qualified pension and profit sharing plans, and generally does not deal with international taxation or specialized industries, such as banking, insurance, and financial services.

[^top](#)

Solicitation of Abstracts

The University of California, Davis School of Law Legal Studies journal contains abstracts and papers from this institution focused on this area of scholarly research. To access all the papers in this series, please use the following URL: <http://www.ssrn.com/link/UC-Davis-Legal-Studies.html>

To submit your research to SSRN, log in to the [SSRN User Headquarters](#), and click on the My Papers link on the left menu, and then click on Start New Submission at the top of the page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: RPS@SSRN.com

Distributed by:

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK

Northwestern University - School of Law, Northwestern University - Kellogg School of Management, University of Texas at Austin - School of Law, McCombs School of Business, University of Texas at Austin, European Corporate Governance Institute (ECGI)

Email: bblack@northwestern.edu

RONALD J. GILSON

Stanford Law School, Columbia Law School

Email: rgilson@leland.stanford.edu

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

[^top](#)

Links: [Subscribe to Journal](#) | [Unsubscribe from Journal](#) | [Join Site Subscription](#) | [Financial Hardship](#)

Subscription Management

You can change your journal subscriptions by logging into [SSRN User HQ](#). If you have questions or problems with this process, please email UserSupport@SSRN.com or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

Site License Membership

Many university departments and other institutions have purchased site licenses covering all of the journals in a particular network. If you want to subscribe to any of the SSRN journals, you may be able to do so without charge by first checking to see if your institution currently has a site license.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

[Accounting Research Network](#)

[NEW Cognitive Science Network](#) **NEW**

[NEW Corporate Governance Network](#) **NEW**

[Economics Research Network](#)

[Entrepreneurship Research & Policy Network](#)

[Financial Economics Network](#)

[Health Economics Network](#)

[Information Systems & eBusiness Network](#)

[Legal Scholarship Network](#)

[Management Research Network](#)

[Political Science Network](#)

[Social Insurance Research Network](#)

[HRN Classics Research Network](#)

[HRN English & American Literature Research Network](#)

[HRN Philosophy Research Network](#)

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact site@ssrn.com for more information.

Individual Membership (for those not covered by a site license)

Join a site license, request a trial subscription, or purchase a subscription within the SSRN User Headquarters:
<http://www.ssrn.com/subscribe>

Financial Hardship

SSRN understands there is financial hardship in certain countries (for example the former Soviet Union and Eastern Bloc). If you are undergoing financial hardship and believe you cannot pay for a journal, please send a detailed explanation to Subscribe@SSRN.com

[^top](#)

To ensure delivery of this journal, please add LSN@publish.ssrn.com (**Legal Scholarship Network**) to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email usersupport@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site licenses, please contact us at Site@SSRN.com

[^top](#)

Copyright © 2010 Social Science Electronic Publishing, Inc. All Rights Reserved