

Essay

The Liminality of Transactional Relationships

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The law is often uncomfortable with liminal space or the space between absolutes. Liminal space is the grey area that defies labels, and creating rules to regulate and navigate liminalities is ultimately where we often find the most important growth and change.¹ In the world of legal theory, liminality is a space that is defined by power and possibility. *Taxing Sugar Babies* by Bridget Crawford is an important exploration of our societal discomfort with transactional relationships, and the way in which that discomfort is reflected in our tax law.² The term sugar dating has come to mean someone (usually a younger person) accepting money or gifts from a sugar daddy (usually an older person) in exchange for a romantic or sexual attention.³ Crawford's work examines the intersection of personal relationships and financial transactions, prompting a deeper reflection on how our

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1. Graeme Laurie, *Liminality and the Limits of Law in Health Research Regulation: What are we Missing in the Spaces in-Between?*, 25 MED. L. REV. 47, 55 (2016) (“Liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial.”).

2. Bridget J. Crawford, *Taxing Sugar Babies*, 109 MINN. L. REV. 737 (2024).

3. See, e.g., *sugar daddy*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/sugar-daddy#google_vignette [<https://perma.cc/56JW-VLSK>] (defining sugar daddy as “a rich and usually older man who buys presents for or gives money to a younger person, especially a woman, usually so that the younger person will spend time with him and have a sexual relationship with him”).

legal system responds to evolving social dynamics and challenging us to rethink traditional approaches to regulation.⁴

Crawford examines the world of *sugaring*,⁵ a pop culture term for a companionate arrangement often but not always between a man and a woman, where the woman receives financial remuneration in exchange for companionship.⁶ Details of the exchange may or may not be clear at the outset of the relationship, nor will they necessarily ever be clearly articulated. Companionship or friendship with or without sex,⁷ involving the transfer of extraordinarily valuable gifts and money, is so commonplace that it is enjoyed by sitting justices on the United States Supreme Court.⁸ The issue raised in *Taxing Sugar Babies* is the uncertainty around the taxation of gifts received in transactional relationships. Although there is no small number of “tax experts” on social media providing definitive advice on how earnings

4. For a discussion on the current legal system see *Underground Economy Series: The Business of Sex Work*, BOLD BUS. (Mar. 30, 2023), <https://www.boldbusiness.com/society/underground-economy-series-business-of-sex-work/> [<https://perma.cc/55KX-8W9M>] (noting that “the sex work industry has been estimated to draw \$15 billion annually,” tax evasion is a common practice, and although the IRS cannot disclose anyone’s tax returns to start a criminal investigation, this may not be the case if an investigation is ongoing).

5. In addition to the sugar daddy dating trope, new spins include the Stevia (or Splenda) daddy, who is more budget-conscious than a traditional sugar daddy. Arika Kim, *Move Aside Sugar Daddies, 2024 is About Stevia Daddies*, YAHOO! NEWS (Jan. 9, 2024), <https://sg.news.yahoo.com/move-aside-sugar-daddies-2024-is-about-stevia-daddies-071636795.html> [<https://perma.cc/G627-VRPT>].

6. See I.R.C. § 2512(b) (defining a gift for as “the amount by which the value of property exceeded the value of consideration”).

7. See @TaxLawProf, TWITTER (Apr. 10, 2023, 11:51 AM), <https://twitter.com/TaxLawProf/status/1645454553611923458> [<https://perma.cc/52SK-SHKP>] (“Unpopular opinion: The situation w/ Clarence Thomas raises many of the same tax issues faced by sugar babies (usually women) who accept ‘gifts’ from a sugar daddy (prob a man) thru companionship/friendship websites such as <http://SugarDaddy.com>.”).

8. Joshua Kaplan et al., *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow> [<https://perma.cc/U4FW-2UKC>] (“For more than two decades, Thomas has accepted luxury trips virtually every year from the Dallas businessman without disclosing them, documents and interviews show. A public servant who has a salary of \$285,000, he has vacationed on Crow’s superyacht around the globe. . . . The extent and frequency of Crow’s apparent gifts to Thomas have no known precedent in the modern history of the U.S. Supreme Court.”).

generated by sugaring should be reported as income or are excludible as gifts, there is little legal clarity in this liminal space.⁹

Property acquired by gift is excluded from gross income under Internal Revenue Code § 102(a). There is no test set forth in the Code by which to determine if payment is a gift or compensation, instead, the guiding principles by which such determinations are made have been set forth by the Supreme Court in *Duberstein v. Commissioner*.¹⁰ For purposes of income taxation, a gift is made out of affection, admiration, charity, or a detached generosity, which is determined only after an examination of the totality of the circumstances in each case. If someone performs services for the payor, it is only one of many factors to consider in determining whether a payment is a gift or compensation. Importantly, in 2008, the Internal Revenue Service added the topic of whether or not a transfer constituted a gift for income tax purposes to the list of topics on which it refused to issue a private letter ruling.¹¹

Crawford's article *Taxing Sugar Babies* casts into sharp relief the broader problem that exists when neither *Duberstein* nor the Service are able to provide clear guidance for the well-intentioned taxpayer. Although *Taxing Sugar Babies* considers this issue from the perspective of sex work, this is a farther-reaching issue. Panhandling or begging, like sex work, is another ancient method of earning a living that is regarded as "shadow work," or employment that is stigmatized.¹² Imagine, for example, the

9. For example, Mia Lee was a forensic accountant on Wall Street, has a CPA license, and now works as an escort, exotic dancer, and performing sex acts on webcam. She also helps sex workers with their taxes and launched a YouTube series "MoneyTalks with Mia." Julie Zauzmer Weil, *The Prostitute Nudging Sex Workers to File Their Taxes*, WASH. POST (Jan. 5, 2024), <https://www.washingtonpost.com/business/2024/01/05/sex-worker-taxes/#:~:text=One%202021%20study%20estimated%20the,cash%20and%20poorly%20regulated%20cryptocurrencies> [<https://perma.cc/5ZEJ-GC5J>]. Additionally, see "The Tax Domme's Guide for Sex Workers and All Other Business People" available on Amazon by Mistress Lori A. St. Kitts who refers to herself as a seasoned tax professional. Her website boasts of "bringing your tax liability to its knees." TAX DOMME, <https://www.taxdomme.com> [<https://perma.cc/7M8M-BVG4>].

10. 363 U.S. 278, 289 (1960).

11. See Emily L. Cauble, *Questions the IRS Will Not Answer*, 97 IND. L. J. 523, 531 (2022).

12. Shadow work has many different meanings. Shadow workers may be workers that work "under the table." Shadow work may also refer to any unpaid labor, including caregiving responsibilities, self-check-out at a grocery store, or even pumping one's own gas. In this publication, it is being used in the context of illicit or stigmatized but not necessarily illegal work. For more information

unhoused person John who collects a substantial amount of donations while living on the street and professionally begging money from passersby.¹³ The donations may be motivated by detached and disinterested generosity felt towards a stranger, though panhandling may be characterized as passive (sitting quietly) or aggressive (cleaning windows with a squeegee with the expectation of a payment), and some strategies may cause donations motivated by apprehension or duress.¹⁴ At least one study estimates income from panhandling in the United States as ranging from \$2 to \$16 per hour.¹⁵ Many would argue that the money earned by John through begging on the street is taxable income,¹⁶ though at least one Tax Court case has held that money earned through begging from friends and family members is properly treated as a gift.¹⁷

Filtering this through an employment or exchange of services filter does not resolve the underlying issue. In 1986, Congress added subsection (c) to § 102 to create an objective rule in the context of the employer-employee relationship.¹⁸ This objective rule does not make things simpler for those involved in a sugaring relationship because the regulations add a layer of complexity: although transfers in the context of an employer-employee relationship are income under § 102(c), Proposed Regulation 1.102-1(f)(2) states that extraordinary transfers to the *natural object of one's bounty* will not be subject to § 102(c). The taxability of sugaring is unclear because the nature of the

on shadow economies, see Friedrich Schneider, *The Shadow Economy and Work in the Shadow: What Do We (Not) Know?*, INST. FOR STUDY LAB. (March 2012), <https://docs.iza.org/dp6423.pdf> [<https://perma.cc/2WS2-UW59>]; see also DAVID A. SNOW & LEON ANDERSON, *DOWN ON THEIR LUCK: A STUDY OF HOMELESS STREET PEOPLE* (Univ. of Cal. Press, 1st ed. 1993).

13. This hypothetical is adapted from Douglas A. Kahn, *The Taxation of a Gift or Inheritance from an Employer*, 64 TAX L. 273 (2011), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2201&context=articles> [<https://perma.cc/49ZU-8LUA>].

14. Daniel Reinhard, *How Much Do They Make? A Systematic Review of Income Generated from Begging*, 33 INT'L CRIM. JUST. REV. 66 (2023).

15. *Id.* at 66.

16. Kahn, *supra* note 13, at 281.

17. Cheryl Metrejean, "Begging" Doesn't Equal Earned Income., J. ACCT. (Mar. 31, 2000), <https://www.journalofaccountancy.com/issues/2000/apr/beggingdoesntequalearnedincome.html> [<https://perma.cc/YT8J-LQRL>] (considering the Tax Court treatment of panhandling in a 1999 case).

18. I.R.C. § 102(c).

relationship itself confounds us.¹⁹ Does sex make you a natural object of one's bounty, whether compensated or uncompensated?

Taxing Sugar Babies acknowledges that this is a gendered conversation that calls into question poverty's response to patriarchy. Stigmatized economies (by weight of stigma) include, but are certainly not limited to, prostitution, escorting, sugaring, and gold digging.²⁰ Participation at these different levels is sometimes entirely dictated by socioeconomics, access, and opportunity. Moral judgment feeds the stereotype of the manipulative succubus, though the reality is often one of survival—participation is a low-barrier means by which women can meet basic needs. We reject the notion that many personal relationships are inherently transactional because we need to feel a sense of community, friendship, or love untethered to any ulterior motive. Only the most patently transactional relationships are acknowledged as transactional. The reality is that there is a troublingly fine financial line between the heteronormative traditional role of provider and that of sugar daddy.²¹

Taxing Sugar Babies illustrates the absurd juxtaposition of two separate tax systems that potentially apply to the same transaction—one with a coarsely technical objective rule (gift tax), and the other with a tailored approach that is fact specific and leaves well-intentioned taxpayers sometimes uncertain as

19. Even some scholars are divided as to whether sugaring should be seen as a form of sex work. Lena Gunnarsson, *The Allure of Transactional Intimacy in Sugar Dating*, 67 SOCIO. PERSPS. 25 (2024).

20. Racheal, *What Makes a Sugar Baby Different from a Prostitute?*, MEDIUM (Apr. 22, 2024), <https://medium.com/@factsoflifetv/what-makes-a-sugar-baby-different-from-a-prostitute-4242bf7d7f71> [<https://perma.cc/RD2Q-FW2X>] (noting that “[p]rostitution involves the direct exchange of money or goods for sexual services, often in a transactional, short-term manner. It’s typically more transactional, with a focus solely on the sexual aspect. On the other hand, being a sugar baby entails a more complex relationship dynamic, often involving companionship, mentorship, and financial support in exchange for time spent together, which may or may not include sexual activities. While both involve some form of exchange for companionship or sexual interaction, the key difference lies in the nature and depth of the relationship and the presence of ongoing support beyond mere transactions.”).

21. See e.g., Shamani Joshi, *Inside the Minds of Sugar Daddies*, VICE (Jan. 8, 2021, 4:51 AM), <https://www.vice.com/en/article/psychology-behind-sugar-daddy-relationships-dating/> [<https://perma.cc/8FVF-92H9>] (quoting a sugar daddy describing that “[a]s a sugar daddy, we feel like their providers and that makes me feel like the money I’m putting into it isn’t wasted because someone’s using it to put food on their table, while genuinely wanting to be with me.”).

to how tax should be reported (income tax).²² Crawford notes that gift narratives are an integral part of sugaring commerce, which relies upon an illusion of romance and intentionally distances itself from prostitution.²³ Both the sugar baby and the sugar daddy prefer the social acceptability of distancing instrumental intimacy, though this ironically and implicitly (and probably not explicitly) obscures proper tax treatment. Although it is the job of the law to draw lines, the underlying relationship resists definition.

Taxing Sugar Babies stops short of offering a proposal as to where or how to draw the line—which tantalizes with the possibility of a follow-up article. Line-drawing would bring more clarity to this area of the law but would do so through an arbitrary rule that would be both under and over inclusive. An objective rule defining most transactional sugaring relationships as sex work necessarily means that gift-giving in the context of many non-sugaring romantic, nonmarital relationships would likely implicitly be swept into the same category with gifts being treated as income. If we refuse to draw a line, we need to consider the vulnerability of women dependent on gifts received through some gradient of sex work,²⁴ and whether a clear rule sweeping a broad swath of relationships into its wake will help to

22. Tax consequences vary based upon whether sugaring transfers are properly classified as gifts or income. If the latter, the sugar baby may report the value of the transfers as income. If the former, the sugar baby would not report the transfers as income, but the sugar daddy would generally have to file a gift tax return on any transfers exceeding \$18,000 in 2024. I.R.C. § 2503(b)(1), (2) (excluding from the total amount of taxable gifts the first \$10,000 of such gifts to such person, subject to an adjustment for inflation) and Rev. Proc. 2023-34 (setting the gift tax annual exclusion for transfers in 2024 at \$18,000).

23. See Mark Travers, *A Psychologist Gives 3 Reasons Why People Enter 'Sugar Relationships'*, FORBES (Jan. 6, 2024), <https://www.forbes.com/sites/traversmark/2024/01/06/a-psychologist-gives-3-reasons-why-people-enter-sugar-relationships/> [https://perma.cc/LN9V-36XH] (“[A] 2021 study found that ‘sugar daddies’ tend to desire both sexual and relational reciprocity from ‘sugar babies.’ However, this desire for genuine connection and authentic, mutual enjoyment of the relationship often clashes with the use of economic incentives to access companionship, as the provider cannot really know if the receiver is faking how she feels about him.”).

24. In 2018, there was an online harassment campaign using the hashtag #ThotAudit that threatened to report sex workers to the IRS. Samantha Cole, *People Are Threatening to Report Sex Workers to the IRS in #ThotAudit*, VICE (Nov. 26, 2018), <https://www.vice.com/en/article/people-are-threatening-to-report-sex-workers-to-the-irs-thotaudit/> [https://perma.cc/W727-PZAS].

destigmatize sex work by lending the cover of relationships normatively considered “appropriate.”

It is through grappling with uncomfortable and uncertain legal liminalities that we can foster growth, change, and innovation in our legal system. *Taxing Sugar Babies* is an important contribution that forces readers to consider the societal norms and biases that shape our understanding of different forms of labor and the value placed on them. The article speaks to the complexity of categorizing financial transactions that occur within relationships that fall outside of a norm. It also leaves us pondering the fact that all relationships are transactional to some degree.