

# On Tax—Rebecca Kysar of Fordham Law School

**Len Teti:** Welcome to On Tax—A Cravath Podcast. I’m Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to tax professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, we’re joined by Rebecca Kysar. Rebecca is a Professor of Law at Fordham Law School. She teaches tax, but she’s also just returned to Fordham after serving in the government. She was first a member of the Biden-Harris Presidential Transition Team, and then a political appointee in the Treasury Department, where Secretary of the Treasury Janet Yellen described her as an invaluable partner. But first, Rebecca, welcome to the podcast. Thanks for joining us.

**Rebecca Kysar:** Thank you, Len, for having me. It’s a pleasure.

**Len:** We met actually, Rebecca, at Cravath. We were in the same class at Cravath. We started in 2005 and spent several years together as tax associates, which I’m sure we’ll get to. But I’m curious, where do we have to go in your life or career to start thinking about how you put yourself on a pathway to law, and tax law in particular?

**Rebecca:** I always liked forming arguments, and I liked forming logical arguments. I remember as a young adult—I think 16—I argued a traffic ticket in court. I got pulled over for an unsafe start, because I apparently pulled out too fast.

So, I went to traffic court to argue against the officer there, and I asked him what his definition of an “unsafe start” was. He said he’d have to look it up. And so, in a kind of Perry Mason moment, I said, “Funny, you didn’t look it up before you gave me the ticket.” So, I got off scot-free.

**Len:** You had yourself as a client.

**Rebecca:** So, I suppose that was my first introduction to legal argumentation, if you can call it that. I went to college and pursued the liberal arts. I majored in religious studies with another major in a business economics program for liberal arts majors.

And I guess through religious studies, I liked understanding how humans ordered their values and society, which is similar to the law. And I also very much liked my economics classes. I enjoyed understanding how to incentivize and disincentivize human behavior, how to think about welfare, how to think about the good life.

I took philosophy classes, and I was drawn to symbolic logic. And so, I thought about pursuing any of these subjects at the graduate level but liked the broad lens and also better career opportunities afforded by a law degree.

**Len:** I see. So, you expected to go to law school at this point, or you were at least planning on it?

**Rebecca:** I think from an early stage in my college career, I had thought seriously about law school. And when I got nearer to graduation, that path became more clear to me.

**Len:** And where does tax start to dovetail into this? Do you remember when you first started to get an interest in tax and develop an affinity for it?

**Rebecca:** I was interested in law generally. I was interested in becoming a professor. So, part of my interest in tax was always rooted in that academic angle. For four generations, my family has been a family of teachers, and I always saw myself in the classroom and always saw myself researching and writing about ideas that I was interested in.

And so, that’s why I went to Yale, which is the breeding ground for law professors, where, ironically, I was completely turned off from being an academic. Coming from a small town in Indiana, the only place I’d ever

worked before Yale was as jill of all trades at a strawberry farm for a number of years, and as a server at a restaurant for a year. And so, Yale was a shock to my system.

There are people who were in the pipeline to become professors that had much more sophisticated experiences and more coherent research agendas even as 1Ls. I also was a bit daunted about what area of the law I wanted to study. And I spent the first two years in law school trying to find that area of law, and eventually, through a process of elimination as a summer associate at another firm, I tried on various areas.

I went to litigation, and it was interesting but being sent down research rabbit holes didn't appeal to me, and I also didn't really have a litigator's personality despite my traffic court experience. For IP law, I just didn't have any technical expertise that I thought could really benefit that area.

Bankruptcy I liked, and in some ways, it's very similar to tax in that it's kind of a hybrid practice between litigation and transactional work. And so, tax was really what I tried last during that summer, and I was immediately drawn to it. I loved the transactional aspect of it, but I loved the fact that you got deep into the substance of the law quickly. I loved that there was this analytical exercise in most tax research issues; I was drawn to that side of it.

I remember my first assignment in that summer associate position was an issue involving the distinction between capital gains and ordinary income. And it was just this really fun line-drawing exercise. And I also liked the policy and the theory undergirding it. So, like much of what I studied in college, it was about shaping human behavior. It was about fairness and the good life—how much inequality should we tolerate as a society, and what is distributively just? What does this tax law incentivize? Is this the best way to incentivize behavior? So, all those questions appealed to me from an intellectual angle as well.

**Len:** I love the idea that we even eliminated IP law before we got to tax. And here you are. More seriously, I really like the idea of approaching tax from an academic perspective, less as a matter of raising revenue or funding the government, and more as an expression of a society's values, broadly speaking, and incentivizing certain behavior and disincentivizing other behavior is certainly part of that. But the broad moral questions or normative questions about how a society ought to be organized around the law, as it relates to fiscal or tax policy, is a really interesting way to come at it. But before we get there, which is sort of more academic, let's talk more about your work experience after law school.

**Rebecca:** I did clerk for a year after law school before coming to Cravath but had some tax experience in that position. I took some tax cases and, also, turned my law school paper into an article about sunset provisions in the tax code during that year before Cravath.

**Len:** Let's talk about clerking for a second. We've had, I would say, a third to a half of our associates probably clerk before they start. One of the newer tax partners in the group, Andrew Davis, clerked on the Second Circuit before he started. We have associates clerking right now actually. I wonder if you can talk about what drew you to that but, also, as a budding transactional tax person, somebody who knew you were going to be starting in a deal environment, how did you think about the benefits or the drawbacks or the process of clerking? Do you remember?

**Rebecca:** Sure. So, back then, you interviewed—I don't know how it works these days—and I was focused on appellate level clerkships because, as I mentioned, I wasn't really interested in being a litigator, and the appellate level clerkships afforded lots of opportunities for research and writing. So, I used that opportunity to really hone my research and writing skills under the tutelage of just a fantastic mentor, Judge Cardamone, who lived in upstate New York, and I very much enjoyed that experience.

It was a kind of calm transition period between law school and law firm life. I lived on 60 acres of land in upstate New York. My little apartment overlooked a stream that I would go swimming in, and otherwise I really enjoyed being in nature. And I thought that was a nice, calm and focused year that helped me build confidence before going into a very intense and fast-paced practice.

**Len:** I see. And so, then when you started at Cravath in the fall of '05, I remember the sorts of work we were doing back then, but what was your impression of the work the Firm was doing?

**Rebecca:** It was a very intense time. It was during the M&A boom, and the Firm was very busy. I recall being thrown into deals right away that were multibillion-dollar deals that I thought, "Wow, I had a lot of responsibility on this." I thought the Firm had such a breadth of transactional practice. We worked on all kinds of M&A deals but also, of course, IPOs, credit deals, ran the gamut. I also started getting involved in international tax planning work as well, which I think is kind of unusual for a firm like Cravath.

So, it was a pretty eye-opening experience, how quickly, of course, turnaround needed to happen. You also were juggling as a tax associate, not just one or two matters as is often the case as a corporate associate, but you're advising on 12 to 15 matters at a time. And so, the organizational skills you need to do that are pretty high, and so that was a challenge as a first-year associate. I benefited tremendously from people that were just above us at Cravath in seniority.

**Len:** Not to mention people in your class.

**Rebecca:** And in my class. Yes, we all helped each other. And it's just so great to have mentors who are not just senior partners or junior partners, but just right above you, too. It's so helpful since they've been through your experience so recently.

**Len:** I was struck by this connection to our peers from our Cravath era, because in mid-January you gave a speech at the State Bar's Annual Meeting, and a lot of our alumni were there sitting at our tables, and we had a lot of pride in watching you give that address. But also, the way we all sort of connected 15 or 20 years afterwards was just really eye-opening. And it's kind of a close bond. You're right, it was an intense time. We were all starting our careers. We all had different ambitions. Others of us have developed new ambitions and achieved those. It's really neat to get back together and sort of share some connectivity after all that time.

**Rebecca:** Yes, I agree, we had a special bond, and I'm glad that it continues.

**Len:** We were too far away for our paper airplanes to make it to the rostrum during your speech, but maybe next time.

**Rebecca:** I'm glad I couldn't hear the heckling.

**Len:** So, at the end of your time at Cravath, a couple of years in, 2008, I guess, if I'm remembering correctly, you made a jump to academia, and you applied to teach at law schools and you chose one job. Tell me about what that leap was like.

**Rebecca:** Yes. So, like I said, when I was in college, even, I thought of myself as potentially going into academia, although I briefly lost confidence in that idea at the beginning of law school. By the end of law school, I very much enjoyed writing law review articles and developing ideas in a nuanced and deep way. And I was surprised by how much I loved tax practice. When I got into it, I thought it was so exciting. I liked doing deals. I liked the collective enterprise that brings smart minds together not just within the Firm but within the tax bar more generally. And so, I struggled with whether or not to leave tax practice. I think my mentors at Cravath very much were making good arguments about why I should stay. They pointed to Mike Schler, who not only has developed a rich tax practice throughout his life, but also was involved in more tax policy issues, writing bar reports, et cetera.

**Len:** The point being, you could have a good transactional tax career, but also be really involved in sort of policy discussions. Right?

**Rebecca:** Right. I could have it all. But I'm no Mike Schler, and not many people are. And I think that the demands on time made that path difficult, at least to the extent that I wanted to explore ideas and write about them. And so, I ended up taking the leap from practice to academia. It was a lot of stress involved in that, because I did love practice so much, and I loved Cravath so much. And there's always a part of me that thinks, "Wow, what if I had stayed?" Of course, I constantly relive that decision.

But at the same time, I've been extremely happy in academia. I was focused on a job in New York City, because my husband is from New York City and is in finance. And so, at the time I was looking narrowly at

academic jobs in New York, which is a risky thing to do, but ended up landing one at Brooklyn Law School. And that was a great place for me to start my career as a young professor.

**Len:** I'm reminded that one of your star students at Brooklyn Law School was Kiran Sheffrin, who's been on the podcast.

**Rebecca:** Yes.

**Len:** And is a senior attorney at Cravath, and she speaks so highly of you. And you speak about mentors, the role that you had in shaping her career trajectory, and your recommending her to us out of law school was a huge service to the Firm. And she's really been an amazing colleague. So, thank you for that.

What was your experience when you started teaching? You're obviously teaching federal income tax—as you said, “baby tax.” You're probably teaching all the advanced tax classes too. But you're also trying to get a foothold in the world of legal thinking, research, writing, creating a reputation and a perspective on the law. So, how did you juggle all of those new responsibilities?

**Rebecca:** It was difficult at first. When you're first learning to teach courses, it's pretty overwhelming. You devote a lot of time putting your class notes together and the courses together. And you of course want to give it your all, and you owe it to the students to develop a course that is both interesting and also edifying. And so, it is a pretty humbling experience to have that responsibility laid at your feet, that I'm now responsible for teaching a hundred students basic income tax, which in my view is so important—not only to whatever practice area that they're going to go into, but also like we talked about, because tax is so important from a societal perspective. It's really important for them to understand the role it serves in our lives. And over time, the teaching gets much easier as you develop an understanding of what the students need. And now, I can't believe it, but I've been teaching for almost 15 years. So, it's been overall a good path.

I think the one challenge has always been how to balance teaching and research. And especially as an untenured professor, that challenge is constantly felt at every turn, as you're trying to get tenure, trying to prove yourself to your colleagues and build your reputation, which you really have to build from the ground up. So, coming straight from practice, I was a little bit behind the game, but eventually you have to take the time to develop those: reputation, interpersonal relationships, and believe in yourself. And eventually it worked out.

**Len:** It was during this period that I remember seeing your name on op-ed pieces in The New York Times and seeing your name and face show up in different media outlets talking about tax. Eventually, you rather famously—at least in the tax world—testified in front of the Senate Finance Committee in 2018 about the 2017 Tax Cuts and Jobs Act. Can you talk to me about how the academic research that you did transitioned into a more visible public policy role as expert and then policy shaper over the last several years?

**Rebecca:** My research has always been two pronged. One is I write on the tax legislative and budget processes. So, I've always been interested in D.C. and what goes on there. And two, I substantively research and write in international tax. When I began thinking about ways to get involved in policy issues, it was something that was very important to me. I wanted to make a difference in the real world. I didn't want to just be in an ivory tower. And so, one opportunity to do that was critiquing the Tax Cuts and Jobs Act of 2017. And given my focus on international tax, that's where I spent a lot of time. And a couple of colleagues and I wrote a paper that was heavily read about the shortcomings of the Tax Cuts and Jobs Act. And I was responsible for the international tax portion of that paper. And at the time we were dealing with a pretty rushed legislative process. And so, people looked to our paper to identify what actually was happening in the bill and where the holes were. And that afforded me more access to congressional members who then wanted to start building a case for reforming the international provisions in the Tax Cuts and Jobs Act.

So, I agree with you that that's where my career began turning more towards D.C.

**Len:** So, I have a question in particular: As you advised the president and vice president on their transition and also as you sort of led into this new formal role at Treasury, I am curious about, but will not ask about private conversations you had with policymakers. But more generally, these are complicated issues. International tax is complicated. Explaining those problems is complicated and you have views about how it might be fixed. How do you talk to a policymaker, the president or somebody else, a staffer, about these complicated issues

in ways that they can understand quickly what the recommendation is and why that recommendation makes sense as a policy matter and as a political matter?

**Rebecca:** I think communicating complex ideas in a way that is understandable is what the best tax lawyers do well. And that skill serves you well in practice with clients. It served me well in teaching and, as you're asking about, it also serves you well in government. You are briefing principals who have a lot on their plate, and it is important to distill issues in a way that does not reference code sections, in a way that gets to the heart of the issue rather quickly. You often don't have much time to do that. And I think that is the most important skill in really all of what I have done as a tax professional. And luckily, teaching has given me a lot of opportunity to hone that skill.

In the government as well, it's not just about communicating to principals in other parts of the government, which is a very big part of the job, but, in our case, it was very important to have a PR strategy as well. And working with the PR people at Treasury, I learned so much from them because you'd have to talk to the public in ways that you don't talk to clients necessarily or your principals. It's a completely different game.

**Len:** Right.

**Rebecca:** And it's also a way to, when we were talking about getting 137 countries to agree on this tax deal that I helped negotiate, it was also a way to help paths forward in various countries. So, our press strategy could influence how other countries thought about the negotiations. And they looked to our statements in the press for how we were going to be positioning ourselves. So, there's also that side of the PR strategy. And so, I learned a tremendous amount from the professionals in that area.

**Len:** The PR piece of this is interesting. It's sort of stunning to hear me talk to someone who is forming tax policy and helping to advise on tax policy, but also talking about the importance of a PR strategy. So, can you tell me last about what you've done most recently, before you went back to Fordham, and that is this role that you had in the Treasury Department with Secretary Yellen, negotiating and talking to the rest of the world about these large tax initiatives? Tell me about that experience.

**Rebecca:** Sure. It was certainly the experience of a lifetime. We entered the administration with a lot of energy behind international tax. International tax was a top priority during the transition period before inauguration. And that's because we made the case that it was really important from both a tax policy and foreign policy perspective.

From a foreign policy perspective, the administration's transition team really wanted to rebuild the United States' reputation as a partner on the international stage. And they centered this vision around this foreign policy for the middle-class idea, which was really collapsing the distinction between foreign and domestic policy. We're going to meet challenges at home in order to improve American competitiveness and we're also going to focus on strategic alliances with European and other partners in order to better combat global issues like climate change, like autocracies, like the threat of Chinese competitiveness. And so, the tax policy team really made the case that the global minimum tax could deliver on those spreads, that it could raise revenues that could improve our domestic strength, that it could level the playing field for our corporations, making them more competitive. And it could also restore our reputation as a good multilateral partner. And Janet Yellen during the time of transition also became a strong supporter of our OECD efforts. She thought that this was a way to make the tax system more fair by taxing capital, which was a huge challenge for the income tax.

So, when we entered the administration, we had all that energy behind us, and we just immediately began trying to unlock the negotiations again. And everyone was happy to see the United States back on the stage. And so, there was a lot of momentum for the first eight months or so before we achieved political agreement on October 8th, 2021, with 137 countries. And that was an incredibly challenging time given that we were operating on all time zones and operating full-out to make sure we did not lose momentum on negotiations. And I would say that having, though, the backing of the entire administration behind you was how it happened, because it wasn't just Treasury, it was the White House. It was both the domestic and foreign policy side of the White House that really made it a special time to be in the administration doing international tax. And this really once-in-a-century opportunity to remake the international tax system, so that it was more stable and

more fair.

**Len:** Those of us in the practice of tax, especially a transactional practice, we obviously follow these developments, because they are important to our clients and to many of our daily tasks. But I just have to say that you and that whole team, which was led by Secretary Yellen and others internationally, were sort of rock stars in the tax world for a period of time. And you were front-page news as you developed these initiatives and I'm just really impressed. And it sounds like an amazing experience, as you say, the opportunity of a lifetime, and I'm thrilled to be able to talk to you a little bit about it. So, thanks for sharing those thoughts.

**Rebecca:** Len, I think a tax rock star might be an oxymoron. I did, however, get to meet Bono on some of my travels. There's a stark contrast between him and me.

**Len:** And it's a big comedown coming to the Cravath tax podcast. But we've been thrilled to have you. In the few minutes we have left, can we talk a little bit about what you do in your spare time? Presumably you have a little bit more of it now that you've come out of the government. What do you like to do when you're not thinking about these tax problems?

**Rebecca:** Sure. Well, I play tennis and run neither very well nor very fast. I also am an oil painter in my other life. So, I try to pick up painting whenever life allows me to.

**Len:** Wow.

**Rebecca:** It's something I kind of always go back to. And this past year, I learned how to ski for the first time. Growing up in Indiana, didn't really have many mountains around, so I learned how to ski with my kids, and I'm relearning guitar. These are kind of hobbies that I'm trying to develop after my Treasury career, since I didn't have much time at Treasury.

My two boys are young, so I'm also interested in water parks and in NERF battles and trampolines. And I'm also interested in doing all that while trying to avoid trips to the ER, which is, you know, always a danger.

**Len:** Between skiing and trampolines, it seems like you better make sure your health insurance is sort of fully paid out.

Well, that's great. Rebecca Kysar, a Professor of Law at Fordham. It's been fantastic to visit with you again. It was great seeing you at the State Bar in January also. And good luck back at Fordham, and thanks for joining us today.

**Rebecca:** Thanks Len.

**Len:** That's all for this episode of On Tax—A Cravath Podcast. You can find us online at [cravath.com/podcast](https://cravath.com/podcast), and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify. If you enjoy the show, please consider rating or reviewing us wherever you listen. We'd also love to hear from you directly. You can tell us what you'd like to hear on the show by emailing [podcast@cravath.com](mailto:podcast@cravath.com).

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