

# Justice Holmes, Ralph Kramden, and the Civic Virtues of a Tax Return Filing Requirement

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## I. INTRODUCTION

A major goal of some tax reform proponents is the elimination of the return filing requirement for many or all Americans. “100 Million Unnecessary Returns” is the title of an article in which Michael Graetz proposes replacing the current income tax with a value added tax (VAT) and a residual income tax imposed only on taxpayers with incomes over \$100,000.<sup>1</sup> According to Graetz, “[t]he vast majority of American families should not have to file tax returns or deal with the IRS at all.”<sup>2</sup> In the *The FairTax Book*, the 2005 bestseller by Neal Boortz and John Linder advocating the replacement of the income tax with a national sales tax, the elimination of individual tax returns is a major selling point for the proposal: “No complicated decisions, no tedious bookkeeping, no saved receipts and tax reporting forms. Oh, and no audits. . . . And April 15? It becomes just another lovely spring day.”<sup>3</sup> Movement in the direction of a return-free system would not necessarily require rejection of the income tax as the federal government’s primary revenue source. On May 17, 2005, the President’s Advisory Panel on Federal Tax Reform heard several hours of testimony concerning the possibility of a “return-free” income tax system.<sup>4</sup>

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<sup>1</sup> Michael J. Graetz, 100 Million Unnecessary Returns: A Fresh Start for the U.S. Tax System, 112 Yale L.J. 261 (2002).

<sup>2</sup> Id. at 281.

<sup>3</sup> Neal Boortz & John Linder, *The FairTax Book: Saying Goodbye to the Income Tax and the IRS* 50 (2005).

<sup>4</sup> President’s Advisory Panel on Federal Tax Reform, Transcript of Ninth Meeting 103-39 (May 17, 2005) (testimony of Eric Toder, Joseph Bankman, and Grover Norquist), available at [http://www.taxreformpanel.gov/meetings/docs/transcript\\_05172005.doc](http://www.taxreformpanel.gov/meetings/docs/transcript_05172005.doc) [hereinafter Panel Transcript].

The Panel learned that there are two kinds of “return-free” income tax systems.<sup>5</sup> Under one system, known as exact (or final) withholding—of which perhaps the best known example is the PAYE (Pay as You Earn) system of the United Kingdom—the amount withheld from wages during the year is designed to equal the precise amount of the taxpayer’s liability, so there is no need for a tax return (or for any refund or payment of additional tax owed). Such a system could accommodate a limited amount of marginal rate progressivity, and a limited number of tax-favored expenditures (such as for home mortgage interest and charitable contributions), but it could not accommodate the level of complexity of the current federal income tax.<sup>6</sup> Moreover, some taxpayers—especially those with self-employment income or capital gains—generally are ineligible for exact withholding and must file returns.<sup>7</sup> According to the General Accounting Office, as of 1996 thirty-four countries had final withholding systems for at least some taxpayers.<sup>8</sup>

The second type of “return-free” income tax is “tax agency reconciliation,” under which the tax agency prepares a tentative return for the taxpayer based on the data it obtains from third parties (such as employers and payers of interest).<sup>9</sup> (“Return-free” is obviously a questionable adjective for a tax agency reconciliation system, but the term

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<sup>5</sup> Id. at 103-04 (testimony of Eric Toder). For a more detailed description of the two types of systems, see William G. Gale & Janet Holtzblatt, *On the Possibility of a No-Return Tax System*, 50 Nat’l Tax J. 475 (1997).

<sup>6</sup> Panel Transcript, note 4, at 106-07 (testimony of Eric Toder). Toder’s testimony is based largely on Treasury Dep’t, *Return-Free Tax Systems: Tax Simplification Is a Prerequisite* (2003), available at <http://www.ustreas.gov/offices/tax-policy/library/noreturn.pdf>. Treasury notes that the U.K. system has only three tax rates, with a basic rate (22%) that applies to about 80% of taxpayers. Id. at 8. Until recently, the system provided a benefit for home mortgage interest payments through a payment from the government to the lender: “A taxpayer with a 10 percent mortgage rate would pay 9 percent interest, and the lender would collect the remaining one percentage point of interest . . . from the government.” Id. The tax benefit for charitable contributions uses a similar approach. Id. A taxpayer subject to the 22% basic rate, wanting to give \$100 to a charity, would give the charity \$78 and the charity would collect the other \$22 from the government. Id. For a detailed discussion of the U.K.’s PAYE system, see William J. Turnier, *PAYE as an Alternative to an Alternative Tax System*, 23 Va. Tax Rev. 205, 224-31 (2003).

<sup>7</sup> Treasury Dep’t, note 6, at 7.

<sup>8</sup> General Accounting Office, *Tax Administration: Alternative Filing Systems*, GAO/GGD-97-6, at 4 (1996), available at <http://www.gao.gov/archive/gg97006.pdf>.

<sup>9</sup> Panel Transcript, note 4, at 104 (testimony of Eric Toder), 111-19 (testimony of Joseph Bankman). For a recent proposal (made under the auspices of the Hamilton Project of the Brookings Institution) to make tax agency reconciliation available to as many as 40% of federal income taxpayers, see Austan Goolsbee, *The “Simple Return”: Reducing America’s Tax Burden Through Return-Free Filing* (2006), available at [http://www.brookings.edu/~media/Files/rc/papers/2006/07useconomics\\_goolsbee/200607goolsbee.pdf](http://www.brookings.edu/~media/Files/rc/papers/2006/07useconomics_goolsbee/200607goolsbee.pdf). The oxymoron in the title—“Return-Free Filing”—is indicative of the widespread confusion over whether a system based on tax agency reconciliation is properly understood as a return-free system.

is commonly used in this way.) This is practical only for taxpayers who claim the standard deduction, and all of whose income comes from sources subject to information reporting.<sup>10</sup> The taxpayer reviews the tentative return, and either can file it as drafted by the tax agency, or can revise it as the taxpayer deems fit. Systems of this sort are in use in Denmark and Sweden,<sup>11</sup> and a recent pilot program (“ReadyReturn”) for the California state income tax received very favorable reviews from the taxpayers who took advantage of it.<sup>12</sup>

Congress twice has ordered reports on return-free systems. The Tax Reform Act of 1986 required the IRS to study the feasibility of return-free income taxation for at least some taxpayers.<sup>13</sup> In the resulting report, the Service considered the possibility of a tax agency reconciliation system, but concluded it was not feasible with existing technology.<sup>14</sup> Congress repeated the legislative demand for a study along with instructions that such a system actually be implemented by 2007.<sup>15</sup> Although Treasury dutifully produced the required report in 2003,<sup>16</sup> no program—not even a pilot program—has yet emerged.

Given the Tax Reform Panel’s decision to hear testimony on exact withholding and agency reconciliation systems, the considerable experience with such systems in other countries, the positive reports on the California experiment, and the repeated congressional interest in the idea, one might have expected the Panel’s report to have recommended some sort of return-free income tax system for some taxpayers. At the very least, one might have expected the Report to have raised the issue, and to have discussed the pros and cons. Instead, a

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<sup>10</sup> General Accounting Office, note 8, at 2 (estimating that 45% of taxpayers filing for tax year 1992 claimed the standard deduction and had income only from wages, dividends, pensions, and unemployment compensation, and thus would be eligible for tax agency reconciliation).

<sup>11</sup> Treasury Dep’t, note 6, at 49-52.

<sup>12</sup> Panel Transcript, note 4, at 112-15 (testimony of Joseph Bankman); Joseph Bankman, Simple Filing for Average Citizens: The California ReadyReturn, 107 Tax Notes 1431 (June 13, 2005). Intuit (the maker of TurboTax) strongly opposed a bill to provide explicit statutory authorization for ReadyReturn, and to make the program permanent, and the bill died without a vote in the 2006 session of the California legislature. Jim Sanders, Tax-Return Bill Dies in Assembly, Sacramento Bee, June 2, 2006, at A4.

<sup>13</sup> Tax Reform Act of 1986, Pub. L. No. 99-514, § 1582, 100 Stat. 2085, 2766 (1986).

<sup>14</sup> IRS, Current Feasibility of a Return-Free Tax System (1987), cited in Hearing Before the Subcomm. on Treasury and General Government of the S. Comm. on Appropriations, 106th Cong. 6 (2000) (statement of Leonard E. Burman, Dep. Asst. Sec’y for Tax Analysis, Treas. Dep’t), available at <http://ustreas.gov/press/releases/l548.htm>.

<sup>15</sup> The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 2004, 112 Stat. 685, 726 (1998).

<sup>16</sup> Treasury Dep’t, note 6.

return-free income tax is the Report's dog that did not bark. It is simply not discussed in the Report.<sup>17</sup>

This Article argues that the Panel was right to retain a return-based tax system, given the Panel's recommendations for major tax simplification. As long as the return filing obligation is not unduly burdensome—which it would not be under the Panel's simplification proposals—a filing obligation has significant civic virtues. Part II describes those virtues. A return-based system represents an appropriate compromise on the level of visibility and painfulness of taxation, and the filing of a tax return can serve an important ceremonial function as an expression of fiscal citizenship. Part III suggests that the civic potential of return filing is not now realized because of the tremendous complexity of the income tax, but that the potential could be realized under a simplified system. It also suggests that tax agency reconciliation (such as California's ReadyReturn) should not be understood as a return-free system, and that a well-designed tax agency reconciliation system would *promote* the civic virtues associated with the filing requirement. Part IV considers the question whether the civic benefits of tax return filing—in particular the conferring of the status of taxpayer on the filer, in his own mind and in the minds of others—are realized when a person files a return but has no income tax liability (for example, because of the earned income tax credit). Part V briefly concludes.

## II. THE CIVIC VIRTUES OF A RETURN FILING REQUIREMENT

With no discussion of return-free income tax systems in the Tax Reform Panel Report, one can only guess why the Panel decided not to pursue that approach. The Report proposes significant simplification reforms,<sup>18</sup> and the Panel members may have concluded that the reduction in tax return preparation burdens flowing from simplification would be relief enough. It is even possible that the Panel members believed that the tax filing process under a simplified income tax would not be merely a tolerable evil, but actually would serve important civic purposes.

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<sup>17</sup> See President's Advisory Panel on Federal Tax Reform, Simple, Fair and Pro-Growth: Proposals to Fix America's Tax System (2005), available at <http://www.taxreformpanel.gov/final-report/>. The Report does discuss the costs—in both time and money—imposed on taxpayers by the return filing requirement. *Id.* at 35-36. The Report, however, does not discuss the possibility of eliminating those costs by abandoning the filing requirement.

<sup>18</sup> *Id.* at 59-106.

*A. Withholding, Return Filing, and the Appropriate Level of Taxpayer Tax Consciousness*

If the members were of this view, they may have taken their cues from Grover Norquist, the President of Americans for Tax Reform, who testified before the Panel in opposition to return-free systems:

[T]he present system . . . is at least citizen-based and focuses taxpayers on what they're paying. . . . [M]oving to a so-called return-free system will reduce people's understanding of what exactly they're paying and their [reduced] focus on it will make it easier to raise taxes. . . . We want people to be aware of what they're paying and how much it costs. The idea that one of the benefits [of a return-free system] is to reduce the psychic costs of tax filing reminds me of the argument for the guillotine, which was that it was more humane. . . . This seems to me the next step after Milton Friedman's mistake of allowing us to go to withholding during World War II; the next step in making it easier for the government to get their hands on your income and making you detached from the actual cost of government."<sup>19</sup>

Some small-government conservatives argue that taxes should be as visible and as painful as possible, on the theory that the public will resist high levels of visible and painful taxes. For these people, the ideal income tax system would retain filing obligations (to ensure visibility) and would repeal withholding (to maximize the pain of payment). Richard Armey, for example, once co-sponsored a bill to replace withholding with the requirement that individuals make monthly payments of estimated tax.<sup>20</sup> During one of the Panel's meetings (not the one concerned with return-free systems) Milton Friedman told the Panel that he rued his participation in the development of income tax withholding during World War II:

[Withholding] has been a mistake in the post-war period, and we would have been better off in the post-war period if we did not have [it]. The reason for that is the withholding tax makes it easy to collect taxes. It's taken from your check before you know that you've got it. And so you could not

<sup>19</sup> Panel Transcript, note 4, at 119-21 (testimony of Grover Norquist).

<sup>20</sup> Stearns Bill Would Repeal Wage Withholding Rules, 71 Tax Notes 915 (Apr. 25, 1996) (citing House Majority Leader Richard K. Armey as co-sponsor of the bill).

today have a government of the size it is . . . if you did not have the withholding tax as a way of raising the money.<sup>21</sup>

At the other extreme, a big-government proponent might favor making taxes as nearly invisible and as nearly painless as possible. It is difficult to find statements from legislators praising the revenue-raising capacity of hidden taxes—for the same reason magicians are reluctant to explain their tricks—but the point is widely recognized. As Jean Baptiste Colbert is said to have remarked, “The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the least possible amount of hissing.”<sup>22</sup> From this point of view, an attractive tax would either dispense with direct taxation of individuals (as with a VAT or sales tax), or would feature exact withholding and no tax returns. Without an obligation to pay over taxes, or to calculate one’s tax liability on a return, a taxpayer would be only minimally aware of the fact that he was paying tax, and thus only minimally resistant to higher taxes.<sup>23</sup>

If the elimination of withholding would cripple the revenue-raising potential of an income tax, and if the elimination of tax returns under exact withholding would dangerously increase the tax system’s revenue-raising capacity, the current system of inexact withholding and return-based reconciliation may be an attractive middle ground. The return preparation system forces taxpayers to pay attention to the to-

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<sup>21</sup> President’s Advisory Panel on Federal Tax Reform, Transcript of Sixth Meeting 113-14 (Mar. 31, 2005) (testimony of Milton Friedman), available at [http://www.taxreformpanel.gov/meetings/docs/transcript\\_03312005.doc](http://www.taxreformpanel.gov/meetings/docs/transcript_03312005.doc).

<sup>22</sup> Statement attributed to Jean Baptiste Colbert, quoted in Jeffery L. Yablon, Certain as Death—Quotations About Taxes, 110 Tax Notes 103, 123 (Jan. 9, 2006); see also Edward J. McCaffery, Cognitive Theory and Tax, 41 UCLA L. Rev. 1861, 1874-86 (1994) (explaining in terms of cognitive theory and loss aversion the lesser resistance of the electorate to hidden taxes—and thus the increasing reliance of Congress on payroll taxes).

<sup>23</sup> One indication, from popular culture, of the significance of a return filing obligation to the visibility of a tax comes from an examination of tax-themed situation comedies. Although I have identified 89 income-tax related sitcom episodes from 1940 to 2006, I have not found any sitcom episodes featuring the payroll tax. Lawrence Zelenak, Six Decades of the Federal Income Tax in Sitcoms, 117 Tax Notes 1265 (Dec. 24, 2007). This disparity is plausibly explained by the differing visibility levels of the two tax systems, since the systems do not differ greatly in the amount of revenue they raise, and since most income taxpayers actually have payroll tax burdens in excess of their income tax burdens. See Office of Management and Budget, Budget of the United States Government Fiscal Year 2007, Historical Table 2.2 (2006) (indicating the percentage of total federal receipts generated by the individual income tax and by payroll taxes in each year from 1934 to 2005; in 2005, for example, the individual income tax produced 43% of federal revenue, while payroll taxes produced 36.9%); Congressional Budget Office, Effective Federal Tax Rates, 1997 to 2000, at 72-73 tbl.C-1 (2003) (indicating that payroll taxes—counting both the employee and the employer share—exceeded income taxes for most households in all years from 1979 to 2000, except 1980).

tal amount of their income tax liability,<sup>24</sup> thus constraining the ability of Congress to impose tax increases; yet the reduced resistance to taxation attributable to withholding enables Congress to raise substantial revenue through the income tax. Perhaps the Panel appreciated this delicate balance, and did not want to upset it by proposing a return-free system. Of course, the immediate concern of most taxpayers at the time of return preparation is more with the amount of their overpayment or underpayment, than with the total amount of their tax liability. From the standpoint of the taxpayer-consciousness-raising function of the return preparation process, it would be better if taxpayers paid more attention to their total income tax liabilities, and less attention to the amounts of their refunds or underpayments. A simple symbolic step in the right direction would be to make the total tax liability line on the Form 1040 bigger and bolder than the surrounding lines.

### *B. Tax Return Filing as a Purchase-of-Civilization Ceremony*

Beyond the contribution of income tax returns to restraining Leviathan, the tax return preparation process does—or at least could—serve the important civic purpose of recognizing and formalizing the fulfillment of the financial responsibilities of citizenship.<sup>25</sup> As Justice Holmes famously remarked, “I like to pay taxes. With them I buy

<sup>24</sup> Requiring taxpayers to file tax returns is not the only possible way to call taxpayers' attention to the total amount of their income tax liability. Marjorie Kornhauser recently proposed requiring the Service to send each income taxpayer an “annual tax statement,” loosely modeled on “Your Social Security Statement,” which the Social Security Administration sends annually to wage earners. Marjorie E. Kornhauser, *Doing the Full Monty: Will Publicizing Tax Information Increase Compliance?*, 18 *Can. J.L. & Juris.* 95, 106-09 (2005). The statement might include, among other things, “the highlights of a taxpayer's last two income tax returns” (including gross income, tax liability, and marginal and effective tax rates), and “statistical comparisons between the individual taxpayer's own tax situation and the average and median of other taxpayers, broken out into income brackets.” *Id.* at 108. The individualized statement would be accompanied by a “Know Your Taxes” booklet, which would explain the basic operation of the income tax system. *Id.* at 109-10. The proposal has considerable merit, but Kornhauser intends it only as a supplement to the return filing requirement, not as a replacement, and rightly so. It is inconceivable that the mailing of annual statements could produce anything close to the level of tax consciousness produced by annual tax return filing.

<sup>25</sup> The United States is unique, among the major economic powers of the world, in imposing income tax on the basis of citizenship alone—that is, imposing income tax on the worldwide income of U.S. citizens not resident in the United States. Hugh J. Ault & Brian J. Arnold, *Comparative Income Taxation: A Structural Analysis* 347 (2d ed. 2004). The Supreme Court acknowledged the power of Congress to tax solely on the basis of citizenship in *Cook v. Tait*, 265 U.S. 47, 56 (1924). The Court remarked that “the government, by its very nature, benefits the citizen and his property wherever found,” and that the power to tax a citizen is based “upon his relation as citizen to the United States and the relation of the latter to him as citizen.” *Id.* at 56. In a formal sense, then, the connection between income taxation and citizenship is uniquely strong in the United States. There is reason to

civilization.”<sup>26</sup> Such an important civic activity demands a ceremony, and the filing of one’s tax return is that ceremony.<sup>27</sup> The filing ceremony may prompt taxpayers to ponder how much civilization they want to buy and whether they are getting good civilization value for their tax dollars,<sup>28</sup> but the linkage between citizen and government through the tax return process has the potential to go deeper than that. April 15 can and should be as important a civic holiday as the first Tuesday after the first Monday in November.<sup>29</sup> Together, the two days celebrate the fulfillment of the two great responsibilities of citizenship. Former IRS Commissioner Mark Everson made the connection between tax filing and voting in his remarks to the Tax Reform Panel:

[L]ast year 183 million people filed individual income tax returns. To put that number in perspective, it is fully half again the number of people who voted in the presidential election. In that sense, paying taxes is a unifying experience fundamental to our democracy and respect for the rule of law.<sup>30</sup>

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doubt, however, that the lessons of *Cook v. Tait* have seeped deeply into the popular consciousness.

<sup>26</sup> Randolph E. Paul, *Taxation for Prosperity* 277 (1947) (quoting Oliver Wendell Holmes, Jr.); see also *Compania Gen. de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting) (“Taxes are what we pay for civilized society. . .”).

<sup>27</sup> Tax day is an occasion for media ruminations on tax policy; there would be fewer and less thoughtful discussions of tax policy in the media without the trigger of April 15. Note, as two examples among hundreds of tax-related articles and op-eds published on or around April 15, Joseph J. Thorndike, *Hurts So Good*, N.Y. Times, Apr. 15, 2005, at A19; Austan Goolsbee, *Why Tell the I.R.S. What It Already Knows?*, N.Y. Times, Apr. 7, 2006, at A25.

<sup>28</sup> As Andrew Mellon, Secretary of the Treasury during the 1920’s, remarked: “Nothing brings home to a man the feeling that he personally has an interest in seeing that government revenues are not squandered, but intelligently expended, as the fact that he contributes individually a direct tax, no matter how small, to his government.” Thorndike, note 27, at A19 (quoting Mellon).

<sup>29</sup> If a return-free income tax system threatens the ritual value of paying taxes, a mandatory vote-by-mail system (as pioneered by Oregon) may pose a similar threat to the ritual value of voting. See Timothy Egan, *Living Rooms Replace Polling Booths in Oregon’s Mail-In Senate Election*, N.Y. Times, Nov. 21, 1995, at A19 (describing the first all vote-by-mail Oregon election, and noting the criticism that vote-by-mail “deprives voters of one of their most important rituals: the Election Day walk to the polls”). The parallel is not exact, of course. Except for those few taxpayers who take their returns to the post office shortly before midnight on April 15, tax return filing has never involved a *public* ceremony comparable to gathering at the polling place. In fact, the objection to voting by mail is that it reduces the voting ceremony to a level comparable to the taxpaying ceremony. *Id.*

<sup>30</sup> Testimony of Mark W. Everson, Commissioner of Internal Revenue, Before the President’s Advisory Panel on Federal Tax Reform 2 (Mar. 3, 2005), available at [http://www.taxreformpanel.gov/meetings/pdf/everson\\_03032005.pdf](http://www.taxreformpanel.gov/meetings/pdf/everson_03032005.pdf); see also William J. Kambas, *Reform and Modernization of the Tax Compliance Process*, 108 Tax Notes 1447, 1450-51 (Sept. 19, 2005) (“[T]he tax compliance process is integral to the U.S. system of par-



This view of tax return filing as a valuable civic ceremony should be attractive to those who subscribe to a fairly wide range of republican or liberal political theories. As described by Cass Sunstein, republican and liberal political theories, despite their considerable variety, share an emphasis on “forming public policy through deliberation, on political equality, [and] on citizenship. . . .”<sup>31</sup> The commitment to deliberation favors “political institutions that promote discussion and debate among the citizenry. . . .”<sup>32</sup> By focusing public attention on the income tax system every April, the filing requirement furthers the deliberative goal. The filing requirement also promotes the goal of political equality (under which “all individuals . . . have access to the political process” and “large disparities in political influence are disfavored”<sup>33</sup>), by recognizing and formalizing the status of each tax return filer as a taxpayer—whether her tax liability happens to be \$1 or \$1 million.<sup>34</sup> It is true that a return-free but individually-based tax system, such as the U.K.’s PAYE, can confer some sense of widespread taxpayer status, thus promoting political equality, but it cannot do so with the forcefulness of a return-based system. Placing a “high premium on citizenship and participation,”<sup>35</sup> republican and liberal political theorists “attempt to provide outlets for the exercise of citizenship.”<sup>36</sup> The return filing ceremony serves admirably as the primary outlet for the exercise of financial citizenship.<sup>37</sup>

In 2007 the notion of tax-filing-as-civic-ceremony may seem like a hopelessly naive view of April 15, but there is considerable anecdotal evidence that tax filing day really served this purpose in previous decades. When the income tax became a mass tax during World War II,<sup>38</sup> Irving Berlin responded by writing the song, “I Paid My Income Tax Today”:

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tipatory governance. . . .”); Richard A. Musgrave, *Clarifying Tax Reform*, 70 *Tax Notes* 731, 732 (Feb. 5, 1996) (“Moving to a wholly depersonalized [tax] system would reduce taxpayer awareness of the fiscal process and thereby dilute responsible fiscal citizenship.”).

<sup>31</sup> Cass R. Sunstein, *Beyond the Republican Revival*, 97 *Yale L.J.* 1539, 1567 (1988).

<sup>32</sup> *Id.* at 1549.

<sup>33</sup> *Id.* at 1552.

<sup>34</sup> But see Part IV (questioning whether taxpayer status is conferred by a filing requirement in the absence of any positive income tax liability).

<sup>35</sup> Sunstein, note 31, at 1555.

<sup>36</sup> *Id.* at 1556.

<sup>37</sup> Admittedly, the described civic benefits of tax return filing will not appeal to those who subscribe to interest group pluralism—under which politics is simply a struggle among groups for a limited supply of societal resources—as a normative political theory. Although the claims in this Section are not addressed to pluralists, even they should appreciate the role a filing requirement might play in focusing individuals’ attention on their interests as taxpayers, thus making them better able to pursue their self-interest through the political process.

<sup>38</sup> See generally Carolyn C. Jones, *Class Tax to Mass Tax: The Role of Propaganda in the Expansion of the Income Tax During World War II*, 37 *Buff. L. Rev.* 685 (1989).

I said to my Uncle Sam  
“Old Man Taxes here I am”  
And he—was glad to see me.  
Lower brackets that’s my speed  
Mister Small Fry yes indeed  
But gee—I’m proud as can be.

I paid my income tax today  
I’m only one of millions more  
Whose income never was taxed before  
A tax I’m very glad to pay  
I’m squared up with the U.S.A.  
You see those bombers in the sky  
Rockefeller helped to build them  
so did I  
I paid my income tax today.<sup>39</sup>

Nor did this attitude disappear with the end of the war. Michael Graetz has described a scene that may sound familiar to many baby boomers:

I remember decades ago my father taking over our dining room table, sitting there filling out his tax return off and on from about mid-February until April 15 every year. This infuriated my mother for obvious reasons. My father struggled on, viewing his duty to determine how much tax he owed the way Justice Holmes did: as the price we pay for a civilized society.<sup>40</sup>

Or consider *The Honeymooners* episode, “Income Tax,” first broadcast on March 7, 1953.<sup>41</sup> Ralph Kramden prepares his tax return, with considerable difficulty. (“I’m dropping dead from the question” on the return, he remarks at one point.<sup>42</sup>) He finds that he owes \$15, which he could pay with the \$15 he had saved to buy a new bowling

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<sup>39</sup> Irving Berlin, *I Paid My Income Tax Today* (1942), quoted in Carolyn C. Jones, *Mass-Based Income Taxation: Creating a Taxpaying Culture, 1940-1952*, in *Funding the Modern American State, 1941-1995*, at 107, 122 (W. Elliot Brownlee ed., 1996).

<sup>40</sup> Michael J. Graetz, *A Fair and Balanced Tax System for the Twenty-First Century*, in *Toward Fundamental Tax Reform* 48, 49 (Alan J. Auerbach & Kevin A. Hassett eds., 2005).

<sup>41</sup> Situation comedies can serve as important source material in constructing a social history of the income tax. Those episodes are described in Zelenak, note 23. Several of those episodes, reflecting changing attitudes to income tax preparation, are discussed below.

<sup>42</sup> *The Honeymooners: Income Tax* (CBS television broadcast Mar. 7, 1953).

ball.<sup>43</sup> Just at that moment, however, a priest drops by and asks for a donation for the “hungry and homeless abroad,” and Ralph gives him the \$15.<sup>44</sup> Ralph tells Alice, his wife, that he will get the tax money by working an extra shift.<sup>45</sup> The episode concludes with Ralph declaring:

I didn’t mean that before what I said about income taxes. Boy, we should give everything to the government. We’re living in a great country. This is the greatest country in the world. We’ve got parks for the kids. Everybody’s free to say what they think and do and please. It’s a great place. You know something? We’re pretty lucky, even though we didn’t have a hurricane, a fire or an explosion.<sup>46</sup>

Similar attitudes were expressed in a number of other radio and television situation comedies from the late 1940’s through the early 1960’s. In a 1948 radio episode of *The Adventures of Ozzie and Harriet*, Emmy Lou, a neighborhood girl, sees Ozzie mailing his tax return and is moved to exclaim:

Oh, what a wonderful bit of Americana! There you stand by the mailbox, a patriotic smile on your face. Your heart cries out, “Take it, Uncle Sam! There’s a lot more where that came from!” No complaining, no grumbling, you’re eager and willing to pay your country its due. You’re 130 million Americans, Mr. Nelson!<sup>47</sup>

Although the show plays Emmy Lou’s over-the-top enthusiasm for a laugh, the show appears to endorse Emmy Lou’s basic attitude toward the tax filing ceremony. A 1950 episode of *Life with Luigi*, a radio situation comedy featuring a recent immigrant, closes with Luigi writing a letter to his mother in Italy, telling her that the total tax collections of the United States for the year were more than \$46 billion, and that “I’m proud to tell you that \$1.56 is what I paid in.”<sup>48</sup> Another sitcom immigrant, Jose Jimenez of the *Bill Dana Show*, expressed similar sentiments in a 1963 episode.<sup>49</sup> Jose tells a co-worker, “I get a wonderful feeling out of making my income tax.”<sup>50</sup> Jose treats prepar-

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<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id. The last sentence refers to Ralph’s disappointment, expressed earlier in the episode, that he did not qualify for a casualty loss deduction.

<sup>47</sup> *The Adventures of Ozzie and Harriet*, “Income Tax,” (NBC television broadcast Mar. 7, 1949).

<sup>48</sup> *Life with Luigi*, “Income Tax Season” (CBS television broadcast Mar. 7, 1950).

<sup>49</sup> *The Bill Dana Show*, “A Tip for Uncle Sam” (NBC television broadcast Jan. 8, 1963).

<sup>50</sup> Id.

ing his return as an occasion for reflecting on “the privilege of living in this wonderful country and having my coastline protected.”<sup>51</sup>

There may be another valuable ceremonial aspect to the tax return filing obligation—the recognition that the government *trusts* its citizens to report correctly their income and deductions, and to calculate their own tax liabilities. This trust—and the concomitant opportunity to disappoint that trust—may be important in symbolizing that the powers of the government are indeed (in the words of the Declaration of Independence) derived “from the consent of the governed.”<sup>52</sup> This would be lost in a return-free system, in which the typical taxpayer would have no choice but to fully comply with his tax obligations.<sup>53</sup> Of course, withholding, information reporting, and audits make it clear that the government trusts taxpayers only up to a point (and a not-very-distant point at that), and there is obviously a limit on how much trust is compatible with efficient tax collection. Still, the level of trust implicit in the current system is far from trivial (especially with respect to deductions), and the civic virtues flowing from reciprocal trust—with the government trusting taxpayers to self-assess and pay their proper tax liabilities, and taxpayers trusting the government to spend tax dollars responsibly—may be worth the inevitable noncompliance by some taxpayers.<sup>54</sup>

The current system also empowers citizens to protest government actions, by using either a failure to file or a failure to pay as form of civil disobedience.<sup>55</sup> As Judge McKay of the Tenth Circuit has writ-

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<sup>51</sup> *Id.*

<sup>52</sup> The Declaration of Independence para.2 (U.S. 1776).

<sup>53</sup> If it is not too grandiose to suggest it, a filing obligation gives taxpayers an element of free will somewhat analogous to the Miltonian conception of Adam and Eve as “Sufficient to have stood, though free to fall.” John Milton, *Paradise Lost*, Book iii, line 99 (1667).

<sup>54</sup> In an article examining the effect of trust on taxpayer compliance, Benno Torgler suggests that governmental trust in citizens, demonstrated by “allow[ing] citizens to declare their own income and to make generalised deductions,” could cause citizens to reciprocate the government’s trust, thus promoting taxpayer compliance (because levels of compliance are positively correlated with levels of trust in government). Benno Torgler, *Tax Morale, Rule-Governed Behaviour and Trust*, 14 *Const. Pol. Econ.* 119, 137 (2003). If government trust in taxpayers is valued only instrumentally—for its potential to improve tax compliance—Torgler’s suggestion seems to miss an important point. True, taxpayers will not exploit every opportunity to cheat under a return-based system in which they feel trusted, but there may be less cheating under a return-free system simply because the system provides for fewer opportunities for cheating. The suggestion in the text is not that reciprocal trust has instrumental value in promoting compliance, but that such trust is intrinsically valuable in a democracy.

<sup>55</sup> See Marjorie E. Kornhauser, *Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America*, 50 *Buff. L. Rev.* 819 (2002) [hereinafter *Legitimacy*] (a wide-ranging critical review of the history of tax protests in the United States, examining both their positive and negative aspects); Marjorie E. Kornhauser, *For God and Country: Taxing Conscience*, 1999 *Wis. L. Rev.* 939 (reviewing the history of U.S. anti-war tax protests, and proposing a statute to allow war tax resisters to direct their tax

ten, “It is hard to imagine a kind of political protest more consistent with the most cherished traditions of this nation than protest focusing on the laws of taxation.”<sup>56</sup> Tax-related civil disobedience does not require a return-based income tax—after all, Thoreau’s famous act of civil disobedience was a refusal to pay a *poll* tax<sup>57</sup>—but it does require a form of taxation imposed directly on individuals and giving individuals some choice as to whether or not to comply. A national value-added tax, national sales tax, or even a truly return-free income tax (such as the U.K.’s PAYE system) would not provide this opportunity. Of course, some might favor the elimination of the filing requirement precisely in order to eliminate the opportunity for tax protesting. As long as tax protests do not overwhelm the system, however, retaining a return-based income tax as an avenue for civil disobedience has its merits. Better, perhaps, to provide a tax outlet for civil disobedience than to leave citizens either feeling powerless to lodge a meaningful protest, or considering less peaceful protest methods.<sup>58</sup>

### III. VIRTUES LOST AND REGAINED

#### A. *Have the Civic Virtues Been Lost?*

Realizing the civic potential of return filing may require a reasonably straightforward and transparent income tax. The tax faced by Michael Graetz’s father and by Ralph Kramden was adequate by those criteria.<sup>59</sup> If, however, taxpayers experience the income tax as a complex mess—a fair description of the federal income tax today<sup>60</sup>—then their reflections on the income tax, and on government itself, may take a far-from-Holmesian turn. The civic virtues are not then merely lost; they are turned into vices. Rather than solidifying the

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payments to a Peace Tax Fund, no portion of which would be spent for military purposes); Angela P. Harris, *Vultures in Eagles’ Clothing: Conspiracy and Racial Fantasy in Populist Legal Thought*, 10 Mich. J. Race & Law 269, 277-85 (2005) (describing a number of the tax protest arguments of the “legal populist movement,” including the arguments that wages are not income, and that the Sixteenth Amendment was never ratified).

<sup>56</sup> United States v. Amon, 669 F.2d 1351, 1364 (1981) (McKay, J., dissenting).

<sup>57</sup> Henry David Thoreau, *The Variorum Civil Disobedience* 11-27 (Walter Harding ed., Twayne Publishers 1967) (1849).

<sup>58</sup> As Kornhauser has observed, “The challenge for this country is to maintain the delicate balance between healthy and self-destructive tax protest.” Kornhauser, *Legitimacy*, note 55, at 929. The elimination of the return-based income tax might leave too little room for healthy tax protest.

<sup>59</sup> See, e.g., 1 Treas. Dep’t, *Tax Reform for Fairness, Simplicity, and Economic Growth* 2 (1984) (“Though the 1954 income tax system exhibited some serious problems, it was relatively simple, it was more nearly neutral toward many economic decisions, and most citizens probably thought it was reasonably fair.”).

<sup>60</sup> See Graetz, note 40, at 50, fig. 1 (chart showing that the federal income tax statutes and regulations grew from approximately 1.5 millions words in 1946, to approximately 9.4 million words in 2000).

link between citizen and government, return filing poisons the relationship. This point has been noted by a number of commentators. Complaining that “[t]axpayers at every economic level confront extraordinary complexity,” Graetz concludes that “[i]n America today, very few people share my dad’s attitude toward taxes.”<sup>61</sup> And former Commissioner Everson warns that “[t]hose who seek to comply but cannot understand their tax obligations may . . . ultimately throw up their hands and say ‘why bother.’”<sup>62</sup> After spending many miserable hours satisfying their filing obligations, taxpayers are not likely to be basking in the warm glow of Holmesian contemplation of their fiscal citizenship.<sup>63</sup> (An alternative hypothesis—that the deterioration in attitudes toward the tax return filing process is attributable to trends in recent decades in the prevalence and dollar amounts of tax refunds is considered and rejected later in this Article.<sup>64</sup>)

A change in attitudes to the income tax produced by increasing complexity can be traced through the subsequent treatment of the income tax in two working class situation comedies—*All in the Family* and *Roseanne*—both clearly descended from *The Honeymooners*.

In “Archie’s Fraud,” a 1972 episode of *All in the Family*, the IRS audits Archie Bunker’s friend, Munson.<sup>65</sup> In order to prove his business expenses, Munson asks Archie for a receipt for the \$680 cash Munson paid Archie last year for driving Munson’s taxi on Sundays.<sup>66</sup>

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<sup>61</sup> Id. at 49-50.

<sup>62</sup> Everson, note 30, at 4; see also Kambas, note 30, at 1450 (“Americans were once unified, in fact linked, with their governments through the exercise of tax compliance. Recently, however, that relationship is challenged because the compliance process has become a mere burden, rather than remain[ing] a proud responsibility.”).

<sup>63</sup> Examining survey data from the 1990 Taxpayer Opinion Survey (sponsored by the IRS), Adam Forest and Steven Sheffrin “found no systematic links between [taxpayers’] perceptions of complexity and [taxpayers’] perceptions of unfairness.” Adam Forest & Steven Sheffrin, Complexity and Compliance: An Empirical Investigation, 55 Nat’l Tax J. 75, 86 (2002). The problem with increasing tax complexity, however, is not that taxpayers necessarily view a more complex tax as a less fair tax. Rather, as stated in the text, the problem is that an excruciating encounter with the complexities of the filing obligation is incompatible with filing as a valuable civic exercise, even if the taxpayer believes the complex system distributes tax burdens fairly.

Of course, as Forest and Sheffrin acknowledge, “[T]here is no necessary theoretical link between the complexity of the tax system and its perceived unfairness that will hold over all places and time.” Id. at 76. It is possible that the increase in tax complexity from 1990 to the present has resulted in taxpayers perceiving the income tax to be less fair. This is especially likely if post-1990 increases in complexity have caused most taxpayers to view the income tax as an impenetrable black box, which spits out a tax bill through some process that they cannot begin to understand. In that case, taxpayers can have no assurance that tax liabilities (both their own and those of their fellow taxpayers) are produced by a set of fair rules.

<sup>64</sup> See Section III.B.

<sup>65</sup> *All in the Family*, “Archie’s Fraud” (CBS television broadcast Sept. 23, 1972).

<sup>66</sup> Id.

When Archie refuses, because Archie did not report the income on his own return, Munson declares, "That's fraud," and Edith, Gloria, and Mike (Archie's wife, daughter, and son-in-law) stare disapprovingly at Archie. Gloria asks, "How could you cheat on your taxes?" Archie replies, "I didn't cheat. I just done what everyone else does." Mike disagrees: "Everybody doesn't cheat . . . . And if Archie committed a fraud they could fine him or put him in jail." A beleaguered Archie defends himself on the grounds that he was just "exercising my loophole." Rather than waiting for the Service to discover his misdeed, Archie decides to visit the IRS office to file an amended return, where Edith explains to the IRS employee, "Archie volunteered to come down as soon as he found he might have to go to prison." When the IRS employee tells Archie that he owes \$140 tax, Archie tries to bribe him with offers of free cab rides and free tires. The employee responds by ordering an audit of Archie's returns for the last three years. The scene concludes with Edith consoling Archie, "Oh Archie, it ain't so bad. At least you found an honest man."<sup>67</sup>

Compared with *The Honeymooners* almost twenty years earlier, *All in the Family* suggests that the taxpayer-government linkage through the tax return system had eroded over the intervening years, but still retained considerable strength. Unlike Ralph, Archie responds to the encounter with his tax return by cheating, not by singing hymns of praise to America. On the other hand, Archie's cheating is condemned by all the members of his family, including Edith—who, naive though she may be, is clearly the show's moral compass. And the episode ends with Archie being justly punished.<sup>68</sup>

If *All in the Family* suggests the civic virtues associated with return filing had eroded by 1972, the "April Fool's Day" episode of *Roseanne* suggests those virtues had disappeared by 1990.<sup>69</sup> The episode opens

<sup>67</sup> Id.

<sup>68</sup> Another sitcom episode from the early 1970's—a 1974 episode of *Maude*—similarly suggests both that income tax honesty norms had badly eroded, and that tax cheaters were likely to be punished. Faced with an audit, a nervous Walter (Maude's husband) tells Maude, "I haven't done anything that every other taxpayer doesn't do." To this Maude responds, "That bad, huh?" The audit results in a large tax bill for Walter. Maude, "The Tax Audit" (CBS television broadcast Feb. 12, 1974).

<sup>69</sup> *Roseanne*, "April Fool's Day" (ABC television broadcast Apr. 10, 1990). Attributing the corrosive cynicism of "April Fool's Day" to the increasing complexity of the Code fits uncomfortably with the fact that the tax return in the episode is for 1989—a year in which most of the simplification gains from the Tax Reform Act of 1986 had not yet been lost. On the other hand, the income tax of the late 1970's and early-to-mid 1980's was indeed a complex mess, and the negative attitudes generated by a decade or more of complex messiness did not suddenly disappear as a result of the 1986 legislation. Moreover, polling data suggest that taxpayers had grown so cynical by 1990 that they refused to recognize the simplification gains from the 1986 Act. In a Gallup Survey conducted in March 1990, 31% of respondents thought that the 1986 Act had made paying their taxes more complicated, 48% thought the complexity had remained about the same, and only 12% thought the 1986

with Dan Conner sitting at his kitchen table on April 15, working on his tax return. His encounter with the form and instructions leads to his angry description of the income tax as “[a] stupid system run by stupid people, thought up by stupid people, hired by stupid people.” (“Who were elected by even stupider people,” Roseanne helpfully points out.) He complains, “This stuff’s so complicated nobody can understand it.” Roseanne offers to help, but after a short review of the instructions she says, “OK, I give up. What language is this?” One of their children asks whether they cheat on their income tax. Roseanne says, “Absolutely not,” at the same time winking and nodding to indicate they do cheat.<sup>70</sup>

Uncertain whether they should have a Form 1099 for \$400 of income Roseanne earned by selling magazine subscriptions, and unable to find the answer in the instructions, they decide to go to the local IRS office. After a long wait, an obnoxious IRS employee points out the answer (that a 1099 is not required for amounts of less than \$600) in the instructions and remarks: “The answer is there in writing. Sorry there are no pictures.” This inspires Roseanne to exclaim: “No human being can really understand these things, you know that. That’s why you’ve got to go get some \$200 an hour lawyer to explain the crap to you, you know. And I can’t afford \$200 an hour.” Another IRS employee chimes in: “We don’t write the stinking laws. You got a complaint, talk to the idiots in Congress.” Roseanne addresses her next remarks to the entire room: “The poor people and us regular people, we’re paying more taxes than the rich people, ‘cause they’ve got all the lawyers to figure out all the loopholes.”<sup>71</sup>

They then go home to complete their return. Although the episode is not explicit on this point, the implication is that once they know the \$400 was not subject to third-party reporting, they do not include it on their return. The show ends with an ironic coda, featuring John Goodman (the actor playing Dan Conner) out of character (or at least playing himself), and apparently concerned that the IRS may decide to audit him in retaliation for the opinions expressed by Dan Conner in the episode: “What you’ve just seen was a play. . . . I personally have nothing but the utmost respect for the Internal Revenue Service and all its dedicated workers. Because, you know, it’s the great guys and gals at the IRS that keep America rolling. . . . So I beg you

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Act had simplified the process. Gallup Survey of March 8-March 11, 1990 (March Wave 1), question 15, available at <http://brain.gallup.com/documents/trendQuestion.aspx?QUESTION=36404&Advanced=0>.

<sup>70</sup> Id.

<sup>71</sup> Id.



please do not confuse hardworking, responsible taxpaying John Goodman with that loveable but naughty scamp Dan Conner.”<sup>72</sup>

There is a limit to the tax policy lessons that can reasonably be drawn from sitcom episodes,<sup>73</sup> but other evidence also suggests a complexity-related erosion in the civic virtues of the return filing process. The most striking evidence that taxpayers perceive the income tax to have grown more complex over the past few decades has been the near disappearance of the taxpayer preparing his own return with pencil and paper.<sup>74</sup> In the 1950's fewer than 20% of taxpayers used

<sup>72</sup> *Id.* Other sitcom episodes from the early 1990's also suggest the disappearance of the civic virtues formerly associated with return filing. In an episode of *Married . . . with Children*, Al Bundy panics when he receives an audit notice because he had claimed twenty-three dependents on the to-be-audited return. *Married . . . with Children*, “A Taxing Problem” (Fox television broadcast Jan. 14, 1990). It is true that Al Bundy is a generally reprehensible character, but the attitude toward the income tax exhibited by the generally admirable Cliff Huxtable is only a slight improvement over Bundy's. In a 1992 episode of *The Cosby Show*, Cliff wants Claire to prepare their return with the help of *The Patriot's Guide to Taxpaying*, the author of which was “drummed out [of the IRS] for giving too many tax tips to the American taxpayer.” *The Cosby Show*, “Some Gifts Aren't Deductible” (NBC television broadcast Apr. 23, 1992). Cliff tries to convince Claire that they qualify for (among other things) an exemption for government workers disabled by terrorist attacks and a deduction for owners of trees destroyed by southern pine beetles. *Id.*

<sup>73</sup> Given the large number of tax-related sitcom episodes—almost 90 from 1940 to the present—it is not surprising that a few episodes go against the general trend. A dishonest character may cheat on his income tax even in an era in which the income tax is held in high regard, and an honest character may comply with his tax obligations even in a dishonest era. For example, despite the respect for the tax system demonstrated by most 1950's sitcoms, Sergeant Bilko spends most of a 1956 episode generating fraudulent receipts to support claimed tax deductions. *The Phil Silvers Show*, “Bilko's Tax Trouble” (CBS television broadcast Dec. 4, 1956). And despite the disrespect for the tax system reflected in most recent sitcoms, in a 2006 episode of *My Name is Earl*, paying his income tax (belatedly) causes Earl to reflect, in a voiceover: “[E]ven if you don't see the government working for you every day, it's out there working for somebody.” *My Name Is Earl*, “Didn't Pay Taxes” (NBC television broadcast Mar. 2, 2006).

<sup>74</sup> There is an impressively large body of public opinion data on various income tax-related issues, going back to the 1940's. For an excellent collection of much of the available data, see Karlyn Bowman, *AEI Studies in Public Opinion: Public Opinion on Taxes* (updated Apr. 6, 2007), available at <http://www.aei.org/publicopinion6>. One might try to discern changing views on the complexity of the income tax by consulting these survey data. Unfortunately, pollsters have not been asking questions focused on complexity for long enough for any clear trends to have emerged in the polling results. See *id.* at 69 (reporting results of surveys taken in 2003, 2005, and 2006, asking respondents whether the income tax was “very complex,” “somewhat complex,” “not too complex,” or “not at all complex;” in the 2003 survey 86% thought the income tax was either very or somewhat complex, compared with 81% in 2005 and 80% in 2006). There are older polls asking taxpayers how difficult they found it to prepare their returns, but the respondents were limited to those who prepared their own returns. See, e.g., *The Roper Organization Inc., The American Public and the Income Tax System: The Third in a Series of Studies, Question 35* (May 1979), available at <http://roperweb.ropercenter.uconn.edu> as USRSPHR-BLOCK1979-0673 (in a survey commissioned by H&R Block, 5% of respondents found “this year's federal tax forms” very difficult to fill out, 15% found the forms fairly difficult, 37% found the forms not very difficult, and 43% found the forms not difficult at all); Chilton Research Services, *National Poll, Question 34* (Apr. 1987), available at <http://>

paid preparers.<sup>75</sup> By 1993 paid preparers were responsible for 51% of all individual returns, while 8% of taxpayers did their own returns with the help of recently-introduced tax return preparation software, and 41% continued to do their own returns the old-fashioned way.<sup>76</sup> Ten years after that, in 2003, the market share of paid preparers had grown to 62%, taxpayers using software had increased to 25%, and the pencil-and-paper crowd had dwindled to 13%.<sup>77</sup> Although the growth in taxpayers' use of software might be explained entirely by technological innovation rather than by increasing tax law complexity, the impressive long-term growth in the use of paid preparers (even in the face of competition from do-it-yourself software, and despite increases in the inflation-adjusted cost of return preparation services)<sup>78</sup> almost certainly represents a response to increasing complexity.<sup>79</sup>

The growing reliance by taxpayers on paid preparers raises two questions relating to the possible civic virtues of a return filing requirement. The first is whether a taxpayer who uses a paid preparer retains enough involvement in the process to generate the civic virtues. The second is whether the threat posed to the civic virtues by complexity can be negated by the use of paid preparers. In other words, when taxpayers hire paid preparers to deal with complexity, do they avoid the negative feelings toward the tax system that would result if they had to grapple with the complexity themselves?

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roperweb.ropercenter.uconn.edu as USABCWASH1987-7021 (responding to a question in a 1987 survey sponsored by ABC News and The Washington Post, 31% found figuring out federal taxes and filling out the forms very difficult, 26% somewhat difficult, 21% not too difficult, and 18% not difficult at all).

<sup>75</sup> Michael J. Graetz, *The Decline (and Fall?) of the Income Tax* 81 (1997).

<sup>76</sup> Eric Toder, *Changes in Tax Preparation Methods, 1993-2003*, 107 *Tax Notes* 759 (May 9, 2005).

<sup>77</sup> *Id.*

<sup>78</sup> Data on the average return preparation fees charged by H&R Block are available in H&R Block's annual returns. In 1992, for example, the average fee (for U.S. clients) was \$53.31. Author's calculations, based on H&R Block, 1996 Annual Report 33 (data for 1992 total U.S. tax preparation fees and total U.S. returns prepared). By 2006, the average fee had grown to \$165.06. H&R Block, 2007 Form 10K, at 26, available at <http://www.hr-block.com/presscenter>. If the average fee had merely kept pace with inflation from 1992 to 2007, the average fee in 2007 would have been only about \$79 (according to author's calculations using the inflation calculator of the Bureau of Labor Statistics, <http://www.bls.gov/cpi>).

<sup>79</sup> Even without increasing complexity, the use of paid preparers might grow if the value of taxpayers' time increased more rapidly than the cost of return preparation services. Although that might explain some of the increase in the use of paid preparers by higher-income taxpayers, it would not explain why, in 2002, 67% of low-income parents who filed tax returns received help preparing their returns (with almost all the help coming from paid preparers). Elaine Maag, *Paying the Price? Low-Income Parents and the Use of Paid Tax Preparers*, *New Federalism: National Survey of America's Families*, Series B, No. B-64, at 3 (Feb. 2005), available at [http://www.urban.org/uploadedPDF/411145\\_B-64.pdf](http://www.urban.org/uploadedPDF/411145_B-64.pdf).

My tentative answer to the first question is, yes, the civic virtues of return filing are compatible with the use of paid preparers. The virtues are the result of the taxpayer's active engagement in the process, and active engagement is possible without taxpayers spending hours deciphering the forms and instructions themselves. In fact, IRS research for tax year 2000 indicates that taxpayers who used paid preparers spent an average of 27.5 hours on return preparation activities (such as recordkeeping, tax planning, gathering tax materials, and consulting with paid preparers).<sup>80</sup> The average cost for the services of a paid preparer was \$243.<sup>81</sup> The 27.5 hours average for users of paid preparers was actually more than the average of 18.1 hours spent by taxpayers who prepared their own returns using pencil and paper.<sup>82</sup> If the typical user of a paid preparer spends the equivalent of more than three working days on the return preparation process (broadly defined to include recordkeeping and tax planning, which may have been done many months before the actual preparation of the return), that should be more than enough time to produce the desired degree of contemplation of one's tax liability and of the tax system in general.

That leads to the second question—does the increasing taxpayer reliance on paid preparers make it possible for Congress to increase the complexity of the tax laws without losing the civic virtues of return filing? Any answer is necessarily speculative, but I believe it does not. The 27.5 hours figure suggests that much of the burden of dealing with complexity cannot be transferred to paid preparers.<sup>83</sup> The problem with the figure is not that it is so small as to eliminate meaningful taxpayer participation in the process, but that it is so large as to generate taxpayer hostility to the process and to the income tax itself. And even to the extent taxpayers are able to avoid the time cost of complexity by hiring paid preparers, they will recognize the cost of the paid preparers—an average of \$223—as itself a cost of complexity, and resent it as such. Moreover, the use of preparers does nothing to alleviate taxpayers' sense of the income tax system as a black box,

<sup>80</sup> John L. Guyton, Adam K. Korobow, Peter S. Lee & Eric J. Toder, *The Effects of Tax Software and Paid Preparers on Compliance Costs*, 58 *Nat'l Tax J.* 439, 441 tbl.1 (2005).

<sup>81</sup> *Id.*; see also H&R Block, note 78, at 25 (indicating H&R Block charged an average of \$160.68 per return for return preparation services in its fiscal year 2006).

<sup>82</sup> Guyton et al., note 80, at 441 tbl.1. Taxpayers using software to prepare their own returns spent the most time of all groups—37.3 hours on average. *Id.* Although perhaps surprising, the results are not anomalous because the returns prepared by taxpayers with pencil and paper tend to be considerably simpler than the returns for either of the other two groups. Taxpayers using software saved themselves 7.5 hours on average compared with the pencil-and-paper option (at an average cost of \$11 for the software), and taxpayers using paid preparers saved themselves 23.4 hours on average compared with the pencil-and-paper option (at an average cost of \$223). *Id.* at 444 tbl.2.

<sup>83</sup> For a discussion of why it is difficult or impossible to transfer much of the burden of dealing with complexity to paid preparers, see text accompanying notes 99-101.

producing income tax liabilities through the use of incomprehensible rules that taxpayers have no reason to assume are fair.

### *B. Do Tax Refund Trends Explain Changing Attitudes?*

As detailed below, since the 1970's roughly three-quarters of individual income tax returns have shown overpayments, indicating the taxpayers are entitled to refunds (of tax withheld, estimated tax payments, or of refundable credits).<sup>84</sup> Taxpayers' attitudes toward the return filing process may be affected by whether they associate the process with receiving a refund of an overpayment, or with having to write a check in the amount of an underpayment. If there had been a decline over the past half-century in the prevalence of refunds, that might explain the decline in good feelings about the return filing process (and thus serve as an alternative to the complexity-based story offered above). In fact, however, refunds have become *more* common even as attitudes toward return preparation have deteriorated. In the 1950's, returns showing overpayments ranged (as a percentage of all returns) from a low of 56% in 1951 to a high of 63.7% in 1959, with 60.3% as the average of the annual percentages for the decade.<sup>85</sup> The average of the annual percentages was 66.8% in the 1960's, 76.9% in the 1970's, 74.9% in the 1980's, 73% in the 1990's, and 78.2% from 2000 to 2005.<sup>86</sup> The average size of refunds has also increased over the decades, even after adjustment for inflation.<sup>87</sup> Converted to 2005 dollars, the average overpayment (on returns showing overpayments) was \$784 in 1954, \$954 in 1965, \$1,670 in 1975, \$1,787 in 1985, \$1,794 in 1995, and \$2,597 in 2005.<sup>88</sup> All else being equal, the increasing prevalence and size of refunds might have been expected to make taxpayers feel better about the return preparation process, but any such effect

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<sup>84</sup> See IRS, Selected Historical and Other Data, 26 Stat. Income Bull. 177, 254 tbl.9 (Spring 2007) ("Number of Individual Income Tax Returns, by Type of Tax Settlement, Tax Years 1950-2005"), available at <http://www.irs.gov/pub/irs-soi/histab9.xls>.

<sup>85</sup> Author's calculations based on id.

<sup>86</sup> Author's calculations based on id.

<sup>87</sup> See IRS, Selected Historical and Other Data, 26 Stat. Income Bull. 177, 285 tbl.19 ("Internal Revenue Tax Refunds: Amounts Refunded by Quarter and Fiscal Year, 1987-2007"), available at <http://www.irs.gov/pub/irs-soi/histab19.xls>.

<sup>88</sup> Author's calculations using the the inflation calculator of the Bureau of Labor Statistics, <http://www.bls.gov/cpi>, and based on IRS, note 84, at 181 tbl.1 ("Individual Income Tax Returns: Selected Income and Tax Items for Tax Years 1999-2005"), available at <http://www.irs.gov/pub/irs-soi/histab1.xls>; IRS, Statistics of Income 1995: Individual Income Tax Returns 81 tbl.3.3; IRS, Statistics of Income 1985: Individual Income Tax Returns 36 tbl.1.4; IRS, Statistics of Income 1975: Individual Income Tax Returns 97 tbl.3.10; IRS, Statistics of Income 1965: Individual Income Tax Returns 14 tbl.4; IRS, Statistics of Income 1954: Individual Income Tax Returns 39 tbl.4.

seems to have been more than offset by forces acting in the opposite direction.

Having rejected the hypothesis that trends in overpayments can explain changing attitudes toward tax return preparation, one might consider the possibility of causation running in the opposite direction. Lee Anne Fennell has suggested that taxpayers may treat overwithholding as an analgesic:

Significant refunds effectively bundle the costs of completing tax paperwork with a larger reward (the refund), and hence could significantly reduce the pain associated with the task. People probably do not have this notion consciously in mind when they overwithhold, but the positive reinforcement associated with having a large, attractive reward paired with an unavoidable and distasteful task could play a role in perpetuating overwithholding behaviors.<sup>89</sup>

If Fennell's suggestion is correct, then taxpayers may have responded to the increasing pain caused by increasing tax preparation complexity by taking more and larger doses of pain-relieving refunds. There is a risk, however, in reading too much into changing withholding patterns because the available evidence suggests that the extent of overwithholding is largely within the control of the government. Taxpayers tend to accept whatever amount of withholding happens to be produced by the mechanical application of the withholding tables, despite their ability to increase or decrease their withholding relative to the amount produced by the default rules.<sup>90</sup>

### *C. Can the Civic Virtues Be Regained?*

A return filing requirement can have significant civic virtues, but only if the substantive law is simplified so that the return preparation burden—in time and in dollars, with or without the help of software or paid preparers—is seen by taxpayers as reasonable. The attitude of Holmes (and Kramden) toward taxes lies dormant among the U.S.

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<sup>89</sup> Lee Anne Fennell, *Hyperopia in Public Finance*, in *Behavioral Public Finance* 141, 151 (Edward J. McCaffery & Joel Slemrod eds., 2006).

<sup>90</sup> See Matthew D. Shapiro & Joel Slemrod, *Consumer Response to the Timing of Income: Evidence from a Change in Tax Withholding*, 85 *Am. Econ. Rev.* 274, 276 (1995) (reporting results of a survey of taxpayer responses to a 1992 change in the withholding tables that reduced the amount of withholding produced under the default rules; fewer than 10% of taxpayers surveyed reported that they “adjusted their withholding to offset the mandated change”); see also IRS, note 84, at 285 tbl.19 (showing a large drop in refunds from fiscal year 1992 (\$88.6 billion) to fiscal year 1993 (\$74.2 billion), almost certainly in response to the changes in the withholding tables). For the official announcement of the 1992 withholding changes, see Notice 92-6, 1992-1 C.B. 495.

public, waiting to be reawakened by a revised income tax with a less aggravating return preparation process. In 1999, 2002, 2003, 2004, and 2006 the IRS Oversight Board commissioned national Taxpayer Attitude Surveys, which asked respondents (among other things) whether they agreed with the (ungrammatical) statement: "It is every American's civic duty to pay their fair share of taxes." In three of the five years, 95% of respondents "completely" or "mostly" agreed with the statement; 96% and 94% "completely" or "mostly" agreed in the other two years.<sup>91</sup> Perhaps even more remarkable, surveys conducted since 1990 have consistently found a substantial portion of taxpayers—nearly a quarter in several cases—who either "loved" or "liked" "doing [their] income taxes."<sup>92</sup> It is difficult to know what to make of these "loved" and "liked" responses. For one thing, the respondents are a mix of users of paid preparers, software users, and paper-and-pencil users, so "doing taxes" does not mean the same thing for all respondents. In addition, it is not clear *why* some people love or like doing their taxes—are they the spiritual heirs of Holmes and Kramden, do they associate doing taxes with receiving refunds, or are they just puzzle enthusiasts?<sup>93</sup> Despite this uncertainty, the survey re-

<sup>91</sup> IRS Oversight Board, 2006 Taxpayer Attitude Survey, Question 2 (Feb. 2007), [http://www.treas.gov/irsob/reports/2006\\_taxpayer\\_attitude\\_survey.pdf](http://www.treas.gov/irsob/reports/2006_taxpayer_attitude_survey.pdf). The 2006 survey changed the question slightly, asking respondents whether they agreed with statement, "It's my civic duty to pay my fair share of taxes." Ninety-four percent of respondents agreed with the statement ("strongly" or "somewhat"). A 2006 survey commissioned by AARP asked respondents to agree or disagree that "it is every American's civic duty to pay their fair share of taxes." AARP, *Opinions on Taxes Among U.S. Adults 5* (Mar. 2006), <http://assets.aarp.org/rgcenter/econ/taxsurvey.pdf>. Almost all (92%) of the respondents agreed ("completely" or "mostly") with the statement. *Id.* Another private poll of U.S. taxpayers, conducted in 2003, asked whether they agreed or disagreed with the statement: "I don't mind paying taxes because my taxes are part of my contribution to society as a citizen of the United States." Eighty-two percent agreed (including 56% agreeing strongly). Stanley B. Greenberg & Anna Greenberg, *Taxes, Government and the Obligations of Citizenship* 6 (Nov. 12, 2003), [http://www.GreenbergResearch.com/articles/156211986\\_pip\\_m111203.pdf](http://www.GreenbergResearch.com/articles/156211986_pip_m111203.pdf). The difference between the Greenberg results and the IRS Oversight Board and AARP results may be due to the difference in the wording of the statements; perhaps 10% to 15% of taxpayers recognize that paying taxes is their civic duty but nevertheless mind fulfilling that duty.

<sup>92</sup> AEI Studies in Public Opinion, note 74, at 71. The AEI Study summarizes the results of four Gallup/CNN/USA Today surveys taken in 1990, 1991, 2000, and 2001. Each survey asked respondents whether their attitude toward doing their taxes was one of "love", "like", "dislike", or "hate." In 1990, 2% chose "love" and 21% chose "like." The corresponding numbers in 1991 were 2% and 22%, 3% and 15% in 2000, and 3% and 21% in 2001. In a 2005 survey conducted by Harris Interactive for the Tax Foundation, however, only 1% of respondents to an almost identical question selected "love", and only 11% selected "like." *Id.* at 72.

<sup>93</sup> A closer look at the results of the 2001 Gallup/CNN/USA Today survey results reveals that the percentage of taxpayers who love or like doing their taxes decreases as income increases. Frank Newport, *Americans Suffer from Negative Mental Attitude While Doing Taxes*, Gallup News Serv., Apr. 12, 2001, <http://institution.gallup.com/content/default.aspx?ci=1807>. Newport suggests this is "most probably due to the fact that low-

sults suggest that a nontrivial amount of goodwill toward the return preparation process has survived the increasing complexity of the income tax. Most remarkable of all, perhaps, is the result of a 2005 survey asking respondents to select one of six adjectives to describe how “the process of paying your taxes” made them feel; more selected positive or neutral adjectives (“happy” (4%), “satisfied” (15%), and “neutral” (41%)) than selected negative ones (“frustrated” (17%), “anxious” (10%), and “angry” (7%)).<sup>94</sup>

There are indications, then, that the civic virtues of a return filing requirement might be reclaimed under a simplified income tax. But what sort of simplification would be needed? In attempting to answer that question, it is useful to distinguish two sorts of return preparation complexity. First, there is the complexity faced by the taxpayer when he sits down to prepare his return; the proliferation of phaseout provisions and the growing impact of the alternative minimum tax (AMT) have greatly increased this sort of complexity in recent years.<sup>95</sup> Second, there is the planning and recordkeeping complexity that taxpayers face throughout the year in anticipation of the eventual preparation of their returns. This second sort of complexity has also significantly increased in recent years, due to the impressive growth of narrowly targeted tax benefits for particular types of expenditures.<sup>96</sup> Phaseouts and the AMT have had an impact here as well, because it is

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income families generally have the lowest taxes to pay.” *Id.* Even in the highest income group (households with annual income above \$75,000), however, 2% loved and 14% liked doing their taxes. *Id.*

<sup>94</sup> AEI Studies in Public Opinion, note 74, at 72 (summarizing Blum & Wepring/NBC News Poll, Apr. 2005).

<sup>95</sup> For an insightful critique of phaseouts, based partly on their contribution to return preparation complexity, see Robert J. Peroni, Reform in the Use of Phase-Outs and Floors in the Individual Income Tax System, 91 Tax Notes 1415, 1429-33 (May 28, 2001). For a complexity-based critique of the growing impact of the alternative minimum tax, see The President’s Advisory Panel on Federal Tax Reform, note 17, at 85-87.

<sup>96</sup> Most of the new benefits have taken the form of credits, rather than deductions. Some sense of the growth of personal credits can be gleaned from the recent history of the “Personal Credits” chapter in the treatise *Federal Income Taxation of Individuals*. The 1995 edition featured only five personal credits (the earned income tax credit, the foreign tax credit, the dependent care credit, the credit for elderly and disabled taxpayers, and the home mortgage credit). Boris I. Bittker & Martin J. McMahon, Jr., *Federal Income Taxation of Individuals* ¶ 27 (2d ed. 1995). The 2002 edition added six more credits (the child tax credit, the adoption credit, the higher education credit (Hope scholarship and lifetime learning), the District of Columbia first-time homebuyer credit, the qualified academy bonds credit, and the credit for elective deferrals and individual retirement account contributions). Boris I. Bittker, Martin J. McMahon, Jr. & Lawrence A. Zelenak, *Federal Income Taxation of Individuals* ¶ 27 (3d ed. 2002). The current supplement to the third edition features five more credits (the clean renewable energy bonds credit, the health care tax credit, the nonbusiness energy tax credit, the credit for residential energy-efficient property, and the credit for alternative motor vehicles). *Id.* (2007 Cum. Supp. No. 2 ¶ 27). By this count, the number of personal credits has grown from five in 1995 to sixteen in 2007.

often difficult for a taxpayer to determine whether he will actually receive a benefit if he makes a putatively tax-favored expenditure, after the phaseouts and the AMT have done their work.

Both types of complexity can and should be reduced, but reduction of the second sort of complexity is the more important goal. No doubt complexity of the first sort drives some taxpayers to hire paid preparers or buy return preparation software, generating resentment of the out-of-pocket cost of dealing with complexity.<sup>97</sup> In addition, this sort of complexity has greatly decreased the transparency of the process of arriving at one's tax liability, making it impossible for most taxpayers to verify that their tax liability was arrived at by the application of a fair set of rules. On the other hand, once a taxpayer has made the move to a paid preparer or software, the problem of the taxpayer directly confronting return preparation complexity—armed with only pencil, calculator, and scrap paper—simply disappears.<sup>98</sup> Return preparation computational complexity is not a headache—although it imposes a cost in dollar and cents—for the seven out of eight taxpayers who have delegated the task of dealing with that complexity to a paid preparer or a computer program. A major reduction in computational complexity might modestly reduce the percentage of taxpayers hiring paid preparers and the average cost of return preparation services, but it would not greatly reduce the incidence of headaches (and resulting bad feelings about the income tax in particular and the federal government in general) brought on by taxpayer encounters with Form 1040, for the simple reason that seven out of eight taxpayers have already taken steps to avoid those headaches.

The major goal of simplification should not be to reduce the percentage of taxpayers hiring paid preparers, or to reduce the average cost of return preparation services. Rather, it should be to reduce the time burden of tax planning and recordkeeping during the tax year itself (as contrasted with the time burden of dealing with Form 1040 after the tax year has ended). The substantial time burden that is not avoided by taxpayers who hire paid preparers is overwhelmingly attributable to such recordkeeping and planning. An IRS study of tax-

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<sup>97</sup> See Peroni, note 95, at 1431 (plausibly suggesting that the growth in the number of phaseouts has "probably led to an increase in demand for tax preparation software . . . and tax preparation and advisory services by middle-income taxpayers as well as high-income taxpayers").

<sup>98</sup> So, for example, the criticism of the AMT by the President's Advisory Panel on Federal Tax Reform, based on the AMT's contribution to return preparation complexity ("millions of taxpayers . . . have to undertake this painful and complex series of calculations [and] complete the complicated worksheets just to determine whether they are entitled to a tax benefit or whether it is taken away by the AMT") seems seriously overstated, given that only one taxpayer in eight prepares his return without the assistance of a paid preparer or software. See President's Advisory Panel, note 17, at 86.



payers filing Form 6251 (the AMT form) for tax year 2000 estimates that taxpayers who filed Form 6251 and used paid preparers had an average time burden of 51.3 hours.<sup>99</sup> Of that 51.3 hours, the two largest components—together constituting almost 80% of the total—were recordkeeping (32.9 hours) and tax planning (7.6 hours).<sup>100</sup> This second aspect of complexity requires taxpayers to inform themselves during the tax year of potentially available credits and deductions, to determine whether they can satisfy the eligibility rules (including the daunting task of determining whether they remain eligible for particular tax benefits after taking into account phaseouts and the AMT), and keeping the necessary records. As the Service's time burden estimates indicate, it is difficult or impossible to avoid these tasks by hiring paid preparers. Alleviation of this second—and more important—type of complexity could be achieved by the repeal of most of the recently enacted narrowly targeted tax benefits, and the simplification of those that remain (for example, by elimination of phaseouts or by permitting the benefits under the AMT as well as the regular tax). Drafting the necessary legislative changes would present no great technical challenges, although generating the necessary political will might be difficult indeed—especially since each new deduction or credit quickly generates its own constituency, which will strongly oppose any attempt to repeal it.<sup>101</sup>

<sup>99</sup> Allen H. Lerman & Peter S. Lee, *Evaluating the Ability of the Individual Taxpayer Burden Model to Measure Components of Taxpayer Burden: The Alternative Minimum Tax as a Case Study*, IRS Res. Bull., 158, fig. 9 (2004), available at <http://www.irs.gov/pub/irs-soi/04lerman.pdf>.

<sup>100</sup> *Id.* In this regard, it is also interesting to note the results of a 2003 public opinion survey that asked respondents to identify one of four options as the leading cause of tax complexity. Most respondents—56%—chose “[t]here are so many different kinds of deductions and tax credits, and so many rules about how to take them,” 17% chose “[t]he forms are too hard to fill out,” 13% chose “[i]t requires too much record keeping,” and 12% chose “[t]here are too many different tax rates, such as 15%, 25%, and 35%.” National Public Radio/Kaiser Family Foundation/Kennedy School of Government, *National Survey of Americans' Views on Taxes 11* (2003), available at <http://www.kff.org/kaiserpolls/3340-index.cfm>. Hiring a paid preparer would not enable taxpayers to avoid much of the complexity caused by the bewildering array of deductions and credits, nor would it enable them to avoid any of the complexity due to recordkeeping requirements.

<sup>101</sup> The responses to a question posed in a 1977 survey give some sense of the political difficulty of achieving simplification. Respondents were asked to choose between the current income tax system and a system featuring “a much simpler tax return form than the current system, [which] the average taxpayer could fill out . . . by himself in about an hour.” The Roper Organization, *H&R Block Study—The American Public and the Income Tax System: A Study of Public Attitudes Toward Income Tax System Quest*, 16 (1977), available at [http://roperweb.ropercenter.uconn.edu/cgi-bin/hsrun.exe/roperweb/catalog40/catalog40.htx?start=summary\\_link?archno=USRSPHRBLOCK1977-0599](http://roperweb.ropercenter.uconn.edu/cgi-bin/hsrun.exe/roperweb/catalog40/catalog40.htx?start=summary_link?archno=USRSPHRBLOCK1977-0599). The question suggested that the reform would be revenue neutral overall, but that any given taxpayer might see his tax bill increase or decrease by as much as 10% as a result of the move to the simpler system. *Id.* For most respondents risk aversion trumped the desire for simplification; 54% expressed a preference for retaining the current system, while only 28% pre-

Even if major simplification could be accomplished, there is a concern that it may be too late to reawaken Holmesian attitudes toward taxation. The worry is that events of recent decades—especially the Vietnam War, the Watergate scandal, and now perhaps the Iraq War—may have irreparably damaged public trust in the federal government and in its ability to spend tax dollars responsibly. Were public confidence in the tax side of taxing-and-spending reestablished, the civic virtues of return preparation might remain lost because of public distrust of the spending side.<sup>102</sup> Historic polling data from the University of Michigan's American National Election Studies (ANES) suggests this problem may be real. Since 1958 ANES has periodically asked respondents, "How much of the time do you think you can trust the government in Washington to do what is right—just about always, most of the time or only some of the time?"<sup>103</sup> In 1958 (during the decade of Ralph Kramden), 73% answered "most of the time" or "just about always."<sup>104</sup> By 1974, in the aftermath of the Vietnam War and Watergate, that figure had fallen to just 36%.<sup>105</sup> Since then the percentage of respondents trusting the government most of the time or always has varied considerably over time, ranging from a low of 21% in 1994 to a high of 56% in 2002 (not long after the attacks of September 11, 2001).<sup>106</sup> Although ANES has not yet published its results for 2006, a New York Times/CBS News poll asking the identical

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ferred the simpler system (although an additional 8% volunteered they would prefer the simpler system if they could be guaranteed their tax bill would not go up). *Id.*

<sup>102</sup> There is a growing literature, in the tax compliance field, on factors that improve or worsen "tax morale"—that is, the willingness of taxpayers to comply with their tax obligations even when cost-benefit analysis would seem to call for noncompliance. Empirical studies indicate that tax morale is positively correlated with trust in government, and with the perception that taxpayers receive benefits from public goods financed by their taxes. See, e.g., Torgler, note 54, at 131-37 (trust in government); John T. Scholz & Mark Lubell, Trust and Taxpaying: Testing the Heuristic Approach to Collective Action, 42 *Am. J. Pol. Sci.* 398, 412 (1998) (trust in government); James Alm, Betty R. Jackson & Michael McKee, Estimating the Determinants of Taxpayer Compliance with Experimental Data, 45 *Nat'l Tax J.* 107, 110-11 (1992) (public goods); James Alm, Gary H. McClelland & William D. Schulze, Why Do People Pay Taxes?, 48 *J. Pub. Econ.* 21, 32-34 (1992) (public goods); James Alm, Betty R. Jackson & Michael McKee, Fiscal Exchange, Collective Decision Institutions, and Tax Compliance, 22 *J. Econ. Behavior & Org.* 285, 298 (1993) (public goods). The tax morale studies are not directly on point here, since compliance is not the focus of this Article. Nevertheless, it seems plausible that developments that weaken tax morale in the compliance sense—particularly declining trust in government and perceptions of increasing waste of tax dollars—also would undermine the civic virtues of a return filing requirement.

<sup>103</sup> The American National Election Studies, *The ANES Guide to Public Opinion and Electoral Behavior* (tbl.5A.1) (Univ. of Mich., Center for Pol. Stud., 2005), available at [www.electionstudies.org/nesguide/toptable/tab5a\\_1.htm](http://www.electionstudies.org/nesguide/toptable/tab5a_1.htm).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

question in January 2006 (with the Iraq War and the government's response to Hurricane Katrina presumably on the minds of respondents) found only 32% of respondents usually or always trusting the government.<sup>107</sup>

ANES also periodically asks a question focused on the government's stewardship of tax revenue: "Do you think that people in the government waste a lot of money we pay in taxes, waste some of it, or don't waste very much of it?"<sup>108</sup> Only 43% of respondents answered "a lot" in 1958, but by 1974 that answer was given by 74% of respondents.<sup>109</sup> After reaching an all-time high of 78% in 1980, the "a lot" response kept in a fairly narrow range over the next two decades (with a high of 70% in 1994 and a low of 59% in both 1996 and 2000).<sup>110</sup> In 2002 the 9/11 effect reduced the "a lot" response to 48%, but the figure bounced back to 61% in 2004.<sup>111</sup>

The polling data suggest that during the 1950's the government enjoyed a level of public trust (both in general and with respect to its stewardship of tax dollars) that it has not enjoyed since, and which it may never enjoy again. On a more optimistic note, however, the data also indicate that public distrust of government is not unchangeable. Even setting aside the dramatic but short-lived increase in trust in government following 9/11, there remain significant (albeit less dramatic) increases in trust during both the Reagan and Clinton presidencies. Particularly encouraging is the fact that the percentage of respondents believing that the government wastes "a lot" of tax money was 19 percentage points lower in 2000 than in 1980.<sup>112</sup>

Giving due consideration to the post-1950's decline in trust in government, it seems fair to conclude that while income tax simplification is a necessary condition for the recovery of the civic virtues of tax return preparation, it may not be sufficient. It is also necessary that taxpayers have a modicum of trust in the federal government, and in its ability to spend tax dollars carefully. Despair seems uncalled for, however, since there is no convincing evidence that the required level of trust is unattainable—in fact, the required level probably existed as recently as 2002, although it may not exist at the moment.<sup>113</sup> There

<sup>107</sup> New York Times/CBS News Poll, Question 14 (Jan. 27, 2006) available at [http://www.nytimes.com/packages/pdf/politics/20060127\\_poll\\_results.pdf](http://www.nytimes.com/packages/pdf/politics/20060127_poll_results.pdf).

<sup>108</sup> The American National Election Studies, note 104, at tbl.5A.3.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* (78% in 1980, compared with 59% in 2000).

<sup>113</sup> In a thoughtful and statistically sophisticated article examining possible explanations for the decline in Americans' trust in government, John Alford suggests that the most promising explanation relates to perceived levels of external threats to the country. John R. Alford, *We're All in this Together: The Decline of Trust in Government, 1958-1996*, in

remains, then, good reason to hope that a simpler income tax system could lead to the recovery of the civic virtues of a tax return filing requirement.

In light of that hope, the Panel's implicit rejection of return-free systems makes sense, when paired with the Panel's simplification proposals. If the income tax could be significantly simplified (obviously a question of political will, not technical feasibility), I would cast my vote in favor of the continued imposition of a return filing requirement. An exact withholding system would destroy the current delicate compromise on the appropriate level of tax consciousness, and would eliminate the sense of civic participation made possible by return filing. William Kambas takes an equally dim view, on citizenship grounds, of tax agency reconciliation (in the form of the California ReadyReturn program).<sup>114</sup> He claims that it "tilts the scales from guidance toward relief from responsibilities . . . risks the reduction of taxpayer awareness of the fiscal process and thereby risks the dilution of responsible fiscal citizenship."<sup>115</sup> I disagree. Although it is often so labeled, tax agency reconciliation is not really a return-free system. A taxpayer using an agency reconciliation system would examine the tentative return prepared by the Service, make as many corrections to the return as the taxpayer deemed appropriate, sign the return, and send it in. Withholding would continue to be inexact, so a taxpayer would continue to compare her tax liability with her withholding, and either request a refund or pay tax with the return. All this should be more than sufficient to produce the tax consciousness desired by Grover Norquist and his allies, and to retain the sense of tax filing as an important aspect of civic participation.

The level of taxpayer participation in the return filing process under tax agency reconciliation closely resembles the level of participation of those taxpayers—more than six out of ten—who use paid preparers

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What Is it About Government that Americans Dislike? 28, 45-46 (John R. Hibbing & Elizabeth Theiss-Morse eds., 2001). When the perceived external threat level is high, trust appears to be high; when the perceived threat level declines, trust tends to diminish. *Id.* Although the article predates the attacks of 9/11, the increase in trust in government following the attacks supports Alford's suggestion. See note 106 and accompanying text. If Alford is correct, and if the public perceives terrorism as a long-term external threat comparable to that of the Cold War, the prospects for relatively high levels of trust in government over the next decade or two may be good. We must take our silver linings where we can find them.

<sup>114</sup> Kambas, note 30, at 1447-51.

<sup>115</sup> *Id.* at 1450; see also Thorndike, note 27, at A19 ("In 1955, the commissioner of the Internal Revenue Service, T. Coleman Andrews, went so far as to decree that the agency should stop helping people fill out their tax forms. His reasoning? Americans should be educated, not coddled.").

under the current system.<sup>116</sup> If the level of participation in the filing process required of taxpayers who use paid preparers is sufficient to produce the civic benefits of a return filing mandate (as I believe it is), then the level of participation required of taxpayers using a tax agency reconciliation system should also be sufficient. It is true that tax agency reconciliation demands less of a taxpayer than the use of a paid preparer, in terms of information gathering and out-of-pocket expenditures, but the core aspects of a filing requirement—reviewing and signing the return, and reconciling one's withholding with one's actual tax liability—all remain.

The civic virtues of the filing process actually may increase under agency reconciliation, compared with either the use of a paid preparer or preparing the return oneself, because most of the negative feelings engendered by grappling with complexity (or paying a surrogate to do so) would be eliminated. In this regard it is important to remember, as Joseph Bankman has pointed out, that even a simple tax return can be daunting to many taxpayers:

[F]or a substantial portion of the population, those forms [1040A and 1040-EZ] are not at all simple. Slightly more than 20 percent of the population lacks the skills necessary to read a food label, fill out a form, or read a simple story to a child. Even individuals with terrific reading skills find filing an anxiety-laden experience. . . . Economists have attempted to measure the time spent on filing and fees paid by taxpayers but cannot measure the anxiety, frustration, and anger associated with filing.<sup>117</sup>

In short, the introduction of tax agency reconciliation (for taxpayers with simple income tax situations), accompanied by a general simplification of the income tax, might restore the virtues of a return-based income tax as an exercise in participatory democracy. Perhaps America has become too pervasively cynical for one to hope that any taxpayer will ever give a speech like Ralph Kramden's as he signs his

<sup>116</sup> Toder, note 76, at 759 (reporting, based on IRS data, that 62% of individual returns were prepared by paid preparers in 2003); see also *They Prepare the Tax Laws, but Not Their Own Returns*, Wash. Post, Apr. 17, 2006, at A11 ("Three of the four top lawmakers on the Senate Finance and House Ways and Means Committees . . . pay professionals to file their annual tax returns with the Internal Revenue Service.").

<sup>117</sup> Bankman, note 12, at 1431; see also Goolsbee, note 27, at A25 (noting that the instructions for Form 1040-EZ are thirty-six pages); Austan Goolsbee, *The Turbo Tax Revolution? Evaluating the Ability of Technology to Solve the Tax Complexity Dilemma*, in *The Crisis in Tax Administration* 124, 136 (Henry Aaron & Joel Slemrod eds., 2004) ("The irony is that the people who find the EZ form simple are exactly the ones who cannot use it. . . . Perhaps that is one reason why as many as half those filing the easiest forms hire a paid tax preparer . . .").

return, but it should be possible to do far better than the Roseanne-like attitudes that dominate today.

As part of the program to recover the civic virtues of return filing, April 15 might be declared a national holiday, "Taxpayers' Day." The act of paying taxes is important enough to merit that recognition. Taxpayers would be rewarded for fulfilling their financial responsibilities of citizenship, and they could spend part of the day reflecting on the civic importance of their status as taxpayers. Even if the national holiday is never introduced, more communities might follow the model of Lawrence, Kansas, which since 1987 has had a tax return filing party at its post office every April 15, complete with live music, dancing, and food.<sup>118</sup>

Another step toward recovery of the civic virtues of return filing might be the adoption of Eugene Steuerle's longstanding proposal to enable taxpayers to "take deductions for charitable contributions until they file their income tax returns or until April 15, whichever comes first."<sup>119</sup> (This would mirror the timing rules under current law with respect to deductions for contributions to individual retirement accounts.<sup>120</sup>) Steuerle favors the proposal because he believes it will increase charitable contributions, but the proposal is also attractive from the perspective of fiscal citizenship. Saul Levmore has suggested that the charitable deduction can be understood as a quasi-voting mechanism, under which "dispersed donors . . . determine which agents, projects, or causes the government will finance."<sup>121</sup> It is a costly vote, of course, because the tax avoided by the deduction is always less than the amount the taxpayer contributes to charity: "We might . . . think of taxpayers as agents employed to decide where government funds should go; these agents must pay for their choices, or votes, in order to take their decisions more seriously."<sup>122</sup> Levmore does not discuss Steuerle's proposal, but the proposal meshes neatly with Levmore's analysis; The quasi-voting aspect of charitable deductions would be more perspicuous to the average taxpayer under

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<sup>118</sup> Eileen Kinsella, *Lace Up Those Dancing Shoes, Grab Your 1040—It's Tax Time!*, Wall St. J., Apr. 15, 1997, at B1; Chris Moon, *April 15 Tax Deadline is Cause for Celebration in Downtown Lawrence*, Topeka Capital-Journal, Apr. 14, 2003.

Civic-minded corporations also might help with the April 15 festivities. On at least one April 15, Starbucks celebrated tax day by offering a free cup of "Calm Tea" to every customer. Joseph Michelli, *The Starbucks Experience: 5 Principles for Turning Ordinary into Extraordinary* 86 (2006). It is questionable, however, whether sending the message that taxpayers need calming down after their encounters with Form 1040 furthers the civic purposes of the return filing process.

<sup>119</sup> Gene Steuerle, *Increasing Charitable Giving: The April 15 Solution*, 48 Tax Notes 221, 221 (July 9, 1990).

<sup>120</sup> IRC § 219(f)(3).

<sup>121</sup> Saul Levmore, *Taxes as Ballots*, 65 U. Chi. L. Rev. 387, 388 (1998).

<sup>122</sup> *Id.* at 416.

Steuerle's proposal than under current law. Adoption of Steuerle's proposal could serve, then, as a bridge between the discharge of the political obligations of citizenship (through voting) and the discharge of the financial obligations of citizenship (through taxpaying). An additional civic advantage of Steuerle's proposal is that it should make taxpayers feel better about the tax return preparation process, by giving them control *at the time of return preparation* over how much tax they owe. Even at the last minute, a taxpayer would be able to avoid some amount of tax by paying some larger amount to her favorite charity. This increased sense of control might well lead to an increased sense of fiscal citizenship. Of course, this citizenship-based rationale for extending the deadline for making charitable contributions strongly suggests that the charitable deduction should be available to nonitemizers and itemizers alike; denying this aspect of citizenship to taxpayers claiming the standard deduction would be counterproductive.

#### IV. DO THE CIVIC BENEFITS OF TAXPAYER STATUS FLOW FROM RETURN FILING ALONE, OR IS A NET INCOME TAX LIABILITY ALSO NECESSARY?

In its discussion of using a VAT as a partial replacement for the income tax—so that only higher-income people would be subject to the income tax—the President's Advisory Panel on Federal Tax Reform noted that "101.1 million taxpayers [sic] would have no income tax liability" under that approach.<sup>123</sup> Panelists disagreed on the policy implications of that fact:

Some members of the Panel felt that it was inappropriate to increase the number of taxpayers who do not make a direct contribution to the cost of maintaining the federal government through income taxes. Others took the opposite position, commenting that . . . lower and middle-income taxpayers . . . would continue to pay taxes, at the cash register through the VAT and through payroll taxes.<sup>124</sup>

The disagreement is not about whether it is important that income taxpayers file returns, but rather about whether it is important that a large percentage of the population have a net (that is, after-credit) income tax liability.<sup>125</sup> Nevertheless, the two issues are closely re-

<sup>123</sup> President's Advisory Panel on Federal Tax Reform, note 17, at 194.

<sup>124</sup> *Id.*

<sup>125</sup> Presumably the panelists who thought it was important to have a large number of taxpayers "mak[ing] a direct contribution to the cost of maintaining the federal govern-

lated, because the arguments in favor of subjecting a high percentage of the population to the income tax closely resemble the arguments in favor of a return filing requirement. In each case, the argument is that it is important that people be viewed (by themselves and by others) as having taxpayer status—both because of the sense of citizenship it confers, and because taxpayer status may cause one to keep a more watchful eye on government expenditures.<sup>126</sup>

Opposing the growth in the number of federal income tax return filers without federal income tax liability—fueled largely by the earned income tax credit (EITC), the child tax credit, and the introduction of the 10% bracket—has become something of a crusade for the Tax Foundation. According to the Tax Foundation, “[I]n 2004, some 42.5 million Americans (one-third of all filers) filed a tax return but had no tax liability after taking advantage of their credits and deductions.”<sup>127</sup> The Tax Foundation views this as a recipe for disaster:

While some may applaud the fact that millions of low- and middle-income families pay no income taxes, there is a threat to the fabric of our democracy when so many Americans are not only disconnected from the cost of government but are net consumers of government benefits. The conditions are ripe for social conflict if these voters begin to demand more government benefits because they know others will bear the costs.<sup>128</sup>

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ment through income taxes” would have considered that goal to be achievable by a broad-based income tax administered through exact withholding (such as the U.K.’s PAYE). *Id.* Despite the absence of tax returns, such a system—unlike a VAT or a national sales tax—would continue to associate particular amounts of federal tax payments with particular individuals. Of course, the payroll tax is an individually-based return-free federal tax, which raises the question why those panelists did not consider the continued imposition of the payroll tax as adequate to ensure broad-based “contribution[s] to the cost of maintaining the federal government.” *Id.* The probable explanation is that the payroll tax is earmarked for particular narrow purposes—the financing of Social Security benefits and Medicare—and thus does not constitute a contribution to the general costs of government. See IRC §§ 3101(a) (imposing 6.2% payroll tax on employees, earmarked for the financing of Social Security) and § 3101(b)(6) (imposing 1.45% payroll tax on employees, earmarked for the financing of Medicare). If payroll tax collections were not earmarked, those panelists might have viewed the payroll tax as satisfying their desire for widespread “direct contribution[s]” to the cost of government, despite its return-free administration. See President’s Advisory Panel on Federal Tax Reform, note 17, at 194.

<sup>126</sup> This suggests a hierarchy of tax systems, in terms of their ability to confer taxpayer status on individuals. A return-based income tax is superior, in this respect, to a return-free income tax. Even a return-free income tax, however, is superior to a tax—such as a VAT or a sales tax—that does not directly impose tax on individuals and does not calculate the total amount of tax paid by each individual.

<sup>127</sup> Scott A. Hodge, *Putting a Face on America’s Tax Returns* 6 (2005). By comparison, only 16% of tax filers paid no income tax in 1968, and only 18% in 1983. *Id.* at 6, chart 3.

<sup>128</sup> *Id.* at 8-9.



When asked a leading question by a Tax Foundation-sponsored survey, 59% of American adults surveyed agreed that “everyone should be required to pay some minimum amount of tax to help fund government.”<sup>129</sup>

As a matter of substance, insisting that nearly everyone be a net income taxpayer seems almost silly. After all, as one group of panelists pointed out, it is possible to be a net federal taxpayer despite having no federal *income* tax liability. This is common enough now, because of payroll taxes and excise taxes,<sup>130</sup> and would be much more common if a federal VAT were added to the mix. It is also possible, of course, for a person to have a federal income tax liability, yet be a recipient of a net transfer from the federal government because of benefits received outside the income tax system. Many people receiving Social Security benefits undoubtedly fall into this category. Another group of people in this category would be created if the substance of the EITC were retained, but the administration of the program were removed from the income tax system.

The Tax Foundation (and the panelists who share its concern) nevertheless may have a point as a matter of psychology. The civic benefits of widespread taxpayer status—both in conferring a sense of shared fiscal citizenship and in encouraging careful scrutiny of government expenditures—may depend on the vast majority of the population being income *taxpayers*, rather than merely income tax *filers*. Those who file income tax returns but pay no tax (with or without receiving refundable credits) may not be understood—by themselves

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<sup>129</sup> Tax Foundation, 2005 Annual Survey of U.S. Attitudes on Tax and Wealth 9 (2005). The question read: “Last year 44 million Americans—that’s one-third of all taxpayers—paid no federal income tax after deductions and credits. Thinking about your own tax burden, do you think this is fair, or do you feel everyone should be required to pay some minimum amount of tax to help fund government?” *Id.* It is worth noting, however, that less leading versions of the same basic question, asked in previous decades, indicated considerably less enthusiasm for making the poor pay income tax. A 1986 survey asked, “As a matter of public policy, do you think that everyone who receives an income should pay SOME tax—even if it’s only one dollar—or do you think that people below the poverty level should not have to pay any tax?” The no-tax option was the choice of 59% of respondents; only 39% wanted to impose the tax on everyone. Roper/H&R Block Study #1986-0643, *The American Public and the American Income Tax System*, Question 15 (Apr. 1986), available at [http://roperweb.ropercenter.uconn.edu/cgi-bin/hsrun.exe/roperweb/Catalog40/Catalog40.htm?start=topSummary\\_Link?R=1&Archno=USRSPHRBLOCK1986-0643](http://roperweb.ropercenter.uconn.edu/cgi-bin/hsrun.exe/roperweb/Catalog40/Catalog40.htm?start=topSummary_Link?R=1&Archno=USRSPHRBLOCK1986-0643). When the same question had been asked in 1979, the results were similar—56% opposed tax on the poor, while 41% favored it. Roper H&R Block Study #1979-0673, *The American Public and the Income Tax System*, Question 22 (May 1979), available at [http://roperweb.ropercenter.uconn.edu/cgi-bin/hsrun.exe/roperweb/Catalog40/Catalog40.htm?start=topSummary\\_Link?R=1&Archno=USRSPHRBLOCK1979-0673](http://roperweb.ropercenter.uconn.edu/cgi-bin/hsrun.exe/roperweb/Catalog40/Catalog40.htm?start=topSummary_Link?R=1&Archno=USRSPHRBLOCK1979-0673).

<sup>130</sup> See Nancy C. Staudt, Taxation Without Representation, 55 *Tax L. Rev.* 555, 584-92 (2002) (demonstrating that many of those who do not pay federal income tax are net federal taxpayers after the burden of other federal taxes is taken into account).

or others—as taxpayers, and this may be true even if their payroll and excise tax payments exceed their refundable credits.<sup>131</sup> I have suggested elsewhere that administering the EITC as part of the income tax has significant advantages over welfare-based administration, in terms of administrative efficiency and encouraging program participation by eligible individuals.<sup>132</sup> The possible symbolic importance of income taxpayer status, however, suggests an argument for taking the EITC out of the income tax system. When 59% of the respondents to the Tax Foundation’s survey said they wanted everyone to pay some income tax, it is doubtful that they meant that no one should receive a net transfer from the federal government. They might be happy enough with the substance of the EITC, if only it were removed from the income tax. The divorce of the EITC from the income tax might then produce a more universal sense of fiscal citizenship than is possible under current law.<sup>133</sup> The disaggregated view described here—of each tax as isolated from all other taxes, and of transfer payments as isolated from all taxes—may be irrational, but it also may be deeply ingrained.<sup>134</sup> If the irrationality is inevitable, it may be better to de-

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<sup>131</sup> Beyond the intangible benefits of taxpayer status on which this Article focuses, taxpayer status can be important for standing purposes under both federal and state law. In *Flast v. Cohen*, 392 U.S. 83 (1968), the Supreme Court ruled that federal income taxpayers had standing to challenge federal expenditures under the Establishment Clause of the First Amendment. Many states permit taxpayer standing to enjoin the illegal expenditure of government funds under certain conditions. This raises the question of which kinds of taxes can give rise to taxpayer standing. State courts generally have been hostile to taxpayer standing based on sales taxes. A number of cases conclude that consumers cannot base standing on sales taxes because retailers, rather than consumers, are the technical taxpayers. See, e.g., *Cornelius v. Los Angeles County Metro. Transp. Auth.*, 57 Cal. Rptr. 2d 618, 628 (1996); *Collins v. State*, 750 A.2d 1257, 1261 (Me. 2000); *Stumes v. Bloomberg*, 551 N.W.2d 590, 593 (S.D. 1996). The Supreme Court of Texas held for prudential reasons that payment of sales tax did not confer taxpayer standing, despite the fact that under Texas law purchasers are liable to the state for sales tax. *Williams v. Lara*, 52 S.W.3d 171, 180 (Tex. 2001). The court explained: “Extending taxpayer standing to those who pay only sales tax would mean that even a person who makes incidental purchases while temporarily in the state could maintain an action. This would eviscerate any limitation on taxpayer suits.” *Id.* Although the Supreme Court has not been asked to decide whether *Flast* standing extends to payers of federal taxes other than the income tax, the state court cases suggest that *Flast* standing would be doubtful for those who pay no federal income tax, but do pay federal excise taxes or a future federal VAT.

<sup>132</sup> Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. Rev. 1867, 1915 (2005).

<sup>133</sup> With respect to the fiscal watchdog benefits of taxpayer status, it is possible that a person who does not notice when an income tax rate increase reduces the amount of his EITC refund, might notice when the same rate change increases his income tax liability while leaving his EITC untouched.

<sup>134</sup> For evidence to that effect, see Edward J. McCaffery & Jonathan Baron, *The Humpty Dumpty Blues: Disaggregation Bias in the Evaluation of Tax Systems*, 91 *Organizational Behav. & Hum. Decision Processes* 230 (2003).

sign tax and transfer systems by taking that irrationality into account, rather than by ignoring it or hoping it will go away.

In support of the idea of taking the EITC out of the income tax in order to solidify the taxpayer status of EITC recipients, it is worth noting that the public perception of Social Security recipients as income taxpayers does not seem to be affected by the likelihood that their Social Security benefits exceed their income tax liabilities. It is unclear to what extent this phenomenon is attributable to a general tendency to view the income tax in isolation from other federal programs (whether tax or transfer), and to what extent it is peculiar to the perception of Social Security benefits as having been earned by prior payments of payroll taxes. If the former explanation is the more important one, perceptions of EITC recipients as taxpayers might be enhanced by moving the substance of the EITC outside of the income tax system.

Nancy Staudt has suggested that the social obligation of low-wage workers may be understood as an obligation to earn a wage—to work for a living—rather than an obligation to pay tax.<sup>135</sup> Under this view, filing an income tax return in order to claim the EITC could serve as a ceremony documenting a low-wage worker's satisfaction of his social duty to work for a living, and taxpayer status—or its moral equivalent—would be thereby conferred on the EITC claimant even if he received a net transfer from the government. From this perspective, administratively divorcing the EITC from the income tax would be exactly the wrong thing to do. As intriguing as Staudt's suggestion certainly is, in light of the responses to the Tax Foundation's survey it seems unlikely that the public currently understands simply participating in the labor force as a substitute for paying tax, or that the public could be brought around to that way of thinking. If the public cannot be converted to Staudt's perspective, separating the EITC from the income tax may be necessary if recipients of EITC transfer payments (in excess of precredit income tax liabilities) are to be perceived as taxpayers.

## V. CONCLUSION

Given the overwhelming complexity of the income tax return preparation process today, it is difficult to imagine (or remember) that a tax filing obligation might have civic virtues. A system of inexact withholding and return-based reconciliation can serve as an attractive compromise between small government proponents who would like to make the taxpaying process as visible and painful as possible, and big

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<sup>135</sup> Staudt, note 130, at 985-86.

government proponents who would like to make the process invisible and painless. And if the tax system is not so complicated as to make return preparation a miserable experience (in terms of the taxpayer's own time and effort, money paid to a preparer, or both), the return preparation and filing process can serve as civic ceremony of equal dignity and importance to voting. All these benefits would be lost under a national sales tax or value-added tax, or under an income tax with exact withholding and no return filing. Although the President's Panel did not explain its implicit rejection of a return-free system, in the context of its simplification proposals it was right to retain a filing requirement. On the other hand, the preparation of tentative tax returns by a governmental agency (as in the case of California's ReadyReturn) is not really a return-free system. Such a system, made available to taxpayers in simple income tax circumstances, would be consistent with—and might even enhance—the civic virtues of a tax return filing requirement.