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

### *I. Introduction: Return-Free Tax Systems and the President's Tax Reform Panel*

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, “The vast majority of American families should not have to 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

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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* 50 (2005).

system.<sup>4</sup>

The Panel learned that “return-free” income tax systems are of two kinds.<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—are generally ineligible for exact withholding and must file returns.<sup>7</sup> According to the General Accounting

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<sup>4</sup>President’s Advisory Panel on Federal Tax Reform, Transcript of Ninth Meeting 103-139 (May 17, 2005) (testimony of Eric Toder, Joseph Bankman, and Grover Norquist).

<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 *National Tax Journal* 475 (1997).

<sup>6</sup> Id. at 106-07 (testimony of Eric Toder). Toder’s testimony is based largely on U.S. Treasury Department, *Return-Free Tax Systems: Tax Simplification is a Prerequisite* (2003). The Treasury notes that the U.K. system has only three tax rates, with a basic rate (22 percent) which applies to about 80 percent of taxpayers. 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. at 8. The tax benefit for charitable contributions uses a similar approach. A taxpayer subject to the 22 percent 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 (2003).

<sup>7</sup>Id. at 7.

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), and prepares a tentative tax return for the taxpayer.<sup>9</sup> (“Return-free” is obviously a questionable adjective for a tax agency reconciliation system, but the term is commonly used in this way.) This is practical only for taxpayers who claim the standard deduction, and whose income all comes from sources subject to information reporting.<sup>10</sup> The taxpayer reviews the tentative return, and can either 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”) with the California state income tax received very favorable reviews from the taxpayers who took advantage of it.<sup>12</sup>

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<sup>8</sup>General Accounting Office, Tax Administration: Alternative Filing Systems 4 (GAO/GGD-97-6, 1996).

<sup>9</sup>Panel transcript, supra 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 percent of federal income taxpayers, see Austan Goolsbee, *The “Simple Return”: Reducing America’s Tax Burden through Return-Free Filing* (2006). 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.

<sup>10</sup>General Accounting Office, supra note 8, at 2 (estimating that 45 percent 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>U.S. Treasury Department, supra note 6, at 49-52.

<sup>12</sup>Panel Transcript, supra note 4, at 112-115 (Bankman testimony); Joseph Bankman, *Simple Filing for Average Citizens: The California ReadyReturn*, 107 Tax Notes 1431 (2005).

Congress has twice ordered reports on return-free systems. The Tax Reform Act of 1986 required the Internal Revenue Service to study the feasibility of return-free income taxation for at least some taxpayers.<sup>13</sup> In the resulting report, the IRS considered the possibility of a tax agency reconciliation system, but concluded it was not feasible with existing technology.<sup>14</sup> The legislative demand for a study was repeated in the Internal Revenue Service Restructuring and Reform Act of 1998, along with instructions that such a system actually be implemented by 2007.<sup>15</sup> Although the Treasury Department dutifully produced the required report in 2003,<sup>16</sup> there is no indication that even a pilot program will be in place in 2007.

Given the 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 return-free income tax

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The future of the California ReadyReturn experiment is in doubt. A bill to provide explicit statutory authorization for ReadyReturn, and to make the program permanent, was strongly opposed by Intuit (the maker of TurboTax), and 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.

<sup>13</sup>Tax Reform Act of 1986, Pub. L. No. 99-514, § 1582, 101 Stat. 2085, 2766(1986).

<sup>14</sup>Internal Revenue Service, Current Feasibility of a Return-Free System (1987).

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

<sup>16</sup>U.S. Treasury Department, supra note 8.

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 of the article 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 of 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 Report, one can only guess

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<sup>17</sup>The President's Advisory Panel on Federal Tax Reform, *Simple, Fair and Pro-Growth: Proposals to Fix America's Tax System* (2005). 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 does not, however, discuss the possibility of eliminating those costs by abandoning the filing requirement.

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 would actually serve important civic purposes.

*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 those persons, the ideal income tax system would retain filing obligations (to ensure visibility) and would repeal withholding (to maximize the pain of payment). Richard Arme, for example, once co-sponsored a bill to replace withholding with the requirement that individuals

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<sup>18</sup>Id. at 59-106 (presenting the Panel's recommendations).

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

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 a withholding. 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 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

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<sup>20</sup>Stearns Bill Would Repeal Wage Withholding Rules, 71 Tax Notes 915 (1996).

<sup>21</sup>President’s Advisory Panel on Federal Tax Reform, Transcript of Sixth Meeting 113-14 (March 31, 2005) (testimony of Milton Friedman).

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

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 total amount of their income tax liability,<sup>24</sup> thus

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<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 more than eighty income-tax related sitcom episodes (Lawrence Zelenak, *From the Great Gildersleeves to Homer Simpson: Six Decades of the Federal Income Tax in Situation Comedies* (unpublished manuscript, on file with the author)), I have not found any sitcom episodes featuring the payroll tax. This disparity can be explained only by the differing visibility levels of the two tax systems, since the two 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 2006*, 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, 1997-2000*, 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).

<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 has recently proposed requiring the IRS 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 average tax rates), and "statistical comparisons between the taxpayer's own tax situation and the average and median income 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 109-110. 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

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.

*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. As Justice Holmes famously remarked, “I like to pay taxes. With them I buy civilization.”<sup>25</sup> Such an important civic activity demands a ceremony, and the filing of one’s tax return is that ceremony.<sup>26</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>27</sup> but the linkage between citizen and government through the tax return process has the potential to go deeper than that.

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close to the level of tax consciousness produced by annual tax return filing.

<sup>25</sup>Randolph E. Paul, *Taxation for Prosperity* 277 (1947) (quoting Oliver Wendell Holmes, Jr.); see also *Compania General 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>26</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 example among hundreds of tax-related articles and op-eds published on or around April 15, Joseph J. Thorndike, *Hurts So Good*, *New York Times*, April 15, 2005, at A19; Austan Goolsbee, *Why Tell the I.R.S. What It Already Knows?*, *New York Times*, April 7, 2006, at A25.

<sup>27</sup>See also the remark of Andrew Mellon, Secretary of the Treasury during the 1920s, that “[n]othing 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.” Andrew Mellon, quoted in *id.*

April 15 can and should be as important a civic holiday as the first Tuesday after the first Monday in November.<sup>28</sup> Together, the two days celebrate the fulfillment of the two great responsibilities of citizenship. 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>29</sup>

In 2006 this may sound 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>30</sup> Irving Berlin responded by writing the song, “I Paid My Income Tax Today”:

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<sup>28</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*, *New York Times*, November 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 a few minutes 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 vote-by-mail is that it reduces the voting ceremony to a level comparable to the taxpaying ceremony.

<sup>29</sup>Testimony of Mark W. Everson before the President’s Advisory Panel on Federal Tax Reform 2 (March 3, 2005). See also Richard A. Musgrave, *Clarifying Tax Reform*, 70 *Tax Notes* 731 (1996) (“Moving to a wholly depersonalized [tax] system would reduce taxpayer awareness of the fiscal process and thereby dilute responsible fiscal citizenship.”), and William J. Kambas, *Reform and Modernization of the Tax Compliance Process*, 108 *Tax Notes* 1447, 1450-51 (“[T]he tax compliance process is integral to the U.S. system of participatory governance.”).

<sup>30</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>31</sup>

Nor did this attitude end with the end of the War. Michael Graetz has described a scene which 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>32</sup>

Or consider the Honeymooners episode, “Income Tax,” first broadcast on March 7, 1953.<sup>33</sup> Ralph Kramden prepares his tax return, with considerable difficulty. (“I’m dropping

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<sup>31</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*, 107, 122 (W. Elliot Brownlee, ed., 1996).

<sup>32</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>33</sup>Situation comedies can serve as important source material in constructing a social history of the income tax. The author has identified approximately eighty radio and television situation comedy episodes, from 1940 to 2006, in which the income tax plays a significant role. Those episodes are described in Zelenak, *supra* note 23. Several of those episodes, reflecting changing attitudes to income tax preparation, are discussed below.

dead from the question” on the return, he remarks at one point.) He finds that he owes \$15, which he could pay with the \$15 he had saved to buy a new bowling ball. 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. Ralph tells Alice, his wife, that he will get the tax money by working an extra shift. 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>34</sup>

Similar attitudes were expressed in a number of other radio and television situation comedies from the late 1940s through the early 1960s. 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>35</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

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<sup>34</sup>The *Honeymooners*, “Income Tax” (March 7, 1953). The last sentence refers to Ralph's disappointment, expressed earlier in the episode, that he did not qualify for a casualty loss deduction.

<sup>35</sup>The *Adventures of Ozzie and Harriet*, “Income Tax,” (March 7, 1949).

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>36</sup> Another sitcom immigrant, Jose Jimenez of the Bill Dana Show, expressed similar sentiments in a 1963 episode. Jose tells a co-worker, “I get a wonderful feeling out of making my income tax.”<sup>37</sup> Jose treats preparing his return as an occasion for reflecting on “the privilege of living in this wonderful country and having my coastline protected.”<sup>38</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 incomes and their 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.” 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>39</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

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<sup>36</sup>Life with Luigi, “Income Tax Season” (March 7, 1950).

<sup>37</sup>The Bill Dana Show, “A Tip for Uncle Sam” (January 8, 1963).

<sup>38</sup>Id.

<sup>39</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.

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>40</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>41</sup> As Judge McKay of the Tenth Circuit has written, “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>42</sup> Tax-related civil disobedience does not require a return-based income tax—after all, Thoreau’s famous

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<sup>40</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 *Constitutional Political Economy* 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 they will not cheat at all in a return-free system in which the government has no need to trust them. 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>41</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) (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 American anti-war tax protests, and proposing a statute to allow war tax resisters to direct their tax 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. of Race and 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>42</sup>*United States v. Amon*, 669 F.2d 1351, 1364 (1981) (McKay, J., dissenting).

act of civil disobedience was a refusal to pay a *poll tax*<sup>43</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 United Kingdom’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>44</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>45</sup> However, if taxpayers experience the income tax as a complex

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<sup>43</sup>Henry David Thoreau, *The Variorum Civil Disobedience* 11-27 (1967).

<sup>44</sup>As Marjorie Kornhauser has observed, “The challenge for this country is to maintain the delicate balance between healthy and self-destructive tax protest.” 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, 929 (2002). The elimination of the return-based income tax might leave too little room for healthy tax protest.

<sup>45</sup>See, e.g., U.S. Department of the Treasury, *Tax Reform for Fairness, Simplicity, and Economic Growth* (Vol. 1) 2 (1984) (“Though the 1954 income tax system exhibited some

mess—a fair description of the federal income tax in 2006<sup>46</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 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,” Michael Graetz concludes that “[i]n America today, very few people share my dad’s attitude toward taxes.”<sup>47</sup> And 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>48</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>49</sup>

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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>46</sup>See Graetz, *supra* note 32, 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).

<sup>47</sup>*Id.* at 50.

<sup>48</sup>Everson, *supra* note 29, at 4. See also Kambas, *supra* note 29, at 1450 (“[Americans were once . . . 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>49</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 and Steven Sheffrin, *Complexity and Compliance: An Empirical Investigation*, 55 *Nat. 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

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, Archie Bunker’s friend, Munson, is being audited by the IRS.<sup>50</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. 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 I.R.S. to discover his misdeed, Archie decides to visit the I.R.S. office to file an amended return. At the I.R.S. office Edith explains to the I.R.S. employee, “Archie volunteered to come down as soon as he found he might have to go to prison.” When the I.R.S. employee tells Archie that he owes \$140 tax, Archie tries to bribe him

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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 which 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>50</sup>All in the Family, “Archie’s Fraud” (September 23, 1972).

with offers of free cab rides and free tires. The I.R.S. 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."

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>51</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>52</sup> The episode opens with Dan Conner sitting at his kitchen table on April 15, working on

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<sup>51</sup>Another sitcom episode from the early 1970s—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" (February 12, 1974).

<sup>52</sup>*Roseanne*, "April Fool's Day" (April 10, 1990). Attributing the corrosive cynicism of "April Fool's Day" to the increasing complexity of the Internal Revenue 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 1970s and early-to-mid 1980s 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 percent of respondents thought that the 1986 Act had made paying their taxes more complicated, 48 percent thought the complexity had

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.

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 I.R.S. office. After a long wait, an obnoxious I.R.S. 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 I.R.S. employ 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.”

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,

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remained about the same, and only 12 percent thought the 1986 Act had simplified the process. Gallup Survey of March 8 - March 11, 1990 (March Wave 1), question 15.

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: “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 I.R.S. that keep America rolling. . . . So I beg you please do not confuse hardworking, responsible taxpaying John Goodman with that loveable but naughty scamp Dan Conner.”<sup>53</sup>

There is a limit to the tax policy lessons that can reasonably be drawn from sitcom episodes,<sup>54</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

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<sup>53</sup>Other sitcom episodes from the early 1990s 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 audited return. *Married . . . with Children*, “A Taxing Problem” (January 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.” 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. *The Cosby Show*, “Some Gifts aren’t Deductible” (April 23, 1992).

<sup>54</sup>Given the large number of tax-related sitcom episodes—approximately 80 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 when 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 1950s 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” (December 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” (March 2, 2006).

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>55</sup> In the 1950s fewer than 20 percent of taxpayers used paid preparers.<sup>56</sup> By 1993 paid preparers were responsible for 51 percent of all individual returns, while 8 percent of taxpayers did their own returns with the help of recently-introduced tax return preparation software, and 41 percent continued to do their own returns the old-fashioned way.<sup>57</sup> Ten years after that, in 2003, paid preparers' market share had grown to 61 percent, taxpayers using software had increased to 25 percent, and the pencil-and-paper crowd had dwindled to 13 percent.<sup>58</sup> Although the growth in taxpayers' use of software might be

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<sup>55</sup>There is an impressively large body of public opinion data on various income tax-related issues, going back to the 1940s. For an excellent collection of much of the available data, see AEI Studies in Public Opinion, Public Opinion on Taxes (available at <http://www.aei.org/publicopinion6>, updated April 12, 2006). 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 percent thought the income tax was either very or somewhat complex, compared with 81 percent in 2005 and 80 percent 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. The Roper Organization, *The American Public and the Income Tax 104* (1978) (in survey commissioned by H&R Block, 4 percent of respondents found “this year’s federal tax forms” very difficult to fill out, 20 percent found the forms fairly difficult, 41 percent found the forms not very difficult, and 34 percent found the forms not difficult at all); ABC News/Washington Post Survey conducted by Chilton Research Services, Question 34 (1987) (available from the Roper Center for Public Opinion Research as USABCWASH1987-7021) (responding to a nearly identical question in a 1987 survey, 31 percent found the forms very difficult, 26 percent somewhat difficult, 21 percent not too difficult, and 18 percent not difficult at all).

<sup>56</sup>Michael J. Graetz, *The Decline (and Fall?) of the Income Tax* 81 (1997).

<sup>57</sup>Eric Toder, *Changes in Tax Preparation Methods, 1993-2003*, 107 *Tax Notes* 759, 759 (2005).

<sup>58</sup>*Id.*

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) almost certainly represents a response to increasing complexity.<sup>59</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?

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 record-keeping, gathering tax materials, and consulting with paid

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<sup>59</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, 66.8 percent 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*, Urban Institute New Federalism National Survey of America's Families, Series B, No. B-64, February 2005, at 3.

preparers).<sup>60</sup> The average cost for the services of a paid preparer was \$223.<sup>61</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>62</sup> If the typical user of a paid preparer spends the equivalent of more than three working days on the return preparation process, 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>63</sup> The problem with the figure is not that it is so small as to

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<sup>60</sup>John L. Guyton, Adam K. Korobow, Peter S. Lee, and Eric Toder, *The Effects of Tax Software and Paid Preparers on Compliance Costs* 120, tbl. 1 (2005) (available at <http://www.irs.gov/pub/irs-soi/05guyton.pdf>).

<sup>61</sup>*Id.* at 125. See also H&R Block, 2005 Form 10K at p. 22 (indicating H & R Block charged an average of \$150.67 per return for return preparation services in its fiscal year 2005).

<sup>62</sup>*Id.* 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. According to Guyton, et al., taxpayers using software saved themselves 7.5 hours on average compared with the pencil-and-paper alternative (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 125.

<sup>63</sup>In this regard, it is interesting to note the results of a 2003 public opinion survey which asked respondents to identify one of four options as the leading cause of tax complexity. Most respondents—56 percent—chose “There are so many different kinds of deductions and tax credits, and so many rules about how to take them,” 17 percent chose “The forms are too hard to fill out,” 13 percent chose “It requires too much record keeping,” and 12 percent chose “There are too many different tax rates, such as 15%, 25%, and 35%.” National Public Radio/Kaiser Family

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, producing income tax liabilities through the use of incomprehensible rules, which taxpayers have no reason to believe are fair.

*B. 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 American public, waiting to be reawakened by a revised income tax with a less aggravating return preparation process. When a 2003 poll of American taxpayers 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,” 82 percent agreed (including 56 percent agreeing strongly).<sup>64</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

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Foundation/Kennedy School of Government, National Survey of Americans’ Views on Taxes 11 (2003). 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>64</sup>Stanley B. Greenberg & Anna Greenberg, Taxes, Government and the Obligations of Citizenship 6 (November 12, 2003) (available at <http://www.GreenbergResearch.com>).

taxes.”<sup>65</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>66</sup> Despite this uncertainty, the survey results suggest that a nontrivial amount of goodwill toward the return preparation process has survived despite 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 percent), “satisfied” (15 percent), and “neutral” (41 percent)) than selected negative ones (“frustrated” (17 percent), “anxious” (10 percent), and “angry” (7 percent)).<sup>67</sup>

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<sup>65</sup>AEI Studies in Public Opinion, *supra* note 55, 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 percent chose “love” and 21 percent chose “like”. In 1991 the corresponding numbers were 2 percent and 22 percent, in 2000 3 percent and 15 percent, and in 2001 3 percent and 21 percent. However, in a 2005 survey conducted by Harris Interactive for the Tax Foundation, only 1 percent of respondents to an almost identical question selected “love”, and only 11 percent selected “like”. *Id.*

<sup>66</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 Service, April 12, 2001. Newport suggests this is “most probably due to the fact that low-income families generally have the lowest taxes to pay.” *Id.* However, even in the highest income group (households with annual income above \$75,000), 2 percent loved and 14 percent liked doing their taxes.

<sup>67</sup>Blum & Wepring/NBC News Poll, April 2005, summarized in AEI Studies in Public Opinion, *supra* note 55, at 72.

In spite of all these indications that the civic virtues of a return preparation requirement might be reclaimed under a simpler income tax system, 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. Even if public confidence in the tax side of taxing-and-spending could be regained, the civic virtues of return preparation might remain lost because of public distrust of the spending side.<sup>68</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?” In 1958 (during the decade of Ralph Kramden), 73 percent answered “most of the time” or “just

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<sup>68</sup>There is a growing literature, in the tax compliance field, on factors that improve or worsen “tax morale”—i.e., 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, *supra* note 40, at 131-37 (trust in government); John T. Scholz and Mark Lubell, *Trust and Taxpaying: Testing the Heuristic Approach to Collective Action*, 42 *Am. J. of Political Science* 398, 412 (1998) (trust in government); James Alm, Betty R. Jackson, and Michael McKee, *Estimating the Determinants of Taxpayer Compliance with Experimental Data*, 45 *Nat. Tax J.* 107, 110-111 (1992) (public goods); James Alm, Gary H. McClelland, and William D. Schulze, *Why Do People Pay Taxes?*, 48 *J. of Public Economics* 21, 32-34 (1992) (public goods); James Alm, Betty R. Jackson, and Michael McKee, *Fiscal Exchange, Collective Decision Institutions, and Tax Compliance*, 22 *J. of Economic Behavior and Organization* 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 which weaken tax morale in the compliance sense—particularly declining trust in government and perceptions of increasing waste of tax dollars—would also undermine the civic virtues of a return filing requirement.

about always.”<sup>69</sup> By 1974, in the aftermath of the Vietnam War and Watergate, that figure had fallen to just 36 percent.<sup>70</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 percent in 1994 to a high of 56 percent in 2002 (not long after the attacks of September 11, 2001).<sup>71</sup> Although ANES has not yet published its results for 2006, a CBS News/New York Times poll asking the identical 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 percent of respondents usually or always trusting the government.<sup>72</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?” Only 43 percent of respondents answered “a lot” in 1958, but by 1974 that answer was given by 74 percent of respondents.<sup>73</sup> After reaching an all-time high of 78 percent in 1980, the “a lot” response kept in a fairly narrow range over the next two decades (with a high of 70 percent in 1994 and a low of 59 percent in both 1996 and 2000).<sup>74</sup> In 2002 the 9/11 effect reduced the “a lot” response to 48 percent, but the figure

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<sup>69</sup>The American National Election Studies, *The ANES Guide to Public Opinion and Electoral Behavior* (2005), tbl. 5A.1, available at [www.electionstudies.org](http://www.electionstudies.org).

<sup>70</sup>Id.

<sup>71</sup>Id.

<sup>72</sup>CBS News/New York Times Poll, Question ID USCBSNYT.012606, R14 (2006).

<sup>73</sup>The American National Election Studies, *supra* note 69, tbl. 5A.3.

<sup>74</sup>Id.

bounced back to 61 percent in 2004.<sup>75</sup>

The polling data suggest that during the 1950s the government enjoyed a level of public trust (both in general and with respect to its stewardship of tax dollars) which 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>76</sup>

Giving due consideration to the post-1950s 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>77</sup> There remains, then, good reason to hope that a

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<sup>75</sup>Id.

<sup>76</sup>Id.(78 percent in 1980, compared with 59 percent in 2000).

<sup>77</sup>In a thoughtful and statistically sophisticated article examining possible explanations for the decline in Americans’ trust in government, John R. Alford suggests that the most promising explanation relates to perceived levels of external threats to the country. When the perceived external threat level is high, trust appears to be high; when the perceived threat level declines, trust tends to diminish. John R. Alford, *We’re All in this Together: The Decline of Trust in Government, 1958-1996*, in *What is it About Government that Americans Dislike?* 28, 45-46 (John R. Hibbing & Elizabeth Theiss-Morse, eds. 2001). Although the article predates the attacks of 9/11, the increase in trust in government following the attacks (described supra, text

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.<sup>78</sup> 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 J. Kambas takes an equally dim view, on citizenship grounds, of tax agency reconciliation (in the form of the California ReadyReturn pilot program). 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>79</sup> I disagree.

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accompanying note 70) supports Alford's suggestion. 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>78</sup>A note of caution is sounded, however, by the response to a question posed in a 1977 survey. 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 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 percent as a result of the move to the simpler system. For most respondents risk aversion trumped the desire for simplification; 54 percent expressed a preference for retaining the current system, while only 28 percent preferred the simpler system (although an additional 8 percent volunteered they would prefer the simpler system if they could be guaranteed their tax bill would not go up). Roper Organization Survey commissioned by H&R Block, Question 16 (May 1977).

<sup>79</sup>Kambas, *supra* note 29, at 1450. See also Thorndike, *supra* note 26 ("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

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 I.R.S., 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 under the current system.<sup>80</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 a 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.

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should be educated, not coddled.”).

<sup>80</sup>Toder, *supra* note 57, at 759 (2005) (reporting, based on IRS data, that 62 percent of individual returns were prepared by paid preparers in 2003). See also *They Prepare the Tax Laws, but Not Their Own Returns*, *Washington Post*, April 17, 2006, p. A11 (“Three of the four top lawmakers on the Senate Finance and House Ways and Means Committees . . . pay professionals to fine their annual tax returns with the Internal Revenue Service.”).

The civic virtues of the filing process may actually 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>81</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 to hope that any taxpayer will ever give a speech like Ralph Kramden's as he signs his 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

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<sup>81</sup>Bankman, *supra* note 15, at 1431. See also Goolsbee, *supra* note 12 (noting that the instructions for Form 1040-EZ are 36 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, – (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 almost 50 percent of people filling out a 1040EZ form hire a paid preparer . . .”).

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>82</sup>

*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 persons would be subject to the income tax—the Panel noted that “101.1 million taxpayers [sic] would have no income tax liability” under that approach.<sup>83</sup> Panelists disagreed on the policy implications of that fact:

Some Panelists 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. Other Panelists 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>84</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,

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<sup>82</sup>Eileen Kinsella, *Lace Up Those Dancing Shoes, Grab Your 1040—It’s Tax Time!*, Wall Street Journal, April 15, 1997, p. B1; Chris Moon, *April 15 Tax Deadline is Cause for Celebration in Downtown Lawrence*, Topeka Capital-Journal, April 14, 2003.

<sup>83</sup>President’s Advisory Panel on Federal Tax Reform, *supra* note 6, at 194.

<sup>84</sup>*Id.*

after-credit) income tax liability.<sup>85</sup> Nevertheless, the two issues are closely related, 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 persons 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>86</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 percent 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-

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<sup>85</sup>Presumably the Panelists who thought it was important to have a large number of taxpayers “making a direct contribution to the cost of maintaining the federal government through income taxes” would have considered that goal to be achievable by a broad-based income tax administered through exact withholding (such as the United Kingdom’s PAYE). 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.” 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.

<sup>86</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—which does not directly impose tax on individuals and which does not calculate the total amount of tax paid by each individual.

third of all filers) filed a tax return but had no tax liability after taking advantage of their credits and deductions.”<sup>87</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>88</sup>

When asked a leading question by a Tax Foundation-sponsored survey, 59 percent of American adults surveyed agreed that “everyone should be required to pay some minimum amount of tax to help fund government.”<sup>89</sup>

As a matter of substance, insisting that almost 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

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<sup>87</sup>Scott A. Hodge, *Putting a Face on America’s Tax Returns* 6 (2005). By comparison, only 16 percent of tax filers paid no income tax in 1968, and only 18 percent in 1983. *Id.*, chart 3.

<sup>88</sup>*Id.* at 8 - 9.

<sup>89</sup>Tax Foundation, *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 percent of respondents; only 39 percent 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 (April 1986). When the same question had been asked in 1979, the results were similar—56 percent opposed tax on the poor, while 41 percent favored it. Roper H&R Block Study #1979-0673, *The American Public and the Income Tax System*, Question 22 (May 1979).

payroll taxes and excise taxes,<sup>90</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) may nevertheless 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*. Persons who file income tax returns but pay no tax (with or without receiving refundable credits) may not be understood—by themselves or others—as taxpayers, and this may be true even if their payroll and excise tax payments exceed their refundable credits.<sup>91</sup> I have suggested elsewhere that administering the EITC as part of the

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<sup>90</sup>See Nancy C. Staudt, Taxation Without Representation, 55 Tax L. Rev. 555, 584-92 (2002) (demonstrating that many persons who do not pay federal income tax are net federal taxpayers after the burden of other federal taxes is taken into account).

<sup>91</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. These cases raise the question of which kinds of taxes can give rise to taxpayer standing. State courts have generally 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*

income tax has significant advantages over welfare-based administration, in terms of administrative efficiency and encouraging program participation by eligible individuals.<sup>92</sup> However, the possible symbolic importance of income taxpayer status suggests an argument for taking the EITC out of the income tax system. When 59 percent 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>93</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 may also be deeply ingrained.<sup>94</sup> If the irrationality is inevitable, it may be better

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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 (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 United States 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 persons who pay no federal income tax, but do pay federal excise taxes or a future federal VAT.

<sup>92</sup>Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. Rev. 1867 (2005).

<sup>93</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>94</sup>For evidence to that effect, see Edward J. McCaffery & Jonathan Baron, *The Humpty Dumpty Blues: Disaggregating Bias in the Evaluation of Tax Systems*, 91 *Organizational Behav.*

to design 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 C. 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>95</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

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& Hum. Decision Processes 230 (2003).

<sup>95</sup>Staudt, *supra* note 90, at 985-86.

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 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 experiment) 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.

