

## REVIVING FISCAL CITIZENSHIP\*

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LEARNING TO LOVE FORM 1040: TWO CHEERS FOR THE RETURN-BASED MASS INCOME TAX. By *Lawrence Zelenak*. Chicago and London: University of Chicago Press. 2013. P. 124. \$35.

### INTRODUCTION

April 15 is a day that most Americans dread. That date is, of course, when federal and nearly all state-level individual income tax returns are due. Agonizing over the filing of income tax returns has long been a perennial part of modern American legal culture. Since the mid-1940s, when the United States first adopted a return-based mass income tax, the vast majority of Americans have been legally required to file an annual Form 1040.<sup>1</sup> Over the years, taxpayers have been complaining about, procrastinating over, and generally loathing the filing of their annual tax returns. Indeed, in recent times, April 15 has even become a day for political protests—an opportunity for some activists, like those in the Tea Party movement, to rail against what they believe to be “excessive taxation and government spending.”<sup>2</sup>

There was a time, however, when taxpayers tolerated and perhaps even looked forward to tax day. Armed with nothing but a pencil, paper, and calculator, individual taxpayers in an earlier era willingly sat down with a shoebox full of receipts and took on the personal task of categorizing their

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1. See 26 U.S.C. § 6072(a) (2012) (“[R]eturns made on the basis of the calendar year shall be filed on or before the 15th day of April . . .”).

2. Amy Gardner & Michael E. Ruane, *On Tax Day, ‘Tea Partiers’ Protest on Mall: Activists Amass in D.C. to Decry Government Taxing and Spending*, WASH. POST, Apr. 16, 2010, at A2, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/15/AR2010041503344.html>; see also Bill Fortier, *Tea Party Faithful Greet Tax Day: Worcester Rally Hears an Urgent Call to Stand and Deliver*, WORCESTER TELEGRAM & GAZETTE, Apr. 16, 2012, at A1, available at <http://www.telegram.com/article/20120416/NEWS/104169961/1160>; Jennifer Feehan, *Tea Partiers Gather in Perrysburg*, BLADE (Apr. 20, 2014), <http://www.toledoblade.com/local/2014/04/20/Tea-Partiers-gather-in-Perrysburg.html>. For more on the Tea Party movement, see generally RONALD P. FORMISANO, *THE TEA PARTY: A BRIEF HISTORY* (2012), and THEDA SKOCPOL & VANESSA WILLIAMSON, *THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM* (2012).

tax information, listing their deductions, and determining their net income and ultimate tax liability. They understood that paying taxes was an important part of belonging to a broader political and social community. During moments of national crises, many citizens even viewed tax paying as part of their patriotic fiscal responsibility—as a way to share in the sacrifices required by war and other emergencies.<sup>3</sup> Evoking Justice Holmes’s famous aphorism that “[t]axes are what we pay for civilized society,”<sup>4</sup> citizens welcomed tax day as a chance to fulfill their civic duty to contribute to the commonweal.

Today, those earlier days of tax-induced civic engagement seem to be a distant memory. Not only have many Americans become disenchanted with the overall tax system, as evidenced by recent public opinion polls.<sup>5</sup> More importantly, as our tax laws have become more complex, an increasing number of taxpayers have become disconnected from the *process* of personally filing their tax returns. They have turned, instead, to professional tax preparers. Whereas in the 1950s only about 20% of taxpayers hired a preparer to assist them with their tax returns (p. 11), by 2008 that figure skyrocketed to nearly 60%.<sup>6</sup> This rise in the outsourcing of tax preparation is symptomatic of the growing dissatisfaction with the current complexity of our tax system.<sup>7</sup>

It is not only everyday Americans who are discontent. Lawmakers, policy analysts, and scholars have also been decrying the many defects of our present tax system. Former U.S. Treasury Secretary Paul H. O’Neill declared that the current tax system is “an abomination” and “not worthy of an advanced society.”<sup>8</sup> Similarly, Bill Archer, the former chairman of the powerful congressional House Ways and Means Committee, famously advised fellow lawmakers to “pull the current income tax code out by its roots and throw it

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3. STEVEN A. BANK ET AL., *WAR AND TAXES* 15 (2008); ROBERT D. HORMATS, *THE PRICE OF LIBERTY: PAYING FOR AMERICA’S WARS* 132–33 (2007).

4. *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting). This well-known phrase is shorthand for Justice Holmes’s more formal declaration: “I like to pay taxes. With them I buy civilization.” FELIX FRANKFURTER, *MR. JUSTICE HOLMES AND THE SUPREME COURT* 71 (2d ed. 1961).

5. According to a December 2011 poll conducted by the Pew Research Center for the People & the Press, nearly 60% of respondents believed that “so much is wrong with the tax system that Congress should completely change it.” *Tax System Seen as Unfair, in Need of Overhaul*, PEW RES. CTR. FOR PEOPLE & PRESS 1 (Dec. 20, 2011), <http://www.people-press.org/files/legacy-pdf/12-20-11%20Taxes%20release.pdf>.

6. LEONARD E. BURMAN & JOEL SLEMMOD, *TAXES IN AMERICA: WHAT EVERYONE NEEDS TO KNOW* 186 (2013).

7. Dennis J. Ventry Jr., *Americans Don’t Hate Taxes, They Hate Paying Taxes*, 44 U.B.C. L. REV. 835 (2011).

8. John Hughes, *Corporate Income Tax in O’Neill’s Sights: Treasury Secretary Hopes to End Levy*, WASH. POST, May 20, 2001, at A7.

away so it can never grow back.”<sup>9</sup> More recently, President Obama has argued that “our tax code is riddled with wasteful, complicated loopholes that punish businesses investing here, and reward companies that keep profits abroad.”<sup>10</sup>

In the process of criticizing the substance and complexity of the existing U.S. tax regime, scholars and reformers have also attacked our return-based tax filing system. Legal scholar Michael J. Graetz, for example, proposes limiting the current mass income tax to a wealthy minority of elite taxpayers and supplementing such a class-based income tax with a broad-based value-added tax (“VAT”).<sup>11</sup> One of the apparent virtues of Graetz’s plan, as the title of his book indicates, is the elimination of *100 Million Unnecessary Returns*.<sup>12</sup> Other reformers go further. Advocates of a flat tax, calling for the complete replacement of the federal income tax with a variety of consumption taxes, contend that their diverse proposals all share the benefit of eliminating the need for tax returns, thus making April 15 “just another lovely spring day.”<sup>13</sup>

With an array of influential thinkers and powerful reformers aligned against the present U.S. tax system, it seems as if our current tax regime may have outlived its usefulness. Given the popular and expert antagonism, is there any hope for the future of the return-based mass income tax? Or has an institution that has long been a central part of American law and society reached the end of its life? In his new book, *Learning to Love Form 1040: Two Cheers for the Return-Based Mass Income Tax*, prolific tax law scholar Lawrence Zelenak<sup>14</sup> takes on the task of defending a simplified version of our

9. David E. Rosenbaum, *Chairman Proposes Redefining Tax Code*, N.Y. TIMES, June 7, 1995, at A22, available at <http://www.nytimes.com/1995/06/07/us/chairman-proposes-redefining-tax-code.html>.

10. See President Barack Obama, 2014 State of the Union Address (Jan. 28, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address>.

11. MICHAEL J. GRAETZ, *100 MILLION UNNECESSARY RETURNS: A SIMPLE, FAIR, AND COMPETITIVE TAX PLAN FOR THE UNITED STATES* 62, 67–70 (2008). As the name implies, a value-added tax is a consumption tax that is levied on the amount of value added to each stage of the production process for a particular good or service. Alan Tait, *Value-Added Tax, National*, in *THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY* 461, 461 (Joseph J. Cordes et al. eds., 2d ed. 2005); Catherine Rampell, *Value-Added Taxes: A Primer*, *ECONOMIX* (Apr. 19, 2010, 1:38 PM), <http://economix.blogs.nytimes.com/2010/04/19/value-added-taxes-a-primer/>.

12. GRAETZ, *supra* note 11. Other tax scholars similarly advocate for a dual income and consumption tax regime. See, e.g., Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 *TAX L. REV.* 1, 4 (2006).

13. NEAL BOORTZ & JOHN LINDER, *THE FAIR TAX BOOK: SAYING GOODBYE TO THE INCOME TAX AND THE IRS* 50 (2005). For a sampling of the recent scholarly revival in calling for a consumption tax to replace the income tax, see ROBERT CARROLL & ALAN D. VIARD, *PROGRESSIVE CONSUMPTION TAXATION: THE X TAX REVISITED* (2012), and DANIEL S. GOLDBERG, *THE DEATH OF THE INCOME TAX: A PROGRESSIVE CONSUMPTION TAX AND THE PATH TO FISCAL REFORM* (2013). For earlier calls for fundamental tax reform that also promised to eliminate tax returns for many Americans, see STEVE FORBES, *FLAT TAX REVOLUTION: USING A POSTCARD TO ABOLISH THE IRS* (2005), and EDWARD J. MCCAFFERY, *FAIR NOT FLAT: HOW TO MAKE THE TAX SYSTEM BETTER AND SIMPLER* (2002).

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present tax system. This is no easy endeavor, especially given the overwhelming and widespread animus toward our current income tax regime.

Zelenak is up to the challenge. Indeed, *Learning to Love Form 1040* is a stirring and highly persuasive defense of our federal tax system. The book convincingly reveals the underappreciated social, cultural, and political benefits of a *return-based mass income tax*. Zelenak concedes that, in its present complex form, the U.S. income tax may be a “fabulous invalid” (p. 111) with a seemingly limited life span.<sup>15</sup> Yet he maintains that there are particular social and political features of our current tax system worth preserving. Zelenak’s goal is to show how a return-based mass income tax, albeit one that is dramatically simplified, contains numerous unsung advantages for American politics and society.

In defending the income tax, Zelenak admirably pushes the current tax-reform debate beyond its conventional boundaries. Whereas most recent studies of tax reform focus on the economic rationales for whether income or consumption is the “ideal” tax base,<sup>16</sup> Zelenak skillfully transcends this narrow and tired debate to explore the under-studied virtues of a return-based mass income tax. Chief among these, Zelenak contends, is the existing regime’s potential to raise “the tax consciousness of the average citizen” (p. 3). For Zelenak and others, taxation is a fundamental part of the social contract between the state and its citizens—a contract that helps us understand the meaning of “fiscal citizenship.”<sup>17</sup> Zelenak complements his innovative substantive analysis with an equally impressive and eclectic use of scholarly methods and sources of evidence. Borrowing creatively from history, political science, sociology, and cultural studies, he relies on a multidisciplinary set of approaches and data to make the case for a simplified, return-based mass income tax.

Yet, like most provocative texts, *Learning to Love Form 1040* is not the final word on U.S. tax reform. In the process of starting an important conversation about the overlooked benefits of a return-based mass income tax, the book leaves open several significant issues. It has little to say, for example, about the impending fiscal imbalance that the United States is likely to

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15. Zelenak has elsewhere made a similar claim. Lawrence A. Zelenak, *Foreword: The Fabulous Invalid Nears 100*, LAW & CONTEMP. PROBS., Winter 2010, at i.

16. See, e.g., Joseph Bankman & David A. Weisbach, *The Superiority of an Ideal Consumption Tax over an Ideal Income Tax*, 58 STAN. L. REV. 1413, 1423–25 (2006); Daniel Shaviro, *Beyond the Pro-consumption Tax Consensus*, 60 STAN. L. REV. 745 (2007).

17. P. 7. “Fiscal citizenship” is a term first coined, as Zelenak notes, by economist Richard Musgrave. Pp. 17, 126 n.15. But in recent years the term has been used to describe a broader relationship between citizens and the state. See generally Richard A. Musgrave, *Clarifying Tax Reform*, 70 TAX NOTES 731, 732 (1996); AJAY K. MEHROTRA, MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929 (2013); JAMES T. SPARROW, WARFARE STATE: WORLD WAR II AMERICANS AND THE AGE OF BIG GOVERNMENT (2011) (characterizing American citizens who contributed to national projects as fiscal citizens).

face in the coming decades, when entitlement spending far outpaces the revenue-generating capacity of our existing tax regime.<sup>18</sup> In fact, the book's normative proposals tacitly insist on maintaining "revenue neutrality" at a time when new forms of revenue may be badly needed. Likewise, in its laudable focus on "tax consciousness" and "fiscal citizenship," the book does not directly address the state's many duties and responsibilities in maintaining an effective social contract between citizens and the sovereign. It has little to say about how political leaders and governmental actors have a reciprocal obligation to ensure an equitable distribution of tax burdens, particularly during periods of increasing inequality. Finally, the book raises several poignant questions about the current state of American politics and civic engagement—questions that may be best answered by placing the author and his book in their own historical context.

This Review proceeds in three parts. Part I examines the central claims and findings of *Learning to Love Form 1040*. It showcases the creative and sophisticated arguments Zelenak uses to support a simplified version of our return-based mass income tax. Part II assesses the book's evidentiary base. It investigates how Zelenak deploys a set of multidisciplinary methods and data to support his main contentions and to chronicle changing popular attitudes toward taxation since World War II. Part III then turns to Zelenak's specific reform proposals and highlights some missed opportunities. After summarizing Zelenak's three specific reforms, this last Part explores some of the issues that the book leaves underexamined. Finally, the Review concludes by contending that Zelenak's original and inspiring defense of the income tax is a uniquely early twenty-first-century project—one that at times wistfully reflects on an earlier age to show how we can revive a robust and pragmatic sense of fiscal citizenship.

#### I. COMPLEXITY AND THE UNDERVALUED VIRTUES OF A RETURN-BASED MASS INCOME TAX

Among the many criticisms of our current federal tax system, the immense complexity of American tax law is the most common. Indeed, the sheer length of the U.S. Internal Revenue Code and associated regulations has become incredibly daunting.<sup>19</sup> Zelenak is acutely aware of the adverse consequences of such complexity, and thus he begins and ends his book by focusing on this critical issue. As a result of this legal complexity, the costs of

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18. For more on this impending fiscal imbalance, see generally CONG. BUDGET OFFICE, *THE BUDGET AND ECONOMIC OUTLOOK: 2014 TO 2024* (2014), available at [http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014\\_Feb.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014_Feb.pdf), and BRUCE BARTLETT, *THE BENEFIT AND THE BURDEN: TAX REFORM—WHY WE NEED IT AND WHAT IT WILL TAKE* 185–86 (2012).

19. As of 2006, one widely used edition of the Internal Revenue Code contained 9,831 sections covering over 3,000 pages. JOEL SLEMROD & JON BAKIJA, *TAXING OURSELVES: A CITIZEN'S GUIDE TO THE DEBATE OVER TAXES* 160 (4th ed. 2008). Meanwhile, the federal tax regulations for that year were a whopping 10,014 pages. Together, this set of documents contains approximately eight million words. *Id.*

complying with our current tax regime have soared. Relying on recent studies, Zelenak notes at the outset that “[t]otal out-of-pocket return preparation costs” for individual taxpayers alone are “about \$15 billion annually.”<sup>20</sup>

Although Zelenak does not defend such complexity, he provides a reasonable explanation for why it exists. “The federal income tax features an immense number of bells and whistles,” he writes, because it is “designed to fine-tune tax liabilities according to numerous aspects of taxpayers’ circumstances” (p. 2). For Zelenak, the multiple gradations of progressive tax brackets and the Internal Revenue Code’s countless deductions and credits are all ways that Congress adjusts for fairness. Through these mechanisms, national lawmakers have tried to tailor tax law to accommodate more precisely the detailed circumstances of different taxpayers while equitably distributing the tax burden. This is certainly an accurate description of particular aspects of our dizzyingly complex tax code.

There is, however, an equally plausible, but perhaps more cynical, explanation—one that Zelenak elides. Over the years, national lawmakers have turned to the tax code as the vehicle of choice for implementing nearly every kind of social, cultural, and economic policy, particularly through the use of tax benefits. In the process, legislators have learned that “reforming” and reestablishing—or simply maintaining—certain tax provisions can provide lawmakers themselves with significant political and economic benefits. Indeed, public-choice theory would suggest that lawmakers may be manipulating the tax code for their own advantage. They may be using their power over such tax dispensations to garner greater campaign contributions or other political favors. Consequently, today’s complexity isn’t just about “fine-tuning”; it may also be about rent-seeking.<sup>21</sup>

Even so, Zelenak’s central objective is not to defend or explain complexity. Rather, his goal is to show that a return-based tax system serves several important social and political aims. Chief among these is the ability of a return-based direct tax to awaken enhanced notions of tax consciousness and fiscal citizenship. The tax system’s potential to forge civic identity is also evident, Zelenak contends, in some surprising contexts such as tax expenditures, which include the individual deduction for charitable contributions and the social-welfare provision known as the Earned Income Tax Credit (“EITC”). In addition, *Learning to Love Form 1040* explores other possible counterintuitive consequences of return-based taxation. The book examines

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20. P. 2. Other estimates indicate that, for tax year 2004, the total annual cost of enforcing and complying with the federal corporate and individual income tax reached nearly \$135 billion. *E.g.*, SLEMROD & BAKIJA, *supra* note 19, at 4, 162.

21. See Richard L. Doernberg & Fred S. McChesney, *Doing Good or Doing Well? Congress and the Tax Reform Act of 1986*, 62 N.Y.U. L. REV. 891 (1987) (book review) (using the enactment of the 1986 Tax Reform Act as an example of legislators’ changing the tax system for self-gain); Edward J. McCaffery & Linda R. Cohen, *Shakedown at Gucci Gulch: The New Logic of Collective Action*, 84 N.C. L. REV. 1159 (2006) (arguing that legislators help create special interest groups because they seek rents). The classic text on public-choice theory and rent-seeking behavior remains JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT* (1962).

how present-day policymakers and activists may perceive our current tax regime as an unstated, yet stable and enduring, political compromise over the appropriate size of government. Similarly, Zelenak illustrates how the quasivoluntary nature of our tax system, with its tolerance for “low-level cheating,” may unexpectedly provide a “safety-valve” function in our liberal democratic society.

#### A. *Tax Consciousness and Fiscal Citizenship*

Although Zelenak is concerned about the growing complexity of our tax system, his overarching objective is to demonstrate that our return-based mass income tax still serves significant social purposes. “One of those purposes,” he explains, “is raising the tax consciousness of the average citizen, compared with the low level of tax consciousness that would prevail under a federal retail sales tax, VAT, or return-free income tax” (p. 3). By making the payment of taxes politically salient for individuals,<sup>22</sup> the return-filing process compels taxpayers to confront the extent of their total financial contributions to the federal government. Zelenak maintains that this, in turn, ought to make taxpayers more cognizant of how public officials are raising revenue and spending tax dollars. In short, the pain of paying taxes should propel taxpayers to be more politically and civically engaged. It should make them better citizens.

Raising tax consciousness, however, is really just a subset of Zelenak’s broader and more ambitious argument about the benefits of a return-based mass income tax. For Zelenak, the primary advantage of such a tax is its ability to foster fiscal citizenship. The process of paying taxes, as many scholars have argued, is a concrete instantiation of the social contract that exists between citizens and their state. Taxes not only formalize our obligations to each other as members of an “imagined community” or as a product of “the political imaginary” but they also signify who is a member of such a community.<sup>23</sup> They help us determine how wide we draw the circle of “we.” And, in the process, taxes define the economic duties and obligations that come with citizenship.<sup>24</sup>

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22. On the importance of political salience as opposed to market salience, see generally David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19 (2011).

23. BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (2d ed. 2006); see also BOB JESSOP, *STATE THEORY: PUTTING THE CAPITALIST STATE IN ITS PLACE* 365 (1990).

24. Scholars have long noted that taxes are among the most pervasive and persistent ways that citizens interact with their government. See, e.g., MORTON KELLER, *REGULATING A NEW ECONOMY: PUBLIC POLICY AND ECONOMIC CHANGE IN AMERICA, 1900–1933*, at 209 (1990). Colleagues and I elsewhere elaborate on the literature that deals with taxation as a social contract. See generally Isaac William Martin, Ajay K. Mehrotra & Monica Prasad, *The Thunder of History: The Origins and Development of the New Fiscal Sociology*, in *THE NEW FISCAL SOCIOLOGY: TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE* 1 (Isaac William Martin et al. eds., 2009).

Zelenak wholeheartedly endorses such a view of taxation and the formation of civic identity. “The near-universal tax return filing requirement defines and mediates the relationship between citizens and the federal government,” he writes (p. 4). “The return-preparation process serves—or at least has the potential to serve—the important civic purpose of recognizing and formalizing the financial responsibilities of citizenship” (p. 4). Echoing Justice Holmes’s famous tax maxim,<sup>25</sup> Zelenak concludes that “[t]he filing of a tax return, with its high visibility and ceremonial aspect, calls the taxpayer’s attention to his status as a taxpayer and a purchaser of civilization in a way that would be impossible under a return-free tax system.”<sup>26</sup>

To emphasize the benefits of tax consciousness and fiscal citizenship, Zelenak contrasts the relative pain and visibility of a return-based mass income tax with the comparative ease and opacity of other tax systems such as (1) a retail sales tax, (2) a VAT, or (3) a system of exact withholding.<sup>27</sup> The constant reference to these three alternative tax regimes is no accident. Indeed, such references are highly significant for Zelenak and his desire to revise our current system while keeping overall tax revenue stable. Not only are these other tax regimes part of many popular reform proposals but they are also essential foils for Zelenak’s main arguments. For Zelenak, any tax reform that eliminates the “civic ceremony” of filing one’s taxes is anathema (p. 4). Whether it is a radical shift in the tax base from income to consumption or an equally dramatic move toward a precise withholding system, such as the United Kingdom’s Pay As You Earn (“PAYE”) system, Zelenak opposes any reform that seeks to abolish the use of a return-based tax system for the vast majority of Americans.<sup>28</sup>

Indeed, these three alternative tax proposals are the *bête noires* of Zelenak’s story. They form the necessary contrast to highlight the normative objectives of the book. Simply put, Zelenak is not willing to give up on the return-based mass income tax. “This book makes the case for retaining a return-based mass income tax not because such a system can accommodate highly complex rules for determining tax liabilities,” he writes, “but because of the potential of a return-based system to promote fiscal citizenship” (p. 5). In this sense, his book joins the growing literature on tax reform. But, as Zelenak explains, his “is a considerably more modest proposal than most—a

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25. See *supra* text accompanying note 4.

26. P. 4. In many ways, Justice Holmes serves as the patron saint of Zelenak’s book. On Justice Holmes’s view of taxation, see generally Stephen Diamond, *Citizenship, Civilization, and Coercion: Justice Holmes on the Tax Power*, in *THE LEGACY OF OLIVER WENDELL HOLMES, JR.* 115, 143–48 (Robert W. Gordon ed., 1992).

27. “Under an exact-withholding system,” Zelenak explains, “employers and other payers of taxable income items (such as interest and dividends) withhold and remit to the government the precise amount of the recipient’s tax on that income, thereby eliminating the need for tax returns to reconcile differences between amounts withheld and taxes actually owed.” P. 1.

28. P. 3. For more on the PAYE system, see William J. Turnier, *PAYE as an Alternative to an Alternative Tax System*, 23 VA. TAX REV. 205 (2003), and William G. Gale & Janet Holtzblatt, *On the Possibility of a No-return Tax System*, 50 NAT’L TAX J. 475 (1997).

proposal *not* to scrap the return-based mass income tax in favor of a return-free system, but to repair the return-based tax so its civic potential can be realized” (p. 5).

Before Zelenak proceeds to his normative proposals for simplification, he provides an account of the important effects of a return-based tax system. First and foremost among these effects is, of course, the role that return-based mass taxation plays in fostering fiscal citizenship. It does so in two ways, both of which focus on process rather than outcomes. First, the process of paying taxes and the accompanying annual reconciliation of tax liabilities represent, for Zelenak, a “civic ceremony” (p. 4). Just as voting is a ceremony of political citizenship, paying taxes is a ceremony of fiscal citizenship. When an individual pays taxes, she draws attention to how she is holding up her part of the social contract. Contributing one’s “fair share” to the public treasury is one way to show that a taxpayer is a citizen, to show that one is “doing one’s part,” as Zelenak puts it, to support “the political community of which one is a member” (p. 17).

Our current tax system also promotes fiscal citizenship by producing a higher level of political and civic engagement. “To be an informed and thoughtfully involved citizen,” writes Zelenak, “one must understand something about both how the federal government raises revenue and how it spends tax dollars” (p. 25). There is no better way to encourage people to develop such an understanding than to make them an obvious part of the tax-paying process. “A citizen is most likely to be motivated to engage in critical evaluation of federal spending,” Zelenak concludes, “if that citizen has paid at least a small amount of tax to the federal government and is fully conscious of having done so” (p. 25). By having some “skin in the game” (p. 30), citizen-taxpayers are more likely to learn about how their government operates and to assess what it does on an everyday basis.<sup>29</sup>

#### B. *How Some Tax Expenditures Can Unexpectedly Foster Fiscal Citizenship*

A citizen-taxpayer’s critical evaluation of public spending can even come, Zelenak argues, from some of the most unexpected aspects of a return-based tax system. For example, many of the tax benefits embedded in the Internal Revenue Code in the form of deductions and credits for specific taxpayers and activities have long been derided as inefficient, and often unacknowledged, forms of indirect governmental spending.<sup>30</sup> Yet Zelenak contends that some of these tax expenditures, particularly the charitable-contribution deduction<sup>31</sup> and the EITC,<sup>32</sup> may actually encourage greater

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29. Professor Kornhauser makes a somewhat similar claim in her calls for an “annual tax statement,” which Zelenak mentions approvingly. P 16; Marjorie E. Kornhauser, *Doing the Full Monty: Will Publicizing Tax Information Increase Compliance?*, 18 CAN. J.L. & JURISPRUDENCE 95, 106–09 (2005).

30. Victor Thuronyi, *Tax Expenditures: A Reassessment*, 1988 DUKE L.J. 1155. The classic work on tax expenditures remains STANLEY S. SURREY, *PATHWAYS TO TAX REFORM* (1973).

31. I.R.C. § 170 (2012).

32. *Id.* § 32.

civic and political participation.<sup>33</sup> By focusing on these two tax expenditures, *Learning to Love Form 1040* stresses the distinction between “filing” and “paying” taxes (pp. 69–70). The former, for Zelenak, is much more vital than the latter (pp. 69–70). Tax filers are compelled to collide with the tax system and acknowledge the existence of the public sector. Therefore, even if low-income workers do not ultimately pay income taxes, as in the case of some EITC recipients, the process of filing for their benefits may potentially make them more engaged citizens.

Zelenak begins his analysis of tax expenditures by discussing how the charitable-contribution deduction can be viewed as an analogue to voting. Building on the scholarship of Saul Levmore, Zelenak shows how “the charitable deduction can be understood as a quasi-voting mechanism.”<sup>34</sup> This deduction, in effect, permits taxpayers to determine which charitable organizations will receive not only their direct pre-tax contributions but also the matching payments that come from the government in the form of tax breaks to the donors. When taxpayers donate property to eligible charities, they are permitted to deduct the value of their donations from their taxable income.<sup>35</sup> Consequently, such charitable contributions reduce the donors’ tax liability by an amount determined by their top marginal tax rate. For instance, if a taxpayer who has a top marginal tax rate of 25% donates \$100 to an eligible charity, the taxpayer will be permitted to deduct \$100 from his taxable income, which will reduce his tax liability by \$25. Ultimately, of the \$100 received by the charity, \$75 comes from the taxpayer, while the federal government provides the remaining \$25 in the form of a reduction in the donor’s tax liability.<sup>36</sup>

Simply put, the charitable-contribution deduction turns the federal government into a partner with donor-taxpayers. Each donation is both a private pre-tax contribution by the donor and a post-tax public contribution by the federal government. As a result of this partnership, the donating taxpayer doesn’t just become more engaged with the public sector; she effectively uses taxation to voice her preferences on how public revenues should be spent. She uses the tax benefit as a type of “ballot” to “vote” for indirect governmental spending. “A taxpayer making a deductible contribution,” writes Zelenak, “can be understood as both voting (as to how federal funds

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33. Pp. 60–70. Zelenak readily admits that too many tax expenditures can also lead to greater complexity, which can undermine fiscal citizenship. Pp. 58–59.

34. P. 61 (citing Saul Levmore, *Taxes as Ballots*, 65 U. CHI. L. REV. 387, 388 (1998)); see also Paul R. McDaniel, *Federal Matching Grants for Charitable Contributions: A Substitute for the Income Tax Deduction*, 27 TAX L. REV. 377 (1972). For more on the relationship between taxpayer status and voting, see generally Nancy C. Staudt, *Taxation Without Representation*, 55 TAX L. REV. 555 (2002).

35. I.R.C. § 170.

36. Zelenak uses a similar example to illustrate how the charitable-contribution deduction operates. See pp. 60–61.

should be directed) and as fulfilling her obligation to make a financial contribution in promotion of the general welfare.”<sup>37</sup>

The EITC also has the potential to promote fiscal citizenship, although in different ways. Zelenak maintains that, unlike the “taxes-as-ballots” argument, the EITC enhances civic and political engagement because it allows low-wage workers to make a claim upon the broader community through government (pp. 68–70). In other words, the process of filing a tax return to receive the EITC is one way that low-income workers are exercising their fiscal rights. If fiscal citizenship is about the *rights* as well as the obligations that arise from a social contract, then for the working poor “fiscal citizenship confers a right to earn a wage sufficient to support oneself and one’s family at a level of basic decency” (p. 69). Although they may not be net contributors to the federal fisc, low-wage workers who receive the EITC are exercising their political and economic rights to a living wage by filing for the EITC. They are doing their own part, however modest, to be active citizens of the community. The key for Zelenak, of course, is that such workers must file a tax return to receive their benefits and to claim their fiscal rights.

### C. Counterintuitive Consequences

Although the book’s main focus is exploring the relationship between taxation and civic identity, *Learning to Love Form 1040* also examines other more counterintuitive consequences of return-based taxation. One of the most intriguing, yet somewhat speculative, claims revolves around the present-day political implications of a tax system, like ours, that uses inexact withholding and an annual tax-reconciliation process. Zelenak argues that the U.S. tax system reflects a compromise between how the two poles of American politics currently perceive the visibility and painfulness of taxes. “Some small-government conservatives,” Zelenak writes, “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” (p. 12). Referencing well-known antitax activist Grover Norquist, Zelenak pointedly illustrates how and why antitaxists prefer a return-based tax system.<sup>38</sup> They do so mainly because such a system, as Norquist has explained, “focuses taxpayers on what they’re paying.”<sup>39</sup> It makes them attuned to the actual costs of government and thus in theory resistant to tax hikes and increased governmental spending. By contrast, proponents of public power will supposedly favor less salient taxes. Big-government liberals prefer “making taxes as nearly invisible

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37. P. 62. As procedural-justice scholars have shown, giving taxpayers “voice” similar to voting is also one way to instill greater trust in government. See generally E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988).

38. P. 57. As president of the antitax group Americans for Tax Reform, Norquist has famously declared that his goal is to shrink the size of government, “to get it down to the size where we can drown it in the bathtub.” Robert Dreyfuss, *Grover Norquist: ‘Field Marshal’ of the Bush Plan*, *NATION*, May 14, 2001, at 11, 12.

39. P. 12 (quoting *Ninth Meeting, President’s Advisory Panel on Fed. Tax Reform* 114 (2005) (testimony of Grover G. Norquist)).

and as nearly painless as possible,” writes Zelenak, because invisible and painless taxes can ease the collection process and hence allow for the unobstructed growth of the social-welfare state (p. 13).

Zelenak admits that there is little historical evidence to suggest this political compromise has been purposeful (pp. 13–14). Liberals and conservatives did not deliberately negotiate the current fiscal settlement. Lawmakers today may not acknowledge that such a compromise even exists. Nonetheless, Zelenak persuasively argues that our current tax system, which combines the relatively invisible system of withholding with the more painful process of annual reconciliation, “may be an attractive middle ground” (p. 13). On the one hand, the annual filing requirement makes taxes highly salient and distressing, compelling taxpayers to be cognizant of tax rates and governmental spending and thus acting as a potential constraint on the growth of big government. On the other hand, the use of withholding makes the collection of taxes relatively invisible and painless, thus enhancing Leviathan’s revenue-raising capacity. “The result,” Zelenak concludes, “is an attractive—and enduring—compromise on the visibility and painfulness of the federal government’s major revenue tool” (p. 13). On the political spectrum of visibility and pain, our current tax system seems to occupy an accepted middle ground.

A second counterintuitive claim emerges from the way Zelenak describes the potential cracks or slippage in the existing return-based mass income tax.<sup>40</sup> As scholars have long noted, our “quasi-voluntary,”<sup>41</sup> return-based tax system frequently fails to collect all the taxes that are legally owed. In fact, tax noncompliance has been identified as “a long-standing problem,”<sup>42</sup> responsible for between \$385 and \$450 billion of uncollected tax revenue annually.<sup>43</sup> Although Zelenak concedes that noncompliance can erode taxpayer morale and thereby undermine the return-based mass income tax, he cleverly inverts the conventional wisdom by arguing that, even here, there might be a silver lining. Accordingly, Zelenak maintains that, because our quasivoluntary system permits tax protests, wartime tax resistance, and “small-scale tax cheating,” we all benefit from the “safety-valve” function of such tax defiance (p. 54).

Even though the political meanings of different forms of tax rebellion vary dramatically, Zelenak contends that each of them may have hidden benefits that would be unavailable under alternative tax regimes. Generally,

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40. Although this Review explores only two of the main consequences of a return-based mass income tax, Zelenak also analyzes a third: the increased media attention that comes from having an annual tax-return filing deadline. Pp. 35–38.

41. On the significance of quasivoluntary tax systems, see MARGARET LEVI, *OF RULE AND REVENUE* 52–67 (1988).

42. U.S. GOV’T ACCOUNTABILITY OFFICE, *AO-06-1000T, TAX COMPLIANCE: OPPORTUNITIES EXIST TO REDUCE THE TAX GAP USING A VARIETY OF APPROACHES* (2006).

43. *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged from Previous Study*, IRS (Jan. 6, 2012), <http://www.irs.gov/uac/IRS-Releases-New-Tax-Gap-Estimates;-Compliance-Rates-Remain-Statistically-Unchanged-From-Previous-Study>.

it is far-right antistatists who attempt to challenge the legitimacy of public power by overtly refusing to pay taxes (p. 39). They try to defy what they perceive as the totalitarian aspects of the Leviathan state. And a return-based mass income tax provides an avenue for these antistatists to vent their protests peacefully (p. 41). Meanwhile, wartime tax resisters are usually left-leaning liberals who want to express their moral outrage over military spending (p. 46). Their tax noncompliance is a form of civil disobedience that would not otherwise be available outside of a return-based tax regime.<sup>44</sup> Finally, those taxpayers who engage in “small-scale cheating” by not reporting nonwage income or by exaggerating certain deductions may fall anywhere on the political spectrum (p. 48). But even their tax noncooperation can be interpreted, according to Zelenak, as a way to increase trust in government and as a form of symbolic, although apparently innocuous, resistance (p. 49). Thus, regardless of the political valence, Zelenak views these three forms of tax rebellion as salutary aspects of our return-based mass income tax.

To his credit, Zelenak concedes that there is a paucity of empirical evidence to support his contention that permitting a small amount of tax protests, tax resistance, and tax cheating is a valuable consequence of our return-based tax regime (p. 41). Thus, in his zeal to defend the return-based mass income tax, Zelenak turns to counterfactual claims about what we might expect in the absence of such a tax system. For example, in his discussion of how tax protest movements may serve “an important safety-valve function,” Zelenak maintains that, because our return-based system permits tax defiance and protest, it forestalls other more violent forms of rebellion—from any part of the political spectrum (p. 41). “Perhaps significant numbers of tax protestors on the Right would turn to armed insurrection in the absence of the tax protest option,” Zelenak speculates, “while a significant number of tax protestors on the Left would turn to more confrontational forms of physical protest (e.g., trespassing on nuclear weapons facilities)” (p. 41). Like other counterfactuals, these scenarios are certainly possible, but they seem rather unlikely.<sup>45</sup>

In his analysis of tax evasion, Zelenak similarly observes that allowing a “little low-level tax chiseling” may provide not only a “safety valve” but perhaps also a way to generate greater trust in government (p. 54). Even this contention, however, rests on limited empirical evidence. If taxpayers believe that the quasivoluntary nature of the return-based tax system is “an expression of the government’s trust in them,” writes Zelenak, “they may respond by acting in a manner worthy of that trust” (p. 49). That is, they may be more willing to pay taxes, and they may have greater faith and confidence in

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44. See Marjorie E. Kornhauser, *For God and Country: Taxing Conscience*, 1999 Wis. L. REV. 939, 940–43.

45. Although it is certainly possible that the safety-valve function may have prevented further violence against the government, it is difficult to gauge precisely such a function’s effectiveness over time. For more on the promise and perils of counterfactual reasoning, see Neal J. Roese, *Counterfactual Thinking*, 121 PSYCHOL. BULL. 133 (1997).

the public sector. This increased trust in government may also be related to greater social cooperation and norms of reciprocity, or what social scientists refer to as *social capital*.<sup>46</sup> In this sense, a return-based tax system that permits some small-scale cheating may paradoxically be part of a “virtuous circle” in which public trust correlates with high social capital, which in turn correlates with greater tax compliance and hence increased public trust and social capital.<sup>47</sup>

Although this is a fascinating argument that synthesizes and builds on several social scientific studies, it ultimately rests on some heroic assumptions, limited data, and unwarranted faith in counterfactual reasoning. The standard literature on tax compliance suggests that tax evasion occurs more often when taxpayers are given increased opportunities to evade. Consider some of the well-known statistics on tax noncompliance by type of income and occupation. Studies show that, for wage earners who have their income taxes withheld by employers, the compliance rate is nearly 100%.<sup>48</sup> By contrast, self-employment business income, which is not subject to information reporting, has a compliance rate closer to 48%.<sup>49</sup> These and other analyses indicate that it is a mix of rigorous enforcement and public trust that can bolster tax compliance.<sup>50</sup>

To be sure, Zelenak is well aware of the tax-compliance literature.<sup>51</sup> Yet rather than focus on enforcement mechanisms, he stresses the importance of social trust to explain why noncompliance may be increasing. As Zelenak admits, it is equally plausible that a society could be caught in a contrasting “vicious circle,” whereby declining trust in government leads to diminishing social capital, which in turn leads to greater tax evasion, which leads to even less trust in government, and so on (p. 52). It remains unclear which of the two circles—virtuous or vicious—the United States is currently in. But many of the studies that Zelenak references, especially those dealing with the importance of public trust and social capital, suggest that in recent years the United States has been suffering from a deficit in precisely these areas (pp.

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46. Among the leading theories of social capital to which Zelenak refers, the most prominent are ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000), and Margaret Levi & Laura Stoker, *Political Trust and Trustworthiness*, 3 ANN. REV. POL. SCI. 475 (2000). P. 52.

47. On the relationship between trust and good governance, see generally TRUST AND GOVERNANCE (Valerie Braithwaite & Margaret Levi eds., 1998).

48. Joel Slemrod, *Cheating Ourselves: The Economics of Tax Evasion*, J. ECON. PERSP., Winter 2007, at 25, 28.

49. *Id.*

50. See Leandra Lederman, *The Interplay Between Norms and Enforcement in Tax Compliance*, 64 OHIO ST. L.J. 1453 (2003). For more on the importance of structural constraints on tax compliance, see generally Leandra Lederman, *Statutory Speed Bumps: The Roles Third Parties Play in Tax Compliance*, 60 STAN. L. REV. 695 (2007).

51. In fact, Zelenak has contributed to the scholarship on tax shelters and noncompliance. See, e.g., Marvin A. Chirelstein & Lawrence A. Zelenak, *Tax Shelters and the Search for a Silver Bullet*, 105 COLUM. L. REV. 1939 (2005).

51, 53–54). Indeed, if there has been a “dramatic decline in trust in government since the 1950s” (p. 51) and if more and more Americans are *Bowling Alone* in an *Age of Fracture*, it seems highly unlikely that the United States is in the midst of a virtuous cycle.<sup>52</sup> In the end, Zelenak concedes this uncertainty, although he remains optimistic that recent positive trends in taxpayer morale may continue to raise “two cheers for the return-based mass income tax.”

## II. AN ECLECTIC SOURCE OF EVIDENCE

In defending the return-based mass income tax, Zelenak does much more than merely provide a legal brief in support of a simplified version of our current tax regime. He also uses a variety of evidence and scholarly methods to uncover the origins, contingencies, and continuities of our return-based mass income tax. He does all this by chronicling the World War II origins of our mass income tax and then contrasting this historical account with a sociological analysis of how our tax system has been reflected in American popular culture.

### A. Historical Origins of the “People’s Tax”

American historians and tax law scholars have long noted that World War II was a critical juncture in the transformation of our fiscal system from a “class tax” to a “mass tax.”<sup>53</sup> What Zelenak skillfully adds to this well-known story is a discussion of how the mid-1940s was also a pivotal period during which national lawmakers roundly rejected an alternative tax base and filing system that might have altered the future trajectory of our fiscal order. Rather than adopting a retail sales tax, New Deal legislators lowered exemption levels and thereby extended the income tax to a wide swath of American households.<sup>54</sup> They also required all income taxpayers to file returns rather than opting for a return-free system of exact withholding for most taxpayers (p. 79). These were, as Zelenak illustrates, two crucial decisions. By mining the published primary sources from the period—mainly newspaper accounts and government documents—Zelenak makes an important contribution to the existing political historiography on New Deal tax policy and demonstrates the historical contingency that may explain why we have our current tax system.<sup>55</sup>

52. PUTNAM, *supra* note 46; DANIEL T. RODGERS, *AGE OF FRACTURE* (2011); *see also* GEORGE PACKER, *THE UNWINDING: AN INNER HISTORY OF THE NEW AMERICA* (2013).

53. JOSEPH J. THORNDIKE, *THEIR FAIR SHARE: TAXING THE RICH IN THE AGE OF FDR* 231 (2013); *see* BANK ET AL., *supra* note 3, at 83–108; W. ELLIOT BROWNLEE, *FEDERAL TAXATION IN AMERICA: A SHORT HISTORY* 108–19 (2d ed. 2004); 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).

54. The number of individual taxpayers exploded from under four million in 1939 to over forty million in 1945. BROWNLEE, *supra* note 53, at 115.

55. This chapter of *Learning to Love Form 1040* is an abridged version of an earlier article that takes a closer look at the rejection of the World War II sales tax. Lawrence A. Zelenak, *The*

Zelenak begins with an examination of how and why lawmakers, led by the Roosevelt administration, favored a mass income tax over a retail sales tax (pp. 71–78). Historians have shown that President Franklin D. Roosevelt had a long-standing commitment to high-end progressive taxes—a commitment that reached back to his days as governor of New York—and that he and his Treasury Department maintained this commitment by resisting early calls for a sales tax.<sup>56</sup> Building on this literature, Zelenak makes two central claims. First, in tracing the legislative history of key revenue acts, he contends that the Roosevelt administration, led by Treasury Secretary Henry Morgenthau Jr., was the central roadblock to the adoption of a retail sales tax. Although Roosevelt and Morgenthau were initially unenthusiastic about lowering income-tax exemption levels to transform the income tax into a mass tax, Zelenak argues, they saw this move as a “lesser evil” compared to the “greater evil” of adopting a sales tax (p. 73). Gradually, the fiscal demands of the war and the need to control inflation convinced the administration to go with a mass income tax (pp. 74–77). By choosing what they viewed as the politically palatable option, the Roosevelt administration placed American fiscal history on the path toward a mass income tax rather than a retail sales tax. “It is clear,” Zelenak concludes, “that Congress would have enacted a retail sales tax during World War II, but for the intense and unwavering opposition of President Roosevelt and his Treasury Department” (p. 77).

The book’s second historical contention follows from the first. Zelenak maintains that the Roosevelt administration’s reasoning in opposing the general sales tax was highly irrational. Morgenthau resisted the retail sales tax because he believed it bore “disproportionately on the low-income groups whose incomes are almost wholly spent on consumer goods.”<sup>57</sup> It was thus “regressive,” Morgenthau informed lawmakers, as it encroached “harmfully upon the standard of living” of ordinary Americans.<sup>58</sup> Zelenak is highly critical of Morgenthau’s economic logic. As Zelenak shows, 1940s tax experts and congressional leaders were well aware of the potentially regressive incidence of a sales tax. In fact, they sought to mitigate this distributional impact by proposing ways to exempt certain kinds of spending by low-income citizens, such as using “a book of coupons entitling the bearer to make \$200 of tax-free purchases each year” (p. 74). Given that such proposals were widely circulated during the congressional debates over the sales tax, Zelenak concludes that the Roosevelt administration’s opposition was “less than wholly rational” (p. 77).

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*Federal Retail Sales Tax That Wasn't: An Actual History and an Alternate History*, LAW & CONTEMP. PROBS., Winter 2010, at 149.

56. THORNDIKE, *supra* note 53, at 45–73. For a contrasting account of New Deal tax policy, see generally MARK H. LEFF, *THE LIMITS OF SYMBOLIC REFORM: THE NEW DEAL AND TAXATION, 1933–1939* (1984).

57. P. 72 (quoting *Hearings Before the H. Comm. on Ways & Means on Revenue Revision of 1942*, 77th Cong. 7 (1942) (statement of Henry Morgenthau Jr., Secretary of the Treasury)).

58. *Id.*

Zelenak is certainly correct about the important leadership role that Morgenthau played in rejecting the *retail sales tax* and accepting the mass income tax. In fact, Morgenthau eventually celebrated his decision to lower income-tax exemption levels. “For the first time in our history,” he proudly told lawmakers, “the income tax is becoming a people’s tax.”<sup>59</sup> The existing secondary literature supports Zelenak’s claim about Morgenthau’s key role in this transformation.<sup>60</sup>

But Zelenak’s second argument about the irrationality of Morgenthau’s position is more difficult to reconcile with the standard historiography. Zelenak contends that the administration’s objections to a retail sales tax with coupon-based exemptions were unreasonable on the merits because such a system “would have been no more burdensome to lower-income groups than subjecting them to the income tax by lowering exemption levels” (p. 77). That may be true, but it does not wholly explain the administration’s position.

As political and economic historians have shown,<sup>61</sup> and as Zelenak acknowledges elsewhere,<sup>62</sup> Roosevelt and Morgenthau were not adamantly opposed to all consumption taxes. Nor was the Treasury Department unaware of ways to alleviate the regressive incidence of such taxes.<sup>63</sup> In fact, Roosevelt may have preferred low-level income taxes over broad-based sales taxes precisely because the visibility and political salience of income taxes could awaken a greater sense of fiscal citizenship. We do know that Morgenthau himself backed the idea of a steeply progressive *spendings tax* during the height of the congressional debates over the Revenue Act of 1942.<sup>64</sup> This support would seem to suggest that he was not completely opposed to certain kinds of consumption taxes. Eventually, for purely political reasons, Roosevelt declined to support the graduated *spendings tax*, which ultimately led to its demise in Congress.<sup>65</sup>

Similarly, Treasury experts were cognizant of proposals to mitigate the regressivity of a retail sales tax through the use of stamp-based or coupon-based exemptions. But they objected to these provisions on administrative grounds, mostly because they thought that it would be difficult to police the legitimate use of such exemption systems.<sup>66</sup> Morgenthau’s willingness to recommend a *spendings tax* to Congress, along with the Treasury Department’s

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59. P. 74 (quoting Henry Morgenthau, Jr., *Secretary Morgenthau’s Tax Statement to Senate Finance Committee*, N.Y. TIMES, July 24, 1942, at 10).

60. See BROWNLEE, *supra* note 53, at 107–10; THORNDIKE, *supra* note 53, at 247–50; see also JOHN MORTON BLUM, *FROM THE MORGENTHAU DIARIES: YEARS OF WAR, 1941–1945*, at 39–42 (1967).

61. See BROWNLEE, *supra* note 53, at 111–12; THORNDIKE, *supra* note 53, at 240–43.

62. See Zelenak, *supra* note 55, at 158–59.

63. See *supra* notes 57–59 and accompanying text.

64. THORNDIKE, *supra* note 53, at 241–43.

65. *Id.* at 243; BLUM, *supra* note 60, at 46–48.

66. According to a 1943 Treasury Department report, “The abuses which might arise under an exemption system (for example, counterfeiting or tax coupons, collusion, misrepresentation and falsification) are potentially great and would have to be guarded against in order

concerns about the administrative challenges of using particular exemption procedures, suggests that the Roosevelt administration may not have been completely ignorant of or unreasonable about existing tax-reform proposals.<sup>67</sup>

A far more likely explanation for the administration's opposition to the general sales tax can be found in the politics, rather than the economics, of taxation at the time. Although there were many economic experts, social commentators, and lawmakers who supported the general sales tax, as Zelenak duly notes, one critical constituency opposed it: organized labor. The American Federation of Labor and other labor unions staunchly rejected the retail sales tax precisely because of its potentially regressive incidence.<sup>68</sup> And organized labor was a vital part of Roosevelt's fragile political coalition.<sup>69</sup> Thus, it is no surprise that the Roosevelt administration opposed the retail sales tax. Indeed, if anything, this opposition demonstrates that astute political decisionmaking trumped economic logic.<sup>70</sup>

Although Zelenak's account of the origins of the "people's tax" may be overly harsh, his investigation of the filing requirements for the mass income tax represents a valuable and much-needed contribution to the existing historiography—not to mention a crucial part of his book's overall defense of the return-based mass income tax. For too long, historians have been preoccupied with analyzing the 1943 political compromise that led to the adoption of income-tax withholding.<sup>71</sup> In the process, they have neglected to examine why Congress in 1944 rejected proposals for a form of exact withholding that, if adopted, would have excused the vast majority of everyday Americans from filing an income tax return. Zelenak briefly wades into this topic to uncover an important lost moment in American fiscal history. He shows that the United States considered a system of exact withholding but instead opted for a more simplified version that still required taxpayers to file a return. By rejecting exact withholding, lawmakers preserved one of the key elements of our modern tax system—an element that is at the heart of Zelenak's book.

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to maintain confidence in the tax system." *Hearings Before the H. Comm. on Ways & Means on Revenue Revision of 1943*, 78th Cong. 1169 (1943).

67. For more on the specific differences between a general sales tax and the spendings tax, see THORNDIKE, *supra* note 53, at 240–43.

68. *Id.* at 21.

69. LIZABETH COHEN, *MAKING A NEW DEAL: INDUSTRIAL WORKERS IN CHICAGO, 1919–1939*, at 252 (2d ed. 2008).

70. Elsewhere, Zelenak acknowledges that Roosevelt's opposition to the sales tax may have made political sense, but he maintains that "the locus of irrationality merely shifts from the Administration to organized labor." Zelenak, *supra* note 55, at 172 & n.182.

71. The political compromise that helped establish mass withholding is known as the Ruml Plan. BROWNLEE, *supra* note 53, at 114; DAVID M. KENNEDY, *THE AMERICAN PEOPLE IN WORLD WAR II: FREEDOM FROM FEAR, PART TWO*, at 200 & n.13 (1999).

To this extent, the historical portion of Zelenak's story is not only fascinating in its own right; it also has a present-day, "utilitarian payoff."<sup>72</sup> It underscores the significance of historical contingency. It shows us that World War II was a pivotal period of plasticity—an era when U.S. fiscal policy could have gone in several different directions. Consequently, there was nothing inexorable or inevitable about the development of our return-based mass income tax. Our tax system evolved through several critical junctures, and at each point the future path of our tax regime could have been dramatically different. Thus, there is nothing natural, neutral, or necessary about the modern tax system. This is an important message to keep in mind, especially for a book with the central aim of exalting the unheralded virtues of a return-based mass income tax.

Despite this practical payoff, there are some strikingly odd aspects of Zelenak's historical tale. First, this decisive story about historical origins is buried as Chapter 5 in a slim, seven-chapter volume. One wonders why this important narrative about the beginnings of the mass income tax and the rejection of exact withholding appears so late in the organization of the argument. One would expect an origins story to emerge much earlier, perhaps as the book's first substantive chapter. Zelenak is possibly trying to emphasize, as he has elsewhere, that history is much more than mere prologue. If his objective is to demonstrate that historical analysis can be fascinating and still have a utilitarian payoff, placing the origins discussion toward the end of the book is certainly one way to stress the usefulness of studying the past.<sup>73</sup>

A second peculiarity of the historical discussion is its ironic and paradoxical tone. The implied normative valence of the history chapter is difficult to integrate with the book's overall thesis. Throughout the chapter, Zelenak seems rather critical of the Roosevelt administration's decision to back a mass income tax with inexact withholding. This tacit criticism appears as a surprising irony when compared with the book's normative goal of defending the return-based mass income tax. In fact, Zelenak concludes his historical analysis with a seemingly agnostic reference to the implications of this historical contingency. "Things might easily have played out differently during World War II, with respect to both retail sales taxation and exact withholding," writes Zelenak. "If they had played out differently, there would probably be—for better or worse—no return-based mass income tax today" (p. 81). This is a surprising statement. If the primary goal of the book is to reveal the unsung benefits of having the vast majority of Americans file their annual income tax returns, one would expect Zelenak to applaud the "accident of history" that gave us the "people's tax" (p. 81). One would expect him to praise this pivotal period as a moment when key historical figures first closed the door on a pernicious broad-based consumption tax

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72. Zelenak himself discusses the importance of tax scholarship that may be "inherently fascinating" and have a "utilitarian payoff." Lawrence A. Zelenak, *Tax Scholarship: Useful and Useless*, 130 TAX NOTES 1337, 1341 (2011).

73. See *id.*

and the insidious process of exact withholding. Yet rather than celebrating Roosevelt and his aides, Zelenak appears paradoxically to condemn them, or at least to reserve judgment on the implications of their historic decisions.

### B. *Popular Perceptions*

To demonstrate the continuities and ruptures in the ways Americans have viewed the return-based mass income tax, Zelenak ventures into cultural studies and sociological analysis. He explores two artifacts of modern American popular culture: radio and television situation comedies and cartoons from the high-brow magazine the *New Yorker*. By summarizing the plot lines of dozens of sitcoms and dissecting the meanings of numerous cartoons, Zelenak provides a fresh and innovative way to gauge American attitudes toward the modern income tax. The use of such diverse and unconventional sources of evidence arguably represents the book's greatest strength. Moving beyond simple public opinion polls, Zelenak uses these unique sources creatively to investigate how the return-based mass income tax has become deeply embedded in the American psyche.

Although both of these cultural genres demonstrate the "special status of the federal income tax in the American consciousness" (p. 84), Zelenak uses each one for different purposes. Whereas the *New Yorker* cartoons depict a certain timeless quality about attitudes toward taxation, the sitcoms are more representative of "changes over time in public attitudes toward the income tax" (p. 83). In this sense, the diachronic analysis of the sitcoms corresponds with the book's central contention that the return-based mass income tax can play a vital role in shaping civic identity.

Nowhere perhaps is this more evident than in the ways sitcoms from the mid-twentieth century depict immigrants' reactions to the income tax.<sup>74</sup> Zelenak analyzes several sitcoms from the 1950s and early 1960s to show how new immigrants to the United States embraced taxation as a ceremony of fiscal citizenship (pp. 86–87). In these sitcoms, newly arrived immigrants struggle to cope with the process of filing a federal income tax return. Their initial frustrations, however, soon turn into a greater appreciation for what it means to be a taxpaying citizen. These episodes generally conclude with a climactic moment when the immigrant-taxpayer reflects on his or her tax liability and proudly proclaims gratitude for "living in this wonderful country."<sup>75</sup> Immigration, as Zelenak notes, has a special place in understanding notions of citizenship. Therefore, it is no surprise that sitcoms from the

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74. In using sitcoms as a way to analyze the unstated mores and norms of American society, Zelenak follows several well-known scholars of popular culture. See, e.g., GERARD JONES, HONEY, I'M HOME!: SITCOMS: SELLING THE AMERICAN DREAM (1992).

75. P. 87 (quoting *The Bill Dana Show: A Tip for Uncle Sam* (NBC television broadcast Jan. 19, 1964)) (internal quotation marks omitted).

immediate post–World War II period—the “golden age” of fiscal citizenship—depict taxation as one way in which new immigrants were integrated into the collective identity of the U.S. nation–state.<sup>76</sup>

*Learning to Love Form 1040*, however, does not simply celebrate these earlier sitcoms. Instead, the book contrasts them with others from the post-1970s, a time when Americans appeared more cynical about government. The stark divergence between the attitudes of sitcom characters from these historical eras shows the changing zeitgeist regarding taxation (p. 88). Unlike characters from the earlier golden age, iconic sitcom figures in the post-1970s do not see the income tax “as a vehicle for satisfying their obligation of fiscal citizenship” (p. 88). On the contrary, they view “it as a mechanism for getting something for nothing from the federal government” (pp. 88–89). Or worse, “they are thrilled when it occurs to them that it is possible to cheat on their taxes” (p. 89).

Sitcom depictions of tax cheating become an important metric for Zelenak’s argument about changing popular perceptions of taxation. Indeed, tax evasion is a recurring theme for many sitcom writers. Zelenak uses episodes from the post–World War II period to show how public attitudes toward tax compliance have deteriorated over time. In the immediate postwar era, Ralph Kramden of *The Honeymooners* was assiduously honest in claiming all of his nonwage income (p. 86). By the 1970s, Archie Bunker from *All in the Family* was eager to “exercise [his] loophole” by not reporting cash income from his moonlighting.<sup>77</sup> And by 1990, the standards of taxpaying honesty seemed to have collapsed altogether, as evidenced by the *Roseanne* episode where the lead characters deliberately fail to report nonwage income (p. 91).

Although Zelenak argues that the important lesson from studying tax-themed sitcoms is that the return-based income tax has had a disproportionate “prominence in the public consciousness” (p. 108), one could also draw an alternative conclusion from Zelenak’s analysis: American attitudes toward the current tax regime have shifted dramatically over time. The historical development of sitcoms may indicate that the United States has been suffering from a vicious circle of declining taxpayer morale and social trust. Zelenak acknowledges this interpretation but appears reluctant to stress just how much U.S. taxpayer morale has declined over the decades.<sup>78</sup> He seems hesitant in criticizing how the post-1960s dissolution of social solidarity and collective obligations has led to a concomitant decline in American tax consciousness and fiscal citizenship.

If the sitcom episodes are emblematic of changing attitudes, the *New Yorker* cartoons, by contrast, “take on a certain timeless quality” (p. 96).

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76. For more on the importance of immigration to citizenship, see generally ROGERS BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* (1992), and CHRISTIAN JOPPKE, *CITIZENSHIP AND IMMIGRATION* (2010).

77. P. 90 (quoting *All in the Family: Archie’s Fraud* (CBS television broadcast Sept. 23, 1972)) (internal quotation marks omitted).

78. See pp. 91–92.

Zelenak analyzes dozens of cartoons from the 1920s to the early 2000s, on a variety of topics from tax audits to tax-return preparation and filing requirements to some of the substantive rules of the federal income tax.<sup>79</sup> Each of these types of cartoons tells a slightly different story about public attitudes toward taxation. But as a whole, Zelenak maintains, they provide a synchronic study of the enduring significance of the return-based character of our tax regime. Because nearly all of the tax cartoons rely on the existence of a return-based regime, Zelenak concludes that the cartoons convey an important lesson: “that being a return-based mass tax has given the federal income tax a prominence in the public consciousness that is unrivaled by any other tax and that is out of proportion to its economic significance relative to other taxes” (p. 108).

Zelenak is certainly correct that the cartoons reflect a certain amount of cultural continuity. Nonetheless, one cannot help but wonder whether more could be gleaned from the cartoons themselves. Zelenak is right to point out that single-frame cartoons, by their nature, are less historically specific and that readers of the *New Yorker* are quite different from the average consumer of TV sitcoms (pp. 95–96). Even so, other cultural commentators contend that *New Yorker* cartoons can be used as a “means of gauging the changing winds of modern society,”<sup>80</sup> and some scholars use the cartoons to chronicle American attitudes toward race and gender.<sup>81</sup> Perhaps taxation is different. Perhaps Zelenak is correct that “cartoons are less suited than sitcoms to pointed critiques” (p. 110). Regardless, Zelenak’s use of these two cultural mediums to show just how deeply embedded the return-based income tax is in American culture makes for an innovative and entertaining analysis. It demonstrates how we take for granted much about our current tax regime. More importantly, the focus on social and cultural sources of evidence provides additional support for the argument that scholars, policy analysts, and lawmakers ought to be attuned to more than just the economic rationales and implications of tax reform.<sup>82</sup>

### III. SIMPLIFICATION PROPOSALS AND MISSED OPPORTUNITIES

*Learning to Love Form 1040* concludes with a succinct chapter on ways to simplify the existing return-based mass income tax. Zelenak’s reform proposals are all sound, cogent ways that “Congress could revise the federal

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79. Pp. 94–110. Some of the most vivid cartoons are reproduced in the book. See, e.g., pp. 103–05.

80. Andrew Feinberg, *Still at the Old Drawing Board*, HORIZON, Jan. 1971, at 54, 54.

81. See, e.g., Cheris Kramer, *Stereotypes of Women’s Speech: The Word from Cartoons*, 8 J. POPULAR CULTURE 624 (1974); Ruth Thibodeau, *From Racism to Tokenism: The Changing Face of Blacks in New Yorker Cartoons*, 53 PUB. OPINION Q. 482 (1989); see also JONES, *supra* note 74, at 228–30.

82. Although legal scholars have turned to popular culture as one way to explore the pervasiveness of law, no one has used sitcoms the way Zelenak does. On how the law has suffused popular culture, see generally RICHARD K. SHERWIN, *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* (2000).

income tax so that it would promote fiscal citizenship more effectively” (p. 111). These recommendations are premised, however, on the notion that the federal government can continue to function with a stable and consistent revenue stream. Although Zelenak does not stress the “revenue-neutral basis” of his proposals (p. 114), raising revenue is obviously not the primary aim of his process-focused recommendations. The implicit concern for revenue neutrality is at odds with what some fiscal analysts are predicting and is in tension with many existing reform proposals.<sup>83</sup> If entitlement spending continues to outpace public monies, revenue neutrality may not be a plausible alternative. Furthermore, Zelenak’s reform proposals underscore the importance of enhancing fiscal citizenship and participatory democracy, but they seem to overlook other ways that public power can sustain the social contract between citizens and the state. The recommendations, in other words, neglect the crucial role of government in creating the conditions that can ensure that all citizens are paying their fair share of the tax burden.

#### A. *The Reform Proposals*

All three of Zelenak’s reform proposals target reducing the current complexity of our national income tax regime. The first deals with the substance of present-day tax law. In an attempt to make the existing system more comprehensible and transparent, Zelenak recommends that Congress “repeal the provisions responsible for the black-box status of this current system—[the Alternative Minimum Tax] and most (perhaps all) of the phaseouts of deductions and credits” (p. 114). He recognizes that, in order to maintain revenue neutrality, marginal tax rates may need to be increased as a result of this proposal. But he is willing to trade higher taxes (to maintain revenue neutrality) in exchange for “an increase in the comprehensibility of the system” (p. 114).

The second and third recommendations address the process of filing tax returns. Building on a 2003 Treasury Department report, Zelenak calls for adopting “tax-agency reconciliation.”<sup>84</sup> This reform would permit the Internal Revenue Service (“IRS”) to prepare an initial tax return on behalf of taxpayers using third-party information. The taxpayers would then review

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83. See, e.g., Susan Jones, *CBO Director: ‘Large and Growing Federal Debt’ Could Produce ‘Fiscal Crisis’*, CNS NEWS (Feb. 11, 2014, 1:26 PM), <http://cnsnews.com/news/article/susan-jones/cbo-director-large-and-growing-federal-debt-could-produce-fiscal-crisis>; Uwe E. Reinhardt, *The Case for Higher Taxes*, ECONOMIX (May 27, 2011, 6:00 AM), <http://economix.blogs.nytimes.com/2011/05/27/the-case-for-higher-taxes/>. For a succinct summary of recent reform proposals that call for revenue raising and deficit reduction, see BURMAN & SLEMROD, *supra* note 6, at 225–29.

84. P. 121 (citing DEP’T OF THE TREASURY, REPORT TO THE CONGRESS ON RETURN-FREE TAX SYSTEMS: TAX SIMPLIFICATION IS A PREREQUISITE (2003)).

their tentative returns and determine whether they agree with the IRS's assessment or whether they wish to revise it. Because of this system's information-reporting limitations, only about 40% of taxpayers could take part in tax-agency reconciliation.<sup>85</sup>

Still, Zelenak is confident that tax-agency reconciliation would be an overall gain for our tax system. "The fiscal-citizenship benefits of the filing process would increase under agency reconciliation," he writes, "because most of the negative feelings engendered by grappling with complexity (or paying a surrogate to do so) would be eliminated" (p. 123). This second recommendation raises some questions about the trade-off between tax simplification and civic engagement. Although tax-agency reconciliation could make the filing process easier and thus reduce antipathy toward the present tax system, would such a relatively painless and simple process also encourage greater political and civic apathy, thereby undermining fiscal citizenship? Where exactly is the line between antipathy and apathy? If tax-agency reconciliation becomes too effective, will citizen-taxpayers become less engaged?

Finally, Zelenak posits the "modest proposal" of encouraging the IRS to "provide a secure online database where individuals could retrieve and download into their returns all their tax information reported to the IRS by third parties" (p. 124). This idea, Zelenak contends, may be the most effective and practical since it would apply to all taxpayers (not just those taking part in tax-agency reconciliation) and because it would be much less politically controversial than more substantive changes to the tax code. Here too, though, one questions whether American citizens would feel safe and secure in allowing the federal government to operate such a database of valuable, personal information. If recent experiences with national-security surveillance, the initial implementation of the Affordable Care Act, and breaches of online privacy are any indication, perhaps the federal government is not the best institution to provide such a clearinghouse of third-party information.<sup>86</sup>

With these reforms, Zelenak hopes to increase tax consciousness and "restore the fiscal-citizenship benefits of return-based mass taxation" (p. 124). But he also wants to do much more. In his concluding chapter, Zelenak makes an eloquent and highly persuasive argument about the links between taxation and democracy. "Taxation without comprehension," he contends, "is as inimical to democracy as taxation without representation" (p. 114). In the end, Zelenak's three recommendations are about ways to

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85. Pp. 121–22. For this figure, Zelenak cites the work of economist Austan Goolsbee. P. 122 n.27 (citing AUSTAN GOOLSBEE, *THE 'SIMPLE RETURN': REDUCING AMERICA'S TAX BURDEN THROUGH RETURN-FREE FILING* 5 (2006), available at <http://www.brookings.edu/~media/research/files/papers/2006/7/useconomics%20goolsbee/200607goolsbee.pdf>).

86. See, e.g., Nick Bilton, *Technical Woes on Website*, N.Y. TIMES, Oct. 2, 2013, at A15; Nicole Perlroth, *Target Struck in the Cat-and-Mouse Game of Credit Theft*, N.Y. TIMES, Dec. 20, 2013, at B1; Ellen Nakashima & Barton Gellman, *Court Gave NSA Broad Leeway in Surveillance, Documents Show*, WASH. POST (June 30, 2014), [http://www.washingtonpost.com/world/national-security/court-gave-nsa-broad-leeway-in-surveillance-documents-show/2014/06/30/32b872ec-fae4-11e3-8176-f2c941cf35f1\\_story.html](http://www.washingtonpost.com/world/national-security/court-gave-nsa-broad-leeway-in-surveillance-documents-show/2014/06/30/32b872ec-fae4-11e3-8176-f2c941cf35f1_story.html).

rebuild the democratic potential of our tax system. These proposals, he concludes, “might restore the virtues of a return-based income tax as an exercise in participatory democracy” (p. 123). Zelenak does not elaborate on what he means by “participatory democracy,” but one can infer from the thrust of the book that he is interested in enhancing multiple aspects of democratic decisionmaking. Clearly, he is eager to augment representative democracy by using the tax system to encourage greater civic engagement and voter participation. But Zelenak wants citizen-taxpayers to do more than just cast ballots. Above all else, he wants the return-based mass income tax to encourage more citizens to engage with the political decisionmaking process—he is determined to reform our current tax system so that it can advance a more robust sense of *deliberative* democracy.<sup>87</sup>

### B. *The State’s Obligations Under Fiscal Citizenship*

Promoting deliberative democracy is a fundamental part of maintaining the social contract between citizens and their government. So too is the state’s obligation to raise adequate revenue in a fair and effective manner. In fact, our modern regulatory, administrative, social-welfare state cannot function without a steady and sufficient stream of revenue. Thus, if entitlement spending continues to rise as expected in future years, Zelenak’s belief in revenue neutrality may be misplaced. Indeed, Zelenak may have missed a golden opportunity to use his discussion of taxation and civic identity as a means to augment the revenue-raising potential of the return-based mass income tax.

To be sure, Zelenak is not oblivious to the revenue-generating possibilities of a simplified version of our current tax system. His discussion of the virtuous circle of trust in government leading to greater taxpayer morale implies that, by bolstering the fiscal-citizenship aspects of the return-based tax system, we may increase national public revenues. But this seems to be an incidental side effect for Zelenak. In his admirable attempts to defend the return-based mass income tax, he seems hesitant to consider other more radical ways to address the impending fiscal imbalance between revenue and spending—such as adopting broad-based consumption taxes to complement our current regime. This elision raises several questions about the relationship between return-based mass taxation and other streams of tax revenue. Is there a critical mass of governmental revenue that needs to be generated by a return-based tax in order to maximize the social and political benefits of such a tax? If so, does that mean that, once this critical mass is achieved, the federal government can turn to other sources of revenue to fill budgetary shortfalls? In other words, is it possible to have a dual or hybrid tax system that can both raise abundant revenue and boost tax consciousness and civic identity?

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87. Zelenak has written more recently about ways the tax system can enrich deliberative democracy. Lawrence Zelenak, *Mitt Romney, the 47 Percent, and the Future of the Mass Income Tax*, 67 *Tax L. Rev.* (forthcoming 2014).

One of the unstated assumptions of *Learning to Love Form 1040* is that Americans may need to choose between a return-based mass income tax and non-return-based consumption taxes like the VAT. But this is a false binary—one constructed more by current political debates than by scholarly dialogue. As legal scholars and reformers have shown, several other industrialized nations have adopted and maintained *both* a return-based income tax and broad-based consumption taxes.<sup>88</sup> The experiences of these other nation-states should give us some solace by demonstrating that a modern liberal democracy can raise sufficient revenue through broad-based consumption taxes without sacrificing the political and social virtues of fiscal citizenship that come from a return-based mass income tax. In the end, transcending this false binary may even help the United States strengthen the collective pact between its citizens and the state.<sup>89</sup>

Generating adequate public revenue is undoubtedly a prerequisite for any liberal democracy.<sup>90</sup> But how a modern liberal state produces such revenue is an equally important part of the social contract. In this sense, *Learning to Love Form 1040* pays less attention to the rights and obligations of political leaders and lawmakers in fulfilling their portion of the agreement between the sovereign and its citizens. Throughout the book, Zelenak discusses fiscal citizenship mainly in terms of the obligations and rights held by citizens and taxpayers of the United States. For Zelenak, the filing of an income tax return is an honorable duty that serves “the important civic purpose of recognizing and formalizing the financial responsibilities of citizenship” (p. 4). The annual filing process is meant to awaken citizens to their rights and responsibilities; it is meant to call “the taxpayer’s attention to his status as a taxpayer and a purchaser of civilization” (p. 4).

But citizenship is not a one-way street. Just as citizen-taxpayers have a duty and obligation to pay their taxes and actively engage in the deliberative decisionmaking process that is at the heart of liberal democracy, governmental officials have a reciprocal social obligation and democratic duty to

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88. See Avi-Yonah, *supra* note 12, at 2; Reuven S. Avi-Yonah, *Risk, Rents, and Regressivity: Why the United States Needs Both an Income Tax and a VAT*, 37 TAX NOTES INT’L 177, 177 (2005); see also THE DEBT REDUCTION TASK FORCE, BIPARTISAN POLICY CTR., RESTORING AMERICA’S FUTURE: REVIVING THE ECONOMY, CUTTING SPENDING AND DEBT, AND CREATING A SIMPLE, PRO-GROWTH TAX SYSTEM 39 (2010). On the importance of both income and consumption taxes to the financing of modern welfare states, see generally JUNKO KATO, REGRESSIVE TAXATION AND THE WELFARE STATE: PATH DEPENDENCE AND POLICY DIFFUSION (2003).

89. Much of the political discourse frames tax reform as a binary choice between income and consumption taxes. Zelenak, in many ways, responds to this political debate with his argument for retaining a return-based income tax. For more on how Zelenak frames the political debate, see pp. 1–3.

90. SVEN STEINMO, TAXATION AND DEMOCRACY: SWEDISH, BRITISH AND AMERICAN APPROACHES TO FINANCING THE MODERN STATE 1 (1993). Scholars of taxation and development have long recognized the critical role of an effective tax system in developing democratic political institutions. See, e.g., Kenneth L. Sokoloff & Eric M. Zolt, *Inequality and the Evolution of Institutions of Taxation: Evidence from the Economic History of the Americas*, in THE DECLINE OF LATIN AMERICAN ECONOMIES: GROWTH, INSTITUTIONS, AND CRISES 83 (Sebastian Edwards et al. eds., 2007).

their citizens. They have an obligation and duty not only to provide public goods and collect sufficient public revenue but also to ensure that the obligations of fiscal citizenship are equitably distributed among all members of the community. In this sense, fiscal citizenship is not a unidirectional force that requires the allegiance only of individual citizens to the modern democratic state. Fiscal citizenship, instead, entails a set of mutual and reciprocal responsibilities on governmental actors to spread more evenly and effectively the costs of underwriting a modern regulatory, administrative, social-welfare state.

Zelenak has surprisingly little to say about this aspect of the social contract—little to say, that is, about the distributional impact of our current tax regime and what the federal government can or should do to address the growing concentration of wealth in the United States.<sup>91</sup> Perhaps discussions of how recent tax laws and policies may exacerbate inequalities remain outside the book's scope. After all, Zelenak's primary aim is to reveal the underappreciated social and political virtues of the return-based mass income tax, not to investigate the economic impact of our current tax regime.

Still, Zelenak's analysis raises some critical questions about cause and effect. If our return-based tax system has the potential to invigorate American democracy and perhaps ameliorate inequality, why has this promise gone unfulfilled in recent decades? Can tax laws and policies truly drive or cause greater political and civic engagement? Or does something more fundamental about American society and political culture need to change first before we can see the genuine benefits of a return-based mass income tax? Reducing tax complexity is certainly part of the answer, but one cannot help but wonder if something more profound and deep-seated must also change. Likewise, one cannot help but wonder how growing economic inequality might affect fiscal citizenship. Is it possible that a government that permits and perhaps even fosters ever-increasing concentrations of wealth inadvertently undermines public confidence in its laws and policies, thereby eroding taxpayer morale and notions of fiscal citizenship? One can certainly see how rising inequality could contribute to this type of vicious cycle.<sup>92</sup>

#### CONCLUSION

Even though *Learning to Love Form 1040* does not directly address recent debates about inequality, the book is undoubtedly a reflection of its author's own historical experiences. Scholars and writers like Zelenak, born

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91. See Thomas Piketty & Emmanuel Saez, *Income Inequality in the United States, 1913–1998*, 118 Q.J. ECON. 1 (2003); see also THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (Arthur Goldhammer trans., 2014).

92. Eric M. Uslaner, *Income Inequality in the United States Fuels Pessimism and Threatens Social Cohesion* (Dec. 2012) (working paper) (on file with the Ctr. for Am. Progress), available at <http://cdn.americanprogress.org/wp-content/uploads/2012/12/Uslaner.pdf>; Neil Irwin, *A New Report Argues Inequality Is Causing Slower Growth. Here's Why It Matters*, N.Y. TIMES (Aug. 5, 2014), <http://www.nytimes.com/2014/08/06/upshot/alarm-on-income-inequality-from-a-mainstream-source.html>.

in the 1950s and educated in the 1970s, lived through the dramatic transformations chronicled in this book. These authors and commentators may recall how their parents embraced their civic duties and proudly paid their taxes—at historically high marginal tax rates, no less. They certainly remember the turbulence of the late 1960s and early 1970s, when the dramatic decline in social capital, trust in government, and taxpayer morale first began. And their adult lives have, of course, been marked by the Reagan Revolution of the 1980s that ushered in a new era of conservative politics and an enduring commitment to tax cuts.<sup>93</sup> These experiences color and frame the tone and message of Zelenak’s ambitious, important book.

In some ways, *Learning to Love Form 1040* is an extended ode to a bygone era. Like many other commentators of his generation,<sup>94</sup> Zelenak looks back, nostalgically at times, on an earlier period in American history—a simpler time when ordinary Americans had greater faith in government, valued social capital, and were proud to pay taxes that would help the broader community. Of course, those days are now a distant memory. And Zelenak is well aware of this. *Learning to Love Form 1040* is thus not a maudlin tribute to “the good ole days.” Nor is it simply a contemptuous narrative of declension. Rather, Zelenak has produced an analytically rigorous, carefully argued, pragmatic, and engaging study of just how the United States has lost its fiscal bearings and what we can do to get back on track.

Cynical readers, reared in more recent times, may not be persuaded by Zelenak’s arguments about the underappreciated virtues of a simplified version of our current tax system. After all, the post-1960s fissures in American society run deep. Earlier notions of social solidarity and ethical duty have clearly dissolved over time. Yet Zelenak’s analysis provides hope that our tax system can still bolster deliberative democracy, that it can spur citizen-taxpayers to move beyond the recent populist polemics to engage in a more serious and thoughtful debate about not only our tax system but also our broader social and political culture.

Indeed, there is increasing evidence that Zelenak is not alone in his measured optimism about the possible revival of fiscal citizenship and deliberative democracy. Recent public opinion polls show that an increasing number of Americans are less disgruntled about filing their income taxes.<sup>95</sup> Elite taxpayers, from Warren Buffett to William Gates Sr., have in recent years advocated increased taxes on the rich in the name of fairness and fiscal

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93. See generally BROWNLEE, *supra* note 53, at 147–77; GIL TROY, *THE REAGAN REVOLUTION: A VERY SHORT INTRODUCTION* (2009); Ajay K. Mehrotra, *The Price of Conflict: War, Taxes, and the Politics of Fiscal Citizenship*, 108 MICH. L. REV. 1053, 1075 (2010).

94. For a somewhat similar analysis of the development of postwar American society, see Paul Krugman, *For Richer: How the Permissive Capitalism of the Boom Destroyed American Equality*, N.Y. TIMES, Oct. 20, 2002, § 6 (Magazine), at 62.

95. PEW RESEARCH CTR., *A THIRD OF AMERICANS SAY THEY LIKE DOING THEIR INCOME TAXES* 7 (2013), available at <http://www.people-press.org/files/legacy-pdf/04-11-13%20Taxes%20Release.pdf>.

responsibility.<sup>96</sup> And a younger generation of scholars and writers has also begun to think pragmatically, along the lines that Zelenak suggests, about ways to create a “patriotic pro-tax movement.”<sup>97</sup> All of this is a promising sign that Americans may not always and everywhere dread April 15 as a day of anxiety and pain. In fact, if Zelenak and others are correct, there may come a time when many Americans will once again offer at the very least two—and perhaps even three—cheers for the return-based mass income tax.

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96. Warren E. Buffett, Op-Ed., *A Minimum Tax for the Wealthy*, N.Y. TIMES, Nov. 26, 2012, at A27; see also Robert Frank, *Bill Gates Supports Taxing the Rich*, WALL ST. J. (Oct. 31, 2011, 12:24 PM), <http://blogs.wsj.com/wealth/2011/10/31/bill-gates-supports-taxing-the-rich/>.

97. David H.A. LeBoeuf, *Website Asks Americans to Love Taxes*, HARV. CRIMSON (Oct. 25, 2010), <http://www.thecrimson.com/article/2010/10/25/williamson-taxes-government-website/> (internal quotation marks omitted); see also Ethan Porter, *Can't Wait 'Til Tax Day!*, DEMOCRACY, Spring 2010, at 115, available at <http://democracyjournal.org/pdf/16/Porter.pdf>.

