

IS THE CITIZEN-CONSUMER THE FUTURE TAXPAYER?

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ABSTRACT

The conception of citizenship popularised by Thomas Marshall includes a social element, in terms of which citizens are taxpayer-beneficiaries of the Welfare State. In the context of the neoliberal dismantling of the Welfare State, social citizenship has been greatly reduced in status. Today, citizens may be conceived simply as consumers of the goods and services supplied directly or indirectly by the State. Merging and developing traditional ideas of citizenship and consumerism, the European Union has promoted the image of the citizen-consumer. Citizen-consumers are expected to actively protect their own interests but also to be alert to the sustainability of the community and the environment, and to be altruistic. This exploratory article considers how this emerging model of citizenship might apply to taxpayers.

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I INTRODUCTION

The social element of Thomas Marshall's trifurcated conception of citizenship was reflected in the different tax-welfare systems established in Western countries during the twentieth century.¹ Francis Castles differentiates between Australasian, British, and Nordic welfare models;² nevertheless each scheme was informed by the idea that workers would willingly pay income taxes (and social insurance contributions) in exchange for the promise of some form of State protection. Although the Marshallian model remains the archetypal starting point for discussions of citizenship,³ in the context of the neoliberal dismantling of the Welfare State, this conception of social membership has become moot. Indeed, taxpayers may be conceived as no more than consumers of the goods and services supplied directly or indirectly by the State. Government holds no conception of shared social solidarity;⁴ it merely responds to consumer demand signals. Rather than being the beneficiaries of welfare, citizens are 'self-responsibilised' to fend for themselves in the market.⁵ Full social citizenship may, from a contemporary Anglophone perspective, seem as historically remote as the prospect of soviet socialism's eliminating capitalism,⁶ but citizenship does not need to be reduced to individualistic consumption. Past manifestations of citizenship are gone and cannot be resurrected in their old forms, but new ways of civic belonging and participation, including taxpaying, can be imagined.

Merging and developing traditional ideas of citizenship and consumerism, the European Union has promoted the image of the citizen-consumer. According to Jim Davies, citizen-consumers actively protect their own interests but are also alert to the sustainability of the community and the environment, and they are altruistic.⁷ Could this image, which does not seek to resurrect a probably passé model of social

¹ See, generally, TH Marshall, *The Right to Welfare and Other Essays* (Heinemann Educational Books, 1981).

² See Francis G Castles, *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand 1890–1990* (Allen and Unwin, 1985) 77. Broadly, the Australasian 'labour defence' welfare scheme ensures the economic strength of workers so that they can fend for themselves in the market, whereas Nordic 'structural' welfare shelters citizens from the vicissitudes of the market.

³ See, for example, Engin F Isin and Bryan S Turner, 'Investigating Citizenship: An Agenda for Citizenship Studies' (2007) 1(1) *Citizenship Studies* 5.

⁴ See David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2005) 80.

⁵ See, generally, Rik Peeters, 'Responsibilisation on Government's Terms: New Welfare and the Governance of Responsibility and Solidarity' (2013) 12(4) *Social Policy and Society* 583.

⁶ Recognising that soviet socialism lost the Cold War does not imply support for Francis Fukuyama's 'end of history' thesis: see Francis Fukuyama, *The End of History and the Last Man* (Free Press, 1992). Authoritarian capitalism appears to be prospering, inter alia, in China and Vietnam. It would, therefore, be a brave undertaking to predict which illiberal ideologies might continue to thrive or take root as the twenty-first century progresses.

⁷ See, generally, Jim Davies, *The European Consumer Citizen in Law and Policy* (Palgrave Macmillan, 2011). Davies tends to refer to 'consumer-citizens'. I reverse the word order to privilege citizenship over consumerism.

citizenship but does aim to counter the sterility of citizenship as consumerism, be applied to taxpayers?

This article, which is exploratory in nature, considers the concept of the citizen-consumer in relation to taxpaying. The jurisdictional focus lies with New Zealand, but overseas experience, particularly that of the United Kingdom, is drawn upon. The paper is structured as follows: First, comparisons are made between Marshallian social citizenship; the neoliberal image of the citizen as consumer; and the citizen-consumer envisaged by European Union policy makers. The aim here is to present a concept of citizenship distinct from both social democratic and neoliberal models. Second, the article draws parallels between different conceptions of the consumer and analogous representations of the taxpayer.⁸ Third, the possibility of the taxpayer as a citizen-consumer is considered. To the extent that this approach takes the idea of collective action seriously and is opposed to anti-tax libertarianism, it may be described as communitarian. But it is a nuanced, arguably diluted, version of pre-neoliberal conceptions of community membership. Fourth, reservations are noted about the socially-undesirable possibilities of activism in the field of taxpaying, especially the role of shaming. Finally, tentative policy recommendations are made and conclusions are drawn.

II TOWARDS CITIZEN-CONSUMERS

This part of the article draws comparisons between Marshall's conception of social citizenship; the neoliberal image of the citizen as consumer; and the consumer-citizen envisaged by European Union policy makers. The aim here is to present a concept of citizenship distinct from both the social citizenship and neoliberal models.

A *Social Citizenship*

Marshall outlined a conception of citizenship which included a civil component (rights necessary for individual liberty), a political component (electoral rights) and a social element (ranging from a right to basic welfare to living 'the life of a civilised being according to the standards prevailing in society').⁹ Engin Isin and Bryan Taylor sum up this conception of citizenship as 'belonging to a society through the entitlements associated with service'.¹⁰ In this scheme, citizens willingly pay taxes in the knowledge that, should certain contingencies occur, such as workplace injury or superannuation, they are guaranteed benefits from the State.¹¹

⁸ While demurring from using such grand terms as Foucaultian 'epistemes' or Kuhnian 'paradigms', it is submitted that government approaches to taxpayers are distinguishable in different periods.

⁹ Marshall, above n 1, 74.

¹⁰ Isin and Turner, above n 3, 5.

¹¹ See Bernard Cadogan, 'Welfare Policy: Governance History and Political Philosophy' Treasury (2013) 86; Karen Boll, *Taxing Assemblages – Laborious and Meticulous Achievements of Tax Compliance* (PhD Thesis, IT University of Copenhagen, 2011) 107.

Marshall was a sociologist, rather than a political philosopher. His conception of citizenship has nevertheless assumed a normative quality.¹² The Marshallian model of social citizenship is, then, commonly used to tell us what citizenship ought to look like. But Marshall's conception of citizenship is specific to a particular time, place and, probably, social class and gender (1945–1985, developed countries, working class men);¹³ it is neither universal nor fixed. This quality of contingency has been starkly demonstrated by the diminution of the status of the worker–taxpayer–beneficiary in the face of neoliberal globalisation.

B Neoliberal Citizenship

Globalisation is, in the definition of Robert Patman and Chris Rudd, 'the intensification of interconnections between societies, institutions, cultures, and individuals on a worldwide basis'.¹⁴ Few would deny the overall benefits of globalised technology, such as the Internet, or the worldwide promotion of human rights. Globalisation debate principally lies with the 'costs and benefits of trade liberalization and foreign investment'¹⁵ and 'capital's freedom to move around the world',¹⁶ which are the principal features of *neoliberal* globalisation. This freedom and velocity of capital movement is planned and deliberate, rather than a natural phenomenon, and has required the introduction of a suite of complementary policies. And so, as William Tabb observes, neoliberal globalisation 'calls for trade and financial liberalization, privatization and deregulation, openness to foreign direct investment, a competitive exchange rate, fiscal discipline, lower taxes and small government'.¹⁷ 'Individual responsibility is stressed, while communitarianism or state-run social or cultural initiatives are discouraged.'¹⁸ The principal beneficiaries of neoliberal globalisation are the owners of multinational enterprises (MNEs).¹⁹

¹² See, for example, Virginia Mantouvalou, 'Workers without Rights as Citizens at the Margins' (2013) *Critical Review of International Social and Political Philosophy* 366, 368.

¹³ Social citizenship in New Zealand has traditionally been informed by patriarchal notions: see, generally, Jane Margaret Scott, 'Discourses of Dependency: Women, Work, and Welfare in New Zealand' (PhD thesis, University of Auckland, 2001).

¹⁴ Robert G Patman and Chris Rudd, 'Introduction – New Zealand Sovereignty in the Era of Globalization' in Robert G Patman and Chris Rudd (eds) *Sovereignty under Siege: Globalization and New Zealand* (Ashgate, 2005) 1, 2.

¹⁵ Brian Roper, 'Globalization and the Shift in Policy-Making from Keynesianism to Neoliberalism: The Decline of National and State Autonomy' in Robert G Patman and Chris Rudd (eds) *Sovereignty under Siege: Globalization and New Zealand* (Ashgate, 2005) 23, 33–4.

¹⁶ Alain Touraine, *Beyond Neoliberalism* (David Macey trans, Polity Press, 2001) 14 [trans of: *Comment sortir du libéralisme?* (first published 1999)].

¹⁷ William K Tabb, *Economic Governance in the Age of Globalization* (Columbia University Press, 2012) 3.

¹⁸ Alison Hearn, 'Brand Me "Activist"' in Roopali Mukerjee and Sarah Banet-Weiser (eds) *Commodity Activism: Cultural Resistance in Neoliberal Times* (New York University Press, 2012) 23, 26.

¹⁹ See, generally, Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Metropolitan Books, 2007).

Neoliberalism is founded on the presumption that human behaviour is dominated by self-interest, and social interactions are value-maximising exchanges.²⁰ Indeed, society is imagined as an agglomeration of markets. Through its privileging of individual choice, neoliberalism may seem to respect and promote autonomy, but it is not, as Barry Hindess observes, 'a natural outgrowth' of liberalism.²¹ Whereas liberal thinkers such as Adam Smith, David Hume and Adam Ferguson conceived *homo economicus* as an autonomous subject, whose activities should be free from government interference, 'neo-liberal *homo economicus*', Colin Gordon argues, 'is manipulable man'.²² Neoliberal policies engender civic docility;²³ they also tend to estrange citizens from government, for example, when welfare functions are outsourced to charities. It is plausible that third-sector organisations or for-profit corporations may deliver certain services more effectively than central government,²⁴ but any such efficiency gains may have a cost for democracy. Indeed, Gino Dal Pont observes that, since the neoliberal ascendancy in the mid-1980s, governments have increasingly relied on charities as they retreat from the role of the 'welfare state as the reliable provider of benefit'.²⁵ Colin Crouch, in turn, argues that the less the State directly provides for the needs of ordinary people, the more apathetic those people will become about democracy.²⁶ Likewise, Richard Murphy observes, 'the more a person perceives a direct relationship between the tax they pay and the government, the more likely it then is that the person will vote in elections'.²⁷

In the neoliberal view, consumerism and citizenship may coincide.²⁸ Relative to the rich version of citizenship identified by Marshall, this conception of citizenship must be considered a sterile vision of social membership. Liberals who deny that society is a community would also reject this monadic image of the citizen. Thus, for John

²⁰ See Jonathan Boston, John Martin, June Pallot and Pat Walsh, *Public Management: The New Zealand Model* (Oxford University Press, 1996) 17.

²¹ Barry Hindess, 'A Society Governed by Contract?' in Glyn Davis, Barbara Sullivan and Anna Yeatman (eds) *The New Contractualism?* (Macmillan Education Australia, 1997) 14, 15.

²² Colin Gordon, 'Governmental Rationality: An Introduction' in Graham Burchell, Colin Gordon and Peter Miller (eds) *The Foucault Effect: Studies in Governmentality* (Harvester Press, 1991) 1, 43.

²³ For example, it is widely thought that students typically no longer think of tertiary education as a 'transformative adult learning experience' which may enable them, in turn, to transform society; rather they see their university studies 'as the pursuit of a qualification that can be exchanged for higher salary and status': see Stephen D Brookfield, *The Power of Critical Theory for Adult Learning and Teaching* (Open University Press, 2005) 25.

²⁴ See, generally, Anup Malani and Eric A Posner, 'The Case for For-Profit Charities' (2007) 93 *Virginia Law Review* 2017.

²⁵ Gino Dal Pont, *Charity Law in Australia and New Zealand* (Oxford University Press, 2000) 3.

²⁶ See Colin Crouch, *Post-Democracy* (Polity Press, 2004) 19.

²⁷ Richard Murphy, *The Joy of Tax: How a Fair Tax System Can Create a Better Society* (Bantam Press, 2015) 65.

²⁸ See Ulrich Haltern, 'Pathos and Patina: The Failure of Constitutionalism in the European Imagination' (2003) 9(1) *European Law Journal* 14, 43. The ACT political party in New Zealand explicitly connects consumption and taxpaying – its full name being the Association of Consumers and Taxpayers. A consumer and taxpayer, the name implies, is one in the same actor; consumption and taxpaying are not the separate functions of private choice and civic obligation.

Rawls, society is not a 'private society', rather it is a system of justice and cooperation.²⁹ For those who support the idea of a progressive, discursive democracy,³⁰ the neoliberal hegemony is a dispiriting development. Yet, as Michel Foucault observes, the 'intransigence of freedom' will always assert itself.³¹ Likewise, Steven Lukes's analysis of 'three dimensions of power' leads to the conclusion that domination of people's deep-seated desires can never be 'more than partially effective'.³² All societies have ethical-religious traditions of altruism and social solidarity which are not extinguished by particular forms of government,³³ and will continue to resist selfish individualism. Similarly, Crouch identifies an 'emerging political imperative to protect the human self from the institutional invasion of the market and the giant corporation, and to insist that the market cannot be the only institution through which we pursue human values.'³⁴

Examples may be adduced of specific policies lying dormant,³⁵ but, in general, we should expect traditional values to be expressed in new forms in opposition to neoliberalism. Thus, Howard Glennerster argues that while collective action through trade unionism has declined, other forms of social solidarity will evolve.³⁶ The Brexit-Trump reaction against neoliberal globalisation is an example of a new form of politics emerging – one which appears to be leading to an unpredictable nationalism, not, say, a return to a progressive, inclusive, collectivism seen, for example, in 'the Great Society' and the civil rights movement in the United States.³⁷ Post-Brexit, a feature of Danish communitarianism, the sentiment of *hygge* (cosiness), has attracted much attention in the United Kingdom.³⁸ The Danish tax-

²⁹ See John Rawls, *Justice as Fairness: A Restatement* (ed Erin Kelly, The Belknap Press of Harvard University Press, 2001) 199.

³⁰ On an ideal discursive democracy, see, generally, Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg, trans, Polity Press, 1997) [trans of: *Faktizität und Geltung. Beiträge zur Diskurstheorie und demokratischen Rechtsstaats* (first published 1992)].

³¹ Michel Foucault, 'The Subject and Power' in James D Faubion (ed) *Power* (trans Robert Hurley et al) (The New Press, 2000) 326, 342.

³² Steven Lukes, *Power: A Radical View* (Palgrave Macmillan, 2nd ed, 2005) 150.

³³ See Charles Taylor, 'Foucault on Freedom and Truth' (1984) 12(2) *Political Theory* 152, 180–1.

³⁴ Colin Crouch, 'Putting Neoliberalism in its Place' (2014) 85(2) *Political Quarterly* 114, 121.

³⁵ For example, the Labour government in the United Kingdom reversed its position on a 10 percent starting income tax rate: see Frank Field, 'Abolishing the 10p Tax Rate Shattered the Contract on Which New Labour was Based' *The Spectator* (online), 7 May 2008 <www.spectator.co.uk/2008/05/abolishing-the-10p-tax-rate-shattered-the-contract-on-which-new-labour-was-based/>.

³⁶ See Howard Glennerster, 'The Sustainability of Western Welfare States' in Francis G Castles, Stephan Leibfried, Jane Lewis, Herbert Obinger and Christopher Pierson (eds) *The Oxford Handbook of the Welfare State* (Oxford University Press, 2010) 689, 698.

³⁷ See Cornell West, 'Goodbye, American neoliberalism. A new era is here' *The Guardian* (online), 17 November 2016 <<https://www.theguardian.com/commentisfree/2016/nov/17/american-neoliberalism-cornel-west-2016-election>>.

³⁸ See, for example, Charlotte Higgins, 'The Hygge Conspiracy' *The Guardian* (online), 22 November 2016 <<https://www.theguardian.com/lifeandstyle/2016/nov/22/hygge-conspiracy-denmark-cosiness-trend>>.

welfare model has moved towards Anglo-style workfare or 'activation',³⁹ but Denmark remains a high-tax country.⁴⁰ Such fiscal progressivity no doubt promotes equality and its benefits,⁴¹ but whether such attractions will translate into communitarian policies in neoliberal countries is a matter of speculation.

C Citizen-Consumers

The European Union has actively sought to forge a new version of citizenship 'based on a fusion of neoliberal market citizenship with a communitarian element that attempts to countervail the most harmful effect of neoliberal deregulation' but does not resurrect 'the social rights of the Keynesian welfare state'.⁴² Thus Norbert Reich observes that 'there is a legal framework for a European Charter for citizens as consumers in the areas of economic, ecological and legal protection'.⁴³ Davies sums up the changing position of the consumer in the European Union as the phenomenon of moving 'from cog to cognisance of the consumer citizen',⁴⁴ so that 'amongst the capable consumer behaviours there are traits more normally associated with the citizen'.⁴⁵ For Davies:⁴⁶

consumer-citizenship can be explained in terms of the opportunity and power, of the capacity to influence and change the law and policy through, on the one hand, representative and expert network structures of new governance and, on the other hand, the market through direct action in the form of complaints enforcement of consumer rights, redress, switching and ethical buying.

If consumption was once an apolitical means of satisfying material desires, to a great extent, it no longer is. Neoliberal globalisation may have shifted power from the

³⁹ See Johannes Kananen, 'Nordic paths from welfare to workfare: Danish, Swedish and Finnish labour market reforms in comparison' (2012) 27(5-6) *Local Economy* 558; Philip Tees, 'Danish government announces reform of benefits: It should pay to work' CPH Post Online (2 October 2015) <<http://cphpost.dk/news/danish-government-announces-reform-of-benefits-it-should-pay-to-work.html>>.

⁴⁰ Denmark's tax to GDP ratio of 49.9 per cent is the highest in the European Union: see European Commission, *Tax Policies in the European Union: 2016 Survey* (2016) 11 <https://ec.europa.eu/taxation_customs/sites/taxation/files/tax_policies_survey_2016.pdf>.

⁴¹ On the social benefits of equality, see Richard Wilkinson and Kate Pickett, *The Spirit Level: Why Greater Equality Makes Societies Stronger* (Allen Lane, 2nd ed, 2011). However, it may be noted that neoliberal Australia ranks higher than communitarian Denmark in the United Nations Development Programme ('UNDP') Human Development Index: see UNDP, 'Table 1: Human Development Index and its components' (2016) <<http://hdr.undp.org/en/composite/HDI>>.

⁴² Peo Hansen and Sandy Brian Hager, *The Politics of European Citizenship: Deepening Contradictions in Social Rights and Migration Policy* (Berghahn Books, 2012) 113. See Haltern, above n 28, 24-6 on why the lack of organic support for European citizenship has, in part, driven empowerment of consumers.

⁴³ Norbert Reich, 'A European Concept of Consumer Rights: Some Reflections on Rethinking Community Consumer Law' in Jacob S Ziegel (ed) *New Developments in International Commercial and Consumer Law* (Hart Publications, 1998) 431, 466.

⁴⁴ Davies, above n 7, 22.

⁴⁵ *Ibid*, 23.

⁴⁶ *Ibid*, 90.

State to MNEs, but, as Foucault tells us, the exercise of power invites reaction and recalcitrance on the part of those who are the subjects of power.⁴⁷ According to Sue McGregor, 'when transnational corporations flouted their ability to escape state regulation, they... highlighted their own responsibility for... corporate social responsibility',⁴⁸ 'a phenomenon that has triggered the *politicisation of consumption*.'⁴⁹

Davies identifies 'a developing consumer citizenship practice based on the idea of individuals acting, alone or collectively, in the role of a politicised consumer'.⁵⁰ The breadth of this citizenship-consumer practice is not confined to immediate consumer transactions; it 'extends to post-transactional and extra-transactional behaviours that embrace the pursuit of consumer rights, redress, empowerment and representation'.⁵¹

Does this new form of consumerism represent a resurrection of communitarianism? William Davies rejects that possibility outright, saying '[communitarianism] reminds us of the enduring value of customs and heritage; consumerism revels in ephemera. They represent two mutually exclusive visions of ethical sovereignty'.⁵² For David Harvey, it is the ineffectiveness of sporadic communitarian initiatives in the face of the neoliberal hegemony that is relevant. He says they achieve nothing 'except to challenge ethical individualism through small-scale collective solidarities that often turn out to be more protective of individual private property rights and values than generative of new kinds of social relations'.⁵³ Both authors' arguments are plausible, but the critical consideration is that in the context of neoliberal hegemony, collective action is categorically different from traditional communitarianism.

Orthodox communitarianism 'regards society as a community, and this, as the very word implies, means that society is in some a *unity*, a single thing in which individual members are bound together'.⁵⁴ '[S]ocial bonds are valuable in themselves, over and above their value as means to the attainment of other, merely individual goods, are thereby downgraded'.⁵⁵ The classical sociological distinction between social groups is made between *Gemeinschaft* (community, such as church congregation) and

⁴⁷ Michel Foucault, 'The Subject and Power' in James D Faubion (ed) *Power* (trans Robert Hurley et al) (The New Press, 2000) 326, 342.

⁴⁸ Cited by Davies, above n 7, 63.

⁴⁹ Ibid (italics in original).

⁵⁰ Ibid, 141–2. Types of consumers do, of course, vary from the vulnerable to the empowered. As Davies notes, citizen-consumers are at the empowered end of the spectrum: see Jim Davies, 'Entrenchment of New Governance in Consumer Policy Formulation: A Platform for European Consumer Citizenship Practice?' (2009) 32(3) *Journal of Consumer Policy* 245, 245. A critical concern is what happens to 'incompetent' consumers.

⁵¹ Davies, above n 7, 108.

⁵² William Davies, 'Beyond Communitarianism and Consumerism' (March 2006) *Renewal: A Journal of Social Democracy* <https://www.academia.edu/1316395/Beyond_Communitarianism_and_Consumerism>. See also William Davies, 'The Emerging Neocommunitarianism' (2012) 83(4) *Political Quarterly* 767.

⁵³ David Harvey, *Cosmopolitanism and the Geographies of Freedom* (Columbia University Press, 2009) 197.

⁵⁴ Gordon Graham, *Contemporary Social Philosophy* (Basil Blackwell, 1988) 12.

⁵⁵ Stephen Mulhall and Adam Swift, *Liberals & Communitarians* (Blackwell, 1995) 15.

Gesellschaft (voluntary association, such as a public company).⁵⁶ For today's citizen-consumers, community may not constitute an end in itself; rather cooperation and social solidarity may represent instruments for achieving individual goals. In particular, people commonly choose to be transitory and occasional members of online communities, whereas, in the past, the obligatory nature of membership was thought to be one of the defining characteristics of community. This should not be taken as a pejorative view on contemporary joint action; it is simply different from the past.

III CITIZENS AND TAXPAYERS COMPARED

Political rights are an element of the three forms of Marshallian citizenship. Taxpaying and political rights are closely associated.⁵⁷ 'No taxation without representation' was, of course, a rallying cry for the American Revolution;⁵⁸ and remains a compelling proposition for the connection between contribution to the common treasury and democratic rights.⁵⁹ But the main concern of this article is social citizenship and its decline. And so, while noting the importance of political (and civil) elements of citizenship to taxation, this part focuses on the relationship between welfare and taxation.

A *Taxpaying and Citizen Models*

Broad differences can be identified between citizenship and taxpaying in the eras of social citizenship and neoliberalism. More speculatively, emerging characteristics of taxpaying in the new millennium may be identified.

1 *Social Citizenship*

The strongest sentiment of social solidarity is likely to be experienced during wartime, and this may be reflected in fiscal measures. For example, during the Second World War, the highest marginal rate of income tax in the United States was 94 per cent – a measure which 90 per cent of Americans considered just.⁶⁰ Even beyond the emergency of war, very high rates of income tax became normalised, along with substantial welfare transfers. Between 1974 and 1979 in the United Kingdom, the highest marginal rate of income tax was 83 per cent; in addition, a 15

⁵⁶ See Talcott Parsons, 'Notes on *Gemeinschaft* and *Gesellschaft*' in Max Weber *Theory of Social and Economic Organization* (Trans. AR Henderson and Talcott Parsons, William Hodge, 1947) 686–94.

⁵⁷ It might be more plausible to argue that, historically, voting has been most closely connected with property ownership or military service: see Neill Atkinson, *Adventure in Democracy: A History of the Vote in New Zealand* (University of Otago Press, 2003) 53 and 181.

⁵⁸ In an equally pithy rejoinder, in *Taxation no Tyranny; an answer to the Resolutions and Address of the American Congress*, Samuel Johnson asked: 'How is it that we hear the loudest yelps for liberty among the drivers of the negroes?' Cited in James Boswell, *The Life of Johnson* (first published 1791, Penguin Books, 1984) 176.

⁵⁹ See Murphy, above n 27, 19–20.

⁶⁰ Pierre Rosanvallon, *The Society of Equals* (Arthur Goldhammer trans, Harvard University Press, 2013) 187 [trans of: *La société des égaux* (first published 2011)].

per cent surcharge was payable on investment income.⁶¹ In this peak era of social citizenship, it was not only the quantity of tax paid and distributed which was notable, it was also the quality of the discourse between government and taxpayer. The United Kingdom introduced pay as you earn (PAYE) towards the end of the Second World War.⁶² Basil Sabine outlines the massive communications exercise undertaken by the revenue authority in the lead-up to the introduction of PAYE, including broadcasts, articles for newspapers and periodicals, posters and branch offices established in very large factories – all done in the midst of a total war.⁶³

2 *Tax and Neoliberal Subjects*

Reduction of direct taxes is a badge of neoliberalism.⁶⁴ Notions of ‘trickle down’ and the notorious Laffer curve informed substantial cuts to income tax. Will Hutton denies that the Laffer curve had any ‘empirical or theoretical support’,⁶⁵ while John Galbraith doubts whether ‘anyone of sober mentality took Professor Laffer’s curve and conclusions seriously’.⁶⁶ The tax shortfall, especially in New Zealand, was made up through regressive indirect taxes. The term ‘taxpayer’ is often conflated with ‘income taxpayer’, even though, in, for example, the United Kingdom, personal income tax accounts for just 27 per cent of government revenue. The people who bear the burden of value added tax (VAT) (18 per cent) do not seem to be considered taxpayers.⁶⁷ In New Zealand, personal income tax may account for a greater proportion of government tax revenue (45.2 per cent) but goods and services taxes (GST), the VAT equivalent, accounts for 26.5 per cent of tax revenue.⁶⁸

3 *Tax in the New Millennium*

Having deregulated, reduced corporate taxes, permitted the free flow of capital, and encouraged multinational enterprise empowerment, it is no surprise that neoliberal countries should have found themselves embroiled in a race to the bottom. Consequently, in the new millennium, the Organisation of Economic Cooperation and Development (OECD) countries have focused their policy concerns on shoring

⁶¹ See T Clark, *The Limits of Social Democracy? Tax and Spend under Labour, 1974–79* (Working Paper 01/04, Institute of Fiscal Studies, London, 2001) <www.ifs.org.uk/wps/wp0104.pdf>. PAYE was introduced to New Zealand in 1958: see Rob Vosslamber, ‘How Much? Taxation on New Zealanders’ Employment Income 1893–1984’ (2009) 15 *New Zealand Journal of Taxation Law and Policy* 299 on New Zealand’s historical income tax rates.

⁶² See Basil Sabine, ‘The New Taxpayers Charter or Taxation without Tears’ (1991) *British Tax Review* 411.

⁶³ ‘PAYE was fully introduced in 1944 ... 15m people, anyone earning £100 a year or more, had received notices telling them their code number for the year upon which their cumulative tax deductions would be based.’ See David Gauke, ‘PAYE Story’ Taxation (21 September 2011) <www.taxation.co.uk/taxation/Articles/2011/09/21/29571/payee-story>. £250 would have constituted the upper limit of low incomes in the mid-1940s: see JR Hicks and UK Hicks, ‘The Incidence of Local Rates in Great Britain’ National Institute of Economic and Social Research Occasional Paper VIII (Cambridge University Press, 1945) 1.

⁶⁴ See Tabb, above 17, 3.

⁶⁵ See Will Hutton, *The World We’re In* (Little Brown, 2002) 103.

⁶⁶ See JK Galbraith, *The Culture of Contentment* (Sinclair-Stevenson, 1992) 10.

⁶⁷ See Murphy, above n 27, 28–9.

⁶⁸ See Bill English, ‘Budget at a Glance: Investing in a Growing Economy’ Treasury (2016) <www.treasury.govt.nz/budget/2016/at-a-glance/b16-at-a-glance.pdf>.

up their tax bases and preventing profit shifting by MNEs.⁶⁹ Parallel to government initiatives, the phenomenon of tax shaming by media and activist groups has emerged.⁷⁰

B Consumers and Taxpayers

Parallels can be drawn between the different conceptions of the consumer identified by Davies and conceptions of the taxpayer. One example is the parallel between the politicisation of consumption and activism against aggressive tax planning. The different phases of interaction may also be compared: pre-transaction (understanding one's tax obligations); transaction (taxpaying); post-transaction (expressing views on how tax revenues should be disbursed). Ultimately, both consumerism and taxpaying might involve participation in the formulation of policy and law.

We might say that consuming is as old as the human exchange of things, but 'the consumer' and 'consumerism' only came to policy prominence in the 1960s 'in response to challenges facing today's more affluent consumers'.⁷¹ Taxpayers have, of course, been around for millennia, and have been taken seriously as a subject of research at least since the time of Adam Smith's *Wealth of Nations* (1776). Consequently, comparisons of 'paradigmatic' treatment of taxpayers and consumers can only be painted with the boldest of brushstrokes. Davies identifies four levels of consumerism in a normative hierarchy, starting with protection, moving to information, then capability, and, finally motivation. Informing consumers (level 2) has a parallel in the massive communications exercises that were required to inform workers when they were brought into the income tax net with the introduction to PAYE. Having competent consumers (capability at level 3) is a requirement for the neoliberal ideal of markets being imagined everywhere. If citizens are conceived as consumers, then GST,⁷² as a tax on comprehensive consumption, is likely to constitute a significant element for the tax base. Finally, just as level 4 consumers are expected to be active in guarding their own and others' rights, so taxpayer activism has emerged as a significant phenomenon in the new millennium.

⁶⁹ For example, the United Kingdom's diverted profits tax, colloquially termed 'the Google tax': see HM Revenue & Customs, 'Diverted Profits Tax' (2014) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385741/Diverted_Profits_Tax.pdf>.

⁷⁰ See Vanessa Barford and Gerry Holt, 'Google, Amazon, Starbucks: The Rise of "Tax Shaming"' BBC News Magazine (21 May 2013) <www.bbc.com/news/magazine-20560359>. See below n 112 on much older forms of tax shaming.

⁷¹ Geraint Howells, Iain Ramsay and Thomas Wilhelmson, 'Consumer Law in Its International Dimension' in Geraint Howells, Iain Ramsay and Thomas Wilhelmson (eds) *Handbook of Research on International Consumer Law* (Edward Elgar, 2010) 1, 4.

⁷² Because GST is a tax on consumption, it might be argued that you 'choose' whether or not to pay it: see Richard A Epstein, 'Taxation in a Lockean World' in Jules Coleman and Ellen Frankel Paul (eds) *Philosophy and Law* (Basil Blackwell, 1987) 39 on 'Lockean taxation' corresponding with consumer choices. Frictionless taxpaying must be welcomed but, in the case of GST (typically around 20 per cent of government revenue), its invisibility disguises taxpaying and that invisibility discourages democratic debate about taxation.

Davies's inclusion of the descriptors 'solidaristic and communitarian'⁷³ and 'individualistic'⁷⁴ in level 4 motivation, which applies to citizen-consumers, may appear oxymoronic. But membership of postmodern society does not conform to strict binomials such as liberal/communitarian; rather people tend to oscillate between singular needs and community engagement. In a useful metaphor employed to interpret Gianni Vattimo's vision of contemporary society,⁷⁵ Heesok Chang likens our social existence to being passengers on a train, alone and yet, from time to time, thrown together.⁷⁶

According to Éric Maurin, '[t]here has been a tremendous reorganization of collective identities in recent years, as our sense of social proximity has fragmented.'⁷⁷ Nevertheless, as Pierre Rosanvallon says, in explaining his conception of equality of singularities:⁷⁸

If the meaning of a person's life lies in his difference from others, then he must coexist with them ... singularity binds a person to others. It does not set him apart. It arouses in others curiosity, interest, and a desire to understand. Equality of singularities does not imply "sameness".

Rosanvallon adds:⁷⁹

This form of equality defines a type of society whose mode of composition is neither abstract universalism nor identity-based communitarianism but rather the dynamic construction and recognition of particularity. This shift has significant implications. First it suggests that individuals now seek to participate in society on the basis of their distinctive rather than common characteristics. The value of singularity is thus directly social. Singularity is not a sign of withdrawal from society (individualism as retreat or separation). Rather, it signals an expectation of reciprocity, of mutual recognition.

We have, then, moved beyond traditional communitarianism (never to return) but we may also be moving beyond neoliberalism.

IV TAXPAYERS AS CITIZEN-CONSUMERS

This part of the article begins by presenting examples of actions which might be considered manifestations of citizen-consumerism in taxation. The examples range

⁷³ Expanding on 'solidaristic and communitarian', Davies, above n 7, 48–9 includes: altruism; ethical and sustainable consumption; communal interest; perceived effectiveness of action; wealth; trustworthiness of information source; and 'good guilt'.

⁷⁴ 'Individualism' includes: self-responsibility; personal safety; demand for quality and reduced cost; self-interest; and perceived effectiveness of action: see *ibid.*

⁷⁵ See, generally, Gianni Vattimo, *The Transparent Society* (David Webb trans, Johns Hopkins Press, 1992) [trans of: *La società trasparente* (first published 1989)].

⁷⁶ See Heesok, 'Postmodern Communities: The Politics of Oscillation' (1993) 4(1) *Postmodern Culture* <pmc.iath.virginia.edu/text-only/issue.993/review-3.993>.

⁷⁷ Cited by Rosanvallon, above n 60, 279.

⁷⁸ *Ibid.*, 260–1.

⁷⁹ *Ibid.*, 261.

from the dissemination of comprehensive analysis by tax academics and practitioners to demonstrations staged by activists as performance events.

A Examples

1 *Tax Justice Network*

The Tax Justice Network describes itself as:⁸⁰

an independent international network launched in 2003. We conduct high-level research, analysis and advocacy on international tax; on the international aspects of financial regulation; on the role of tax in society; and on the impacts of tax evasion, tax avoidance, tax 'competition' and tax havens. We seek to create understanding and debate, and to promote reform, especially in poorer countries. We are not aligned to any political party.

The Tax Justice Network may not be aligned to a particular political party, but it is not ideologically neutral, particularly in respect to its conception of the corporation and corporate duties. The dominant Anglo-American theory of the corporation, which is consonant with and implicated with neoliberalism, is based on an assumption of shareholder primacy.⁸¹ In this view, the corporation is a mere web of contracts, principally the contracts between directors and shareholders.⁸² The company is not a corporate citizen which might have moral obligations,⁸³ say, to refrain from aggressively avoiding tax.⁸⁴ The guiding function of directors, in this scheme, is to maximise shareholder returns, even if that requires bending or, possibly, breaking the law. In contrast, the corporate social responsibility movement, whose principles are consonant with the aims of the Tax Justice Network, sees the corporation as a corporate citizen.⁸⁵ The *Companies Act 2006* (UK) may move away from doctrinaire shareholder primacy by establishing an obligation on directors to take into account a broad range of stakeholders when considering the best interests of the company. Nevertheless, the principal directorial duty is 'to promote the success of the company for the benefit of its members [shareholders] as a whole'.⁸⁶ While the Tax Justice Network is persuasive in its view that directors

⁸⁰ See Tax Justice Network, 'Our Goals and Methods' <www.taxjustice.net/>.

⁸¹ See, generally, Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439.

⁸² See Daniel R Fischel, 'The Corporate Governance Movement' (1982) 35 *Vanderbilt Law School* 1259, 1273.

⁸³ See Frank H Easterbrook and Daniel R Fischel, 'Antitrust Suits by Targets of Tender Offers' *Corporate Governance Movement* (1982) 80 *Michigan Law Review* 1155, 1177.

⁸⁴ For counter arguments, see William B Barker, 'The Ideology of Tax Avoidance' (2009) 40(2) *Loyola University Chicago Law Journal* 229; Zoe Prebble and John Prebble, 'The Morality of Tax Avoidance' (2010) 43 *Creighton Law Review* 693.

⁸⁵ See, for example, Reuven Avi-Yonah, 'Corporate Social Responsibility and Strategic Tax Behavior' in Wolfgang Schön (ed) *Tax and Corporate Governance* (Springer, 2008) 183.

⁸⁶ *Companies Act 2006* (UK), s 172.

of United Kingdom companies do not have a fiduciary duty to avoid tax,⁸⁷ the wording of section 172 is sufficiently broad so as to permit aggressive tax planning.

When groups, such as the Tax Justice Network, promote progressively-biased arguments, they invite rebuttal from oppositely-aligned organisations, particularly those funded by Business Roundtables and libertarian foundations.⁸⁸

2 UK Uncut

Malcolm James describes UK Uncut as a 'grass-roots pressure group ... which campaigns against the public spending cuts imposed by the Conservative-Liberal Democrat coalition government'.⁸⁹ UK Uncut came to prominence through its direct action in seeking to shame certain United Kingdom high street stores.⁹⁰ Either these companies or their principal shareholders had engaged in aggressive tax planning. Mostly young people used Web 2.0 media⁹¹ to arrange and publicise their demonstrations. In a more traditional approach, UK Uncut sought judicial review of a decision by the United Kingdom's revenue service (HMRC) to waive national insurance contributions owed by Goldman Sachs. Although the move was ultimately unsuccessful, James concludes:⁹²

UK Uncut has been extremely successful in shaping public opinion, because, since it was founded in late 2010, there has been an upsurge of public interest in, and consciousness of, the tax arrangements of large companies and wealthy individuals, thus subjecting them to greater scrutiny. Similarly, HMRC has been called to account and the power relations which underpin the relationship between them and large companies.

The high street protests were disruptive,⁹³ but the long-term effectiveness of such performances,⁹⁴ which may alienate many ordinary people, must be questioned.⁹⁵

⁸⁷ See Farrer & Co LLP, 'Fiduciary Duties and Tax Duties' (2013) <www.taxjustice.net/cms/upload/pdf/Farrer_and_Co_Opinion_on_Fiduciary_Duties_and_Tax_Avoidance.pdf>.

⁸⁸ The New Zealand Business Roundtable, under the leadership of Roger Kerr, provided considerable intellectual impetus to libertarian ideology, with Richard Epstein, as a frequent guest lecturer, making a significant contribution.

⁸⁹ Malcolm David James, 'Cutting a Good Deal: UK Uncut, Goldman Sachs and the Challenge to Administrative Discretion' (2013) 14(3) *Journal of Applied Accounting Research* 248, 258.

⁹⁰ See, for example, the demonstrations in well-known shops on London's Oxford Street available on You Tube at <<https://www.youtube.com/watch?v=ffYIE0ILBbI>>.

⁹¹ Web 2.0 technologies underpin platforms, such as Facebook, Wikipedia and Twitter, which enable their users to participate in online activities, rather than passively consume information produced by others: see, generally, Tim O'Reilly, 'What is Web 2.0?' in Michael Mandiberg (ed) *The Social Media Reader* (New York University Press, 2012) 32, 32-52.

⁹² James, above n 89, 263.

⁹³ See Ellie Mae O'Hagan, 'A Moment that Changed Me – the Day I Discovered Protest', *The Guardian* (online), 16 July 2015 <www.theguardian.com/commentisfree/2015/jul/16/moment-that-changed-me-direct-action-uk-uncut>.

⁹⁴ On protest as performance, see Pia Wiegink, *Protest EnACTed: Activist Performance in the United States* (Winter Verlag, 2011) 75-111.

⁹⁵ On the negative public reaction to the poll tax demonstrations in the United Kingdom, see Chris Rootes, 'Shaping Collective Action: Structure, Contingency and Knowledge' in Ricca

3 *Crickhowell Going Offshore*

Businesses in the small Welsh town of Crickhowell have emulated certain well-known British firms and MNEs to establish the town's own BEPS scheme.⁹⁶ Their object is to protest against and to demonstrate the ease of aggressive offshore tax planning. The Fair Tax Town campaign seeks to force government's hand in closing tax loopholes.⁹⁷ An implicit threat is that, if Crickhowell could 'move offshore', every town and business across the United Kingdom could follow.

4 *The Panama Papers*

In 2016, the International Consortium of Investigative Journalists (ICIJ) released the so-called Panama Papers, a massive leak of information about the Panamanian-based law firm Mossack Fonseca, its clients, and their involvement in tax evasion on a grand scale.⁹⁸ The first political casualty of these revelations was Iceland's Prime Minister, Sigmundur Davíð Gunnlaugsson, who resigned in the face of demonstrations against his concealment of offshore wealth.⁹⁹ Following the ICIJ leaks, in Australia, '1000 entities, involving hundreds of taxpayers – many of which include high-wealth individuals and their lawyers and accountants – [were] under investigation by the Australian Taxation Office'.¹⁰⁰

5 *Anti-tax Groups*

In contrast to the previously mentioned groups, whose fundamental aim is a progressive distribution of tax burdens, other groups wish to cap or reduce taxes. From a Marshallian perspective, it is submitted that these groups exercise their political citizenship but have no concern for the social aspects of citizenship. This conflict must be understood in the context of a simple fact about Western democracy: the poor and the young do not vote in the same proportions as do the wealthy and old.¹⁰¹ In the context of local government, this electoral vacuum

Edmonson (ed) *The Political Context of Collective Action: Power, Argumentation and Democracy* (Routledge, 1997) 81, 90-1.

⁹⁶ See Adam Sherwin, 'Crickhowell: Welsh Town Moves 'Offshore' to Avoid Tax on Local Business', *Independent* (online), 12 November 2015 <www.independent.co.uk/news/uk/crickhowell-welsh-town-moves-offshore-to-avoid-tax-on-local-business-a6728971.html>; Kimiko de Freytas-Tamura, 'Welsh Town Leads a British Revolt against the Tax System and Corporations' *The New York Times* (online), 21 February 2016 <www.nytimes.com/2016/02/21/world/europe/welsh-town-leads-a-british-revolt-against-the-tax-system-and-corporations.html?_r=0>.

⁹⁷ Fair Tax Town, 'Sign the Fair Tax Town Pledge' (2015) <<http://fairtaxtown.com/>>.

⁹⁸ International Consortium of Investigative Journalists, 'The Panama Papers' (2016) <<https://panamapapers.icij.or>>.

⁹⁹ Jon Henley, 'Iceland PM Steps Aside after Protests over Panama Papers Revelations', *The Guardian* (online), 5 April 2016, <www.theguardian.com/world/2016/apr/05/iceland-prime-minister-resigns-over-panama-papers-revelations>.

¹⁰⁰ Nassim Khadem, 'Australians with links to Panama Papers could be charged following raids this week' *The Sydney Morning Herald* (online), 6 September 2016 <www.smh.com.au/business/the-economy/australians-with-links-to-panama-papers-could-be-charged-following-raids-this-week-20160906-gr9sl0.html>.

¹⁰¹ In New Zealand, if current trends continue, by 2050, at least 40 per cent of people who vote in national elections will be aged 65 and older: see Jonathan Boston and Judith A Davey,

permits property owners to proscribe the scope of local democracy. California's Proposition 13, which limited increases in local taxes, is perhaps the pre-eminent instance of the propertied class asserting their taxation interests through a democratic process.¹⁰² Because the young and the poor do not tend to vote in local or national elections, taxation policy is likely to reflect the interests of older, propertied citizens who do vote. It is, therefore, unsurprising that anti-tax groups believe they might be able to influence tax policy, particularly at a local level.¹⁰³ One of these groups is the New Zealand Taxpayers Union, whose ostensibly uncontroversial goals include good fiscal governance. But another goal is 'to lower the tax burden on New Zealanders'.¹⁰⁴ The imperative of lowering the tax burden implies small government, the conservative Holy Grail.¹⁰⁵ Murphy pertinently asks whether these *soi-disant* 'alliances' or 'unions' have any mandate from or connection with taxpayers.¹⁰⁶

One of the key challenges faced by progressive civil groups is to present a united front in the way that conservative tax activists often do, notably in promoting a so-called flat tax. Thus, despite sharing the goal of just taxes, Murphy has criticised Crickhowell's Fair Tax Town, likening the initiative to 'protesting about street crime by going out to do some street crime: irresponsible'.¹⁰⁷ Sigmund Freud's 'narcissism of small differences' seems particularly relevant here.

'Politics of Ageing' in Jonathan Boston and Judith A Davey (eds) *Implications of Population Ageing: Opportunities and Risks* (Institute of Policy Studies, 2006) 363, 364.

¹⁰² See, for example, Kevin Drum, 'Happy 35th Birthday, Tax Revolt! Thanks for Destroying California', *Mother Jones* (online), 7 June 2013 <www.motherjones.com/kevin-drum/2013/06/tax-revolt-35th-anniversary-prop-13-california>.

¹⁰³ See, for example, the Auckland Ratepayers' Alliance, which describes itself as a 'coalition of individual Aucklanders and ratepayer groups dedicated to championing prudent fiscal management of our Super City': see Auckland Ratepayers' Alliance, 'About' <www.ratepayers.nz/about>. The Auckland Ratepayers' Alliance is, in fact, a company solely owned and directed by Jordan Williams, the chief executive of the New Zealand Taxpayers Union. Williams featured significantly in an exposé of right wing 'dirty politics': see Nicky Hager, *Dirty Politics: How Attack Politics Is Poisoning New Zealand's Political Environment* (Craig Potton Publishing, 2014).

¹⁰⁴ New Zealand Taxpayers Union, 'What We Stand for', <www.taxpayers.org.nz/what_we_stand_for>. The 'union' does not publish the identity of its sponsors>.

¹⁰⁵ The New Zealand Taxpayers Union is far less overt in its libertarian leanings than its inspiration, the United Kingdom's Taxpayers' Alliance: see The Taxpayers' Alliance, 'Our Mission' <www.taxpayersalliance.com/our_mission>.

¹⁰⁶ Murphy, above 27, 68.

¹⁰⁷ Quoted by Vanessa Houlder, 'Crickhowell Is the Town that Went Offshore', *Financial Times* (online), 13 November 2015 <www.ft.com/cms/s/0/911b609a-89f6-11e5-9f8c-a8d619fa707c.html#axzz3tbAXLPG0>. Murphy is the founder of the Fair Tax Mark, a private accreditation body: see Fair Tax, 'What's the Fair Tax Mark?' <www.fairtaxmark.net/what-is-it/>.

B Reservations about Activism

If, as communitarians hold, the community precedes the individual,¹⁰⁸ the interests of the community may trump the interests of individuals.¹⁰⁹ Indeed, community precedence may lead to oppression on grand and individual scales. Shaming, which can be both petty and severe, is particularly relevant in this regard.

1 Shaming

Amitai Etzioni observes that not only is shaming an archetypal sanction in strongly knit communities, but public humiliation may also represent a necessary step towards repentance and, ultimately, reintegration in the community.¹¹⁰ It is stressed that Etzioni contemplates traditional communities, such as church congregations; very few of us live today in such communities. In open communities, shaming is unlikely to work as restorative justice, especially in the digital age; the capacity of social media to disgrace others is unbounded. These media make stigmatisation easy, far reaching, and potentially devastating in its effects on the subjects of shaming.¹¹¹ Public humiliation, which has historically constituted a potent weapon in the armoury of social control,¹¹² is incompatible with the fundamental legal principles of proportionality and the rule of law.¹¹³

Martha Nussbaum presents plausible arguments against shaming.¹¹⁴ First, by humiliating a person, shaming offends their inalienable dignity.¹¹⁵ Second, shaming is a manifestation of ‘mob justice’; it is ‘not the impartial, deliberative, neutral justice that a liberal-democratic society typically prizes’.¹¹⁶ Third, shaming is an unreliable

¹⁰⁸ The essential difference between progressive liberalism and progressive communitarianism is that the former conceives of the rights-bearing individual as being prior to society: see Mulhall and Swift, above n 55, 45.

¹⁰⁹ Individual rights are plausibly incorporated into communitarianism theory; indeed, they may be more richly understood in the context of particular communities: see Philip Selznick, ‘The Communitarian Persuasion’ in Emiliios A Christodoulides (ed) *Communitarianism and Citizenship* (Ashgate, 1998) 15, 16.

¹¹⁰ See, generally, Amitai Etzioni, ‘Introduction’ in Amitai Etzioni and David E Carney (eds) *Repentance: A Comparative Perspective* (Rowman & Littlefield Publishers, 1997).

¹¹¹ See, for example, Jon Ronson, ‘“Overnight, Everything I Loved Was Gone”: The Internet Shaming of Lindsey Stone’, *The Guardian* (online), 21 February 2015 <www.theguardian.com/technology/2015/feb/21/internet-shaming-lindsey-stone-jon-ronson>.

¹¹² According to Johannes Voet, in the Dutch city states, those found guilty of tax fraud faced, along with financial or physical penalties, shaming-style sanctions ranging from loss of rank to permanent exile: see Johannes Voet, *Selective Voet* (ed and trans P E Gane, Butterworths, 1955–8) Book XXXIX, Title 4, Section 21. Bankrupts could also face shaming, being ostracised or exiled.

In contemporary China, shaming is a potent weapon of both the State and groups within society: see, for example, Xiaoming Chen, ‘Social Control in China: Applications of the Labeling Theory and the Reintegrative Shaming Theory’ (2002) 46(1) *International Journal of Offender Therapy and Comparative Criminology* 45.

¹¹³ See Philip A Joseph, *Constitutional and Administrative Law in New Zealand* (Brookers, 3rd ed, 2007) 945; Tom Bingham, *The Rule of Law* (Penguin Books, 2011) 66–84.

¹¹⁴ Martha C Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton University Press, 2004) 230–7.

¹¹⁵ *Ibid*, 230.

¹¹⁶ *Ibid*, 234.

form of punishment.¹¹⁷ Justice is necessarily informed by proportionality, whereas humiliating someone may result in ‘calibrating inaccurately the magnitude of the penalty’.¹¹⁸ Fourth, shaming is not necessarily an effective deterrent. People who suffer humiliation at the hands of the dominant group may become more alienated than before, leading to the possibility of sub-groups being attracted by the stigma imbued by hegemonic groups. Nussbaum’s concerns lie with disadvantaged groups, but the already socially distant elite can also be further alienated by stigmatisation and may, for example, become tax exiles.

Opposition to shaming is, in essence, about maintaining human dignity and promoting social inclusion. Since corporations do not have human dignity,¹¹⁹ Julia Annas and Deborah Rhode are persuasive when they argue that shaming juristic persons is different from shaming people, and may be an appropriate legal and social sanction.¹²⁰ Concerned with its image, Starbucks made a voluntary corporate tax payment of £15 million, and transferred its European headquarters from low-tax Amsterdam to London – effectively assuming a higher tax burden as a public relations exercise.¹²¹

Corporations should, nevertheless, expect proportionate sanctions. It may also be noted that the corporate veil may be ignored and individuals behind the corporation vilified.¹²² The nature of a corporation is too complex an idea to be considered here, but, if the law makes a corporation a juristic person, that entity ought to be subject to the rule of law.¹²³

¹¹⁷ Attempts by the liberal media to disgrace Donald Trump for his tax planning were unsuccessful and seem to have contributed to his image as a shrewd leader. See Sophia Tesfaye, ‘All of Donald Trump’s apologists: Rudy Giuliani, Chris Christie argue that avoiding taxes makes him a “genius”’ Salon (4 October 2016) <www.salon.com/2016/10/03/all-of-donald-trumps-apologists-possible-tax-avoidance-makes-trump-a-genius-rudy-giuliani-chris-christie-argue/>.

¹¹⁸ Nussbaum, above n 114, 235.

¹¹⁹ Delivering a unanimous decision of the South African Constitutional Court, Langa DP, said in *Investigating Directorate: SEO v Hyundai Motor Distributors (Pty) Ltd* 2001 (1) SA 545, [18]: ‘Juristic persons are not the bearers of human dignity.’

¹²⁰ Cited by Nussbaum, above n 114, 244.

¹²¹ Vanessa Houlder, ‘Starbucks European Unit Pays \$15m UK Tax’ *Financial Times* (online ed, 29 June 2016) <<https://www.ft.com/content/5222fd14-3d3b-11e6-9f2c-36b487ebd80a>>.

¹²² See, for example, the conflation of Philip Green and British Home Stores plc, as seen in Matt Hunter and Sam Tonkin, ‘Sir Shifty carries on cruising while last stores close: Former BHS boss Philip Green suns himself on his £100million super yacht as the department store he’s accused of sinking disappears from the High Street after 88 years’ *The Daily Mail* (online), 29 August 2016 <www.dailymail.co.uk/news/article-3762304/After-88-years-BHS-finally-disappears-today.html#ixzz4QtVTveJg>. The point is not to condone directorial malfeasance but to ensure that it is proportionately punished in accordance with the rule of law.

¹²³ Mark Bovens argues that, since due process was developed to protect individuals against arbitrary behaviour on the part of the agents of the omnipotent state, due process should not be extended to large organisations as they are not similarly weak in relation to the State: see Mark Bovens, ‘The Corporate Republic: Complex Organizations and Citizenship’ in Emiliós A Christodoulides (ed) *Communitarianism and Citizenship* (Ashgate, 1998) 158, 162. It would, however, weaken the procedural elements of the rule of law if juristic persons, which may hold property in their own names, did not have full access to the courts: see *First National Bank of South Africa v Commissioner, SARS* 2002 (4) SA 768 (Constitutional Court).

2 *Activism to Slacktivism*

The Internet has transformed activism, notably through online petitions organised by groups, such as MoveOn.¹²⁴ But such ‘clicktivism’ or, more pejoratively, ‘slacktivism’,¹²⁵ is controversial. Micah White, a co-founder of Occupy Wall Street, has, for example, criticised clicktivism for its use of marketing methodology and its dilution of the impact of direct action.¹²⁶ Well-considered activism can influence individual and corporate behaviour, including taxpaying,¹²⁷ but the place of cyber-vigilantes in civil society is problematic.

3 *Corporate Co-option*

Online activist organisations, such as MoveOn, may emulate business models in ways that offend some grassroots activists,¹²⁸ but businesses, notably Uber and Airbnb, which have access to millions of customers and suppliers, may conversely emulate online activists.¹²⁹ The possibility becomes real of political discourse, including proposals for local taxes on hotel beds, being co-opted by business interests. Despite having the veneer of citizen participation, Uber and Airbnb are able to flood the market place of ideas by harnessing the self-interest of their drivers or hosts. Thus, Conor Dougherty and Mike Isaac report:¹³⁰

Now, as cities grapple with the growth of [Uber and Airbnb] and try to pass rules for how they should operate, the companies are fighting back by turning their users into a vast political operation that can be mobilized at any sign of a threat.

V POLICY RECOMMENDATIONS AND CONCLUSION

This part of the article makes tentative policy recommendations and draws conclusions.

¹²⁴ See MoveOn, ‘What Is MoveOn.org?’ <<http://front.moveon.org/about/#.Vmdz4Tahd54>>.

¹²⁵ ‘Actions performed via the Internet in support of a political or social cause but regarded as requiring little time or involvement (eg signing an online petition or joining a campaign group on a social media website’: see Oxford Dictionaries, ‘Slacktivism’ (2015) <www.oxforddictionaries.com/definition/english/slacktivism>).

¹²⁶ See Micah White, ‘Activism after Clicktivism’ Q (2014) <<http://qideas.org/articles/activism-after-clicktivism/>>.

¹²⁷ See, for example: John Gellemore, Edward L Maydew and Jacob R Thornock, ‘The Reputational Costs of Tax Avoidance’ (2014) 31(4) *Contemporary Accounting Research* 1003; Scott D Dyreng, Jeffrey L Hoopes and Jason H Wilde, ‘Public Pressure and Corporate Tax Behavior’ (WP14/16, Oxford University Centre for Business Taxation, 2014).

¹²⁸ See White, above n 126.

¹²⁹ See Issie Lapowski, ‘Uber’s New Fake Feature Derides Regulators’, *Wired* (online), 16 July 2015 <www.wired.com/2015/07/uber-de-blasio/>.

¹³⁰ Conor Dougherty and Mike Isaac, ‘Airbnb and Uber Mobilize Vast User Base to Sway Policy’, *The New York Times* (online), 4 November 2015 <www.nytimes.com/2015/11/05/technology/airbnb-and-uber-mobilize-vast-user-base-to-sway-policy.html?_r=0>.

A Policy Recommendations

The least controversial policy recommendations will be considered first (constituencies for fiscal information, and consultation); then the more problematic issues of engaging with activists and tax education.¹³¹

1 Constituencies for Fiscal Information

Government agencies collect considerable fiscal information which, subject to privacy concerns, should be made available to the public to foster discourse. One of the difficulties faced in this regard lies with making information comprehensible and useful to the widest audience. (A large body of literature exists on the issue of usefully communicating financial information; much has been published in the journal *Accounting, Auditing & Accountability*.) Potential also exists for non-engagement and apathy. In 2014, the United Kingdom's revenue authority posted a leaflet to 30 million taxpayers explaining how their income tax and national insurance contributions were used.¹³² Two-thirds of taxpayers later surveyed could not recall receiving the summary. Nevertheless, of the remainder, 75 per cent found the explanation of tax useful, and 60 per cent considered the explanation of government expenditure helpful.¹³³

The World Bank has long urged governments to promote constituencies for fiscal information.¹³⁴ But this laudable proposal is not unproblematic. In particular, a government-funded body charged with disseminating tax information would find it difficult to present information in a useful but politically neutral way. Indeed, one of the perceptions of the United Kingdom revenue authority's information exercise was that the authority had been politicised.¹³⁵

2 Consultation

Consultation is an uncontroversial element in the development of contemporary tax policy.¹³⁶ New Zealand has instituted a well-regarded generic tax policy process (GTPP).¹³⁷ But the GTPP tends to be dominated by submissions made by the New

¹³¹ This article is about the relationship between government and taxpayers. The content of substantive tax laws lies beyond the scope of the article.

¹³² It is not obvious why details of VAT revenue, which accounts for approximately one-fifth of United Kingdom exchequer receipts, were not included. But see above n 67 on the common exclusion of VAT-payers from the conception of 'the taxpayer'.

¹³³ See Adam Palin, 'Tax Statements Sent out to an Apathetic Public', *Financial Times* (London), 7 November 2015, 3.

¹³⁴ See Deepa Narayan (ed), *Empowerment and Poverty Reduction: A Sourcebook* (World Bank, 2002).

¹³⁵ See Palin, above n 133, 3.

¹³⁶ Michael Cadesky, Ian Hayes and David Russell, *Towards Greater Fairness in Taxation: A Model Taxpayer Charter Preliminary Report* (AOTCA, CFE and STEP, 2013) 184.

¹³⁷ For an overview of the GTPP, see Adrian J Sawyer, 'Broadening the Scope of Consultation and Strategic Focus in Tax Policy Formulation – Some Recent Developments' (1996) 2 *New Zealand Journal of Taxation Law and Policy* 17. For a concise, plain language overview of the GTPP, see Peter Dunne, 'Keynote Address to EMA Annual Payroll Conference' (2013) <<http://beehive.govt.nz/speech/keynote-address-ema-annual-payroll-conference>>. For a critical review of the GTPP in practice, see Peter Vial, 'The Generic Tax Policy Process: A

Zealand Law Society, Chartered Accountants Australia and New Zealand, large law firms and accounting practices, and, depending on the issue, special interest business groups. As consultation, it has a narrow practical focus. Ideally, we all would be involved in tax discourse, but, in practice, which individuals and civic groups have the time and resources to contribute to developing tax policy? Conversely, when only a few members of civil society are engaged, debate may become skewed.¹³⁸ Tax is seen as a technocratic preserve. When democratically-elected representatives fail to heed the wisdom of professional technocrats, they may be dismissed as 'tax prats'. Contemplating this technocratic dismissal of non-experts from tax policy discourse, Wendy Bradley observes '[t]he outsider, the tax prat, might think there is a simple syllogism, that is, tax is governed by law, laws are made, the people making them have set simplicity as a priority objective, therefore tax law will become simpler via their actions.'¹³⁹

3 *Activism*

Following Davies, European Union policymakers have sought to empower the citizen-consumer. It is submitted that this advanced stage of consumerism is also seen in the behaviour of taxpayers. The research-based activism of the Tax Justice Network seems to reflect an ideal of citizen empowerment expressed in rational discourse. But was the pro-tax activists' disruption of shoppers on London's Oxford Street or the small businesses of Crickhowell taking their profits offshore part of the Brussels-based policymakers planned and executed policies for consumer-citizenship? So, policymakers must ask: to what extent is citizenship-consumerism an organic phenomenon that may resist shaping by government? Indeed, to what extent should government be wary of activism?

4 *Tax Education*

Murphy argues that taxation should be a compulsory subject for schools, implicitly, in the way that Civics is taught in the United States. Support for democracy is near universal but, in essence, Murphy argues that progressive taxation is as equally uncontroversial as democracy. But, for plausible and honest reasons, others would dispute that assumption. Taxation is not a cold science: it is, in its nature, political and partisan, and one must be sceptical that it could be taught without ideological inflection in the school classroom.

"Jewel in our Policy Formation Crown"?' (2012) 25(2) *New Zealand Universities Law Review* 318.

¹³⁸ In New Zealand, for example, the well-endowed Morgan Foundation has gained publicity for its proposal for an arguably Quixotic form of capital taxation: see Andrew Laxton, 'Gareth Morgan's Big Tax Idea' *The New Zealand Herald* (online), 1 October 2011 <www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10755689>.

¹³⁹ Mike Truman, 'Tax Prat of the Year' Taxation (6 February 2013) <www.taxation.co.uk/Articles/2013/02/06/53361/tax-prat-year>; Wendy Bradley, 'Tax Prats and Citizen Stakeholders: Professionalism in the Gap Between Tax Priority Setting and Tax Policymaking' (2015) 24(2) *Social and Legal Studies* 203, 220.

B CONCLUSION

This article is exploratory in nature, and has considered the applicability of the emerging model of the citizen-consumer to taxpayers. Despite the promise of citizen-consumer activism in the field of tax law and policy, reservations have been noted. Some of the main tools of tax activism – performance protest and shaming – can be disproportionately harmful both to the cause of social justice and the subjects of shaming. Co-option of online activism by corporate interests is also a concern. In an ideal discursive democracy, citizens would actively participate in the formulation of the policy and laws under which they contribute to and benefit from the public treasury.¹⁴⁰ Web-based technology ostensibly promotes this ideal, but the reality is more complex. Distinctions between protest and consumption, and between business and consumer interests, become increasingly difficult to maintain. Consequently, any policy recommendations must be tentative, and conclusions uncertain.

The research of Davies in relation to consumerism and citizenship, and that of Rosanvallon on singularity and equality are not well known among Australasian tax academics.¹⁴¹ Nevertheless, their ideas have relevance beyond their source and immediate context of the European Union. Both examine the structural changes in the relationship between citizens and the State and citizenship. These changes in developed countries, from social citizenship to neoliberalism and beyond, are equally relevant to New Zealand and Australia. It must be conceded that the authors' conceptualisation of citizenship are, to some degree speculative; nevertheless, in the field of taxation, they suggest ways for both citizens and the State to engage with the power of MNEs.

¹⁴⁰ See, generally, Jonathan Barrett, 'Communities of Taxation and Justice: A Communitarian Approach to Inequality and Taxation' (2012) *Journal of Applied Law and Policy* 1.

¹⁴¹ I am grateful to Miranda Stewart for alerting me to the work of Pierre Rosanvallon.

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