

IS THE CITIZEN-CONSUMER THE FUTURE TAXPAYER?

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ABSTRACT

The conception of citizenship popularised by Thomas Marshall includes a portrayal of citizens as taxpayer-beneficiaries of the Welfare State. However, Marshall tells us little about how citizens engage with taxpaying, other than to say that such an obligation is an element of the bundle of rights and responsibilities which constitute citizenship. Circularly, citizens are presumed to be willing taxpayers because, as citizens, they are fully included in the political community. In the context of the neoliberal dismantling of the Welfare State, Marshallian citizenship, if it ever had general application, has become moot. Today, taxpayers 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. According to Jim Davies, citizen-consumers (or level 4 consumers) actively protect their own interests but are also alert to the sustainability of the community and the environment, and are altruistic. This paper considers whether this model could apply to taxpayers.

I INTRODUCTION

The social democratic conception of the citizen popularised by Thomas Marshall¹ is commonly the starting point for discussions of citizenship.² This conception includes the civic role of taxpayer-beneficiaries of the Welfare State. Marshall tells us little, however, about the ways in which citizens engage with taxpaying, other than to imply that paying tax is an element of the bundle of rights and responsibilities which constitute citizenship. Circularly, citizens are presumed to be willing and active taxpayers because, as citizens, they are fully included in the political community. They are willing and active in each of their civic roles, whether it is electing their lawmakers or paying taxes set through the democratic process. In the context of the neoliberal dismantling of the Welfare State, Marshallian

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

² See, for example, Engin F Isin and Bryan S Turner, 'Investigating Citizenship: An Agenda for Citizenship Studies' (2007) 1(1) *Citizenship Studies* 5.

citizenship, if it ever had general application, 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. In turn, government holds no conception of the good life; it merely responds to demand signals. While social democratic citizenship may, from our contemporary perspective, seem as historically remote as the prospect of soviet socialism's representing a viable alternative to capitalism,³ citizenship does not need to be reduced to consumption. Past manifestations of citizenship are gone and cannot be recreated, but new forms 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.⁴ Could this image, which does not seek to resurrect a probably passé model of social democracy but does aim to counter the sterility of citizenship as consumerism, be applied to taxpayers?

This paper, which should be treated as an exploratory work in progress, considers whether the citizen-consumer might provide a model for the future taxpayer.⁵ The jurisdictional focus is

³ 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 twentieth first century progresses.

⁴ See, generally, Jim Davies, *The European Consumer Citizen in Law and Policy* (Palgrave Macmillan, 2011).

⁵ The focus of this paper lies with individuals as taxpayers. Nevertheless, even the largest multinational enterprises ('MNEs') are ultimately owned and controlled by individuals.

The term 'taxpayer' is often conflated with income taxpayer, even though in the United Kingdom, income tax accounts for just 27 percent of government revenue. The people who bear the burden of value-added tax ('VAT') (18 percent) do not seem to be taken into account: see Richard Murphy, *The Joy of Tax: How a Fair Tax System Can Create a Better Society* (Bantam Press, 2015) 28-9.

While consumerism aims to redress the bargaining and informational imbalance between vocational sellers and non-vocational buyers, the consumer is typically identified by final use of a good or service. And so, under New Zealand law, if an MNE is the final user of a good or service normally used for domestic purposes, they are a consumer with especial legal protections, but, if a sole trader purchases

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 the trifurcated conception of citizenship proposed by Marshall; the neoliberal image of the citizen as consumer; and the citizen-consumer envisaged by European Union policy makers.⁶ The aim here is to present a concept of citizenship distinct from both social democratic and neoliberal models.

Second, the paper draws parallels between different conceptions of the consumer with analogous representations of the taxpayer. It is not claimed that taxpayers have actually been represented in the ways identified; rather, particular images of the taxpayer may be inferred from the types of taxes levied at different times, and other relevant information.⁷

Third, the possibility of the taxpayer as a citizen-consumer is considered. This is, in essence, a communitarian approach,⁸ which may be distinguished, in particular, from anti-tax libertarianism. But it is a nuanced, arguably diluted, version of communitarianism.⁹ For citizen-consumers, community may not constitute an end in itself; rather cooperation and

goods or services from a major corporation for on-sale, they are not a consumer, and are subject to the vagaries of caveat emptor: see *Consumer Guarantees Act 1993* (NZ), s 2 definition of 'consumer'. Despite these oddities, it seems that we can reasonably refer to individuals as taxpayers (of a range of taxes, but principally income tax and GST) and consumers, as individuals buying goods and services for domestic purposes.

⁶ Davies generally refers to 'consumer-citizens'. I reverse the word order because, to my mind, citizenship is a morally superior consideration to consumerism.

⁷ I hesitate to use such grand terms as Foucaultian 'epistemes' or Kuhnian 'paradigms'; nevertheless, government approaches to taxpayers are distinguishable in different periods.

⁸ The essential difference between the viewpoints of progressive liberals and communitarians lies in the formers' conception of the rights-bearing individual as being prior to society: see Stephen Mulhall and Adam Swift, *Liberals & Communitarians* (Blackwell, 1995) 45.

⁹ 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': see Gordon Graham, *Contemporary Social Philosophy* (Basil Blackwell, 1988) 12. '[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': see Swift and Mulhall, above n 9, 15.

social solidarity may represent instruments for achieving individual goals.¹⁰ 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.¹¹

Fourth, reservations are noted about the socially-undesirable possibilities of active communitarianism in the field of taxpaying, especially the potential role of shaming. Capture of online activism by corporate interests is also noted.

Finally, tentative policy recommendations are made and preliminary conclusions are drawn.

II TOWARDS CITIZEN-CONSUMERS

This part of the paper draws comparisons between Marshall's conception of 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 democratic and neoliberal models.

A *Social Democratic 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').¹² Engin Isin and Bryan Taylor sum up this conception of citizenship as 'belonging to a society through the entitlements associated with service'.¹³ In this social democratic scheme, citizens pay taxes in the knowledge that, should certain

¹⁰ This possibility of instrumental communitarianism seems to be particularly likely in relation to online groups. But instrumental communitarianism may be more widespread; contemporary trade unions, for example, typically market themselves to potential members on the basis of the individual benefits of membership, rather than the inherent good of worker combination.

¹¹ The classical sociological distinction between social groups is made between *Gemeinschaft* (community) and *Gesellschaft* (voluntary association): 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.

¹² Marshall, above n 1, 74.

¹³ Isin and Turner, above n 2, 5.

contingencies occur, such as workplace injury or superannuation, they are guaranteed benefits from the State.

Marshall was a sociologist. It is therefore reasonable to assume that he sought to study a particular social arrangement, one that was temporally and culturally-specific. His conception of citizenship has nevertheless assumed a normative quality.¹⁴ In other words, the Marshallian model is commonly relied upon to tell us what citizenship ought to look like. For social democrats, this apparent normativity may provide comfort in the neoliberal era. 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); 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 *Citizens as Consumers*

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'.¹⁵ 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'.¹⁶ More specifically, as Alain Touraine identifies, 'capital's freedom to move around the world' is 'the main cause of the threats that hang over us'.¹⁷ 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

¹⁴ See, for example, Virginia Mantouvalou, 'Workers without Rights as Citizens at the Margins' (2013) *Critical Review of International Social and Political Philosophy* 366, 368.

¹⁵ 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.

¹⁶ 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, 33-34.

¹⁷ Alain Touraine, *Beyond Neoliberalism* (Polity Press, 1998) 14.

direct investment, a competitive exchange rate, fiscal discipline, lower taxes and small government'.¹⁸ The principal beneficiaries of globalisation are multinational enterprises ('MNEs').¹⁹

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.²⁰ 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'.²¹ Neoliberal policies engender civic docility;²² 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,²³ 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'.²⁴ Colin Crouch, in turn, argues that, the less the State directly provides for the needs of ordinary people, the more apathetic those

¹⁸ William K Tabb, *Economic Governance in the Age of Globalization* (Columbia University Press, 2012) 3.

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

²⁰ 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.

²¹ 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.

²² 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.

²³ See, generally, Anup Malani and Eric A Posner, 'The Case for For-Profit Charities' (2007) 93 *Virginia Law Review* 2017.

²⁴ Gino Dal Pont, *Charity Law in Australia and New Zealand* (Oxford University Press, 2000) 3.

people will become about democracy.²⁵ 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’.²⁶

Neoliberalism is founded on the presumption that human behaviour is dominated by self-interest, and social interactions are value-maximising exchanges.²⁷ Indeed, society is imagined as an agglomeration of markets. In this context, consumers and citizens may be viewed as essentially the same thing.²⁸ In the social democratic view of citizenship, the citizen as consumer 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 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 Indeed, consumers in the advanced economies have asserted their rights and started to manifest behaviour traditionally associated with citizenship.

²⁵ See Colin Crouch, *Post-Democracy* (Polity Press, 2004) 19.

²⁶ Murphy, above n 5, 65.

²⁷ See Jonathan Boston, John Martin, June Pallot and Pat Walsh, *Public Management: The New Zealand Model* (Oxford University Press, 1996) 17.

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.

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.

C Citizen-consumers

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’.³² 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’;³³ thus, ‘amongst the capable consumer behaviours there are traits more normally associated with the citizen’.³⁴ For Davies:³⁵

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 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.³⁶ According to Sue McGregor, ‘when transnational corporations flouted their ability to escape state regulation, they ... highlighted their own responsibility for ... corporate social responsibility’,³⁷ ‘a phenomenon that has triggered the *politicisation of consumption*.’³⁸

³² 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.

³³ Davies, above n 4, 22.

³⁴ Davies, above n 4, 23. See Haltern, above n 28, 24-6 on why the lack of organic support for European citizenship has, in part, driven empowerment of consumers.

³⁵ Davies, above n 4, 90.

³⁶ Michel Foucault, ‘The Subject and Power’ in James D Faubion (ed) *Power* (trans Robert Hurley et al) (The New Press, 2000) 326, 342.

³⁷ Cited by Davies, above n 4, 63.

³⁸ Davies, above n 4, 63 (*italics in original*).

Davies identifies ‘a developing consumer citizenship practice based on the idea of individuals acting, alone or collectively, in the role of a politicised consumer’.³⁹ 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’.⁴⁰

III CITIZENS AND TAXPAYERS COMPARED

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 formulations of policy and law.

A *Consumerism and Taxpaying*

Davies identifies 4 levels of consumers in a normative hierarchy, starting with protection, moving to information, then capability, and, finally motivation. I have added, in Table 1 below, a level 0 which precedes protection since, before the emergence of full-blooded consumerism in the 1960s,⁴¹ legal indifference to contractual power imbalances, manifest in

³⁹ Davies, above n 4, 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.

⁴⁰ Davies, above n 4, 108.

⁴¹ 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 challenges facing today’s more affluent consumers’: see 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.

the principle of *caveat emptor*, was the normal approach to consumer contracts.⁴² We can, albeit very loosely, compare these consumer levels with levels of taxpayers. And so, akin to the *laissez faire* approach to level 0 consumers, the general population was before the twentieth century generally subject to ‘invisible’, indirect taxes.⁴³ Government ostensibly left many of its subjects alone in terms of contract and tax. Protection (level 1), as a form of paternalism, can also be seen in the exclusion of many people from the direct tax base. 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 net with the introduction to pay-as-you-earn (‘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 goods and services tax (‘GST’), 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.

Table 1: Normative hierarchy of consumer-citizenship practice compared with taxpaying⁴⁴

Level	Key feature of consumerism	Key feature of taxpaying
0 Laissez faire	Caveat emptor	Most taxpayers subject only to ‘invisible’ indirect taxes
1 Protection	Mandatory contractual provisions; consumer rights and redress	Only income tax paying elites regularly included in discourse with Revenue
2 Information	Product labelling and branding; education and public information;	General population engaged in discourse with Revenue discourse through, e.g., PAYE

⁴² The *Sale of Goods Act 1893* (56 & 57 Vict c 71), which was followed around the British Empire (see, for example, the *Sale of Goods Act 1908* (NZ)), provided certain default, but not mandatory, purchaser protections.

⁴³ It is not suggested that people were unaware of indirect taxes, but compared to, say, poll taxes, which have often proved flashpoints (see Murphy, above n 5, 33), multiple, specific consumption taxes are less obvious.

⁴⁴ Liberally adapted from Davies, above n 4, 48-9 Fig 5.1.

	national consumer organisations	
3 Capability	Market structures and individual capacity ⁴⁵	Emphasis on GST ⁴⁶ Consultation but mainly with experts and highly organised interest groups
4 Motivation	Solidaristic and communitarian; ⁴⁷ Individualistic ⁴⁸	Possibilities for active taxpayer engagement ⁴⁹

B *Voting and Taxpaying*

Taxpaying and voting are closely associated.⁵⁰ ‘No taxation without representation’ was, of course, a rallying cry for the American Revolution;⁵¹ and remains a compelling proposition

⁴⁵ Neoliberalism requires the creation of markets everywhere and participation in those markets by competent consumers.

⁴⁶ 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 percent of government revenue), its invisibility disguises taxpaying and that invisibility discourages democratic debate about taxation.

⁴⁷ Expanding on ‘solidaristic and communitarian’, Davies, above n 4, 48-9 includes: altruism; ethical and sustainable consumption; communal interest; perceived effectiveness of action; wealth; trustworthiness of information source; and ‘good guilt’.

⁴⁸ ‘Individualism’ includes: self-responsibility; personal safety; demand for quality and reduced cost; self-interest; and perceived effectiveness of action: see Davies, above n 4, 48-9.

⁴⁹ Participation in consultation about tax laws is a principal example being an active taxpayer.

⁵⁰ 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.

⁵¹ Less well-known but with equally pithiness, Samuel Johnson countered the Americans’ claims in his *Taxation no Tyranny; and answer to the Resolutions and Address of the American Congress*. Johnson asked: ‘How is it that we hear the loudest yelps for liberty among the drivers of the negroes?’ See James Boswell, *The Life of Johnson* (first published 1791, Penguin Books, 1984) 176.

for the connection between contribution to the Treasury and democratic rights.⁵² But the correlation between electoral and taxation features has changed over time, as indicated in Table 2 below.

Table 2: Features of voting and taxpaying⁵³

Time period	Voting features	Taxpaying features
1870-1914	Expansion of the franchise	Focus on consumption taxes Limited progressive taxation
1918-1939	Move towards universal franchise	Self-protecting elites subject to direct taxes: see, in particular, <i>the Duke of Westminster's case</i> ⁵⁴
1945-1985	Full and active democracy	Progressive taxes and social benefits High engagement with taxpayers by Revenue
1985-2005	Decreasing voter engagement ⁵⁵	Increase in use of indirect, invisible taxes Decrease in direct, visible taxes ⁵⁶

⁵² See Murphy, above n 5, 19-20.

Compare the right of a New Zealand permanent resident to vote – and, of course, an obligation to pay income tax – with Australia’s residency-based income taxation system but citizenship-based electoral system.

⁵³ These categories have been constructed to illustrate possible connections; claims are not made for their empirical validity. For an in-depth analysis of changes in United Kingdom taxation during the twentieth century, see Martin Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (Cambridge University Press, 2002).

⁵⁴ *IRC v Duke of Westminster* [1936] AC 1 (HL), Lord Tomlin said: ‘Every man is entitled if he can to order his affairs so that the tax under a tax statute is less than it would otherwise be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.’

⁵⁵ Australia is unusual among Anglophone electorates in having compulsory voting: see *Commonwealth Electoral Act 1918* (Cth) s 245(1); Australian Electoral Commission, ‘Electoral Background: Compulsory Voting’ (2015) <http://www.aec.gov.au/About_AEC/Publications/backgrounders/compulsory-voting.htm>.

		Reduction in taxpayer-Revenue engagement
2005-	Continued decrease in voter engagement – growth in online activism	Governments attempt to counter BEPS ⁵⁷ by MNEs Attempt to re-engage taxpayers ⁵⁸

C Snapshots

The ‘snapshots’ below indicate the changing relationship between government and taxpayers.

1 *Insignificance of Income Tax*

In the tax year 1899-1900, income tax contributed a little more than two percent of New Zealand government revenue; less than one in fifty adult males were income taxpayers.⁵⁹

2 *Servicing War Debt*

Having incurred heavy debts during the First World War, governments became increasingly reliant on income tax as a form of revenue.⁶⁰ Nevertheless, relatively few citizens were subject to income tax or had regular contact with Revenue.

⁵⁶ See the prominence of the Laffer curve, and the general privileging of wealth through the reduction of capital taxes: see, generally, Will Hutton, *The World We’re In* (Little Brown, 2002); John Kenneth Galbraith, *The Culture of Contentment* (Sinclair-Stevenson, 1992).

⁵⁷ ‘BEPS’ stands for ‘base erosion and profit shifting’: see OECD, ‘Base Erosion and Profit Shifting’, (2015) <<http://www.oecd.org/ctp/beps.htm>>.

⁵⁸ Todd McLay, *Making Tax Simpler towards a New Tax Administration Act: A Government Discussion Document Policy and Strategy*, Inland Revenue (2015) <<http://taxpolicy.ird.govt.nz/sites/default/files/2015-dd-mts-3-tax-administration.pdf>>.

⁵⁹ See ‘The Colonial Era’ in AH McLintock (ed) *An Encyclopaedia of New Zealand* (New Zealand Government, 1966) Te Ara – the Encyclopedia of New Zealand (2009) <<http://www.TeAra.govt.nz/en/1966/finance-public>>.

⁶⁰ In 1914, government expenditure in Great Britain was around eight percent of national income. In the 1920s and 1930s, the percentage had risen to 20, much of the increase being attributable to the need to service war debt: see Rondo Cameron, *A Concise Economic History of the World: From Palaeolithic Times to the Present* (3rd ed, Oxford University Press, 1997) 343. See also, generally, JF Rees, *A Short Fiscal and Financial History of England 1815-1918* (Methuen, 1921) on the financially crippling effects of war debt. It was not only war debt that required far greater tax revenue during the inter

3 *World War II and PAYE*

The United Kingdom introduced the PAYE method of income tax payment towards the end of the Second World War.⁶¹ Basil Sabine outlines the massive communications exercise undertaken by Revenue in the lead up to the introduction of PAYE, including broadcasts, articles for newspapers and periodicals, posters and branch office established in very large factories – all done in the midst of a total war.⁶²

4 *Peak Income Tax*

Between 1974 and 1979 in the United Kingdom, the highest marginal rate of income tax was 83 percent; in addition, a 15 percent surcharge was payable on investment income.⁶³

5 *BEPS*

In the new millennium, the Organisation of Economic Cooperation and Development ('OECD') countries increasingly turned their policy concerns towards shoring up their tax

bellum period. Liberal and Labour governments instituted the basis of the Welfare State. See Daunton, above n 53, 3 on the growth of social spending in the United Kingdom.

⁶¹ See Basil Sabine, 'The New Taxpayers Charter or Taxation without Tears' (1991) *British Tax Review* 411.

⁶² '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) <<http://www.taxation.co.uk/taxation/Articles/2011/09/21/29571/payee-story>>

PAYE was introduced in New Zealand in 1958: see Rob Vosslander, 'How Much? Taxation on New Zealanders' Employment Income 1893-1984' (2009) 15 *New Zealand Journal of Taxation Law and Policy* 299, 316.

⁶³ 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) <<http://www.ifs.org.uk/wps/wp0104.pdf>>. See Vosslander, above n 62 on New Zealand's historical income tax rates.

bases and preventing profit shifting by MNEs.⁶⁴ Significantly, the phenomenon of tax ‘shaming’ by media and activist groups emerged.⁶⁵

D *Preliminary Conclusions*

In very broad terms, we can compare government treatment of consumers with its engagement with taxpayers. The State-consumer relationship has ranged from historical disinterest; through paternal protection; then informing; capability building for competent consumers; to ‘empowering’.⁶⁶ Similar trends can be identified in taxpaying from a plethora of invisible taxes, inclusion of the majority from direct taxes, inclusion in income tax through PAYE, the emergence of GST as a reflection of the prominent role of consumption in society, to the possibility of the taxpayer as citizen-consumer. This possibility is considered in the following part of the paper.

IV Taxpayers as Citizen-Consumers

In part 2 of this paper, the concept of the citizen-consumer was introduced. This part of the paper begins by presenting four illustrative examples of actions which might be considered manifestations of citizen-consumerism.

Example 1 *Tax Justice Network*

The Tax Justice Network describes itself as:⁶⁷

... 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

⁶⁴ 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>.

⁶⁵ See Vanessa Barford and Gerry Holt, ‘Google, Amazon, Starbucks: The rise of ‘tax shaming’’ BBC News Magazine (21 May 2013) <<http://www.bbc.com/news/magazine-20560359>>.

⁶⁶ It is debatable whether contemporary consumers have been empowered by government policy or thrown to the mercy of the market. Certainly, competent consumers are able to enforce their rights and, perhaps, influence policy. The critical consideration is what happens to ‘incompetent’ consumers.

⁶⁷ See Tax Justice Network, ‘Our goals and methods’ <<http://www.taxjustice.net/>>.

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.

It would be naive to suggest that groups, such as the Tax Justice Network, do not have a particular ideological orientation, even if they do not directly associate themselves with a particular political party. If, in order to promote greater tax contribution by MNEs, one rejects the principle of shareholder primacy, which is the dominant Anglo-American conception of the corporation,⁶⁸ one is necessarily taking an ideological stance. For shareholder supremacists, the corporation is a mere web of contracts.⁶⁹ It is not a corporate citizen which might have moral obligations, say, to refrain from aggressively avoiding tax.⁷⁰ The guiding function of directors, in this scheme, is to maximise shareholder returns, even if that requires bending or, possibly, breaking the law. And so, while I am a ‘fellow traveller’ of the Tax Justice Network, it must be recognised as an ideologically-aligned organisation. Ideological-aligned argument invites rebuttal from oppositely-aligned organisations, particularly those funded by Business Roundtables and libertarian foundations.⁷¹

Example 2 *UKUncut*

UKUncut came to prominence through its direct action in seeking to shame certain United Kingdom high street stores.⁷² Either these companies or their shareholders had engaged in aggressive tax planning.⁷³ Predominantly young people used social and Web 2.0 media⁷⁴ to

⁶⁸ See, generally, Henry Hansmann and Reinier Kraakman, ‘The End of History for Corporate Law’ (2001) 89 *Georgetown Law Journal* 439; compare with Fukuyama, above n 3.

⁶⁹ See Daniel R Fischel, ‘The Corporate Governance Movement’ (1982) 35 *Vanderbilt Law School* 1259, 1273.

⁷⁰ 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.

⁷¹ In New Zealand, 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.

⁷² See, for example, the demonstrations in well-known shops on London’s Oxford Street. <<https://www.youtube.com/watch?v=ffYIE0ILBbI>>.

⁷³ Identification of tax evasion is relatively clear cut. Likewise, taking advantage of tax privileges for, say, superannuation fund contribution is uncontroversial tax mitigation. But the distinction between tax avoidance and legitimate tax planning is far from clear. Broadly worded, general anti-avoidance

arrange and publicise their demonstrations. The protests were disruptive,⁷⁵ although the long-term effectiveness of such performances⁷⁶ must be in question.⁷⁷

Example 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.⁷⁸ The point is to protest against and demonstrate the ease of offshore tax planning. The Fair Tax Town campaign seeks to force government's hand in closing tax loopholes.⁷⁹ An implicit threat is that, if a small town could move offshore, so could every town and business across the United Kingdom.

Example 4 *Anti-tax groups*

provisions are typically included in income tax legislation, but courts necessarily struggle to apply them. We might find aggressive tax planning distasteful, but it is up to the legislature to set the rules with which businesses must comply. If these rules are ambiguous, it is in the nature of enterprise to take an arbitrager's advantage.

⁷⁴ Web 2.0 technologies underpin websites, 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.

⁷⁵ See Ellie Mae O'Hagan, 'A moment that changed me – the day I discovered protest', *The Guardian* (online), 16 July 2015 <<http://www.theguardian.com/commentisfree/2015/jul/16/moment-that-changed-me-direct-action-uk-uncut>>.

⁷⁶ On protest as performance, see Pia Wiegink, *Protest EnACTed: Activist Performance in the United States* (Winter Verlag, 2011) 75-111.

⁷⁷ At the time of writing, I was unable to find a currently operative website for UKUncut.

⁷⁸ See Adam Sherwin, 'Crickhowell: Welsh town moves 'offshore' to avoid tax on local business', *Independent* (online), 12 November 2015 <<http://www.independent.co.uk/news/uk/crickhowell-welsh-town-moves-offshore-to-avoid-tax-on-local-business-a6728971.html>>.

⁷⁹ Fair Tax Town, 'Sign the Fair Tax Town Pledge' (2015) <<http://fairtaxtown.com/>>.

In contrast to the previously mentioned groups, whose fundamental aim is a fair distribution of tax burdens,⁸⁰ other groups wish to cap or reduce taxes. 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 proportion as the wealthy and old.⁸¹ California's Proposition 13, which limited increases in local taxes, may be a remarkable example of the powerful asserting their taxation interests through a democratic process.⁸² More generally, because the young and the poor do not tend to vote in local or national elections, taxation policy will necessarily 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.⁸³

The New Zealand Taxpayers' Union, which, despite having an uncontroversial goal of good fiscal governance, ultimately wants 'to lower the tax burden on New Zealanders'.⁸⁴ Lowering the tax burden is code for small government, the conservative Holy Grail.⁸⁵

⁸⁰ We can be confident that, say, the Tax Justice Network would be working for tax equity whatever the economic context. It is more debatable whether UKUncut would be as concerned with tax avoidance if it were not for the context of austerity measures in the United Kingdom.

⁸¹ In New Zealand, if current trends continue, by 2050, at least 40 percent of people who vote in national elections will be aged 65 and older: see Jonathan Boston and Judith A Davey, '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.

⁸² Kevin Drum, 'Happy 35th Birthday, Tax Revolt! Thanks for Destroying California', *Mother Jones* (online), 7 June 2013 <<http://www.motherjones.com/kevin-drum/2013/06/tax-revolt-35th-anniversary-prop-13-california>>.

⁸³ See, for example, the Auckland Ratepayers' Alliance Ltd ('ARAL'), which describes itself as a 'coalition of individual Aucklanders and ratepayer groups dedicated to championing prudent fiscal management of our Super City': see ARAL, 'About' <<http://www.ratepayers.nz/about>>. ARAL is, in fact, a company solely owned and directed by Jordan Williams, the chief executive of the New Zealand Taxpayers Union. Williams features 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).

⁸⁴ New Zealand Taxpayers Union, 'What we stand for', <http://www.taxpayers.org.nz/what_we_stand_for>.

⁸⁵ 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' <http://www.taxpayersalliance.com/our_mission>.

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 common goals of just taxes, Murphy is an outspoken critic of Crickhowell's Fair Tax Town, likening the initiative to 'protesting about street crime by going out to do some street crime: irresponsible'.⁸⁶

V Reservations about Activism

If, as communitarians hold, the community precedes the individual, the interests of the community, represented by the majority, *may* trump the interests of the individual.⁸⁷ Indeed, community precedence may lead to individual oppression on grand and petty scales.⁸⁸ The legal and social sanction of shaming is of particular current relevance.

A *Shaming*

In *The Scarlet Letter*, a townsman explains thus the punishment meted out to a convicted adulteress:⁸⁹

Murphy, above 5, 68 pertinently asks whether these soi-disant 'alliances' or 'unions' have any mandate from or connection with taxpayers.

⁸⁶ Quoted by Vanessa Houlder, 'Crickhowell is the town that went offshore', *Financial Times* (online), 13 November 2015 <<http://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?' <<http://www.fairtaxmark.net/what-is-it/>>.

⁸⁷ Individual rights are plausibly incorporated into communitarianism theory; indeed 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. Unlike liberal utilitarianism which, in its basic form, aggregates the wishes of the majority at a particular point in time, communitarianism may adopt a very long-term approach which indicates that respect for the individual is essential for community survival and flourishing.

⁸⁸ Plato's *Republic* and Mussolini's Fascist Republic are classic examples of the community/State suffocating the individual.

⁸⁹ Nathaniel Hawthorne, *The Scarlet Letter: A Romance* (first published 1850, Doubleday and McClure Co, 1898) 77

... our Massachusetts magistracy ... have not been bold to put in force the extremity of our righteous law against her [execution] ... in their great mercy and tenderness of heart, they have doomed Mistress Prynne to stand only a space of three hours on the platform of the pillory, and then and thereafter, for the remains of her natural life, to wear a mark of shame upon her bosom.

The communitarian philosopher Amitai Etzioni observes that, not only is shaming an archetypal sanction in strongly knit communities, public humiliation may also represent a necessary step towards repentance and, ultimately, reintegration in the community.⁹⁰ But online shaming is unlikely to work as restorative justice. Hester Prynne may only have been humiliated by those of her community in her physical presence, but Web 2.0 media are unbounded; they make shaming far easier, far more reaching, and far more devastating in its effects on people.⁹¹ Public humiliation, which has historically constituted a significant weapon in the armoury of society's punishments,⁹² is an ill-fit with the liberal State subject to the rule of law.⁹³

Martha Nussbaum presents five key arguments against shaming:⁹⁴ first, shaming constitutes humiliation of a person, and thereby offends their inalienable dignity.⁹⁵ It is the offensive act

<https://archive.org/stream/scarletletterar01hawtgoog/scarletletterar01hawtgoog_djvu.txt>. In such a community, adultery would necessarily be a crime.

⁹⁰ See, generally, Amitai Etzioni, 'Introduction' in Amitai Etzioni and David E Carney (eds) *Repentance: A Comparative Perspective* (Rowman & Littlefield Publishers, 1997).

⁹¹ Jon Ronson, "'Overnight, everything I loved was gone': the internet shaming of Lindsey Stone", *The Guardian* (online), 21 February 2015 <<http://www.theguardian.com/technology/2015/feb/21/internet-shaming-lindsey-stone-jon-ronson>>.

⁹² Voet tells us that, in the Dutch city states, those found guilty of tax fraud faced, along with financial or physical penalties, shaming-style penalties ranging from loss of rank to permanent exile: see Johannes Voet, *Selective Voet* (ed and trans: PE Gane, Butterworths, 1955-8) Book XXXIX, Title 4, Section 21. Bankrupts could also face shaming, being ostracised, or exile.

⁹³ It is significant that in China, which has not as yet fully embraced the rule of law, 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.

⁹⁴ Martha C Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton University Press, 2004) 230-7.

and not the actor that should invite social disdain. Second, shaming is a manifestation of ‘mob justice’; it is ‘not the impartial, deliberative, neutral justice that a liberal-democratic society typically prizes’.⁹⁶ Third, shaming is an unreliable form of punishment. Justice is necessarily informed by proportionality,⁹⁷ whereas humiliating someone may result in ‘calibrating inaccurately the magnitude of the penalty’.⁹⁸ 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.⁹⁹ Finally, shaming may manifest an ‘ever widening attempt to put more people under social control’.¹⁰⁰

Opposition to shaming is, in essence, about maintaining human dignity. Since corporations do not have human dignity,¹⁰¹ 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.¹⁰² Corporations should, nevertheless, expect proportionate treatment. The nature of a corporation is too complex an idea to consider here, but, if the law makes a corporation a juristic person, that entity ought to be subject to the rule of law.¹⁰³

⁹⁵ Ibid, 230.

⁹⁶ Ibid, 234.

⁹⁷ Proportionality is ‘one of a cluster of elemental principles that are intrinsic to the concept of ‘law’’ and a ‘general principle of law recognised by civilised nations’: see Philip A Joseph, *Constitutional and Administrative Law in New Zealand* (Brookers, 3rd ed, 2007) 945.

⁹⁸ Nussbaum, above n 94, 235.

⁹⁹ In New Zealand, for example, the adoption of Nazi icons by the Mongrel Mob gang may offend the majority but contributes to an us-against-them solidarity for gang members, who are typically recruited from the most socially disadvantaged groups.

¹⁰⁰ Nussbaum, above n 94, 236.

¹⁰¹ 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.’

¹⁰² Cited by Nussbaum, above n 94, 244.

¹⁰³ 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, it is not necessary for large organisations as

B *Activism to Slacktivism*

The Internet has transformed activism, notably through on online petitions organised by groups, such as MoveOn.¹⁰⁴ But such ‘clicktivism’ or, more pejoratively, ‘slacktivism’¹⁰⁵ is controversial. Micah White, a co-founder of Occupy Wall Street, has criticised clicktivism for its use of marketing methodology and its dilution of the impact of direct action.¹⁰⁶ The arguments are indicative of the schismatic tendency commonly observed among progressive activists.

Well-considered activism can influence corporate behaviour, including in relation to taxpaying.¹⁰⁷ But the place in civil society of anarchistic, cyber-vigilantes, such as Anonymous, must be problematic.¹⁰⁸

C *Corporate Capture*

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 legal persons did not have full access to the courts: see *First National Bank of South Africa v Commissioner, SARS* 2002 (4) SA 768 (Constitutional Court).

¹⁰⁴ See MoveOn, ‘What is MoveOn.org?’ <<http://front.moveon.org/about/#.Vmdz4Tahd54>>.

¹⁰⁵ ‘Actions performed via the Internet in support of a political or social cause but regarded as requiring little time or involvement, e.g. signing an online petition or joining a campaign group on a social media website’: see Oxford Dictionaries, ‘Slacktivism’ (2015) <<http://www.oxforddictionaries.com/definition/english/slacktivism>>.

¹⁰⁶ See Micah White, ‘Activism after Clicktivism’ Q (2014) <<http://qideas.org/articles/activism-after-clicktivism/>>.

¹⁰⁷ See, for example: John Gellimore, Edward L Maydew and Jacob R Thornock, ‘The Reputational Costs of Tax Avoidance’ (2014) 31(4) *Contemporary Accounting Research* 1003-33; 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).

¹⁰⁸ The hacker group Anonymous has reportedly ‘declared war’ on ISIS (Daesh): see Andrew Griffin, ‘Paris attack: Anonymous launches ‘biggest operation ever’ against Isis’, *Independent* (online), 19 November 2015 <<http://www.independent.co.uk/life-style/gadgets-and-tech/news/paris-attacks-anonymous-launches-its-biggest-operation-ever-against-isis-promises-to-hunt-down-a6735811.html>>. The likelihood of a group such as Anonymous effectively cooperating with governments to thwart a common enemy seems unlikely.

Online activist organisations, such as Move On, may emulate business models,¹⁰⁹ but businesses, such as Uber, which have access to millions of customers and suppliers may conversely emulate online activists.¹¹⁰ The possibility becomes real of political discourse, including tax protest, being captured by business interests, despite having the veneer of citizen participation. Thus Conor Dougherty and Mike Isaac report:¹¹¹

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.

VI POLICY RECOMMENDATIONS AND CONCLUSIONS

In ideal discursive democracy, citizens would actively participate in the tax discourse which leads to the formulation of the policy and laws by which they contribute to and benefit from the Treasury.¹¹² Web-based technology ostensibly promotes this ideal, but the reality is more complex. Distinctions between protest and consumption, and between business and consumer interest, become increasingly difficult to maintain. Consequently, any policy recommendations must be tentative, and conclusions uncertain.

A *Policy Recommendations*

With regard to policy recommendations, I will consider the least controversial first (constituencies for fiscal information, and consultation); then the more fraught areas of engaging with activists and tax education.

1 *Constituencies for Fiscal Information*

¹⁰⁹ See White above n 106.

¹¹⁰ See Issie Lapowski, 'Uber's new fake feature derides regulators', *Wired* (online), 16 July 2015 <<http://www.wired.com/2015/07/uber-de-blasio/>>.

¹¹¹ Conor Dougherty and Mike Isaac, 'Airbnb and Uber Mobilize Vast User Base to Sway Policy', *The New York Times* (online), 4 November 2015 <http://www.nytimes.com/2015/11/05/technology/airbnb-and-uber-mobilize-vast-user-base-to-sway-policy.html?_r=0>.

¹¹² See Jonathan Barrett, 'Communities of Taxation and Justice: A Communitarian Approach to Inequality and Taxation' (2012) *Journal of Applied Law and Policy* 1.

Government agencies collect considerable fiscal information which, subject to privacy concerns, should be made available to the public. Of course, one of the difficulties faced is making the information comprehensible and useful to widest audience.¹¹³

The potential exists for non-engagement and apathy. In 2014, the United Kingdom's HMRC sent out a leaflet to 30 million taxpayers explaining to them how their income tax and national insurance contributions were used.¹¹⁴ Two-thirds of taxpayers surveyed could not recall receiving the summary. Nevertheless, of the remainder, 75 percent found the explanation of tax useful, and 60 percent considered the explanation of government revenue to be helpful.¹¹⁵

The World Bank has long recommended that governments should foster constituencies for fiscal information.¹¹⁶ A government-funded body to disseminate tax information would find itself in an invidious situation under either a conservative or progressive government.

2 Consultation

Consultation is an uncontroversial element in the development of contemporary tax policy.¹¹⁷ New Zealand has instituted a well-regarded generic tax policy process ('GTPP').¹¹⁸ But the

¹¹³ A huge body of literature exists on this issue, often published in the journal *Accounting, Auditing & Accountability*.

¹¹⁴ It is not obvious why details of VAT revenue, which accounts for around one-fifth of exchequer receipts, was not included. But see above n 5 on the common exclusion of VAT-payers from taxpaying.

¹¹⁵ See Adam Palin, 'Tax statements sent out to an apathetic public', *Financial Times* (London), 7 November 2015) 3. Commentators criticised the scheme for not using email, and the potential politicisation of HM Revenue & Customs.

¹¹⁶ See Deepa Narayan (ed), *Empowerment and Poverty Reduction: A Sourcebook* (World Bank, 2002).

¹¹⁷ Michael Cadesky, Ian Hayes and David Russell, *Towards Greater Fairness in Taxation: A Model Taxpayer Charter Preliminary Report* (AOTCA, CFE and STEP, 2013) 184.

¹¹⁸ 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 "Jewel in our Policy Formation Crown"?' (2012) 25(2) *New Zealand Universities Law Review* 318.

consultation process tends to be dominated by submission made by the New Zealand Law Society, Chartered Accountants Australia and New Zealand, large law firms and accounting practices, and, depending on the issue, special interest groups. As consultation, it has a narrow practical focus. Who would oppose an ideal discursive democracy as proposed by Habermas?¹¹⁹ But who has the time and resources to contribute to tax policy?

3 Activism

European Union policymakers have, as I read Davies, chosen to and have been able to empower the citizen-consumer. It seems more likely, however, that groups within civil society have responded, within the official frameworks, in ways which suit their particular constituencies and interests. Perhaps they correspond with official policy goals, but it seems doubtful that policy has determined outcomes. It is implausible, for example, that pro-tax activists' disrupting shoppers on London's Oxford Street or the small businesses of Crickhowell taking their profits offshore were part of the Brussels-based policymakers planned and executed policies. So, policymakers must ask: to what extent is citizenship-consumerism an organic phenomenon which may resist shaping by government? Indeed, to what extent should government be wary of activists?

4 Tax Education

Murphy argues that taxation should be a compulsory subject for schools, implicitly, in that way that Civics is taught in the United States. Despite sharing many of Murphy's views, I would find great discomfort in tax being taught in schools – at least in the way that he proposes: support for democracy is near universal but Murphy essentially argues that progressive taxation is as uncontroversial as democracy. Like him, I support a highly progressive taxation-distribution system, but I also recognise that others, for plausible and honest reasons, oppose that. Taxation is not a cold science: it is, in its nature, political and partisan, and I am sceptical that it could be taught without ideological inflection in the school classroom.

B *Conclusions*

This paper has considered whether the citizen-consumer might provide a model for the future taxpayer. The concept of citizen-consumer has been developed in contrast to social

¹¹⁹ For an argument why the Habermasian ideal is, in fact, not ideal, see Chantal Mouffe, *On the Political* (Routledge, 2005) 84.

democratic and neoliberal images of citizenship. Parallels were drawn between the consumer and the taxpayer, before the possibility of the taxpayer as a citizen-consumer was considered. Despite the promise of activism, reservations must be noted. Some of the main tools of tax activism – performance protest and shaming – can be disproportionately harmful to both the cause of social justice and the subjects of shaming. Capture of online activism by corporate interests is also a concern. Nevertheless, overall, the emergence of the idea of the taxpayer as a citizen-consumer is a development that should be welcomed.