

# **A CHALLENGING SCIENTIFIC PATH: THE ACADEMIC VALUE OF TAXPAYER RIGHTS FOR A CONTEMPORARY, SKILLED AND COMPARATIVE LAW EDUCATION**

*Giovanna Tieghi<sup>1</sup>*

## **Abstract**

Contemporary democracies are experiencing a never-ending fiscal and legal crisis, causing reductions in agencies' budgets and having significant adverse effects, including the restriction of individual liberty, with the consequent restraint of personal ambitions and a weakening awareness of taxpayers' rights (TRs). These developments result in the need for a new paradigm of comparative law: a constitutional taxpayer-centric approach. Admitting the crucial importance of the relationship between the State and citizens as the basic requirement for overcoming the inadequacies of the contemporary State, the proposed new theory reveals personal dignity to be a constitutional value with substantial normative effectiveness.

This paper presents the case for the undertaking of such an analysis being a current matter for academics and legal experts. The aim is to gradually reach a common legal understanding of the basic foundations of contemporary legal systems, including taxpayer rights as a tool of implementation of the comparative methodology.

An updated tool of fairness should be considered for its potential to support new models of education, even beyond tax administration. The final purpose is the achievement of cooperative and positive outcomes which are supported by the comparative method. That method has, in fact, already proved to be one of the most challenging scientific approaches providing significant evidence of improvements in terms of cooperation, productive dialogue, mutual gain and relevant implications, including operational changes and enhancement of cultural change, at both national and international levels.

Key words:

*taxpayer – rights/obligations – comparison - education – dignity – accountability*

## **1. LAW: AN UPDATED, OPERATIONAL AND COMPARATIVE PERSPECTIVE WITHIN THE DIGNITY-ACCOUNTABILITY FRAMEWORK**

Exploring the stimulating topic of taxpayer rights in the contemporary era demands a very challenging double prerequisite: the scholar must be humbly open to different compelling perspectives and must be interested in understanding the "world of law in context."

---

<sup>1</sup> I delivered these remarks on 13 April 2017 while a guest lecturer at Temple University School of Law, Philadelphia, U.S. I was invited there by Professor Alice Abreu. This lecture represents the ongoing dialogue on the matter reinforced by the crucial insights explored during the II International Taxpayer Rights Conferences, held in Wien, Austria, in March 2017.

Foreword: for accuracy, quotations are included in their original languages.

In fact, the modern jurist and observer of that relatively recent field of law<sup>2</sup>, unlike his or her predecessors, plays a prominent role in the following complex ongoing process: first, in the attempt to define the role of taxpayer rights for consideration by the governors of contemporary democracies, which are experiencing a never-ending fiscal and legal crisis (law in context); second, in the struggle for implementing a compelling trend of studies on taxpayer rights shaped to foster the enhancement of an effective relationship between the State and its citizens.

However, these two requirements will lack effectiveness if we do not include a third element among the jurist's tasks: the urgent mission to rebuild and reshape the jurist's own identity within contemporary society.

In order to be effectively driving the matter forward, the modern jurist, in fact, needs to unpack his or her own personality, using specific scientific tools to help him/her find his/her correct place in the contemporary world, in which a struggle is taking place between two poles: authority and liberty (Tieghi, 2012). The task, indeed, is to find the right balance in the ongoing struggle between the individual, governed citizen-taxpayer, with his/her passions, needs, wishes, and the State, the tax administration and its governors.

How should he/she work on that? What kind of tools could – or, better, should - the jurist use so that he/she has the skills needed to face such a complex struggle? A basic requirement is a common understanding of the role played by the contemporary taxpayer and of taxpayer rights. That is a challenge directly connected with the meaning of law and its implication from a constitutional point of view, that is, in terms of liberty and dignity. One way in which to conceive the struggle is as a dialectic exchange (Olson, 2010a: "The ability to interact with the government, to be treated as a person and with dignity" in order to have a real "conversation about what is being done to that person and why it is being done") in which tax administration and the taxpayer are engaged "with mutual respect and honesty" (Tieghi, 2012; Feld & Frey, 2002a; Feld & Frey, 2002b; Frey & Feld, 2004; Frey & Feld L.P.).

Two specific elements have to be taken into consideration to support this preliminary assumption and to exhaustively define the abilities that a modern legal expert has to master: first, the proper link with concrete experience<sup>3</sup>; second, the use of the comparative method as a "shortcut to understand the world." (Pegoraro & Rinella, 2017). The second actually includes the first element and has to be considered as the real and effective turning point for an updated vision of law – law that "is not in the law books", but rather, law that has to be transparent and that would not be able to provide simple answers if it were connected with real experiences (for a broader application see Feinman, 2014). This means a law that is made by people, according to policy, passions, wishes and rules, and which is, primarily, about justice.

---

<sup>2</sup> One of the very first institutional works was *Taxpayers' rights and obligation: A Survey of the Legal Situation in OECD countries*, which was produced by the Organisation for Economic Co-operation and Development's Publications and Information Center, in conjunction with the International Bureau of Fiscal Documentation (IBFD), in 1990. It followed the first conference with the symbolic title "*Taxation and Human Rights*", which was held in 1987: International Fiscal Association (1988). *Taxation and Human Rights*. Kluwer Law and Taxation Publishers, Rotterdam.

<sup>3</sup> "The Life of the Law has not been logic: it has been experience": Supreme Court Justice Oliver Wendell Holmes (Justice career 1902-32).

"What does the future hold for the role of the judge in a democracy? I believe," explains the former President of the Supreme Court of Israel, "(...) the need to bridge law and society will become more pressing. Social changes are becoming more and more intensive. Society," he underlines, "will need courts more than ever to bridge the gaps between law and life." A law-justice relationship will be necessary "to protect the constitution and its values" (Barack, 2006). This approach includes values which are connected with the individual role of the person in his/her proper singular dignity dimension (the so-called personalist approach) and also in his/her communitarian context (as explicated in the Italian Constitution, when it talks about people's roles in the social community and the consequent implications of solidarity obligations; see, for example, art.3, 36 and 41 of the Italian Constitution). These two aspects are summarized clearly by a basic constitutional principle which points to the mutual consideration of rights and obligations as being the basis for contemporary tax systems: for example, article 2 of the Italian Constitution.

The Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.

Taxpayer rights, conceived as proposed, are not only of help to the taxpayer and the progressive consideration of the taxpayer's identity, but are also essential to the effective functioning of the tax system, where liberty and responsibility coexist to inspire an effective advancement of cultural change (Tieghi & Fransoni, 2016).

Finally, we have to consider whether the taxpayer should be positioned *within* the legal system, as a person, citizen or partner, or *outside* it, as a subject: "Public policy decisions should not be made on the basis of some imaginary hostility between freedom and the tax collector, for if these two were genuinely at odds, all of our basic liberties would be candidates for abolition" (Holmes & Sunstein, 1999).

It is in this institutional dilemma, involving the foundations of contemporary constitutional systems in terms of the relationship between the duty to pay taxes and the need to safeguard taxpayer rights, that comparative methodology gives us a multifaceted insight, positing new paradigms of law - among which, as discussed in this paper, are models based on trust, integrity, humanity and dignity<sup>4</sup> - thereby encouraging the consideration of similarities and differences in a dynamic and competitive way so as to shape a highly operational framework. This ongoing effort encourages dialogue about the need to foster training with a specific moral task: to become receptive to the ethical challenges of the legal profession, which means, in the end, to be prepared to work towards building an accountability network.<sup>5</sup>

---

<sup>4</sup> Many western democracies are causing us to ponder whether or not they have taken the fundamental approach that considers that "integrity and fairness of a tax system manifests in many ways, which go far beyond the political philosophies underlying any particular tax system", as "they apply in any tax system and thus in all tax systems, just as human rights are universal": Cadesky, M., Hayes, I. A., and Russell, D. (n.d.) *Objectives of a Model Taxpayer Charter*. Retrieved from [www.taxpayercharter.com](http://www.taxpayercharter.com).

<sup>5</sup> Judges, and all legal and institutional subjects operating in an accountability-network, have to be safeguarded not exclusively in their role to design, project and define a new democracy. There is something more: they have to be supported, pushed, driven, so as to mirror the evolutionary dimension of democracy when at their best. As it was

The search for the best model to assure the effectiveness of taxpayer rights has to be driven by relevant consideration of the comparative perspective, a tool that constantly involves dialogue for the advancement of a constitutional progress. This method can overcome the current undeniable restriction of individual liberty, with the consequent restraint of personal ambitions and, of course, a weakening awareness of taxpayer rights.

The main outcome of the proposed approach will be the collective construction of a progression of ideas and, thus, of solutions; a process directly involving the taxpayer. However, what is really progressive from a legal point of view is that any suggested solution has to be assessed by its ability to provoke the articulation of different perceptions about crucial issues; for comparisons, as the Italian former Constitutional Court Chief Justice affirmed, "serve to intensify critical insight". (Grossi, 2005). Such comparison, with a subsequent exploitation of different experiences, cannot but help us to focus an issue and reach a common aim, although this does not mean resorting to mere standardization (Bertolissi, 2012b). To the eyes of a constitutionalist, it "helps us to advance, to abandon the firmness that implies a petrification of the existence".<sup>6</sup>

## **1.2. LAW AND RIGHTS: THE "MOOD" OF LAW AND THE CONSTITUTIONAL TAXPAYER-CENTRIC APPROACH**

"In democratic societies", it has been wisely recalled, "the rule of law safeguards people's rights, their endeavor and their humanity. But unless the rule of law is enforceable or enforced free of discrimination or corruption, rights have little meaning". "Taxation", the distinguished author continues, "is the means used to support a civilized society – it funds government goods and services which give meaning to rights. And the style and effectiveness of tax administration impacts on a community's confidence in their tax system and on the relationship between a citizen and the state" (D'Ascenzio, 2007).

That basic and significant premise, summarizing the previous considerations, leads us to the next step: rights, to be effective – so as to acquire a significant weight on tax discourse - have to be connected with the specific framework proposed. Moreover, they have to be part of a global comparative dialogue with its own significant and proper normative meaning. The suggestion is a conception of legal rules where the content absorbs what has been relegated out of the legal field: humanity (Tieghi, 2016a). This concept has to be conceived as starting from its effective normative – basically constitutional – meaning. The aim is to have a human rights (Tieghi, 2014) basis as a point of reference, comprehensive of taxpayer's rights, and a constitutional method of interpretation based on active liberty. Active liberty, in fact, is conceived as the "connections (...) between the people and their government – connections that involve responsibility, participation, and capacity" (Breyer, 2005).

---

appropriately underlined in the "law in the context" approach, they have to manage to "unpack the choice and interpretation of facts that result in the legal reconstruction (...) to slow down this appropriation of reality by unfolding the space in which (...) – it – will actually operate" (Zumbansen, 2013, p. 19); to foster the direct connection between law and real experience for a new evaluation of facts and an updated interpretive decision-making process to keep up-to-date constitutional sources through dynamic technical devices (Tieghi, 2015a, p. 160).

<sup>6</sup> "(...) *insomma, aiuta a progredire, ad abbandonare la fissità che comporta una pietrificazione dell'esistente*": (Bertolissi, 2015a, annotation no. 6, 50).

The described approach, which is definitely not just theoretical, includes research relating to new paradigms and fields of studies beyond that which encompasses insights conceived "for a new tax system".<sup>7</sup> Moreover, this thesis has its own basic foundation in the idea that "at their core, taxpayer rights are human rights. They are about our inherent humanity".<sup>8</sup> Real recognition of human dignity means it must be conceived not just as a right but, above all, as a constitutional value (for the assumption by which "human dignity as a constitutional value has several functions in the field of human rights", see Barack, 2015).

The constitutional value allows for the appreciation of the individual not just as a single person, but also as an essential part of the global community: in this sense, the solidarity principle – well-described in the second paragraph of article 2 of the Italian Constitution – defines the "service relationship" between people working for a better society, and, especially, between the taxpayer and the State.

In the perspective of a "service relationship", therefore, it should be taken into consideration that

undertaking key aspects of the tax authority-taxpayer service relationship should be important to tax authorities, who may be better able to channel their resources to prioritize a customer service focus on the attributes of the tax assessment process that are valued most by taxpayers, thereby improving *compliance* directly, or indirectly through other means, such as trust (Farrar, 2015).

In the legal logical process, we have to include tools that have wrongly been considered outside the legal discourse. Comparative experiences – even constitutional ones<sup>9</sup> – on the recognition of taxpayer rights demonstrate, in fact, that they have to be included in the process: the so-called "mood of law" is a way to identify negative (hate, revenge, contempt, disqualification, disregard, pride, prejudice etc.) and positive feelings (virtues, dignity, honor, modesty, solidarity, courage, equality, justice etc.) (Italia, 2017) which can acquire normative importance as fundamental legal principles.

---

<sup>7</sup> It was not by chance that this was title and the subject of a recent meeting and, in Italy, it has been properly identified by the academics. This is clear evidence of an impelling forward projection, as summed up by the national conference, held in Italy, Genova, in June 2016. The merit is to be ascribed to Professor Victor Uckmar's outstanding view of comparative undelayable consideration: a stimulating input that we researchers all owe him thanks for. Worried by the Italian "governors' deafness to the proposals delivered" (note, March 31, 2016 Uckmar V.), he wrote: "we'd like the academics to promote drastic proposals of reform" (note, Feb 1, 2016, Uckmar V.) and pointed out that "it's not enough a Reform, but it's necessary a new system and, perhaps, reproduce what generally takes place abroad" (note, March 31, 2016, Uckmar V.) Conference Agenda retrieved from <http://docplayer.it/37813590-Per-un-nuovo-ordinamento-tributario.html>.

<sup>8</sup> (Olson, 2013, 1189). Concept explained on occasion of the Italian Conference held at the University of Padua, Italy, and reported by the local newspaper, which quoted Nina Olson directly, as follows: "To better function, tax administration has to be more human" (Ilmattino di Padova, June 4, 2013, 13).

<sup>9</sup> The Mexican experience regarding implementation of human rights started from an amendment process of the Constitution itself. The 2011 *Human Rights Amendments* (HRA, 2011) includes protection for taxpayers within the process of safeguarding human rights. The underlying reasoning – which is specifically relevant for the purposes of this paper – was to add value to the "pro persona principle". With regard to the safeguarding of TRs, and particularly the new article 1 of the Mexican Constitution, which requires all public administrations to abide by and promote human rights, see Figueroa and Jacobo, (2015), p. 573. Ek's interesting work considering the idea that "*human rights refers to constitutional rights*" is also highly relevant (Ek, 2012, p.9).

That approach reflects the essential and constitutional premise of the contemporary tax discourse: it offers significant insights to close the loop in the taxpayer-centered accountability network. The aim is to put the taxpayer, who is experiencing the hardship of the current crisis, in such a crucial position as to be an active part of the system. The final aim is to realize a service-oriented tax administration, including an interpretation of taxpayer charters as customer charters.<sup>10</sup>

Serving taxpayers, in fact, implies letting their rights be enforceable and significant under the constitutional justice system. And that is not just to solve a single case, but to establish the person to whom those rights are related at the core of the judicial review. There, the art is to balance different values in view of a specific decisional moment of evaluation of people's needs and virtues in terms of dignity. This is the way to allow the taxpayer to be engaged (especially when considering the Forum on Tax Administration's study, (FTA, 2012)) and to contribute to a fair tax system. By "actively involving and engaging taxpayers, their representatives and other stakeholders", it is easier "to achieve a better understanding of the taxpayer's perspective and to cooperate with third parties" (FTA, 2012).

## **2. LAW AND THE LIBERAL REVIVAL: REVISITING THE REQUIREMENTS FOR A STRONG DEMOCRACY**

The turnaround can only become a true opportunity if we are aware of, and acknowledge, the negligence of the system. The recipients of that cultured empowerment are not only legal experts or academics, but also common taxpayers and, especially, the taxpayer-students who, more than others, are taking the academic path to become educated citizens of their own country. The "capacity to identify our dilemmas" has, in fact, to be readdressed in order for us to "design remedies to overcome them" (Schlesinger, 1990). The change in culture involves new options and best practices, but also an accurate use of legal sources (judicial vs, statutory law). Certainly, the consideration of different jurisdictions (common law and civil law), though susceptible to be considered a negative variable, will inevitably be hard to reconcile with the existing system.

From a progressive constitutional perspective<sup>11</sup> and its potential for contemplating competing visions, it is necessary to think of changes as "salutary for citizens in a democracy" (Benjamin, 2004). They could only be legally supported if they were justified by an improvement of the dialectic dimension of the institutional dialogue.<sup>12</sup> The constitutional background described in this paper, in fact, takes its strength directly from the dialectic attitude of the comparative methodology. It's the comparative approach that enhances reasoning about alternative methods, cultures, solutions, chances, events, regulations, recommendations, reports, official speeches, and judgments. The comparative analysis starts with the legislative – either broad or detailed – approach to classify and identify taxpayer rights; it identifies the source – constitutional or not –

---

<sup>10</sup> "Open up the tax system so the taxpayers have more certainty as to the law, so that there is transparency in the tax administration, so that revenue authority service levels improve and to ensure that there is accountability" (Bentley, 2002, p.1).

<sup>11</sup> This approach includes a human rights basis for the idea of taxpayer's rights itself and a constitutional method of interpretation based on an active liberty (conceived as "connections (...) between the people and their government – connections that involve responsibility, participation, and capacity" (Breyer, 2005, p.16).

<sup>12</sup> "The point is to begin a dialogue about what is the right answer in a given situation, and to ensure that everyone taking part in that dialogue has sufficient information with which to make up his or her own mind about the desired outcome or approach" (Olson, 2010b, p. v).

of the specific – written or not - constitution existing in a country, then moves on to the existence – or absence – of and effectiveness – or ineffectiveness - of a Taxpayer Advocate (national, local or federal). Finally, the analysis identifies any approaches proposed or used in other systems which have to be taken into consideration for the different levels of tasks directly connected with developing an updated and skilled educational process.

Taking the criteria to reach effective operational as well as theoretical aims into account, the suggested items are finalized so as to fulfil the following tasks: to help legislators to find new solutions; to support judges' decisions by providing a basis for judicial reasoning; to facilitate the adoption of well-functioning models used by other tax administrations; to better understand the legal system or to recognize clues or signs of positive – or negative – direct implications; up to the level of – sometimes unconsciously – working to reinforce the whole democratic system. In other words, the goal is to make taxpayers' individual choices and preferences the fundamental criteria by which to ascertain how the taxpayer is taken into consideration by the tax administration<sup>13</sup>, based on a wider multifaceted and interdisciplinary perspective.

The "*freedom to choose*" in the liberal conception, in fact, cannot disregard the "freedom to choose the laws under which all citizens must jointly live" (Holmes, 2002). As for the freedom of choosing funds, consensus is only required if he, who is called to choose, is concretely put in the position to concur with the definition of the whole of the choice itself. That is, to concur in the way explained in the second section of article 4 of the Italian Constitution (describing the right to work), to the remedy of every existing degraded situation. "Every citizen", states the Italian Constitution, "has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual *progress* of society".

### 3. LAW AND EDUCATION: NEW MODELS FOR A BETTER SOCIETY

If it is by reconsidering the appreciation of human values that taxpayer rights can become effective as part of the system, due to their potential to be an expression of citizen-taxpayers' passions (for the suggestion to consider rights as having a functional role in promoting virtues, encouraging diversity and letting democracy function, see Holmes, (1995)) and choices, the struggle against the major sources of "unfreedom" (Sen, 1999) has to become part of a wider – beyond merely legal – review process. *Cooperative compliance* – an advanced approach described in current international studies (FTA, 2013) – marks, specifically, the path by which to admit the possibility of a real act of faith towards the honest citizen, the honest taxpayer (Tieghi, 2013).

What is the role of education within this process? And how does one educate students of law as honest future taxpayers? To be effective, the educational path has to be conceived with the same prerequisites described above, namely, to include taxpayer rights within an updated, constitutionally-based and comparative framework. To this end, some specific tools need to be clarified.

---

<sup>13</sup> For a concrete example of balance between tax institutions and individual fiscal choice as "a comprehensive method of evaluating (...) alternatives (...) for delivering services to taxpayers" through the measure of "taxpayer value of a broad range service delivery options", see the experimental American model named *Taxpayer Choice Model* (TCM 2012-2013): (National Taxpayer Advocate, FY 2013, p.55).

First, education should adopt a legal approach, with a broad meaning of the term "law" which is not directly connected with specific formal and traditional legal sources, but which is concerned with functioning and producing effects. Second, legal education should consider the individual taxpayer as being central to an accountability network; someone who is to be defended by taking his/her needs, preferences and rights, but also duties, into account, as is the case in all his/her other dealings with the government. Third, legal education should adopt a team approach from the beginning, not just so as to take advantage of the student's youthful energies but, above all, so that he or she can experience the challenge overcoming natural obstacles (foreign language, new legal systems or new legal reasoning, for example) and accept interdisciplinary approaches and skills. Fourth, students should prepare, through self-assessment and evaluation, so that they are ready to interact with other members with specific roles within the group or course, conference speakers, committee members and so on as soon as possible. Fifth, students should be encouraged to develop an attitude of curiosity, embracing a problem-oriented education from the start, and being receptive to any inputs – even informal – and accommodating, so as to capture diverse suggestions and observations.

The final scope? To provide instruments for educational fulfillment. In other words, a culturally-oriented attitude towards the reconstruction of a system which has its own foundations in its own people: "(...) namely, it is of the people, by the people, and for the people".<sup>14</sup> Remember that "the public has no hands except those of individual human beings" (Dewey, 1927).

### **3.1. THE STUDENT-TAXPAYER'S AWARENESS OF THE ABILITY TO SHAPE A CONSTITUTIONALLY EFFICIENT FRAME OF GOVERNMENT**

To create an effective system, or a better society, we have to abandon the attitude of a servant and acquire the attitude of a freeman.<sup>15</sup> Taking this approach to higher ideals, we can better understand the importance of establishing an institutional framework based on civil and civilized coexistence. That is particularly useful when developing an updated interpretation of taxpayer rights which is supported by constitutional values. And, while the comparative approach emphasizes personal awareness as being part of a global interaction with a historically unique circulation of different insights, it has its main roots in very clear historical patterns. We have to reinforce, primarily, our awareness that "the spirit of a people, its cultural level, its social structure, the deeds its policy may prepare – all this and more is written in its fiscal history, stripped of all phrases. He who knows how to listen to its message here discerns the thunder of world history more clearly than anywhere else" (Schumpeter, 1918; Cattarin, 2009).

When transposing this assumption to the field explored here, we inevitably have to deal with nothing more than the basic growth of a subject who has to feel – and to be – part of a government in order to fulfill the fundamental values of a democracy. Essential prerequisites are to be aware

---

<sup>14</sup> "But for the IRS to do its job well, it must start from the perspective of what government is about – namely, it is of the people, by the people, and for the people. The government is funded by taxes paid by the people" (National Taxpayer Advocate, 2015b, vii).

<sup>15</sup> "*Per diventare davvero un popolo libero, bisogna sottoporsi alla fatica di realizzare una trasformazione interiore che consiste nell'abbandonare la mentalità dello schiavo e acquisire quella dell'individuo libero*" (Viroli, 2008, p.46).



that the subject matters, to be focused, to be determined, to be hopeful, to be provided with a good education, to be led by example with hope, to never fear.<sup>16</sup>

But the turning point of the inner message to those students has to be considered to be the inclusion of a proper attitude to overcome the mood of helplessness that modern taxpayers feel in their dealing with tax authorities all over the world:

Do not ever let anyone make you feel like you don't matter, or like you don't have a place in our (American) story -- because you do. And you have a right to be exactly who you are. But I also want to be very clear: This right isn't just handed to you. No, this right has to be earned every single day (The White House, Office of the First Lady, 2017).

The ongoing process of the student's education precisely reflects the ongoing education of the honest taxpayer without including the fundamental constitutional values:

You cannot take your freedoms for granted. Just like generations who have come before you, you have to do your part to preserve and protect those freedoms. And that starts right now, when you're young. Right now, you need to be preparing yourself to add your voice to our national conversation (The White House, Office of the First Lady, 2017).

That means having the ability to feel the obligation of being part of a community, exactly like taxpayers, with their duty to pay taxes and to contribute to the welfare of the public, even beyond their own interests.

Finally, legal training has to be designed to make two roles correspond: the student as a citizen, and the student as a taxpayer:

You need to prepare yourself to be informed and engaged as a citizen, to serve and to lead, to stand up for our proud (our country) values and to honor them in your daily lives. And that means getting the best education possible, so you can think critically, so you can express yourself clearly, so you can get a good job and support yourself and your family, so you can be a positive force in your communities (The White House, Office of the First Lady, 2017).

The comparative constitutional approach embraces all of those defined competitive skills; for example, Professor Livio Paladin, Emeritus Chief Justice of the Italian Constitutional Court and Professor of Constitutional Law at the University of Padua, always encouraged young people "to fight for the Law" (Bertolissi, 2015b). This approach contemplates something more than mere legislative enactments.

---

<sup>16</sup> These remarks were made by Michelle Obama in her emotional final White House speech on January 13, 2017 (The White House, Office of the First Lady, 2017).

#### 4. THE ROLE OF TAXPAYER RIGHTS IN THE CONTEMPORARY ACADEMIC CURRICULA

What is the best path to take in order to effectively include taxpayer rights as a tool of contemporary education and skill?

Firstly, the point of reference of traditional law studies must be changed by focusing on the government as the unique icon of tax sovereignty<sup>17</sup>, and including the "freeman", who is, above all, the main character within the historical charters of freedom of the liberal tradition, in the debate.<sup>18</sup> Secondly, legal education should give attention to the public costs of individual rights. Careful consideration of the latter can, in fact, as authoritatively underlined by Holmes and Sunstein (1999), "shed new light upon old questions."

When supported by the above-mentioned premise, comparative law, as a method of studying legal problems, can provide a most challenging update of the academic scenario. The method's added value is in its starting point – namely, the subject towards whom all the investigations have to be addressed – and in the constitutional nature of the issue of lack of public resources, connected with the topic of the costs of rights.<sup>19</sup>

These two features, investigated from the comparative point of view, add some useful language "to the debate about what states and people owe each other, and what they can rightfully expect from each other" (Christians, 2017). This is so because: comparative law forces scholars to move beyond the trends already investigated; it requires them to get to know things, stories, documents, customs, sources and languages in order to really understand and select the proper information to use independently from their authoritative legal force; and because, most crucially for research purposes, it pushes them to look for the common denominator of the solutions. Ultimately, comparative law permits academics, experts and students to consider which solution could be the most effective at a general level, supporting the operational, updated view, by which tax law includes *standards* as well as *rules*.<sup>20</sup>

---

<sup>17</sup> "Tax scholarship typically presumes the state's power to tax and therefore rarely concerns itself with analyzing which relationships between a government and a potential taxpayer normatively justify taxation, and which do not. ... [The time is come to] "present the case for undertaking such an analysis as a matter of the state's obligation to observe and protect fundamental human rights" (Christians, 2017, p.1).

<sup>18</sup> This evolution is marked by different important acts, from the 1215 *Magna Carta Libertatum* to the 1297 *Confirmatio Cartarum*, and then to the 1297 *De Tallagio non Concedendo*, the 1628 Petition of Right, the 1689 English Bill of Rights, the 1776 Virginia Declaration of Rights and the 1776 US Declaration of Independence. See Bertolissi (2015c), pp. 4-14.

<sup>19</sup> "Once the costs of rights become an accepted topic of research, students of public finance will have ample incentive to provide a more precise and through account of the dollar amounts devoted to the protection of our basic liberties" (Holmes & Sunstein, 1999, p. 24).

<sup>20</sup> "We argue that tax law and tax administration are not objectively exceptional. That is, we believe that tax is law and as such is composed of standards as well as rules, and that the IRS has the same powers and is subject to the same constraints that all administrative and enforcement agencies have. (...) Our central claim is that when tax is viewed as objectively exceptional – that is, when tax is thought to be fundamentally different in kind from other fields of law – it is deprived of the analytical tools and vocabulary common-place in other fields of law" (Abreu & Greenstein, 2016, p. 501).

The implications are of remarkable interest. The nature of tax law is, from this perspective, a perfect point of observation. It demonstrates the importance of legal comparison, not just for topics of international tax law, but for comparison with other experiences of broad fundamental concepts of domestic tax law (for an interesting comparative review of the paper's topic, see Frasoni, 2016). This leads to the stimulating assumption by which "tax exceptionalism is not a specific idea. Rather, it is a way of conceiving tax or, still more loosely, an attitude toward tax" (Abreu & Greenstein, 2016)<sup>21</sup>, which, in turn, leads us to review the traditional meaning of tax law – nowadays often limited and self-constrained to the formal, legislative, authoritative power of the State, or to the so-called Jacobean approach (Tieghi, 2015b)<sup>22</sup> – and solicits a change in terms of predominance of the coherence, legitimacy and transparency of *interpretative* – more than normative - solutions. This is, finally, a matter of comparative constitutional law.

In other words, significantly combining the need for certainty with the effective application of rules (and standards) instead of focusing on the degree of details and inflexibility of rules themselves<sup>23</sup>, taxpayer rights studies can reveal specific scientific paths by which to explore new trends, mixing approaches which are norm-based with evidence-based ones. This quickly leads to the fascinating process of engaging in interdisciplinary reflection and work.

#### 4.1. THE INTERDISCIPLINARY APPROACH

By overcoming the experience of difference – tax exceptionalism –we avoid viewing tax law in the way that many tax scholars do, that is, "to think of tax as different from other fields of law and, in some cases, even as something separate from law" (Abreu & Greenstein, 2016). This leads to the basic point of defining the concept of law. As proposed in this article, the interpretation of the role played by taxpayer rights in the progress of contemporary democracies reveals not a legal vacuum, but a legal gap between legal systems and a human protection perspective; in that sense, we can argue that "comparison becomes the law" (Goodrich, 2012).

This suggests a turning point exists, primarily in the academic sphere, based on the awareness that

---

<sup>21</sup> "The key to this more transparent, predictable view of tax administration is accepting that tax law is just law. This, in turn, requires abandonment of the objective aspect of tax exceptionalism. Stripped of its exceptionalist cloak, tax law becomes just law and the IRS just an administrative agency, subject to the same constraints, but able to exercise the same powers, as other agencies" (Abreu & Greenstein, 2016, pp. 498 and 505).

<sup>22</sup> As analyzed "from the above-mentioned approach, the breaking point to be taken into consideration to separate the two kinds of constitutionalism is the fact that western democracies, and above Italy, are all inspired to the Jacobean France model. That's why they have always been governed by reason. The State, in those countries, is represented by the impersonal will of the law, not by the personal will of people. Italy, in this context, has never generated a historical bill of rights, that means never experienced a real revolution against the power" (Tieghi, 2015b). See, moreover, Bertolissi (2015c and, on the same lines, Meneghelli (1999). This way to in which conceive power has dangerous implications on the concept, and the functioning, of fiscal policy.

<sup>23</sup> "We are not unmindful of the magnitude of the change we are calling for. The IRS has long thought of itself and of the tax law as exceptional, and we know that changing longstanding habits of thought and action will require a herculean effort. But we think that the transparency and legitimacy gains are well worth that effort. We propose that abandoning the objective aspect of tax exceptionalism be an integral part of that shift" (Abreu & Greenstein, 2016, p. 512).

...tax professionals serve as *mediators* who both shape and are shaped by the taxpayers' experience. If tax professionals view the tax system and its administrators as illegitimate, they will likely convey that view to taxpayers and those taxpayers will, in turn, be less likely to be fully compliant" (Abreu & Greenstein, 2016).

To be real *mediators*, firstly between experience and law, and then between tax agency and taxpayer-experts on the matter, tax scholars must possess a specific ability to embody something missing: a balanced skill to connect original and new patterns which are deeply connected with taxpayer rights. This is directly connected to the need for the safeguarding and promotion of taxpayer rights in contemporary academic curricula, which should be designed from the starting point of current international experiences. The suggested focus is on: the *development-human rights* dichotomy (i.e. the Human Rights-Based Approach to Development – HRBAD) as a "fundamental overhaul of human rights thinking, as it introduces new substances rights and corresponding obligations" (Vandenhoe & Gready, 2014); on the *promotion-protection* dichotomy, applied to enumerated and implied taxpayer rights; and, finally, on the *cooperation-confrontation* dichotomy which, finding justifications in experiments conducted in the tax field using the cooperative-compliance approach, serves to overcome the dogma of the imperatives obscuring the principle of contradictory opinions founded on the *dialectic use of power*.

By drawing attention to these patterns, legal experts (tax professionals, academics and, students) develop the legally crucial perception of investigation as acquiring a very effective interdisciplinary approach. In tax, an interdisciplinary approach means "the attitude to go beyond a law" conceived as a set of strict, detailed rules. Law now embraces open-minded attitudes towards different disciplines (such as linguistics, history, public and private policy, philosophy, anthropology, political sciences, and all social sciences serving comparison – economics, finance, statistics, geography, ethics and psychology) (Pegoraro & Rinella, 2017). Taxpayer rights studies require exploration of areas called "uncontrollable" (Crespi Reghezzi, 2012) – that is, to concern ourselves with rules *effectively* applied.

Following this perspective, taxpayer rights cannot but become a relevant part of the academic curricula which are capable of being included as an official component. They cover a field of study and research which, to date, has not been considered other than as a specific and independent field of law. Viewed narrowly by other traditional branches of law, tax law has been taught following the traditional approach, looking at it as an instrument of the State's power and sovereignty, and the topic of taxpayer rights has never been taken into account from its inner soul; its constitutional comparative nature. That is, it has never been evaluated and treated as a stimulating platform which can be used to train and shape skilled people, so they are able to give their necessary – and now urgent – contributions, thereby creating the international network of effective cooperation needed if we are to upgrade to taking a more interdisciplinary approach. This approach is not just a legally technical one, but a multifaceted approach which enhances acknowledgement of rights in taxation starting from the legal interpretation process.<sup>24</sup>

---

<sup>24</sup> "The topic of the taxpayer's rights in the 'modern' meaning of the term, from an institutional or constitutional viewpoint, is of crucial importance for the evolving dynamics of contemporary political systems. (...) Far from the continental Jacobean tradition, current international tendencies are considering those rights as a fully-integrated part of the political culture (...)" In that sense, common law jurisdictions that "suggest new paths for overcoming the inadequacies of the contemporary State" are being developed (Tieghi, 2014, pp.1475-1476).

## 5. EVIDENCE

Starting with the dignity-accountability framework proposed, I suggest the key points supporting the thesis of the academic value of taxpayer rights are the constitutional-taxpayer centric approach and the comparative perspective. The major question, however, is whether this approach is legally operational or whether it simply responds to academic curiosity or is an intellectual exercise.

The consideration of taxpayer rights proposed in this paper reveals fundamental – constitutional – issues which must be solved and needs to be bridged with an updated comparative perspective: a kind of approach by which, thanks to its dynamic component of critical evaluation, experts can effectively test and upgrade their levels of skill, motivation and professional attitude to a proper scientific methodology. Only if well-informed, can they manage competing visions. It's a challenging scientific path, which goes beyond an educational process, and reveals, on the operational level, its concrete potentialities to train people to enable them to more effectively contribute to the ongoing international dialogue by generating useful outcomes. This is not just a theoretical exercise. In terms of taxpayer rights' protection, interpretation and implementation, bridging the gap between advanced jurisdictions and fledgling jurisdictions has two empirical implications: on the one hand, the necessary identification of the crucial topics to be questioned; on the other hand, the constructive ability to look for a general and shared theory – not a single imperative dogma, but a shared trend made of multifaceted insights – starting from the verification of experience-data. These insights must address the different levels of compliance and fairness displayed by each jurisdiction.

### 5.1. THE CURRICULA OF THE UNIVERSITY OF PADUA (SCHOOL OF LAW)

A current example of the work in progress with regard to the urgent identification of crucial topics to be questioned is the constitutional comparative school of academics<sup>25</sup> laying its basic foundations and values on a humanistic-institutional approach rather than normative approach. The school is situated within the Public International and European Law Department (DiPIC) of the University of Padua, Italy, the second oldest university in Europe and, above all in terms of interest in respect of this paper, the one where Galileo Galilei taught in the name of freedom of thought in study and teaching. This message incorporated in the globally-renowned University motto: "*Universa universis patavina libertas*".<sup>26</sup>

This distinctive feature is connected to two different dimensions: the dialectic approach and the operational approach. The dialectic approach is considered to be the primary logical basis by which

---

<sup>25</sup> The school was initiated by the Master Professor Livio Paladin (Professor of Constitutional Law at the University of Padua from 1969 to 1977, when he became Chief Justice of the Italian Constitutional Court), and continues today thanks to his scholar, the current Professor of Constitutional Law, Professor Mario Bertolissi. The most significant outcome of their friendly and human relationship is the institution of the *Centro sulle Istituzioni Livio Paladin*, a special observatory on Italian and foreign institutions, which was created to reinforce the dialogue on fundamental topics (which include, not by chance, taxpayer rights) which were to be explored by way of lectures, conferences, and publications while always satisfying the condition to gather as many law students together as possible. Website: <http://www.studioistituzioni.it>.

<sup>26</sup> For details of the university's history, see its website: <http://www.unipd.it/en/university/history>.

to foster the use of free dialogue at different levels of legal discourse<sup>27</sup>. But, what about its operational dimension? The organization of work implies that there a variety of academic courses, directly connected with the public field of law. Specifically, there are four courses that all students are required to take, commencing in the first year and continuing into the fourth. They represent the crucial topics a constitutional-oriented, thus competitive, academic program should offer to today's students with the primary purpose of investigating contemporary democracies' dysfunctions: fiscal, legal and, last but not least, social.

My recommendation is based on the empirically-tested courses, a "fascinating journey through legal standards" which, even if they initially seem disconnected, are shaped to build a chain of progressive steps forward. The main theme is to use the individual and his/her role in the system as reference points for analysis. The final objective is to verify the degree of legal consideration of personal dignity as a constitutional value with substantial normative effectiveness in order to globally reinforce the students' dialectic, argumentative and, above all, critical abilities with a focus on contemporary domestic and foreign events. But how can we attain that?

The four required courses start with the first-year Legal English course, which is immediately followed by Italian Constitutional Law. Then, semester by semester, the students take the Comparative Public Law course and finish with the Constitutional Italian Justice course. Using legal English – with its consequent implications - as a common shared "language of rights" with its imprinting of the "law in context approach", provides us with irreplaceable instruments of communication in the changing international framework of legal dialogue.<sup>28</sup> (From the taxpayer rights' point of view, the topic is also assuming a very interesting new nuance, which gives major substance to and evidence of the idea of taxpayer charters as expressions of demands for justice. See Abreu & Greenstein, 2017). Using a common language which stimulates a double perspective – including common law jurisdictions views and approach – helps with the identification of the fundamental constitutional topics connected with the relationship between the State and citizens within which the debate between tax agency and taxpayer surfaces as overriding.<sup>29</sup> Actually, each

---

<sup>27</sup> "Synonymous with 'creative comparison' which always keeps the routes for cooperation open" but also, as the author underlines, "synonymous with discussion aimed towards achieving resolution, an operational decision" (Bertolissi, 2005, my translation).

<sup>28</sup> That is why, the title, and leading theme of the course shared with students to be part of their educational awareness is "*Legal English in a changing world*". That means they will be asked not just to learn and give explanations of legal terminology, but to be open to being introduced to the significant aspects of the common law systems. It will hopefully foster a way of thinking through a dynamic perspective founded on the appropriation of real cases and authentic legal sources currently being questioned as part of the international debate. The topic of TRs, of course, allows for many innovative inputs to be taken into account from different perspectives. The subtitle of the course is: "*English for Law: the student's perspective*". The subject definitely needs a specialized register, which has to be acquired not just for academic purposes but with a long-lasting vision for skilled and competitive professional activity. What is going on worldwide? It is a question of method: students have a right to be part of the ongoing and challenging dialogue connected with their futures, that is, on the lack of resources and the parallel impellent need not to take liberties acquired for granted.

<sup>29</sup> The core objective of the entire curriculum is to focus on the topics which generate the crucial questions of the contemporary constitutional law: the resources available; formally protected rights and rights effectively supported by remedies of enforcement; the different levels or attempts of protection; the principle of responsibility as a crucial parameter by which to evaluate the public action. All topics start from the content of article 53 of the Italian Constitution ("*Every person shall contribute to public expenditure in accordance with his/her own capability. The tax system shall be progressive*"). All of them are equalized by the assumption that they are topics of constitutional relevance. The suggested shift from the tax field (founded on a lasting confrontation between tax agency and taxpayer)

step of the curriculum is supported by the use of a comparative approach methodology, which is applied to topics of public law, public governance and fiscal policy relevance.<sup>30</sup> The courses prepare students for the analysis methods of judicial reviews of legislation in order to verify the dynamic application of the constitutional principles.<sup>31</sup>

The second dimension – the operational aspect – is the empirical and experimental method as a distinctive component of the student's cultural background. The program encourages: the application of the problem-solving method, even with respect to issues of civil law; the planning of experiential events, such as visits to the Italian Constitutional Court in Rome to attend public courtroom discussions; and attendance at conferences (national and international) featuring guest lecturers, Italian and foreign, to discuss current topics related to the degree of wealth of contemporary democracies. In September 2016, the ongoing focus on the role of the taxpayer in the national and international framework led to the U.S. National Taxpayer Advocate and one of the Italian Taxpayer Advocates, together with more than twenty academics, tax professionals and scholars, debating the compelling original topic of "The democracy of the taxpayer" at a conference held at the university (University of Padua, Aula Magna, September 15, 2016). A significant number of seats were occupied by law school students, with 50 attendees being members of the university's organizational committee.

Some concluding remarks on this point: the aim to support the ongoing educational process of new generations is precisely focused on providing them with legal tools and criteria – primarily interpretative, then normative – so that the deficiencies and problems of contemporary democracies can be faced. This experimental academic scholarship certainly has its original roots in the constitutional taxpayer-centric approach and it is supported by the comparative perspective. Its commitment, consequently, is to offer first year students a constitutional-comparative-oriented approach by which to question, step by step, the fundamental pillars of the contemporary State – beyond its deficiencies – through the lens of the relationship between taxation and rights. Furthermore, it explores the substantial link between the lack of public resources and the protection of rights.

---

encourages clarification of the constitutional value of personal dignity and the taxpayer sovereignty. (*Ex multis*, specifically on the matter of the constitutional law sphere and areas of interest, here are some specific works from the above-mentioned school: Bertolissi (2012); Bertolissi (2015c); Tieghi (2012); Bergonzini (2011); Cattarin (2009).

<sup>30</sup> The curriculum looks at different jurisdictions through the double-lens of power (the national and local organizational structures) and of liberties (constitutional safeguards and different models of judicial review of legislation). The courses start with a comparative analysis of contemporary liberties and then look at the level of protection influenced by the new frontiers of globalization, by new models of the Welfare State and by current international trends enhancing a cooperative-compliance rather than a command-and-control approach, including liberties and fiscal history, for an updated application of the comparative method to modern tools of liberty, with priority given to taxpayer rights. For some specific analysis of the matter, see: Tieghi (2012); Tieghi (2015b); Tieghi (2016a); Tieghi (2018).

<sup>31</sup> This component of the curriculum explores the Italian system of constitutional justice (including the judicial review of legislation), with particular emphasis on: firstly, the methods and tools the court uses to enforce constitutional rights; secondly, the technical devices to be used to properly access the Italian court judicial review from a procedural point of view; and thirdly, the most effective legal instruments that a contemporary jurist has, and must be able to use to correctly, in order to interpret the constitutional parameters. In this way, he may suggest a decision consistent with an updated and substantially effective interpretation of the constitutional principles and rights to the court. For some specific analysis on the matter, see Tieghi (2015a); Bergonzini (2015); Bergonzini (2018); Bertolissi & Bergonzini (2017).

## 5.2. THE STIMULATING CURRENT EXPERIENCE OF THE INTERNATIONAL CONFERENCES ON TAXPAYER RIGHTS AND THE WORLDWIDE LANGUAGE OF RIGHTS

As regards the constructive ability to look for a general and shared theory starting from the verification of experienced-data revealed by different jurisdictions, the International Conference on Taxpayer Rights must be considered.<sup>32</sup> It is a very recent worldwide initiative, which was developed by the United States National Taxpayer Advocate, Nina Olson, and her staff. There have been two International Conferences on Taxpayer Rights in two years, with two more due to take place during the next two years. Delegates from 22 countries joined the inaugural meeting, which was held in Washington D.C. in November 2015; representatives from more than double the number of countries joined the second, which was held in Vienna, in March 2017, and delegates from more than 50 countries registered to attend the third one, e held in Amsterdam, in May 2018.

That original, comparative, international experience is having very positive outcomes with regard to a variety of different profiles: new and interdisciplinary research lines, effective dialogue to suggest experimental solutions, operational attempts to explore new strategies of effective administration, and efforts in building a stable international professional team connected by a stimulating network.

That is probably not an exhaustive list, but it certainly shows the extraordinary importance of tackling the topic of taxpayer rights and its connected areas of interest<sup>33</sup> with a critical attitude and from a comparative perspective: both are legally flexible and dynamic methods which reveal the unquestionable interpretative inner nature of the legal approach we need to use to give meaning and substance to the taxpayer rights content. That occurs, first of all, if we recognize the need for an international theory (Bentley, 1998, cited in Bentley, 2007) which takes into account different levels of tax compliance, of administrative strategies, and also different ways of questioning and considering the crucial subject of the Taxpayer Advocate/Ombudsman as a really active part of the whole system.<sup>34</sup> However, what is particularly relevant, is related to the different cultures of

---

<sup>32</sup> For more information, see <https://taxpayerrightsconference.com>.

<sup>33</sup> "At the beginning of 2016, I charged my immediate staff with identifying significant research into topics that have relevance for tax administration, including approaches to voluntary compliance, worldwide taxpayer service, alternative dispute resolution, taxpayer rights, fraud detection, online accounts appearance, and geographic focus. I asked that they not limit their review to tax literature, but to look at psychology, organizational theory, network theory, marketing, and other disciplines. As a result, Volume 3 contains comprehensive Literature Reviews on several tax administration topics. We used this research as groundwork for many of the Most Serious Problems herein; we wanted to look at the IRS in a broader context, and the Literature Reviews have enabled us to bring insights from other disciplines and other countries and apply them to IRS problems and challenges" (National Taxpayer Advocate, 2016a, vii-viii).

<sup>34</sup> Considering the U.S. experience, for example, Nina Olson said "it is indeed a very difficult mission, with almost irreconcilable tensions built into it," when she became the US NTA in March 2001. "But I believe that this tension can be a *source of creativity* for all the participants" (Camp, 2010, p.1251). How can we not mention, in this context, the *Efforts to Improve TAS Advocacy and Service to Taxpayers* in the U.S. by two alternative models presented by in the FY 2016: the Centralized Case Intake (CCI) and self-help initiatives? (NTA, FY2016, p.88-89). In this respect, considering the Mexican jurisdiction, the Mexican Supreme Court ruling (Feb, 26, 2008) concerning the legitimacy of the Mexican Taxpayer Advocate (named *Prodecon*) is of crucial importance. The judgment of the Mexican Supreme Court of Justice ruled the Action of Unconstitutionality (*Acción de Inconstitucionalidad*) 38/2006, which basically challenged two main issues: a) the designation process of the Chief Ombudsman of *Prodecon*; and b) the designation process of the internal governance body of *Prodecon*. The ruling of the Supreme Court did declare the invalidity of



rights. A tool of implementation and progress is the acceptance of realization of different understandings and awareness of taxpayer rights.

The inputs given by the dichotomy between "language of rights" and justice definitely encourages, "by making explicit the principle of justice (...) and by revealing a dimension of justice shared by multiple fields of law" (Abreu & Greenstein, 2017), in line with what's proposed here, the effort of recognizing substantial normative effectiveness of the value of personal dignity as a fundamental criteria by which to question the application and enforcement of taxpayer rights.

Undoubtedly, there is a trend to move in the direction of what has been called the "*Future State Vision*" (National Taxpayer Advocate, 2015a) with the constitutional taxpayer-centric approach, thus establishing an internationally shared comparative base. Simply stated, the explicit, fundamental purpose of this approach is "*to ensure that (U.S) taxpayers have voice in the process (...) so we can consider diverse viewpoints and gather suggestions and descriptions of taxpayers' needs*" (National Taxpayer Advocate, 2015b).

## **6. IN CONCLUSION: FUTURE STUDENTS, FUTURE TAXPAYERS, "FUTURE STATE"**

The central perspective which animates the idea of taxpayer rights having an academic value is that of taxpayer rights as a tool of implementation of the following three profiles: implementation of the comparative methodology through the application of the legal interpretation process (educational students' process); implementation of the taxpayer-centric consideration of tax administration (educational citizens' process); and implementation of a cultural-oriented education (educational vision of the world).

The three distinctive profiles emphasize the core understanding by which "young people's minds are not vases to be filled in, but torches to be fired up", as Plutarch reminded us. However, to fire up minds, we need something more than hard work. We need a vision of the world which includes a project: the same project the U.S. Founding Fathers fought for – to obtain the *confidence* of citizens in proportion with the *fortification the rights* of the people against the encroachments of the government.<sup>35</sup> This kind of engagement results in a "humbling and moving experience" which becomes a real "transforming experience" (National Taxpayer Advocate, 2016a)<sup>36</sup> when the object of interest is the current taxpayer in his/her different dimensions of the student-citizen. In the

---

the designation process of the internal governance body of *Prodecon*. However, the designation process of the Chief Ombudsman was untouched, as the Court determined that the participation of the Mexican Senate in the designation process is correct and desired, as it functions as a counterweight in the appointment of an individual that will be responsible for safeguarding the rights of taxpayers. As a part of his functions, through brief documents (called "*Cuadernos*", to be consulted in <http://www.prodecon.gob.mx/index.php/home/cc/publicaciones#cuadernos>), the *Prodecon*, like the U.S. Taxpayer Advocate, explains in a very easy and understandable way what taxpayer rights are, what the situation of those rights is in Mexico, and how *Prodecon* is protecting them on the basis of the progressive equivalence between taxpayer rights and human rights.

<sup>35</sup> James Madison's language quoted in a display in the Rotunda of National Archives, Washington D.C.

<sup>36</sup> vii. A "transforming experience" as it was for the ones who have recently enjoyed the stimulating experience of the 12 Public Forums on Taxpayer Needs and Preferences. Further information and full transcripts are available here: <https://taxpayeradvocate.irs.gov/public-forums>.

contemporary era, more than ever, the updated and challenging vision we need includes the three aspects summarized below.

Firstly, this educational vision must give substance to "the law in context" and to the comparative approach. Interpretation should play a substantial role in supporting this:

it goes without saying that interpretation has (something) to do with mystery, because it has to do with man. The true jurist knows that and that should represent the necessary knowledge of anyone who ponders on a set of values – which is the Constitution<sup>37</sup>,

not of regulations to exacerbate in their literal essence.

Secondly, the vision must connect "Taxpayer Rights and the Future State", to ensure they "are the foundation for tax administration" and to enhance "the foundational role of the Taxpayer Bill of Rights" (National Taxpayer Advocate, 2016b; IRS Future State, 2016). In other words, it must give meaning to the ongoing international dialogue for a constructive dialectic discussion, a debate which has to be, on the one hand, finalized to deliver better outcomes<sup>38</sup> and, on the other hand, founded on constitutional premises. That means giving substance to the living values of the Constitution<sup>39</sup>, primarily as human dignity<sup>40</sup> to reinforce the role of jurisprudence and to strengthen those values even against legislative and executive action.

Thirdly, the vision must effectively define the Dignity-Rights and Accountability-Obligations dichotomy. According to relevant experimental studies, it has been shown both that "procedural fairness enhances identification which in turns supports positive tax attitudes and reduces the inclination towards tax evasion" (Hartner, Rechberger, Kirchler & Schabmann, 2008; Murphy, 2005). Moreover, "the interaction paradigm is shifting to a trust relationship between taxpayers and authorities, which is based on a compliance and fair-play agreement as well as on effective tax control" (Kirchler, 2015).

These elements comprise an updated, skilled, comparative and culturally-oriented law education that harnesses the power of education<sup>41</sup>: "I figured out first how to be a generally informed citizen

---

<sup>37</sup> Translated from Bertolissi (2015d), p.110. Further insights on the matter come from the idea that "law, rather than a mere technical add-on to a morally (or immorally) finished society, is, along of course with a whole range of other cultural realities from the symbolics of faith to the means of production, an active part of it" (Geertz, 1983).

<sup>38</sup> For a great example of the constructive dialogue: "*We disagreed now and then*," Justice Ginsburg reminisced, with reference to Scalia, "*but when I wrote for the Court and received a Scalia dissent, the opinion ultimately released was notably better than my initial circulation*" (Lind, 2016).

<sup>39</sup> "It is the living Constitution that is responsible for keeping the (...) Constitution from becoming obsolete, or worse" (Strauss, 2010, p.5). Although this refers to the U.S. Constitution, the thesis has to be taken into account in all nations.

<sup>40</sup> "Human dignity as a constitutional value has several functions in the field of human rights. It provides the theoretical foundation for human rights; it assists in the interpretation of human rights at the sub-constitutional level; it is one of the values that every constitutional right is intended to realize; it plays a role in the limitations to constitutional rights and in determining the limits to such limitations; it plays a primary interpretative role in those cases where the constitution does recognize a constitutional right to human dignity" (Barack, 2015, p.362).

<sup>41</sup> "To become who you are and to do the work you want to do is to be open to want to learn and give at the same time" (Shashkevich, 2017). Furthermore: "You've got to get your education! It's the only way to get ahead in the world" (Sotomayor, 2013).

before I tried to be a specialist in anything else," said U.S. Court Justice Sotomayor on the auditorium stage at Stanford Law School in March 2017. "And that's the advice I would give all of you who are experiencing college. Take courses in areas that don't particularly interest you, but might make you a more knowledgeable person. ... Curious people go further" (Shashkevich, 2017).

How can we go further in respect of the taxpayer rights perspective?

The former Italian Chief Justice of the Constitutional Court strongly recommended taking the route of inviting today's law students to be aware that they are living in a post-modern era, where the term "post-modern" really means, legally speaking, *transition*: the jurist has to rediscover his/her own specific identity, which calls for the interpretative moment to be a starting point – not a final destination – from which to trace a path requiring bravery and responsibility in order to face, and try to interact in, the current world (Grossi, 2016; Grossi, 2017).

## REFERENCES

- Abreu, A., & Greenstein, R. K. (2017). The US Taxpayer Bill of Rights: Window Dressing or Harbinger of Legitimacy? Paper presented in Wien, 2nd International Conference on TR, March 13, 2017. Retrieved from <https://taxpayerrightsconference.com/2017-archive/2017-conference-materials-vienna-austria/>.
- Abreu, A. G., & Greenstein, R. K. (2016). Tax as Everylaw: Interpretation, Enforcement and Legitimacy of IRS. *The Tax Lawyer*, 69(3), 493-512.
- Barack, A. (2006). *The Judge in a Democracy*. Princeton University Press.
- Barack, A. (2015). *Human Dignity. The Constitutional Value and the Constitutional Right*. Cambridge: Cambridge University Press.
- Benjamin, G. (2004). Formal State Constitutional Change Progress. Retrieved from [www.federalismi.it](http://www.federalismi.it), no. 15/2004, 1.
- Bentley, D. (2002). The significance of declarations of taxpayers' rights and global standards for the delivery of tax services by revenue authorities. *Bond University, Law Papers*. Retrieved from [http://epublications.bod.edu.au/law\\_pubs/35](http://epublications.bod.edu.au/law_pubs/35), 1.
- Bentley, D. (2007). *Taxpayers' Rights: Theory, Origin and Implementation*. The Netherlands: Kluwer Law International.
- Bergonzini, G. (2011). *I limiti costituzionali quantitativi dell'imposizione fiscale*. Napoli: Jovene.
- Bergonzini, G. (2015). Corte costituzionale, autorevolezza, educazione alla democrazia: oltre l'umanità e la segretezza. In M. Bertolissi (Ed.), *Riforme. Opinioni a confronto* (pp. 169-192). Napoli: Jovene.
- Bergonzini, G. (2018). Democrazia diretta, legislazione tributaria e cittadinanza: oltre il limite costituzionale vigente? (Forthcoming).

- Bertolissi, M., & Bergonzini, G. (2017). *Province. Decapitate e risorte. Il carattere democratico dell'amministrazione locale*; B.G. *Province, rappresentanza, Corte costituzionale: un'occasione perduta*. Torino: Giappichelli.
- Bertolissi, M. (2005). Pensare le istituzioni come il bene comune. In *Dizionario della Democrazia*, Torino: Ed. San Paolo, 8.
- Bertolissi, M. (2012a). *Contribuenti e parassiti in una società civile*. Napoli: Jovene.
- Bertolissi, M. (2012b). *Prefazione*, in Tieghi, G., (2012), XV.
- Bertolissi, M. (2015a). La Laudato sì *come fatto normativo*. Bertolissi, M. et al., (2015). Atti della *Giornata di studi in ricordo di Livio Paladin, Riforme. Opinioni a confronto*. Napoli: Jovene, annotation no. 6, 50.
- Bertolissi, M. (2015b). *Livio Paladin. Appunti riflessioni ricordi di un allievo*. Napoli: Jovene.
- Bertolissi, M. (2015c). *Fiscalità Diritti Libertà. Carte storiche e ambiti del diritto costituzionale*. Napoli: Jovene.
- Bertolissi, M. (2015d). *Libertà e 'ordine delle autonome'. La lezione di Silvio Trentin*. In M. Bertolissi, (Ed.), *Autonomia e responsabilità sono un punto di vista* (p.110). Napoli: Jovene.
- Breyer, S. (2005). *Active Liberty. Interpreting our Democratic Constitution*. NY: First Vintage Books Edition.
- Cadesky, M., Hayes, I.A., and Russell, D. (n.d.) *Objectives of a Model Taxpayer Charter*. Retrieved from [www.taxpayercharter.com](http://www.taxpayercharter.com).
- Camp, B.T. (2010, March 8). What Good is the National Taxpayer Advocate? *Tax Notes*, 126(10), 1251.
- Cattarin, A. (2009). *Dalla servitù alla sovranità: No taxation without representation*. Napoli: Jovene.
- Christians, A., (2017, February 27). Human Rights at the Borders of Tax Sovereignty. Retrieved from <http://ssrn.com/abstract=2924925>.
- Crespi Reghezzi, G. (2012). La comparazione giuridica estrema: L'Est europeo, l'Estremo Oriente, l'Africa e l'India. In L. Antonioli, G.A. Benacchio, & R. Toniatti (Eds.), *Le nuove frontiere della comparazione* (p.244). Trento: Università degli studi di Trento.
- D'Ascenzio, M. (2007) *Foreword*. In D. Bentley (Ed.), *Taxpayers' Rights: Theory, Origin and Implementation* (vii). The Netherlands: Kluwer Law International BV.
- Dewey, J. (1927). *The Public and Its Problems*. Chicago: Swallow Press.
- Ek, V.M.C. (2012). *Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges*. *Human Rights Brief*, 20(1), 8-14.
- Farrar, J. (2015). An Empirical Analysis of Taxpayers' Fairness Preferences from Canada's Taxpayer Bill of Rights. *Journal of Accounting and Taxation*, 7(5), 71-79.
- Feinman, J. M. (2014). *Law 101. Everything You Need to Know About American Law* (4<sup>th</sup> ed). Oxford: Oxford University Press.

- Feld L.P., & Frey, B. (2002a). Trust Breeds Trust: How Taxpayers are Treated., *Economics of Governance*, 3(2), 87-99.
- Feld L.P., & Frey B. (2002b). *The Tax Authority and the Taxpayer: An Exploratory Analysis*. Mimeo, University of St. Gallen.
- Figuroa, R., & Jacobo, R. (2015). *The Practical Protection of Taxpayers' Rights*. Basil Congress of IFA, IFA Report 2015.
- Forum on Tax Administration. (2013). *Co-operative Compliance: A framework from Enhanced Relationship to Co-operative Compliance* OECD Publishing. In <http://www.oecd.org/tax/administration/co-operative-compliance.htm>.
- Forum on Tax Administration (FTA), Information Note (2012, January). Right from the Start: Influencing the compliance environment for small and medium enterprises. Retrieved from <https://www.oecd.org/ctp/administration/right-from-the-start-influencing-the-compliance-environment-for-smes.pdf>.
- Fransoni, G. (2016, 30 Agosto). La "legge tributaria" è ugualmente problematica per tutti!. *Rivista Diritto Tributario Supplemento Online*. Retrieved from <http://www.rivistadirittotributario.it/2016/08/30/la-legge-tributaria-ugualmente-problematica-tutti>.
- Frey, B., & Feld L. P. (2002). Deterrence and Morale in Taxation: An Empirical Analysis. CESifo Working Paper Series No 760, Available at SSRN: <https://ssrn.com/abstract=341380>
- Frey, B., & Feld, L.P. (2004). Illegal, Immoral, Fattening of What?: How Deterrence and Responsive Regulation Shape Tax Morale. Marburg: *Philipps-Universität Marburg*, Faculty of Business Administration and Economics, Department of Economics (Volkswirtschaftliche Abteilung).
- Geertz, C. (1983). *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: Basic Books.
- Goodrich, P. (2012), Interstitium and Non-law. In P. G. Monateri (Ed). *Methods of Comparative Law: An Intellectual Overview* (pp. 213-229). Cheltenham-Northampton: Edward Elgar Publishing Ltd.
- Grossi, P. (2005). *Mitologie giuridiche della modernità*. Milano: Giuffrè.
- Grossi, P. (2016, February 4). *Verso il domani. La difficile strada della transizione (Towards tomorrow. The hardship of transition)*. Official Speech at the University of Padua. In Grossi, P. (2017). *Percorsi giuridici della post-modernità*. Bologna: Il Mulino.
- Hartner, M., Rechberger, S., Kirchler, E. & Schabmann, A. (2008). Procedural Fairness and Tax Compliance. *Economic Analysis & Policy*, 38(1), 137-152.
- Holmes, S., & Sunstein Cass, R. (1999). *The Cost of Rights: Why Liberty Depends on Taxes*. New York: W.W. Norton & Company.
- Holmes, S. (1995). *Passions and Constraint: On the Theory of Liberal Democracy*. Chicago: University of Chicago Press.
- Holmes, S. (2002). The Liberal Idea. *The American Prospect*. Retrieved from <http://prospect.org/cs/articles>, Nov. 30, 2002, 7.

- IRS. (2016). *IRS Future State*. Retrieved from <https://www.irs.gov/uac/newsroom/irs-future-state>.
- Italia, V. (2017). *I sentimenti nelle leggi*. Milano: Giuffrè.
- Kirchler, E. (2015). The Art of Dodging tax. *Financial World*, June-July 2015, 43. Retrieved from [www.financialworld.co.uk](http://www.financialworld.co.uk).
- Lind, D. (2016, February 14.) Read Justice Ginsburg’s moving tribute to her “best buddy” Justice Scalia. *Vox*. Retrieved from <http://www.vox.com/2016/2/14/10990156/scalia-ginsburg-friends>.
- Meneghelli, R. (1999). *Stato e democrazia visti dall’alto*., Padova: CEDAM.
- Murphy, K. (2005). Regulating More Effectively: The Relationship between Procedural Justice, Legitimacy, and Tax Non-compliance. *Journal of Law and Society*, 32(4), 562-589.
- National Taxpayer Advocate. (2013) *Fiscal Year 2013: Objectives Report to Congress, TAS Research Initiatives*. Retrieved from [www.taxpayeradvocate.irs.gov/Annual-reports-To-Congress/FY2013](http://www.taxpayeradvocate.irs.gov/Annual-reports-To-Congress/FY2013).
- National Taxpayer Advocate Public Forums. (2016). Retrieved from <https://taxpayeradvocate.irs.gov/public-forums>.
- National Taxpayer Advocate. (2015a). *Annual Report to Congress. IRS Future State Vision: Implications for Today and Tomorrow*. Retrieved from [http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15\\_Volume1.pdf](http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15_Volume1.pdf).
- National Taxpayer Advocate. (2015b). *Annual Report to Congress: Preface*. Retrieved from [http://taxpayeradvocate.irs.gov/media/default/documents/2015ARC/ARC15\\_Volume1:Preface.pdf](http://taxpayeradvocate.irs.gov/media/default/documents/2015ARC/ARC15_Volume1:Preface.pdf).
- National Taxpayer Advocate. (2016a). *Annual Report to Congress: Preface*. Retrieved from [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16\\_Volume1\\_Preface.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume1_Preface.pdf).
- National Taxpayer Advocate. (2016b). *Annual Report to Congress: Special Focus – IRS Future State: The National Taxpayer Advocate’s Vision for a Taxpayer-Centric 21<sup>st</sup> Century Tax Administration*. Retrieved from [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16\\_Volume1\\_SpecialFocus.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume1_SpecialFocus.pdf).
- National Taxpayer Advocate. (2016c) *Fiscal Year 2016: Objectives Report to Congress*. Retrieved from [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-JRC/Efforts\\_to\\_Improve\\_TAS\\_advocacy\\_and\\_service\\_to\\_taxpayers.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-JRC/Efforts_to_Improve_TAS_advocacy_and_service_to_taxpayers.pdf).
- Olson, N. E. (2010a). Taking the Bull by its Horns: Some Thoughts on Constitutional Due Process in Tax Collection. *The Tax Lawyer*, 63(3).
- Olson, N. E. (2010b). *National Taxpayer Advocate (NTA): 2010 Annual Report to Congress, Preface*. Retrieved from [www.taxpayeradvocate.irs.gov/files/ARCDedication\\_Preface\\_TOC.pdf](http://www.taxpayeradvocate.irs.gov/files/ARCDedication_Preface_TOC.pdf).



- Olson, N.E. (2013, June 3). A Brave New World: The Taxpayer Experience in a Post-Sequester IRS. *Tax Notes*, 1189-1199.
- Organization for Economic Cooperation and Development. (1990). *Taxpayers' Rights and Obligations: A Survey of the Legal Situation in OECD Countries*. Paris: OECD Publications and Information Center, in cooperation with the International Bureau of Fiscal Documentation (IBFD).
- Pegoraro, L., & Rinella, A. (2017). *Sistemi costituzionali comparati*. Torino: Giappichelli.
- Prodecon (n.d.). *Cuadernos*. Available at <http://www.prodecon.gob.mx/index.php/home/cc/publicaciones#cuadernos>.
- Schlesinger, A. Jr. (1990). The Liberal Opportunity, *The American Prospect*, Retrieved from <http://prospect.org/article/liberal-opportunity>.
- Schumpeter, J. (1918). The Crisis of the Tax State: Essay. In R.V. Clemence (Ed.), *Essays of J. A. Schumpeter (1951)*. Cambridge: Addison-Wesley.
- Sen, A. (1999). *Development as Freedom*. Oxford: Oxford University Press.
- Shashkevich, A. (2017, March 10). Supreme Court Justice Sonia Sotomayor emphasizes importance of broad education, empathy in her talk at Stanford. *Stanford News*. Retrieved from <http://news.stanford.edu/2017/03/10/justice-sonia-sotomayor-speaks-stanford/>
- Sotomayor, S. (2013). *My Beloved World*. New York: Knopf Doubleday.
- Strauss, D.A. (2010). *The Living Constitution*. New York: Oxford University Press.
- The White House, Office of the First Lady (2017, January 6). Remarks by the First Lady at the National School Counselor of the Year Event. [Press release]. Retrieved from <https://obamawhitehouse.archives.gov/the-press-office/2017/01/06/remarks-first-lady-national-school-counselor-year-event>.
- Tieghi, G. (2012). *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*. Napoli: Jovene. [http://www.jovene.it/public/allegati/38671\\_Sommario\\_Indice-Tieghi.pdf](http://www.jovene.it/public/allegati/38671_Sommario_Indice-Tieghi.pdf) – Review by Professor Olivetti Rason, N. (2015). Fiscalità e diritti nello Stato costituzionale contemporaneo (Taxation and rights in the contemporary constitutional State) (Retrieved from [http://www.dpceonline.it/index.php/dpceonline/article/view/18\\_n.3/2015](http://www.dpceonline.it/index.php/dpceonline/article/view/18_n.3/2015)).
- Tieghi, G. (2013). *Fiscalità, compliance e Stato costituzionale (Fiscal Policy, Compliance and Constitutional State)*. *Federalismo fiscale*, 7(2013) n.1-2, 73-128.
- Tieghi, G. (2014). Taxpayer and Human Rights: The Taxpayer Advocate and the Challenge of Contemporary Democracies Towards New Constitutional Forms. *Dir. pubb. comp.eur.*, n.4/2014, 1475-1488.
- Tieghi, G. (2015a). Per una “Costituzione continuamente attualizzata”: Corte costituzionale e overruling. *Conference Papers, Giornata di studi in ricordo di Livio Paladin, Riforme. Opinioni a confronto*, (2015). Napoli: Jovene, 160, 135-167.
- Tieghi, G. (2015b). *Taxpayers Rights: A Constitutional Perspective. The Italian TBOR 15 years on 'at the top of the world'. But what about effectiveness?* Paper presented at the 2015 International Conference on Taxpayer Rights. Retrieved from [https://taxpayerrightsconference.com/wp-content/uploads/2016/08/Tieghi\\_Final\\_Paper.pdf](https://taxpayerrightsconference.com/wp-content/uploads/2016/08/Tieghi_Final_Paper.pdf).

- Tieghi, G. (2016a). Contribuente e comparazione giuridica: il recupero del concetto di ‘umanità’ nella prospettiva costituzionale. Spunti dal mondo anglosassone e dal Messico. Conference Papers (2016). *L’Università per un nuovo ordinamento tributario*. Raccolta di scritti in occasione del Convegno del 14-15 ottobre 2016, Genova, entitled “*Per un nuovo ordinamento tributario*”, 90° Anniversary of the *Review Diritto e Pratica Tributaria*, 819-832.
- Tieghi, G. & Frasoni, G. (2016b). L’affermazione dei *Taxpayers Rights* negli Stati Uniti: sistemi di tutele a confronto e risultati di un Garante. *Rivista di Diritto Tributario, Supplemento Online*. Retrieved from <http://www.rivistadirittotributario.it/2016/09/06/laffermazione-dei-taxpayers-rights-negli-stati-uniti-sistemi-tutele-confronto-ambiziosi-risultati-un-garante/>.
- Tieghi, G. (2018). *The Law Serving the People: A Taxpayer-Centric Constitutional Outlook*. Forthcoming publication.
- University of Padua Website. <http://www.unipd.it/en/university/history>.
- Vandenhole, W., & Gready, P. (2014). Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective. *Nordic Journal of Human Rights*, 32(4), 291-311.
- Viroli, M. (2008). *L’Italia dei doveri*. Milano: Rizzoli.
- Zumbansen, P. (2013). What Lies Before, Behind and Beneath a Case? Five Minutes on Transnational Lawyering and the Consequences for Legal Education. *Osgoode Hall Law School*, CLPE Research Paper No. 62/2013.