

*Taxpayer Rights:
a constitutional perspective
The Italian Taxpayer Bill of Rights 15 years on ‘ at the top of the world’ .
But what about effectiveness?*

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Abstract

Taxpayers' Rights are today the key issue in a system authentically founded on liberty. The study of the relationship between tax authorities and taxpayers defines the balance between authority and liberty and highlights the limits of the fiscal Constitution in a wider institutional context.

Assuming that perspective in contemporary distressed democracies, the comprehension of the crucial importance of taxpayer rights and duties becomes essential for the functioning of democratic systems.

The issue has received overwhelming attention over the last decades, but it has been often investigated taking into account tax authorities' perspective: Taxpayers' Charters are, generally, the evidence of that pathological approach relegating the taxpayer to the role of subordinate *subject*.

The Italian Taxpayer Bill of Rights – ITBOR (*Statuto dei Diritti del Contribuente*), Law July 2000, no. 212, is dramatically revealing such 'pathologies' of lack of consideration of the taxpayer. 'Law in books' has remained 'in books'. Fifteen years now since its enactment: serving the *International Model Taxpayer Charter* for its content, it is not yet serving the Italian system in terms of effectiveness. The challenge is of new strategies of cooperative tax compliance and of a constitutional consideration of taxpayer rights.

Is a complete restyling necessary? Recent proposals are along this line. Anyway none of them can be taken into consideration without this premise: the unquestionable constitutional importance of the new role the taxpayer should take in an evolving constitutional State, from subject to citizen, from *partner* to *customer*. The article proposes a constitutional approach to explore how Taxpayer Charters can become an updated roadmap for an effective tax administration. It shows that Taxpayers' Charters have to be based on two pillars: liberty and responsibility. That is the context for a 'customer taxpayer' and his pragmatic human rights.

SUMMARY:

1. Introduction. – 2. Italian Constitutionalism and “Constitutional Traditions”. – 2.1. Fiscal vs Constitutional History: How Long to Combine Dialogue with Power? - 3. “A strong Taxpayer Bill of Rights” to “provide a roadmap for effective tax administration”: is the Italian Taxpayer Bill of Rights sufficiently ‘strong’? – 3.1. Broad Principles: Strong Enough to Catch the Promise of the TBOR? – 4. Towards the Taxpayer as a Customer: the Right to Choose (Taxpayer’s Choice) and Right to Quality Service to Push the “Tax System to measure its Performance through the lens of the TBOR” - 5. Conclusions.

1. Introduction.

When considering the so called ‘*Form of the State*’, the traditional civil law reference is to the relationship existing between Governors and Governed in a given historical period. From a comparative perspective it is interesting to note that the above-mentioned expression is just a way to consider, from an Anglo-American perspective, the concept of ‘*Constitution*’ which, in fact, includes State-citizen relationship and involves, beyond the rule of law, customs, traditions, jurisprudence, Justice and Liberty. It is a process that starts from law – namely its shape and structure –, and goes to the essence, the substance, the dynamic unit that outlines the system of values. And it engages also the ‘guardian’ of those values: the Constitutional or Supreme Court.

No doubt the above-mentioned relationship is assuming a crucial role in the evolving context where contemporary democracies are experimenting with new challenges: the duty to meet the challenge to adopt new constitutional forms where ‘law in books’ has to correspond, and concur, with ‘law in action’¹ and, furthermore, with ‘law in context’². How is it possible to realize that? How can it affect the comprehension, and, above all, the application of taxpayer rights?

Through an original approach, we can work out the importance of that relationship (Governors-Governed) as it may be examined either by putting authority and liberty on the same ground (*liberal* constitutionalism), or on different grounds (*Jacobean* constitutionalism)³. The lexicon used may coincide in verbal use, but it makes a difference in substance .

Italy is a country whose cultural-institutional matrix keeps close to a Jacobean angle since, when reasoning about the Constitution⁴, it prefers the doctrine of the State over the idea

* Giovanna Tieghi delivered this remark at the Inaugural *International Taxpayer Conference on Taxpayer Rights* in Washington, DC, on November 18, 2015. Foreword: for higher adequacy, quotations are all reported in the original language.

¹ “*Tali verifiche (on law in action) vanno condotte sia sul terreno strettamente costituzionalistico delle norme subprimarie e di quelle attuative sia su quello dell’effettività: non è pensabile che il costituzionalismo contemporaneo, tutto giocato sulla continua rinnovazione di bilanciamenti di valori in un dinamico interagire di giudici costituzionali e opinione pubblica, possa essere misurato esclusivamente in termini di law in the books*”: G.F. FERRARI, ‘*Civil law*’ e ‘*common law*’: *aspetti pubblicistici*, in AA.VV., *Diritto costituzionale comparato*, by P. Carrozza, A. Di Giovine, G.F. Ferrari, Vol. II, Laterza, Roma-Bari, 2014, p.789.

² See, for a pragmatic view and analysis, W.TWINING, *Law in context. Enlarging a Discipline*, Oxford University Press, Oxford, 1997.

³ 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: M. BERTOLISSI, *Fiscalità Diritti Libertà. Carte storiche e ambiti del diritto costituzionale*, Jovene, Napoli, 2015. In the same line, R. MENEGHELLI, *Stato e democrazia visti dall’alto*, Cedam, Padova, 1999. This way to conceive power has dangerous implications on the concept, and the functioning, of fiscal policy.

⁴ For a discussion on the concept of Constitution and its implication from a comparative perspective that distinguishes common law from civil law systems, see G. TIEGHI, *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*, Jovene, Napoli, 2012, http://www.jovene.it/public/allegati/38671_Sommario_Indice-Tieghi.pdf pp. 1-55, and specifically, on the meaning of the term *Constitution* that *definitely includes State-citizen relationship*, see p.6.

that it implies a “mutually mandatory agreement”⁵. Consequences are undeniable: the distance between citizens and the system of power is enormous. Especially between taxpayer and tax authority a fierce feeling of reciprocal repulsion still persists. The result is an enormous waste of public money and unlimited tax evasion.

That is the reason why a relationship consistent with what is called a Constitutional State is to be built. Experiences gained in the common law jurisdictions and debates and studies at international level, make it clear that taxpayers’ rights belong to the category of *Human Rights*⁶ and that the perspective of human rights is based on tax compliance.

How can civil law systems, as experienced in Italy, find a way to embrace the premise of taxpayer rights being human rights⁷? How can we conceive the idea of ‘tax compliance’ making a great effort to drop out the ‘power perspective’ and to approach a different dynamic perspective where the taxpayer has his own role in the institutional system⁸? And, finally: does the dichotomy of the civil-common law jurisdiction still have an influence on how taxpayer rights have to be considered? Or, is the traditional classification nowadays useful merely to offer a systematic framework?

Tax compliance cannot be for the outcome of repression, but the positive implication of education. That presumes that the taxpayer be not just conceived, but treated as a *person*⁹, with its individual dignity¹⁰, as the center of assignment of rights and

⁵ The authentic Italian expression is “patto reciprocamente obbligante”: F. BARBAGALLO, *Da Crispi a Giolitti. Lo Stato, la politica, i conflitti sociali*, in AA.VV., *Storia d'Italia*, vol.5, by G. Sabbatucci e V. Vidotto, Laterza Roma-Bari, 2010, 6. But that is nothing different from the “unwritten social contract between the government and its taxpayers” Nina Olson has more than once mentioned to realize the new vision among 21st century tax authorities (not only in the US): National Taxpayer Advocate (NTA), 2013 Annual Report to Congress, vol.2, in www.taxpayeradvocate.irs.gov/2013AnnualReport, p.20.

⁶ Discussed in N. E. OLSON, *A Brave New World: The Taxpayer Experience in a Post-Sequester IRS*, *Tax Notes*, June 3, 2013. At a conference in June 2013 at the University of Padua, Italy, (D. FERRAZZA, “*Per funzionare bene il fisco sia più umano*”. Nina Olson, *Garante federale del contribuente negli Stati Uniti, ospite a Padova. “Solo attraverso l’ascolto si ritrova efficienza e si riduce il contenzioso”*”, in *il mattino di Padova*, 4 giugno 2013, p. 13), Nina Olson, the Head of the American Taxpayer Advocate Service at the Internal Revenue Service, warned: «At their core, taxpayer rights are human rights. They are about our inherent humanity”: N.E. OLSON, *A Brave New World: The Taxpayer Experience in a Post-Sequester IRS*, *Tax Notes*, June 3, 2013, 1190. Far from the continental Jacobean tradition, moreover, current international tendencies are considering those rights as a fully-integrated part of the political culture as far as conceiving the “theory of taxpayers’ rights as a ... component of general rights theory”: D. BENTLEY, *Taxpayers’ Rights. An International Perspective*, *The Revenue Law Journal*, Queensland 4229, School of Law, Bond University, D. Bentley, 1998, p. 394. For the influence of human rights in tax matter see D. BENTLEY, *Taxpayers’ Rights: Theory, Origin and Implementation*, Kluwer Law International BV, Netherlands, 2007, p. 3. Moreover, crucial is the premise described to support the origin of the recent international study for the definition of a Model Taxpayer Charter: “There must be some purpose, some benefit to a country in legislating to recognize Taxpayer Rights. The answer may lie in the concepts of fairness and efficiency and as a consequence of adherence to the Universal Declaration of Human Rights (if not to it specifically, then at least to certain of its principles)”, in www.taxpayercharter.com.

⁷ G.TIEGHI, *Taxpayer and Human Rights: the Taxpayer Advocate and the Challenge of Contemporary Democracies Towards New Constitutional Forms*, in *Dir. pubb. comp.eur.*, no.4/2014, pp.1475-1488.

⁸ G. TIEGHI, *Fiscalità, Compliance e Stato costituzionale*, in *Federalismo fiscale*, no.1-2/2013, pp. 73-128.

⁹ F. MOSCHETTI, *L’abdicazione (oramai trentennale) del Parlamento vanifica il “consenso all’imposta”*, in *Il Fisco*, no.12/2003, p. 5161. He speaks about “*la sovranità del popolo che si contrappone (...) alla ‘non sovranità’ dell’apparato burocratico, delle rappresentanze di categoria, dei consiglieri governativi (...)*”. And, moreover, as regards the leadership of the ‘person’ within the institutional framework, as centre of rights and duties to safeguard the democratic principle in the tax field, see F. MOSCHETTI, “*Interesse fiscale*” e “*ragioni del fisco*” nel prisma della capacità contributiva, in AA.VV., *Atti della giornata di studi in onore di Gaspare Falsitta*, by M. Beghin, F. Moschetti, R. Schiavolin, L.Tosi, G.Zizzo, Cedam, Padova, 2012, pp.157-211. “*Ma gli articoli 2, 4, e 53 Cost. che pongono al centro la persona, che ne fanno il perno di diritti e doveri e che concepiscono i doveri pubblici (non già come imposizioni che hanno*

obligations under the First Part of the Italian Constitution, in a perspective of cooperation, not juxtaposition. Certainly, it is a question of hard cooperation which turns out to be a problem of Constitutional Comparative Law, not of Tax Law.

Considering this background, the key issues of the present paper can be outlined as follows: first, the relationship between tax authorities and taxpayer as a constitutional problem; second, the search for a legal model and the legal techniques that are necessary to make a bill of rights a fundamental part of legal sources, in order to respond, starting from the Italian case, to the promise of a Taxpayer Charter; third, the redefinition of a new role for the contemporary taxpayer to accomplish an updated interpretation of dignity as item of balance between liberty and responsibility.

2. Italian Constitutionalism and “Constitutional Traditions”.

So far, in the history of the Italian Republic the weight of a stainless tradition has obstructed distinguished scholars from investigating issues that represent the core of the form of State, intended as the fiscal Constitution, the essence of a System. Especially, as regards the article 53, 1st clause, of the Italian Constitution prescribing that “everybody has to contribute to public expenses considering his/her contributory role and capability”. That principle explains something more than the duty to contribute in order to build an efficient system; from the constitutional point of view, as outlined above, it describes the relationship between liberty and authority¹¹.

The main question for the comprehension of an effective dimension of taxpayer rights is the investigation on the decision-making process: which considerations and which criteria – from the constitutional perspective – should be taken into account by the legislator, tax authorities and, above all, the Constitutional Court in balancing the interests of taxpayers, the tax authority, the State and the citizens, when considering tax rules where liberty and authority may conflict?

in se stesse le ragioni del proprio essere ma) come proiezione sociale della persona e delle sue attitudini (e dunque nei limiti di queste), fanno altresì Sistema con il ‘principio democratico’ dell’art.1 e dell’art. 23 Cost’: ivi, pp.162-163. That is the description of a theory that has overruled both individualism and the ethic State, “*pone al centro la persona nell’ambito dell’ispirazione di fondo dell’intera Carta Costituzionale che è il ‘principio democratico’; (...) considera la persona come valore primario per la sua essenza etica; (...) pone nell’ambito della sua essenza etica anche la responsabilità per il bene comune; (...) considera le attitudini di ogni singola persona come un valore che ha un duplice valore: per sé, e per gli altri; procede dalle attitudini di ogni singolo per realizzare il bene comune*”: that philosophy is totally ignored by recent theoretical studies that state the leadership of the State ‘fiscal interest’, so as to cancel the inside justice of the single case: ivi, p. 164. Instead, persists the Author, it is right starting from taxpayers rights that, within the democratic State, people can pursue the fiscal interest: F. MOSCHETTI, *Il “principio democratico” sotteso allo Statuto dei diritti del contribuente e la sua forza espansiva*, in AA.VV., *Consenso, equità e imparzialità nello Statuto dei diritti del contribuente, Studi in onore del prof. Gianni Marongiu*, by A. Bodrito, A. Contrino, A. Marcheselli, Giappichelli, Torino, 2012, p. 22.

¹⁰ To have an updated idea of the importance of the constitutional dimension of human dignity in contemporary and comparative systems, and specifically, considering taxpayers’ rights, the outcome and implications of the study of “human dignity as a framework right”, see the relevant work of A.BARAK, *Human Dignity. The Constitutional Value and the Constitutional Right*, Cambridge University Press, Cambridge, 2015.

¹¹ “Essentially taxation can be seen as a barometer of the developing balance between state and individual rights”: D. BENTLEY, *Taxpayers’ Rights: Theory, Origin and Implementation*, quot., p. 15.

Italian tradition reveals a systematic underestimation of everything concerned with taxation and its constitutional significance. It is a crucial and complex phenomenon for the vitality of the system that is also a consequence of the acceptance of the old German doctrine that conceived of tax as an expression of State sovereignty.

Anyway, considering contemporary Constitutions, they cannot leave out what is really essential and that is the dimension of civil coexistence, represented by the foundation of constitutional law.

In this sense, in fact, the reviewed concept of person - and the taxpayer conceived as the key person of the institutional system – beyond the recent studies encouraging a process from the leadership of the fiscal interest to the achievement of effectiveness of the democratic principle¹², reveal important implications for the consideration and interpretation of Taxpayer Charters, generally speaking, and of the Italian one, more specifically: first, the necessity to overturn the principle of subjection¹³ and give new strength to liberty¹⁴; second, the compelling need to leave the so-called *command-and-control*, still present in our country where it has not evolved towards a shared *responsive-service* orientation¹⁵; third, the time to focus on the *honest taxpayer-citizen* and his immanent and unassailable “active liberty”¹⁶.

How is it best to realize change to enable the laws concerning taxpayers rights to be effective? How is it best to design the path to effectiveness to include taxpayer’s liberty?

The premise is changing the point of reference and including in the debate the ‘freeman’¹⁷, the main character of the historical Charters of freedom of the liberal tradition¹⁸: that means to recover and get back to the “*common values*” and the “*cultures and traditions of the people of Europe*”, beyond the “*constitutional traditions*” quoted in the Preamble of the EU Charter of Fundamental Rights¹⁹. Those expressions let us know we have to

¹² F. MOSCHETTI, *Il “principio democratico” sotteso allo Statuto dei diritti del contribuente e la sua forza espansiva*, quot., pp. 3-24. “Bisognava valorizzare anche nel diritto tributario il dettato dell’art.1, comma 2, Cost., secondo cui la sovranità appartiene al popolo” nell’intero ordinamento, nella produzione delle leggi e nei rapporti con i soggetti deputati alla loro attuazione (amministrazione e giudici)” (ivi, p.12). And again: “Il cittadino è sovrano anche quando è contribuente; vorrei dire, soprattutto quando ‘contribuente’, cioè responsabile di quel bene comune che sono le ‘spese pubbliche’” (ivi, p. 15).

¹³ AA.VV., *Sudditi. Un programma per i prossimi 50 anni*, by N.Rossi, Torino, IBLibri, 2012.

¹⁴ “(...) individual freedom is at the same time dependent on and incompatible with the communal coercive action that is necessary to achieve it”: D. KENNEDY, *The Structure of Blackstone’s Commentaries*, *Buffalo Law Review*, vol. 28 (1979), p.211.

¹⁵ G.TIEGHI, *Fiscalità e diritti nello Stato costituzionale. Il contribuente partner*, quot., pp. 150, 207 (footnote), 225, 240, 242, 245.

¹⁶ «Certo è che per giungere alla libertà attiva, per costituire cioè uno Stato demarchico è necessaria la cultura della libertà: occorre che i cittadini si sentano parti inscindibili della società, che avvertano come il loro intervento attivo è determinante per il modo di essere di ciascuno e di tutti»: F.BENVENUTI, *Il nuovo cittadino. Tra libertà garantita e libertà attiva*, Venezia, Marsilio, 1994, p. 126.

¹⁷ “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”: S. HOLMES, R. SUNSTEIN CASS, *The costs of Rights. Why Liberty Depends on Taxes*, W.W. Norton & Company, NU-London, 1999, p.31.

¹⁸ An evolution marked by different important acts: from the 1215 Magna Charta Libertatum, to the 1297 Confirmatio Chartarum, and then to the 1297 De tallagio non concedendo, the 1628 Petition of Right, the 1689 Bill of Rights, the 1776 Virginia Declaration of Rights, to the 1776 US Declaration of Independence, in M.BERTOLISSI, *Fiscalità Diritti Libertà. Carte storiche e ambiti del diritto costituzionale*, quot., pp. 4-14.

¹⁹ “The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organization of their public authorities at national, regional and local

recover and so read those cultures and traditions as connected with the ‘right to liberty’ stated in article 6 (Right to Liberty and Security), Title II (Freedoms) of the EU Charter.

The recovering of those cultures and traditions encourage the recovering of specific *constitutional* traditions, those specific values and virtues that gave the chance to real liberal democracies to become responsive to rights and liberties.

In this context, it should be easier to create the conditions to fix the limits of a taxation that dispossesses in the name of a formal appointed power, thus preventing abuses. To include rights in taxation²⁰ we have to rethink building fiscal policy premises on a dialectic relationship: considering updated obstacles and the fiscal crisis in a globalized world, and above all the unevenness of the Italian system still blocked by the dogma of the imperatives which obscures the principle of contradictory opinions, we have to go back to the top the *dialectic use of power*. That is, a vision of a legitimate power which is the mirror of its function, not of its bureaucratic red tape.

That is the real message incorporated in historical Charters of freedom: taxpayers rights, linked with taxation, transplanted into the common essence of a human being. From a constitutional point of view that means human beings, and taxpayers firstly, cannot be degraded to an attachment of the whole institutional system. A subject, as it happens in the Italian experience, whom the legislator, after passing the law (L. n. 212/2000, *Disposizioni in materia di Statuto dei diritti del contribuente*) regularly disregards.

The freeman of the 1628 English Petition of Rights to whom the “laws and liberties of the country” (Art.X)²¹ have to be applied, has to be the vehicle for an updated perspective of taxation as a whole of “rights” whose “enjoyment (...) entails responsibilities and duties with regard to other persons, to the human community and to future generations”²².

levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment”, Preamble of EU Charter of Fundamental Rights, proclaimed in 2000 and become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

²⁰ “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 are moving common law jurisdictions that “suggest new paths for overcoming the inadequacies of the contemporary State”: G. TIEGHI, *Taxpayer and Human Rights: the Taxpayer Advocate and the Challenge of Contemporary Democracies Towards New Constitutional Forms*, pp.1475-1476.

²¹ Article X: “They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land”. For a deep analysis on the content of the Petition in which rights, liberties and taxation, have been jointly established and conceived as “*ramificazioni di un medesimo tronco*”, see M.BERTOLISSI, *Fiscalità Diritti Libertà. Carte storiche e ambiti del diritto costituzionale*, quot., p.10.

²² Charter of Fundamental Rights of the European Union, *Preamble*.

2.1. Fiscal vs Constitutional History: How Long to Combine Dialogue with Power?

Those historical experiences have been acquired as title for participation and engagement in public life: and that explains exactly why those *traditions* are still able today to mark the fundamental and current relevance of those historical principles. They have actively contributed to lay the foundations of a system deeply rooted in liberty. To recall that system, we have to abandon the attitude of a servant to acquire the attitude of a freeman²³.

Stressing this approach to higher ideals, we can better understand the aim to build an institutional framework based on civil and civilized coexistence through a well-known statement which is particularly useful for an updated reading of taxpayers rights from a constitutional perspective: we should remember, in fact, to emphasize the 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”²⁴.

Reality, on the other hand, especially thinking about the Italian system, reveals that fiscal history is totally unknown and dismissed by constitutional history. So it is urgent to wonder: is there anything more politically – and then, consequently - constitutionally relevant than taxes? Are tax evasion and its pathological causes and remedies an issue exclusively regarding Tax Agencies or, rather, do they represent a pathological behavior that seriously undermines the quality and quantity of the safeguards set out in the first part of the Italian Constitution describing rights and duties?²⁵

The belief in taxes is not an act of faith²⁶; however the current significance of historical Charters is highlighted through the reinstatement of the human dimension ignored by Jacobean constitutionalism, focused on the Law, but efficaciously described by article 36 of the Italian Constitution speaking about “a free and dignified life” of human beings considered as workers. It is reconsidering the appreciation of human values that taxpayers’ rights can become effective as part of the system, in their potential quality to be an expression of taxpayers’ passions²⁷ and choices, keeping struggling against the major sources of ‘unfreedom’²⁸. These are the only premises to go beyond the idea of the coercive

²³ M. VIROLI, *L'Italia dei doveri*, Rizzoli, Milano, 2008, p.46: “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”.

²⁴ J. SHUMPETER, *The Crisis of the Tax State*, 1918, in *Essay* edited by R.V. Clemence, Cambridge, 1951, p.7, quoted by A. CATTARIN, *Dalla servitù alla sovranità. No taxation without representation*, Jovene, Napoli, 2009, p. 62.

²⁵ See AA.VV., *Evasione fiscale e “tax compliance”*, by A. Gentile e S. Giannini, il Mulino, Bologna, 2012 and A. SANTORO, *L’evasione fiscale. Quanto, come e perché*, il Mulino, Bologna, 2010.

²⁶ Luigi Einaudi, in the presentation of L.V. BERLIRI, *La giusta imposta*, Roma, 1945, quoted by G. FALSITTA, *Per un fisco “civile”*, Giuffrè, Milano, 1996, IX: “(...) la credenza dell’imposta sul reddito, sul patrimonio o sulle eredità o sui consumi non è un atto di fede”.

²⁷ For the suggestion to consider rights functional to promote virtues, encouraging diversity and let democracy function see S. HOLMES, *Passions and Constrains. On the Theory of Liberal Democracy*, University of Chicago Press, 1995.

²⁸ A. SEN, *Development as Freedom*, Oxford University Press, Oxford, 1999.

State: it is the *cooperative compliance* – in the advanced approach described in current international studies²⁹ - that marks the path to admit the possibility to make a real act of faith towards the honest citizen, the honest taxpayer³⁰. An act of faith that arises from the deference and the re-consideration of our own customs, our own values, from those *cultures and traditions of the people of Europe* stated in the EU Charter of fundamental rights. The aim is to keep alive the intangibility of a route that, historically, and with different outcomes – this refers to the two types of constitutionalism – that has marked the different points of balance of the relationship between liberty and authority.

Approaching a form of taxation supported by the human dimension and both historical, and consequently, fiscal experience means looking at the contemporary experience of a worldwide fiscal crisis reviewing the very same concept of Constitution: what is happening, if it works, in that case is constitutional³¹. Or it can be something in writing which comes either from the top or from the bottom: the latter, revealing a social, rather than legal need. The social system thus protects itself as a historical system to which institutions convert themselves³².

Traditions unify fiscal and constitutional history to find the fairest balance between power and citizens, authority and liberty. In this perspective, it leads to the dialectic representation of a taxpayer's needs. It is understandable that the fulfillment of dialogue in the tax field is one of the hardest steps on the path towards a new balance between tax authorities and taxpayer. To keep working for a real fiscal exchange³³, it is first necessary to introduce and consider a preliminary and crucial issue: duty.

First of all, the duty to accept being conditioned by real life and other people, in terms of equality and joint responsibility³⁴. Consequently, the duty to contribute to public expenses as article 53 of the Italian Constitution prescribes. The duty as the precondition for enjoying rights, civil and political liberties³⁵.

²⁹ Forum on Tax Administration (FTA), *Co-operative Compliance: A framework from Enhanced Relationship to Co-operative Compliance*, May 2013, OECD Publishing, in <http://www.oecd.org/tax/administration/co-operative-compliance.htm>.

³⁰ G. TIEGHI, *Fiscalità, compliance e Stato costituzionale*, quot., p. 75.

³¹ “Non è certo un caso se le democrazie sono nate e riescono a funzionare in maniera soddisfacente nei Paesi anglosassoni – e cioè dove poggiano su una forma mentis empirica e pragmatica – mentre si rivelano creature ad un tempo così ambiziose e fragili da noi, dove predomina appunto una formazione mentale di tipo razionalistico”: G. SARTORI, *Democrazia e definizioni*, il Mulino, Bologna, 1957, p.42.

³² A. TORRE, *La Corte Suprema del Regno Unito: la nuova forma di una vecchia idea*, in *Giornale di storia costituzionale*, I, 2006, p.7.

³³ As regards the “implicit contract about fiscal exchange” and its implications to consider tax authorities and taxpayers as partners engaged with “mutual respect and honesty”, see B. FREY, L.P. FELD, *Illegal, Immoral, Fattening of What?: How Deterrence and Responsive Regulation Shape Tax Morale*, Philips-Universitaet Marburg, Volkswirtschaftliche Beiträge, Marburg Nr. 26/2004, p.2 and 4. For the responsive regulation approach see, specifically, V. BRAITHWAITE, *Responsive Regulation and Taxation: Introduction, Law & Policy*, vol. 29, No. 1, January 2007.

³⁴ G.M. FLICK, *Elogio della dignità*, Libreria Editrice Vaticana, Città del Vaticano, 2015, p. 64.

³⁵ “Condizione necessaria non in senso declamatorio, ma in senso proprio, poiché, senza di esso, i diritti degenerano nella tirannide o nel privilegio di una parte e nella sottomissione e nel servilismo dell'altra; insomma, nel loro contrario”: M. VIROLI, *L'Italia dei doveri*, quot., 34. And, furthermore, for a deep analysis: “Per essere chiari, la società politicamente organizzata non è molto diversa da una società per azioni. E' azionista chi ha acquistato un'azione. Chi ha dato qualcosa. E' l'azionista che vota, perché sarebbe folle che votasse chi nulla ha dato ed è estraneo alla società. L'evasore - parziale o totale: si tratterà di distinguere e graduare, non v'è dubbio - non è azionista della Repubblica, perché ha deciso di non 'concorrere alle spese pubbliche'. Perché dovrebbe, da estraneo, 'concorrere... a determinare la politica nazionale' (mi esprimo con il lessico dell'art.49 della Costituzione) e locale, se non ha 'pagato' il dovuto? Che titolo ha per dire la sua, per votare in assemblea se non è

From duties, to liberties. From liberties, to the functioning of the power. From the power, to the denial of liberties if democracies keep neglecting to verify the data of experience. And historical and fiscal experiences of contemporary democracies speak of an extra-legal field made by *traditions*, including the concepts of *practices*, *conventions*, that are an extra-legal phenomenon through which the single case, the single fact³⁶ gets back to its inherent importance as a founding moment of law, meanwhile assuming a crucial role in the constitutional process and reflection³⁷. Practice helps find the balance between authority and liberty as it is the point of reference between a fair tax and the legitimation of fiscal power³⁸, thus to become the link with the real life of a human being.

It is in this moment and context that the constitutional comparative scholar is required to study the living core of many Constitutions and working as a historical researcher³⁹ to catch the turning point from a State of legislation to a Constitutional State, focused on the substance of the living values of the Constitution⁴⁰ to reinforce the role of jurisprudence in order to strengthen those values even against legislative and executive action⁴¹.

The experiences of constitutionalism, therefore, find their bases not in the legal principle, but were born and are still fostered by virtues expressed in the traditions analyzed above: liberal or Jacobean. They are expressions of a power challenging itself – or not – with responsibility. And challenging, measuring, comparing is nothing more than getting back to the profile of a dialectic method on a legislative ground. A wise use of the creative, positive tension of the dialogue⁴² is critical for the effectiveness of the outcome.

azionista? Conclusione. Chi non paga il tributo dovrebbe perdere l'elettorato attivo e passivo. Punto e basta": M. BERTOLISSI, *Contribuenti e parassiti in una società civile*, Jovene, Napoli, 2012, p.98.

³⁶ "Esistono dati di fatto che, nello stesso tempo, interrogano la coscienza di ciascuno e mettono alla prova le conoscenze che un giurista - un giuspubblicista alle prese con la Costituzione - ha, a motivo dei suoi studi": among them, the reference was to the considerable Italian tax evasion: M. BERTOLISSI, *Fiscalità Diritti Libertà*, quot., p. VII.

³⁷ This approach has great implications on the definition of Law: " (...) il diritto, quello genuino, nasce inarrestabilmente dalla storia, dall'economia, dalla realtà sociale effettivamente sentita dalla gente e non ha consistenza durevole se formulato, sia pure con piglio autorevole e voce grossa, da comandi normativi (meno che mai da raffinate teorie) che si distaccano troppo da cose, persone, vicende concrete, sino ad oltrepassare quello che può dirsi il 'punto di non ritorno'. Il punto oltre il quale più o meno lentamente, ma inevitabilmente, il diritto 'debole' si disgrega": A. GUARINO, *La coda dell'occhio*, novembre 2005, p.8, quoted in M. BERTOLISSI, *La prassi amministrativa tributaria*, in M. BERTOLISSI, *Autonomia e responsabilità sono un punto di vista*, Jovene, Napoli, 2015, p. 341.

³⁸ M. BERTOLISSI, *Prassi amministrativa tributaria*, quot., pp. 347- 349.

³⁹ "Perché solo comparando le molteplici, individuali utilizzazioni pratiche delle norme da parte dei vari operatori del diritto il giurista ... può giungere ad attribuire a una norma, a un complesso di norme, a un sistema organico di norme, il senso e la portata che essi hanno oggettivamente avuto in un tratto determinato di spazio e tempo": G. BOGNETTI, *I grandi modelli del diritto costituzionale comparato. L'oggetto e il metodo*, in P. CARROZZA-A. DI GIOVINE-G.F. FERRARI, *Diritto costituzionale comparato*, Tomo II, Laterza, Roma-Bari, 2014, p. 726.

⁴⁰ "It is the living Constitution that is responsible for keeping the (...) Constitution from becoming obsolete, or worse": D.A. STRAUSS, *The living Constitution*, Oxford University Press, NY, 2010, p. 5. Even if referred to the US Constitution, that thesis has to be taken into account in all nations.

⁴¹ The perspective is by R. DREIER, *Rech Staat Vernunft*, Frankfurt a. M., 1990, revoked, during the deep and interesting analysis on constitutional State by P. RIDOLA, *Preistoria, origini e vicende del costituzionalismo*, in AA. VV., *Diritto costituzionale comparato*, quot., p. 767.

⁴² "Dialogo ... è sinonimo di 'confronto creativo', che 'tiene sempre aperte le vie della collaborazione'; di 'confronto' finalizzato 'a una conclusione, a una decisione operativa'. Porsi in questa prospettiva significa accettare, implicitamente ma chiaramente, l'idea che le istituzioni sono il campo nel quale sorgono, si sviluppano e si contrappongono relazioni umane, che via via costruiscono e definiscono rapporti permeati di valori, secondo lo splendido insegnamento dantesco per cui il diritto è 'hominis ad hominem proportio'. Significa avere sempre presente, dinanzi a sé, che, alla fine, si dovrà rendere conto, indipendentemente dal rischio di una qualche sanzione formale, perché non si potrà mai sfuggire al giudizio della propria coscienza": M.

3. “A strong Taxpayer Bill of Rights” to “provide a roadmap for effective tax administration”: is the Italian Taxpayer Bill of Rights sufficiently ‘strong’?

Referring to Taxpayer’s Charters as new instruments for a dialogue between tax authorities’ legitimate power and taxpayer protection and satisfaction⁴³, the question sets out the role of Taxpayer’s Charters within the different institutional frameworks. First, as an application of the objectives of a Bill of Rights in the tax field; second, to help make taxpayers’ rights effective.

A preliminary dilemma is critical to the updated definition of taxpayer rights: considering the compelling new evaluations of *standards of best practice* to improve the relationship between Tax Authorities and taxpayers: are Taxpayer Charters a *mere enumeration of taxpayers’ rights* or have they become *instruments of implementation of service standards*?

The answer requires a response, from a starting point of experience, to Nina Olson’s recent important warning: “As I have stated before”, she asserted, “I believe a strong Taxpayer Bill of Rights provides a *roadmap for effective tax administration*. (...) If the tax system measures its performance through the lens of the TBOR, taxpayers can be confident that they will be treated right, even when they don’t get the relief they hope for”⁴⁴.

Nina Olson’s recent words capture the first profile introduced above: what is the meaning of a Bill of Rights? Which of the possible content is more compatible with effectiveness in the tax field?

An important contribution has been given by specific studies aimed, primarily, to analyze the role of a general Bill of Rights⁴⁵ and, subsequently, to understand the significance of a Taxpayer Bill of Rights⁴⁶ specifically. The two trends can be summed up in Olson’s request, and wish, to have a bill with the quality to “emulate the Bill of Rights to the U.S. Constitution, because I think that will be easier for taxpayer to learn, appreciate, understand and remember”⁴⁷.

They have concurred, on one hand to find the conception of a Bill of Rights most compatible with its initial scope, having in mind the historical prototype of the US Bill of Rights. The choice was among the three proposals of a Bill of Rights as a Charter of

BERTOLISSI, *Pensare le istituzioni come il bene comune*, in C.A. CIAMPI, *Dizionario della Politica*, Il Gazzettino del Nordest, San Paolo, Milano, p. 8.

⁴³ G.TIEGHI, *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*, quot., pp. 288-303, par. 2: *L’aumento indiscriminato delle Taxpayers’ Charters: l’antinomia tra law in books e law in action e il contenuto dei taxpayers’ rights in panorami costituzionali diversi*.

⁴⁴ National Taxpayer Advocate (NTA), *Fiscal Year 2015 Objectives Report to Congress, Preface*, “The Role of a Taxpayer Bill of Rights in Tax Administration”, in www.taxpayeradvocate.irs.gov/2015ObjectivesReport, p. 4.

⁴⁵ Let’s think, in particular, of the interesting analysis of D. A. STRAUSS, *Afterword: the Role of a Bill of Rights*, in AA.VV., *The Bill of Rights in the Modern State*, by R.A. Epstein, R. Sunstein Cass, The University of Chicago Press, Ltd, London, 1992.

⁴⁶ Precisely, as a leading teaching, see D. BENTLEY, *The significance of Declarations of Taxpayers’ Rights and Global Standards for the delivery of Tax Service by Revenue Authorities*, Bond University, Law Papers, 2002, in http://epublications.bond.edu.au/law_pubs/35, Speech of the International Symposium on Japan’s Tax Reforms – The National Forum for Structural tax Reform.

Fundamental Human Rights, as a Structural Corrective or as a Code. The idea of exploiting the Bill of Rights as a way of correcting certain structural deficiencies in representative Government, preserving the judicial supremacy of Courts to interpret and apply laws, seems to answer the compelling current and widespread need to correct legislative excesses. We learn from *The Federalist 51*, in fact, that the task of providing “practical security” consists “in giving to those who administer each department the constitutional means and personal motives to resist encroachments of the others” to block, as Madison affirmed, the flow of “the legislative department” that “is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex”. And this is the exact condition we are experiencing in the Italian System, especially in the tax field.

On the other hand, to understand the real significance of declarations of taxpayers’ rights in the contemporary State, a stimulus directly connected with the Bill of Rights as a structural corrective, has come from the suggestion to consider the target of declarations of rights in “improving tax administration and taxpayer compliance”, that is, the taxpayer. “They can result”, it has been emphasized, “in spectacular cultural changes within the revenue authority with a major focus on taxpayer service” and, finally, it has been noted that “in conjunction with the introduction of a taxpayer declaration and stated service standards there is usually a significant emphasis on identifying and penalizing taxpayer non-compliance”⁴⁸.

That leads to the second profile, that is to help taxpayer’s rights be effective. To become *instruments of implementation of service standards* – so to let taxpayers rights be really pragmatic –, in fact, Taxpayers Charters have to be “easy to understand”⁴⁹, a living and dynamic pattern of the legal system in order to build an accountability network among different institutions: legislator, tax administration, judges and, above all, the Constitutional Court.

The Italian Taxpayer Bill of Rights (ITBOR, *Disposizioni in materia di Statuto dei diritti del contribuente*), approved with State Law no. 212/2000, after more than ten years’ proposals⁵⁰, serves the purpose to challenge the dichotomy of ideal legal aims and effective experience, law and society, theory and practice: if the U-turn of sovereignty has been perceived as compelling, what has the ITBOR pragmatically worked towards⁵¹?

As regards the structure of the law, we can find four different fronts considering

⁴⁷ N.T.A, *Why we need a Taxpayer Bill of Rights*, in <http://www.taxpayeradvocate.irs.gov/blog>.

⁴⁸ D. BENTLEY, *The significance of Declarations of Taxpayers’ Rights and Global Standards for the delivery of Tax Service by Revenue Authorities*, quot., p.4.

⁴⁹ “I’m not suggested”, explained the TA at the beginning of the year 2012, “that a Taxpayer Bill of Rights, in ad of itself, creates any new rights. As I noted above, we’ve had three major pieces of taxpayer rights legislation that enacted taxpayer protections. Rather, I believe Congress can help taxpayer better understand their existing rights by grouping taxpayer rights into simple, easy-to-understand categories”: N.T.A, *Why we need a Taxpayer Bill of Rights*, quot.

⁵⁰ G. MARONGIU, *Contributo alla realizzazione della “Carta dei diritti del contribuente”*, in *Diritto e Pratica tributaria*, vol. LXII, Padova, 1991, part I, pp. 585-636.

⁵¹ Very extended literature on this declaration. Let me recall just some of them: E. DE MITA, *Lo Statuto del contribuente è legge*, in E.DE MITA, *Politica e diritto dei tributi in Italia*, ed Il Sole 24-Ore, 2000, p.428; G. FALSITTA, *Lo Statuto dei diritti del contribuente e il castello dei Pirenei*, in *Corr. Giur.*, 2001; AA.VV., *Consensus equità e imparzialità nello Statuto dei diritti del contribuente, Studi in onore del prof. Gianni Marongiu*, quot.; G. MARONGIU, *Lo Statuto dei diritti del contribuente*, Giappichelli, Torino, 2004, 2008, 2010 (revisited editions); G. MARONGIU, *Lo Statuto dei diritti del contribuente nell’accertamento e nel processo*, in www.giustizia-tributaria.it, June 27, 2014; D. MAZZAGRECO, *I limiti all’attività impositiva nello Statuto dei diritti del contribuente – Studi di diritto*

different addressee and contents: the first group of provisions (art.1-4) introduces limits to the legislative function, in the name of the principle of the certainty of law, declaring the provisions of the ITBOR “general principles of tax system”, underlining that those principles are direct expression of constitutional principles (art.3, 23, 53 and 97 Italian Constitution) and that they are an expression of stability; moreover, in the light of the certainty of law, we find provisions on transparency and clarity of tax law (art.2), a general prohibition of retroactive action of tax provisions (art.3), and limits to the use (or, better, abuse!) of the legislative decree by the Executive power (art.4). The second group concerns the constraints to tax administration in its relationship with taxpayers (art.5-12): the right of information, the right of knowledge of acts and simplification; the right to have clear and justified acts; the safeguard of integrity of property; the right to be replaced in terms; the principle of cooperation between tax authorities and taxpayers; the right to ask the tax authorities for information about the application of tax law in case of uncertainty about the correct interpretation; taxpayers’ rights and safeguards during inspection. The third group of provisions (art. 13-15) refers specifically to taxpayers’ safeguards, including the institution of a Regional Taxpayer Advocate (art.13), provisions for non-resident taxpayers, a code of behavior for employees responsible for inspections and, finally, a fourth group (art.16-21) for final provisions for normative coherence.

To result in a “roadmap for effective tax administration” the ITBOR should embody the above-mentioned premises of priority of the taxpayer’s role and his potential capability to create an accountability network⁵² among the different subjects involved in the tax authorities-taxpayer relationship: that is, beyond those two subjects, legislators and Judges. The taxpayer should be the meeting point connecting all other subjects. If everybody works with a taxpayer-oriented approach, the vital circle of fiscal exchange will become effective and productive for the satisfaction of the public interest too.

The regular monitoring activity on the ITBOR, every five years, has given outcomes in terms of interesting feedback we can sum into three specific moments⁵³. Facts show a growing attention to the Bill from ordinary judges and their permanent attempt to integrate the articles of the Constitution with the principles stated in it. So as to give the ITBOR a leading place in the legal sources thanks to the connection of its values with constitutional principles⁵⁴. It is a hard process for tax administration to change its mind and start using

tributario, Giappichelli, Torino, 2011.

⁵² G. TIEGHI, *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*, quot., p. 61 and ss.

⁵³ Let’s say, every five years: National Meeting held in Udine, Nov. 12, 2005, *Lo Statuto dei diritti del contribuente. Un primo bilancio cinque anni dopo*, see G. MARONGIU, *Lo Statuto dei diritti del contribuente nell’ambito dei principi generali del Diritto tributario*, in www.associazionetributaristi.it; National Meeting for the 10th Anniversary, Genova, 4-6 Nov., 2010, see, for an interesting overview on the first ten years, L.F. NATOLI, *Dallo Statuto dei diritti del contribuente alla codificazione tributaria*, in AA. VV., *Consenso, equità e imparzialità nello Statuto dei diritti del contribuente, Studi in onore del prof. Gianni Marongiu*, quot., pp. 26-28; and fifteen years later, see the considerations related by G. MARONGIU, *Bene lo Statuto ma ora serve il Codice dei tributi*, in www.ilsole24ore.com, Aug. 3, 2015, underlining the impelling need to prompt the principles of the ITBOR to be alive through the enactment of a Revenue Code, recovering the founding fathers’ message, and especially Ezio Vanoni’s guidance and inspiration, to consider a legislation by principles as the beginning of a project and a process concerning codification.

⁵⁴ I’m talking about the considerable number (more than fifty) decisions of the Italian Supreme Court of Cassation and, specifically, about decisions no. 17576, December 10, 2002, no. 7080, April 14, no.

the ITBOR remedies (i.e. ruling-*interpello*, for example) to create a dialogue with the taxpayer while keeping some items clearly in contrast with an idea of cooperation and mediation through the TA. They can be traced in: 1. the incorporation of the Regional TAs within the Tax Authority structure, that is placed in same headquarters as the Direzione Regionale delle Entrate; 2. difficulties in getting in direct touch with the Regional TA as email contacts are referred to the Tax Authorities (@agenziaentrate.it) and that makes evident confusion, and prevents, in reality, any kind of true direct contact with the TA; 3. Non-existence of a TAS website, so the only information can be found in the Direzioni Regionali Agenzia delle Entrate website, or at the Finance Department website to get the list of Regional TAs and contacts and, finally, at the Senate website, where you can hardly find the Annual Reports on TAs activities presented by the Minister of Economy and Finance to the Parliamentary Commission at the end of each year, and no specific official website is active for the Six-monthly and the Annual Reports which are randomly widespread on different websites; 4. No effective powers and hardship to have independent funds and staff personnel, with an evident differentiation among the different Regions⁵⁵; 5. Non-existence of a National Taxpayer Advocate meant to coordinate the single specific regional strategies despite the great effort of the National Association of TAs to foster the figure of the TAs giving that figure a new role in the institutional framework as an efficient “*Garante Mediateur*”⁵⁶. Legislative proposals were aimed to change

3407/2005, no. 21513/2006, no. 8254/2009 through which the Court clearly declared the “*axiological superiority*” of the principles stated or inferable from the Bill regulations, namely from their function of hermeneutical approach, binding for the interpreter. In that perspective, thus, it was emphasized that the interpretation compliant with the ITBOR results definitely in the interpretation compliant with constitutional rules, which the Bill itself declares to accomplish in the tax set of rules. Moreover, the Court significantly declared that some of the principles in the Bill (knowledge of deeds, clarity and motivation of deeds, safeguard of good faith and taxpayers’ trust) must be considered as “*immanent*” within the tax system so as to be binding. The judicial evolution of the upgraded consideration of the Bill points out, effectively, the crucial role of the Supreme Court of Cassation to give the Bill a fair dignity: in this sense, see also decisions no. 10982/2009; no. 2749/2009; no. 10982/2009, no. 16436/2009 and some more. But already in 2011, the Court, even if reinforcing the quality of the content of ITBOR, full of immanent principles, kept a distance from the previous decisions declaring the ITBOR provisions not able to be used as a parameter for the declaration of unconstitutionality of provisions violating the ITBOR (decision n. 2221/2011): E. DE MITA, *La Cassazione ridimensiona lo Statuto*, in www.ilsole24ore.com, April 24, 2011.

⁵⁵ *Relazione sull’attività svolta dai Garanti del contribuente (Anno 2013)*, presented by Minister Padoan, transmitted to the Presidency October 6, 2014, in www.senato.it, XVII Legislatura, Doc. LII no.2, p. 40. The Report considering the data of Year 2014 is going to be published in www.senato.it, XVII Legislatura, Doc. LII no.3.

⁵⁶ The National Organization of TAs was created in March 2002 with the aim to coordinate the whole group of Regional *Garanti*, and also to operate as a representative authority in power to refer to the Executive and the Parliament on fiscal policy issues. During the Plenary Session of May 2010, the Organization unanimously decided to create three enduring Commissions to give an “objective interpretation to the completeness of TAs functions” (D. CIAVARELLA, *L’interpretazione oggettiva delle funzioni del garante a tutela del contribuente ed al servizio degli organi costituzionali*, in www.studiotributariovillanti.it, July 8, 2010). What has to be emphasized of the above-mentioned analysis for the purposes of the current study, is the increase of awareness on the fact that data and news reported by TAs to the Executive and the Parliament have a fundamental importance as they give the true representation of the economic life of the country, that is the underlined necessity for the progress of our country to have the exact knowledge of the taxpayers’ ‘psychological status’ between economic outcomes of taxes and public expenses. Following that potentially innovative path, on November 9, 2012 the National Association of TAs has been established with the specific aims firstly, to widespread the knowledge of the figure and functions of the TAs among citizens and public institutions; secondly, to take care of the institutional relationship of the members of the Association with the Parliament, the Executive power and other administrative and political Authorities: *Press Release*,

article 13 of the ITBOR (prescribing the TAs legislation).

In spite of some definitely relevant individual stances on activities aimed to reinforce the role of the TA within the system by strategic operations to let him be identified and become operatively useful to citizens⁵⁷, what the above-mentioned reveals is a figure still without real independence and, above all, real powers and perspective so as to be interpreted and felt, by TAs and taxpayers, as a figure without incisiveness⁵⁸. That is not to hide, on the other hand, updated data revealing a huge number of requests by taxpayers and, above all, the outcomes in the last four years concerning the major categories of requests: self-help and maladministration⁵⁹. That is to say that taxpayers (mostly tax advisors!) wish the TAs' intrusion to reinforce their motion, often wrongly hoping the TA could substitute the Tax Agency instead of just simply recommend the Tax Authority to initiate a process of self-help. But in case of denial of self-help, the Italian taxpayer has just the right to ask for reimbursement of damages but not to appeal for that denial⁶⁰.

From a different point of view, the very – and probably the most – pathological approach is the one adopted, daily, by the legislator who operates as if ITBOR did not exist, legislating while disregarding the law⁶¹. Not to mention that the same figure of the

Nov.11, 2012. One of the last important steps in the hard struggle to get a pragmatically effective TA, was the proposal, put forward during the Meeting of the TAs of September 29, 2015, to create a new authority - named "Assemblea dei Garanti dei Contribuenti. In the aim of the founders, modifying the article 13 of ITBOR, it was to become a permanent Authority with functions of coordination: a kind of 'Garante Mediateur' for its impartiality and competence (*Assemblea dei Garanti dei contribuenti delle Regioni d'Italia*, in www.valledaostaglocal.it, Oct.5, 2015). It is to be proved, in any case, if the creation of more and more authorities may really help foster the institutional figure of the TAs. The crucial step, anyway, has to be considered the effort of the Association to create a new cooperative link, first of all, as the Responsible for Communications had wished, with the Department of Economics (*Relazione sull'attività svolta dai Garanti del contribuente (Anno 2013)*, quot., p.41).

⁵⁷ Let's think about the idea to support and facilitate also verbal and informal contacts with taxpayers and the choice to admit their power to make recommendations not merely previous requests. The previous Garante Liguria set up the service "Richieste al Garante" for a direct access: for adequate description of initiatives meant to overcome bureaucratic and economic difficulties, see DI NOTO L., *Il garante del contribuente: profili critici*, in AA.VV. *Consenso, equità e imparzialità nello Statuto dei diritti del contribuente, Studi in onore del prof. Gianni Marongiu*, quot., pp.606-607.

⁵⁸ For a comparison between the role of the US TA and the Italian Regional *Garanti* see G.TIEGHI, *Taxpayer and Human Rights: The Taxpayer Advocate and the Challenge of Contemporary Democracies towards New Constitutional Forms*, quot., pp. 1484-1486. On the powerless TA, see the following considerations: "La figura è priva di incisività", it was underlined, "come si converrebbe ad un'autentica autorità investita di ampi poteri di controllo e vigilanza, ma è piuttosto rivolta, in mancanza di un potere coercitivo, a effettuare solo richiami non idonei, peraltro, a incidere sull'atto in contestazione": *Relazione sull'attività svolta dai Garanti del contribuente (Anno 2013)*, quot., p. 37.

⁵⁹ Considering years 2010-2013, motions for self-help were quite numerous (3194), 13716 for maladministration and everything concerning any general irregularity made by Tax Authorities, but no reply at all: in *Relazione sull'attività svolta dai Garanti del contribuente (Anno 2013)*, quot., pp. 15-21.

⁶⁰ Corte di Cassazione, judicial order no. 10020/2012 (no appeal against denial) and judicial order no. 698/2010 and decision no. 5120/2011 (right to ask for reimbursement for damages).

⁶¹ E. DE MITA, *Lo Statuto dei diritti del contribuente tra valorizzazione che ne fa la Cassazione e le violazioni del Parlamento*, in *Boll.trib.*, 2008, p. 1639 ss. Legislator persistent abuses (A. BONGI, *Decenni di soprusi per lo Statuto*, in *Italia Oggi Sette*, Sept. 22, 2010, in www.rassegnastampa.mef.gov.it) were recalled in their dramatic implications – caused by the persistency of the legislator's evident indifference towards this law and his giving priority to collection activities- at the last National Meeting held in Siena in December 2014 entitled "The citizen between the State and the Tax Advisor. From the ITBOR to the Tax Advisor's Ethic". Significantly the concept to define the taxpayer as an ATM (Automatic Teller Machine) was used: that explains more effectively the priority of the Italian State to put enforcement before rights and service. About that, see L. BASILE, *Contribuenti bancomat. Diritti violati in nome dell'esigenza di far cassa*, in *Italia Oggi*, Dic. 13, 2014, and then www.studiotributariovillani.it/public, Jan. 2015. On the other hand, in that meeting an update was given in

Italian TAs has been placed at serious risk by the legislator – without any consideration of its crucial institutional role - with its absorption into the sphere of commitments entrusted to the President of the Tax regional Commission. This was to have occurred in January 2014, but so far it has produced only a reduction of salary.

To that dangerous deficiency, we have to add the inflexible position of the Constitutional Court not to operatively⁶² condemn legislative abuses and the evident violations of the ITBOR. And the fact is that the Court operates in that way merely in the name of formal justifications concerned with the legal formal position the ITBOR has in the hierarchy of legal sources: an ordinary law, not constitutional so as to become – just in this case - a judicial parameter for the declaration of unconstitutionality⁶³. The emphasis on the connection of ITBOR values with constitutional principles, instead, could have given the bill a leading place in legal sources. The Italian Court's pragmatic functioning reminds us of the 'selection of cases' as a typical mechanism of constitutional justice which works, in some jurisdictions like Italy, even if it is not legally prescribed: the formal defect (i.e. the parameter cannot be an ordinary law) becomes the excuse of not evaluating the substance of the constitutional suit. And that has relevant implications for the evaluation and outcomes of the constitutional process.

Constitutional justices should be placed in a position to undertake any type of constitutional review for taxpayer's rights violations. A constitutional perspective of taxpayer's rights, in fact, should promote what is considered the core of the so-called New Commonwealth Model of constitutionalism, that is the prevalence of the substance, of the constitutionality of the issue up to the point of not considering the specific outcome (declaration of unconstitutionality, declaration of inconsistency, etc.): "just because under a parliamentary bill of rights the Courts cannot strike down legislation", it has been wisely underlined, "does not mean that judges cannot undertake a type of constitutional review". It's up to the justices being aware that "under a statutory bill of rights judges are typically empowered to interpret enactments in a manner consistent with the bill of rights , or can make declarations on inconsistency where the enactment unjustifiably trenches on fundamental rights (and cannot be read down to achieve consistency) or can grant remedies for rights violations"⁶⁴.

Moreover, in the last few years, on one hand the great effort to design an International Model Taxpayer Charter⁶⁵ "devoted to laying out what a good tax system

the number of ITBOR violations apparently reaching a number of 500 since its enactment (C. DELL'OSTE, G. PARENTE, *Statuto dei diritti violato 450 volte*, in *Il Sole 24 Ore*, Oct. 22, 2012).

⁶² See, in particular, the interesting observations on the need of a Constitutional Court intervention considering its role in the constitutional tax field, E. DE MITA, *Diritto tributario e Corte costituzionale: una giurisprudenza "necessitata"*, in *Boll. Trib.*, 2008, p. 1045.

⁶³ In the beginning the Italian Constitutional Court reaffirmed the earlier opinion of the Supreme Court of Cassation (2004) stating that the regulations in the Bill represent adaptable criteria of interpretation of tax law (judicial order no. 216, July 2004) even though later never used as a parameter of constitutionality. On the contrary, the Court expressly denied the chance of a judicial review of legislation enacted in violation of the ITBOR caused by the nature of ordinary law of the ITBOR itself (judicial order no.41/2008 and then, definitely, with the decision no.58/2009).

⁶⁴ A. BUTLER, P. BUTLER, *The New Zealand Bill of Rights Act 1990: A commentary*, LN, Wellington, 2005, p.25.

⁶⁵ The study started in 2008 from the idea of the Fiscal Committee and Member of the Executive Board, Confédération Fiscale Européenne (CFE), widespread during the CFE Forum of the same year with

should contain” to give taxpayers a “fair tax system that recognizes fundamental human rights”⁶⁶ is evident. On the other hand, the continuous violations of the ITBOR have drawn attention to the compelling necessity for an update of the ITBOR but, above all, a much more crucial concern: does the ITBOR, betrayed daily, still have a meaning? The ‘national hypocrisy’⁶⁷, an expression conveying the feeling of most Italians and summing up the most disillusioned critiques, is at a crossroad. Serving the International Model⁶⁸ we have had the recognition of a great ideal structured in a form going beyond the mere declarations of tax agents obligations: as aimed by its founding father, Gianni Marongiu, it expresses a broader vision of the world and of the law that escapes from mere procedure and inflictions and goes further, towards the aim to realize *integrity* within the system. It is a system where “in return for taxes, taxpayers should not only receive goods and services, but also sound governance that is respectful and protective of democratic principles and processes”⁶⁹.

But, as we are testing, this is not enough. And the Italian experience is causing us to ponder over it as it has not matched with 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 system, just as human rights are universal”⁷⁰. “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”, goes on the distinguished Author, “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”⁷¹. There is no more trust in the legislator, it is more and more difficult to accept the choice of the Constitutional Court not to take into account the inherent power of ITBOR for progress in terms of civilization.

the proposal to realize a Model Taxpayer Charter on an international level. Then the CFE was designed, in 2013, by the EU Commission to join, as a member, the experts of the “EU Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation”. Subsequently, the Model developed by CFE and two tax professional bodies (The Asian-Oceania Tax Consultants’ Association (AOTCA) and the Society of Trust and Estate Practitioners (STEP), based on a survey on the status quo of taxpayer rights and obligations in 37 (in the end 41) countries, was published in M. CADESKY, I. HAYES, D. RUSSEL, *Towards greater fairness in taxation: A Model Taxpayer Charter*, Paperback, 2013, www.cfe-eutax.org and the Final version was very recently presented at the CFE PAC Conference titled “Big Data – a threat to taxpayer rights?”, held in Amsterdam, Nov. 13, 2015. The model can be accessed at www.taxpayercharter.com. For detailed references and information see also P. VALENTE, I. HAYES, D. BERMENTLO, *Il Model Taxpayer Charter. Statuto dei Diritti e Doveri del Contribuente, Cooperazione con il Fisco tra Tax Governance e Tax Compliance*, in *il Fisco*, n. 36/2013, pp. 5570- 5579.

⁶⁶ *Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com.

⁶⁷ G. GENTILI, *Legge di stabilità, sparisce il Garante del contribuente. Lo Statuto tradito ha ancora un senso?*, in *Notizie Italia*, Oct. 2013.

⁶⁸ B. BIVONA, *Statuto del contribuente: sul tetto del mondo il modello italiano*, in www.fiscooggi.it, May 2013.

⁶⁹ V. BRAITHWAITE, *Tax System Integrity and Compliance: The Democratic management of the Tax System*, in V. BRAITHWAITE, *Taxing Democracy: Understanding Tax Avoidance and Evasion*, Aldershot, Ashgate, 2003, p. 271.

⁷⁰ *Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com.

⁷¹ M. D’ASCENZO, *Foreword*, in D. BENTLEY, *Taxpayers’ Rights: Theory, Origin and Implementation*, quot., p. vii.

Does it still matter having a Bill of Rights clearly “in book” and hardly lived as “in action” or “in context”⁷²? Which is the impact of the non-justiciability and non-accessibility of taxpayers rights by the Constitutional Court on the effectiveness of tax administration?

Former Chief Justice Livio Paladin, Professor at the University of Padua, School of Law, laid the foundation when, during his Speech in Rome at the Constitutional Court building, June 5, 1986 for the 30 anniversary of the institution of the Italian Constitutional Court, he declared the crucial importance of having a judge – the Court primarily – able, as already done in the past, to overrule precedents, forcing jurisprudence to make it appropriate to evolving times, to the outcomes of the system, to the progress of legal culture, to the widespread needs of civil society⁷³.

What else, so essential – and then, constitutional – can close the circle in the accountability taxpayer-centered network to realize a service-oriented tax administration? Serving taxpayers 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 fix the Person to whom those rights are connected at the center of the judicial review, a place for excellence where the art is to balance different values, which causes pressure to force a specific decisional moment of evaluation of people’s needs and virtues in terms of dignity⁷⁴: this is the way to allow the taxpayer to be engaged⁷⁵ and to contribute to a fair tax system. According to this approach, in fact, “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”⁷⁶.

⁷² “Se i giuristi fingessero la vigenza di un ordinamento giuridico compiuto ed autosufficiente in tutti i suoi elementi, essi scenderebbero il diritto dalla realtà sottostante; e nessuna pretesa potrebbe risultare più pericolosa di questa, sia per chi miri alla giustizia sostanziale degli ordinamenti giuridici, sia per chi voglia approfondire lo studio degli stessi sistemi normativi”: L. PALADIN, *L’interdisciplinarietà nelle prospettive dei giuristi*, in AA.VV., *Accademia e interdisciplinarietà – I Saggi*, by E. Riondato, Padova, 1998, p. 243.

⁷³ “Cambiare giurisprudenza, sforzandosi di renderla sempre adeguata al mutare dei tempi, agli sviluppi dell’ordinamento, al progredire della cultura giuridica, alle esigenze diffuse nella società civile”: L. PALADIN, *Discorso commemorativo tenuto il 5 giugno 1986*, in *Giur. Cost.*, 1986, I, p. 1203, quoted in G. TIEGHI, *Per una “Costituzione continuamente attualizzata”*: Corte costituzionale e overruling, in AA.VV., *Atti della Giornata di studi in ricordo di Livio Paladin, Riforme. Opinioni a confronto*, Jovene, Napoli, 2015, pp. 135-167.

⁷⁴ Considering the dignitarian vision of human rights, it’s easier to perceive the intimate link between human rights and taxpayer’s rights: «La connessione tra diritti e dignità umana è ormai un punto fermo nel pensiero giusfilosofico corrente e trova positivo riscontro in importanti testi normativi, costituzionali e sovranazionali. La connessione ha principalmente una funzione genetica. Vi è il postulato che tutti gli uomini siano egualmente degni: essi si devono reciproco rispetto per la loro comune umanità. Ma è un rispetto che non si vuole limitato all’umanità come specie in quanto si pensa che ognuno di noi sia singolarmente portatore di una propria umanità, che va protetta e incoraggiata. Occorre così che a ciascuno sia offerta – dagli altri e, per essi, dallo Stato- la concreta possibilità della cosiddetta ‘fioritura’, cioè l’opportunità di realizzarsi secondo i propri desideri, il personale progetto di vita. Se ciò si ritiene che consegua dalla nostra dignità di uomini, giuridicamente ne deriva, almeno potenzialmente, una pluralità pressoché infinita di pretese e, dunque, di possibili diritti»: U. VINCENZI, *Diritti e dignità umana*, Bari, Laterza, 2009, p. v. Moreover, see A. PIRAZZOLI, *La dignità dell’uomo. Geometrie costituzionali*, Ed. Scientifiche Italiane, Napoli, 2012.

⁷⁵ Especially considering the study of Forum on Tax Administration (FTA), Information Note, *Right from the Start: Influencing the compliance environment for small and medium enterprises*, January 2012, in www.oecd.org/site/ctpfta/49428016.pdf.

⁷⁶ Forum on Tax Administration (FTA), Information Note, *Right from the Start: Influencing the compliance environment for small and medium enterprises*, p. 3, and pp. 25-29.

3.1. Broad Principles: Strong Enough to Catch the Promise of the TBOR?

The second part of N. Olson's thought moves from a pragmatic consideration. "But", Ms. Olson recognizes, "there is a pressure in tax administration today that mitigates against this approach. ... My vision of tax administration is one in which the agency is guided by *broad principles* of tax administration – the Taxpayer Bill of Rights – and uses those principles to analyze its programs and action. ... Reflexively, it should ask itself: how does this initiative impact other, more vulnerable groups of taxpayers who may not be the intended focus of this initiative? This approach keeps the faith with the millions of other taxpayers who are going about their lives doing the best they can. This approach furthers voluntary compliance, because it fulfills the promise of the TBOR – that taxpayers have the right to a fair and just tax system"⁷⁷.

We can assume the Italian experience based on a ITBOR made up of principles has served the International Model Taxpayer Charter properly because, differently from other existing models, the Italian Charter realizes the normative fundamental base able to guarantee the reasonable, fair and progressive new balance⁷⁸ of the taxpayer's rights and obligations towards tax administration. Article 1, cl.5, of the International Model, in fact, states that rights and obligations "are to be taken together, with each given appropriate weight such that one does not override the other". This is the appropriate explanation of the constitutional perspective inevitably required for taxpayer rights to be genuinely effective because it is directly connected with the principle of joint liability to contribute to public expenses, in application of art.53 of the Italian Constitution.

Moreover, considering the choice made by the three international professional Associations to expand the application of the Charter beyond taxpayers and tax

⁷⁷ National Taxpayer Advocate (NTA), *Fiscal Year 2015 Objectives Report to Congress, Preface*, "The Role of a Taxpayer Bill of Rights in Tax Administration", quot., p.4.

⁷⁸ The starting point of the concept of a "new balance" appears, in fact, to be very crucial for an updated understanding of the role of modern Taxpayer Charters: it deals, considering also the *Objectives of a Model Taxpayer Charter* described by the authors of the Model, with the phenomenon of increasing taxpayer responsibilities "while recognition of Taxpayer rights has at best stood still". "Those responsible for drafting tax legislation", as they underline, "have not often seen a benefit to recognizing additional rights of taxpayers. (...) This undermines the 'good partner' approach to tax administration, and it has caused taxpayers and tax advisors alike to be cynical of this philosophy" (*Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com). Instead, fostering the new balance means right that "recognizing and enshrining comprehensive Taxpayer Rights in legislation will contribute substantially to both the perception and reality of fairness and integrity in the tax system. Placing statements of Taxpayer Responsibilities in an overarching document", it has been emphasized, "reinforces the proposition that while holding rights, taxpayers must also shoulder responsibilities and do so in good faith". In that perspective, in fact, we can assume that "the adoption of such a document may actually bring about the partnership philosophy of the taxpayer, the tax advisor and the tax administration cooperating together". Moreover, and this is the crucial outcome, "consider that Taxpayer Rights are responsibilities for the tax administration and Taxpayer Responsibilities are rights of the tax administration". "The mirror image of rights and responsibilities, laid out and acted upon in a balanced and constructive way", in fact, "should enhance the relationships between all stakeholders". The detailed list of 10 responsibilities and 10 rights includes, on one hand, the responsibility to be truthful, provide information, be cooperative, make payment, comply with the law, maintain records, take due care, retain responsibility for advisors, show courtesy, comply cross border; on the other hand, the right to integrity and equality, certainty, efficiency and effectiveness, appeal and the right to dispute resolution, appropriate assistance, confidentiality and privacy, pay correct amount of tax, representation, proportionality and honesty (explained in more details in Chapter 2, www.taxpayercharter.com and, recently, listed as Fundamental Principles- see Annex) informally called the "Ten Commandments": Press Release 2015_03, Brussel, Nov. 13

administration, we can perceive the advanced aim to create the above-mentioned network: in fact the addressees are also the States (in all their articulations and powers) and the taxpayer's advisors (art.1). And again: what has been emphasized, starting from the Italian model, is the use of a broad fundamental principle on tax law. In particular, the statement of fairness in tax legislation means, primarily, ensuring that tax legislation is clear, unambiguous and understandable to carry out the constitutional base of the right to understand, conceived as a genuine inviolable right, means of control and verification of responsibility⁷⁹. This requirement, anyway, is not an end in itself. Considering the so-called "trio of fairness dimension" which, including fairness-based approaches, foster a more service relationship with the tax authority⁸⁰, it works for the still more ambitious aim of a service-oriented approach, including the definition of *reasonable service standards* (prescribed by art. 11) and, from a constitutional perspective, a more transparent relationship with taxpayer.

As we all know, according to relevant experimental studies, it has been proved both that "procedural fairness enhances identification which in turns supports positive tax attitudes and reduces the inclination towards tax evasion"⁸¹, and, above all, that "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"⁸². The Italian choice to introduce a legislation based on principles, in fact, reflects the ideals of great thinkers to set fiscal provisions in order and define a clear framework for driving all subjects involved in the network. But, unfortunately, Italian experience speaks about principles ignored, aims failed, rights relegated to paper⁸³. Principles, in fact, have to be connected with specific criteria for application⁸⁴ and with the constitutional background

2015, in www.cfe-eutax.org/sites.pdf).

⁷⁹ For an interesting and update analysis on the simplification of the rules and administrative procedures, see M. BERTOLISSI, V. ITALIA, *La semplificazione delle leggi e dei procedimenti amministrativi*, Jovene, Napoli, 2015.

⁸⁰ Particularly interesting are the implications for tax policy makers considering the fact that, among the "three dimensions that are known to influence tax compliance and the tax assessment process", that is procedural fairness, interpersonal fairness and informational fairness, it has been proved that "rights classified as interpersonal or informational fairness were significantly underweight relative to procedural fairness". On the contrary, it has been empirically demonstrated that they are the most important aspect of a service relationship. The research, in fact, starting from the Canadian case, "suggests that tax policy makers should give greater consideration to interpersonal fairness and informational fairness when constructing taxpayer charters, and in particular, identify other aspects of interpersonal fairness that could be incorporated into taxpayer charters": J. FARRAR, *An Empirical Analysis of Taxpayers' Fairness Preferences from Canada's Taxpayer Bill of Rights*, *Journal of Accounting and Taxation*, Vol.7 (5), May 2015, p.78.

⁸¹ M. HARTNER et alt., *Procedural fairness and tax compliance. Economic Analysis & Policy*, 38, 2008, pp. 137-152; K. MURPHY, *Regulating more effectively: the relationship between procedural justice, legitimacy, and tax non-compliance*, *Journal of Law and Society*, 32, pp. 562-589.

⁸² E. KIRCHLER, *The Art of dodging, Tax*, in www.financialworld.co.uk, June-July 2015, p. 43.

⁸³ It is not accidental that from the survey used to define a Model Taxpayer Charter it was demonstrated that "Taxpayer Charters in the past (...) have, for the most part, not been overly useful or well received" and, "in many cases, these Taxpayer Charters are either ignored entirely, or are not well known. They are", it has been underlined, and that has to be considered suitable with the Italian case, "not effective in enhancing the perception of fairness of the tax administration": *Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com.

⁸⁴ "While useful for guidance", it has been recently appropriately recalled planning an International Model Taxpayer Charter, "they are largely not actionable. Indeed," and that is the main point, "it is for exactly this reason that Taxpayer Responsibilities are laid out in precise terms in tax legislation". "Without specific

including the assumption that “Taxpayer Rights have a basis in human rights, and are an essential part of a tax system that cannot be removed”⁸⁵.

We have been led to forget - while we have to recall - the teaching of our eminent and prestigious personalities who fought for high ideals: just to mention, Einaudi’s warning to let taxpayers be aware of the reasons why they are paying because if that reason is not clearly illustrated, they have a title to cry out injustice⁸⁶. How can taxes be understood and taxpayers be compliant if the taxpayer’s perspective is daily ignored?

The process involving Italy in the last decades has been marked by a dangerous involution of the relationship between Legislator and Executive power: the abdication of legislative power to leave space for a second legislation by the Executive (decreti legge e decreti legislativi) has led to sacrifice the principle of ‘no taxation without representation’ and to put the ongoing question for a definitive codification aside⁸⁷. Deregulation has become the mirror of a confused system, up to claim, for the fiscal Italian system, not just a serious Reform, but a true Revolution⁸⁸.

criteria for application to each major subject area, particularly under the heading of Taxpayer Rights, as generally there is no lack of provision for Taxpayer Responsibilities, we are back to where we started”: *Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com.

⁸⁵ *Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com. Particularly interesting from this specific point of view is the case of Mexico. An unusual and very interesting event -from a constitutional point of view-, was the Human Rights Reform enacted in 2011 (known as HRA 2011) which brought about a “new constitutional paradigm whose cornerstone is the recognition of human rights (under both the Constitution and the international treaties that Mexico is party to)” and, led to “the introduction of the ‘pro persona principle’ as a fundamental guiding principle for the interpretation and enforcement of laws and also provides broader protection for taxpayers”: R. FIGUEROA, R. JACOBO, *The Practical Protection of Taxpayers’ Rights*, Basil Congress of IFA, IFA Report 2015, p.573. The Mexican Constitution was modified “in one of the most significant constitutional changes to date in Mexico” and thanks to that Reform “the way human rights will be defended in Mexican society” were transformed with evident implications on tax field: the articles of the Constitution related directly with the Mexican tax system and its foundation in the Human Rights protection are article 1, expressively prescribing a constitutional obligation for the authorities to protect and defend Human Rights and article 31, IV, which prescribes the obligation to pay taxes in a proportional and equitably way. For our purposes, it is of a true and significantly relevant example the way Mexican society, through the HRA 2011, caught the “aim to enhance constitutional mechanisms to better protect human rights in Mexico. That had begun several decades ago as part of a general State Reform” thanks, also, to the effort of the Mexican Supreme Court that in 2009 fostered for the prevalence of the term ‘human rights’ underlining the deficiencies of the terms ‘individual rights’ and ‘fundamental rights’ having as a pre-requirement the crucial idea that “human rights refer to constitutional rights”: V.M.C. EK, *Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges*, *Human Rights Brief* 20, no. 1, 2012, p.9.

⁸⁶ “Riesce difficile persuadersi che in fondo all’imposta si debba cercare solo l’incanto delle cose. Gli uomini vogliono istintivamente rendersi conto del perché pagano; e se quella ragione non è spiegata chiaramente, gridano all’ingiustizia”: L. EINAUDI, in the presentation of L.V. BERLIRI, *La giusta imposta*, Roma, 1945, quoted by G. FALSITTA, *Per un fisco “civile”*, quot. p.ix.

⁸⁷ For an interesting analysis of the term codification connected with coherence and certainty, see G. FALSITTA, *Vicende, problemi e prospettive delle codificazioni tributarie in Italia*, in *Il Fisco*, quot. pp.5247-5262.

⁸⁸ “Riconsiderati criticamente i fondamenti del rapporto fra il cittadino e il Fisco nell’attuale società ‘occidentale’ - segnata più che in passato dai processi della globalizzazione e dalla percezione di crescenti insicurezze ed emarginazioni - (prima sessione), esaminato il grado di concreta, effettiva equità esprimibile dai vari sistemi fiscali - avanzando l’idea che il sistema fiscale italiano più che di una riforma abbisogna forse di una rivoluzione (...) la quarta sessione” of the meeting “ha perseguito il duplice intento di vagliare il ‘tasso di democraticità dell’attuale procedimento di formazione delle norme tributarie’ e, per quanto concerne la codificazione, di fornire ‘i primi punti di riflessione’”: V. TOMBOLATO, P. MARINO, F. LORETO, *Presentazione, La produzione di norme tributarie tra elusione dei principi costituzionali e tentativi di codificazione*, *Atti della quarta sessione del Seminario permanente di Etica e Democrazia fiscale*, by F. Moschetti, in *Il Fisco*, all. no. 10/2013, p. 5159. See, moreover, M. BERTOLISSI, “Rivolta fiscale” *Federalismo Riforme costituzionali. Promemoria per un’Italia che cambia*, Cedam, Padova, 1997.

For the Italian taxpayer, a set of rules based on principles in the tax field, as the ITBOR, could have been an important step forward in the process towards a new relationship. Principles included in the ITBOR could have marked – and still can, if constitutionally oriented - a real turning point if we consider that the self-qualification of the Bill as law of direct fulfillment of the Constitution could have been interpreted as an explanatory support to constitutional principles. Much more beyond the formal qualification of the law within the legal system of the Italian sources, it could have represented a positive reinforcement of constitutional values, as to taxation and its implications. And that, on the basis of a truly liberal jurisdiction. If formally it is clear that the ITBOR cannot be defined as a constitutional law, we cannot ignore that any law later approved in contrast with the ITBOR, is not totally legitimate and, actually, unconstitutional⁸⁹. That is a legislative and judicial behavior able to devalue and underestimate the Bill when it ignores that the ITBOR itself explicitly recalls the constitutional principles it is applying: equality, legality, ability to concur to public expenses, and public administration's good practice, impartiality and rule of law.

Definitely, as regards a legislation based on principles, the question is if the ITBOR is *strong enough to catch the promise of the TBOR*. To be strong the ITBOR could be essentially understood on its premises, which primarily include the constitutional perspective I have described, based on the assumption to consider taxpayers' rights as Human Rights. We should really be aware of the compelling need to transpose the theme of taxpayers' satisfaction and requirements to a context other than specifically fiscal or commercial, i.e. the context of constitutional law. Moreover, the comparative point of view can now open our Jacobean approach towards the recall of our constitutional traditions. That means that the analysis of the non-exclusively Italian legislation based on principles has to be focused on verifying its compatibility with the idea of a customer taxpayer and, then, with the possible implicit configuration of a particular subjective juridical situation of active liberty⁹⁰.

4. Towards the Taxpayer as a Customer: the Right to Choose (Taxpayer's Choice) and Right to Quality Service to Push the "Tax System to measure its Performance through the lens of the TBOR".

Some basic conditions have proved to be unavoidable to push the *"tax system to measure its performance through the lens of the TBOR"*. First of all, a revisited interpretation of the

⁸⁹ L. F. NATOLI, *Dallo Statuto dei diritti del contribuente alla codificazione tributaria*, quot., p. 27.

⁹⁰ For an interpretation of the term, its useful and constitutionally oriented meaning helpful for an updated interpretation of taxpayers' rights and its uselessness for different kinds of jurisdictions (considering the requirement to "combine the two" liberties, of the ancients and of the moderns) see: S. BREYER, *Active Liberty. Interpreting our Democratic Constitution*, Vintage Books, NY, 2005. Specifically, crucial is the idea of a "sharing of sovereign authority" that "suggests several kinds of connection between that legitimacy and the people" (p. 15). And the pragmatic implications can be seriously taken into account: "active liberty", specifies Justice Stephen Breyer of the US Supreme Court, "cannot be understood in a vacuum, for it operates in the real world. And in the real world", he with authority insists, "institutions and methods of interpretation must be designed in a way such that this form of liberty is both sustainable over time and capable of translating the people's will into sound policies" (p. 16).

principle of accountability in those who govern and operate in the field. This has led to the need to go *towards new services and 'quality politics' in view of the customer taxpayer's satisfaction*. Secondly, an implementation of a protected involvement of the taxpayer, respectful of his liberty of choice within an organized set of rules. In that context, a figure so far strongly dismissed in the Italian context, the Taxpayer Advocate, has to emerge⁹¹. Functional powers and transparency have to be granted to push tax administration to realize an effective interaction with taxpayers.

Some recent specific proposals have to be seriously considered to valuably protect taxpayers' rights and choices in the attempt to restyle the ITBOR actually in force. Those proposals, in the vision of Public Accountant and Auditors Italian Association⁹², do try to respond to our fiscal system pathologies like the ongoing production of fiscal legislation generating confusion instead of certainty of law; the indiscriminate increase of tax burdens, evident countertrend instead of a desired simplification; the irrational daily unilateral change of laws that betray not only the respect for both taxpayer and enterprise, but also the principle of the non-retroactive validity of the law; the enduring request to the taxpayer's inversion of the burden of proof that damages the principle of contradictory and the safeguards of advocacy; finally, the issue of the abuse of law, which generates uncertainty as no one can be sure that his choice among different fiscal options may not be contested. The specific proposals are aimed:

- to reinforce the legal value of the ITBOR prescribing an express recall of its principles in the article 53 of the Constitution;
- to strengthen the principles of the ITBOR (art.1) considering the possibility of derogation only in exceptional cases;
- to support the principle of non-retroactivity introducing, as a limit of retroactivity the safeguard of lawful confidence, which is an implication of the certainty of law (art.3);
- to introduce some specific new provisions in the ITBOR: a) a provision against the abuse of the law and tax avoidance (art. 4-bis); b) a provision concerning the codification of the right to good administration article 41 of EU Charter of Fundamental Rights⁹³ (art. 5-bis), specifically binding the U-turn of burden of proof to safeguard the principle of contradictory opinion⁹⁴ with introduction of the compensation for damages for the

⁹¹ "A tax ombudsman (also called taxpayer advocate) is not an effective mechanism to enforce and monitor Taxpayer Rights unless given the legal power to do so": *Objectives of a Model Taxpayer Charter*, in www.taxpayercharter.com.

⁹² Illustrative Report about the '*Nuovo Statuto dei diritti del contribuente AIIDC*', January 27, 2015, in www.aidc.pro/public/news. For the first comments see F. MICARDI, *Lo Statuto del contribuente, dopo 15 anni serve un restyling*, in www.ilsole24ore.com.

⁹³ *Article 41*: 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. 2. This right includes: - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;- the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

⁹⁴ That is the right of the tax injunction to be held before its emission, which is founded on the right to advocacy prescribed by the article 24 of the Italian Constitution and the good operation of public administration good operation of the Article 97 Const., recently reaffirmed by the Supreme Court of

taxpayer; c) a specific provision concerning the declaration to facilitate the taxpayer's repentance through an integrative individual income tax return to modify or correct the previous one (art.6-bis); d) the supplement to consider as legitimate the duty to explain reasons of tax acts also through the so called justification *per relationem* (art.7 on clarity and reasons of tax administrative actions) when those acts are attached to the notified act or when the taxpayer already proves to possess it; e) the introduction of limits to the suspension of taxpayer's credits towards the State (art.8); f) the reinforcement of cooperation (art.10) in two different ways: firstly, exempting the taxpayer from revenues, penalties and interest when he proves to have applied tax authority instructions even if meanwhile they have been changed or he has been led to behave in a certain way because of delays, neglects and mistakes by the tax administration; secondly prescribing no sanctions when violations don't entail a tax obligation; g) as regards sanctions, the proposal is to add a new article (art.10 bis) to establish the principle of proportionality in direct application of European directives and to reinforce the principle of fair cooperation in view of facilitating the taxpayer's repentance through legislative and administrative measures; h) the proposal (art.11) to define a unique set of rules as a base for ruling; i) and to add, in application of the principle of equality⁹⁵, the provision to consider the tax authority's response to the ruling as appealable; l) the introduction of the provision of the invalidity of the notice of assessment notified before the term of 60 days for the release of the copy of the memorandum declaring the end of inspection (art.12, regarding taxpayer's safeguards).

How can the above-mentioned proposals mark a further step in the process to push the "*tax system to measure its performance through the lens of the TBOR*"?

We do not have to keep moving in the wrong direction: it is totally worthless to stop at the stage of modifying some legislative provisions or including some others without having in mind a more ambitious framework. Those proposals, like some others suggested in these last years, have to cope with the constitutional perspective - and its evolving process - as an unavoidable requirement.

But, how to pragmatically operate in that direction? Let's go back, as a premise, to the two basic conditions described: the principle of responsibility and liberty (right to choose and right to quality service).

1. The fulfilment of the principle of equality (art.10 ITBOR), which reveals, thanks to the Australian *partnership model*, the internationally-accepted idea of a *partner* taxpayer, is not only useless as a parameter of constitutionality but, in spite of the institutional acknowledgment of its value⁹⁶, it does not even concern the cultural premises of the Form of State. So we have to think about a true 'contract of interests' that besides the limits to the unfair action of the tax administration, in the taxpayers' rights finds also the right to control its action in the perspective of a behavioral mutual influence. Really it is, the right

Cassation with decision September 18, 2014, no. 19667 and by the UE Court of Justice with decision July 3, 2014, C-129/13, C-130/13 Kamino International Logistics BV and Datema Hellman Wortdwtite Logistics BV.

⁹⁵ Recently emphasized by the Italian Supreme Court of Cassation with decisions no. 8663/2001 and no. 5843/2012 and by the EU Court of Justice with the well-known decision C-28/95, July 17, 1997, § 41.

⁹⁶ Supreme Court of Cassation, sec. trib., Dec. 10, 2002, no. 17576, in *Giur. It.*, 2003, I, p. 2194.

that finds handhold in the theory of the regulatory pyramid. Consequently, new possible constitutional criteria of judgment for the Constitutional Court activity to define a new legal title for the taxpayer can be rediscovered if some requirements are taken into considerations: *a.* the evaluation costs-benefits for the safeguard of each single right. That involves accountability as a specific *modus vivendi* through forms of compensation for damages and the so-called apology payments; *b.* a serious economic analysis of legal issues, in particular considering the institutional pragmatic implications of decisions for the addressee taxpayers; *c.* an approach based on the connection between tax price and the right to vote on taxes, considering the direct interconnection between tax morale and political rights, relationship that has internationally shown the increased effective weight of administrative rights and goals. That leads to the real key point: it is well known that Taxpayers' Charters have found their most effective dimension in their stimulus for mutual exchange administratively, more than legislatively. We cannot ignore, in fact, that the exorbitant flow of legislations on taxpayers rights has provided a dangerous lack of legislative directions. To make a case law and foster best practices has become a new challenge not only for the common law jurisdictions, but for civil law jurisdictions as well. Going beyond the law helps to effectively catch the spirit of law through the propelling figure of the TA. Thus subjectivity, personalized by the taxpayer, has to be conceived as counterpoised to the impersonal power of the law⁹⁷ and, consequently, it has to find constitutional ground on specific substantial values that, in the Italian constitutional dimension, can be found in the systematic consideration of the articles 2, 36 and 53 of our Constitution. This outcome allows a balance of interests, within the partnership between taxpayer and tax administration, equally responsible.

2. The conclusions deduced by the application of the partnership model, anyway, cannot be considered without the weak part of that theory which pushes, nowadays, to an inescapable upgraded redefinition. The new challenges of contemporary times have created the conditions to take an updated comprehension of the taxpayers' rights to the extreme so as to reach preservation and emphasis of the interconnections between the principle of responsibility and the taxpayer's preferences⁹⁸. A step that absorbs the partnership model in its unquestionable merits but dares to go further, endorsing the taxpayer potentialities in his being a Person propellant of new institutional dynamics by his individual choices and

⁹⁷ R. MENEGHELLI, *Stato e democrazia visti dall'alto*, Cedam, Padova, 1999, p. 69: "Lo Stato democratico, a differenza dello Stato dispotico, è lo Stato della legge; è lo Stato in cui non domina la volontà personale di questo o quel soggetto, ma la volontà impersonale della legge. In questa volontà impersonale i cittadini dovrebbero trovare certezza e sicurezza del loro vivere e del loro convivere. (...). Ma non è così", the Author explains. Law does not guarantee certainty and security as experience shows pathological effects of the over production of laws: "L'esperienza," insists the Author, "ci insegna, non solo che, quando aumenta il numero delle leggi, difficilmente queste riescono ad essere delle buone leggi, ma anche che l'eccesso di regolamentazione sortisce due pericolosi effetti: il primo che, quando sono molte e fatte male, le leggi non sempre vengono applicate, e questo, lungi dal produrre il desiderato effetto della certezza, produce, al contrario, quello indesiderato dell'incertezza; il secondo che un eccesso di regolamentazione finisce per inceppare l'azione, per privarla di ogni iniziativa e per infondere nell'animo dei cittadini un senso di asfissia e di schiavitù che fa rimpiangere i tempi della loro antica povertà".

⁹⁸ Considering the "based empirical research regarding the propriety of the contents of taxpayer charters", it has been recalled that the analysis on the fairness dimensions "is twofold as", in particular, "it will identify taxpayer's preferences for the contents in this charter according to each fairness dimension. By recognizing which aspects of each dimension of fairness are most important to taxpayers, tax authorities may be able to refine their compliance strategies (...)": J. FARRAR, *An Empirical Analysis of Taxpayers' Fairness Preferences from Canada's Taxpayer Bill of Rights*, quot., p. 72.

preferences. The persistency of some profiles of adversarialism in the partnership model⁹⁹, may jeopardize its values if not appropriately adequate to current needs oriented towards effective Taxpayer Charters.

3. If the precedents of American, Australian and Mexican experiences can have given the input for a historical redefinition of the relationship between tax authorities and taxpayers, in different jurisdictions it is not possible to ignore that each system has been called to give its own citizens some sort of response in terms of balancing their freedom with the accountability of the whole system. But the constitutional background described in this paper has revealed, above all in the Italian experience, all its potential to make individual choices¹⁰⁰ being taxpayers' preferences the fundamental criteria to judge the way the taxpayer is taken into consideration by the tax administration in an upgraded perspective. The “*freedom to choose*” of the liberal conception, in fact, cannot disregard the “*freedom to choose the laws under which all citizens must jointly live*”¹⁰¹. As for the freedom of choosing funds, the consensus is required only if he who is called to choose is concretely put in the position to concur to the definition of the whole of choice itself¹⁰².

4. That will introduce a legal reconsideration of freedom itself, as choice and as value, beyond its formal safeguard. In that perspective, in fact, he who pays has the right to vote, to choose and he can claim to control the action of representatives. The aim is to generate a competitive context for obtaining the best possible service¹⁰³ as possible from tax authorities, thus fostering the repositioning of the axis of choices: from tax authorities to the taxpayer. This is the way to have the conditions to consider – and treat - the taxpayer as a *customer*: that is a taxpayer with the virtuous ability¹⁰⁴ to be the meeting point of a network that links responsibility – of power and also of their addressees – to the taxpayer's preferences¹⁰⁵. And we have article 2 of the Constitution that founds this perspective: not just for the connection between rights and obligations, but for the progressive

⁹⁹ M. BURTON, DABNER J., *The partnership model of the relationship between tax administration and tax practitioners: drivers, challenges and prospects*, *Journal of Australian Taxation*, 2008.

¹⁰⁰ 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), in NTA, *Fiscal Year 2013, Objectives Report to Congress, TAS Research Initiatives*, in www.taxpayeradvocate.irs.gov/Annual-reports-To-Congress/FY2013, p.55.

¹⁰¹ S. HOLMES, *The Liberal Idea*, *The American Prospect* in <http://prospect.org/cs/articles>, Nov. 30, 2002, p.7.

¹⁰² A. FERRO, *Valore sociale: longevità e intergenerazionalità*, in *Salute Persona Cittadinanza*, n. 1/2012, p.33.

¹⁰³ For an updated and progressive reading of the ‘Right to quality service’, see NTA, *Objectives Report to Congress*, Fiscal Year 2016, Vol. 1, in www.TaxpayerAdvocate.irs.gov/2016ObjectivesReport, pp. 86-91. A very recent effort in that sense is the updated version of the Tax Commission's Charter of Service (named also ‘quality agreement’ published by the Italian Department of Finance on Nov. 25, 2015: http://www.dirittoegiustizia.it/allegati/TP_FISCO_cartaservizicittadino_s.pdf).

¹⁰⁴ “*Coltivare le virtù è un obiettivo irrinunciabile non solamente dal punto di vista della cittadinanza – cosa da tempo risaputa – ma anche da quello dell'economia*”: S. ZAMAGNI, *Il contribuente virtuoso: come vincere l'evasione fiscale*, in AA.VV., *Evasione fiscale e “Tax compliance”*, quot., pp. 219.

¹⁰⁵ In the perspective of a “service relationship” Farrar did appropriately underline 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”: J. FARRAR, *An Empirical Analysis of Taxpayers' Fairness Preferences from Canada's Taxpayer Bill of Rights*, quot., p.78.

consideration of the taxpayer's personality and his capability to choose for the progress of the whole system¹⁰⁶.

5. Conclusions.

It is properly within the constitutional interpretation and process that the incentive for a redefinition of the safeguard of the taxpayer rights can find the appropriate context for effectiveness. "Taxpayer charters may be instrumental" in that sense, "in ensuring smooth interactions between tax authorities and taxpayers"¹⁰⁷. The principles in the Bill represent – and have to represent - adaptable criteria of interpretation of tax law. The interpretation compliant with the ITBOR results, and has to definitely result, in the interpretation compliant with constitutional rules, which the Bill itself declares to accomplish in the tax set of rules. The appropriate approach for taxpayers' rights is, in fact, a consideration of their role as a matter of interpretation, especially constitutional interpretation: for the purpose of effectiveness that kind of interpretation has to be considered binding for the interpreter¹⁰⁸.

However, the turnaround can become a true opportunity only if we people are aware of the negligence of the system: the "capacity to identify our dilemmas" has, in fact, to be readdressed to "design remedies to overcome them"¹⁰⁹. The change in culture, means, options and practices, is not to be considered a negative variable, inevitably hard to be conciliated with the existing system. From a progressive constitutional perspective¹¹⁰ it is necessary to think of changes as "salutary for citizens in a democracy"¹¹¹ if they are justified by an improvement of the dialectic dimension of the institutional dialogue¹¹².

¹⁰⁶ Issue I am working on for a new publication.

¹⁰⁷ J. FARRAR, *An Empirical Analysis of Taxpayers' Fairness Preferences from Canada's Taxpayer Bill of Rights*, quot., p. 78.

¹⁰⁸ Judges 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 at their best. As it was appropriately underlined, in the 'law in the context' approach, they have to manage to "unpack(ing) 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": P. ZUMBANSEN, *What lies Before, Behind and Beneath a Case? Five Minutes on Transnational Lanyering and the Consequences for Legal Education*, in *Odgoode Hall Law Scholl*, Research Paper No. 62/2013, p. 19, quoted in G. TIEGHI, *Per una "Costituzione continuamente attualizzata": Corte costituzionale e overruling*, in AA.VV., *Atti della Giornata di studi in ricordo di Livio Paladin, Riforme. Opinioni a confronto*, quot., p. 160.

¹⁰⁹ A. Jr SCHLESINGER, *The Liberal Opportunity*, *The American Prospect*, in <http://prospect.otg/cs>, p.1.

¹¹⁰ Which, of course, include a Human Rights basis to include 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": S. BREYER, *Active Liberty. Interpreting our Democratic Constitution*, quot. p.16).

¹¹¹ G. BENJAMIN, *Formal State Constitutional Change Progress*, in www.federalismi.it, no. 15/2004, p.1, paper discussed at the Conference on "Federalism and sub-national Constitutions, Design and Reform", Bellagio, March 2004.

¹¹² "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", N. E. OLSON, National Taxpayer Advocate (NTA), *2010 Annual Report to Congress, Preface*, in www.taxpayeradvocate.irs.gov/files/ARCDedication_Preface_TOC.pdf, p.

Taking this background seriously, the search for the best model assuring the effectiveness of taxpayer's rights has to be driven by a relevant consideration of the comparative perspective by means of a constantly involved dialogue for the advancement of a constitutional progress. The main outcome will be the progress of ideas and, thus, of solutions. But those solutions have to be determining in their ability to provoke a surfacing of different perceptions in the design of crucial issues: comparison, as a current Constitutional Court Justice affirmed, "serve to intensify critical insight"¹¹³. And the sense is that comparison with a subsequent exploitation of different experiences cannot but help focus any issue and reach a common aim, though not meaning mere standardization¹¹⁴. To the eyes of a constitutionalist, it "helps advance, helps abandoning the firmness that implies a petrification of the existence"¹¹⁵.

To fulfill those purposes, we have to consider our own Constitution as something in need of fuel to move; in need of dedication, spirit, responsibility¹¹⁶. A pragmatic point of reference in the tax field to find the balance between responsibility and freedom, through the action of a propelling¹¹⁷ and creative¹¹⁸ Taxpayer Advocate which acts as a key item of the constitutional system itself¹¹⁹. And that's why the TA can become the true turning point

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¹¹³ P. GROSSI, *Metodologie giuridiche della modernità*, Giuffrè, Milano, 2005, p. 9.

¹¹⁴ M. BERTOLISSI, *Prefazione*, in G. TIEGHI, *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*, quot., p. XV.

¹¹⁵ "(...) insomma, aiuta a progredire, ad abbandonare la fissità che comporta una pietrificazione dell'esistente": M. BERTOLISSI, *La Laudato si come fatto normativo*, in AA.VV., *Atti della Giornata di studi in ricordo di Livio Paladin, Riforme. Opinioni a confronto*, quot., p. 50, annotation no. 6.

¹¹⁶ "La nostra Costituzione è in parte una realtà, ma soltanto in parte è una realtà. In parte è ancora un programma, un ideale, una speranza, un impegno di lavoro da compiere. Quanto lavoro avete da compiere! Quanto lavoro vi sta dinanzi!" (...) "ma non è una Costituzione immobile che abbia fissato un punto fermo, è una Costituzione che apre le vie verso l'avvenire. (...) Però, vedete, la Costituzione non è una macchina che una volta messa in moto va avanti da sé. La Costituzione è un pezzo di carta, la lascio cadere e non si muove: perché si muova bisogna ogni giorno rimetterci dentro il combustibile: bisogna metterci dentro l'impegno, lo spirito, la volontà di mantenere queste promesse, la propria responsabilità": P. CALAMANDREI, *Introductory Speech to the Students*, Conference on the Italian Constitution, January 16, 1955, Milan.

¹¹⁷ Let's see, for example, the single initiatives undertaken by some Garanti to overcome the difficulties for taxpayers to be aware there exists a TA for their need. Garante di Trento has published a "Charter of Services" and has been available for media; in order to promote his role, Garante Valle d'Aosta has a personal section on an on line magazine (Garante Valle D'Aosta, Report I semester 2013, p.6, in *Relazione sull'attività svolta dai Garanti del contribuente (Anno 2013)*, quot., p.33). As some Italian Regional TAs have properly emphasized, in fact, it is evident the need to boost taxpayers' confidence towards institutions, conceived generally and the Tax Authority, specifically" (Garante Provincia di Trento, Report I semester 2013, p.2, in *Relazione sull'attività svolta dai Garanti del contribuente (Anno 2013)*, quot., p.38). Moreover, the Garante Regione Piemonte reinforced the belief that the strong point of the TA is its being an Authority of persuasion, and he has to behave considering that role to stimulate and push to fulfill the ITBOR (Garante Piemonte, Report I semester 2013, p.12, in *Relazione sull'attività svolta dai Garanti del contribuente (Anno 2013)*, quot., p.38-39). What mentioned above insists on the line to give TAs coercive powers in order not to loose trust and reliability.

¹¹⁸ "It is indeed a very difficult mission, with almost irreconcilable tensions built into it", Nina Olson said 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": quotation in B.T. CAMP, *What Good is the National Taxpayer Advocate?*, *Tax Notes*, March 8, 2010, p. 1251. How not to mention, in this context, the *Efforts to Improve TAs Advocacy and Service to Taxpayers* in the US by two alternative models presented by in the FY 2016: the Centralized Case Intake (CCI) and self-help initiatives? NTA, *Objectives Report to Congress*, Fiscal Year 2016, quot., pp. 88-89.

¹¹⁹ Of crucial importance is the Mexican Supreme Court ruling (2009) concerning the legitimacy of the Mexican Taxpayer Advocate (named *Prodecon*). México has a special federal law which describes and points out the taxpayer's rights. The existence of this law, undoubtedly makes these rights strong and gives

for the effectiveness of taxpayers' rights: it is appropriate to go back to one of the classic thoughts of our liberal-democratic thinking. The Italian Norberto Bobbio, meditating on the rights of people, gave us a significant teaching when, reevaluating the importance of inherent rights, he stated that "when (...) in a political document, like the Declaration of Rights of Virginia, we read: 'All men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety', then we have to admit that exactly in that moment a new form - literally, I mean without any prior event - of political group has been given birth. It reveals to be not only the government of laws contrasted with the Government of men, already praised by Aristotle, but the government of Men AND Laws concurrently, of men who make laws and of laws accepting limits as to the preexisting rights of individuals, limits which laws cannot exceed. In other words the modern Liberal State, continuously fulfilled in the Democratic State because of its internal development"¹²⁰.

"The secret", in fact, as suggested by another Italian personality during a memorable speech at the House of Representatives on October 21, 1948, in a perfectly appropriate discourse on the ground of the effectiveness of the taxpayers' rights, "relies on creating a suitable climate by means of political and moral persuasion. A climate raising the awareness that, while safeguarding the rational and unchanged tax imposition, not only a formal state law is safeguarded but the essence of the life of the State as well"¹²¹. "If we do not make

remedies to solve any violation committed by the tax authorities. Once this law came into force (in 2005) the Federal Tax Code was amended in order to include one specific provision (18-B) that announced the creation of the taxpayer Ombudsman. One year later, in 2006, the bill proposing the formal creation of *Prodecon* was presented and, months later, approved by the Federal Congress. Despite that, in 2006, the General Attorney, on behalf of the President of Mexico, challenged this law before the Supreme Court (considering the difficulties for the authorities to accept the creation of an independent body like *Prodecon* that could have become an obstacle for the collection of taxes). But in 2009, adopting a clear constitutional perspective based on the separation of powers theory, the Supreme Court ruled expressively recognizing the legal and constitutional existence of *Prodecon*. On September 1^o of 2011, the *Prodecon* started working to protect the Mexicans taxpayer's rights. As a part of its functions, the *Prodecon*, like the Us Taxpayer Advocate, tends to explain in a very easy and understandable way, through brief documents (called "*Cuadernos*", to be consulted in <http://www.prodecon.gob.mx/index.php/home/cc/publicaciones#cuadernos>) what the taxpayer's rights are, what the situation of those rights is in México and how *Prodecon* is protecting them on the basis on the progressive equivalence between taxpayer's rights and human rights.

¹²⁰ N. BOBBIO, *I diritti dell'uomo oggi*, re-published in *L'età dei diritti*, Einaudi, Torino, 1990, p.256.

¹²¹ "*Il segreto (...) sta nel creare attraverso la persuasione politica e morale un clima nel quale si senta che, difendendo la razionale e uguale applicazione dei tributi, si difende non una legge formale dello Stato, ma l'essenza stessa della vita dello Stato*": E. VANONI, quoted by E. DE MITA, *La legalità tributaria*, Milano, 1993, pp. 8-9. Original source: E. VANONI, *Discorsi pronunciati alla Camera dei Deputati ed al Senato della Repubblica in sede di discussione in sede di discussione del bilancio: ottobre 1948*, Ist. Poligrafico dello Stato, Roma, 1948. Economist and politician, Vanoni's teaching is still very present to face the complex debate on the relationship between tax and ethics, fostering the idea that without a fiscal justice democracy is condemned to die: his view of the person (E.VANONI, *La persona umana nell'economia pubblica*, 1945, reprinted in A. Tramontana (ed.), *Ezio Vanoni. Scritti di finanza pubblica e di politica economica*, Cedam, Padova, 1976) helps remind us that every legislative reform risks to have a lacking significance if citizens are not intimately aware of the institutional importance and equity of taxation. An updated analysis on the matter reveals the impellent necessity to revisit the current Italian debate following the path of a direct interconnection between taxpayer's tax ethics and tax authority's behavioral ethics. That path, marked appropriately by Professor Francesco Moschetti in his analysis-of the article 53 of the Italian Constitution, has been recently presented during the XXXIII Congress of the National Association of Tax Analysts and Consultants (ANTI, Ancona, Oct. 10, 2015). For further observations

taxpayer rights the lynchpin of our” – that is also worldwide – “tax system, as our Bill of Rights” (together with Constitutions all over the world), “is the lynchpin of our constitutional democracy, we lose our heart and soul”¹²².

What is the essence of the life of the State if not the constitutional premise, the lifeblood¹²³ that links the taxpayer with government even beyond the law?

which contribute to reinforce the debate of great significance from a constitutional perspective are the following articles: E. DE MITA, *Senza giustizia fiscale la democrazia rischia di morire. La visione morale dei tributi*, in *Il Sole24 Ore*, Nov. 25, 2015, p.10; about the importance, for governors and governed, that the consensus has to be referred to both revenues and expenses, see G. MARONGIU, *Sulla bilancia del consenso le tasse ‘legate’ alle spese*, in *Il Sole24 Ore*, Nov. 2, 2015; and for a crucial analysis of the role of equality for Governors pursuing ethic objectives of economic and social politics with the primary aim to protect the fundamental rights of citizens, see F. GALLO, *Quel tributo all’uguaglianza*, in *Il Sole24 Ore*, Nov. 2, 2015.

¹²² N.E. OLSON, *A Brave New World: The Taxpayer Experience in a Post-Sequester IRS*, quot., p. 1199.

¹²³ Considering the decision *Bull v. United States*, 259-260 U.S. 247 (1935) affirming that “taxes are the lifeblood of government, and their prompt and certain availability an impetuous need”, the U.S. NTA has emphasized, referring to the specific relationship between tax authorities and taxpayers, that “If taxes are the life-blood of government, then it is the taxpayers who provide the life-blood. So, if the government wants a long life, it is in its self-interest that taxpayers remain financially viable and in long-term tax compliance”: N.E. OLSON, *Taking the Bull by its Horns: Some Thoughts on Constitutional Due Process in tax Collection*, Westlaw, *Tax Lawyer*, vol. 63, No. 3, American Bar Association, 2010, p. 230.