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## Migration and Taxation in the Popular Imagination

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## MIGRATION AND TAXATION IN THE POPULAR IMAGINATION

MONTANO CABEZAS\*

### INTRODUCTION

Taxpayer attitudes and beliefs are arguably as important as any economic analyses are when trying to understand a tax system.<sup>1</sup> There is an even greater incentive to care about taxpayer perceptions in countries using tax systems that operate on a voluntary or self-assessment basis, like in the United States, because of the influence that those perceptions may have on compliance.<sup>2</sup> Given the effect of these softer, social-normative-based considerations on the ability of the state to collect revenue, when should government respond to erroneous popular conceptions of laws affecting taxation? And, if government should respond, what is the best forum for doing so?

This Essay will examine these questions within the framework of popular attitudes regarding issues at the intersection of taxation and migration. There are at least three reasons to care about issues that occur at this intersection.

First, how migrants are taxed touches on the concepts of source and residence—two foundational aspects of who and what form part of the tax base. The phenomenon of migration forces society to think about taxation from an international perspective, which results in a much different conversation about the normative foundations of tax policy choices than one that focuses solely on

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1. Young-dal Song & Tinsley E. Yarbrough, *Tax Ethics and Taxpayers Attitudes: A Survey*, 38 PUB. ADMIN. REV. 442, 442 (1978) (“Abstract economic analyses are undoubtedly important to an understanding of tax systems, but of equal importance in a democratic system is the taxpayer’s perception, evaluation and compliance with the tax laws.”); *see also* VITO TANZI, POLICIES, INSTITUTIONS AND THE DARK SIDE OF ECONOMICS 113 (2000) (arguing that tax laws that are difficult to understand and can be interpreted in different ways may lead to corruption); Leo P. Martinez, *Taxes, Morals, and Legitimacy*, 1994 BYU L. REV. 521, 550 (1994) (explaining how a good perception of tax law facilitates compliance); Gorm Rye Olsen, *The World Bank and the IMF: Tax, Democracy and Shrinking Aid in Sub-Saharan Africa*, 28 F. FOR DEV. STUD. 147, 162 (2001). The IMF and World Bank say that “people are willing to pay taxes provided they feel they benefit from doing so.” *Id.*

2. *See, e.g., infra* notes 69–74 and accompanying text.

the domestic realm. Most important in this different popular conversation is the inclusion of “us and them” concepts, which are not present, or at least not present in the same way, in conversations that consider only domestic issues. Second, flowing from the inclusion of “us and them” concepts, tax and migration are both politically sensitive topics subject to popular misinformation and misunderstanding, which can undermine trust in those tasked with regulating them. In addition to being contentious, the topics of taxation and migration are also fundamental to any society, as they touch on how to fund the nation state and who can come into and leave a community. Scholars commonly accept that people can be easily misled about contentious issues based on their pre-existing biases,<sup>3</sup> and, assuming that we think it is a good thing that people have generally accurate perceptions of how these issues affect them, we should then be concerned if there are signs that individuals are being led astray. Finally, especially in the context of unauthorized immigrants and refugees, thinking about how issues at the intersection of taxation and migration are perceived is important because how we treat those of us who are most marginalized speaks volumes about who we are as a society and how we conceive notions of justice.<sup>4</sup>

Accordingly, this Essay examines popular narratives and tax policy reality on the topic of the taxation of migrants, and it argues that the lessons learned from this exercise demonstrate why government ought to use media, especially social media, more proactively in an effort to dispel popular misconceptions. Drawing from news and social media as sources, Part I surveys tax-related attitudes and perceptions through case studies concerning expatriated U.S. corporations, unauthorized immigrants, and refugees. Part II provides an analysis of the case studies and discusses how a proactive effort by government to engage with the public through social media may alter the policy landscape. Part III comments on and critiques my proposal from a broader, policy-based perspective.

## I. CASE STUDIES

Speaking generally, there are three issues that not only touch on taxation and migration, but also have been the subject of popular news coverage within the past five years. The first issue is corporate inversions. The second is the tax treatment of individual American expatriates. The final issue is the broad topic

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3. See generally CASS R. SUNSTEIN, ON RUMORS: HOW FALSEHOODS SPREAD, WHY WE BELIEVE THEM, WHAT CAN BE DONE (2009); Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. OF GEN. PSYCHOL. 175 (1998).

4. See, e.g., Debates of the Senate, 42nd Parl., 1st Sess., Vol. 150, No. 85, at 2030 (Dec. 8, 2016) (statement of Sen. Kim Pate) (Can.) (“I will conclude today with a quote that was shared with me over 25 years ago by another woman who from her isolation in a segregated cell touched me deeply when she urged me to heed the words of Lilla Watson, an indigenous woman from Australia, when she said: If you have come to help me, you are wasting our time. If you have come because your liberation is bound up with mine, then let us work together.”).

of lower-income individuals coming into the United States as immigrants, refugees, or as unauthorized workers.

I first wanted to survey as many news media reports as possible on these three issues. I restricted my searches to articles published within the last five years not only to ensure that my findings reflected current popular discourse, but also because people interact with media today in a manner that is both more personal and public than in the past due to the growing importance of social media in the public's consumption of news.<sup>5</sup> Because of the personalized experience and often members-only nature of social media, a comprehensive, unbiased survey would be next to impossible, and I did not attempt to include commentary directly from social media in my survey. I have, however, taken into consideration the effects of social media on news stories to the extent that such effects are referenced within traditional news sources.

Using google.com (as opposed to another country's version, such as google.ca or google.fr), with private browsing settings engaged to avoid having my past search history influence my findings, and using U.S.-based ISPs, I searched variations on "corporate inversion news tax," "leaving U.S. tax FATCA," "undocumented immigrants workers tax," and "refugees tax U.S." I performed similar searches using U.S. and Canadian versions of Google News, as well as NewsDesk, which is a Government of Canada news database. I determined relevance by both reading search summaries and by noting if the result was published by a news organization (as opposed to, for example, an academic or trade publication).

My search yielded the widest volume and variety of articles on corporate inversions and unauthorized workers, which form the first two case studies in this Essay. I discarded the idea of studying individual expatriates because I believed that there was insufficient coverage of this phenomenon. My use of the NewsDesk and Google News Canada databases, however, unexpectedly alerted me to a third event that had both significant coverage and touched on issues relating to migration and taxation—that of Syrian refugees in Canada—which forms the final case study in this Essay.

A. *Lack of Patriotism and a Broken Tax System: Corporate Taxpayers Leaving the United States*

The opening case study concerns U.S. multinational corporations that emigrate or "invert" so that they become a resident in another jurisdiction.<sup>6</sup> The

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5. See Amy Mitchell et al., *Pathways to News*, PEW RES. CTR. (July 1, 2016), <http://www.journalism.org/2016/07/07/pathways-to-news/> [<https://perma.cc/8682-F5HY>] (finding that 18% of U.S. adults get their news on social media).

6. The terms "invert" and "inversion" are used to describe the change that takes place when using a chart to conceptualize how various business entities are organized. Prior to the inversion transaction affecting a U.S.-resident business, a U.S. corporation will sit at the top of the business's

benefit of this kind of migration is that a corporation can permanently avoid paying a relatively high U.S. corporate tax on income earned in non-U.S. jurisdictions.<sup>7</sup> Concerning this phenomenon, there are two academic schools of thought. The first is that U.S. companies are essentially forced into inverting because of competitive pressures from other non-U.S. companies, as well as from former U.S. companies that have inverted, which benefit from a lower tax rate on their non-U.S. income.<sup>8</sup> The second sees such behavior as a logical extension of income stripping—in other words, through income stripping, U.S. companies have been so successful at deferring U.S. tax on what is in substance domestic income that they need to invert to get access to cash that is essentially trapped abroad.<sup>9</sup>

In terms of how popular media has covered inversions, I expected to find a split based on either the political preferences of individual authors or the publications themselves, with those on the left disparaging the practice and those on the right showing it in a positive light. Instead, I found generally objective acknowledgement of the realities companies face, with coverage noting, for example, that corporations weighing the decision of whether to invert “must

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corporate organization chart. The residence of this top corporation, or “TopCo,” has important tax implications because if the TopCo has U.S. residency, then not only will all of the business’s U.S. corporations be subject to U.S. tax, but its foreign subsidiaries will also be subject to U.S. tax. After an inversion transaction, the U.S. TopCo is replaced by a foreign corporation. As a result, the business will be considered a foreign resident, and only the U.S. corporations will be subject to U.S. tax. See Terry LaBant, *U.S. Corporate Tax Inversions Explained*, WEALTHMANAGEMENT (May 24, 2016), <http://www.wealthmanagement.com/high-net-worth/us-corporate-tax-inversions-explained> [https://perma.cc/EX63-9R2D].

7. The combined U.S. federal and state statutory income tax rate is generally estimated at 39%, which is nominally higher than other jurisdictions. See Table of *Statutory Corporate Income Tax Rate*, ORG. FOR ECON. CO-OPERATION & DEV. [OECD], [https://stats.oecd.org/index.aspx?DataSetCode=Table\\_III](https://stats.oecd.org/index.aspx?DataSetCode=Table_III) [https://perma.cc/X3JV-R2FA]. U.S. corporations earning foreign income, however, typically do so through foreign corporations, the active income of which is not subject to U.S. income taxation until repatriated. See I.R.C. §§ 951–965 (2012); see also *How Does the Current System of International Taxation Work?*, TAX POL’Y CTR., <http://www.taxpolicycenter.org/briefing-book/how-does-current-system-international-taxation-work> [https://perma.cc/CUA9-UYZ9]. Therefore, U.S. corporations can defer U.S. taxation on active foreign income, and they can do so indefinitely so long as they choose not to repatriate. Inverting makes such deferral permanent while protecting the company from possible U.S. rule changes that would treat active foreign income like passive income, deeming repatriation to impose a tax.

8. See generally R. Glenn Hubbard, *Tax Policy and International Competitiveness*, 82 TAXES 213 (2004) (explaining how inversions are about taxes, taxes are part of the business cost structure, and businesses regularly seek to streamline their costs and remain competitive).

9. See, e.g., Reuven S. Avi-Yonah & Omri Marian, *Inversions and Competitiveness: Reflections in the Wake of Pfizer/Allergan* 7–8 (Univ. of Mich. Law & Econ. Research Paper Series, Paper No. 15-021, 2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2703576](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2703576) [https://perma.cc/JS9C-4P8V].

balance profits with corporate social responsibility,”<sup>10</sup> and that the decision of whether a company should “pass itself off as foreign and in that way cut its American taxes”<sup>11</sup> was “problematic.”<sup>12</sup>

A split based on political perceptions did emerge, however, when trying to determine the underlying cause of the inversions. On the one hand, those on the left generally blamed corporate greed, generally calling inversions a “scam”<sup>13</sup> and noting, for example, that after Pfizer canceled its merger with Allergan due to the introduction of new anti-inversion rules,<sup>14</sup> “[a]ny pretense to a motivation [for inversion] other than dodging taxes has now been wiped away.”<sup>15</sup> On the other hand, those on the right called inversions a “symptom of something deeper,”<sup>16</sup> and blamed a “broken”<sup>17</sup> and “uncompetitive and overly burdensome U.S. corporate income tax code,”<sup>18</sup> which “puts U.S. companies at an unsustainable competitive disadvantage compared to their global competitors.”<sup>19</sup>

Among centrists, such as former President Obama, there was an acknowledgement of both perspectives, with criticisms of American companies

10. Ameet Sachdev, *Walgreen Considers Headquarters Move: Is Tax Loophole Unpatriotic?*, CHI. TRIB. (June 29, 2014), [http://articles.chicagotribune.com/2014-06-29/business/ct-walgreen-headquarters-taxes-0629-biz-20140629\\_1\\_walgreen-co-tax-loophole-alliance-boots](http://articles.chicagotribune.com/2014-06-29/business/ct-walgreen-headquarters-taxes-0629-biz-20140629_1_walgreen-co-tax-loophole-alliance-boots) [https://perma.cc/6VAV-BM7D].

11. *A Corporate Tax Dodge Gets Harder*, N.Y. TIMES (Apr. 6, 2016), <https://www.nytimes.com/2016/04/07/opinion/a-corporate-tax-dodge-gets-harder.html> [https://perma.cc/3JS7-HXTD].

12. Yevgeniy Feyman, *Tax Inversions Don't Destroy US Jobs*, CNBC (Apr. 6, 2016, 1:10 PM), <http://www.cnbc.com/2016/04/06/tax-inversions-dont-destroy-us-jobs-commentary.html> [https://perma.cc/6C8M-7X9V].

13. Michael Hiltzik, *Corporate Tax Scam Watch: The 'Inversion' Craze*, L.A. TIMES (July 8, 2014, 1:49 PM), <http://www.latimes.com/business/hiltzik/la-fi-mh-corporate-tax-scam-20140708-column.html> [https://perma.cc/GG4T-8634].

14. See *Inversions and Related Transactions*, 81 Fed. Reg. 20, 858 (Apr. 8, 2016) (to be codified at 26 C.F.R. pt. 1), for the text of the new anti-inversion rules.

15. N.Y. TIMES, *supra* note 11; see also Mark Karlin, *Unpatriotic US Corporations Increasingly Move Headquarters Overseas to Decrease Taxes*, TRUTHOUT (June 30, 2014), <http://www.truth-out.org/buzzflash/commentary/us-corporations-increasingly-move-headquarters-overseas-to-decrease-taxes> [https://perma.cc/LVF4-56NE].

16. Feyman, *supra* note 12.

17. Richard Rubin, *U.S. Crackdown on Inversions Renews Calls for Tax Code Overhaul*, WALL ST. J. (Apr. 6, 2016), <https://www.wsj.com/articles/u-s-crackdown-on-inversions-renews-calls-for-tax-code-overhaul-1459982348> [https://perma.cc/TDM2-LK4R].

18. Wayne Winegarden, *Corporate Inversions Are the Symptoms, Bad Tax Policy Is the Disease*, FORBES (Mar. 8, 2016, 12:13 PM), <https://www.forbes.com/sites/econostats/2016/03/08/corporate-inversions-are-the-symptoms-bad-tax-policy-is-the-disease/> [https://perma.cc/5KPJ-87E7].

19. *Id.*

for using an “unpatriotic tax loophole,”<sup>20</sup> while simultaneously recognizing that the U.S. corporate tax system gave a real incentive for multinationals to invert and that “the best way to end this kind of irresponsible behavior is with tax reform that lowers the corporate tax rate, closes wasteful loopholes, [and] simplifies the tax code for everybody.”<sup>21</sup>

*B. Not Paying a Fair Share: Unauthorized Immigrant Workers in the United States*

At the opposite end of the spectrum from U.S. multinationals are unauthorized<sup>22</sup> workers who come to the United States to do jobs that Americans are often unwilling to do.<sup>23</sup> Many Americans believe that these immigrants are not paying their fair share of taxes.<sup>24</sup>

As with my expectations for U.S. multinationals, I assumed that there would be a divergence in reported perspectives, with those news outlets associated with an ideological stance against immigration generally taking up a “not paying their fair share”-type argument, while those outlets more open to immigration advancing the contrary view that, because of state and local taxes, sales taxes, and payroll taxes, most unauthorized workers would be subject to a relatively

20. Zachary R. Mider, *‘Unpatriotic Loophole’ Targeted by Obama Costs \$2 Billion*, BLOOMBERG (Dec. 2, 2014), <https://www.bloomberg.com/news/articles/2014-12-02/-unpatriotic-loophole-targeted-by-obama-costs-2-billion> [<https://perma.cc/VN99-XXD7>] (statement of former President Obama).

21. Barack Obama, President, Remarks by the President on the Economy (Apr. 5, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/04/05/remarks-president-economy-0>.

22. Thanks to Claire LaFont for urging me to prefer the term “unauthorized” over “undocumented,” the general argument being that many immigrants have documents, but they have expired or are inappropriate for the work that they are doing. For more on how the importance of properly defining this vulnerable group, see Jennifer Merolla et al., *“Illegal,” “Undocumented,” or “Unauthorized”: Equivalency Frames, Issue Frames, and Public Opinion on Immigration*, 11 PERSP. ON POL. 789, 793–94 (2013). On the tax contributions of unauthorized immigrants more generally, see Claire LaFont, *Tax Contributions of Unauthorized Immigrants: Leaving More in the Tax System than They Take Out* (Mar. 9, 2017) (unpublished comment) (on file with the Saint Louis University Law Journal and presented at the Sarasohn Conference).

23. For an academic perspective from the Urban Institute, see Maria E. Enchautegui, *Immigrant and Native Workers Compete for Different Low-Skilled Jobs*, URBAN WIRE (Oct. 14, 2015), <http://www.urban.org/urban-wire/immigrant-and-native-workers-compete-different-low-skilled-jobs> [<https://perma.cc/ZN43-GRWP>]. For anecdotal evidence, see Elizabeth Dwoskin, *Why Americans Won’t Do Dirty Jobs*, BLOOMBERG BUSINESSWEEK (Nov. 9, 2011), <https://www.bloomberg.com/news/articles/2011-11-09/why-americans-wont-do-dirty-jobs> [<https://perma.cc/NZT4-Z6YR>].

24. See, e.g., *Most Immigrants Pay Their Fair Share of Taxes*, TEX. POL. PROJECT U. TEX. AUSTIN (Oct. 2012), <https://texaspolitics.utexas.edu/set/most-immigrants-pay-their-fair-share-taxes-october-2012> [<https://perma.cc/GL3A-P55E>] (showing a majority of persons polled “somewhat disagree” or “strongly disagree,” and a plurality of persons polled “strongly agree,” with the statement “most immigrants pay their fair share of taxes”).

high effective rate of tax on income earned in the United States. Instead, I found a generally uniform media response noting that unauthorized immigrants contributed to the public treasury, had a relatively high effective rate of taxation, and, because they were unauthorized, would likely not be able to reap the benefits of paying into the Social Security system through payroll taxes.<sup>25</sup> Of interest was the fact that the tone of many of these reports was one that intended to debunk erroneously held assumptions and popular attitudes.

For example, USA Today wrote that:

It may come as a surprise to some that just like almost everyone else, unauthorized immigrants pay taxes. They pay property taxes and sales taxes, and many also pay taxes on their incomes. In fact, on average, they pay a higher share of their incomes in state and local taxes than taxpayers in the top 1%.<sup>26</sup>

The Miami Herald ran an article with the title *They May Not Be Documented. But They Do Pay Taxes*.<sup>27</sup> News outlets additionally noted that unauthorized immigrants contribute “billions of dollars a year to Social Security, but may never reap any retirement benefits from it,”<sup>28</sup> and “pay their part despite the fact that they are explicitly banned from taxpayer-funded programs such as Social Security, Medicare, welfare, and food stamps.”<sup>29</sup> These statements were corroborated by other sources, which stated that from 1996 to 2003, almost \$50 billion in income tax and more than \$41 billion in Social Security and Medicare taxes were collected from undocumented immigrants.<sup>30</sup> Finally, CNN ran a piece to correct popular misconceptions, entitled *5 Immigration Myths Debunked*, showing that unauthorized immigrants paid taxes and contributed to Social Security.<sup>31</sup>

25. See *infra* notes 26 and 28.

26. Lisa Christensen Gee, *Undocumented Immigrants Pay up on Tax Day: Column*, USA TODAY (Apr. 15, 2016, 12:32 PM), <http://www.usatoday.com/story/opinion/2016/04/15/undocumented-immigrants-taxes-state-local-services-column/83080208/> [https://perma.cc/ZNS8-PR85].

27. Jenny Staletovich, *They May Not Be Documented. But They Do Pay Taxes*, MIAMI HERALD (Feb. 24, 2017, 3:51 PM), <http://www.miamiherald.com/news/local/article134797534.html> [https://perma.cc/RN69-CB86].

28. Alexia Fernández Campbell, *The Truth About Undocumented Immigrants and Taxes*, ATLANTIC (Sept. 12, 2016), <https://www.theatlantic.com/business/archive/2016/09/undocumented-immigrants-and-taxes/499604/> [https://perma.cc/Q9AR-LWFL].

29. Meredith Hoffman, *Undocumented Immigrants Pay Billions in Taxes to Fund Programs They're Banned from Using*, VICE NEWS (Apr. 13, 2015), <https://news.vice.com/article/undocumented-immigrants-pay-billions-in-taxes-to-fund-programs-theyre-banned-from-using> [https://perma.cc/EQ87-JR4Q].

30. Jana Kasperkevic, *Illegal Immigrants: We Do Pay Taxes, and the Government Knows Exactly Who We Are*, BUS. INSIDER (Mar. 16, 2012, 3:55 PM), <http://www.businessinsider.com/how-illegal-immigrants-pay-taxes-2012-3> [https://perma.cc/G86P-Z78H].

31. Maria Santana, *5 Immigration Myths Debunked*, CNN MONEY (Nov. 20, 2014, 7:12 PM), <http://money.cnn.com/2014/11/20/news/economy/immigration-myths> [https://perma.cc/99YG-49D7].



### C. *Costs to Taxpayer: Syrian Refugees in Canada*

Finally, the popular discourse on immigration and taxation has concerned itself with the public cost of taking in refugees. Shortly after his election in November 2015, Prime Minister Justin Trudeau announced that Canada would accept 25,000 Syrian refugees by the end of the year.<sup>32</sup> The refugee intake had wide popular support, with many groups lobbying the Canadian government to take in even more refugees, to which the government responded by allowing another 10,000 Syrian refugees.<sup>33</sup> As of January 2017, Canada has accepted over 40,000 Syrian refugees.<sup>34</sup>

Some Canadians, however, erroneously believed that the refugees were getting more monthly support than Canadian pensioners and made social media posts that supported this theory.<sup>35</sup> The social media posts went viral. As with the case of unauthorized immigrants in the United States, news outlets were quick to correct the misunderstanding. Global News responded the same day to a tweet that contained the erroneous government support figures and ran an article entitled *No, Canada Doesn't Spend More on Refugees than on Pensioners*. The article summed up the situation by opening with: "Maybe you've seen it. Maybe your uncle forwarded it to you or someone you know posted it on Facebook. The meme, infographic, status update, chain email you received is false."<sup>36</sup> Another article, referencing a Facebook post made six days earlier that had been shared 37,000 times, noted that the problem with the post was that the author had

32. *See Canada Meets Target to Resettle 25,000 Syrian Refugees*, GUARDIAN (Feb. 29, 2016), <https://www.theguardian.com/world/2016/mar/01/canada-target-resettle-25000-syrian-refugees> [<https://perma.cc/RL73-JQ22>]; *Canada's Warm Embrace of Refugees*, N.Y. TIMES (Dec. 11, 2015), <https://www.nytimes.com/2015/12/12/opinion/canadas-warm-embrace-of-refugees.html> [<https://perma.cc/3PAJ-NATY>].

33. *Canada to Accept Additional 10,000 Syrian Refugees*, GUARDIAN (Mar. 31, 2016), <https://www.theguardian.com/world/2016/mar/31/canada-10000-syria-refugees-john-mccallum> [<https://perma.cc/H97Q-7WRK>].

34. *#WelcomeRefugees: Key Figures*, GOV'T CAN., <http://www.cic.gc.ca/english/refugees/welcome/milestones.asp> [<https://perma.cc/7GTL-8W5P>] (showing, as of January 29, 2017, 40,081 Syrian refugees arriving in Canada since November 2015).

35. *See, e.g.*, Carole De Lorenzi (@caroledodd), TWITTER (Nov. 19, 2015, 7:30 AM), <https://twitter.com/caroledodd/status/667364399464775680> [<https://perma.cc/S7SM-A8D8>]; Charmaine de Silva, *How True Is It?: Refugees Get More Money for Support than Pensioners*, GLOBAL NEWS (Jan. 4, 2016, 4:40 PM) (Can.), <http://www.cknw.com/2016/01/04/how-true-is-it-refugees-get-more-money-for-support-than-pensioners> [<https://perma.cc/4Z57-4TP2?type=image>] (showing a Facebook posting by Mike Kaufman, written on Dec. 30, 2015 at 7:44 PM).

36. Anna Mehler Paperny, *No, Canada Doesn't Spend More on Refugees than on Pensioners*, GLOBAL NEWS (Nov. 20, 2015, 11:44 AM) (Can.), <http://globalnews.ca/news/2349786/no-canada-doesnt-spend-more-on-refugees-than-pensioners> [<https://perma.cc/EX8D-3UV9>]. Apparently, the Syrian misinformation was a recycled version of a false story that surfaced in 2004 with respect to Somali refugees settling in Canada. *See Refugees vs. Retirees?*, SNOPE (Aug. 11, 2016), <http://www.snopes.com/politics/immigration/refugees.asp> [<https://perma.cc/775D-952H>].

misquoted information, and that the “repercussion can be negative backlash against refugees that is unwarranted.”<sup>37</sup>

Also of interest, and what makes this case study distinct, is that the Canadian government put out a notice on its website that asked: “Do government-assisted refugees get more income support and benefits than Canadian pensioners do?” and answered: “No. Refugees do not get more financial help from the federal government than Canadian pensioners do. A widely circulated email makes this *false claim*.”<sup>38</sup> News outlets quoted directly from<sup>39</sup> or provided a link to<sup>40</sup> the government notice when writing about the controversy. Further, Global News, the organization that had been asked via Twitter about the level of support for Syrian refugees, responded directly with a Tweet linking to its article that debunked the theory, which also contained a link to the government’s notice on the topic.<sup>41</sup>

## II. ANALYSIS AND APPLICATION

### A. Overview

The three case studies that I reviewed all show some kind of controversy at the intersection of taxation and migration. The media and government responses in each of them were different. On the issue of corporate inversions, we see a traditional response. Authors and media outlets took positions on the issue according to their politics, and the government commented on what they thought was the best solution to the issue. Corporate inversions can be distinguished from the other two case studies in that inversion touches on emigration, as opposed to immigration. In other words, in the context of emigration, whether individual or corporate, there is no threat of the “other” entering one’s homeland. Although a corporate inversion may represent an exodus of national wealth and pride, there is a distinct visceral or intuitive connection (even if it is erroneous

37. Silva, *supra* note 35.

38. *Do Government-Assisted Refugees Get More Income Support and Benefits than Canadian Pensioners Do?*, GOV’T CAN., <http://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=105&top=11> [<https://perma.cc/CD28-PLZJ?type=image>].

39. *See, e.g.*, Susana Mas, *Do Government-Assisted Refugees Receive More Money for Food than Canadians on Welfare?*, CBC NEWS (Jan. 7, 2016, 4:25 PM) (Can.), <http://www.cbc.ca/news/politics/do-government-assisted-refugees-receive-more-money-for-food-than-canadians-on-welfare-1.3230503> [<https://perma.cc/DC9N-UBP5>]; Sonja Puzic, *Fact Check: Do Refugees Get More Financial Help than Canadian Pensioners?*, CTV NEWS (Dec. 1, 2015, 1:53 PM) (Can.), <http://www.ctvnews.ca/politics/fact-check-do-refugees-get-more-financial-help-than-canadian-pensioners-1.2670735> [<https://perma.cc/T998-564H>].

40. *See, e.g.*, Paperny, *supra* note 36.

41. *See* Carole De Lorenzi (@caroledodd), TWITTER (Nov. 19, 2015, 7:37 AM), <https://twitter.com/caroledodd/status/667365973356343296> [<https://perma.cc/U9Y8-HEJ8>]; Global News (@globalnews), TWITTER (Nov. 19, 2016, 9:48 AM), <https://twitter.com/globalnews/status/66739086656589824> [<https://perma.cc/KMW9-G2PN>]; Paperny, *supra* note 36.

or debatable) between an individual coming to one's country and obtaining the benefits that it offers, potentially without contributing a fair share, that is not present in the case of a corporate entity leaving.<sup>42</sup>

My second case study on the tax treatment of unauthorized immigrants demonstrated unexpectedly positive practices. While I had assumed that the nature of coverage of this group would be largely dictated by political preferences, as with the coverage of corporate inversions, I instead found a general trend of media wanting to accurately represent the contributions to the public treasury made by this marginalized and vulnerable group.<sup>43</sup>

This case study is potentially indicative of how media portrayals can influence law. With respect to taxation, researchers have shown that the social context of taxpayer behavior is relevant. For example, the more taxpayers are perceived to be honest, the more likely people are to pay taxes,<sup>44</sup> and that exposure to and promotion of compliance norms help maintain compliance levels.<sup>45</sup> Similarly, the perception of a tax system's fairness is of utmost importance for tax compliance, because "[i]f a taxpayer feels that she/he is in a sort of unfair contract she/he will probably be less likely to comply."<sup>46</sup> Therefore, to the extent that the example of the tax treatment of unauthorized immigrants accurately improves the perception of the tax system, and shows that it is working fairly and efficiently, the resulting improved public perception of tax law can facilitate taxpayer compliance<sup>47</sup>—or, at the very least, not undermine it.

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42. See, e.g., Henry Ordower, *Retreat from Progressive Taxation in the Swedish Welfare State: Does Immigration Matter?* 1, 3–5, 12 (St. Louis Univ. Legal Studies Research, Working Paper No. 18, 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2468813](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2468813) [<https://perma.cc/P6PZ-TW55>]; see also Henry Ordower, Professor of Law, Saint Louis Univ. Sch. of Law, "Retreat from Progressive Taxation in the Swedish Welfare State" Presentation at McGill Tax Justice and Human Rights Symposium (June 20, 2014), <https://www.youtube.com/watch?v=Q3myXDBsrGs>. Both of these sources posit a link between diminishing ethnic homogeneity and reduced tax progressivity in Sweden, as many Swedes view the immigrant population as the "other."

43. See *supra* notes 26–31.

44. Bruno S. Frey & Benno Torgler, *Tax Morale and Conditional Cooperation*, 35 J. COMP. ECON. 136, 137, 142 (2007). In a similar vein, regarding how public perception of institutions affects compliance, Torgler has also shown a correlation between tax morale, with a focus on trust in government, and the size of the shadow economy in Latin American countries. Benno Torgler, *Tax Morale in Latin America*, 122 PUB. CHOICE 133, 133, 135–36, 141, 153 (2005). Torgler has additionally posited that greater engagement with democratic institutions improves tax morale (i.e., trust in government) and thus improves compliance. Benno Torgler, *Tax Morale and Direct Democracy*, 21 EUR. J. POL. ECON. 525, 525–26, 530 (2005) (showing a link between direct democracy and taxpayer compliance).

45. See Leandra Lederman, *The Interplay Between Norms and Enforcement in Tax Compliance*, 64 OHIO ST. L.J. 1453, 1462–63 (2003).

46. Torgler, *Latin America*, *supra* note 44, at 153.

47. Martinez, *supra* note 1, at 550.

The third case study of Syrian refugees in Canada, however, offers what I think is the most interesting example of the power that governments could use to positively affect social perceptions in otherwise politically contentious situations. In this case, the government took a proactive step in countering an erroneous perception about what taxpayer-financed benefits refugees were receiving.<sup>48</sup>

I think that the Canadian government's approach to this matter has many laudable qualities. First, the specificity of the correction is helpful to the extent that it addresses the source of the popular misconception by referring to the email as its root.<sup>49</sup> There is academic support for the notion that early intervention to address negative racial views is preferred.<sup>50</sup> Second, having the government make an official statement, as opposed to an individual doing so, is also helpful because the action carries the weight and imprimatur of an institution (as opposed to an individual actor who may be perceived as acting for personal political gain). Finally, although the Canadian government's release is undated, the fact that most news coverage of the issue mentions the government statement suggests that the release was timely and that it spurred, or at least supported, the media reports.

Any critical thinking about the Canadian government's behavior, however, must also consider the contextual political benefits and imperatives of such behavior. Prior to being elected, Prime Minister Justin Trudeau's center-left Liberal Party of Canada was initially trailing both the incumbent right-wing Conservative and the left-leaning New Democratic parties in the polls.<sup>51</sup> The Liberals, however, vaulted to first place and won the 2015 election by outflanking the New Democrats on the left in many policy areas.<sup>52</sup> Post-election, by speaking up against a false-media campaign, which appeared to have as its goal the fomentation of intolerance, Justin Trudeau's government could add to its credibility among the left-leaning voters who had supported them, and thus satisfy an important part of the government's electoral base. Similarly, and perhaps more importantly, the specific response to the viral social media post

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48. See GOV'T CAN., *supra* note 38.

49. *Id.*

50. Ariel Porat, Changing People's Preferences by the State and the Law 15–16 (Feb. 17, 2017) (unpublished manuscript) (available at [http://scholarship.law.berkeley.edu/law\\_econ/Spring2017/Schedule/8/](http://scholarship.law.berkeley.edu/law_econ/Spring2017/Schedule/8/)) (explaining how early intervention to address the risk of “poor” preferences, such as racist preferences, is beneficial both in terms of efficiency and for overall “cost” to the preference holder).

51. *Justin Trudeau's Liberals Lagging in Third Place: Poll*, METRO NEWS (July 10, 2015) (Can.), <http://www.metronews.ca/news/canada/2015/07/10/justin-trudeaus-liberals-lagging-in-third-place-poll.html> [<https://perma.cc/BQA6-HWKM>].

52. Michael Den Tandt, *Justin Trudeau Swings for the Fences by Continuing to Outflank NDP on the Left*, NAT'L POST (Feb. 19, 2016, 12:02 PM) (Can.), <http://news.nationalpost.com/news/canada/canadian-politics/michael-den-tandt-justin-trudeau-swings-for-the-fences-by-continuing-to-outflank-ndp-on-the-left> [<https://perma.cc/3XTZ-9VWQ?type=image>].

and email was arguably necessary as the Canadian intake of Syrian refugees was a key point of the Trudeau government's brand<sup>53</sup> and was also directly opposed to that of the former government.<sup>54</sup> Further, the lead-up to the 2015 election was marked by an appeal to nativist politics by the incumbent Conservative government, the most obvious example of which was the passing of legislation entitled the Zero Tolerance for Barbaric Cultural Practices Act.<sup>55</sup> This legislation called attention to crimes, already prohibited by general criminal law, that were often associated in popular discourse with persons from the Middle East and the Indian subcontinent such as forced marriage or defenses related to honor killings. During the election season, the incumbent Conservative government additionally promised to implement a telephone hotline where persons could report those suspected of such acts,<sup>56</sup> despite the fact that the police or 911 emergency services were already available to deal with these concerns. Thus, to the extent that the 2015 election was a referendum on nativist politics, the Trudeau government's policy reversal on the issue of Syrian refugees was a way to reaffirm its commitment to a tolerant and pluralist society. Accordingly, an attempt to recast the intake of Syrian refugees not as a humanitarian act but rather as a policy that disadvantaged "regular" Canadians was a direct attack on the newly elected government's brand, and it was therefore politically imperative that it be debunked.

#### *B. Recommendation: More Direct Use of Social Media*

In the context of social media posts that spread erroneous information to the wider public<sup>57</sup> or attempt to call out the government<sup>58</sup> (as opposed to conversations without a public dimension, such as those between two people or among a small group of friends), I think that—given the right circumstances with respect to the public nature of the conversation, the importance of the issue, and the egregiousness of the misrepresentation—it would be appropriate for

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53. See, e.g., LIBERAL PARTY OF CAN., REAL CHANGE: A NEW PLAN FOR A STRONG MIDDLE CLASS 64–65 (2015), <https://www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf> [<https://perma.cc/5RB6-VLE5>].

54. See, e.g., Lina Dib, "Targeted for Extermination": Harper Says Prioritizing Christians and Religious Minority Refugees Isn't Discriminatory, NAT'L POST (Oct. 10, 2015) (Can.), <http://news.nationalpost.com/news/canada/canadian-politics/targeted-for-extermiation-harper-says-prioritizing-christian-and-religious-minority-refugees-isnt-discriminatory> [<https://perma.cc/5MKU-NZJ6?type=image>]; Harper Shut Canada's Door During Syria's Agony: Editorial, TORONTO STAR (Oct. 11, 2015), <https://www.thestar.com/opinion/editorials/2015/10/11/harper-shut-canadas-door-during-syrias-agony-editorial.html> [<https://perma.cc/XL7R-YHUY>];

55. Zero Tolerance for Barbaric Cultural Practices Act, S.C. 2015, c 29 (Can.).

56. Lucas Powers, *Conservatives Pledge Funds, Tip Line to Combat 'Barbaric Cultural Practices'*, CBC NEWS (Oct. 2, 2015, 7:47 PM) (Can.), <http://www.cbc.ca/news/politics/canada-election-2015-barbaric-cultural-practices-law-1.3254118> [<https://perma.cc/LAA5-CF47>].

57. See, e.g., Silva, *supra* note 35 and accompanying text.

58. See, e.g., De Lorenzi, *supra* note 35.

governments to respond directly via social media in order to quell false rumors. This, admittedly, could go wrong very quickly. Without the utmost professionalism and sensitivity, such a response could be perceived as the state directly attacking an individual. The political consequences of such an occurrence are fairly easy to imagine. More important is the specter of the state invading a personal sphere. Social media is, in many instances, a forum for gossip-like information. Do we really want the weight and power of the state acting as oversight on those conversations? We have, with President Trump, a head of state who arguably uses Twitter in a manner similar to the one that I am advocating, which has resulted in a polarization.

But perhaps the correct analogue to my recommendation would not be President Trump, who often tweets from his personal and official presidential account in an emotional and combative manner, but would rather be a fact checker who checks for egregious misrepresentations—especially those that threaten a vulnerable group. Such a use, I think, balances the concerns regarding an overbearing state with a recognition of the importance of the media in shaping law itself.<sup>59</sup>

Alternatively, a savvy government could avoid the appearance of attacking a particular person by employing the mechanisms of social media as content-distribution system rather than only a platform for dialogue. To use an informal term, government could effectively become a “troll” facilitator by simply posting, in a neutral manner, contravening facts in the hope that other social media users will repost the contravening facts on those entries that promote false narratives, and will thus further the government’s corrective message.

Within the context of this Essay’s case study on Syrian refugees, the Canadian government seems to have used social media in a content-distribution manner similar to the one described in the previous paragraph. When a Twitter user called on Global News to respond to the false claims of government spending,<sup>60</sup> Global responded directly with a link to its own article,<sup>61</sup> which in turn provided a link to the Canadian government’s statement on Syrian refugees.<sup>62</sup> Interestingly, I have not been able to find a Government of Canada social media post linking to the government’s statement or otherwise rebutting the claim that government-assisted refugees get more income support and benefits than Canadian pensioners do, despite the fact that “Immigration, Refugees & Citizenship Canada” has a well-maintained and active Twitter

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59. Lawrence M. Friedman, *Through a Glass Darkly: Law, Culture, and the Media*, 62 DEPAUL L. REV. 571, 584 (2013) (“Every political figure—and every interest group—makes its case by and through the media. . . . Campaigns, like those against drunk driving, smoking, and saturated fats, lead to changes in public opinion and, very often, to changes in the law.”).

60. De Lorenzi, *supra* note 41.

61. Global News, *supra* note 41.

62. Paperny, *supra* note 36.

account with 142,000 followers.<sup>63</sup> This suggests that the Canadian government either made a strategic decision not to link to the notice via social media, or simply lacked the coordination to allow the official government statement and its social media activities act in concert.

In the U.S. context, @IRSNews, which provides “IRS news and guidance for the public, the press and practitioners,” has over 90,000 Twitter followers.<sup>64</sup> Similarly, @USCIS, the “Official Twitter Channel of the U.S. Citizenship and Immigration Services,” has 109,000 followers.<sup>65</sup> These numbers arguably show that the infrastructure and audience are already in place for the use of a content-distributor/troll-facilitator strategy. Thus, if direct government intervention through social media is not practical, at the very least governments can change their social media habits so that they provide accurate information in a manner that can easily be used by others.

### III. COMMENTARY AND RESPONSE TO POTENTIAL CRITICISM

Public confidence in democratic institutions is arguably declining.<sup>66</sup> At the same time, the current multitude of information sources combined with the ability to consume only media that fits one’s worldview means that a person’s conception of the state, political actors and institutions, and law may be easily manipulated by misinformation. A tenet in much American legal education is that there is no such thing as “the law.”<sup>67</sup> Today, there additionally seems to be no such thing as the truth.<sup>68</sup> I would add that this seems to become truer the more contentious the issue.

How should lawmakers respond? Scholars have noted that public opinion is important and influences legal structures,<sup>69</sup> and that law, in order to maintain

63. IRCC (@CitImmCanada), TWITTER, <https://twitter.com/citimcanada> [<https://perma.cc/3A8G-2929>].

64. IRS (@IRSnews), TWITTER, <https://twitter.com/IRSnews> [<https://perma.cc/2GP3-BUQE>]. The IRS also maintains a separate account that provides “news and guidance for tax professionals,” which, as of Oct. 2017, has 47,700 followers. See IRS (@IRStaxpros), TWITTER, <https://twitter.com/IRStaxpros> [<https://perma.cc/ZP6H-CVUE>].

65. USCIS (@USCIS), TWITTER, <https://twitter.com/USCIS> [<https://perma.cc/STY4-KD BY>].

66. Christopher Carman, *The Process is the Reality: Perceptions of Procedural Fairness and Participatory Democracy*, 58 POL. STUD. 731, 732 (2010) (“Public confidence and support for democratic institutions is declining across established Western democracies . . .”).

67. Liam Murphy, *Better to See Law This Way*, 83 N.Y.U. L. REV. 1088, 1106 (2008).

68. See, e.g., Jane Suiter, *Post-Truth Politics*, 7 POL. INSIGHT 25, 25 (2016); William Davies, *The Age of Post-Truth Politics*, N.Y. TIMES (Aug. 24, 2016), <https://www.nytimes.com/2016/08/24/opinion/campaign-stops/the-age-of-post-truth-politics.html> [<https://perma.cc/KM2P-CUMQ>].

69. Friedman, *supra* note 59, at 571–72 (“[C]ulture interacts with the legal structure in crucial ways because of the importance of something we can call public opinion, a critical feature in societies that are (relatively) democratic.”).

legitimacy, must “respect the ‘instincts’ of its subjects.”<sup>70</sup> The U.S. National Taxpayer Advocate, Nina E. Olson, characterizes taxation as a gateway for government interactions.<sup>71</sup> In terms of the public perception of the tax system, Ms. Olson writes that it is “in the Government’s self-interest to facilitate voluntary compliance, because voluntary compliance is far more cost effective than enforced compliance.”<sup>72</sup> Ms. Olson further suggests using insights from behavioral science to help improve tax compliance, noting that economic deterrence is “not the IRS’s only lever” and that softer approaches, including better explaining the rules to taxpayers, can improve both the social norms and results related to compliance with less cost than traditional punitive enforcement.<sup>73</sup> These recommendations would seem to acknowledge that rules and power alone are not enough to influence a community, but that successful lawmaking must influence social norms to attain legitimacy.<sup>74</sup>

70. Martinez, *supra* note 1, at 546 (building on Oliver Wendell Holmes’s explanation of adverse possession in *The Path of the Law*, 10 HARV. L. REV. 457, 477 (1897)).

71. See Nina E. Olson, *Taxpayer Rights, Customer Service, and Compliance: A Three-Legged Stool*, 51 U. KAN. L. REV. 1239, 1242 (2003) (“Taxpayers’ relationship with the tax system—their social contract with the tax system—infects all other government relationship and interaction.”); see also Andrew C. Gould & Peter J. Baker, *Democracy and Taxation*, 5 ANN. REV. POL. SCI. 87, 105 (2002) (“Democratic institutions affect taxation at every stage of the policy-making process.”).

72. *Financial Services and General Government Appropriations for Fiscal Year 2016: Hearing Before the Subcomm. of the Comm. on Appropriations*, 114th Cong. 95 (2015) (prepared statement of Nina E. Olson, National Taxpayer Advocate). Ms. Olson continued by noting:

For context, more than 98 percent of all tax revenue collected by the Government is paid voluntarily and timely. Less than 2 percent is collected through enforcement action. If the IRS were to collect 10 percent less in enforcement revenue, tax revenue would decline by less than \$6 billion. If voluntary tax payment were to drop by 10 percent, tax revenue would decline by more than \$300 billion.

*Id.* Note, however, that some scholars posit that the link between voluntary compliance and social or behavioural norms is perhaps overstated, because the bulk of this compliance results from withholding and information reporting. See Lederman, *supra* note 45, at 1468 & n.77.

73. 1 NAT’L TAXPAYER ADVOCATE, ANNUAL REPORT TO CONGRESS 50 (2016); see also Martina Hartner et al., *Procedural Fairness and Tax Compliance*, 38 ECON. ANALYSIS & POL’Y 137, 150 (2008) (looking at the move toward cooperative and persuasive approaches to tax compliance, with a focus on taxpayer attitudes and aspects of procedural fairness or justice influencing tax compliance). *But see* Leandra Lederman, *Tax Compliance and the Reformed IRS*, 51 U. KAN. L. REV. 971, 1010–11 (2003) (showing that, while procedural fairness does seem to have some effect on taxpayer compliance, behaviors that aimed to increase taxpayer morale, such as a softer tone in notices and improved service to taxpayers, did not have a noticeable effect on compliance).

74. Terence C. Halliday & Bruce G. Carruthers, *The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes*, 112 AM. J. SOC. 1135, 1140–41 (2007).



If we accept the social<sup>75</sup> and rhetorical<sup>76</sup> aspects of law, then we should be very concerned with how law is perceived. Accordingly, I recommend that governments should take a more active role in countering blatant misconceptions or misunderstandings of their laws. I have argued previously that where there is academic controversy and perceived unfairness, such as in the context of the U.S. practice of citizenship-based taxation, it would be helpful if government were more forthcoming with its rationale for maintaining such practices.<sup>77</sup> The underlying reasoning is that such explanations could improve the political and democratic discourse by allowing citizens to better understand a government's actions. In this Essay, I am presenting a variation on that theme: If there is a gross misunderstanding, a conspiracy theory, or a false proposition being proffered to the public and it is gaining (or has the potential to gain) widespread acceptance, the government should be active in debunking that claim. And, as a sub-recommendation, when governments do engage in debunking misconceptions, they should do so in a manner that recognizes the importance of nontraditional forms of disseminating news, including social media.

In practice, we know that most government agencies have a presence on Twitter, Facebook, and other similar sites, but I would argue that these agencies use their accounts in a manner that evokes a barely noticed radio playing in the background. As examples, consider some representative tweets from March 2016 from national agencies dealing with taxation, immigration, and refugees:

@IRSNews writes “Need answers to #tax questions? #AvoidtheRush searching by topic or keyword with the #IRS Tax Map online”<sup>78</sup> and “The easiest way to avoid a #tax refund delay is by filing electronically. . . . #IRSTaxTip”,<sup>79</sup>

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75. THOMAS HOBBS, *LEVIATHAN* 90 (Richard Tuck ed., Cambridge Univ. Press 1996) (1651) (arguing that law only exists within societies).

Where there is no common Power, there is no Law: where no Law, no Injustice. . . . Justice, and Injustice are none of the Faculties neither of the Body, nor Mind. If they were, they might be in a man that were alone in the world. . . . They are Qualities, that relate to men in Society, not in Solitude.

*Id.*

76. James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 684 (1985) (“[L]aw is most usefully seen . . . as a branch of rhetoric . . . the central art by which community and culture are established, maintained, and transformed . . . [which] has justice as its ultimate subject.”).

77. Montano Cabezas, *Reasons for Citizenship-Based Taxation?*, 121 PA. ST. L. REV. 101, 141–42 (2016).

78. IRS (@IRSNews), TWITTER (Mar. 12, 2017, 9:30 AM), <https://twitter.com/IRSNews/status/840963218046611456> [<https://perma.cc/3MRH-XX45>].

79. IRS (@IRSNews), TWITTER (Mar. 12, 2017, 7:15 AM), <https://twitter.com/IRSNews/status/840929167499767808> [<https://perma.cc/D5DC-JEQ6>].

@USCIS writes “Daylight Savings Time starts today. Don’t be left in the dark – learn about the naturalization process”<sup>80</sup> or “The Wrong Help Can Hurt: watch this video to learn more about being aware beware of immigration #scams.”<sup>81</sup>

There are, however, more effective uses of this medium, and it makes sense for governments to explore the possibilities. For instance, while agencies typically provide seasonally relevant information, they almost never interact with individual users beyond a simple “like” or retweet. Governments should recognize that what distinguishes social media from traditional formats is the potential for interaction among users, and that the most powerful forms of social media communication are through active interactions and not mere passive dissemination of information. Accordingly, it would be helpful if, when appropriate (i.e., in a public conversation, concerning an important issue, and where there has been egregious misrepresentation), government engaged directly with social media users.

A potential problem with my recommendation that law and policies be clarified in the popular sphere is that such clarifications could easily turn into propaganda. During the 2003 Iraq War, the Bush administration was apparently “nearly as preoccupied with how the combat was portrayed as with the combat itself.”<sup>82</sup> Currently, the Trump administration seems to have a tendentious relationship with facts and often appears to comment on laws and policies in a way that confuses, rather than establishes, the truth. As I mentioned above, President Trump’s use of Twitter arguably fits precisely within my recommendations of how the government ought to clarify its policies. There is a danger that increasing the voice of government in public discourse will do little more than serve the partisan and ideological biases of those who hold the passwords of official government accounts. This critique, however, applies to all forms of government communication in public discourse.

That said, I do acknowledge that it is virtually impossible for government actions to be free from political considerations. For example, with respect to Justin Trudeau’s government’s response to misinformation concerning Syrian refugees, the decision for the government to directly address this occurrence was almost certainly because the Syrian refugee program was intimately linked with the Trudeau administration’s brand.

Yet there is value in communicating a rightful defense of the government, especially when doing so contributes to a necessary level of trust in the integrity of a regulatory regime that affects all members of society, regardless of their

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80. U.S. Citizenship and Immigration Services (@USCIS), TWITTER (Mar. 12, 2017, 8:01 AM), <https://twitter.com/USCIS/status/840940790998282240> [<https://perma.cc/GYR7-95U5>].

81. U.S. Citizenship and Immigration Services (@USCIS), TWITTER (Mar. 10, 2017, 12:01 PM), <https://twitter.com/USCIS/status/840291566107406336> [<https://perma.cc/7UHW-7QE9>].

82. Ronald R. Krebs & Patrick Thaddeus Jackson, *Twisting Tongues and Twisting Arms: The Power of Political Rhetoric*, 13 EUR. J. INT’L REL. 35, 35 (2007).

political preferences. All taxpayers have an interest in ensuring that their government's laws and policies are accurately represented. Even if one does not agree with those policies, I argue that it is nonetheless valuable for a government to accurately state its position. After all, as was shown during the 2016 U.S. presidential election cycle, it becomes very difficult to debate issues when there is no consensus about the underlying facts.

The one weakness I will readily admit is that my recommendation assumes that governments have an interest in reporting accurate facts with respect to their laws and policies. This may not always be true. In the past, traditional media took on the role of ensuring that laws and policies were accurately represented to the public. But the increasing ability of people to choose their media exposure according to niche preferences calls into question the ability of traditional media outlets to perform such a function.<sup>83</sup> While this state of affairs will likely reduce the ability of the press to check government power, and recognizing that this may make it easier for lawmakers to abuse power, I nonetheless think that it is reasonable to ask legislators to plainly explain their laws and policies to their citizens, and to do so in a manner that is truthful. The essence of my argument was captured by the late Senator Daniel Patrick Moynihan, who is attributed with saying “[e]veryone is entitled to his own opinion but not his own facts.”<sup>84</sup>

#### CONCLUSION

In this Essay, I have used case studies of how the media portrays issues at the intersection of taxation and migration to survey popular conceptions in this area. Where popular conceptions are grossly erroneous, I have recommended that government intervene to correct the misunderstanding. I have also argued that, because of the increasing ability of individuals to consume news media that speaks only to their political preferences, government can no longer rely on traditional media to make such corrections on its behalf and ought to use social media more actively to that end, including—where appropriate—directly intervening in grossly erroneous public social media conversations.

An easy criticism of this proposal is that such actions could easily turn into state propaganda. Recognizing this potential, I nonetheless argue that such a basic function, that of ensuring that law and policies are presented accurately to the electorate, is essential to the democratic process. If we cannot expect at least this from our governments, the prospect of a vibrant democracy grows dim.

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83. See, e.g., Cass R. Sunstein, *How Facebook Makes Us Dumber*, BLOOMBERG (Jan. 8, 2016), <https://www.bloomberg.com/view/articles/2016-01-08/how-facebook-makes-us-dumber> [<https://perma.cc/FJS3-SZ7T>]; Walter Quattrociocchi, Antonio Scala & Cass R. Sunstein, *Echo Chambers on Facebook 14* (June 2016) (unpublished manuscript) (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2795110](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795110)) [<https://perma.cc/UZ83-Z677>]).

84. Steven R. Wiseman, *Introduction* to DANIEL PATRICK MOYNIHAN, A PORTRAIT IN LETTERS OF AN AMERICAN VISIONARY 2 (Steven R. Wiseman ed., 2010).