



Volume 64

Issue 2 *The 2014 Randolph W. Thrower
Symposium – American Dispute Resolution in
2020: The Death of Group Vindication and the
Law?*

Article 8

2014

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Recommended Citation

Robert A. Schapiro, *Randolph W. Thrower: Serving the Public with Principle, Passion, and Poetry*, 64 Emory L. J. 277 (2014).

Available at: <https://scholarlycommons.law.emory.edu/elj/vol64/iss2/8>

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RANDOLPH W. THROWER: SERVING THE PUBLIC WITH PRINCIPLE, PASSION, AND POETRY

*Robert A. Schapiro**

Randolph W. Thrower was a most distinguished alumnus and role model. He was a man of high ideals, who served the public with principle, passion, and poetry. His illustrious career always will remain an inspiration for Emory lawyers—indeed all lawyers—current and future.

In the pages of history, Randolph Thrower will be best remembered for speaking truth to power, for standing up for principle by resisting the corrupt commands of President Richard Nixon and the President's advisers. Thrower refused to allow the Administration to use the Internal Revenue Service as a tool of political retribution. The Watergate scandal revealed many people, including many lawyers, who began with good intentions, but ended up seduced by power. They eventually collaborated, rather than resting on principle. Unlike them, Randolph Thrower insisted on doing the right thing, even though it meant losing his job as Commissioner of the Internal Revenue Service.¹

Through his act of heroic defiance, Thrower fought back against political corruption. Thrower's act of moral courage also had a romantic element. He was protecting not only principles of ethical governance, but more specifically, an object that he revered and praised—the tax system of the United States.

In safeguarding the tax system, Thrower shielded a special treasure. He rhapsodized about the tax system with unusual passion and affection:

“Rise up, my love, my fair one, and come away.
For, lo! the winter is past, the rain is over and gone;
The flower appears on the earth;
The time of the singing of the birds is come,
And the voice of the turtle is heard in our land.”

It is that time of year now—and we are hearing, not only the voice of the turtle in our land, but also the voice of the taxpayer, as we

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¹ Matt Schudel, *IRS Chief Stood Up to Nixon White House*, WASH. POST, Mar. 19, 2014, at B7, available at http://www.washingtonpost.com/national/anderson-w-thrower-defiant-irs-chief-under-nixon-dies-at-100/2014/03/19/069e414e-af96-11e3-9627-c65021d6d572_story.html.

experience the usual springtime participation by our citizen-taxpayers in government.²

It is an uncommon person who can wax poetic about the tax system of the United States. Randolph Thrower was such an uncommon person. The reasons for his deep attachment to the tax system reveal a great deal about why he was such an extraordinary lawyer, public servant, and human being. Thrower understood the tax system as a testament to the character of the American people and as a powerful instrument of social policy.

When others applaud the tax system, they generally adopt a more utilitarian perspective. United States Supreme Court Justice Oliver Wendell Holmes famously asserted, “Taxes are what we pay for civilized society.”³ Holmes and other commentators embrace a transactional approach. Taxes represent money well spent on services much needed.⁴

To Randolph Thrower, it was not about the money. To him, the tax system was not a necessary evil, a prosaic way to fund the necessities of government. Rather, he appreciated the tax system as a demonstration of the sterling character of the nation.

Randolph Thrower emphasized the ways in which the tax system testified to the high quality of American democracy. He believed that a tax system offered an important barometer of the health of a nation. He argued that “the quality of a democratic nation and of the people’s regard and support for government can be measured by an examination of its revenue system.”⁵ On that scale, the people of the United States scored very well. Thrower wrote, “Our national character, as measured by reference to citizen participation in our revenue system, tests very high.”⁶

Thrower underscored the inherent nobility of the tax system, not just its instrumental benefits. Thrower stressed with pride that the revenue system in

² Randolph W. Thrower, *America’s Tax System, a National Asset*, 23 TAX EXECUTIVE 569, 571 (1970) (quoting *Song of Solomon* 2:10–12).

³ *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

⁴ Even for those who express support for the tax system on broader grounds, the transactional approach remains. For example, Arthur Godfrey offered praise, qualified in economic terms: “I am proud to be paying taxes in the United States. The only thing is—I could be just as proud for half the money.” *Tax Quotes*, IRS <http://www.irs.gov/uac/Tax-Quotes> (last visited Dec. 13, 2014).

⁵ Randolph W. Thrower, Herman Goldman Memorial Lecture: Taxation—A Test of National Character (May 21, 1975), in 31 REC. ASS’N B. CITY N.Y. 13, 13 (1976).

⁶ *Id.* at 15.

the United States rested on self-reporting and individual compliance. The high degree of taxpayer participation and integrity rendered the system the envy of the world.⁷ To be sure, the laudable behavior of American taxpayers did offer practical benefits. The strong level of voluntary assessment and compliance made revenue collection extremely efficient. Thrower proudly observed that per dollar of revenue collected, the cost of operating the Internal Revenue System was the lowest of any revenue collection agency in the world.⁸

Thrower also demonstrated deep commitment to the concept of the tax system as a vital instrument of public policy. It was under the leadership of Commissioner Thrower that the government reversed its longstanding policy and decided to deny tax exemptions to racially discriminatory private schools. In reaching this conclusion, the government relied on a notion of evolving statutory meaning. The government concluded that the statutory definition of charity followed the meaning under the English Statute of Charitable Uses, enacted in 1601.⁹ Under the guidance of that statute, the understanding of “charitable” had evolved over time. Thrower explained, “From century to century what was charitable had to be determined by reference to current standards.”¹⁰ The government thus rejected a static, textualist understanding of the statute, in favor of a dynamic and purposive conception. The charitable exemption was designed to serve a particular purpose, to advance public policy, and the particular application of the exemption would evolve over time with developing understandings of social values. With Thrower’s guidance the government interpreted the statute with less emphasis on the literal language and more focus on the implied meaning. Thrower offered a deeper, more nuanced, more poetic construction of the statute. The tax system could not be understood to subsidize a practice, racial discrimination, that was completely antithetical to contemporary American values.

⁷ See *id.* at 14.

⁸ See *id.* Thrower offered this observation some 40 years ago. The situation remains essentially the same today. A recent study by the OECD found that out of more than 50 countries reviewed, the United States had the seventh most efficient revenue system. See OECD, TAX ADMINISTRATION 2013: COMPARATIVE INFORMATION ON OECD AND OTHER ADVANCED AND EMERGING ECONOMIES 180 tbl.5.3 (2013), http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/tax-administration-2013_9789264200814-en. The United States also ranks as one the most efficient countries in collecting taxes, considering the cost of collection as a percentage of gross domestic product. See *id.* at 181 tbl.5.4.

⁹ See *Administration’s Change in Federal Policy Regarding the Tax Status of Racially Discriminatory Private Schools: Hearing Before the H. Comm. on Ways and Means*, 97th Cong. 84 (1982) (statement of Randolph W. Thrower, Former Comm’r, Internal Revenue Service), reprinted in 35 TAX LAW. 701, 703 (1982).

¹⁰ *Id.* at 704.

A decade later, the Reagan Administration attempted to change course, arguing that the language of the statute did not permit the denial of tax exemptions to racially discriminatory schools. The Reagan Administration's argument relied heavily on a textualist approach to statutory interpretation, rejecting broader appeals to purpose, public policy, or historical evolution. The United States Supreme Court decisively rejected the Reagan Administration's textualism and endorsed Thrower's position.¹¹ Purpose, public policy, and poetry prevailed.

To Randolph Thrower, the tax code, and the law in general, constituted a rational enterprise that, when properly understood, served human needs. The tax code had to be interpreted in light of its noble purposes so it could do its part to fight racial segregation and advance other laudable public goals. The widespread compliance with the code in the United States demonstrated the broad support of these ideals.

From this perspective, corruption must be resisted in any area, but especially with regard to the tax system, a shining star in the firmament of American democracy. When the common person endorsed and reinforced the integrity of the system, could the chief magistrate be allowed to abuse it? When the tax system could be a powerful tool to advance public values, could it be allowed instead to undermine social ideals? In defending the integrity of the tax system, Thrower was safeguarding a central pillar of American society.

Thrower's strong character and unerring moral compass meant he would defend the tax system, even in the face of powerful political pressure. His vision and insight allowed him to see the poetry in this most prosaic area of the law, to understand the special value of the tax system that he defended with great ardor. He understood that it was a system deserving of the utmost respect, devotion, protection, and poetic attachment. That commitment to principle, expressed with passion and poetry, will always form part of his enduring legacy.

¹¹ See *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983). Only then-Justice Rehnquist dissented.