

# Chapter 2

## Duty to Whom?

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*There is no moral obligation to pay a homeless person who does an inferior job of washing your windshield without your permission while you are stuck at a stop light. Why should there be a moral obligation to pay government for providing some inferior service that you do not want and did not ask for?*

(McGee, 2012).

### Introduction

If we have a duty to pay taxes, to whom do we owe a duty? The literature over the last few thousand years has discussed three possibilities – to God, to some segment of the community, or to the state. The next few sections of this chapter review this literature and the various arguments that have been put forth that assert we have a duty to pay taxes.

### Duty to God

Some religious literature has stated that we owe a duty to God to pay taxes. Sometimes, the duty is directly to God and sometimes the duty is to the state, but that God will punish us if we do not pay (Jalili, 2012). The argument often takes the form of a command – God commands us to pay taxes. Does he really? Who says so?

There are passages in the Bible that seemingly take an absolutist position. Romans 13, 1–2 supports the Divine Right of Kings, which basically holds that

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whoever is in charge of government is there with God's approval and anyone who disputes that fact or who fails to obey is subject to damnation.

Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation (Romans 13:1–2).

Jalili (2012) interprets the Muslim literature to hold that there is an absolute duty to pay the state whatever it demands, but only in cases where the state is a purely Islamic state, the belief being that in a purely Islamic state, the rulers are God's representatives on earth and are there with God's approval. Such a state currently does not exist, but even if one did exist, it is doubtful that the people in charge of running the state would do it honestly, since humans are imperfect. History has shown time and time again that when individuals are given power, they become corrupt. The trick is to structure governments so that no one individual has too much power. The least corrupt governments tend to be the ones that have checks and balances built into the system.

Almost no one believes this gibberish these days that God commands us to pay whoever is in charge. Governments are corrupt and often evil. To believe such a statement would be to support the regimes of Hitler, Mao, Stalin, Pol Pot, and all the other dictators who have killed millions of people. Such a belief would give credence to the Marxist view that religion is the opiate of the people.

Presumably, some religious fundamentalists still adhere to this view, since it is in the Bible, which they believe to be the literal word of God, a belief that is disputed by McKinsey (1995; 2000), Templeton (1996), and others (Burr, 1987; Lewis, 1926; Barker, 1992).

Since God did not write the Bible, we must discount anything and everything that is in it. We must apply the rules of logic and fairness before we decide whether the Biblical position on any issue is the position we should adopt. Applying those rules, it would be fair to conclude that God did not command us to pay taxes to evil states, since the people who run those evil states are likely to use the funds to do evil things.

Several other passages in the Bible have something to say about taxes. In the New Testament, when Jesus was asked whether it was legal to give tribute to Caesar, he said: "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (Matthew 22:21). But all this statement really says is that we are supposed to give individuals and institutions (the state) what they are entitled to. It does not address the main issue, which is what the state might be entitled to. One might infer from this passage that Jesus said it is all right to evade the tax if the state is not entitled to the tax. In fact, such would be the logical conclusion to draw from this statement.

St. Paul made a similar statement in Romans 13:7: "Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour."

Schansberg (1998), a Biblical scholar, interprets the Bible to permit wiggle room, an escape clause when the government is evil or engages in immoral activities, such as subsidizing abortion or engaging in an unjust war, a topic also addressed by Pennock (1998). Thus, even if God does command us to pay taxes, the command is less than absolute.

## Duty to Others

Another argument is that we have a duty to others to pay taxes. Others may include the religious community or other taxpayers.

Cohn (1998) states that Jews have a duty to pay taxes in order not to make other Jews look bad, a strain of thought that is contained in the Jewish literature but is also contained in the Muslim literature, applying the same concept to Muslims (Jalili, 2012). The argument goes something like this. Jews may not do anything that disparages other Jews. A Jew who evades taxes makes all other Jews look bad. Therefore, a Jew must not evade taxes.

This argument sounds good on the surface. It is a special application of the broader rule that we should not do anything that harms others. However, a closer analysis reveals weaknesses in the argument. For example, must a Jew pay taxes to Hitler in order not to be called a bad Jew?

This issue was addressed in a survey instrument distributed to a group of Orthodox Jewish students (McGee and Cohn, 2008). The survey instrument consisted of 18 statements. Participants were asked to select a number from 1 to 7 to indicate the extent of their agreement or disagreement with each statement. One of the statements was “Tax evasion would be ethical if I were a Jew living in Nazi Germany.” The 18 statements were ranked in terms of strength. Although this statement was the strongest argument to justify tax evasion, its score was 3.12 which, on a scale of 1–7, where 1 represents strong agreement, means that even Orthodox Jews believe there is some duty to pay taxes to Hitler.

This belief seemingly defies rationality. Ayn Rand (1961) would probably assert that it is an example of the sanction of the victim. However, their reason for concluding that Jews have an obligation to pay taxes even to Hitler is based on two strains of thought in the Jewish literature – one must not do anything to disparage another Jew, and the law is the law (Cohn, 1998).

Both of these rationales can be criticized. It seems stupid that Jews should assert they have a duty to help pay for the purchase of the poison gas that is used to kill them in the death camps just so that no one refers to them as bad Jews. A better argument would be that Jews have an obligation to other Jews to evade paying taxes to Hitler so that it would be a bit more difficult for Hitler to kill Jews.

The “law is the law” argument can also be criticized. The basic argument is that all laws must be obeyed. Gandhi, Martin Luther King, and other rebels would disagree, and might even state that there is a moral obligation to break unjust laws. Even the Jewish literature makes a provision for breaking unjust laws.

Taxes may not be confiscatory nor arbitrary nor discriminatory. Maimonides for example, rules that a king who usurps power or whose laws are capricious or discriminating may be disobeyed and his laws including tax, disregarded (Tamari, 1998, citing Mishnah Torah Hilkhoh Gezeilah Cpat. 5 halakhah 11).<sup>1</sup>

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<sup>1</sup> Jewish scholars may point out that I have misspelled “Maimonides” and “Mishneh.” In my defense, my excuse is that I am merely quoting Tamari, letter for letter. Possibly, the differences arise because of translation. The original version of the Mishneh Torah was in Hebrew. In some versions of Hebrew, they leave out the vowels, leaving the reader to guess which vowel best fits.

Another reason given in the Jewish literature for not evading taxes is because tax evasion might result in jail, which makes it difficult or impossible to perform good works (mitzvos). That argument goes something like this. Jews have a duty to perform good works (mitzvos). Jews who evade taxes might go to jail. If they go to jail, it would be difficult or impossible to perform good works. Therefore, Jews must not evade taxes.

This view may be criticized on several grounds. Going to prison might actually avail one or more opportunities to do good deeds than staying on the outside. Also, evading taxes might be considered doing a good deed, especially if Hitler is the tax collector. Evading the payment of taxes to an evil regime might result in the perpetration of less evil.

Another variation of the argument that there is a duty to others is the belief that we owe a duty to other taxpayers to pay our fair share. If we pay less than our fair share, others must pay more than their fair share.

This argument also sounds good on the surface. However, analyzing the argument uncovers flaws. For example, how does one determine fair share? What if everyone is paying more than their fair share because tax rates are too high or because government is doing a lot of things it should not be doing? Failure to pay all that the government demands in such cases does not automatically mean that other taxpayers are being unfairly harmed by the evader. If those taxpayers are being harmed, it is by the government that is overcharging them for the services it provides.

If “taxation of earnings from labor is on a par with forced labor” (Nozick, 1974: 169), then evading this forced labor is perfectly ethical. If the government has to force others to perform more labor because evaders have escaped it, then it is the government that is perpetrating the injustice, not those who have found a way to reduce the amount of forced labor the government extracts from them.

One might also point out that it is not necessarily true that if an evader pays less, others will be forced to pay more. If I pay less than is legally due, it has no effect on my neighbor down the hall or on anyone else in the building. If the government runs on a balanced budget (a rarity these days), then if I pay less, government will have less money to waste and squander, which is a benefit to a society that values efficiency. That is also true if the government runs a deficit. The less money it has to spend, the less it can waste and squander.

## Duty to the State

Numerous scholars over the years have asserted that there is a duty to pay taxes to the state.

The state has to be maintained for the common good, peace and security, and therefore it is part of legal justice that the citizens should contribute their just share when it is claimed (Davis, 1938: 339).

A tax is not due as a penalty but since the magistrates and princes serve the Republic they have a *strict right* to demand those things which are necessary. Therefore those who defraud this right commit an injustice (La Croix, 1739: III, pars II).

By the very fact that the people have transferred the authority and administration of the republic to the prince, they tacitly promise to give him a just stipend and whatever is necessary for carrying on the business of the state (Billuart, 1874: 215).

... just as the king is bound to work for the good of the people by administering justice and performing other duties, so on the other hand are the people bound from justice and natural law to pay taxes for the maintenance of the prince (Liguori, 1907).

Concina (1774) compares the state to a servant. “Therefore the stipend, just as a servant’s wage, is due in strict justice.” Patuzzi (1770) compares the relationship of the state and the individual to that of an employee and employer.

According to Patuzzi, the relations between the citizen and the state are comparable to the relations between employer and employee. The state, i.e., the government, is hired by the citizens. It has certain obligations which require the expenditure not only of time but also of money. In return the state has a strict right to compensation from the employer, i.e., from the citizens (Crowe, 1944: 57, summarizing the views of Patuzzi).

However, even if we concede that there is some moral obligation to pay something for the services the state renders to the citizenry, it does not follow that we must pay whatever the state demands. What if the state is evil, corrupt, or inefficient? What if it spends on things we abhor? Should pro-life people be forced to pay for abortions? Should agnostics or atheists be forced to subsidize religion? Should Catholics be forced to support the Church of England if they happen to live in the UK? Should childless people be forced to pay for the education of other people’s children? Or for their health care? Or for the pensions of their parents or grandparents?

Is tax evasion ethical if a large portion of the funds collected wind up in the pockets of corrupt politicians or their families and friends? What if tax rates are too high and we cannot afford to pay? What if the tax system is unfair? Is there a duty to pay if the government does not provide me with any services? Is it ethical to evade some portion of the tax if the government does more *to* me than it does *for* me? What if the government discriminates against people on the basis of race, religion, or ethnicity, or if it imprisons and/or tortures people for their political beliefs? Is it ethical for a Jew living in Nazi Germany to evade taxes?

These are all questions that need to be answered or at least addressed. Part of the answer lies in whether the state is a just state.

### ***The Just State***

When trying to determine whether, or under what circumstances, one has a duty to pay taxes to the state, one approach to determine the answer is to ask whether the state is a *just* state. If the answer is *yes*, then there is a duty to pay; if the answer is *no*, there is less than an absolute duty to pay, although there might be some duty to pay even if the state is not purely just, or so the argument goes. Perhaps, the duty to pay might be viewed as on a sliding scale, where the duty to pay drops as the

extent of injustice increases. One might illustrate this relationship by the following linear continuum:

Unjust State	Just State
No Duty to Pay	Absolute Duty to Pay

If we accept this rule of thumb, the next step is to determine what makes a state just and what makes it unjust. The concept of justice has been discussed for thousands of years, going back to Plato ([The Republic](#); [The Laws](#), among other places) and Aristotle ([The Politics](#); [Nicomachean Ethics](#)) in ancient Greece.

One might also refer to social contract theory, which includes the presumption that where the state performs the functions it has been hired to perform, there is a duty to contribute to the support of the state. Numerous writers over the centuries have discussed various versions of the social contract theory, including Hobbes (1651), Locke (1689), and Rousseau (1762).

We can discuss social contract theory another time. At this time, all that is necessary to point out is that there are major problems with the social contract theory, not least of which is the fact that no group of humans ever got together and entered into such a contract, and even if they did, their contract is not binding on anyone who did not sign. It is a well-established principle of law that no one can bind anyone else to a contract against his will. Thus, any contract we did not sign is not binding on us (Spooner, 1870).

Another concept that might be mentioned at this juncture is the Biblical command that we should pay those who deserve to be paid.

Render therefore unto Caesar the things that are Caesar's; and unto God the things that are God's (Matthew 22:21).

Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honor to whom honor (Romans 13:7).

Both of these Biblical quotes beg the question because they do not provide clear guidance regarding when there is a duty to pay. All we can gather from these commands is that we should do what is the fair thing to do.

Doing what is fair reminds me of a conversation I had over lunch while visiting the Foundation for Economic Education (FEE) in Irvington-on-Hudson, New York, during the 1980s. FEE is located on an expensive piece of real estate in Westchester County, just north of New York City. Because it is a nonprofit organization, it is exempt from property taxes. Were it not a nonprofit, it would be forced to pay an exorbitant amount of taxes to support a wide range of government services it does not use, including the local school system.

The people I was dining with, a rabid group of libertarians, told me that FEE voluntarily sends a check to the local government every year to pay for the water, fire, and police services it uses. They determine what they consider to be a fair price and they send the check. It seems like this approach is fair and honorable. They are not free riding, but they also are not being exploited by a state that would otherwise force them to pay for services they do not use and do not value.

Getting back to the issue of justice, Frédéric Bastiat's view might be adopted as a means of guiding us to the solution. For Bastiat (1801–1850), the only legitimate functions of government are the protection of life, liberty, and property. All other actions are illegitimate because they redistribute wealth by taking from some and giving to others. He might be labeled an advocate of the night watchman state.

He was a negative rights theorist. To paraphrase Bastiat, “My right to life, liberty and property do not conflict with your right to life, liberty or property.” In other words, my liberty to throw out my fist stops where your nose begins.

... this negative concept of law is so true that the statement, *the purpose of the law is to cause justice to reign*, is not a rigorously accurate statement. It ought to be stated that *the purpose of the law is to prevent injustice from reigning*. In fact, it is *injustice*, instead of justice, that has an existence of its own. Justice is achieved only when injustice is absent (Bastiat, 1968: 29).

A state is acting illegitimately when it enforces positive rights (rights created by government), since such rights necessarily come at someone else's expense. For example, the right to free health care comes at the expense of those who are forced to pay. The right of a retired worker to social security comes at the expense of others who are still working. The right to a free education comes at the expense of those who do not have children or have children who attend private schools.

The right of the landlord to charge \$1,500 per month rent on a property he owns is violated if some government has a rent control law restricting the rent to \$500. In such a case, the landlord is being forced to subsidize the rent of his tenant to the tune of \$1,000 per month. In substance, the law is taxing the landlord \$1,000 and transferring that amount to the tenant, to whom the government has granted the right to subsidized rent. One person's right is gained only at the expense of another person's right.

Such laws are inherently unjust for Bastiat. He calls such laws legal plunder.

But how is this legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime.

Then abolish this law without delay, for it is not only an evil itself, but also it is a fertile source for further evils because it invites reprisals. If such a law – which may be an isolated case – is not abolished immediately, it will spread, multiply, and develop into a system (Bastiat, 1968: 21).

Walter Williams has the following to say on the subject:

But you might say, if government didn't do all that it's doing we wouldn't have a *just* society. What's *just* has been debated for centuries but let me offer my definition of social justice: I keep what I earn and you keep what you earn. Do you disagree? Well then tell me how much of what I earn *belongs* to you – and why? (Williams, 1987: 62).

In other words, to the extent that a state engages in redistribution it is unjust. Unjust states need not be obeyed. Indeed, the dictates of unjust states should be resisted. Thus, one may say, at a minimum, that there is no moral duty to pay taxes to a state to the extent that the tax funds paid are used for redistribution rather than to pay for essential government services that protect the lives, liberty, and property of the vast majority.

Can we take this argument a step further? Can one make an argument that the duty to pay is less than absolute even if the state confines its functions to the protection of life, liberty, and property? For example, what if one chooses not to use the services the state provides? Is there still a duty to pay? If so, why is there a duty to pay and where does this duty come from? It seems like it would be an uphill battle to try to argue that there is a duty to pay in cases where the taxpayer does not benefit.

Robert Nozick (1974), the eminent Harvard philosopher, raises this point, indirectly, at least. Both Nozick and Bastiat (1968) assert that the state cannot legitimately do anything that individuals cannot do. The reason states came into existence is to more efficiently protect the lives, liberty, and property of their constituents. Individuals have the right to protect their lives, liberty, and property. They merely delegated these inherent rights to some government. It is a principal–agent relationship, where the state is the agent of the citizenry.

If some individuals choose not to avail themselves of the services the state provides, it seems inherently unfair that they should be forced to pay for services they do not want. Even though the state may be the dominant provider of security, it may not be the only provider of security. Private security agencies also provide security for a fee, and individuals who prefer to hire one of these private security agencies should be able to do so without also being forced to pay for state security, which they do not use.

The same could be said for pensions, education, or any other service the state provides. People should not be forced to pay for social security if they are willing to forego receiving social security benefits. People who do not have children or who send their children to a private school should not be forced to pay for the education of other people's children. Such forced payments are inherently unfair. Evasion of payments for such services would seem justified.

One might think that we have solved the problem at this point, but there is another issue to discuss. What if the government provides services that you use? Is there a moral obligation to pay for them? We all benefit from the government's provision of police and fire protection. We all use government roads. Is there a moral obligation to pay for them?

Nozick (1974: 265) asks the question – Would you pay for the service if the compulsion were removed? If the answer is *yes*, then an argument could be made that there is a moral duty to pay. The example of the FEE sending a check to the local government is an example of how to do the right thing in the absence of compulsion.

But that is not the end of the analysis. What if the government provides a service you use but does so inefficiently? It is a valid statement that government is less efficient than the private sector. Hundreds of studies over the years have documented the fact that the private sector can do just about anything more efficiently than government (Fitzgerald, 1988; Greene, 2001; Kemp, 2007; Poole, 1980; Savas, 1982, 2005). Is there a moral obligation to reimburse the government for its costs if its monopoly price is higher than what would exist in a free market, where government did not prevent private providers from offering the same or better service?



Government is a monopolist in the areas where it operates. Since the government uses force to prevent private individuals and firms from entering the market, it would seem unfair to force people to pay the monopoly price the government charges to reimburse it for its inefficiently provided services. If one would voluntarily pay for the service the government provides, it seems fair that the correct price to pay would be the price that would exist if the government did not abuse its power by preventing private firms from entering the market.

The post office could be used as an example. The federal government of the USA has a monopoly on the delivery of first-class mail. The absence of competition allows it to charge above-market prices and provide below-market levels of service. Wherever the private sector has been allowed to compete, such as in the delivery of packages, it has been able to do the job cheaper and better than the government alternative. Where individuals would be willing to pay for a service currently provided by government, it seems that the fair price would be the price they would pay in the absence of monopoly. To insist on a higher price would be to force people to pay a price that would result in the unjust enrichment of government, since it has done nothing to earn an above-market price.

## Concluding Comments

As was mentioned previously, there may be a duty not to pay in some cases. Where the state is evil and would use the funds to finance its evil projects, there is a duty not to pay. The same could be said where the state is engaging in an unjust war.

One might also apply utilitarian ethics to conclude that there is a duty not to pay. The argument goes something like this. The state is not as efficient as the private sector. We have a duty not to waste resources. We can minimize or reduce waste (increase efficiency) by not transferring resources to the less-efficient government sector. Therefore, we have a duty to evade taxes because the result will be a more efficient, and therefore more prosperous society. The result will be a positive-sum game because there will be more winners than losers. To my knowledge, no one has applied utilitarian ethics to the issue of tax evasion in quite this way. Perhaps, mention of it here will start a dialog among ethicists and policy makers.

Evasion of taxes also strengthens property rights, since taxation violates property rights. A just society is a society, where property rights are not violated. The more tax evasion we have, the fewer property rights are violated. If “taxation of earnings from labor is on a par with forced labor,” as Nozick asserts (Nozick, 1974: 169), then evasion would also reduce the amount of forced labor we must endure. Tax evasion may be seen as a form of self-defense, where the state is little more than a robber.

The strongest case to support the position that there is a moral duty to pay taxes is the case where the state limits its activities to the defense of life, liberty, and property. This is the reason why governments were formed, according to Bastiat (1968) and a host of other political theorists. When governments go beyond these

basic functions, they venture into the realm of redistribution and confiscate the property of some to dole out to others, which is always unethical and never justifiable. In such cases, the government need not be obeyed.

However, even in cases where the state limits its activities to the defense of life, liberty, and property, it is difficult to justify on ethical grounds the confiscation of property to pay for these functions if the person whose property is confiscated does not want to utilize the government services. Individuals who are willing to forego access to the services the state provides should not be forced to pay for those services. People who prefer not to use government services to protect their life, liberty, and property should not be forced to pay. People who want to opt out of social security or Medicare or Medicaid should be able to do so. People who do not have children enrolled in government schools should not be forced to pay for the (inferior) education of the children who attend those schools. People who abhor abortion should not be forced to pay to support clinics that supply abortion services. There is nothing unethical about refusing to pay for services you do not want.

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