

Chapter 3

An Analysis of Some Arguments

Robert W. McGee

Introduction

Morality can exist only when there is choice. Stated alternatively, where there is no choice there is no morality. If a commanding officer orders a soldier to either kill someone or be killed for disobeying an order, the soldier is not morally responsible for executing the person who has been chosen for execution because he has no choice.

From that basic premise, one may also state that paying taxes does not raise any moral issues because one does not have a choice. Paying taxes is neither moral nor immoral. It is merely something one is forced to do. Paying taxes to an evil or corrupt government is not immoral because we have no choice. Paying taxes to the Nazi war machine does not constitute an unethical act because we have no choice.¹

But that is not quite correct because it is possible to refuse to pay (evade) taxes that are legally owed if one is willing to suffer the penalty. Some theologians have argued that it is not immoral to evade taxes if one is willing to pay the penalty for nonpayment (Angelus of Clavasio 1494; Crollly 1877; Merkelbach 1938: 287; Navarrus 1618). Other theologians have disagreed with this position (Antoninus 1571).

There have been instances historically where individuals have refused to pay taxes for one reason or another. One moral reason that has been given for refusing to pay taxes is when the taxpayer is confronted with the option of paying taxes to support an unjust war or being punished for failure to pay. Some Vietnam War protesters refused to pay taxes for this reason. This reasoning goes back hundreds of years in the philosophical and theological literature (Pennock and Robert 1998).

¹This latter position has been disputed and we will discuss it below.

R.W. McGee (✉)
School of Business, Florida International University, 3000 NE 151 Street,
North Miami, FL 33181, USA
e-mail: bob414@hotmail.com

But what if someone refuses to pay taxes just because they do not want to pay and what if they have an opportunity to evade and perhaps not get caught? This possibility raises a different set of issues because they do have a choice. Where there is choice, there is an opportunity to act morally or immorally. The remainder of this paper examines the main arguments that have been put forth to claim that tax evasion is either ethical or unethical.

Duty to Whom?

The literature discusses duty to three possible entities – God, the state, and other individuals. To these three duties mentioned above, one might add a fourth category – duty to clients. Tax practitioners have a fiduciary duty to do what is in the best interest of their clients. If the cost of evading taxes exceeds the benefits to be gained by evading, then practitioners have a fiduciary duty to their clients not to help them evade taxes, even if evading the tax itself does not constitute an unethical act.

Another point about tax evasion by practitioners is worth mentioning. Local bar associations, state boards of accountancy, and associations of certified public accountants have rules that sanction their members for aiding and abetting tax evasion. In cases where tax evasion does not constitute an unethical act, it seems inherently unfair that practitioners should be subject to sanctions, loss of their license, and so forth, on ethical grounds because they have not done anything unethical (McGee 1998).

The Relationship of the Individual to the State

The relationship of the individual to the state is one of the main determining factors of what the duty is to pay taxes. Stated differently, the duty to pay taxes is determined by the relationship of the individual to the state. The two polar extremes are that the individual is the master and the state is the servant, or the state is the master and the individuals are the servants. Either the state exists for the benefit of individuals or individuals exist for the benefit of the state. These two polar positions can be represented by the following continuum.

State is Master	Individuals are Masters
Individuals are Servants	State is Servant

At the extreme left side of the spectrum is the view that the state is the master and the people are the servants, who exist for the benefit of the state. Various totalitarian regimes over the centuries have been at or near this end of the spectrum. The underlying philosophy of those who support this view of the state might

be stated thus: “Ask not what your country can do for you – ask what you can do for your country.” (Kennedy 1961).

At the other extreme is the view that the state exists only to provide services for the citizenry. Most liberal democracies hold this view to some extent.

It is probably fair to say that historically very few states have been at either extreme. Most states are between these two extremes and have elements of both polar positions.

Ancient Greece and ancient Rome had slaves, and so did many more modern societies, including the United States prior to the Civil War of 1861–1865 (or War of Northern Aggression, depending on one’s perspective). However, these societies also had citizens who were not slaves.

The Soviet Union did not have slaves, *per se*, although its citizens were not free to choose their occupation, their place of residence, their political beliefs or their religion, and they were not free to leave the country. One could say the same of ancient Egypt. The Nazi regime in Germany generally allowed its citizens to choose their occupations, their place of residence and their religion but not their political beliefs. Those who disobeyed the state or who even said anything negative about the state were subject to severe punishment under both the Nazi and Soviet regimes.

At the other end of the spectrum is the view that the state is the servant of the people. The question then becomes, “What services should the state provide to its citizens?” Those who believe in minimal government believe that the functions of the state should be limited to the protection of life, liberty, and property and that all other functions of the state are illegitimate. Others believe that the legitimate functions of the state go beyond these basic protections and into the realm of social welfare. However, once one goes beyond the basic functions of protecting life, liberty, and property, some individuals are forced to contribute to the welfare of other individuals, which some political philosophers would say is an illegitimate use of state power (Nozick 1974).

The duty to pay taxes is not absolute, partly because the duty to the state is not absolute. The duty to pay may be viewed on a continuum as well.

No duty to pay

Absolute duty to pay

As a general rule, one might assert that there is no duty to pay where taxpayers are treated like slaves of the state, and that there is an absolute duty to pay where the state is a true servant of the people, when services are limited to the protection of life, liberty, and property. As one approaches the left side of the spectrum, the duty to pay declines, and as one approaches the right side of the spectrum, the duty to pay increases.

However, there are problems at the right side of this spectrum. For example, what if some citizens would rather provide for their own protection? Do they still have a duty to pay taxes to support protections that they do not want? If so, where does this duty come from? How can one say that the state is justified in extracting taxes from those people when they would agree not to burden the state by using the services

that the state provides? It seems like an unfair trade, since the parties at one end of the bargain do not want the services the state provides. Rather than being a voluntary exchange, it is a forced exchange.

There is also the problem of a democracy that devolves into untrammelled majoritarianism, as James Madison and some of America's other Founding Fathers feared. If some majority comes to power through the electoral process and uses its power to exploit some minority (usually rich people), do those who are exploited still have a duty to pay whatever taxes the democratically elected government demands? If two wolves and one sheep vote on what's for dinner, not only does the sheep not have to obey the majority but also has an absolute right to use deadly force to prevent the will of the majority from being implemented. Could one say the same of some other minority that is exploited by the majority?

How much force is justified in defending one's life, liberty, or property is a basic question of political philosophy. When one's life is being threatened unfairly, it seems reasonable that the individual being attacked can use deadly force to prevent being killed, but what if it is mere property that is threatened with confiscation? May one still use deadly force to prevent the confiscation?

It seems reasonable that one may use the same amount of force to defend property as the other side uses to attempt to confiscate the property. If the state uses deadly force to unjustly confiscate property, one might reasonably argue that the individual whose property stands to be confiscated is justified in using equal force to prevent the unjust confiscation. Arguing that the individual whose property is at risk is not justified in using equal force to that used by the aggressor is an untenable position.

Arguments Pro and Con

A number of arguments have been used over the centuries to justify both major positions – that there is a duty to pay taxes or that there is no duty to pay taxes. We will now examine those arguments.

Taxes Are the Price We Pay for Civilization

Oliver Wendell Holmes, Jr. (1841–1935), an eminent American jurist, has been quoted as saying that “Taxes are the price we pay for civilization.” It is carved on the façade of the Internal Revenue Service building in Washington, DC (Block 1997). Actually, the quote has been attributed to him with several variations. In Felix Frankfurter's biography of Holmes he quotes Holmes as saying “I like paying taxes. With them I buy civilization.” (Frankfurter 1961: 71).

The Holmes quote has permeated the accounting, tax, legal, economics, public finance, and popular literature and is perhaps the most frequently quoted utterance

about taxes. When Franco Modigliani, the Nobel Prize winning economist heard it, his response was “That is a very non-Italian attitude.” (Samuelson 1999: 354).

Elaborate upon the meaning of the quote in a *Chicago Tribune* newspaper article published the day before the April 15 tax filing deadline in the United States (Holmes and Sunstein 1999b). They responded to taxpayer arguments that “It’s our money and we want to keep it” and “Why should the IRS take our money, when the government wastes it and we want to spend it on ourselves?” with some counterarguments. They ask whether the money in our pockets and bank accounts is fully ours. They ask whether we could have inherited it without the assistance of a probate court or whether we could have saved it without bank regulators. They argue that without taxes there would be no property and we would have no assets worth defending. Homeowners depend on fire and police protection as well as registry titles and deeds, all services provided by government. Taxes pay for armies to protect us from external aggression. They conclude that there is no liberty without dependency on government to protect our rights.

They raise some good points and they should not be faulted for not offering counterarguments to the many criticisms that could be made of the tax system. After all, there is limited space in newspaper article and it is not possible to fully analyze all the issues and respond to opponents, although they did elaborate on some of these points in a book on the same topic (Holmes and Sunstein 1999b).

However, their argument is incomplete on several counts, as is the Holmes position in general. While a case can be made for using force to collect revenue that is used to protect the rights to life, liberty, and property, the argument for using force to support other government functions is more difficult to justify. Government functions that redistribute wealth from those who have earned it to those who have not are difficult to justify. Whole books have been written that analyze this question (de Jouvenel 1952). Frederic Bastiat (1801–1850), a French political economist, has the following view on this abuse of government power, which he refers to as 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).

Then there is the question of how much civilization do we want to pay for. There is a difference between government and society. Society can exist without government but government cannot exist without society. Even in places that do not have a fully functioning government, like Somalia, Afghanistan, and post-earthquake Haiti, there is society and a civilization. There is no doubt that more protection of life, liberty, and property would be a good thing in these places. However, having more government and more taxes is only one of several possible solutions. In some cases society itself is oppressive and violates basic rights like the right of free speech

and press and the right to property. There are certain factions in Afghanistan that think women should not go to school or receive medical care from male doctors. But since women are not permitted to go to school, there are no female doctors. In such cases it is not lack of government that is the problem but rather society.

The “Government Couldn’t Exist Without Taxes” Argument

The underlying assumption to the “Government couldn’t exist without taxes argument” is that it is desirable that government exist. A variation of that argument is that functions that are now provided by government could no longer be provided by government without taxes. But that does not mean that some or all of the functions now provided by government would no longer be provided. The market would provide the services that are demanded by consumers and the nonprofit sector would provide the most important charitable functions. Functions that government should not provide would no longer be provided by government if it could no longer generate the tax funds to pay for those functions. If governments did not have the funds required to invade or bomb other countries they would be far less likely to invade or bomb other countries, which is generally a good thing. If government could not raise the funds to engage in wasteful spending projects like building bridges to nowhere,² it would no longer build bridges to nowhere.

An underlying premise of the argument that government could not exist without taxes is that all government funds come from taxes, which is blatantly not true. Governments can also raise funds by user fees, lotteries and voluntary contributions. Thus, it cannot be said that government cannot exist without taxes because it can. What would be more accurate to say is that government cannot exist at the present level without taxes. The scope of government would have to be cut back if its only sources of funding were user fees, lotteries, and voluntary contributions, and that might be a good thing.

The voluntary contribution option might seem ridiculous. One might validly ask who in their right mind would voluntarily send a check to the government when government already takes perhaps 20–40% of a person’s income and squanders a good deal of what it collects? That is a valid point. However, if government were to drastically shrink in size because it could no longer extract taxes from the populace, it would have to shed its wasteful spending habits and people would be less inclined

²I am referring to the scandal surrounding Congressional approval to spend hundreds of millions of dollars to build a bridge from mainland Alaska to Gravina Island, an island that was nearly uninhabited and which already had a ferry service connecting it to the mainland. The main issue was whether taxpayers from Florida, Kansas, and other states should be forced to pay for a bridge in Alaska that was not needed and was pushed by a member of the Alaska Congressional delegation mostly as a means of creating jobs (and obtaining Alaskan votes at the expense of the taxpayers of the other 49 states).

to view government as a wasteful and corrupt behemoth. Some people may even view government as worthy of receiving contributions if those contributions were to be spent on worthy projects, such as relief to Haitian or other disaster victims (although making a donation to the Red Cross would probably be a more rational option). After natural disasters like the earthquake in Haiti and Hurricane Katrina numerous individuals donated millions of dollars to help in the relief effort. Various Hollywood celebrities and others have donated to such causes on numerous occasions. Ted Turner made news by donating \$1 billion to the United Nations (United Nations 2006). In such cases, government would compete with private charities such as the Red Cross.

There is a body of literature that shows how government services can be provided privately. Space does not permit a full discussion and analysis of this literature. However, there are many cases where the market or the nonprofit sector have been able to provide services that had previously been provided by government, usually at lower cost and higher quality (Donahue 1991; Fitzgerald 1988; Greene 2001; Kemp and Roger 2007; Letwin 1988; Pitcher 2003; Poole and Robert 1980; Savas 2005).³

The “What If Everybody Did It” Argument

The “What if everybody did it” argument, known in philosophical circles as the Kantian Categorical Imperative (Kant 1997, 1998, 2001), is an argument that has been used in the philosophical literature to determine whether an act can be justified on ethical grounds. It has become a form of ethical reasoning (Baron et al. 1997).

When applied to the issue of the morality of tax evasion, the conclusions are interesting. Of course, if everyone refused to pay all taxes, government would not be able to garner any revenue to perform its functions, unless it resorted to the printing press to print money, user fees, lotteries, or voluntary contributions. But what if everyone merely refused to pay unjust taxes? The obvious answer is that soon there would be fewer unjust taxes and more justice. What if everyone refused to pay taxes to an oppressive or corrupt government? Soon there would be fewer oppressive and corrupt governments. What if everybody refused to pay for wasteful spending? Soon there would be less wasteful spending.

Étienne de la Boétie (1530–1563) asked a similar question a few centuries ago. His basic question was why do people support the governments that oppress them? His conclusion is that our slavery is voluntary (Boétie 1577; de la Boétie 1974, 1975; Keohane 1977; Walter 1966).

³ www.privatization.org provides a wealth of information, including a database, of numerous cases where functions once performed by government have been successfully transferred to the private or nonprofit sector.

The Taxation Is Theft/Slavery Argument

This argument basically states that taxation is theft because it constitutes the taking of property without the owner's consent. When a thief takes property without the owner's consent it is called theft but when the government does it, it is called taxation. The only difference between the two is who does the taking.

A corollary of this position is that taxation is slavery. Nozick (1974) makes this argument in *Anarchy, State and Utopia*. The argument derives from the body as property doctrine. Individuals own their bodies. They use their bodies to produce income. This income is the fruits of their labor. They are entitled to the fruits of their labor. Their entitlement is superior to that of all others. Anyone who takes these fruits without the owner's consent does so without moral justification. If some government takes 40% of the fruits of one's labor, it is the substantial equivalent of enslaving that person for 2 days a week, given a 5-day workweek. "Taxation of earnings from labor is on a par with forced labor." (Nozick 1974: 169).

Those who object to this line of reasoning might argue that taxation is not really theft because we consent to it. But that is not always the case, as is discussed elsewhere in this paper. It might also be pointed out that coercion would not be needed if there were consent, and since coercion is required, we may reasonably conclude that consent is not present.

Tamari (1998) turns the "taxation is theft" argument on its head by stating that tax evasion is theft. Of course that implies that the funds that would be taken in taxes really belong to the government, even though the income has been earned by the citizenry. Nozick's entitlement theory would challenge that assertion.

The Law Is the Law

Another argument against the moral case for tax evasion is that "The law is the law" (Cohn 1998). In other words, one may never disobey a law. One may further argue that if you don't like the law you can change it, which may or may not be true, even in a democracy.

One criticism of this view is that it does not take unjust laws into account. There is a strain of thought within the philosophical and political science literature that unjust laws need not be obeyed. In some cases one might even assert that there is a moral duty to disobey unjust laws. Protesters who practice civil disobedience would agree with this position. Thus, a better position might be that there is a moral duty to obey just laws but not unjust laws.

The "We Have a Duty to Pay Taxes" Argument

The "We have a duty to pay taxes" argument can be subdivided into at least three subparts. According to the literature, this duty can be to God, to the government or

to some portion of the population. The duty to God argument and the duty to the government argument are discussed elsewhere in this paper, so let's focus on the third case, the duty to some group.

The group can include other taxpayers. If I pay less, others must pay more is one argument that has been used historically. This argument is discussed in another part of the present paper, so let's move on to a related argument. There is a strain of thought within the Jewish literature (Cohn 1998) that holds that one Jew must never do anything to disparage another Jew. In other words, if one Jew does something bad it makes all other Jews look bad. That being the case, no Jew should ever evade taxes because doing so would make all other Jews look bad.

This view may be criticized on the grounds of a lack of duty. The argument can be made that one individual may have a duty to another individual but not to a group, unless there is a duty to each member of the group. But more importantly, if the tax itself is unjust or if the proceeds from the tax are used for evil purposes, there may be a positive duty to evade the tax so that evil enterprises cannot be funded.

The Ability to Pay Argument

The ability to pay argument is based on a non sequitur: You have more, therefore you must pay more. That is not the case when you go to the supermarket. Why should it be the case when you are called upon to pay for government services?

The ability to pay argument has a long if undistinguished history in the literature. Discussions of the concept appear in the Catholic theological literature going back hundreds of years (Crowe 1944). Karl Marx advocated it in his *Critique of the Gotha Program* (1875).

The underlying assumption of the ability to pay argument is that some people have a moral right to live at the expense of others or that some individuals can be used as resources for other individuals rather than as ends in themselves. There are basically just two positions on the relationship of the individual to the state. One view holds that the people are the masters and the state is the servant. The other view holds that the state is the master and the people are the servants, who may be considered resources to be used for whatever purpose the state sees fit. The ability to pay concept (I cannot call it a principle because it is the absence of principle) is a corollary of this second view because it treats individuals as resources, to be milked as needed.

The "It's OK If Everyone Is Doing It" Argument

This argument might seem outrageous on its face, but Catholic theologians have defended this view on the basis of fairness. Martin Crowe (1944: 37), discussing the view of Genicot E.-Salsmans (1927), states that "...it would be unjust to burden conscientious men with heavier taxes while wicked men usually pay less."

Crowe (1944: 40), quoting Henry Davis (1938: 339), states:

It appears unreasonable to expect good citizens, who certainly are in the minority, to be obliged in conscience to pay taxes, whereas so many others openly repudiate the moral obligation, if there is one. It seems unjust that good people should feel an obligation to be mulcted and to pay readily, in order to balance the evasions of so many.

Thus, it appears a case can be made on the basis of fairness for evading taxes if everyone else is doing it.

The Majority Rule Argument

In a democracy, the majority rules. In cases where there is not unanimity, which is in nearly all cases, that means that the minority must be content to take their lumps. The argument is sometimes made that if they don't like it they should leave, an argument that is discussed elsewhere in this paper.

One of the differences between a democracy and a republic is that the majority rules in a democracy whereas in a republic the minority has rights. For example, in a democracy, if two wolves and one sheep vote on what to have for lunch, the sheep must comply with the majority vote of the wolves, whereas in a republic the sheep has rights that are superior to any majority and would have a right to resist with whatever force is needed.

The point is that one may not assert that there is always a moral duty to pay any tax that some majority has voted to enact. More is needed. If taxes are imposed in order to suppress some segment of the population, or perhaps all segments of the population, one must look for some moral justification. One may not merely assume that the tax is always morally justified.

A related argument is that we have elected representatives to do our bidding. It is a more efficient system of government than having debates and town hall meetings every day. Most people are too busy working and living their lives to study the issues and arrive at conclusions regarding a wide range of policy issues, so they delegate that task to their elected representatives, who are supposed to become specialists who work only in the best interests of their constituents. No one actually believes that, and the literature of the Public Choice School of Economics has documented numerous cases where public officials use their offices to work for their own interests rather than those of their constituents (Tullock 1970, 1989, 1993).

The Representative Government Argument

The representative government argument is a variation of the contract theory or "we consent to be taxed" argument, which is discussed below. This argument basically states that we consent to be taxed because we elect representatives who do our bidding. It is an application of the principal-agent theory. The taxpayers (voters) are

the principals. The elected representatives are the agents. They do what we tell them to do and we delegate authority, since we are too busy leading our lives to become enmeshed in the details of government. If they vote to tax us, it is OK because we elected them to represent us. Thus, we agreed to be taxed and we should have no complaints. If we no longer want them to represent us, we can throw them out in the next election and choose a different set of representatives.

There are several weaknesses with this argument. While it is true that we elect our representatives, it does not necessarily follow that they do our bidding. More often than not they do the bidding of some special interest group, or they do their own bidding, working on their own behalf instead of the behalf of the people who elected them. The Public Choice School of Economics has been documenting this phenomenon since the 1970s or so. It is also obvious whenever we read the newspaper (or the Internet) or watch television. Very few people believe that Congress or the various state legislatures represent them or their views.

Even if we are able to elect a representative who does represent our views, it is likely that the individual elected will only agree with us on 60 or 70% of the issues, and that representative is one of many. If I live in Florida, the representatives from California (on the left coast) and New York and other liberal states will override any votes that are cast by my representative (who, as of this writing, does not represent my views anyway). Thus, it cannot be said with a straight face that our representatives actually do our bidding and that we therefore have no room to complain.

The Contract Theory Argument (We Consent to Be Taxed)

The Contract Theory argument and the consent argument are not quite the same but they will be lumped together here for the sake of efficiency. The underlying premise of the Contract Theory is that some group of individuals got together at some time in the past and agreed to form a government to protect life, liberty, and property. No documentation can be found of such a meeting, of course, but from a philosophical perspective no documentation is needed in order to discuss the issue.

Various forms of the Contract Theory have emerged over the centuries. According to some versions of the theory, individuals give up their rights in exchange for government protection whereas in other versions individuals retain their rights and merely delegate their rights to government because of efficiency. Three versions of the theory that have stood the test of time in the philosophical literature are those of Hobbes (1651), Locke (1689) and Rousseau (1762). We will not debate the differences and nuances of their three versions in this paper but will discuss some criticisms that have been made of all contract theories.

Lysander Spooner (1870) raises some strong legal objections to all contract theories. He pointed out that it is a long and well-established principle of common law that no one may be bound by a contract without his consent. He analyzed the United States Constitution as an example. His argument was that the U.S. Constitution was signed by a small group of individuals who represented no one

but themselves and that those individuals are all now dead. If they bound anyone it was only themselves. No one else was bound and certainly future generations were not bound by any agreement they entered into. Any contract they had died with them. They did not obligate their children or anyone else's children to abide by the Constitution they signed.

Since taxation is compulsory upon all, voters and nonvoters alike, it cannot be said that those who vote thereby consent to be taxed (Spooner 1870, p. 14). Many people who vote do so to protect their property. A modern version of this argument would be that we do not vote *for* certain candidates, we vote *against* them by voting for their opponent, whom we consider to be the lesser evil. Merely voting for the lesser evil is not the same as consenting to be taxed by the winner of the election. Voting is seen as a means of protecting property against those who would confiscate it without consent of the owner. Voting for individuals who promise to confiscate less than their opponents cannot be confused with consenting to the future confiscations.

Spooner points out that the main difference between government tax officials and a highwayman is that the highwayman will just rob you once and let you go. He will not rob you repeatedly and give you moral lectures about why he is taking your property without your consent for your own good and that you are morally obligated to pay (Spooner 1870, p. 17).

In another place, Spooner states:

... no man can be taxed without his personal consent ... Taxation without consent is as plainly robbery, when enforced against one man, as when enforced against millions ... If the government can take a man's money without his consent, there is no limit to the additional tyranny it may practise upon him (Spooner 1852, p. 222).

He goes on to state that all legitimate government is no more than a mutual insurance company where individuals consent to pay some agreed upon fee in exchange for the services that insurance companies provide. Those who agree receive protection and those who decide not to pay are not entitled to protection.

One may point out that this approach would result in free rider problems, since some people would be afforded protection without paying. It is a valid point. If a policeman sees someone being assaulted he probably will not ask the victim whether his insurance payments are up to date before coming to his aid. In cases where a nonparticipant receives police or fire protection, some kind of premium billing arrangement might be used whereby nonsubscribers are charged a premium for using police or fire services. Such an arrangement would be fair to subscribers, since it is the subscribers who are paying to support the service.

The “If You Don’t Like It, Leave” Argument

We have all heard the “If you don’t like it, leave” argument. It is often heard whenever someone is complaining about the government, the society, or a job. The underlying premise of such arguments is that if you decide to stay you consent to whatever rules are established by the people in charge.

Several criticisms may be made of this argument. Perhaps the main criticism is that wherever you go you are faced with another imperfect political jurisdiction. Merely deciding to stay where you are does not mean that you consent to all of the rules. It merely implies that you have decided that your current residence is the least unacceptable choice, all things considered.

There also may be economic reasons for not leaving, such as the inability to find suitable employment or the inability to buy a plane or train or bus ticket. The point is that consent to submit to the rules of the political jurisdiction may not be inferred merely because the individual in question has not voted with his feet to leave.

Another problem with this argument is that not everyone is free to leave. The vast majority of those who lived in the former Soviet Union were not free to leave the country without government permission, and permission was usually not granted. In many cases, individuals who asked for permission were punished for merely asking. Communist Cuba and North Korea may be cited as other examples where individuals are not free to leave as of this writing.

Recent legislation enacted in the United States imposes an exit tax on certain individuals if they decide to leave permanently (Arsenault 2009), which has been referred to as America's Berlin Wall (Anonymous 2008). However, whereas people who left Berlin during the communist era had to do so without government permission and had to pay a 100% tax, in the sense that they had to leave all their assets behind, the U.S. tax is somewhat less than 100%, although the principle is the same.

It seems inherently unfair to tax individuals who decide to leave a political jurisdiction. If they are willing to forego the benefits that the government provides, they should not be forced to pay, since they have given up the right to receive future benefits by leaving. If there is any moral duty to pay taxes, such a duty exists only in cases where the government provides services to the taxpayer. Since the government will not provide future services to people who leave the country permanently, it seems that there would be nothing unethical about evading such exit taxes.

The “We Must Pay Our Fair Share” Argument

The fair share argument is prevalent in the literature. It is a moral argument, since not paying one's fair share means that someone else must pay for your benefits. One who does not pay one's fair share is a free rider, a leech on the body politic.

The problem with the fair share argument is that no one can agree on what one's fair share is. If it means that individuals should pay for the value of the government services they receive, then most people are paying more than their fair share, since they receive less in government benefits than what they pay. That is certainly true in the case of federal taxes in the United States. It is often difficult to see what benefits one receives from the federal government, but it is easy to see the costs, or at least some of them, especially on pay day when a percentage of wages earned are withheld from paychecks.

If that is the case, then could it be said that those who pay more than their fair share have a moral justification to evade at least a portion of their taxes? It would seem so, since it would be difficult to justify being forced to pay *more* than one's fair share on moral grounds.

Internal Revenue Service data for the United States reveals that the top 1% of U.S. taxpayers pay more than 40% of all federal income taxes and that the top 5% pay nearly 61% of total taxes, which means that the bottom 95% pay 39% (Tax Foundation 2009). In other words, the top 1% of income earners pay more than the bottom 95% of income earners (Prante and Robyn 2010). Given those statistics it would be difficult to justify the argument that the top 1 or 5% of income earners are not paying their fair share. A more realistic argument would be that they are paying far more than their fair share, that they are actually being exploited.

The problem with the fair share argument is that "fair share" is never defined. If one begins with the premise that there is a moral obligation to pay one's fair share, one might also reasonably assert that there is no duty to pay more than one's fair share. Since the top 1 and 5% of income earners are obviously paying more than their fair share, one may reasonably conclude that those income groups may morally evade at least some of the taxes that are legally owed.

The "Tax Evasion Is a Sin" Argument

Some theologians believe that tax evasion is a sin. The Christian Bible seems to indicate that there is a duty to support the government, whether it be a king or Caesar (Matthew 22: 17–21). There is a long line of debate on the specific nature of the sin in the Catholic literature. Some theologians have said that it is a mortal sin to evade taxes (Saint Antoninus 1571), meaning that the offender is destined to go to hell for eternity. Other theologians believe tax evasion is a mortal sin if the amount is "sufficient for a mortal sin of theft." (Molina 1611). At least one theologian believed it is not a mortal sin to secretly transport grain and other merchandise from the city without paying a tax on it, provided he does not resist the tax collectors with violence and force of arms (Beia 1591). Bonacina states: "Those who defraud taxes imposed on the necessities of life (pro usualibus) probably can be excused from mortal sin and from the obligation of making restitution." (Bonacina 1687: 449).

The current edition of the Baltimore Catechism states that tax evasion is a sin but does not get more specific than that. Some Catholic theologians have held that tax evasion is not a sin at all, provided that the government is corrupt or provided the evader is willing to pay the price if caught (Crowe 1944).

Some theologians have held that tax evasion is not a sin at all, at least in some cases.

But I say that when those who impose these taxes do not provide for the common good, for example, in caring for roads, bridges, the safety of people and other things, according to their ability as they are bound to do, the subjects do not sin if they evade the tax without

lying and perjury, nor are they bound to restitution ... Nor do I believe that those sin who defraud taxes, even when the aforesaid (i.e., those who impose the taxes) do provide for the common good.” (Angelus Carletus de Clavisio 1494).

Since theologians cannot agree on the nature of tax evasion, it is difficult to arrive at any clear-cut answer to the question on theological grounds. That, coupled with the fact that there are many atheists and agnostics, and that many believers do not necessarily value the opinions of their clergy, makes it impossible to reach a consensus on theological grounds.

Finding a view one feels comfortable with is probably religion specific. For example, the Mormon literature states that tax evasion is always unethical (Smith and Kimball 1998), and it is reasonable to expect that Mormons do not place much value on the opinions of Catholic theologians. The Baha’i literature states that tax evasion is always unethical except in cases where members of the Baha’i faith are oppressed by the government in question (DeMerville 1998). Speaking from a Jewish perspective, Tamari (1998) states that tax evasion is theft, which is a sin, although he does make exceptions in cases where the government is corrupt. Another Jewish scholar (Cohn 1998) takes the position that tax evasion goes against Jewish teachings, at least most of the time.

The “If I Pay Less, Others Must Pay More” Argument

The “If I pay less, others must pay more” argument is a variation of the fair share argument but it is not quite identical. It also involves some assumptions that may not be accurate. Since governments often resort to deficit financing to fill the gap between tax expenditures and tax receipts, the fact that one taxpayer pays less does not necessarily mean that others must pay more, at least not directly. It merely means that the deficit increases.

But there is more to it than that. If one looks at the taxing and spending pattern in the United States for the last few decades, one sees that merely raising more in tax collections does not result in reducing the deficit. In fact, for every dollar collected in new taxes, federal government spending has increased by more than one dollar. That being the case, it is difficult to state that evading \$20 in taxes means that other taxpayers have to pay that \$20 because the amount of funds spent is not that closely related to the amount of taxes collected. If you pay \$20 less than you should, it does not mean that someone else must pay \$20 more.

In the rare event that a government has a balanced budget, paying less than your fair share means that the government has less money to operate with, but that is not necessarily a bad thing. If the government wastes and squanders money, then paying less means there will be less waste and squandering. If the government engages in evil activities, failure to pay your fair share means the government will not be able to engage in as many evil activities.

Also, in the case of those who are already paying more than their fair share, it would be illogical to assert that they must continue to do so lest others be forced to

pick up their slack. If the taxpayer's moral obligation to pay taxes has already been met by paying the fair share amount, it cannot be said that failure to pay beyond that amount constitutes an unethical act because other taxpayers must pay the extra amount. If there is any moral question, it involves that tax collector who insists that you must continue to pay more than your fair share.

If an armed robber bursts into a restaurant and demands that the patrons give him 50% of what is in their wallets and purses, is it unethical not to tell the robber you have \$50 in your shoe? What if the robber instead demands that the people in the room give him \$1,000 so that he can pay his medical bills or buy an airplane ticket to visit his girlfriend, and that the amount to be collected from each patron will be based on the ratio of what is in their purses and wallets? Is it unethical not to tell the person in charge of the collection that you have \$50 in your shoe? If it is not unethical to hide money from the thief, why is it unethical to hide money from the government if the government is little more than a thief? Does it make any difference that your failure to disclose the \$50 will mean that others will have to pay more? It is the thief who is acting unethically, not you.

The Redistribution/False Philanthropy Argument

The redistribution/false philanthropy argument consists of several branches. One view is that the tax system should be used not only to raise the revenue needed for government to function but also to redistribute income from the rich to the poor. This view is a close cousin to the ability to pay argument. It is based on a non sequitur – You have more, therefore you should pay more. The public finance literature justifies redistribution on marginal utility grounds (Musgrave 1959; Musgrave and Musgrave 1976; Pantaleoni 1883), in spite of the fact that it is impossible to compare interpersonal marginal utilities (Kaldor 1939; Rothbard 1970, 1997).

Some advocates of this view even go so far as to say that the rich have a moral obligation to give to the poor. This view is expressed in the literature of several religions.

Perhaps there is an obligation to give to those who are less fortunate and perhaps there is not. Whether such an obligation exists is beside the point and merely distracts us from the main issue, which is whether the use of the tax code to redistribute income is fair, or whether it is a just use of the government's use of force. Bertrand de Jouvenel (1952) wrote an entire book addressing this question.

The fact that force or the threat of force is used to collect taxes erases the possibility of acting morally, since all morality involves choice. Since people are forced to pay, it cannot be said that they are acting morally. People cannot be forced to act morally. It is an example of false philanthropy. Those who advocate the use of the tax system to take money from those who have earned it and give it to those who have not earned it are not acting out of compassion or love for humankind. They could do that only if they used their own funds. Encouraging the use of government

force to pay for one's favored pet projects or to further one's personal agenda cannot be said to be a moral act. One may actually categorize it as immoral.

Walter Williams, talking about justice, sums up the counterargument to the redistributionists as follows:

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, p. 62)

The other branch of the redistribution argument goes in exactly the opposite direction. This view argues that, while there may or may not be a moral obligation to pay taxes to a government whose functions are limited to the protection of life, liberty, and property, there is no moral obligation to pay for functions that go beyond those basic functions. Once the tax law is used to redistribute income rather than raise funds for necessary government functions, the moral obligation to pay ceases.

The “I Receive Benefits, Therefore I Must Pay” Argument

There is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses (Rawls 1971, p. 283).

Another argument that there is a moral duty to pay taxes is that one should pay if one receives benefits – I receive benefits from government; therefore I have a duty to pay. The underlying premise of the argument is that there is a moral duty not to be a free rider. If one receives benefits but does not pay, then someone else must pay for your benefits. Such people are leeches on the body politic.

That very well may be true in some cases but that is not the end of the story. Just because one receives benefits does not mean that there is an automatic duty to pay all that is demanded. What if what you receive from the government is the equivalent of a bicycle but they want you to pay the equivalent of a car?⁴ Or what if you give the government the equivalent of a bicycle in taxes but the government gives you the equivalent of a car in benefits? Is there less of an obligation to pay in the first case than in the second case? What if you did not want the car but they gave it to you anyway? What if you tell them you do not want the bicycle or car that they offer to give you in exchange for your tax payments? Do you have an obligation to pay anyway?

Let's take a concrete example. Social Security⁵ is a bad investment. A private pension plan would yield a much higher return and the nest egg that builds up could be passed on to beneficiaries of one's choice. It has been called a government Ponzi

⁴I do not know the origin of this example. Marshall Fritz used it in a speech I heard in the 1980s but it did not originate with him.

⁵For more on these and other points, see www.socialsecurity.org.

scheme, since one group pays into it and another group takes the funds out of the system. There is no real trust fund in the finance sense of that term. One advantage of a private sector Ponzi scheme is that contributions are voluntary. In a government Ponzi scheme the payments are forced and taxpayers may be lectured on why they have a moral obligation to pay.

Medicare is also a bad investment compared to the market alternative if one takes the total costs into account. Everyone who earns a salary must pay into the system but only a relatively few people qualify for benefits. At least with a private plan everyone who pays is entitled to benefits. Is there a duty to pay for such programs when there either are no benefits or when benefits are forced down your throat? If so, where does this duty come from? Neither the public finance literature nor the ethical literature addresses this point, perhaps because there is no duty in these situations.

That does not mean that there is never a duty to pay if benefits are received from some governmental entity. The author knows of a nonprofit entity in Westchester County, New York, just north of New York City that makes an annual voluntary contribution to the local government. There is no legal duty to pay because nonprofit entities are tax exempt, but their board felt they had a moral duty to pay their fair share for the police and fire protection, water and sewage services they received from the local government. Thus, there might be a duty to pay taxes in some cases where benefits are received but it cannot be said categorically that there is always a duty to pay just because benefits are received. The duty argument is especially weak in cases where the benefits are unwanted or where the benefits received cost substantially more than the market alternative.

The “I Do Not Receive Benefits, Therefore I Do Not Have to Pay” Argument

The benefit theory in its extreme form developed during the eighteenth century as a protest against the unjust tax systems of France and other countries. According to this theory, a person should pay taxes in direct proportion to the benefits he receives from the state. If an individual could prove that the state conferred no benefits upon him, he could not be held to pay anything. According to this basis a poor man should be taxed more than a rich man because the state does more in the matter of support and protection for the poor than for the rich. (Crowe 1944: 24–25, citing Seligman 1931: 73).

There are a number of cases where the individuals who are taxed do not qualify for the benefits. Social Security and Medicare were mentioned above but they are not the only examples that could be given. If the benefits are “separable,” a case can be made that those who do not use the service should not be forced to pay. For example, if some individuals do not use a public park, a moral case could be made that they should not have to pay to maintain the park. In reality it would be an uphill battle to construct a plausible argument that there is a moral obligation to pay for the use of a park one does not use. A fair solution would be to charge user fees so that only those who benefit from the service would be paying for it.

The way the current federal tax system is structured, people who live in Florida and Maine are forced to subsidize the construction of bridges in Alaska and roads in California, even though there is only a very remote chance that they will use them. If there is a duty to pay for such bridges and roads, it is difficult to see where such a duty comes from. Where there is no duty to pay, evasion is ethically justifiable.

In some communities there is a free bus service that is available only for senior citizens, yet all taxpayers are forced to pay for it. Likewise, local governments sometimes offer entertainment events that only a small fraction of the local population ever takes advantage of. In some Florida communities, some of those who take advantage of these free services are retired multimillionaires. These free services are paid for by the lower and middle income classes. If there were a way for nonusers to evade the taxes used to support these activities it seems like they would be morally justified in doing so, since they receive no benefit from them and are forced to pay for benefits that are enjoyed by individuals who have more assets and income than they have. It is a kind of reverse redistribution, since the group being subsidized is generally in better financial condition than the group that pays.

Being forced to educate other people's children is one of the more expensive examples of a separable cost that is unfairly assessed. Most education in the United States and many other countries is free, in the sense that the parents of the children who attend government schools do not have to write a check to the owner of the school. It is inherently unfair to the parents of children who attend private schools to be forced to pay to educate other people's children as well as their own children. And how can an argument be made that childless individuals have a moral duty to pay for the education of other people's children? If there were some way to evade payment of these taxes it seems like the evaders would be morally justified in doing so.

The usual argument that is made to counter this charge is that the prior generation paid to educate you; therefore, you have a moral duty to educate the next generation. There are several problems with this line of reasoning. For one, it is a non sequitur – Peter paid to educate Paul; therefore Paul has a moral duty to educate Jane. The argument is not logical.

But that is not the only weakness in the argument. Not all people had their education paid by taxpayers. Those who went to private schools had their educations paid for by parents or grandparents or through scholarship funds that were given up voluntarily by the donors. It seems inherently unfair to force these people to pay for the education of others, since they have not received any benefits from the government system. It is also inherently unfair to force childless people to pay to educate other people's children. It is difficult to see how a moral argument can be constructed that would give them this obligation.

A fair solution would be to have a user fee approach. Those who benefit pay and those who do not benefit do not pay. Those who cannot afford to educate their children should seriously consider not having children, since they would be placing a burden on everyone else. Alternatively, private charities and nonprofit organizations could be used to educate the children of the poor. Such a system has worked in the past. There is no reason to believe it would not work in the future (Blumenfeld 1985; Burleigh 1973; West 1970).

The “We Owe It to the Future/Past Generation” Argument

This argument is similar to the previous argument but it is not identical. It takes several forms. The common element is that the present generation somehow owes a moral duty either to the future generation or the past generation to pay taxes. One form of this argument involves the supposed duty to pay Social Security taxes. It goes something like this. The older generation has paid Social Security taxes so that their parents could receive Social Security benefits; therefore our generation has to pay Social Security taxes to support our parents’ generation.

The argument involves a non sequitur, of course. But there are other problems with it as well, not the least of which is that Social Security is a poor investment, as was mentioned above. Should orphans be relieved of paying Social Security taxes, since they did not have parents? Should the current generation be relieved of paying Social Security taxes when their parents die? Should those who do not want to pay be relieved of payment obligations if they agree not to take benefits when they would otherwise be eligible to do so? If not, why not? What moral argument could be constructed to justify making them pay when they agree not to take the benefits at the end of the pipeline?

Social Security is another example of a separable payment situation. In a just society, individuals should be able to choose whether they want to participate in the government system. If they choose not to participate they should not be forced to pay. It is difficult to construct a moral case that argues they should be forced to pay for something they do not want. That, coupled with the fact that Social Security is a bad investment, makes it appear that evading the Social Security tax might be justifiable on ethical grounds.

The “Government Is Evil/Corrupt/Oppressive” Argument

All governments are less than perfect. Some are downright evil. Is there a moral obligation to pay taxes to such governments anyway? Is it unethical for Jews living in Nazi Germany to evade taxes where Hitler is the tax collector? This question was actually asked in a number of surveys distributed to various groups in the United States and elsewhere (Some of these surveys are discussed elsewhere in this book). Those surveys consisted of a series of 18 statements that began with the phrase: “Tax evasion is ethical if ...” Respondents were asked to select a number from 1 to 7 to indicate the extent of their agreement or disagreement with each statement. The Jews in Nazi Germany statement often received the most support. Other strong arguments for justifying tax evasion were in cases where the government wastes money or is corrupt or engages in human rights abuses. There is also some support for tax evasion in the philosophical and theological literature in cases where the government is corrupt or oppressive or where there is inability to pay (discussed elsewhere in this book).

The “We Have a Duty to Evade Taxes” Argument

The argument has been made that there may be a moral duty to evade taxes, at least in some cases. The theological literature states that there is a duty to evade immoral taxes, such as in cases where the funds are used to pursue an unjust war. War protesters during the Vietnam War asserted this reason, as have others in different wars (Pennock 1998).

This argument may be expanded to include other issues. For example, a strong case can be made that it would not be unethical to evade taxes if you lived in Nazi Germany, regardless of your religion, since the Hitler war machine was evil. There may even be a duty to evade taxes to defund such an evil regime to the extent possible.

It seems abhorrent to force Orthodox Jews, Muslims, and some Christians to pay taxes to fund abortion, since these groups believe that abortion is murder. It is reasonable to expect that some members of these groups believe that tax evasion might be not only justified but required to prevent their funds from being used for such purposes.

But a solution is not that simple. For example, if only one-tenth of 1% of their taxes is used to fund abortions, would they be justified in evading only one-tenth of 1% of their taxes? Doing so would not prevent the remaining 99.9% of their tax payments from being used to fund abortions, since the funds are poured into a common fund to pay for a wide range of government services, including abortions. The only way to be sure that their taxes will not be used to fund abortions would be to evade *all* taxes. If this line of moral reasoning were expanded to include other abhorrent government expenditures, then any taxpayer who disapproved of just one-tenth of 1% of government expenditures on moral grounds would be justified in evading 100% of taxes, since any lesser percentage would not prevent their tax funds from being used to pay for the abhorrent activity. One way to prevent this kind of thing from happening would be for governments to refrain from spending on abhorrent activities and confine their expenditures to the protection of life, liberty, and property.

Let's look at another argument that espouses a duty to evade taxes on moral grounds. There is a strain of thought within utilitarian ethics that holds actions that increase efficiency to be moral (Posner 1979, 1983, 1998). Some utilitarians hold the view that one is not acting ethically unless one chooses the most efficient option available (Shaw 1999).

If we begin with that premise and take into account the fact that the private sector can provide just about anything more efficiently than government, we are led to the conclusion that we have a moral duty to evade taxes so that our funds are not transferred out of the more-efficient private sector and into the less-efficient government sector. It is a point that is seldom discussed in the literature.

Some scholars, including eminent Harvard philosopher Robert Nozick (1974), have called taxation theft and the income tax a form of involuntary servitude, since it confiscates the fruits of people's labor. If one wants to reduce the extent of theft

and involuntary servitude in a society, one way to do that would be to engage in tax evasion. Doing so prevents theft and slavery.

There is a strain of thought within the political science, philosophy, and religious literature that we have an affirmative duty to resist evil. Dietrich Bonhoeffer, a German theologian, was executed on direct orders from Hitler for his participation in a plot to assassinate him.

Silence in the face of evil is itself evil. God will not hold us guiltless. Not to speak is to speak. Not to act is to act (Dietrich Bonhoeffer).

All that is necessary for evil to triumph is for good men to do nothing (Attributed to Edmund Burke).

As this page is being written, federal agents of the United States government are groping the sex organs of men and women at airports throughout America as a condition of allowing them to board airplanes. In some cases they are conducting body cavity searches. Has the time come to resist? If not, what else would they need to do to the citizenry before resistance is called for?

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