

Moral Duty to Pay Taxes?

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The reactions to the Obama administration's recent tax proposals, both pro and con, are replete with all of the predictable rhetoric and carefully chosen descriptors. The proposals are either "fair" or "unfair." Usually, one thinks a tax proposal is fair if he pays less and some other guy pays more.

The proposals promise to close "loopholes." Again, one person's loophole is another person's rightful and appropriate tax incentive — designed to promote worthy social or economic practices and stimulate economic growth. One person's clever transaction is another person's abuse of the tax code.

Do the proposals on taxing the off-shore profit of multinational corporations result in their paying their "fair share," or do they reduce American competitiveness abroad? Perhaps they do both. If so, is that OK because "fairness" is a greater good than competitiveness?

A congressman told me years ago that the perception that everyone was paying his fair share was more important than the predictable economic impact of a tax policy. Maybe so, if a sense of fairness results in higher compliance. The problem is, there is no tax system that everyone agrees is fair.

This latest tax-policy discussion provoked me to think more broadly, once again, about morality and ethics when it comes to taxation. In short, do we have a moral duty to pay taxes? And if so, to what extent are we acting morally when we take steps to avoid them?

Take a look at our moral obligation to pay, apart from the presumed legal obligation. There was a time that I viewed the payment of taxes as a non-moral act. We paid them because we were legally obligated to do so, not because there was anything intrinsically good about doing so. But I've changed my mind. Because we have a moral obligation to obey a just civil authority, we have a moral obligation to pay the taxes imposed by that authority.

Most organized religions recognize this moral obligation, and some state so explicitly. Consider the remark of Jesus: "Render unto Caesar what is Caesar's." Beyond religion, it is not a stretch to understand that a member of a society who benefits from the social construct has an obligation to contribute to the cost.

One bothersome question is whether we have a moral obligation to pay our taxes if we think that the funds are being used for an immoral purpose. Although I have empathy for those who take this position, the system simply cannot work that way. We would have no taxes. If we had no taxes, we would have no government.

Even proponents of limited government, as am I, acknowledge the need for some government. If we have objections to how our tax dollars are being spent, we should work through the representative process and have our objections heard, not boycott the tax system.

Since, in my mind, we have a moral obligation to pay, what then of our attempts to pay less? I've spent a good portion of my career doing exactly that — advising people and designing transactions in such a way that taxes are minimized, or even eliminated. Was I doing the right thing? In a famous court case in the 1920s, Justice Learned Hand penned these words:

“Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again, the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible.”

There is a long history of statutes, case law, and regulations that tell us what we should pay. One of the problems is that the law is so complex that it is filled with both intended and unintended consequences. And often, the government wants to have it both ways — if the unintended consequence costs the government revenue, it wants us to pay based on the “spirit” of the law. If the unintended consequence (e.g., the marriage penalty) costs the taxpayer more in taxes, too bad — pay up and write your congressman. That's unfortunate.

The government should also be required to live with the results of the system it is responsible for creating. My conclusion? (1) We must pay taxes, (2) We have every right to pay as little as the law demands, (3) We should use our voices and our vote to ensure justice as to how our taxes are determined and how our money is spent.