

Civilization's Price: Cultivating a Jewish Tax Ethic

Introduction

SUPREME COURT JUSTICE Oliver Wendell Holmes, Jr. famously wrote that taxes are “the price of civilization”. Judaism recognizes them as more. Taxes are a means of civilization, and their creation and collection reveals a tremendous amount about a society’s priorities and values.

Recent scandals involving Jews shirking their tax responsibilities have led to much ink being spilled, in certain circles, on whether or not Jew must pay taxes. The Jewish ethical answer in a free democracy is unequivocally “yes”.¹

Does the Jewish ethical tradition have anything to say beyond this basic question? Aside from how they should be paid (regularly, fully), can we articulate a Jewish tax ethic?

The Torah contains several kinds of taxes and tithes in its economic system.

— *Terumah* was levied to support the priests who did not own property and devoted themselves to the communal good including running the Temple. *Terumah*, was given, according to rabbinic mandate at a level of between a fortieth, fiftieth or sixtieth of total produce, depending on the generosity of the payer.

— *Ma’aser rishon*, a tenth taken after *terumah* was taken, was given to support the landless *Levi'im* in their service educating and serving the Jewish people.

- *Ma'aser sheini* is a share of produce that had to be eaten in the capital, Jerusalem, or sold and substituted with food bought in Jerusalem, to support its economy.
- *Ma'aser ani*, is a ten per cent tax that went exclusively to the poor. In addition to these flat taxes, the Torah also requires all citizens to pay the raise money for the Temple.²

These fixed Torah taxes—agricultural tithes, Temple duties, and supporting the Priests and Levites—are not formally levied today in our day and age when we are bereft of the Temple. However, there is a rich halakhic literature starting in the Talmud and extending to the twentieth century that reflects the rabbinic enactments that were made to self-regulate and levy taxes for the benefit of the entire community.

If a community were to create new taxes, how should they be devised? What sources could it turn to, and what values would it use? What aspects of those rabbinic sources can we turn to for guidance that directs us towards the values a community should use when taxing its citizens.

Before delving into the debate, a quick primer on different types of taxes:

- Capital tax (also known as a poll tax or head tax): a set amount that is taxed on every individual in a community, regardless of income.
- Flat tax: a percentage based tax that is applied to all, regardless of wealth. Both the capital tax and the flat tax are commonly referred to as “regressive” taxes, since it imposes a greater proportional burden on the poor than on the wealthy.
- Progressive tax: a tax that takes a larger percentage from the wealthy than it does from the poor.

The Views of Maimonides and Rabbenu Tam

The Talmudic discussion on taxes begins in the Tractate *Bava Batra*. The Talmud discusses building a wall that will protect the community from thieves and robbers. Should those who are closest to the wall, and would therefore benefit the most, pay the most? Should all the residents pay an equal amount regardless of their proximity to the wall? Or should those who have more pay more, even if they might benefit least.

R. Eleazar inquired of R. Yohanan: When these communal taxes are levied, are they levied by the person [where every person would pay the same amount]? He replied: It is levied according to means; and Eleazar

my son, fix this ruling firmly in your mind. According to another version, R. Eleazar asked R. Yohanan whether the impost was levied in proportion to the proximity of the resident's house to the wall or to his means. He replied: In proportion to the proximity of his house to the wall; and you, Eleazar my son, fix this ruling firmly in your mind.³

It is clear that whatever the ruling, it was important to R. Yohanan that his son understand and internalize the rationale for levying taxes, presumably because he regarded it as a critical matter. But the two versions of R. Yohanan's statement leave the reader uncertain how to prioritize criteria for assessing taxes.

Maimonides clarifies which version he views as primary:

When they assess a tax to build a wall, they assess according to *kiruv batim*, [proximity of the house to the wall, which assumes more benefit]. Whoever is closer pays more.⁴

We see here Maimonides' view of a Jewish tax ethic. We hold like the second statement of Rav Yohanan: taxes should be assessed according to use, with those who benefit more from public goods (in halakhik language, *kiruv batim*) paying more.

Tosafot quotes Rabbenu Tam, who was not content with Maimonides' reading. Commenting on the second half of the *sugya*, *Tosafot* writes:

The poor who are close to the wall give more than the poor who are far, and the wealthy who are close give more than the wealthy who are far. However, the wealthy who are far give more than the poor who are close, since the wealthy are also assessed by their wealth [in addition to their proximity].⁵

A hierarchy of a tax assessment emerges, from those who pay most to those who pay least.

- Wealthy who benefit greatly
- Wealthy who benefit a little
- Poor who benefit greatly
- Poor who benefit a little

In other words, Rabbenu Tam believed the Gemara implied a progressive-hybrid system, in which both benefit from a project and relative wealth should influence the amount one pays in taxes. However, *Tosafot* brings another *sugya* which show that the case of the wall is unusual:

Our rabbis taught: a band of merchants that was traveling in the desert

and a group of robbers threatened them, we assess [the ransom] according to wealth (*mamon*) [where the wealthy would pay more than the poor] and not according to head (*nefashot*) [where everyone would pay the same]. But if they hired a guide to walk in front of them, we assess per capita (*nefashot*).⁶

Tosafot notes the difference between these two cases. In the first case, the robbers do not really want to kill the merchants and the threat is not to life, but to property, so we assess according to wealth/*mamon*. In the second case, there is a real threat to life; without the guide, the group would be lost in the desert and die. In that case, we assess by capita/*nefashot*. The Mordekhai, a later Ashkenazi commentator, picks up on the distinction between taxes that are levied for life and death purposes and those that are not:

Everything that does not have an element of life and death is assessed exclusively by wealth/*mamon*.⁷

The Tur continues in this vein, writing that taxes for services and goods like water, communal ritual needs, *Sifrei Torah*, are assessed only according to wealth.⁸ In the case of the wall, however, the Tur writes that there is an element of life and death as well. That is why the wall is a hybrid case of both assessing according to wealth and capita.

We can now set out a fuller hierarchy of values: we tax according to capita in matters of life and death, according to a mixture of benefit and wealth if it is not wholly clear whether life and death are involved (like our case with the wall), and according to wealth alone in cases which clearly lack a life and death element. It seems as if a majority of taxable cases fall into the third category and therefore individual benefit from the service provided plays no role in how much one should pay for that service.

Contemporary Halakhah

The 20th century Israeli *posek*, R. Eliezer Waldenberg in *Tsits Eliezer* takes the Jewish tax ethic a step further.

What is the Torah perspective on taxes? Is it a progressive approach, where we tax according to the level of wealth, or is it uniform, meaning that every resident pays the same tax rate regardless of poverty or wealth?⁹

Using the sources we have seen and others, the *Tsits Eliezer* concludes almost all taxes should be assessed progressively. He lists water, road repair, lights, hospitals, social services, nursing homes and more as taxes that are

assessed by *mamon*, which means in his words, *progresivit*. It is fascinating to note that the *Tsits Eliezer* argues that assessing according to *mamon* does not only mean that the rich pay more than the poor. After all, in a flat tax people with more money will pay more, since 10% of a lot is more than ten per cent of a little. Rather, for the *Tsits Eliezer*, almost all communal taxes are assessed by progressive means—the wealthy paying more, both in sum and in percentage, than the poor.

What about taxation by capita in life or death or situations? This seems like a strange value. After all, we want to raise as much money as possible in life or death situations, ensuring that whatever communal good that is desperately needed can be achieved. Perhaps a different ethic is at play here—when it comes to saving lives, we do not want to communicate that some lives are worth more than others. Just as with the half-shekel tax, each life is worth the same amount. However, we recognize that this may not generate enough to pay for the good. That may be the ethical thrust behind Rabbeinu Tam's hybrid: we need to be able to raise necessary funds to save lives, so we calculate half the tax *lefi mamon*, but we must also acknowledge that each life is worth saving, and so assess the other half of the tax *lefi nefashot*.

Implications

What implications might this have for the Jewish community today? Let us explore, for example, those who send their children to private school and do not wish to pay taxes for schools their children do not use. Should they be able to opt out of taxes that go to public education? Should they advocate for lower education tax rates in general since their segment of the community does not benefit from those services? As we saw from our sources, the Maimonidean reading of the *sugya* would allow for one to advocate in that direction. On the other hand a large number of *rishonim* and *aharonim* took issue with Maimonides reading. Given that that one can argue that we all benefit from the provision of a public education system, (more educated and well-adjusted young people, leading to less crime and less social and family deterioration and other social goods, even if only to a lesser extent than those who send their children to public schools, one can certainly apply the paradigm developed by Rabbeinu Tam and Tur. The amount of individual benefit from a public good (*kiruv batim*) is only taken into account for tax rates in very specific situations involving life or death considerations. Otherwise we assess one's responsibility to contribute to the communal needs according to one's wealth (*govin lefi mamon*).

Given this background, we believe that the Orthodox Jewish community should not be advocating for drastically reducing public school budgets in their communities simply on the fact that they do not directly make use of the public school system. We do not here speak of the general questions of how best to allocate limited funds in the public sector budget and how to balance the needs of public schools versus other public needs such as medical care, sanitation, fire and policing needs and other vital needs. Looking at the American tax system, we might be struck by how some parts of our tax code work against the halakhic model. As we saw from the Gemara as read through the prism of Rabbeinu Tam, the Mordekhai, and the *Tsits Eliezer*, in the halakhic system the wealthy are taxed more in both absolute and proportional terms. Recently, Warren Buffet, the world renowned investor, reported that he was paying a lower federal tax percentage on his billions of dollars (16.5%) than his middle class office workers (25%). Buffet wrote:

Since 1992, the I.R.S. has compiled data from the returns of the 400 Americans reporting the largest income. In 1992, the top 400 had aggregate taxable income of \$16.9 billion and paid federal taxes of 29.2 percent on that sum. In 2008, the aggregate income of the highest 400 had soared to \$90.9 billion—a staggering \$227.4 million on average—but the rate paid had fallen to 21.5 percent.¹⁰

According to a recent study by the Corporation for Enterprise Development, while the federal tax rate is overall progressive, low capital gains and dividends tax rates notwithstanding, state tax systems, are almost all regressive. In the great majority of states, which depend on income, property, and consumption taxes for revenue, the poor pay a higher proportion of their income in taxes than the wealthy.¹¹ In New York, the total state tax rate for the lowest income earners is 9.6%, while for the top earners it is 7.2%. In California it is 10.2% for the very poor, 7.4% for the very rich.¹²

Do Jewish values compel us to work towards change? As an Orthodox Jew, I believe the answer is yes. As Rabbi Joseph Soloveithick wrote in *Ish Ha-Halacha*: “The halacha is not hermetically enclosed within the confines of cult sanctuaries, but penetrates into every nook and cranny of life. The marketplace, the street, the factory, the house, the meeting place, the banquet hall, all constitute the backdrop for the religious life.” A careful study of the Talmudic and halakhic sources reveals a clear ethic of taxation. As committed Jews who believe in the transformative power of Torah and the prophetic call to justice, it is our responsibility to manifest these Torah values in the world.

NOTES

1. R. Moshe Feinstein, *Igrot Moshe*, *Hoshen Mishpat* I:88.
2. Exodus 30:11-15.
3. *Bava Batra*, 7b.
4. Rambam, *Mishneh Torah*, the Laws of Neighbors, 6:4.
5. *Tosafot*, *Bava Batra* 7b.
6. *Bava Kama* 116b.
7. Mordekhai, *Bava Batra* 474.
8. Tur, *Hoshen Mishpat*, 103.
9. R. Eliezer Waldenberg, *Shut Tsits Eliezer*, 2:22.
10. Warren Buffet, 'Stop Coddling the Super-Rich' *New York Times*, August 14, 2011
11. Carl Davis et al., *Who Pays? A Distributional Analysis of the Tax Systems in All 50 States*. Washington, DC: Institute on Taxation and Economic Policy, 2009.
12. *Assets and Opportunity Scorecard*, Corporation for Enterprise Development, 2012.