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Thus spake the rabbis -- The first income tax?

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THUS SPAKE THE RABBIS — THE FIRST INCOME TAX?

Abstract: A passage from the Talmud concerning income tax policy is examined. The attempt is then made to apply the policy to a hypothetical situation and to see whether the policy is relevant to the modern era.

The Introduction

A recurring fiscal policy decision must be made every time a new tax is imposed or when a change is made in the way an old tax is levied. The dilemma facing the policy makers, aside from political issues, is whether the tax should be imposed on an indirect or direct basis, by means or by head, with a minimum or a maximum, etc. or by some combination of the various possibilities.

That this problem is not unique to today’s economy is made quite evident by a scrutiny of some of the Hebraic writings almost 2,000 years ago. In this paper, one such case is considered; a case concerning taxation for security purposes. Aside from the historical significance and an examination of a different culture, the debate and the suggested solutions outlined in the paper may prove of interest in today’s taxation climate.

The Source

The question posed here comes from the Talmud, probably the most important and influential piece of Jewish illumination after the Torah. The Talmud contains all the rules, laws, and regulations about how a Jew should behave, his relationship with others and, in effect, orders his total existence. Although now in written form, it was passed down through the generations in oral form from the time of Moses. The Talmud consists of two parts. The Mishnah is

My thanks to Rabbi Zushe Silberstein, who suggested this topic and made pertinent and important comments on the paper. Nevertheless, although I am neither a Talmudic scholar nor a tax expert, I alone must bear full responsibility for all interpretations and conclusions drawn.
the actual code of Jewish law, which was compiled over many generations by various Rabbis and was edited and completed by Rabbi Yehuda Hanasi (d. approx. 220 C.E.). The *Gemara* is the collected discussions of Rabbis who lived after the *Mishnah* was completed. As a general rule, in its printed form the *Talmud* is annotated by the Commentary of Rashi and other commentaries; it is also extensively footnoted and cross referenced. These addenda are absolutely essential for any real understanding of the text, although even then it is quite difficult to fathom.

The particular question discussed in this paper comes from the *Baba Bathra*, a part of one of the tractates from the *Talmud*, which "deals with claims of, right to do or possess something, or to prevent another from doing or possessing something." As the editor of the translation used for this paper states,

*Baba Bathra* shows us the Palestinian and Babylonian Rabbis in the role not of religious guides but of secular judges and administrators, regulating the purely worldly affairs of the Jewish people, and deciding their business disputes . . . decisions are based to a larger extent on custom, tradition and common sense. Nevertheless, it should be emphasized that the logic and thought inherent in the text derives from the *Torah* and its principles. The reasoning followed in the *Talmud* is largely referential, constantly harkening back to other regulations, other interpretations and other portions of the text. Needless to say, this makes the text very difficult for the layman to follow. The net result, of course, is that only a very few really understand; "final" verdicts are left in the hands of the learned, who have devoted their lives to the study of the *Talmud*. Incidentally, orthodox Jews, to this day, seek these verdicts in disputes and abide by the decisions rendered.

*The Scenario*

The stage is set by the following paragraph:

MISHNAH. He (a resident of a courtyard) may be compelled (by the rest) to (contribute to) the building of a porter's lodge and a door for the courtyard. Rabban Simeon B. Gamaliel, however, says that not all courtyards require a porter's lodge. He (a resident of a city) may be

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*a*There are six major divisions to the *Talmud* and in turn the six divisions are subdivided into sixty-three tractates.
compelled to contribute to the building of a wall, folding doors and a cross bar. Rabban Simeon B. Gamaliel says that not all towns require a wall. How long must a man reside in a town to be counted as one of the townsmen? Twelve months. If, however, he buys a house there, he is at once reckoned as one of the townsmen.

Note: Superscripts in the above paragraph are from the original text. The discussion will be centered on the portion following . . . require a porter's lodge.

After this paragraph, which appears in bold type in the translation, there is the Gemara section. This consists of almost ten pages of detailed discussion, argumentation and quoting of precedent to arrive at a pragmatic understanding of the Mishnah.

Before getting into the debate of who should pay for a wall, the question arises, and rightly so, of whether all towns require a wall. Since the answer to this question may have an effect on how the cost of a wall is apportioned, it is reasonable that this be addressed initially. Rabban Simeon B. Gamaliel says that not all towns require a wall. The Rabbis, the representatives of the anonymous opinion cited in the Mishnah, however, contend that all towns require a wall. They hold this opinion on the grounds that any town can be attacked by a roving band and hence is in danger. The argument therefore hinges on the degree to which it is considered that there is a possibility of attack. Nevertheless, since the next part concerns the form of levy, it can be assumed that the Rabbis' opinion was the accepted one. In general, in cases such as this, the law is resolved according to the anonymous Rabbis, since they are in the majority.

Before addressing the next question, it is essential to appreciate that the texts being discussed are derived from oral history. The opinions had been passed down from generation to generation with the result that contradictions seemed to appear. This is evident when we examine the question of how the levy for the wall should be assessed. It is written therein that, according to one version, when R. Eleazar asked R. Johanan how the tax should be levied, he answered, according to means. Others recall, however, that he answered, in proportion to the proximity of his house to the wall. Given this dichotomy, the Tosaphot, in a footnote to the text, interpret the opposing views as meaning that a poor man living close to the wall would pay more than the poor man at a distance from the wall and likewise for the rich man, but that the rich man at a distance from the wall would pay more than the poor man close to the wall.
wall. (The Tosaphot are the collected comments of descendants and pupils of Rashi.)

ILLUSTRATION

Although the criteria for assessing the tax seem eminently sensible and straightforward from a practical viewpoint, the implementation may not prove too simple. As an example, what is a rich man or a poor man? What are the different degrees of wealth at which the break comes? What share of the assessment is there for the protection of life and what share for goods? These and other perplexing questions are difficult, if not impossible, to answer but some answer must be given.

To try to solve this dilemma, a simple (perhaps naive) example is offered. The town of Plomforta has twelve residents. Each resident has a different net worth and the homes are at various distances from the outskirts of the town. A wall has to be built at a cost of $420.00.

a) For the equal portion to be paid by each individual, the first $1,000 of worth is assessed at .4% or $4. per resident. The net worth is then reduced by this $1,000. (Total assessed $48.)

b) As an assessment for the possibility of attracting the danger in the first place, each resident is taxed .2% of his net worth less the $1,000 in a) above, i.e., R1 — .002 (10,000 — 1,000) = 18 (Total assessed $108.)

c) The balance of the cost of the wall, $420 — $48 — $108 or $264 is assessed based on a function of the distance from the outskirts and the total net worth of the resident. This was calculated by multiplying the distance by the net worth and dividing the total into the balance of $264 to arrive at the assessment of .2%, i.e. R3 — .002 (10,000) (3) = $60.
d) The tax assessed per resident is shown below:

<table>
<thead>
<tr>
<th>Net Worth</th>
<th>Distance to outskirts</th>
<th>Equal Portion (a) = .4%</th>
<th>Attracting Attention (b) = .2%</th>
<th>Distance &amp; Worth (c) = .2%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000</td>
<td>1</td>
<td>$4</td>
<td>$18</td>
<td>$20</td>
<td>$42</td>
</tr>
<tr>
<td>$10,000</td>
<td>2</td>
<td>4</td>
<td>18</td>
<td>40</td>
<td>62</td>
</tr>
<tr>
<td>$10,000</td>
<td>3</td>
<td>4</td>
<td>18</td>
<td>60</td>
<td>82</td>
</tr>
<tr>
<td>$7,000</td>
<td>1</td>
<td>4</td>
<td>12</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td>$7,000</td>
<td>2</td>
<td>4</td>
<td>12</td>
<td>28</td>
<td>44</td>
</tr>
<tr>
<td>$7,000</td>
<td>3</td>
<td>4</td>
<td>12</td>
<td>42</td>
<td>58</td>
</tr>
<tr>
<td>$4,000</td>
<td>1</td>
<td>4</td>
<td>6</td>
<td>8</td>
<td>18</td>
</tr>
<tr>
<td>$4,000</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>16</td>
<td>26</td>
</tr>
<tr>
<td>$4,000</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>24</td>
<td>34</td>
</tr>
<tr>
<td>$1,000</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>$1,000</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>$1,000</td>
<td>3</td>
<td>4</td>
<td>0</td>
<td>6</td>
<td>10</td>
</tr>
</tbody>
</table>

'1 = furthest from outskirts; 3 = closest to outskirts

This assessment seems to follow the letter of the law. It is left to the reader to decide whether it is acceptable and reasonable.

Although it seems obvious that the tax should be levied on the residents of the town, two additional problems arise. 1) Should all residents of the town be required to pay for the wall? and 2) When does an individual become a resident?

The first question is posed because it is explained in the text that Rabbis do not pay the tax. The reasoning behind this dictum is based on various passages in the Torah and is ratified by many learned discussants. (There is insufficient space in this paper to delve into the deep theological argument underlying this thought, but it should be realized that in Judaism, spiritualism is deeply intertwined with monetary considerations. Nevertheless, essentially it is manifest that the Rabbis have no need for protection, since their safety is in the hands of the Almighty, nor it is argued, do the Rabbis bear any responsibility for attracting the danger initially.)

Another, usually unique group, the orphans, are required to pay the tax. Being minors, as a rule, even if they want to pay certain taxes or to forgive debts, they are not permitted to do so. In this instance, however, it is considered that they have no defense from...
violence. Not being exempted from the tax would also tend to enhance the standing of the orphans in the community. The principle that seems to follow from these examples is that a tax should be levied on those who have a need for the service being provided by the tax.

The problem of when a resident becomes a resident leads to a long discussion. Many other portions of the *Talmud* refer to this question in different circumstances and it would seem that every possible situation is examined to establish precedent. One interesting semantic distinction is made between an inhabitant and a resident, where a pragmatic decision is made that after 12 months an inhabitant becomes a resident since he is showing commitment to the town at this time. The debate becomes quite involved, however, when residency for the levy is compared to the regulations for the giving of charity. Since giving of charity is one of the most basic duties of the Jew, this duty is spelt out in great detail in the *Talmud*, i.e., after 30 days residence he must contribute to the soup kitchen, after three months to the charity box, etc. The discussion, which covers several pages, becomes quite tortuous, but I have been assured that there is a thread of continuity throughout. To this un-tutored eye, however, there seem to be many unrelated passages. Nevertheless, the net result—and as in all similar cases this must be resolved practically—is that a resident, for the purpose of the security tax, is one who has lived in the town for 12 months. This dictum is tempered somewhat, however, by the ruling that as soon as a residence is purchased, one is deemed to become a resident. Moreover, I understand, although this is not evident in the text, that a tenant is responsible for this tax rather than the owner of the residence, presumably because it is the tenant’s life and movables at risk.

**The Discussion**

Over the centuries, the *Talmud* has been dissected, analyzed, and discussed *ad infinitum*. Meanings of words, their connotations, by whom they were uttered, and the circumstances under which they were said, all have a bearing in their interpretation. Even further afield, the Cabalists would calculate the numerical value of a word, based on the position of each letter in the alphabet, as an aid in divining its meaning. It should, therefore, not be surprising to learn that there is less than universal agreement about the meaning of many passages.

As an example, one of the foremost authorities in the field,
Maimonides, seems to disagree with the consensus reached by the Tosaphot on who should pay the tax. He states, quite clearly and unequivocally, that the tax should be collected on the basis of proximity to the wall; "the closer one lives to the wall, the more he must give." Unfortunately, Maimonides does not offer any justification for his disagreement with the Tosaphot. However, this great thinker and lawgiver is held in such awe by present students of the Talmud that they accept that he had good reason for ruling as he did. It is possible that Maimonides came to this conclusion on the premise that a thief would kill in order to escape detection and therefore that the sole purpose of the wall was to protect the life of the residents.

Another, more contemporary author, Aaron Levine, analyzes and rationalizes the security tax levy using modern economic theory. His study examines the above passage as well as many pertinent writings over the years and attempts to justify the reasoning of each interpreter. He first uses the Efficiency Rationale to explain why the levy must be made coercive. Because everyone wants protection, it is a natural assumption that protection will be provided. The "free rider" motive dictates however, that someone else will pay for it, hence, it is necessary to initiate the coercive feature. Furthermore, since there is forced participation in the tax, only those who have signified that they expect to be permanent inhabitants in the town are required to pay. Permanence is pragmatically indicated by residency in the town for a twelve month period or the purchase of a house in the town for residency purposes.

A possible rationalization of the proportionate amounts to be paid is explained by the argument that those close to the outskirts of the town are more likely to be victimized by thieves, particularly in the case of movable property. It also follows that the wealthier the individual, the more he has to lose. Nevertheless, even though a thief may only be interested in stealing, it is considered natural that an inhabitant would try to prevent the theft from occurring. The thief, on his part, would tend to resist and in the ensuing struggle, the inhabitant could lose his life. Following this reasoning every man is in danger and rich or poor, every man has to contribute for the safety of his life. Levine, following through, in his argument, mentions several other commentators who justify this handling of the levy but by reference to other precedents. He concludes, however, that the causation principle plays a large part in the decision to apportion the assessment between a poll tax and a means test.
The Lesson

In matters of security—and it must be emphasized that this lesson is restricted to security—the tax to cover the cost of providing the protection required should be apportioned using the following criteria.

1. A potential initial need for the protection.
2. The individual(s) responsible for this need must pay for a greater share.
3. The greater the potential loss, the greater the amount to be paid.
4. Notwithstanding the above three points, a potential loss of life to each and every individual.

Following these precepts, it is averred, will result in an equitable apportionment of the cost of providing security to the residents of a town.

The question that arises at this point is whether the teachings of the ancient prophets of the Hebrews have any relevance to the fiscal policy setters of today. The answer must be in the affirmative, as much for the process as for the end result.

In these days of high taxation coupled with the perceived lack of control over the expenditure of the funds received, it would be instructive to the taxpayer to know why he is being assessed and the method used in arriving at his share of the tax. This calls for a more detailed breakdown of the purposes for which the tax dollar is assessed. Coupled with this detail would have to be debate and discussion akin to that used herein. In this fashion it is envisioned that a more equitable division of tax would be attained and that there would be a stronger control over the spending of the monies received.

The Conclusion

The Talmud is second only to the Torah as the Holy Book that directs every action of the observant Jew. In this paper, one passage from the Talmud, a very early example of income tax policy, is examined in detail. The arguments for the basis of allocation of this tax are brought out from different points of view. An attempt is then made to relate the thinking of 2,000 years ago to the modern environment. Although the principles enunciated seem to make a great deal of good sense and are quite convincing, the application of the principles to practice, as many Ministers of Finance have found to their sorrow, is a much more difficult task.
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FOOTNOTES

1Epstein, Introduction.
2Epstein, Introduction.
3Epstein, p. 76.
4Maimonides, p. 178.
5Levine, pp. 136-147.

BIBLIOGRAPHY


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