



What Should One Do?

Let's do a thought experiment. I'm ordered by the Department of Health and Human Services (HHS) to perform, without compensation, cleaning services at a local retirement home. I've not been found guilty in a court of law of a crime for which I'm being punished. I've simply been ordered to work at the home in the name of promoting the public welfare. Failure to comply means going to jail.

I might seek a court injunction against HHS's edict. But suppose the court rules that HHS has the authority to order me to perform cleaning services. I might take my complaint all the way to the U.S. Supreme Court, only for the Court to rule: yes, under the U.S. Constitution's welfare clause and the authority it gives Congress, I'm compelled as ordered by HHS to perform cleaning services.

My question to you is, now that the courts have ruled, should I simply comply? You might rejoin by suggesting that the question cannot be answered unless additional information is supplied such as: Did Congress properly vote to authorize HHS to order me to clean retirement homes? Did it single me out or are other Americans assigned similar tasks? In other words, was there invidious discrimination?

My response to your first set of questions is, what does a vote have to do with the rightness or wrongness of the mandate? Would a

majority vote determine the rightness or wrongness of rape, murder, theft, and slavery? To the second question, I would also ask, does the rightness or wrongness of an act depend on the number of people forcibly used to serve the purposes of another? Was slavery in our country okay because four million blacks were enslaved instead of just one? Does equality in servitude make servitude just?

One might rejoin by saying, "All those arguments are neither here nor there; the law is the law and people should obey." Balderdash! South Africa used to have apartheid laws that strictly controlled where blacks could live, work, and eat. Nazi Germany had anti-Semitic laws. In the United States there was the Fugitive Slave Act of 1850. Would you have obeyed those laws?

Would you have sought prosecution of white employers who hired black workers in contravention of job reservation laws that were a part of South Africa's Civilized Labour Policy? In Nazi Germany, would you have approved sanctions against Germans who were hiding Jews or assisting them to escape? In the United States, would you have turned in members of the underground railroad who assisted escaping slaves? These questions suggest that when deciding whether or not to obey a law, one always has to ask whether that law is moral and just. But that's not quite the end of it. One must also ask, if I decide to disobey immoral and unjust laws, whether I am willing to risk suffering at the hands of the state for disobedience.

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Servitude Through Taxation

You say, “Okay, we’ve gone through your thought experiment; so what’s the relevance?” Most people would agree that it would be wrong and immoral to force me to clean retirement homes. They might even say that it would be a form of constitutionally prohibited servitude. But would they go so far as to accept the generalization that it is immoral and unjust for one person to be forcibly used to serve the purpose of another? Saying so and giving just a bit of thought to such a generality would introduce significant difficulties in today’s America. Why?

While most Americans would agree that I should not be forced to clean retirement homes, no similar consensus would be reached about whether it is right to take a portion of my earnings through taxes to hire someone to clean retirement homes. However, there is little conceptual difference between physically forcing me to clean retirement homes and physically forcing me to cough up some of my earnings to do the same. In the case of forcing me to spend four hours cleaning retirement homes, I must forgo money I could have earned and used were I not mopping and scrubbing. If I am taxed, I still must forgo enjoyment I could have received from four hours of earnings. Both measures forcibly use me to serve the purposes of another under pain of punishment. I’ll be fined and imprisoned if I actively disagree with that use of my earnings. Moreover, if I am too resolute in my refusal I can suffer death at the hands of the state.

Morally there is only a trivial distinction between forcing me to perform cleaning

services at senior citizen homes and accomplishing the same through taxation. The taxation form of servitude is less visible and hence more palatable to the ordinary citizen, and as such it makes servitude politically more feasible. Not many Americans, I would hope, would sanction enslavement of doctors to provide medical treatment to the medically indigent or enslavement of lawyers to provide legal services to the poor. In a moment of reasonableness, they might argue that if cleaning retirement homes, treatment of the medically indigent, and providing legal services to the poor is in the public interest, then the burden should be borne by all Americans instead of particular Americans. But distributing the burden through the tax code simply conceals the immorality of forcing one person to serve the purposes of another.

There is nothing in our Constitution that authorizes Congress to engage in “charitable” expenditures, and no clearer words were spoken about that than those of the U.S. Constitution’s “father,” James Madison. In 1792 Congress had appropriated \$15,000 to assist some French refugees. Madison disapprovingly said, “I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents.”

So what is to be done when our government makes immoral or unconstitutional decrees? Is one morally obligated to obey? I think not, but one has to decide whether one wants to risk fines, imprisonment, and death at the hands of the U.S. Congress. □