



- Jim is a born American citizen living in Toronto. He does not make enough money to be obligated in taxes to the US (slightly more than \$100,000 USD) and does not want to go through the effort of filing. Do you have an obligation to encourage him to file? Jim's children were born in Toronto, but hold US citizenship. Do you have to encourage them to file US taxes?
- Sarah is a US citizen living in Toronto who would owe US taxes if she filed. Must you encourage her to file and pay?
- In most years Matt, a US citizen living in Toronto, files US taxes and receives child benefits from the US government as he does not make enough to owe US taxes. One year he gets a bonus and earns enough to owe to the US government. He does not want to file. Alternatively, he wants to file and hide some of his income. What do you do?

1. US Tax Myths <http://time.com/money/4298634/expat-expatriate-taxes-us-myths/>

Myth #1: I don't live in the U.S., so I don't have to file U.S. taxes.

Contrary to popular belief among expats, the obligation to file U.S. taxes does not end when you take up residence in a new country. The United States is one of only two countries (the other being Eritrea) that taxes its citizens no matter whether they reside.

Myth #2: I don't owe U.S. taxes, so I don't have to file a U.S. tax return.

In order to prevent the double taxation of income earned by U.S. citizens living abroad (i.e., tax imposed by the U.S. and the country of residence), the U.S. tax code contains provisions that can reduce or eliminate an expat's obligation to pay U.S. taxes. For instance, the foreign earned income exclusion (FEIE) allows expats to exclude a certain amount of income earned abroad (\$100,800 for 2015). Expats are also generally allowed to use foreign taxes paid as a credit against their U.S. tax obligation.

2. 2017 BCSC 1764: British Columbia Supreme Court, United States of America v. Smith

In United States v. Yang... (Ont. C.A.) Mr. Justice Rosenberg wrote for the Ontario Court of Appeal at para. 5: [5] The combined effect of ss. 15 and 29 is to implement the double criminality requirement. The authority to proceed sets out the Canadian offence that is equivalent to the offence allegedly committed in the extradition partner state. The extradition judge is therefore not concerned with foreign law. He or she merely determines whether there is evidence of conduct that would amount to the Canadian offence described in the authority to proceed. The evidence must be sufficient as would justify an accused's committal for trial if the offence were alleged to have been committed in Canada.

The Minister submits that approach applies also to Mr. Smith because, for example, the ROC reads in part: According to IRS records, no U.S. taxpayer, including SMITH and any of the entities he controlled, paid U.S. income taxes on the US\$18.4 million of income that SMITH earned from Quadra in 1998. With respect to the US\$18.4 million of unreported income, there is a tax due and owing to the United States of US\$8,256,897

3. Wikipedia: The **Foreign Account Tax Compliance Act (FATCA)** is a 2010 United States federal law requiring all non-U.S. ('foreign') financial institutions (FFIs) to search their records for customers with indicia of 'U.S.-person' status, such as a U.S. place of birth, and to report the assets and identities of such persons to the U.S. Department of the Treasury.

For more details: <https://www.irs.gov/businesses/corporations/information-for-foreign-financial-institutions>

4. IRS <https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar>

Those required to file an FBAR who fail to properly file a complete and correct FBAR may be subject to civil monetary penalties. For penalties that are assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the IRS may assess an inflation-adjusted civil penalty not to exceed \$12,459 per violation for non-willful violations that are not due to reasonable cause. For willful violations, the inflation-adjusted penalty may be the greater of \$124,588 or 50 percent of the balance in the account at the time of the violation, for each violation.

The Source for "Dina DiMalchuta Dina", the Law of the Land is the Law

5. Talmud, Bava Kama 113a

מתני'. אין פורטין לא מתיבת המוכסין
גמ'. והאמר שמואל: דינא דמלכותא דינא! אמר רב חנינא בר כהנא אמר שמואל: במוכס שאין לו קצבה; דבי ר' ינאי אמרי: במוכס
העומד מאליו.

Mishnah: One may not make change using money from the tax-collector's box...

Gemara: But didn't Samuel say, "The law of the kingdom is the law?" R' Chanina bar Kahana cited Samuel as specifying: This [mishnah] speaks regarding a tax collector who does not have a fixed amount. In the yeshiva of R' Yannai they said: This [mishnah] speaks regarding a self-appointed tax collector.

Theory 1: Divine Right of Kings

6. Nehemia 9:37 (see also Samuel I 8:11-18)

וּתְבוֹאֲתָהּ מִרְגָּה לְמַלְכִים אֲשֶׁר־נִתְּתָה עָלֵינוּ בְּחַטֹּאוֹתֵינוּ וְעַל גְּוִיֹּתֵינוּ מִשְׁלִים וּבְבֵהֶמְתָּנוּ כְּרֻצֹנָם וּבְצָרָה גְדוֹלָה אֶנְחֵנוּ: (פ)

On account of our sins it yields its abundant crops to kings whom You have set over us. They rule over our bodies and our beasts as they please, and we are in great distress.

7. Responsa of the Geonim (Asaf) #66 (Less extreme in Ramban and others)

כי כאשר השליט הקב"ה את המלכויות בעולמו, כך השליטין על ממון בני אדם לשלוט בו כרצונם, ואפילו ישראל, ככתוב: 'ועל גווייתנו מושלים ובבהמתנו כרצונם'

When G-d gave power to the kings in the world, he gave them control of people's money, to control them as they will, even those of the Jews, as it says "over our bodies and our beasts as they please."

8. Rabbenu Yonah of Gerondi, as cited by Shitah Mekubetzet Bava Batra 54b

שהנכסים מופקעים מבעליהם בדיני המלך, וכענין הפקר ב"ד הפקר

For the property is removed from its owners by law of the king, just as "that which the courts make ownerless, is ownerless."

9. The power of the king may devolve to the people when there is no monarch, thereby imbuing democracies with the same power (Rabbi Avraham Kook in Mishpat Kohen 144)

Theory 2: The King owns the land

10. Rabbi Shimon b. Aderet (Rashba), Nedarim 28a

משום דמצי אמר להו אם לא תעשו מצותי אגרש אתכם שהארץ שלו היא

Because he can say "if you don't follow my commands, I will expel you", for the land is his.

Theory 3: Honoring the Noachide Laws (Some, such as Rabbi Isaac Breuer believe this applies to international law)

11. Talmud, Sanhedrin 56b

ויצו אלו הדינין וכן הוא אומר +בראשית י"ח+ כי ידעתיו למען אשר יצוה את בניו וגו'

'And Gd instructed Adam' – This refers to civil law, as it is also written, 'He will instruct his children and household afterward to guard the path of Gd, to practice righteousness and justice.'

12. Rashi to Gittin 9b

חוץ מגיטי נשים - דלאו בני כריתות נינהו הואיל ולא שייכי בתורת גיטין וקידושין אבל על הדינין נצטוו בני נח

"Their bills of divorce [are unacceptable for Jewish courts]" – Because they are not subject to our laws of divorce, since our laws of divorce and **kiddushin** do not apply to them. Regarding civil law, though, Noachides are instructed

Theory 4: Communal recognition: Partnership or social contact

13. Talmud, Bava Batra 8b

ורשאין בני העיר להתנות על המדות ועל השערים, ועל שכר פועלים, ולהסיע על קיצתן

Townpeople may make rules for measures and prices and wages, and may fine those who violate the norms.

14. Rabbi Herschel Schachter, Taxation and Dina Demalchusa

It is important to note that today the basis for taxation is totally different from what it was in Talmudic times. Today, all modern countries provide a variety of services: They provide streets and highways, and maintain forests and museums. They provide fire, police, and military protection. They collect garbage and deliver mail. They do medical research to discover cures for diseases, etc. The taxes are collected for the purpose of covering the annual budget, which pays for all of these projects. The **halacha** views all of the people living in the same neighborhood as "**shutfim**" - "partners," sharing a common need for a **shul**, yeshiva, **mikveh** and an **eruv**, and therefore, the "partners" can force each other to put up the needed amount to further their partnership. So too,

all people who live in the same city, state, and country are considered "**shutfim**" with respect to the services provided by that city, state, and country. The purpose behind the taxes is no longer "to enrich the king" in the slightest... And even if much of the tax money goes towards expenditures that are not to one's personal liking and that one gets nothing out of, such is the **halacha** of any partnership: the majority of the partners have the right to determine what are the reasonable needs of the partnership (**Choshen Mishpat** 163:1). Therefore, this majority has the legitimate right to force the minority to contribute their share towards properly furthering the partnership.

15. Rabbi Tzvi Hirsch Chajes (Torat Neviim)

נראה לי דבר חדש דכל משפטי המלוכה המה רק ענין תקשורת בין המלך להעם, ועל אופנים הללו נאותו הצדדים, והעם התרצו לוותר הונם ורכושם לטובת הכלל להיות דבר אחד לדור אשר יצא לפניהם וילחם מלחמותיהם . . .
It appears to me [to suggest] something novel, that all the laws of the monarchy are just an issue of agreement between the king and the nation, and in these ways the sides agreed, and the people consented to surrendered their wealth and property for the general good, so that there should be one ruler per generation who will go out before them and fights their battles . . .

International Law?

16. Rabbi Shaul Yisraeli, Amud HaYemini 16

ע"כ נ"ל שיסוד של ד"ד אחד הוא וגם בין עם לעם הוא רק מצד הסכמה, כי הרי גם באמרנו הסכמת בני המדינה אין פירושו, שכל אחד ואחד הסכים לזה, אלא שהולכים אחרי הסכמת הרוב, והמיעוט בטלה דעתם. וכמו כן אפשר לומר שמה שנהגו בו המלכים והמלכויות השונות נחשב כהסכמה כללית של באי עולם.
Thus, it seems that the basis of "the law of the land" is **the same**, even when it is **between nations** it is predicated on **consent**. For even when we say the consent of the members of the nation, this does not mean **that each and every person** agreed to this. Rather, we follow the consent of the **majority**, and the minority is nullified to them. Similarly, it could be that what kings and different governments practice is considered a general consent of humanity. Therefore, even if some do not agree to this, their opinion is nullified.

17. Yehoshua 9

(טז) ויהי מקצה שלשת ימים אחר אשר קרתו להם בג'ת וישמעו פי קרבים הם אליו ובקרבו הם ישיבים: (יז) ויסעו בני ישראל ויבאו אל עריהם ביזם השלישי ועריהם גבעון והכפירה ובארות וקרית יערים: (יח) ולא הכום בני ישראל כי נשבעו להם נשיאי העדה ביהוה אלהי ישראל וילנו כל העדה על הנשיאים: (יט) ויאמרו כל הנשיאים אל כל העדה אנחנו נשבענו להם ביהוה אלהי ישראל ועתה לא נוכל לנגע בהם: (כ) זאת נעשה להם והחיה אותם ולא יהיה עלינו קצף על השבועה אשר נשבענו להם:
(16) But when three days had passed after they made this pact with them, they learned that they were neighbors, living among them. (17) So the Israelites set out, and on the third day they came to their towns; these towns were Gibeon, Chephirah, Beeroth, and Kiriath-jearim. (18) But the Israelites did not attack them, since the chieftains of the community had sworn to them by the LORD, the God of Israel. The whole community muttered against the chieftains, (19) but all the chieftains answered the whole community, "We swore to them by the LORD, the God of Israel; therefore we cannot touch them.

18. Rambam, Laws of Kings 6:3

ואסור לשקר בב'ריתם ולכזב להם אחר שהשלימו וקבלו שבע מצות:
It is forbidden for us to lie to them in their peace treaty or deceive them after they have made peace and have accepted the Seven Commandments.

19. Approaches:

- a. **Ralbag on Joshua 9:15:** If they broke their vow, it would seem as if they don't take their promises seriously, nor do they fear G-d.
- b. **Radak on Joshua 9:7:** They didn't want others, who didn't realize the vow was null and void, to think they were treaty breakers.
- c. **Radbaz to Rambam:** It would desecrate G-d's name.

20. Some Thoughts:

- a. If you take child benefits yearly, and then don't file when you would owe, that is unethical.
- b. If you lie on tax returns and receive child benefits, that is theft.
- c. If you take advantage of the rights of citizenship, that is likely a "partnership"
- d. One must always be concerned of **chillul Hashem**, desecrating and sanctifying G-d's name.