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Tax Avoidance and the Accountant's Professional Duty: A Review

Thomas T. Amlie
Associate Professor of Accounting
Penn State University-Harrisburg, USA

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Abstract

There is a substantial body of literature in the business ethics field dealing with the ethics of tax avoidance. Some of this literature extends the ethical inquiry to the tax professional, arguing that participation in tax avoidance activities is contrary to the accountant's professional duty, both in terms of their duty to the public welfare as well as their duty to follow proper accounting practices. The existing literature usually argues from the premises that tax avoidance is detrimental to society, and that the accountant has a largely undefined duty to the welfare of society. If those premises are accepted, the conclusion in the existing literature that participation in tax avoidance activities violates the accountant's duty to the public interest is unavoidable. It is also argued that accountants have a duty as professionals which would preclude engaging in tax-avoiding activities, irrespective of its impact on the wider society. This paper reviews the existing literature which addresses these topics and evaluates the premises and conclusions which have been largely accepted in the literature. The commonly cited harms to the public interest caused by tax avoidance are reviewed, and the origin, nature, and codification of the accountant's professional duty are examined. It is argued that not only are the harms caused by tax avoidance often mis- or overstated, but that the professional duty of the accountant is misspecified as well. Since these are critical premises to the argument that tax avoidance represents a violation of the accountant's duty to the public interest, the questionable validity of those premises leads to serious reservations about the validity of the conclusion. This paper does not argue that tax avoidance is either ethical or unethical, good or bad, moral or immoral. The sole purpose of this paper is to examine whether it is correct to argue that the accountant's professional duty to the public interest would prohibit condoning or participating in tax avoidance activities.

Keywords: Tax accounting, Professional ethics, Tax avoidance, Duty to society

Introduction

A recurring claim in discussions of tax avoidance or aggressive tax planning is that tax accountants, as professionals, have a duty to the public, and that participation in tax avoidance or aggressive tax planning activities violates this duty. The purpose of this paper is to critically review the literature on the effects on the public welfare of tax avoidance, the nature of the tax accountant's duty to the public, and how that duty extends to the professional's role in tax-related engagements, and to evaluate the most pervasive arguments in this area.

Arguments that enabling tax avoidance is a violation of the professional's duty to society generally rest on one or more of several supporting arguments. First, there is a consequentialist argument that tax avoidance is detrimental to the welfare of society. Second, it is assumed that participation in or acquiescence to tax avoidance is contrary to the accountant's professional duty, either because it is contrary to the accountant's duty to the public welfare or because it violates some other aspect of professional duty. Rigorously questioning these arguments is a critical precursor to any meaningful discussion of the ethics of taxation and tax avoidance, as well as the professional's obligation in this regard.

Three arguments made with respect to the first assumption – that tax mitigation is detrimental to some aggregate called "society" – will be examined here. Essentially a utilitarian argument, the primary thrust in the literature is that the public benefits from governmental spending programs, and that tax avoidance or aggressive tax planning imperils these spending programs. A related argument, but one that deserves separate consideration due to the moral imperative of respecting the rights of others, is that this threat to governmental services represents a violation of the rights of the recipients of those services. Finally, it is argued that if an avoiding taxpayer pays less than their "fair share" of taxes, that necessarily implies that other taxpayers will have to pay more than their "fair share".

The second assumption – that a "duty to society" is violated when the accounting professional assists the client in mitigating taxes – hinges critically on the nature of that duty to society. If that duty is poorly defined, or if the hierarchy of professional obligations is incorrectly specified, any conclusions regarding the ethical shortcomings of accounting professionals in this context are suspect. An argument that is related to the idea of "professional duty" involves virtue ethics or "Good Accountant" argument: that accountants have a professional duty that extends beyond simply adhering to the letter of the tax code. Instead, as Good Accountants they have a professional duty to prepare accounting information with a focus on "economic substance over form", and to adhere to the spirit rather than the letter of the tax code. This Good Accountant argument is extended by some who claim that tax accountants have a duty to the revenue authority or the "tax system" which equals or exceeds their duty to their client. As a Good Accountant, they must act in the interests of both of their tax-paying client as well as the tax-receiving government.

The paper opens with a brief description of the methodology for searching the relevant literature and the parameters for inclusion or exclusion. A brief discussion of the categorization of tax-reducing endeavors is then followed by a review of some of the extant literature on the ethics of tax avoidance and the implications for the accounting professional. The arguments underlying the claim that accountants violate their professional obligations by either participating in or tacitly approving tax-avoiding activities are examined and critiqued. It is shown that the arguments underpinning such a claim enjoy only questionable support and that therefore the conclusion itself is similarly suspect.

Methodology

As this paper is intended to provide a review and evaluation of existing research in this area, a systematic search of the extant literature was performed. The core argument of the paper involves the ethical implications of tax avoidance and the accounting professional's responsibility in that regard. This paper therefore necessarily involved reviewing the literature in a number of different fields: the ethical issues surrounding tax avoidance or evasion, the nature of the accountant's professional responsibilities, both in general and with respect to tax avoidance, and the nature of professional responsibilities across other professions.

In searching for relevant literature, the ABI/Inform database was utilized, searching peer-reviewed literature published in scholarly journals from January 1 2014 through January 1, 2024. The search results were filtered to exclude non-English-language papers and to include only papers available full-text through the Pennsylvania State University electronic resources system.

The literature search on the ethical arguments surrounding tax avoidance/evasion was based on the terms [”tax evasion" OR "tax avoidance"] AND [ethic* OR unethical OR consequen*] within the abstract of the text, with the term [tax] within the title. The term "consequen*" was added since the effects of tax avoidance are often couched in terms of the consequences for society, or consequentialist ethical arguments. This search yielded 93 results. The abstracts of the papers were scanned to determine whether they were in fact concerned with the ethical ramifications of tax avoidance or evasion. Many of the papers in the results involved questions of what affects the level of tax avoidance behavior (e.g., religious or cultural or demographic characteristics), rather than what makes such behavior ethically questionable. Virtually all of the literature argues that tax avoidance is unethical based on a variety of related consequentialist concerns. A representative sample of the literature is referenced in the paper.

The literature on the (general) professional responsibilities of the accountant included both the pronouncements of the various professional bodies as well as a search of the academic literature. The academic literature was searched based on the terms [accountant OR accounting OR accountancy] in the abstract, and [“professional ethics” OR “professional duty” OR “code of ethics” OR “professional responsibilit*” OR “ethical duty”] in the abstract. This search yielded 69 results. Some of the resulting papers were not related to the accounting profession. Most of the papers related to the accounting profession involved the need for ethical accountants, how to inculcate professional values, or the effects of (un)ethical behaviors on the accounting firm or its clients: interesting topics, but not relevant to the current effort. After scanning the abstracts it was determined that there were 12 papers which actually addressed the issue of the nature of the accountant’s professional ethical obligations.

The literature on the accountant’s ethical responsibilities in the context of tax accounting was searched on the terms in the title [“tax avoidance” OR “tax evasion” OR “aggressive tax”], and the terms in the full text [“tax accountant*” OR “tax practice” OR “tax planning” OR “tax preparer”] AND full text [ethic* OR "professional ethics" OR "professional duty" OR "code of ethics" OR "professional responsibilit*"]. This search yielded 135 results. As in the other searches, examination of the abstracts (or in most cases simply the title) revealed that most papers were not related to the issue in question: most of the accounting-related papers explored issues relating to the determinants of tax avoiding behavior, rather than the question of the manner in which it contravened the professional obligation of the accountant.

The relevant literature yielded by the preceding searches was examined, and references to other relevant works in their bibliographies pursued. This resulted in tracing the evolution of the literature back into earlier periods. This additional literature was not restricted to literature available full-text through the Pennsylvania State University electronic resources.

Tax mitigation, avoidance, and evasion

Any discussion of the ethics of taxation, tax mitigation, tax avoidance, aggressive tax avoidance, and tax evasion must necessarily start with an effort to define terms. Tax mitigation is generally viewed as an ethically acceptable activity, wherein decisions are made which are based on bona fide business considerations, but which also happily coincide with beneficial provisions in the tax code. Tax avoidance involves using provisions in the tax code to reduce taxes, where transactions are entered into or structured in such a manner that their sole or primary purpose is to avoid taxes. Tax avoidance is further divided further into "aggressive" tax avoidance (commonly deemed unethical) and non-aggressive (not as universally decried). The distinction between tax avoidance and aggressive tax avoidance is not well-defined, and often seems to hinge on whether the tax position comports with the "spirit" of the law, or whether it is likely to be upheld judicially or administratively. If it is likely to be supported it is viewed as avoidance; if support is questionable or unlikely it is deemed aggressive avoidance. Some writers (Frecknal-Hughes, et al., (2017)) treat "aggressive tax avoidance" and "unethical" as overlapping categories (e.g., "aggressive and unethical tax avoidance") without ever clearly defining one except as being indicative of the other. Tax evasion is commonly defined as the failure to pay taxes that should be legally due through concealing income or overstating expenses. Unlike tax mitigation, tax avoidance, and aggressive tax avoidance (which all involve abiding by some interpretation, however tenuous, of the letter of the law), tax evasion involves violation of the law.

Although these distinctions might be viewed as irrelevant to utilitarian arguments based on the claim that taxes are beneficial to society, they are relevant when we turn to the "good accountant" argument. For the sake of exposition, the term "tax avoidance" will be used throughout the remainder of the paper.

Literature on professional responsibility and tax avoidance

There is substantial literature on the ethics of tax avoidance and evasion. Most of this literature focuses on the ethical failings of the tax avoider and how the avoider's decision to minimize the tax obligation is a violation of any of a number of ethical standards. Some of this literature is extended to the role of the tax accountant, which is the issue under consideration in this paper. Participation in, or the condoning of, tax avoidance is sometimes couched as a violation of the professional's "duty to the public". Despite numerous well-reasoned expositions suggesting that the public interest, and indeed the public, is inadequately defined for the purposes of alleging such ethical failures (Dellaportas and Davenport (2008) and Murphy and Bennett (2018), among others), the preponderance of the literature ignores such definitional concerns.

The argument that accountants have a professional duty to society which precludes participation in tax avoidance is based on two supporting arguments. The first is that tax avoidance is contrary to the interests of society, and that the accountant has a professional duty to mitigate such harms.

The argument that tax avoidance is contrary to the interests of society is made along a number of dimensions. It is argued that tax avoidance imperils the delivery of governmental services, to the detriment of society. Some extend this argument to claim that tax avoidance by one party violates the rights of others, either by violating the rights of the recipients of governmental goods and services, or by creating an unfair state of affairs where some taxpayers are forced to pay more than their "fair share" of taxes in order to compensate for the reduced tax revenues brought about by tax avoidance.

The second supporting argument is based on the accountant's duty to adhere to professional standards of behavior, irrespective of any consequences that arise from tax avoidance. Most commonly this is expressed as an obligation to adhere to the spirit of the tax code rather than the letter, and to report economic events in accordance with the economic reality rather than the form of the transactions. Sometimes this "duty to society" is extended by suggesting that the accountant has a professional duty to the revenue authority which must be balanced against the duty owed to the client.

That tax avoidance is unethical is treated as either a premise or a conclusion in the vast majority of the literature. In addition to the countless references to tax avoidance resulting in "unfair" outcomes (e.g., tax avoiders do not pay "their fair share"), most of the literature attaches odium to tax avoidance in no uncertain terms. Lokanan (2023) refers to the "moral culpability", "seedy underbelly", and "sordid culture" of tax avoidance.

In extending this disapprobation to tax practitioners, Shafer and Simmons (2008) note that "The facilitation of overly aggressive tax avoidance … implies more than simply a disregard for the public interest or public good. It also suggests that professional tax advisors do not believe strongly in the value of ethical or socially responsible corporate behaviour." Sikka and Hampton (2005) note that aggressive tax avoidance behavior raises major questions about the ethics of accountancy firms.

The conclusion that tax avoidance is contrary to the accounting professional's duty to society relies upon the aforementioned arguments as premises. To the extent that these premises are faulty or questionable, so must be the conclusion drawn from them. The remainder of this paper examines these arguments in some detail.

Evaluating the arguments

The public benefits from tax-funded spending

The most common argument regarding the professional accountant's obligations to the public vis-à-vis tax avoidance is that tax revenues fund public spending programs, and these public spending programs benefit society – they are "in the public interest". Therefore, the inescapable conclusion must be that any efforts to reduce tax payments are contrary to the public interest, and therefore any professional who assists in these efforts is violating his obligation to society.

In most cases, the argument is made that if taxes are evaded the governmental coffers will be inadequate to fund desirable spending programs (Darcy (2017), Dole, et al. (2014), and others). Stainer, et al. (1997) argue that "The ultimate effect (of avoidance/evasion) is the inevitable loss of revenues to the tax authorities and consequently to society at large", which suggests that any untaxed funds are a deadweight loss to "society".

Darcy (2017) notes that "The negative impact of tax abuse on the ability of states to deliver services, address poverty and meet their human rights obligations is becoming more apparent and is increasingly recognized." Similarly, Payne and Raiborn (2018) note that "governments always seem to lack sufficient funds to support the needs of society". Davis and Strawser (1993) couch tax avoidance in terms of a "class struggle aimed at reducing taxes". The use of class struggle imagery clearly suggests that tax evasion by one class necessarily implies resulting damage to some other class. Dole, et al. (2014) note that "Less tax revenue means reduced provision of public goods and services (e.g. unemployment benefits, hospitals, policing, roads, etc.) or more borrowing by national governments to fund these activities. Therefore, those involved in devising and promoting tax avoidance schemes can be seen as depriving society (especially the needy) of those goods and services, or burdening future generations with increased repayments, both of which are unethical." de Colle and Bennett (2014) argue that tax avoidance leads to an entire litany of societal ills. Increasing social inequality, undermining compliance culture, unfair competition, eroding tax revenues, increased global poverty, and other consequences of tax avoidance are clearly not in the public interest, so any accountant who participates in or condones tax evasion is abrogating his or her duty to society. In a similar vein, Sikka (2015) notes that accounting firms are deeply implicated in the inequitable distribution of income and wealth, a major cause of the economic crisis engulfing the neoliberal economies.

These consequentialist arguments have been recast in terms of being a "sustainability" issue (Bird and Davis-Nozemack (2018)), where tax avoidance endangers not only the societal infrastructure but also has consequences for the regulatory compliance assumed to be necessary for the sustainability of society and social cooperation.

The consequentialist argument that tax avoidance is harmful to society is taken as a truism. In a singular paper which stands out for challenging this premise, West (2018) notes that any utilitarian analysis of taxation and tax avoidance is indeterminate. "Simply listing the various costs and benefits associated with tax avoidance and/or tax payment does not itself provide a utilitarian justification" (West, 2018). Given the tenuous nature of the assumed societal harm arising from tax avoidance, and the fact that different professionals (as well as different economists and philosophers) might in good faith have very different views of its accuracy, treating it as an irrefutable truth removes the most fundamental and contentious grounds for ethical deliberation.

As Frederic Bastiat noted in the introduction to his essay "That Which is Seen, and That Which is Not Seen" (1850):

> In the department of economy, an act, a habit, an institution, a law, gives birth not only to an effect, but to a series of effects. Of these effects, the first only is immediate; it manifests itself simultaneously with its cause — *it is seen*. The others unfold in succession — *they are not seen*: it is well for us if they are *foreseen*. Between a good and a bad economist this constitutes the whole difference — the one takes account of the *visible* effect; the other takes account both of the effects which are *seen* and also of those which it is necessary to *foresee*. Now this difference is enormous, for it almost always happens that when the immediate consequence is favorable, the ultimate consequences are fatal, *and the converse*. Hence it follows that the bad economist pursues a small present good, which will be followed by a great evil to come, while the true economist pursues a great good to come, at the risk of a small present evil." (Bastiat, 1850).

An exhaustive quantitative enumeration of the costs and benefits of taxation, tax avoidance, and governmental spending programs, and how they affect the millions of individuals who make up "society", is not possible. While the literature suggests that the popular view is that governmental spending programs are on net beneficial, there are some who believe that the income tax is "the root of all evil" (Chodorov, 1954), as it is what funds the interventionist warfare/welfare state which leads – according to that argument – to such wholesale misery and economic dislocation. The economic repercussions of a given tax or spending decision affect an unknowable number of people for an unknowable length of time through an unknowable chain of secondary effects, and the effect on each individual's welfare is not quantifiable. Even an observer graced with omniscience, who could foresee all of the secondary effects on all persons, would be unable to judge how each individual perceived the effects on his or her own welfare. Utility, although a useful theoretical construct in economics, is not observable, quantifiable, or comparable across individuals; one does not have a certain number of "utils" which can be compared to the utils of another person, these "utils" cannot be observed by an external observer, and one cannot add or otherwise aggregate these unquantifiable utils and arrive at an objective quantifiable measure of utility. Hence any utilitarian critiques of tax avoidance risk being deemed specious. At best, one can make the exceedingly weak statement that a certain state of affairs seems unfair according to his or her personal, subjective measure of "fairness", based on his or her limited knowledge of the overall situation. That is a far cry from an assessment of the overall costs or benefits of a policy, and hardly the foundation on which to build any sort of objective consequentialist argument on ethics.

In addition to questions regarding the net welfare effects of tax-funded expenditures, there are similar uncertainties regarding the deleterious effects of taxes. At one extreme there are some who would no doubt argue that any profits above some minimal rate of return should be taxed away: it is in the public interest for this surplus value or excess profit to be taxed away and "returned" to the community. At the other extreme, Hoppe (2001) observes that humankind's long slow climb from a subsistence standard of living has been made possible by individuals deferring consumption and instead saving and investing their resources in more efficient production technologies. This investment is predicated on the assumption that the returns from that investment will be secure from theft or expropriation; in the absence of such assurances, the incentive to invest for the future is decreased.

Any attempts to rank the interests of various parties – the taxpayer, other members of society, the government, suppliers, other taxpayers, or creditors – is of necessity subjective. In a highly complex world and complex economy, where business decisions cause ripples in the economy, immediate and long-term, on innumerable stakeholders, any attempt to summarize the effects on all of the parties affected and declare "this course of action is in the best interest of society" reveals an unbecoming hubris. Additionally, if such a judgment was expected of the professional, we would be faced with the immediate problem that different professionals, in applying their best judgment, would invariably arrive at different conclusions as to what course best advanced "the public good". Given that an indisputable objective utilitarian calculation is impossible, can ethical opprobrium attach to the actions of someone who believes that the course of action they have chosen is in the interests of society?

Accounting information is useful in that it aids economic actors in making utility-maximizing decisions which guide resources to their best and highest uses, as reflected in the price structure for inputs and outputs, and protecting users from fraud. Taxation by its very nature distorts the price and profit signals which guide the allocation of resources in the economy. An endeavor which is profitable (i.e., socially desirable, as measured by the relative value of inputs versus outputs, which are the sum of all societal valuations of those inputs and outputs) in the absence of taxes might be unprofitable in their presence. Working to minimize the tax burden – whether through avoidance or evasion – is working to remove distortions in the flow of rewards for socially desirable activities. Taxation, by its uninvited involvement in private sector transactions, distorts the market signals that guide the efficient allocation of resources. It diverts resources from where the public would freely choose to allocate them (as revealed by their voluntary decisions), and instead diverts them to politically chosen ends. Although these tax-funded ends are desired by, and in the interests of, the political class which makes these allocations, they are clearly not the same as the desires which the public has revealed through their voluntary transactions.

Taking all of these considerations into account, arguments that tax avoidance is detrimental to the welfare of society are seen to be questionable at best. It is difficult if not impossible to make the definitive statement that tax-funded spending is beneficial to society "at large", and the detrimental effects of taxation would need to be balanced against any net benefits argued to arise from such spending.

Tax avoidance violates the rights of others

Some authors take the ethical arguments against tax avoidance even further, arguing that tax avoidance violates the rights of other parties. This "rights violation" argument is made along two dimensions: first, that the funding threats to government services imperil the rights of the recipients of those services, and second that tax avoidance by one imposes an unfair burden on others.

If the government is deprived of revenues it imperils the realization of peoples' rights to healthcare, housing, education, and other governmentally-provided benefits. Darcy (2017) notes that tax avoidance leads to "the denial or infringement of economic and social rights". Similarly, de Colle and Bennett (2014) note that tax avoidance practices "might fail to respect the spirit of the law and violate the rights of communities, individual taxpayers, competitors (other corporations and nation-states) and other stakeholders". Since one of the overriding ethical concerns of all people, including professionals, should be respect for the rights of others, this is a potentially critical issue. If avoidance does in fact result in the violation of the rights of others, then any acts by an accounting professional in the furtherance of this aim would be a violation of their ethical duty to society.

At this point, the critical distinction between "legal rights" (i.e., privileges or entitlements, henceforth "privileges") and moral or human or natural rights (henceforth "rights") becomes critical. Rights exist prior to government. Rights are inherent in the nature of man, and arise from his self-ownership. Per Locke, "every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his." (Locke, 1689). Governments are instituted among people to protect their existing rights, not to violate the rights of some in order to benefit others. Governments can protect rights, but they cannot create or grant rights: they can only grant privileges. The rights of the individual exist prior to the creation of government and are unchanged – neither expanded nor contracted – by the creation of government.

Third party beneficiaries – whether recipients of government benefits or other taxpayers – have, in the absence of a freely entered into contract, no moral or ethical right to the resources of another person. While some may argue that individuals have a "right" to receive healthcare or food or shelter or education at the expense of the taxpayer, and legislation may make these things legal privileges, they are not "rights" according to the proper usage of the term. A right can never impose a positive obligation on another person, save the obligation not to interfere with the pursuit of the subject of that right. The right to the free practice of religion does not require third parties to construct a temple for the adherent, nor does the right to free speech require that a third party publish or broadcast that speech. A "right" which can be secured only by violating the rights of others – in this case, the right to the fruits of your own labors – is not a right. There should have been no moral opprobrium attached to violating the "rights" of slaveholders in the 19th century United States by depriving them of their legal property "rights" in their slaves. To the contrary, the odium should have been attached to helping them secure those "rights". Those were not rights but legal privileges, the exercise of which violated the true rights of others. The moral right was on the side of the enslaved. Just as a government which states "you do not have the right to liberty because of your race" is confusing "rights" with "legal permissions", so is a government which declares "you have the right to healthcare at the expense of your neighbor".

"Rights", properly understood, must adhere to Kant's Categorical Imperative. The rights of individuals must be able to be applied universally. A system where one person has the "right" to the property of another person, if universalized, would imply that all had a right to the property of all, and would lead to chaos and the destruction of society.

Some authors have noted the lack of explicit mention of tax avoidance in both professional codes of ethics as well as Human Rights standards. Darcy (2017) writes that corporate tax avoidance "is not specifically mentioned in the UN Guiding Principles or Framework" of the Human Rights Council. Darcy posits that "It may be that the indirect nature of the impact on human rights of corporate tax avoidance partly explains why it was neglected in the development of the business and human rights agenda." It is equally plausible that tax avoidance is not mentioned in those contexts because it is not a human rights issue: since third party recipients have no "right" to the taxpayer's resources, no human rights violation is possible by failing to provide those resources. Ciravegna and Niere (2022) refer to "…some forms of harm to society, such as tax evasion, which do not infringe human rights…".

Much of what people refer to as "rights" in this context, e.g., the right to taxpayer-funded healthcare or education, is simply, as Frederic Bastiat noted in *The Law* (1850), legal plunder.

> "But how is legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime." (Bastiat, 1850)

The argument that tax avoidance violates the rights of the recipients of taxpayer-funded benefits to those benefits is groundless, as such rights, from a moral perspective, do not exist.

There are similar rights-based arguments which assert that tax avoidance by one party leads to the rights of compliant taxpayers being violated. When one party pays less than their "fair share", that necessarily implies that other taxpayers must pay more than their "fair share" (Payne and Raiborn (2018), de Colle and Bennett (2014), Stuebs and Wilkinson (2009), among others). These "other taxpayers" may be either contemporaries of the tax avoiders (to the extent that governmental spending is financed by current taxes or through inflationary policies), or future generations of taxpayers (to the extent that the spending is debt financed). This unfairness is the fault of the avoiding taxpayer, and hence is evidence of ethical shortcomings.

There are two issues which must be addressed in order to make this argument. First, if arguments are to be made by reference to the "fair share" of various taxpayers, then there must be some agreement as to what a "fair share" entails. Second, if one person avoids a coercive extraction, should they bear the ethical odium if the revenue agency turns their coercive powers on another party?

The terms "fair" and "fair share" are sprinkled liberally throughout the literature on taxation and tax avoidance, but are seldom defined. Payne and Raiborn (2018) make reference to "fair" or "fairness" in the context of taxation 34 times without any effort to define the terms. Bird and Davis-Nozemack (2018) use some variant of the term 25 times, again without definition. In many cases writers seem to take the attitude that Justice Potter Stewart took towards the definition of obscenity: "I know it when I see it". Like the terms "public interest" and "social justice", they are freighted terms often employed without any agreed-upon meaning. Sometimes these undefined terms are used in tandem, as when Bird and Davis-Nozemack (2018) state that "Tax avoidance deters attainment of the elusive goal of just taxation to support an equitable society", without defining either the means ("just taxation") or the ends ("equitable society"). Whilst the authors might have an intuitive sense of what those terms meant to them at the time they used them, to use them as a basis for discussion requires clear and unambiguous definitions so that others may evaluate the argument. As Datt (2014) noted, the use of terms such as "fair share" and "aggressive tax planning" "convert what should be an objective determination of liability for tax into an emotive subjective concept with political overtones." (Datt, 2014).

There are generally two arguments through which tax burdens could be deemed to be "unfair": either the tax code itself is unfair, and/or a lack of compliance with the tax code results in an unfair outcome. If we take the position that taxation and the tax code are inherently just and fair then it could be convincingly argued that one taxpayer avoiding their share of taxes imposes an unfair burden on others. Such an assumption implies others: that governments are entitled to a certain amount of tax revenue, that the intended distribution of the burden amongst various classes of taxpayers attains some standard of "fairness", and that individuals have an ethical obligation to pay whatever taxes are levied. None of those preconditions are met.

This idea of a "fair share" is extended to the share of the taxpayer's income to which the government is entitled, as "governments want to receive their fair share from each societal member" (Payne and Raiborn, 2018). Similarly, Sikka (2015) notes that "the UK state's share of the national wealth in the form of tax revenues has also declined". This suggests that irrespective of what the tax revenues are to be used for, there is some share of income to which government has a moral claim.

The characterization of the tax code as "just and fair" is not objectively tenable, except by appeal to legislative authority. There is no agreed-upon definition of what constitutes a "fair" tax code, and it seems likely that most individuals would deem either their own or someone else's contribution to governmental coffers either excessive or inadequate. Aside from a general (although not universal) agreement that the tax code should be progressive to some extent, it is inconceivable that all parties would have an identical idea of the specifics of a "fair" tax code. The only argument that could logically be brought to bear is that the tax code is the product of deliberation amongst democratically elected representatives, and therefore reflects a collective judgment of "fairness". Such an argument fails on a number of levels. Legislators are generally elected by a minority of eligible voters (a function of both voter turnout and election margins), and are elected based on any number of criteria unrelated to their largely unknown inclinations regarding the specifics of the tax code. Tax legislation is written by a minority of the elected legislators (e.g., the Way and Means Committee in the United States House of Representatives, or the comparable legislative authorities in other countries), and is often contrary to the wishes of a significant proportion of the legislature. Given human nature and political realities, it is generally assumed that provisions in the tax code are written to reward political supporters (Van de Vijver, 2022). In short, it is highly unlikely that the tax code as written reflects the wishes of even a substantial minority of the population.

In addition to the question of how fairness is to be defined, another more fundamental ethical issue arises when a tax evader is accused of causing harm to a fellow taxpayer. If one party avoids paying their share of the total societal tax bill, that necessarily implies that other taxpayers must make up the shortfall, total governmental revenue extractions being held constant. Virtually all decisions which people make are driven in whole or in part by self-interest, broadly defined. Virtually all decisions that people make – whether employment, leisure, consumption, family – have consequences which affect the welfare of others. Taking a job with one employer rather than another, at a higher wage rather than a lower one, affects the welfare of the employers, the customers, and other actual and potential employees. Choosing leisure over productive work affects the resources available to society at large. Choosing to save rather than consume, or vice versa, has implications – however small – for the welfare of all other market participants. We generally don't attach ethical odium to a person's decision to act in their own interests, even when those acts have a negative effect on the welfare of others, as long as the actor is not violating the rights of others.

This suggests that a more important question is whether the blame for any harms befalling compliant taxpayers in the form of higher taxes should be laid at the feet of the tax avoider or the taxing authority. Is the harm to the compliant taxpayers the fault of the taxpayer who avoids paying taxes, or is it the fault of the government which exacts the tribute? The actual harm is the extraction of resources through the use of coercion in a non-reciprocal, non-voluntary transfer. That harm is the direct consequence of the actions of the taxing authority. Do individuals have an obligation to protect others from harm by submitting to that harm themselves? While the bonds of friendship or kinship might induce one to voluntarily protect another by submitting to harm, does that self-imposed obligation of self-sacrifice extend to the protection of strangers? In a similar vein, it is estimated that 40,000,000 people are currently in a state of slavery worldwide. If one person escapes bondage, that may result in those remaining in bondage being forced to greater exertions. Would the person who escaped from bondage be criticized due to the increased misfortune of those who did not escape?

Based on the foregoing, the argument that tax avoiders violate the rights of compliant taxpayers is not strongly supported. There is little basis for ascribing the sobriquet “fair” to the existing tax code (other than by appeal to legislative infallibility), so claims that the changes in the distribution of the burden resulting from tax avoidance are “unfair” to compliant taxpayers (or a violation of their rights) are equally unsupported. The burden borne by compliant taxpayers is imposed by the state, so at a fundamental level the harms imposed on compliant taxpayers are the result of the actions of the state. That one party’s actions in any field of endeavor – employment, housing, romance, etc. – might have a negative effect on another party is accepted without question and usually without prejudice. If one person accepts a desirable employment position, precluding another from the benefits of that position, we do not generally ascribe moral fault to the person who takes the position. That same principle should apply in the case of the payment of taxes.

To the extent that budget deficits caused by tax avoidance are financed by debt, additional harms can be caused to various parties. Those who avoid taxes are often accused of violating the rights of future taxpayers, as those future taxpayers will be called upon to pay off that debt. As important, perhaps, are the harms caused by the debt issuance itself. If the debt is monetized by the creation of additional money in the banking system (as is currently the case in most developed nations), it increases the supply of money and leads to additional price inflation. The high inflation currently being experienced in many countries around the world is commonly attributed to this. Alternatively, if the debt is sold without the creation of additional banking reserves that implies that investment capital is being diverted from private-sector uses to governmental uses – the “crowding out” phenomenon that has been discussed in the finance and economics literature for years. Since private sector investment is generally directed towards investment in future productive capacity, while governmental spending is often a mix of consumption and investment (e.g., infrastructure) spending, and since private sector spending is in concord with societal preferences as revealed through the price structure and governmental spending is guided by political motivations, it is likely that the net effect on economic outcomes is negative. These very real negative consequences – intergenerational inequity, increased inflation, and/or reduced private sector investment – are due to the existence of budget deficits: the excess of spending over taxation. Taking governmental spending as a given, the increased debt necessary to compensate for avoided taxes does represent a real negative consequence of tax avoidance. Again, we are faced with the question of whether the harms are the result of the actions of the tax evader, or whether they should be blamed on the fiscal or monetary authorities who undertake these harmful acts.

Based on the foregoing, it is argued that the first of the two supporting arguments – that tax avoidance is harmful to the public interest and is ethically odious – is not strongly supported. Tax supported spending is not an unalloyed good, tax extractions interfere with the efficient allocation of resources, tax avoiders do not violate the "rights" of any third parties, and any harms to compliant taxpayers are more properly credited to the actions of the revenue authority rather than the avoiding taxpayer.

The second of the two supporting arguments is that accountants have a professional duty which precludes condoning or participating in tax avoidance. Leaving aside the conclusions from the previous discussion of the relationship between tax avoidance and the public interest, the question of the nature and extent of this professional duty merits closer examination.

The Accounting Professional's Duty to Society

Professionals are expected to adhere to high ethical standards; one of these professional expectations is that they will apply their expertise in the "public interest". That raises the question of what that public interest is. If "the public interest" is undefined, it is hard to make a compelling case that an act either conforms with or is contrary to it.

What do the Profession's Codes of Ethics say?

Numerous authors have criticized various national accounting bodies' codes of ethics (Backoff and Martin (1991), Baker (2005), Fatemi et al., (2017), among others) for their vague and inadequate admonitions to act "in the public interest", noting that instead they focus largely on standards of professional practice. Perhaps this vagueness is the necessary result of uncertainty as to what that interest is. Alternatively, perhaps it is not covered in depth because there is already clarity within the profession as to what that public interest is: in the codes of ethics of the medical and legal professions the "public interest" isn't extensively defined, as it is seemingly captured by the professional's obligation to the client.

It has been stated that "ethics codes are the most concrete cultural form in which professions acknowledge their societal obligations" (Abbott, 1983). Similarly, Greenwood (1957) notes that "Through its ethical code the profession's commitment to the social welfare becomes a matter of public record, thereby insuring for itself the continued confidence of the community." Ideally we would be able to address any questions regarding the nature of the profession's duty to society by reference to these codes. In reality, of course, professional bodies – like virtually any other group of individuals with common economic interests – have often acted with an eye towards the economic interests of their members (Backoff and Martin, 1991).

The Code of Conduct of the American Institute of Certified Public Accountants (AICPA), in addressing the obligation to the public interest, indicates that "The accounting profession's public consists of clients, credit grantors, governments, employers, investors, the business and financial community, and others who rely on the objectivity and integrity of members to maintain the orderly functioning of commerce." Rather than being vague, this rather clear statement provides scant support for claims that there is a professional duty to "the public" to avoid assisting clients in reducing taxes.

While writers have frequently looked to these codes to find support for their views regarding the profession's obligations to the public interest, when that support is lacking the discrepancy is attributed to a failure of the code, rather than any defects in the writer's position. For example, Baker (2005) argues that the concept of "the public interest" is essentially mis-specified by the AICPA, and therefore the Code of Ethics is similarly faulty. Similarly, Stuebs and Wilkinson (2009) note that while the audit side of the public interest role is well understood, "On the tax side, the public interest role is perhaps less understood and less eagerly embraced"(Stuebs and Wilkinson, 2009). Alternatively, it is possible that the public interest role is adequately understood and properly reflected in the Code; it simply doesn't comport with the views of Stuebs and Wilkinson.

The AICPA Standards on Tax Service prohibit clearly illegal behavior, but not tax avoidance positions which are "likely to be sustained judicially or administratively" (AICPA, 2018). The Handbook of the International Code of Ethics for Professional Accountants (2023) published by the International Ethics Standards Board for Accountants takes much the same position: that tax positions must have some basis in law, and that the position is likely to prevail. The AICPA Standards also state a "duty to the tax system" exists which precludes attempting to take advantage of the audit selection process, or taking a position solely to obtain leverage in negotiations with the tax authorities. Unfortunately, this narrowly specified "duty to the tax system" has morphed semantically into statements that tax professionals "serve" the government, or are "government representatives" (Frecknal-Hughes, et al., 2017), or that they serve "two masters" (the government and the client) (Brody and Masselli, 1996). Such constructions suggest a duty to the government on par with the duty to the client: that the duty to assist the client in legally minimizing taxes is offset by a countervailing duty to the revenue authority to not minimize taxes. Other writers appeal to this narrow "duty to the tax system" to support a claim of a broader "duty to society at large", which is then assumed to encompass ensuring adequate governmental revenues, protecting the tax base against erosion, and a "fair" distribution of the tax burden (Stuebs and Wilkinson, 2009). Such a position would necessarily imply that any efforts to reduce the taxpayer's tax burden would run afoul of this expansive "duty to the tax system".

This is where the lines between tax mitigation, tax avoidance, aggressive tax avoidance, and tax evasion become important, but are largely blurred in the existing literature. Leaving aside claims of outright tax evasion, there are myriad references in the literature to "abusive tax shelters" (Stuebs and Wilkinson, 2009) or "aggressive and unethical tax avoidance" (Frecknal-Hughes, et al., 2017) or "overly aggressive tax avoidance" (Shafer and Simmons, 2008). To the extent that such tax positions are defensible administratively or judicially, they do not represent a failure to honor the "duty to the tax system" as defined by the AICPA.

The Origin of the Accounting Profession's Duty to Society

Trying to base arguments regarding the accounting professional's ethical duty to society on the codes of ethics of various professional organizations is likely to be unsatisfying. In addition to the well-documented history of professional organizations working to maximize the welfare of their membership rather than society, appeals to these codes of ethics run the risk of giving undue ethical credence to what may be politically- or economically-motivated positions. The AICPA's Code of Professional Conduct has been criticized for not actually reflecting the "true" ethical responsibilities of the profession; instead, accounting and its ethical codes are viewed as a means to perpetuate an unjust distribution of economic resources and power (e.g., Baker, 2005; Williams, 1987; Willmott, 1990).

"The public interest" will mean different things – sometimes diametrically opposed things – to different people. The concept remains vague and undefined (Murphy and Bennett (2018); Neu and Cameron (2005)). Much like the words "ethical" and "fair", it is used extensively but seldom subject to rigorous and satisfactory definition. In attempting to determine how accountants can advance the public interest, a review of the nature of that interest and how accounting professionals can advance it might cast light on the appropriate interpretation of that duty.

Accounting information is used by various parties to make decisions regarding the allocation of scarce resources. Investors, creditors, employees, suppliers, customers, and others rely on accounting information when making decisions regarding entering into economic transactions and relationships, and in negotiating the terms of those relationships. This use extends to contracts and activities beyond those where the firm itself is involved, as when an investor decides to buy or sell the firm's securities on the secondary market. Since numerous parties with disparate interests rely on the same information set, it is important that accounting information be unbiased and possess "representational faithfulness".

This accuracy and representational faithfulness of accounting information is critical to the welfare of society: not only to those who are parties to contracts which are based on this information, but also to those several steps removed from those contracts. The profit or loss that a firm earns is indicative of the efficiency with which it converts factors of production into goods and services that satisfy the wants of society. A firm which is profitable is taking less valued factors of production and converting them into more valued outputs; it is increasing the welfare of society, as measured by the value (as revealed by prices) that society places on the inputs versus the value society places on the outputs. A firm which is consistently showing losses is taking valuable factors of production and converting them into lower valued outputs, and is decreasing the welfare of society. Clearly it is in the interests of society to be able to accurately distinguish the former from the latter. Similarly, a firm in a precarious financial position (i.e., in danger of insolvency or bankruptcy) is usually in that position because its products, its processes, or its management have been unable to efficiently convert inputs into socially desirable outputs. If that information is hidden or obscured then resources might be directed to that firm and towards endeavors which are counter to the revealed preferences of society.

The accountant is in a position unlike most other professionals. There are third parties aside from the client who rely upon the accountant's integrity and honesty in making important decisions regarding the allocation of scarce resources. This allocation of scarce resources to their best and highest uses has implications for the welfare of people around the globe, whether they are aware of it or not. Furthermore, creditors, investors, suppliers, customers, and employees may all rely upon the accounting information provided in making decisions regarding entering into contracts and the terms of those contracts. Providing or attesting to inaccurate information, which a party to a contract relies upon to their detriment, is tantamount to abetting fraud.

In accounting, deciding upon the professional's obligation is not a matter of the subjective balancing of the interests of different parties; one cannot have an ethical duty to assist a client in perpetrating a fraud. Accurate, unbiased presentation of accounting information is necessary in order to not deceive interested parties who may rely upon it in entering into exchange transactions. Even in cases where the firm itself is not a party to a contract, such as when an investor chooses to purchase or sell shares in the secondary market, there is an expectation that the published financial information on which the investor relies is free from inaccuracy or deliberate bias. People who rely on accounting information for decision making purposes can come to harm as a direct result of flawed accounting information. This is the "obligation to the public" which the professional accountant needs to acknowledge and honor. The accountant does not set the interests of one member of the public above those of another. Although the professional has a duty to act in the client's best interests, that duty cannot extend to abetting the defrauding of other parties. To defraud a party is to deprive them of their property under false pretenses, which is a violation of their rights. Like the blindfolded figure of Justice, the accountant's role is to discover, disclose, and attest to "the truth", without regard to the interests of the parties involved. The accountant's professional duty to society is largely to present accurate information so that those who rely on that information to make economic decisions are not deceived or defrauded. That professional duty of care is owed to all who would utilize that information: the duty is to provide accurate information, not specifically to ensure that adequate revenues are provided to governmental coffers. The consequentialist argument that accountants must ensure adequate governmental revenues are flawed both because the consequentialist concerns are highly debatable, but also because that position is based on a misunderstanding of the accountant's duty.

Virtue Ethics and a Duty to the Government

Sometimes the consequentialist concerns on the societal effects of tax avoidance are augmented by arguments from a virtue ethics or "Good Accountant" perspective. In some cases it is argued that the accountant owes a specific duty to the government in particular. At other times it is argued that the "Good Accountant" has a duty to present information which accurately reflects the economic substance rather than the form of economic conditions, and that tax information must conform with the spirit as well as the intent of tax law.

A virtue ethics approach could suggest that the tax professional has a duty to the taxing authority which precludes participation in tax avoidance. As was noted previously, the duty to the tax system promulgated by the AICPA is narrowly defined to prohibit positions which are unlikely to survive judicial or administrative scrutiny, which attempt to take advantage of the revenue authority's audit selection process, or which are used as a bargaining position. This narrowly bounded duty has been broadened by some to a "duty to society at large", which is then assumed to encompass a more specific duty to the tax authorities. Brody and Masselli (1996), Jackson and Milliron (1989), Fatemi et al (2017), and others argue that accountants have a duty to the taxing authorities. In order to properly discharge their duties as accountants, they must acknowledge and honor this duty, which tax avoidance activities would violate. Joplin (1919) seemed to take this view to an extreme, arguing that the existence of taxation makes the government "to all intents and purposes a partner in the affairs of each citizen as well as in each corporation or association of citizens", and that the determination of the client's tax position is on a par with the allocation of income amongst partners: **"**In the practice of our profession I am sure that there is not one of us who when preparing a statement of partnership interests would not be most punctilious in seeing that in every particular a fair division of profits is made. It would seem that the same attitude should be maintained in the preparation of figures to be used in making income tax returns." (Joplin, 1919). Joplin goes on to note that the duties of the professional accountant are to "the government…our employees…the profession"; the client was notably absent from this list.

Other arguments have been made which attempt to provide a foundation for the claim of a specific professional duty to the public as embodied by the governmental taxing authority. Addison and Mueller (2015) note that accountants, especially Big Four accounting firms, are subject to a privileged market arrangement courtesy of the state: a partially-closed market where licensure requirements result in limited competition. In exchange for this privileged market position the profession owes a compensatory duty to the public, or to the entity (government) which grants them this privileged position. Viewing members of different groups as aggregates rather than as individuals, Davis and Strawser (1993) argue that since some accountants assist in drafting tax legislation, "the 'profession' can be characterized as acting on behalf of, and being affiliated with, the state" (Davis and Strawser, 1993). In short, since some members of the profession are agents of the state, then all members of the profession share in that agency relationship. Such an argument can be passed over in silence.

The argument that the accountant has a duty to the tax authority, beyond the general duty to the public, fails on several levels. Although some (Brody and Masselli (1996) and Jackson and Milliron (1989)) have argued that the privately engaged tax accountant has a duty to both the client and the government, such an argument is untenable. The client engages the professional in a principal/agent relationship, with the understanding that the agent works in what he or she perceives is the best interests of the principal/client. There is no such relationship between the accountant and the taxing authority. The taxing authority does not engage the professional and does not compensate the professional. A tax accountant employed by the governmental revenue agency would have an ethical duty to their client (the revenue agency), and the public on whose supposed behalf the revenue agency functions. That duty to the public is based on the public's standing as the principal for whom the revenue agency is the agent; it is a duty to the client, rather than a duty to a third party.

The final argument which is advanced to suggest that tax avoidance violates a duty to the revenue authority is based on the revenue authority's reliance on the work of the accountant. To be a "good accountant" is to concern oneself above all with the accurate reporting of economic information (West, 2018). A virtue ethics approach suggests that the Good Accountant should focus on preparing information with an eye to economic substance rather than form, and that tax returns should be prepared in accordance with the spirit rather than the letter of the tax code. Frecknal-Hughes, et al., (2017) argue that "… a practitioner acting ethically should follow not only the letter of the law, but also its spirit (underlying intention)." This is often taken to be the key to the distinction between "tax avoidance" and "aggressive tax avoidance" (e.g., Lokanan (2023)). However, if the tax code as written does not reflect the intent of the legislators, then any speculations regarding the actual but unrevealed intent must of necessity be highly subjective. Given that the letter of the law is clearly known, whilst the "spirit" of the law is not, one must keep in mind the observation of Lord Simon of Glaisdale who observed that "Disagreeable as it may seem that some taxpayers should escape what might appear to be their fair share of the general burden of national expenditure, it would be far more disagreeable to substitute the rule of caprice for that of law" (quoted in Stainer, et al. 1997). Suggestions of caprice are not simply hyperbole; Freedman (2012) observes that "others suggest that the spirit of the law may be found outside the decision of the courts, in terms of what is acceptable to the revenue authorities or current government, or perhaps even non-governmental organizations." This suggests that the "intent" which is to be followed is subject to change as the authority of differing power groups wax and wane; the uncertainty inherent in appeals to the "spirit" has been appropriately characterized as "some fuzzy notion" (Dowling (2014)).

Although one of the underpinnings of the accountant's obligation to the public to provide accurate and unbiased information is to ensure that members of the public are not harmed through reliance on inaccurate information, such a duty cannot be owed to a party who is compelling – by coercion – another party to enter into a relationship. Taxation is a coercive, non-negotiable, non-reciprocal transfer of wealth; the relative power, position, and ethical standing of the parties is virtually indistinguishable from that which exists in extortion or robbery. Lysander Spooner (1870), in a comparison of the highwayman and the tax collector, observed that the highwayman:

> "… does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. … He has not acquired impudence enough to profess to be merely a "protector" … He does not persist in following you on the road, against your will; assuming to be your rightful "sovereign," on account of the "protection" he affords you. He does not keep "protecting" you, … by robbing you of more money as often as he finds it for his interest or pleasure to do so; and by branding you as a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. … In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave." (Spooner, 1870)

One would not find fault with a robbery victim who fails to disclose money secreted in his or her shoe, and one would not expect the victim's accountant to have a professional duty to disclose the existence of those secreted assets. One would not claim that the robber was "defrauded" by being deceived as to the existence of assets.

The relationship and "contract" between the tax payer and taxing authority is not consensual in any meaningful sense of the term. Although a previous United States Senate Majority Leader famously claimed that taxes were "voluntary" since taxpayers "voluntarily" fill out and file tax forms (Helfeld, 2008), such a claim is on a par with the claim that a robbery victim consented to the robbery because he surrendered his wallet in preference to suffering physical harm. Others claim that engaging in economic activity in a system where taxes are levied on such activity is tantamount to consenting to be taxed; this is a variant of the "social contract" argument, where people are assumed, by the virtue of their existence, to have consented to an unwritten, unspecified, and potentially unlimited obligation. Again, this can hardly be deemed "free consent"; "free consent" implies the ability to freely decline to participate in a relationship, or at the very least to negotiate the terms of the relationship, without fear of penalty or retribution. In a voluntary contract, either party can walk away, and neither party can impose the dictated choice "do business with me or don't do business at all". In the case of taxation, however, the taxing authority has arrogated to itself just such a power.

The foregoing suggests that the accounting professional's ethical duties, which are cited in arguing against involvement in tax avoidance activities, may in fact not be applicable to the area of tax accounting. The accounting professional's duty to the public grew out of the special role of accounting information in guiding the efficient allocation of resources and helping to protect people from fraud. It is not a forgone conclusion that "the public interest" is best served by aiding in the collection of tax revenues. If such a speculative claim is made, then the insuperable problem of the subjective ranking of unknown, incommensurable, unquantifiable interests needs to be faced. Similarly, the argument that the accountant has a duty, as a "good accountant", to provide accurate information to the taxing authority rests on a fundamental error regarding the contractual and moral standing of the taxing authority.

Comparisons to other professions

The arguments made above regarding the tax accountant's professional duties to the public, in the context of tax accounting, are contrary to almost all of the existing literature. If we examine the argument in the light of the duty to the public interest of other professions, it is found that that conclusion is not unreasonable. There is a paucity of evidence from any profession that the professional's duty to some third party "public" dominates the duty to the client, within the constraint that the professional not violate the rights of others.

In the legal profession an attorney is expected to do his utmost to secure the acquittal of a client, even when the attorney knows of the client's guilt. The vigorous representation of unsympathetic clients was long regarded as the epitome of professionally ethical behavior. From John Adams representing British soldiers in the 1770 "Boston Massacre", to 21st century attorneys representing defendants in the "War on Terror", it has been viewed as an ethical duty for attorneys to advance the interests of clients whose punishment would be viewed by most contemporaries as "in the public interest". Although convicting and imprisoning a violent criminal would be – according to most – in the public interest, that public interest does not outweigh the attorney's duty to the client. Similar to the AICPA, the American Bar Association's Code of Professional Conduct requires that members not promulgate falsehoods to the court, but they are under no obligation to offer information which might incriminate their client. Similarly, in contractual negotiations attorneys are expected to negotiate on their client's behalf, subject to the constraints of honesty and fair dealing. There is no expectation that the attorney would place the interests of the counterparty equal to or ahead of the client's interests, and certainly no expectation that the interests of some unrelated third parties would be put ahead of the client's interests.

As noted in Backoff and Martin (1991), early authoritative writings on legal ethics stressed that the attorney who "... refuses his professional assistance because in his judgement the case is unjust and indefensible, usurps the functions of both judge and jury." The same standard applied to the tax professional would suggest that the duty to the client to attain the client's ends supersedes any duty to the revenue authority.

The American Medical Association has been clear about the obligation to the public interest that medical professionals have. "By accepting the privilege of medical education, physicians enter into a covenant to use their medical knowledge for the benefit of society." "It is these 3 aspects--the nature of illness, the nonproprietary character of medical education, and ***the oath of fidelity to the patients' interests***--that define medicine as a moral community and determine the ethical obligations of the individual physician and the profession as a whole." (Geraghty, 2001) (emphasis added).

The medical professional is to use their knowledge to "benefit society". This benefit to society is bestowed by using their competence "in the interests of the sick", and they have taken an "oath of fidelity to the patients' interests". For medical professionals, the "defining purpose is to respond to and to advance the welfare of patients" (Pellegrino, 2002). "The sick" and "the patient" are the client; the patient is the personification of society, and by serving the patient the physician serves society. Society is not viewed as some third party with interests separate from, or in opposition to, the interests of the patient/client.

There is a long unfortunate history of medical professionals acting in the interests of "society" in the aggregate, while violating their duty to their patients. With hindsight these are almost universally decried as instances of ethical failure. During the Progressive Era of the early 20th century there was a great deal of interest within some parts of the medical community in the study of eugenics. The forced sterilization of "undesirables" – whether based on race, intellectual infirmity, or criminal behavior – was deemed to be in the interests of society. Similarly, the forced abortions under China's "one child policy" were undertaken for the supposed good of society. Even if such medical practices were in the interest of society at large, and even though the victim of such practices was not a "client" who was owed a professional duty via an explicit agency agreement, they represent a violation of the rights of the individuals involved and are almost universally viewed as a significant breach of medical ethics.

Similarly, from 1932 to 1972 the United States conducted what became known as the "Tuskegee Experiments", wherein Black men were denied readily available treatments for syphilis so that the progression of the disease could be studied. The United States Public Health Service (USPHS) conducted these studies in the name of the public interest. Although the physicians in the public health service who participated in this study were supposedly acting in the public interest, you would be hard pressed to find anyone today who would claim they were acting in a manner consistent with their professional ethical obligations. The right of the study participants to the full information needed to make informed consent was violated.

The medical profession can provide instructive examples which illustrate the professional's duty to their patient versus their duty to broader society, and how the rights – properly understood – of the various parties affect the morality of an act.

If a physician has a patient who needs an organ donation, even though the physician has a duty to the patient it would be unthinkable for the physician to engage in forced organ harvesting, as the physician's duty to the patient is subject to the constraint that the properly understood rights of others cannot be violated. Even if the lives of numerous others could be improved or saved through donations from a single "donor", it would be ethically and professionally unconscionable to engage in forced organ harvesting. Current allegations of organ harvesting from political prisoners in China – which are universally condemned as grossly unethical – are a case in point. Even something as seemingly innocuous and harmless as forced blood donations would be viewed as an egregious violation of the rights of the "donor", and a breach of medical ethics.

Based on these comparisons to the standards applied to other professions, to argue that accountants have a professional responsibility to society or government which would dominate their duty to their client seems inappropriate. The client is the embodiment of society, and society is served by serving the client. Professionals have a duty to not violate (or countenance the violation of) the rights of others. While this responsibility would preclude the accountant from providing false information that others would rely on to their detriment, it has already been established that tax avoidance does not result in a violation of the rights of others. The accountant's professional responsibility to not provide false information (analogous to the attorney's responsibility to be forthright with the courts) is a tenable argument against participation in tax evasion. To argue that it also precludes tax avoidance activities is more difficult, as such is often characterized as being compliant with the letter, but not the spirit, of the tax code.

Concluding comments

Hopefully this review and critique of the arguments in the bulk of the extant literature will motivate others to reconsider the implicit and explicit assumptions underlying much of the research on professional ethics vis-à-vis tax avoidance. The extant literature is largely built on a foundation provided by two assumptions: that tax avoidance is irrefutably contrary to the public interest, and that the accounting professional's duty to the public interest (or the revenue authorities) is broad enough to include minimizing tax avoidance activities. This paper has presented arguments to support the contrary positions: that tax avoidance is not irrefutably and entirely harmful to society, that the professional accountant's duty to the public does not extend to either insuring adequate revenues for governmental coffers, and that participation in tax avoidance activities isn't necessarily a violation of the accountant's ethical duties.

The argument that tax avoidance is antithetical to the interests of society is debatable. It is the nature of taxation and government spending to take resources from where society has voluntarily directed them and to redirect them to other ends. This redirection of resources has both positive and negative effects on different members of society, and the totality of the repercussions of these reallocations is unknowable. The extended chain of consequences set in motion by both the taxation and the spending is generally not considered, and the effects on the individually perceived welfare of all those affected is both unknowable and not subject to objective measurement. There is no a priori reason to assume that such reallocations are beneficial rather than detrimental, other than via very narrow, superficial, and entirely subjective assumptions regarding the outcomes.

The argument that tax avoidance leads to the violation of the rights of those whose receipt of governmental services is threatened is similarly ill-considered. The recipients of governmental services – healthcare, education, pensions, etcetera – do not have a moral or ethical right to the fruits of another party's labor. They may have a legal right – an entitlement – based on legislation, but that is not the same thing as a right from a moral perspective. It should go without saying, from long historical experience, that there is often a substantial gulf between legal and moral imperatives. One does not have the right to violate the rights of another, in this case the right to be secure in their honestly obtained property. Since the individual does not have this right, the majority of people in a community cannot delegate such a right – which they individually do not possess – to a government. To quote *The Law* by Frederick Bastiat again,

> "Force has been given to us to defend our own individual rights. Who will dare to say that force has been given to us to destroy the equal rights of our brothers? Since no individual acting separately can lawfully use force to destroy the rights of others, does it not logically follow that the same principle also applies to the common force that is nothing more than the organized combination of individual forces?" (Bastiat, 1850)

Definitional voids are inherent in extant claims that tax avoidance by one party puts an "unfair" burden on compliant taxpayers. No meaningful definition of "fairness" is ever offered in the literature, except by implicit reliance on legislative omniscience in the creation of the tax code. At the same time, even that is suspect as there are admonitions that "fairness" is somehow reflected in the unknown and amorphous "spirit" of the tax code, rather than the letter. Finally, it is not clear whether the harms suffered by compliant taxpayers are more appropriately attributed to the taxing authority or to tax evaders.

Arguments that accountants have a duty to the public which includes mitigating tax avoidance are similarly weak. These arguments are that the accountant's professional duty to the public includes ensuring adequate tax revenues to fund governmental programs, that the accountant owes a duty to the revenue authority which equals or exceeds the duty to the client, and the virtue ethics argument that the accountant has a professional responsibility to disavow any representations that are counter to the true underlying economic reality of a transaction or position.

The accountant's duty to the public interest has historically been well-defined, and does not include ensuring adequate governmental tax revenues. Accounting information is critically important to society because it helps to guide resources to their best and highest uses (as determined by society, and as revealed by prices, profits, and losses), and in such use it is relied upon by members of the public (employees, suppliers, creditors, et al.) as a basis for entering into economic transactions. Inaccurate or biased information would lead to the misallocation of resources, to the detriment of society as a whole. Inaccurate or biased information can lead individual actors who rely on it in contracting to be victims of fraud, a violation of the rights of the defrauded. It is these critically important societal functions of accounting information which give rise to the professional's duty to the public. These considerations can not be logically widened to encompass a professional duty to ensure that one party contributes an undefined "fair share" to others.

Extending the accountant's obligation to provide accurate information to a duty to the revenue authority is questionable at best, largely because of the nature of taxation and the relationship between the revenue authority and the taxpayer. Accountants must provide accurate information so that parties do not enter into transactions under false pretenses. This both helps to ensure the optimal direction of economic resources (as revealed by voluntary transactions between market participants), as well as protects contracting parties from fraud. Taxation diverts economic resources from their societally-determined optimal uses, and as the taxation relationship is a non-consensual, non-reciprocal transaction it is inappropriate to view the revenue authority as a victim of "fraud" when tax avoidance takes place. Furthermore, there is no principal/agent relationship between the accountant and the revenue authority which would imply the existence of any sort of fiduciary or moral duty.

The virtue ethics argument (e.g., the "Good Accountant") is the most tenable of the arguments against the professional's involvement in tax evasion. Under this argument, the distinction between tax mitigation, avoidance, and evasion becomes critical. Tax evasion, where accounting information is deliberately misstated, is clearly a violation of professional standards and obligations. Just as attorney's have an ethical obligation to not promulgate falsehoods to the court, accountants have an obligation to not promulgate falsehoods to the revenue authority. Tax mitigation, where arrangements with bona fide economic value are structured to take advantage of features of the tax code, does not violate the Good Accountant's duty. The middle ground of tax avoidance is not as clear-cut. If a multinational corporation assigns an "unreasonable" transfer price between entities in separate tax jurisdictions, or if it engages in an inversion where the corporate headquarters is moved to a tax haven (two commonly cited examples of "aggressive tax avoidance"), it could be argued that the Good Accountant should not participate in these arrangements. Each of these situations would have to be evaluated independently, as the interplay of the duty to the client and the difficulties in determining whether something is within the bounds of "reasonableness" would have to be weighed against whether and to what degree the proposed tax treatment represents a falsehood.

In considering the question of a professional's ethical duties, to society or to the client or to the revenue authority, it is important to note that ethical duties precede codes of ethics, just as rights precede law. Law is created to codify the protection of rights, and to create a legal framework within which the state can punish aggressions against those rights. Similarly, codes of ethics are created to codify, and make enforceable through sanctions, the professional's pre-existing ethical duties. The physician's ethical duty to the patient existed prior to the American Medical Association's Code of Ethics, and prior to the creation of the United States of America. The creation of the AMA or the USA did not change the nature of the ethical duty to the patient or to society. Similarly, the accounting professional's ethical duty to society is the same irrespective of the jurisdiction or era. Prior to the creation of the Federal income tax in 1913, the accountant had no duty to assist in the transfer of client assets to the state. To say that such an ethical duty came into being with the passage of the 16th amendment is to conflate legislation with morality. Such questionable equivalency is not unheard of in the literature, where numerous authors have suggested a moral duty to obey the law (Lenz, 2020) or that "By definition, evasion is illegal and hence unethical" (Stainer, et al., 1997). There are enough examples in history of legal and yet grossly unethical, or illegal but ethical, acts to permanently put to rest any such arguments.

Most of the literature on tax avoidance, and the professional's ethical obligations in that regard, has focused on what individual authors have viewed as being the "most ethical" outcome. The literature is unfortunately rife with, and centered on, terms which are never defined. "Fair" and "fair share", "public interest", and "rights" are central to these arguments, and yet are seldom if ever defined. Most commonly, "fair share" is defined as whatever is in accord with the (equally unspecified) spirit of the law. In most cases, the primary argument has been some variation of "tax revenues are used to accomplish what we perceive to be good works, so any attempts to reduce taxes are unethical". This very superficial argument has no grounding in the theory of why professions have an ethical duty to society or what those duties might be. They amount to little more than "accountants are involved in the determination of tax obligations, and efforts to reduce those obligations are counter to what we perceive to be the public interest", without any deeper inquiry. By starting with the assumption that taxation and governmental spending are in the public interest, no other conclusion is possible than that any tax reduction is counter to that inadequately defined public interest, and hence is a violation of the accounting professional's ethical duty. Hopefully this paper will encourage people to rethink those fundamental assumptions.

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