

E-TOLLS TO PAY OR NOT TO PAY?

MICAH 6:1-8

MATT 22: 15-22

Let me start with a story:

A very rich man once built an enormous company, it not only made millions, but much rather billions of dollars each year. After completing the building of their new head office he proudly moved into his office on the 32nd floor. The chairman/owner of this wonderful company had barely moved into his office when after six months he noticed a crack developing in the south wall behind his desk. He called for the head of the construction company to explain the crack. The head of the other company explained that it was a fracture caused by the settling of the mammoth structure. They plastered over the cracks, alas two months later the crack reappeared, this time only larger. The chairman threatened all kind of law suits but could find no one who could identify with any certainty why a crack appeared on the 32nd floor. One of his employers suggested a well renowned structural engineer and asked if he could employ him to consult. The desperate chairman agreed. When the structural engineer arrived he examined the crack, looked at the plans of the building and headed directly down to the 5th floor of the basement parking way below ground level. The chairman was furious at this waste of time, on the verge of firing him, his confidant pleaded to give a him chance to explain. Ten minutes later the chairman was summoned to the bowels of his building. Red faced and angry the chairman wanted to know what they were doing way, way below his office, the place where the crack first appeared. The structural engineer explained that he had a hunch; he had asked the guard if during the construction phase he had noted anything peculiar. At first he thought there was nothing he could remember, but, then said he did have a fellow guard who worked night shift. After every shift he noticed that the guard took home two bricks. After four years of construction and no one noticing just two bricks a day, it wasn't the office on the 32nd floor that had the problem, but the south wall of the 5th level parking in the basement.

Perhaps that is the best way to describe what has happened with the e-toll legislation as it currently exists.

There are a number of definitions one could find when trying to define Civil Disobedience;

The most widely accepted account of civil disobedience, famously defended by John Rawls (1971) suggests;

‘Civil disobedience is a public, non-violent and conscientious breach of law undertaken with the aim of bringing about a change in laws or government policies.’

On this account, people who engage in civil disobedience are willing to accept the legal consequences of their actions, as this shows their fidelity to the rule of law. Civil disobedience, given its place at the boundary of fidelity to law, is said to fall between legal

protest, on the one hand, and conscientious refusal, revolutionary action, militant protest and organised forcible resistance, on the other hand.

It is this definition that I would like to use as a frame work for what I say tonight.

‘Civil disobedience is a public, non-violent and conscientious breach of law undertaken with the aim of bringing about a change in laws or government policies.’

I would like to say up front;

- 1) I respect and submit to the rule of law.
- 2) I like most citizens pay my taxes, I pay vat, I pay a fuel levy, I have paid additional school fees, I have paid for a medical aid policy, and I pay for private security. I am not against paying my portion to the state.
- 3) I do not think that e-tolls in themselves are bad or not required; I think they are essential to developing an adequate infrastructure for all cities and metropolitans.
- 4) I am willing to face the consequences of my actions when faced with the law.
- 5) I believe that the way in which the current law regarding e-tolls in Johannesburg is legislated is morally flawed. Therefore I choose to act in a way that may lead me to act in a way that is seen as civil disobedience.
- 6) I believe that submitting to these laws may certainly bring harm and even death to some or many and therefore I cannot in good Christian conscience support them.

The term ‘civil disobedience’ was coined by Henry David Thoreau in his 1848 essay to describe his refusal to pay the state poll tax implemented by the American government to prosecute a war in Mexico and to enforce the Fugitive Slave Law. In his essay, Thoreau observes that only a very few people – heroes, martyrs, patriots, reformers in the best sense – serve their society with their consciences, and so necessarily resist society for the most part, and, sadly as a consequence are commonly treated as state enemies, when in truth they are acting as good citizens. Thoreau, for his part, spent time in jail for his protest, as have many after him and have been treated by their societies – sometimes temporarily, sometimes indefinitely – as its enemies. This is the risk of civil disobedience in any country.

Those in the past who have acted in this manner are Gandhi in South Africa and India, Martin Luther King Jr in the US civil rights movement in America, Rosa Parks, Nelson Mandela, Dieterich Bonheoffer, Martin Niemoller, our own Rev. Robbie Robertson, the entire Presbyterian Church of Southern Africa, when in 1976 the General Assembly took a vote to marry all people across racial boundaries, and many, many more.

The bible, as is the law is unclear on civil disobedience. In law there is no law against civil disobedience, but you may be prosecuted for the law you are breaking, as an act of civil disobedience.

Sadly the bible is not much clearer. One congregant last week did ask me what I made of Matt 22. If one reads Matthew 22, the Pharisees were trying to trick Jesus, Jesus sees through their façade and suggests that we should “render unto Caesar that which is

Caesar's," in other words pay your taxes. But, like most aspects of scripture that is not all that Jesus said on this occasion.

To cut a very lengthy story short, Jesus is confronted by both the Pharisees and the Herodians. Traditionally enemies, but they team up in order to trick the Christ. The Pharisees have a vested interest in one answer, and the Herodians a vested interest in a directly opposing answer. Jesus would be doomed if he did and doomed if he didn't.

Palastine was an occupied country and the Jews were subject to the Roman Empire; and the question was "is it, or is it not, lawful to pay tribute to Rome?"

There were in fact three regular taxes which the Roman Government exacted. *Ground tax*, *income tax* and then *poll tax*. The tax the Pharisees and the Herodians were referring to was the *poll tax*.

This tax had to be paid by every male person from the age of fourteen to the age of sixty-five, and by every female person from the age of twelve to the age of sixty-five. It amounted to 1 *denaria*. $\frac{3}{4}$ of a *Denaria* was equivalent to one day's pay.

The dilemma for Jesus was this, if he said it was unlawful to pay the tax, he would be reported to the authorities as seditious and he would be arrested. If he said it was lawful to pay the tax he would stand discredited in the eyes of his fellow Jews, as they claimed this tax was in recognition of Caesar as Lord, and the Jews only had only one king, God! To pay tax to an earthly king, because he was king, *poll tax* was to admit the validity of the Roman King. No fanatical Jew ever wanted to do that.

Now this tax was not merely the paying of money to run the country. Matthew was writing between 80 and 90CE. The temple had been destroyed, in 70CE a portion of this *poll tax* was used as temple tax for the Roman Temple of Jupiter and Capitolinus in Rome. This *poll tax* was a real problem.

So in response Jesus asks to see a common coin looks at it and wisely says, "Render unto Caesar what is Caesar's, and render unto God what is God's." With this deep insight Jesus never laid down rules and or regulations; he lays down principles. Here he lays down a very, very important one.

Every Christian has a double citizenship. People are citizens of the countries in which they reside, and taxes are needed for the efficient running and order of those countries, hence we all pay income tax. (However grudgingly.) But, the Christian is also a citizen of heaven. Jesus infers here that there are matters of principle in which the responsibility of the Christian is to God. There may well be times when the two citizenships live in glorious harmony, and that happens it is wonderful. But, when the Christian is convinced that it is God's will that something should be done, it must be done; or if he is convinced that something is against the will of God, the person must resist it and take no part in it.

Now where the boundaries between these two lie, Jesus does not say, but, they are for a person's own conscience to test and then to act. "Render unto Caesar what is Caesar's, and Render unto God, that which is God's." Hence acting out of consciousness to God, does not make one a bad citizen.

The question of conscience is something that is a hallmark of the Reformed Church, of which the Presbyterian Church belongs. When the church courts are asked to debate an issue and then its delegates have to decide, they do so knowing that they should carry no instruction from a principle. Once the debate has been heard we really do believe that each person is entitled by the guidance of the Spirit, in assessment with the traditions and laws of the church to make the choice their conscience leads them to.

So what about e-tolls around Gauteng, and the current legislation as it exists?

Let's first of all try to understand this from a legal point of view. As previously stated, I have no problem with the concept of riding on a road and paying for the use of that road. Where this legislation becomes mired for me is in the collection process.

I am not a lawyer, but I do have three children in the profession; many people argue that the only time one may be sued is when a bill is presented, and the facts of the invoice can be correctly ratified. To date, it would seem that the data-base and its information, from which the invoices are being sent is completely marred by inaccuracies. It would appear that ARTO, the Data-Base on which Sanrail is drawing information is completely out of date and riddled with mistakes. Does my conscience allow me to support a system where people who can ill afford a month's groceries are being sent bills, and threatened with blacklisting being sued out from a system that does not work. My conscience would say no! In its current state, although it may be law, it is bad law, and causing enormous frustration for hundreds and thousands of people.

Secondly, let me deal with the way in which the tolls are currently collected. I am not sure that creating jobs, is a good enough excuse for a company whose head office is outside of this country and whose wealth will be expanded to no gain in South Africa. No matter the percentage and it varied every time OUTA went to court, why should any percentage of the toll go toward the collection of toll fees. South Africa has been using toll roads in various parts of the country for well nigh on thirty years or more; none of the money collected was used to go out of the country.

The collection system raises further ethical issues for me. We have been told that the user-pay system is the most moral way of funding this tax. Well, let's see. It has been argued that if one were to place a small levy on the current fuel price and every one contributed toward infrastructure development through a national levy, those who don't use the roads would be unfairly prejudiced.

If one opted for the petrol levy system, none of the money collected would leave the country to a company employed to collect the fee. Hence whatever percentage is being charged by that company could be deducted from the fee immediately, thus reducing the overall cost to the motorist. Alongside this, I do not know of any

company who is going to absorb this added cost, without passing the cost onto the consumer. So for instance, if a manufacturer, a retailer, and or a producer has to move their goods along the freeways, they are going to pay an extra toll fee. The cost of the toll will be built into the price of the product and Mrs Smith who lives in Himeville is going to pay the added cost for the product and indirectly pay for a road she has never, ever used. Therefore the user-pay principle so stoically defended is already compromised.

Think for one moment of the double taxation on that product. If the producer, retailer builds in the mark up for the cost, that will increase the vat of the product. Those who live in Himeville will pay an increased vat and those in Johannesburg, who have already paid for their own usage will have to pay again when they buy the product off the shelf. An added fuel levy would mean a much smaller addition to the cost and a much smaller mark up at the till.

Thirdly, when toll roads were first mooted, the law insisted that viable alternate routes were to be provided. On all of the other national toll roads there are reasonable viable alternatives, in the city centre and surrounds, very few of the alternative roads are viable, in as much as they are badly potholed, causing damage to cars. We know that the traffic lights in Johannesburg are not functional, causing endless unnecessary delays. When the initial ring road was built, these supposed alternate roads were never ever built to carry the high volumes they are now experiencing. These, no doubt contribute to a lack of productivity and influence road rage.

Fourthly, there is no viable public transport system as an alternate option. There are no regular busses, there are no trains to the northern suburbs, Gautrain on whom they are trying to piggy back, does not provide the frequency that is required for a metro bus service.

Now all of these are gross frustrations, and my guess, is that if monies collected in the past had been used to address these problems, and our money was not going offshore, very few would object to paying the required toll. But there is one further factor which really annoys, and challenges the moral validity of this law like nothing else. Is it not a government's duty to protect the most vulnerable of its society? Without pushing a social welfare state, does the government not have an obligation to protect the poorest of the poor? I am sure most would argue that this is a requirement of government.

Much like the story of the basement, the most immoral aspect of this entire legislation, has nothing to do with the collection of the fees, it doesn't have to do with the "user pay" principle but much rather the state's attitude toward busses and taxis that use these roads. The government has legislated that buses and taxis are free from paying tolls.

At first blush, this seems like a wonderful compromise and a very a sensible thing to do. But, when you dig just a little deeper and scratch under the surface of this supposed compromise, is it not true that neither of these industries have proved easy to regulate. In fact the taxi industry survives without any form of regulation whatsoever. Because of the state's refusal and/or inability to regulate this vast industry, they have become a law unto themselves. Many, many taxis are un-roadworthy, many drivers are unlicensed, and this

lawless industry, by government's own acknowledgement, accounts considerably for the carnage we see on our roads on a daily basis.

By the state's own admission, taxis and busses are the second biggest contributors (pedestrians being the biggest) to the out of control road accident and death toll in the country.

This means that by exempting taxis and buses from paying tolls, while they remain unregulated, we are encouraging if not forcing the much poorer person in our country to put their lives at real risk every time they want to go to work or back. To encourage any citizen to ride in a mode of transport that is not, or cannot, or will not be properly regulated is a moral issue. Remember the definition I referred to at the beginning of this talk;

Civil disobedience is a public, non-violent and conscientious breach of law undertaken with the aim of bringing about a change in laws or government policies.

If ever we needed to stand together to change a law which not only discriminates against the poor, but endangers their lives and compromises their livelihoods, it is now.

Render unto Caesar what is Caesars, and render unto God, what is God's.

Our conscience has always been linked to the mind and will of God. God's call on us at all times to protect the widow, the orphan, the poor and the marginalised. The eighth century BCE prophet Micah pleading with the people of his day phrased it this way when questioned what the people of his day should do to serve God; he replied.

He has told you, O mortal, what is good;
and what does the Lord require of you
but to do justice, and to love kindness,
and to walk humbly with your God?

E-tolls in themselves are not a bad thing, the way they are legislated for in parts of this country make them immoral. The question we have to ask ourselves, each as an individual, and as a church, is where does our conscience take us on this issue?