

# Being Human Can be Taxing

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One of my favorite comic book series is Marvel's 'The X-Men.' Created by Stan Lee, who also brought us Spider-man, the comic focuses on mutants. Mutants are humans with special abilities due to mutations that are either genetic, such as Wolverine's ability to extend claws and quickly heal, or those caused by radiation, such as the gamma rays that turn Bruce Banner into the Hulk.

The X-Men are a group of mutants that use their powers to help mankind. They are recruited and trained by Professor Charles Xavier, whose psychic powers allow him to communicate telepathically. He dubs the heroes the X-Men, because they possess special powers attributable to their possession of the "X-gene," which normal humans lack and gives mutants their "extra" abilities.

One of the common themes of the comic is that of prejudice; even though the X-Men use their powers to help humans, humans are constantly trying to lock them up and deprive the "freaks" of their rights. A recurring storyline involves government officials holding hearings to find "cures" for mutants, and short of that, possibly exterminating them.

In the comics, the government fights to have mutants not be recognized as human; ironically, in real life, the government fought to have mutants treated as humans.

In 2003, Toy Biz, Inc., a Marvel subsidiary that imported comic book character action figures into America, sued the United States in the U.S. Court of International Trade. The suit sought to have the Marvel action figures declared as "toys" instead of "dolls." See, the Harmonized Tariff Schedule of the United States imposed an import duty, or tax, on dolls at a rate of 12% of value, while toys are taxed at a rate of 6.8%.

Under the Harmonized Tariff Schedule, dolls are defined as "representing only human beings and parts and accessories thereof." Toys, on the other hand, are defined as "representing animals or other non-human creatures (for example, robots and monsters) and parts and accessories thereof."

The action figures were categorized as dolls by customs officials, resulting in practically twice as much tax. In the lawsuit, officials claimed that while mutant action figures possessed nonhuman characteristics, such as claws or robotic eyes, these still "fall far short of transforming [these figures] into something other than the human beings which they represent." The court held that if an action figure possessed even one nonhuman feature, such a feature prohibited it from being classified as a "doll."

The court elaborated on mutants, ruling that, "These fabulous characters use their extraordinary and unnatural physical and psychic powers on the side of either good or evil. The figures' shapes and features, as well as their costumes and accessories, are designed to communicate such powers. The X-Men figures are marketed and packaged as 'mutants' or people born with 'x-tra' power. That they are denoted as such by the manufacturer or the importer lends further credence to the assertion that they represent creatures other than (or more than) human beings."

After examining more than 60 action figures, Judge Judith Barzilay ruled in favor of Toy Biz and ordered that the U.S. reimburse the company for import taxes paid on previous toys. As a result, the Harmonized Tariff Schedule has since been changed to eliminate the distinction between dolls and other toys, which are now categorized, and taxed, the same.

As a Star Wars fan, I love the Toy Biz case. If anyone asks to see my "doll" collection, I can say, "They aren't 'dolls,' they're 'action figures.'" After all, it's the law.

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