Yesterday's Protester May be Tomorrow's Saint: Reimagining the Tax System Through the Work of Dorothy Day

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INTRODUCTION

Even would-be saints don’t always pay their tax bills. Dorothy Day, who lived from 1897 to 1980, was a legendary U.S. activist and cofounder of the Catholic Worker movement.\(^1\) Day worked most of her adult life among the poor; she was a lifelong advocate for workers’ rights and social justice. The Catholic Church named Day a “Servant of God” approximately twenty years after her death,\(^2\) setting her on

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The matter is controversial, especially at the Catholic Worker, where some worry that the search for miracles and other saint making procedures will de nature the Dorothy Day they knew: the foe of unrestrained capitalism and the pacifist who attended daily Mass but did not shy from criticizing the church on issues of social justice.

Id.
the path toward canonization as a saint. Day led a life of heroic virtue oriented toward advancing the common good, but she resisted participation in the U.S. federal income tax system, despite its role (at least in part) in funding government efforts themselves meant to advance the common good.

Throughout her life, Dorothy Day refused to pay federal income tax and did not seek formal legal status or tax exemption for the Catholic Worker, despite threats of prosecution. With respect to her personal finances, Day seemed to have taken the position that she did not owe any taxes because she never benefited from income she earned from her speaking engagements and book sales. According to one news report, Day had "no personal wealth or money of her own." Instead, "[a]ll she earns or is given by others" went directly to the poor or to the Catholic Worker for its work providing direct services to the same population. This stance would have been one she shared

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3 In order for the Catholic Church to declare a particular person a saint, they must first be declared by the Pope to be a "Servant of God." Thereafter, a "postulator," resident in Rome, conducts a lengthy investigation of and report on the candidate's life and published writings, if any. Pope John Paul II, Divinus Perfectionis Magister, The Holy See (Jan. 25, 1983), https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp_ii_apc_25011983_divinus-perfectionis-magister.html. Members of the Vatican's "Congregation for the Causes of Saints" then vote on the candidate. Id. There are thirty-four members of the Congregation and several consultants to it. Congregation for the Causes of Saints, The Holy See, http://www.vatican.va/roman_curia/congregations/csaints/documents/ re_con_csaints_pro_20051996_en.html (last visited Mar. 28, 2023). With the Pope's approval, the candidate then must move through several stages. A Servant of God is declared "Venerable" by papal decree issued after certain "heroic virtue" is demonstrated. John A. Hardon, Modern Catholic Dictionary 588 (1980). A "Venerable" person may be declared "Blessed" (beatus) upon proof of certain "heroic virtues." Id. The candidate must be shown to be responsible for a posthumous miracle. Process of Canonization, The Dorothy Day Guild, http://dorothydayguild.org/the-case/process-of-canonization/ (last visited Mar. 28, 2023). The beatus may be declared a saint (canonized) through a formal papal declaration upon a showing of two miracles credited to the candidate. Id. See also Camillo Becchetti, Beatification and Canonization in The Catholic Encyclopedia, New Advent, https://www.newadvent.org/cathen/02364b.htm (last visited Mar. 28, 2023). Critics of Day's canonization process point to its costs and the possibility that Day's radical message may be simplified or distorted. See Liam Stack, Was Dorothy Day Too Left-Wing to Be a Catholic Saint?, N.Y. Times, Jan. 21, 2022 (quoting Day's granddaughter Martha Hennessy reflecting that, "Mother Teresa, she got marginalized by becoming a patron saint against abortion when her whole life was about curing for the dying when nobody else would care for them. How did that get translated into anti-abortion?"). https://www.nytimes.com/2022/01/21/nyregion/dorothy-day-sainthood.html.

4 See, e.g., Max H. Seigel, Dorothy Day and Movement Resist U.S. Tax Claim, N.Y. Times, May 19, 1972, at 45 (detailing a notice of tax deficiency filed by the government against Dorothy Day and the Catholic Worker organization).

5 See Colman McCarthy, Poverty Worker Battles IRS, J. News, Aug. 11, 1972, at 7 (noting that "[t]here is no question that Miss Day has not been paying her taxes in the last few years. She has never paid them").

6 See id.

7 Id. But according to one of Day's biographers, "[t]he money Dorothy got from her speaking engagements and from the books that she wrote was used for [her daughter]..."
in common with religious orders, such as the Benedictines and the Franciscans, and would have allowed her to formally organize her community as tax exempt, but she would not even take that ministerial step. With respect to the provision of those services and the publication of the Catholic Worker newspaper, Day declined to formally organize a legal entity or seek tax-exempt status. To do so, she believed, "would mean an endorsement of the Federal Government's military spending and continuation of the war" in Vietnam.

Day's life of voluntary poverty supports the veracity of the claim that she did not personally benefit from much of her income beyond a subsistence level, and no one doubts that the Catholic Worker provided direct services to the poor. Factually speaking, though, Day's tax positions were incorrect as a matter of tax law; yet the IRS eventually abandoned its enforcement efforts against her despite having both the facts and the law on its side. Perhaps the IRS was wary of any negative publicity associated with assessing a tax on either a well-known figure who had devoted her life to the poor or on the movement she founded. Day was basing her noncompliance on a moral stance that she believed was justifiable under Catholic social teaching. While we can only speculate as to the IRS's motives for dropping its enforcement action against Day, the possibility that it was motivated by a respect for her religious commitment makes it worthwhile to ask whether Day's income tax positions in fact correctly reflected Catholic social teaching. The answer has relevance not just for those interested in a deeper understanding of Dorothy Day. Indeed, the answer to this question has considerable relevance today for any

Tamar," William D. Miller, Dorothy Day: A Biography 304 (1982). Without substantiation for either statement, it is difficult to know precisely how Day spent any money she received, however. This is not to suggest that Day was somehow living fashionably while noncompliant with her tax obligations. See McCarthy, note 5 (quoting one of Day's contemporaries as saying, "[f]or 50 years, Dorothy Day has served the poor, living in the slums, eating tasteless food, wearing cast-off clothes, shivering in the winter, sweltering in the summer."). Based on publicly available information, at least some of Day's copyrights appear to have passed on death to her daughter, Tamar, suggesting that Day herself retained the legal right to any royalties she received. See Dorothy Day, The Long Loneliness (photo. reprint 1997) (1952) (providing on the copyright page that the intellectual property was "renewed 1980 by Tamar Teresa Hennessy").


10 Id.

11 See McCarthy, note 5.

12 See Seigel, note 4.

13 See id. (noting that "Miss Day's work of feeding, clothing and sheltering thousands of needy has brought praise from President Nixon").
taxpayer who might have a moral objection to tax compliance, which
could include observant Catholics, nonobservant Catholics, persons
of other faiths, and those who profess no faith at all. From the per-
spective of anyone interested in a functioning tax system, Day’s tax
noncompliance is an example of one of the many challenges the gov-
ernment faces in raising revenue from those who have moral objec-
tions to how the government spends its revenue.

A central part of life in a constitutional democracy is the many pre-
scribed ways for challenging governmental actions that arise within
the constitutional order. Citizens who wish to bring about change have
multiple options. They might seek to effect change from within by le-
gal means (e.g., voting, lobbying, protesting, speaking, or other lawful
action). They might also attempt change by knowingly violating the
law, expecting to face applicable sanctions they are willing to incur in
order to potentially bring attention to an unjust law. Finally, a citizen
might seek to exit the system entirely and take up membership in a
new polity with more sympathetic views. Within this framework, there
is an accepted baseline principle: Individuals must pay taxes owed to
their government, notwithstanding disagreement with the use of pub-
lic monies, so long as governmental expenditure decisions arise out of
a sound democratic process and constitutionally adherent procedures.
Indeed, willfully rejecting and ignoring all obligations to pay tax is not
merely a civil issue; it rises to the level of criminality.

Day’s case, however, challenges this conventional framework. She
failed to comply with her obligation to pay taxes and the government
was aware of her action, and yet Day faced no sanctions. The govern-
ment simply chose not to penalize her. At the same time, her compli-
ance brought about no concrete legal reform. For that reason, it may
be tempting to write off her story as the quixotic tale of one tax pro-

14 Indeed, at least one Catholic Archbishop took a similar approach to Day’s, although
not to such an extreme level. In 1982, the Archbishop of Seattle, Raymond G. Hunthausen,
deliberately withheld $125 from his taxes as part of a protest against nuclear spending and
donated the funds to the World Peace Tax Fund of Bellport, New York, and, while not
specifically urging Catholics in his diocese to follow suit, did advocate in broader speeches
for taxpayers withholding half their income taxes as a form of protest against “war taxes.”
See, e.g., Wallace Turner, Tax Refusal Completes Prelate’s Moral Journey, N.Y. Times,

15 For the purposes of this Article, we take no position on the role of religious language
or thought in lawmaking per se. Cf. Marie Failinger, The Justice Who Wouldn’t Be Lu-
theran: Toward Borrowing the Wisdom of Faith Traditions, 46 Clev. St. L. Rev. 643, 643-44
(1998) (summarizing scholarly disagreement among Rawls, Nagel, and others regarding the
use of religious language or reasoning by legislators or judges). Instead, we are interested
here in what insights arise about the tax system through the lens of one theoretical fram-
work among many, acknowledging that this paper deploys a religious one. Cf. Critical Tax
Theory: An Introduction xxiii (Anthony C. Infanti & Bridget J. Crawford eds., 2009) (call-
ing critical tax theory “a lens that one can pick up and put down”).

16 See Part IV.
tester. Yet doing so would be an error because it raises some fundamental questions about whether there are (or should be) additional options for taxpayers who object to particular uses of tax revenue. Should taxpayers have the ability to opt out (of paying) without being deemed criminals? If so, to whom would such an option be available? Would it be uniquely available in cases where a citizen objects to governmental expenditures on religious grounds? If so, what kinds of religious beliefs would qualify? If available more broadly, what might be the limits to an exception to one’s obligation to pay taxes? How broad might exceptions be, before the entire constitutional edifice might collapse? Will not every citizen look to find a way to avoid paying taxes on some such grounds? A close examination of Day’s interactions with the U.S. federal tax system, and the government’s response, will shed light on this series of difficult questions.

Furthermore, separate and apart from the answers to these particular questions, the story of Dorothy Day is worth telling for other reasons. Day’s example focuses attention on the relations among the individual, the church, and the state. Part of the “reimagining” of the tax system to which the Article’s title alludes is broadening the understanding of who tax protesters are and why they object. There is a deep tradition of anti-war protest in U.S. history. Too often this aspect of tax history is obscured by the contemporary portrait of tax resisters as holders of fringe, anti-government beliefs. Day was a dissenter and government critic, to be sure; but she also understood herself as an obedient Catholic with a robust vision for a society in which all people lived in community, with deep and abiding mutual responsibilities for each other.

This Article offers a critical exploration of Day’s views on the relationship between the tax system and Catholic social theory. Simply

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17 In drawing on historical material to “educate . . . about the interconnectedness of taxation, social justice and progressive political movements,” the Article also fits in the critical tax scholarly tradition. See Infanti & Crawford, note 15, at xxi-xxii.

18 See, e.g., IRS, The Truth About Frivolous Tax Arguments (Mar. 2022) (responding to “some of the common frivolous arguments made by individuals and groups who oppose compliance with the federal tax laws,” including arguments that income taxes violate the Fourth Amendment protection against search and seizure, that taxes constitute a “taking” of property without just compensation under the Fifth Amendment, and that taxes are unconstitutional because the Sixteenth Amendment was not duly ratified), https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction [https://perma.cc/6PG5-PFMK].

19 See Marjorie Kornhauser, For God and Country: Taxing Conscience, 1999 Wis. L. Rev. 939, 943-44 (1999) (discussing the history of anti-war tax protests and observing that, “[m]ost war tax resisters are loyal citizens who do not deny the right of the government to tax them. In fact, they are willing to pay taxes. Frequently, they seek no personal gain from not paying their taxes because they either put their tax money in escrow or donate it to peace-promoting organizations”).

20 See Part II.C.
put, she believed that the greatest moral obligation of a Christian—and she framed her belief in explicitly religious terms—was to care for one’s fellow citizens, especially those who lacked food, clothing, and shelter. Day had been a committed anti-war activist before she converted to Catholicism in 1927, and she integrated her pacifism with a deep religious commitment to a life carrying out what the Catholic Church calls “works of mercy.” Day’s communitarian, pacifist Christianity was, in her view, incompatible with the payment of federal income taxes. To pay taxes would be to finance a nation’s war and war preparations—activities that harmed all people worldwide.

Generally speaking, Day embraced a philosophy of direct action and personal responsibility, in the sense that each person has the obligation to share their wealth and resources with their neighbors. She did not place much stock in government assistance; to her mind, such aid degraded the recipient and misappropriated to the government what was an intensely individual duty to care for one’s fellow humans. At the same time, however, she understood that economic

21 Dorothy Day, Letter to Our Readers at the Beginning of Our Fifteenth Year, Cath. Worker Movement, May 1, 1947, at 2 (“Every house should have a Christ’s room. The coat which hangs in your closet belongs to the poor. . . . It is you yourself who must perform the works of mercy. Often you can only give the price of a meal, or a bed on the Bowery.”), https://thecatholicnewsarchive.org/?a=d=d=CW19470501-01.22 [https://perma.cc/4YC4-WXQM].

22 See Miller, note 7, at 150 (describing Day’s early labor activism) and Dorothy Day, The Duty of Delight: The Diaries of Dorothy Day 57 n.54 (Robert Elsberg ed., 2008) (reprinting Dorothy Day’s writing in the June 1940 edition of the Catholic Worker that, “in the present war we stand unalterably opposed to war as a means of saving ‘Christianity,’ ‘civilization,’ ‘democracy.’ We do not believe that they can be saved by these means.”).

23 Traditionally, works of mercy are divided into “corporal” and “spiritual” categories. Corporal works of mercy are: “To feed the hungry; To give drink to the thirsty; To clothe the naked; To harbour the harbourless; To visit the sick; To ransom the captive; To bury the dead. The spiritual works of mercy are: To instruct the ignorant; To counsel the doubtful; To admonish sinners; To bear wrongs patiently; To forgive offences willingly; To comfort the afflicted; To pray for the living and the dead.” Joseph Delaney, Corporal and Spiritual Works of Mercy, The Catholic Encyclopedia, New Advent, https://www.newadvent.org/cathen/10198d.htm (last visited Mar. 28, 2023). See Day, note 22.

24 See Day, note 7, at 179 (in which Day recounts a conversation with her collaborator Peter Maurin about people’s general preference to receive state forms of welfare, as opposed to assistance from their families, and Maurin’s belief that “[i]t is not the function of the state to enter into these realms. Only in times of great crisis, like floods, hurricane, earthquake or drought, does public authority come in. Charity is personal.”), see also Harry Murray, Dorothy Day, Welfare Reform, and Personal Responsibility, 73 St. John’s L. Rev. 789, 789 (1999) (noting that “The Catholic Worker has always advocated personal responsibility rather than government programs as the way for Catholics to share their resources with poor neighbors.”).

26 An unsigned column published by the Catholic Worker, possibly written by Day, described that even though canned meat provided by the federal government to unemployed individuals was found not to be meat at all (it had been tested on cats, after the government received complaints), the government accepted no responsibility for children who
tragedies like the Great Depression warranted extraordinary government intervention in ordinary citizens’ lives. 27 Indeed, Day advocated for the redistribution of wealth from the rich to the poor. 28 Yet she herself opted out of the greatest redistribution program of them all: the federal income tax system. 29 This is true even though Day was a devout adherent to a faith that increasingly came to recognize during her lifetime the important moral role that tax systems have in advancing the common good. 30

Day viewed the law mostly (although not exclusively and not explicitly) as an instrument of oppression, not a pathway to liberation. This Article attempts to explain why Day willingly obeyed many laws but defied the income tax laws. It is difficult, but not impossible, to reconcile all of Day’s views on taxation with contemporary understanding of Catholic social teaching. 31 Throughout the twentieth century, major Catholic thinkers articulated with increasing clarity the obligation to pay just taxes and the view that taxation is a moral means for achieving a more just society. Day’s actions expose underdevelopments in Catholic social thought about the precise contours of “just” taxation.

Part I of this Article provides a biographical sketch of Dorothy Day and an overview of the Catholic Worker movement. Part II explores Day’s views on taxation, pacifism, and social justice. 32 It attempts to reconcile her belief in wealth redistribution with her nonpayment of federal income taxes and her failure to seek tax-exempt status for the Catholic Worker. 33 Part III examines Day’s tax resistance in the context of Catholic social teaching, particularly as that thought was developing during Day’s lifetime in the twentieth century. 34 It explains how Day’s views on taxation were out of step with the emerging contours

27 See Day, note 7, at 179; see also Nancy L. Roberts, Dorothy Day and the Catholic Worker 116 (1984) (“[Day] concluded that an emergency the magnitude of the Great Depression demanded immediate, government-sponsored relief. At the same time she continued to acknowledge the evils of big government . . .”).

28 See Dorothy Day, Beyond Politics, Cath. Worker, Nov. 12, 1949, at 2 ("[D]o we . . . stand only for just wages, shorter hours, increase of power for the workers, a collaboration of employer and worker in prosperity for all? No, we want to make 'the rich poor and the poor holy,' . . . We don't want luxury. We want land, bread, work, children . . .”), https://thecatholicnewsarchive.org/?a=d&d=CW19491101-01.2.3 [https://perma.cc/SM7U-4VSH].

29 See notes 4-10 and accompanying text.

30 See Part III.

31 See Part III.

32 See Part II.

33 Day thought of the Catholic Worker as a newspaper and an unorganized collective of individuals, and even a movement, but not an organization per se. See Part II.

34 See Part III.
of traditional Catholic teaching on tax compliance. Part IV then explores what implications Day’s protests might have for better integrating taxpayers into the tax system where their faith or other convictions led them to have objections similar to Day’s.35

I. BACKGROUND

A. Dorothy Day’s Early Life

Dorothy Day was a social radical who converted to Catholicism and became the leader of one of the most important lay movements in twentieth-century Catholic history.36 She was born in Brooklyn, New York, in 1897 to Episcopalian parents.37 Her father, John, was a journalist.38 His work took the Day family from Brooklyn to San Francisco, where they were living during the Great Earthquake of 1906.39 Day recalled later in her autobiography, The Long Loneliness, that the devastation of the earthquake and the community’s response impressed her at a young age with the power and importance of collective action in caring for the most desperate of one’s fellow citizens.40

From San Francisco, the Day family moved to Chicago, again for John Day’s work.41 At age sixteen, Dorothy Day enrolled in the University of Illinois.42 She wrote that at this stage in her life,

[I]n my feeling that I was one of the strong, I felt then for the first time that religion was something that I must ruthlessly

35 See Part IV.
36 See Fisher, note 1 (“By the time of her death . . . many Catholics credited Day and her movement with awakening them to a richer faith . . . [I]n creating a tradition of genuine radical Catholicism in America, she contributed profoundly to the religious life of the nation.”).
39 Id.
40 See Day, note 7, at 21 (“I remember about California . . . the joy of doing good, of sharing whatever we had with others after the earthquake, an event which threw us out of our complacent happiness into a work of catastrophe.”): Dorothy Day, From Union Square to Rome (1938), reprinted in Dorothy Day, Selected Writings 13 (Robert Ellsberg ed., 4th prtg. 2009) [hereinafter Selected Writings] (“What I most plainly remember about the earthquake was the human warmth and kindliness of everyone afterward . . . [A]fter the earthquake everyone’s heart was enlarged by Christian charity.”).
41 Day, note 7, at 22 (describing the family’s move to Chicago); Miller, note 7, at 16 (same).
42 Day, note 7, at 39 (“I wanted every home to be open to the lame . . . In such love was the abundant life and I did not have the slightest idea how to find it. One step I made toward it was joining the Socialist party when I went to the University of Illinois the next year.”).
cut out of my life. ... I felt it indeed to be an opiate of the people and not a very attractive one, so I hardened my heart.\textsuperscript{43}

While in college, Day read the works of Jack London, Upton Sinclair, Fyodor Dostoevsky, and Leo Tolstoy.\textsuperscript{44} She retrospectively claimed that she wanted to believe in God, but that she perceived mostly "the ugliness of life in a world which professed itself to be Christian."\textsuperscript{45} Day joined the Socialist Party, but she was not a significant participant in its activities.\textsuperscript{46}

Two years after Day’s enrollment at the University of Illinois, her father took a job at the \textit{Morning Telegraph} in New York.\textsuperscript{47} Day felt that she could "not bear to have [her family] go so far without me,"\textsuperscript{48} and so she willingly left college to pursue a career as a writer in New York.\textsuperscript{49} There she worked for a variety of radical publications including the Socialist daily newspaper \textit{The Call},\textsuperscript{50} as well as \textit{The Masses}, a class-oriented publication that attracted many young artists and writers as contributors.\textsuperscript{51} In New York, Day joined the Industrial Workers of the World (IWW), or the "Wobblies."\textsuperscript{52} She described this period as one in which she "wavered between my allegiance to socialism, syndicalism (the I.W.W.'s) and anarchism."\textsuperscript{53} Day’s circle of friends in New York included writer Eugene O’Neill and others associated with the Provincetown Playhouse.\textsuperscript{54}

Simultaneously with building her new career as a writer, Day was developing into a spiritual seeker of sorts. She wrote that:

\textsuperscript{43} Id at 43.
\textsuperscript{44} Id. at 42-43.
\textsuperscript{45} Day, note 40, at 14.
\textsuperscript{46} Robert Ellsberg, Introduction to Dorothy Day. Selected Writings xix (Robert Ellsberg ed., 4th prtg. 2009) ("In 1914, as a freshman at the University of Illinois in Urbana, she made her first act of political commitment by joining the Socialist Party. It was mostly a symbolic gesture; she found the meetings dull, and attended few of them.").
\textsuperscript{47} Day, note 7, at 50.
\textsuperscript{48} Id.
\textsuperscript{49} Ellsberg, note 46, at xix.
\textsuperscript{50} Id.
\textsuperscript{51} Id. at xx; see also John Sayer, Art and Politics, Dissent and Repression: The Masses Magazines Versus the Government, 1917-1918, 32 Am. J. Leg. Hist. 42, 42 (1988) (describing \textit{The Masses} magazine as "an effort to blend politics and art, [which] had become by 1916 a strong opponent of the war in Europe" and providing a detailed account of a civil case challenging the decision of the United States Postmaster General to bar the mailing of the magazine on the grounds that it hampered with the conduct of military recruitment and the war itself). In 1917, several staff members of \textit{The Masses} were tried, but not convicted, for violating the Espionage Act for interfering with the draft. See Miller, note 7, at 121; Sayer, at 63-64, 74. Day was not among those tried. See Miller, note 7, at 102.
\textsuperscript{52} Ellsberg, note 46, at xix.
\textsuperscript{53} Day, note 7, at 62.
\textsuperscript{54} Ellsberg, note 46, at xx.
[m]any a morning after sitting all night in taverns or coming from balls at Webster Hall, I went to an early morning Mass at St. Joseph’s Church on Sixth Avenue and knelt in the back of the church, not knowing what was going on at the altar, but warmed and comforted by the lights and silence, the kneeling people and the atmosphere of worship.\textsuperscript{55}

Hers was a world of ideas and idealism. Of the members of her social circle, Day said that “as young people we were attracted to the people, to the poor, and we lived in slums and suffered in order to do the work we chose.”\textsuperscript{56} Through political activism, Day sought meaning in the world, and she also followed what she called a “blind instinct” to pray and go to church.\textsuperscript{57}

In 1917, Day joined a planned picket for women’s suffrage in Washington, D.C.\textsuperscript{58} The protesters were arrested outside the White House.\textsuperscript{59} At least initially, the experience for Day was one of camaraderie.\textsuperscript{60} Of the protesting group, Day wrote,

\begin{quote}
I had been part of an organized body of women of all ages and stations in life. . . . There had been schoolteachers, writers, ardent champions of feminism, women who had worked in the cause in England as well as in the United States. There had been the solidarity of the group.\textsuperscript{61}
\end{quote}

After the protesters received jail sentences of fifteen days to six months, and the court denied them treatment as “political prisoners” (a designation that would have given the women the right to wear their own clothes, to receive mail, and to read periodicals), the protesters began a hunger strike.\textsuperscript{62} Once in jail, Day said she “lost all consciousness of any cause. I had no sense of being a radical, making a protest against a government, carrying on a nonviolent revolution. I could only feel darkness and desolation all around me.”\textsuperscript{63}

Her perceived sense of connectedness to a political cause ultimately was dwarfed by a sense of connection to individual suffering:

\textsuperscript{55} Day, note 7, at 84.
\textsuperscript{56} Id. at 86-87.
\textsuperscript{57} Id. at 85.
\textsuperscript{58} Id. at 72-73.
\textsuperscript{59} Id. at 73.
\textsuperscript{60} Id. (describing how the picketing women marched two by two wearing purple and gold sashes and carrying banners).
\textsuperscript{61} Id. at 98.
\textsuperscript{62} Id. at 72-73.
\textsuperscript{63} Id. at 73.
That I would be free after thirty days meant nothing to me. I would never be free again, never free when I knew that behind bars all over the world there were women and men, young girls and boys, suffering constraint, punishment, isolation and hardship for crimes of which all of us were guilty. The mother who had murdered her child, the drug addict—who were the mad and who the sane? Why were prostitutes prosecuted in some cases and in others respected and fawned on? People sold themselves for jobs, for the pay check, and if they only received a high enough price, they were honored. . . . Why were some termed criminals and others good businessmen?\textsuperscript{64}

In this excerpt from her autobiography, Day voiced skepticism about the lines that laws draw between the legal and the illegal.\textsuperscript{65} She called into question the difference between “criminals” and “good businessmen.”\textsuperscript{66} Her firsthand experience with confinement caused her to question whether prison—“constraint, punishment, isolation and hardship”—was an appropriate systemic response to the “sin and suffering” of humanity, when “sickness and sin” was common to all people.\textsuperscript{67} Day found unexpected comfort in reading the Bible while in solitary confinement.\textsuperscript{68}

After ten days, the protesters were transferred to the city jail, where they were treated as political prisoners, and thus they ended their hunger strike.\textsuperscript{69} In these less restrictive conditions, Day said that she “had no thought of religion” other than that she was “ashamed” at having turned to the Bible: “I had seen myself too weak to stand alone, too weak to face the darkness of that punishment cell without crying out, and I was ashamed and again rejected religion that had helped me when I had been brought to my knees by my suffering.”\textsuperscript{70} Ultimately, Day was released after about three weeks in jail.\textsuperscript{71}

Back in New York, with World War I raging, Dorothy Day turned from journalism to nursing.\textsuperscript{72} As she explained in a letter to a friend,\textsuperscript{73}

\begin{itemize}
\item Id. at 78, 82.
\item Id. at 78.
\item Id.
\item Id.
\item Id. at 80-81 (“I began asking for a Bible the second day I was imprisoned and by the fourth day it was brought me. I read it with the sense of coming back to something of my childhood that I had lost. My heart swelled with joy and thankfulness for the Psalms. . . . Yet all the while I read, my pride was fighting on. I did not want to go to God in defeat and sorrow. . . . I tried to persuade myself that I was reading for literary enjoyment.”).
\item Id. at 82.
\item Id. at 83.
\item See Miller, note 7, at 102.
\item Day, note 7, at 87.
\end{itemize}
“Now that we are in the thick of war and there is so much work to be done, I might as well try to do some of it instead of sitting around playing at writing.”73 During a time of war, Day sought a way to be useful: “What good am I doing my fellow men? They are sick and there are not enough nurses to care for them. I refuse to admit that I am helping the war effort in going into [nursing] training. . . . It’s the poor that are suffering. I’ve got to do something.”74 Day worked for a year at Kings County Hospital in Brooklyn.75 There she dispersed medicine, bathed patients, made beds, and generally witnessed all forms of illness and death.76

Day considered nursing “the most noble work women could aspire to,” and yet she experienced an “irresistible urge to write.”77 She fell in love with a fellow hospital worker,78 had an intense affair, and became pregnant.79 She terminated the pregnancy,80 marrying another man on the rebound and traveling with him in Europe.81 Shortly thereafter, she left him, calling this a period of “my own personal joy and heartbreak.”82

Afterward Day lived briefly in Chicago.83 In 1922, she was jailed after a raid there on an I.W.W. “safe house” where she was nursing a sick female friend.84 Day recounted the experience as one of intense “shame and humiliation,” as the arresting officers charged her and her

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73 Id. at 88.
74 Id.
75 Id. at 87-93.
76 Id. at 89-93.
77 Id. at 94.
78 Miller, note 7, at 124-25.
79 Ellsberg, note 46, at xx. One biographer reads Day’s novel The Eleventh Virgin as a thinly veiled account of the affair and pregnancy. See Miller, note 7, at 123-42.
80 Ellsberg, note 46, at xx-xxi.
81 Miller, note 7, at 143-147.

The man’s name was Barkeley Tobey, and she married him, it seems, in the early spring of 1920, just months after the tragic denouement of the [earlier] affair. The marriage is a matter that Dorothy was loath to discuss. “About my marriage,” she wrote to a friend, “I’ll tell you more about it sometime. It lasted less than a year. I married a man on the rebound, after an unhappy love affair. He took me to Europe and when we got back I left him. I felt I had used him and was ashamed.”

Id. at 143 (quoting Day).
82 Day, note 7, at 95.
83 Id. In her autobiography, Day declined to detail this period in her life because she did not want to write “about other people with whom I was intimately associated.” Id. at 94. She also said that she “never intended to write an autobiography. I have always wanted instead to tell of things that brought me to God and that reminded me of God.” Id. Nevertheless, Day’s biographers have said that she always regretted the abortion. See Ellsberg, note 46, at xxi (“[T]he memory of this waste of life would remain with her always.”); Miller, note 7, at 147-48 (describing Day’s time in Chicago).
84 Day, note 7, at 99 (“[N]ight detectives raided the I.W.W. hotel as a disorderly house and arrested all they found there. Many of the men, who were old radicals and had gone
friend with prostitution (she later learned) and forced them to stand on a street corner under a lamp until a police wagon came. Of being jailed with prostitutes, Day wrote of her few days in prison,

It was as ugly an experience as I ever wish to pass through. . . . I do not think that ever again, no matter of what I am accused, can I suffer more than I did then from shame and regret, and self-contempt. Not only because I had been caught, found out, branded, publicly humiliated, but because of my own consciousness that I deserved it. Day later reflected that “we as women had no right to be in that house,” because it had a reputation as a brothel. She rued her decision to go there with the sick friend as a lapse of judgment for which she “deserved” to be punished. Day returned to New York in 1924 after selling the film rights to her autobiographical novel, The Eleventh Virgin. With the proceeds, she bought a small beach cottage on Staten Island. She fell in love with, but never married, a political anarchist named Forster Batterham. Day gave birth to their daughter, Tamar, in 1927. Shortly thereafter, Day converted to Catholicism, thereby alienating Batterham, who ended their relationship. She later reflected that, “[i]t was not because I was tired of sex, satiated, disillusioned, that I turned to God. . . . It was because through a whole love, both physically and spiritual, I came to know God.” In fact, the love she felt for her daughter drew Day to the Church. With her feelings of gratitude, “came the need to worship, to adore. . . . [M]y very experience as a radical, my whole make-up, led me to want to associate myself with others, with the masses, in loving and praising God.” Day’s dilemma, then, was how through persecution on the West Coast, made their escape out of fire escapes and over roofs.”).

85 Selected Writings, note 40, at 17-18.
86 Id. at 18.
87 Id.
88 Id.
89 See Roberts, note 27, at 24 (1984) (reporting that Day received $2,500 for the rights to her novel).
90 Id. (calling the Raritan Bay community on Staten Island where Day’s home was located “a colony of radicals and beachcombers”).
91 Id. at 24-26 (calling Batterham “a biologist whose guiding principle was a rationalist anarchism. Nature delighted him, but most humans and their unjust institutions did not”).
92 Id. at 26.
93 Id. (noting that Batterham “was a man who spurned the idea of God as well as the sacrament of marriage,” and that Day’s religious views sufficiently “irritated” Batterham that the couple’s relationship therefore ended).
94 Day, note 7, at 140.
95 Id.
to integrate her new religious identity with her commitment to social causes.\footnote{See Roberts, note 27, at 26 (saying that Day became a Catholic because "it was a church of the poor, because she felt its continuity," despite the association of the Catholic Church at the time with establishment interests).}

\textbf{B. The Founding of the Catholic Worker Movement}

While juggling her new role as a mother with her career as a writer, Day became a contributor to the Catholic journal \textit{Commonweal}.\footnote{See Day, note 7, at 155 ("Between meals, sitting on a stool by a high kitchen table while the stew boiled on the stove and Tamar played with pots and pans in the closet, I wrote stories and articles, one of which I sold to \textit{The Commonweal}, a Catholic weekly.").} In 1932, she was covering a hunger march in Washington, D.C. for \textit{Commonweal}.\footnote{Id. at 162.} Day noted the lack of an organized Catholic presence at the Communist-organized march: "[W]here was the Catholic leadership in the gathering of bands of men and women together, for actual works of mercy that the comrades had always made part of their technique in reaching the workers?"\footnote{Id. at 165.} She stopped at the Shrine of the Immaculate Conception to pray, asking "that some way would open up for me to use what talents I possessed for my fellow workers, for the poor."\footnote{Id. at 166.} Apocryphally or not, Day later wrote in her autobiography that upon her return to New York, she found Frenchman Peter Maurin waiting in her kitchen.\footnote{Id. at 169 ("When I walked into my apartment, I found waiting for me a short, stocky man in his mid-fifties, as ragged and rugged as any of the marchers I had left.").}

Peter Maurin was an itinerant social radical who had been leafleting and lecturing in Union Square about "radical action based on Christian values."\footnote{Roberts, note 27, at 32.} Mutual acquaintances had directed Maurin to Day.\footnote{Day, note 7, at 169 (recounting that Maurin explained to Day that, "George Shuster, editor of \textit{The Commonweal}, told me to look you up. Also, a red-headed Irish Communist in Union Square told me to see you. He said we think alike.").} When they met, Maurin expounded his ideas with Day as a willing listener.\footnote{Roberts, note 27, at 32-33 (saying that Maurin "was seeking a special person: someone who could promulgate his ideas on radical action based on Christian values. ... Recognizing that [Day's] vocation was journalism, he convinced her—without difficulty—that she should start a newspaper to communicate the idea of social action rooted in Christian principles").} As Day understood Maurin's "program," it had three components: "clarification of thought, starting houses of hospitality, and organizing farming communes."\footnote{Dorothy Day, Loaves and Fishes 7 (1963).} Over the next several months and at Maurin's urging, Day developed a plan to start a Christian newspaper focused on social action, in order to begin the "clarification of
thought."106 A few months later, the first issue of the *Catholic Worker*
appeared.107

The *Catholic Worker* sold for one cent on the streets.108 The news-
letter contained mostly opinion pieces about the injustice of war, the
importance of fair labor practices, and the obligation of society to pro-
vide food, clothing, and shelter for the poor.109 The purpose of the
publication, according to Day, was "to change public opinion, to in-
doctrinate, to set small groups to work here and there in different cit-
cies who will live a life of sacrifice, typifying the Catholic idea of
personal responsibility."110 There were many people attracted to the
writings in the *Catholic Worker*, and its publication headquarters drew
radicals and seekers interested in a new social gospel that promised
revolution, dignity, and rights for all.111 It also attracted people who
needed a place to live.112 With donated funds, Day, Maurin, and a few

106 Roberts, note 27, at 33; Dorothy Day, Filling a Need, Cath. Worker, May 1, 1933, at 4
(incorrectly cataloged by the website as dated Mar. 1, 1933) ("In an attempt to popularize
and make known the encyclicals of the Popes in regard to social justice and the program
put forth by the Church for the 'reconstruction of the social order,' this news sheet, The
*Catholic Worker*, is started."). https://thecatholicnewswarehouse.org/?d&d=CW19330501-
01.2.13 [https://perma.cc/NU4L-REE5].

107 Roberts, note 27, at 35 (recounting the launch of the first issue of the *Catholic Worker*
on May 1, 1933, which Day paid for in part with her own funds); see also Day, note 106, at 4
("The money for the printing of the first issue was raised by begging small contribu-
tions from friends. . . . Another kindly and generous friend sent twenty-five. The rest of
it the editors squeezed out of their own earnings, and at that they were using money neces-
sary to pay milk bills, gas bills, electric light bills.").

108 See Day, note 105, at 18 ("One Irishman looked at the masthead and rebuked us for
the line which read 'a penny a copy.' We were in the pay of the English, he said. Next
month we changed it to 'a cent a copy' just to placate the Irish.").

109 See, e.g., Dorothy Day, The Listener, Cath. Worker, May 1, 1933, at 1, 5 (including
stories on the low wages paid to women working in garment factories, workers picketing
their former places of employment, a strike at a local restaurant, and similar topics), https://
thecatholicnewswarehouse.org/?a=d&d=CW19330501-01.2.2 [https://perma.cc/GR6N-
8WMZ]; Dorothy Day, Neighborhood Council in Action, Cath. Worker, Sept. 1, 1933, at 2
(describing the experiences of one low-income woman who was evicted from her apart-
ment), https://thecatholicnewswarehouse.org/?a=d&d=CW19330901-01.2.7 [https://perma.cc/
Q94L-EK47]; Dorothy Day, Another Miracle, Please, St. Joseph!, Cath. Worker, Feb. 1, 1934,
at 4 (hereinafter Day, Another Miracle) (thanking readers for donations of food and
bedding for the poor and unemployed), https://thecatholicnewswarehouse.org/?
d&d=CW19340201-01.2.20 [https://perma.cc/3XSQ-3SC8]; see also Roberts, note 27, at
52-53 ("For more than fifty years, the Catholic Worker movement has addressed many
social issues through its paper. The major ones include labor relations, racism, anti-Semi-
tism, militarism and conscription, Communism, the excesses of capitalism, voluntary pov-
erty, and most prominently, pacifism. . . . [P]acifism soon emerged as its most dominant
issue.").

110 See Roberts, note 27, at 38 (quoting Day).

111 See Miller, note 7, at 258-71 (describing the multiple young people and many individ-
uals in need who became part of Day's regular orbit).

112 See id. at 260 (quoting Day as saying, that with money donated by a friend, "we
rented our first apartment, moved in some beds and sheltered this one unemployed wo-
man. Within a week we had a score of applicants at our doors"); Dorothy Day, Fall Ap-
of their associates rented two houses—one for men, one for women—where those who came to them seeking shelter could go.\textsuperscript{113} They started a soup kitchen on the Lower East Side of Manhattan, too.\textsuperscript{114} Soon, Day, Maurin, and their colleagues found themselves at the epicenter of what would become the Catholic Worker movement: a powerful, progressive intellectual force of devout twentieth-century lay Catholics who, by example, challenged their Church to demonstrate a commitment to peace, justice, and the dignity of the poor.\textsuperscript{115}

Day spent the remainder of her life serving and advocating on behalf of the poor.\textsuperscript{116} She was a sought-after speaker,\textsuperscript{117} interlocutor,\textsuperscript{118} organizer,\textsuperscript{119} and fellow protester.\textsuperscript{120} She died in 1980 at the age of

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peal], Cath. Worker, Oct. 1, 1958, at 2 ("We were getting out a paper, THE CATHOLIC WORKER, which was dedicated to the personalist and communitarian approach but we lived in poverty in a store front and on the street and people came to us very directly for their immediate needs."); https://catholicnewsource.org/?a=d&d=CFW19581001-01.2.6 [https://perma.cc/2P6F-FFP7].

\textsuperscript{113} See Miller, note 7, at 259-60 (describing the first houses of hospitality established by the Catholic Workers).

\textsuperscript{114} See, e.g., Helen Deines, The Catholic Worker Movement: Communities of Personal Hospitality and Justice, 35 Soc. Work & Christianity 429, 436 (2008) (describing the Catholic Worker's "houses of hospitality" both then and now as offering "both permanent and temporary residence, clothing, and a daily soup kitchen to guests. In addition, they are also houses of prayer, critical reflection, social activism, and newspaper production, engaging both workers and guests in all these activities as each so desire").

\textsuperscript{115} One scholar describes the "philosophical cornerstones of the Catholic Worker movement" as "a communitarian Christianity, which stresses the necessity to live in community as Jesus did and the importance of individual action (personalism) to achieve social justice; pacifism and nonviolence; and voluntary poverty, which stems from a de-emphasis on material possessions." Roberts, note 27, at 7.

\textsuperscript{116} See Miller, note 7, at 515 ("After 1976 Dorothy virtually withdrew from the affairs of the world of the Worker movement. Her lot, as she knew, was to await death.").

\textsuperscript{117} In her diary for 1965, Day noted that her public speaking engagements were so numerous that they interfered with her writing. See Day, note 22, at 373 (reprinting diary entry from Oct. 27, 1965, in which Day noted: "After my speaking engagements to which I am already committed, I will take no more engagements for a time and write more."). In fact, Day's diary noted a few days later that her "first time speaking in open air" was on Nov. 6, 1965. Id. at 374. Day spoke at an anti-war rally in Union Square in New York. See generally Dorothy Day, Union Square Speech (Nov. 6, 1965), https://voicesofdemocracy.umd.edu/day-union-square-speech-speech-text/. On the importance of Day's speech, see Sara Ann Mehrtretter, Dorothy Day, Union Square Speech, 1 Voices Democracy 165, 166 (2006) (calling Day's speech in Union Square "a turning point in the growth of the Catholic peace movement").

\textsuperscript{118} See, e.g., Dorothy Day, Our Spring Appeal: Mystery of the Poor, Cath. Worker, Apr. 1, 1964, at 8 (responding to students who had written to her asking, "[h]ow do you see Christ in people?" with the explanation that "[i]t is an act of faith, constantly repeated. It is an act of love, resulting from an act of faith. It is an act of hope, that we can awaken these same acts in their hearts too"); https://catholicnewsource.org/?a=d&d=CFW19640401-01.2.3 [https://perma.cc/Z48L-3XNH].

\textsuperscript{119} For example, Day had a large role in organizing for the purchase of the Catholic Worker's first communal farm in Easton, Pennsylvania. See Miller, note 7, at 292 (discussing establishment of the farm); id. at 296-97 (providing an overview of challenges in running the farm); id. at 384 (the conclusion of that farm operation).
eighty-three. Her legacy lives on in the more than 180 Catholic Worker communities currently working in twelve countries, all of which are “committed to nonviolence, voluntary poverty, prayer, and hospitality for the homeless, exiled, hungry, and forsaken.” The movement begun by Peter Maurin and Dorothy Day retains vital today, carrying out “acts of mercy” and directly serving the poor and disenfranchised.

II. Dorothy Day’s Views on Taxation

A. Pacifism

Through the writing in the Catholic Worker newspaper and the work in what became a network of “hospitality houses” for the poor, Dorothy Day and her Catholic Worker colleagues emphasized a Christian communitarianism. Writing in 1935, one priest articulated the commitment thus: “[T]he illnesses of injustice, hate, disunion, race hatred, prejudice, class war, selfishness, greed, nationalism, and war weaken this Mystical Body [of Christ], just as the prayer and sacrifices of countless of the faithful strengthen it.” Thus, if all people are “members or potential members of the Mystical Body of Christ,” then peaceful relations among all people can be the only permissible state of existence, and all war must be opposed. As one historian explains it, “[Catholic Workers] believe that if Christians and people of good will everywhere refuse to participate in war and to allow their governments to stockpile armaments, then war can no longer exist.”

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120 See, e.g., Miller, note 7, at 500 (recounting how Day took part in a 1973 protest organized by the Unified Farm Workers, associated with Cesar Chavez, against the Teamsters Union).
121 See Whitman, note 1.
124 See, e.g., Day, Fall Appeal, note 112 (describing the message of the Catholic Worker newspaper as “dedicated to the personalists and communitarian approach”).
126 Id. at 2.
127 Roberts, note 27, at 10.
128 Id.
For Day and others, refusing to “participate in war” meant, at a most fundamental level, refusing to pay federal income taxes. Catholic Worker and Day contemporary Ammon Hennacy expressed his opposition to war through picketing the offices of the Internal Revenue Service and fasting on the anniversary of the bombing of Hiroshima. Day publicized Hennacy’s belief that, “If we pay taxes, we pay for the bomb.” Both Hennacy and Day acknowledged that declining to pay income taxes did not translate into entirely “clean hands” with respect to war financing; however: “[Hennacy] has presented us all with a problem,” Day wrote. “What kind of work can we do for which we need not pay federal income tax? Even if we do not pay it directly, there is a withholding from pay, and the hidden federal taxes on tobacco, liquor, the theater.” In addition, Day recognized that the economic realities of individual citizens might differ, with some citizens being more able than others to make the types of financial sacrifices necessary to avoid participating in the tax system. Finally, Day did not object to all forms of taxation; she recognized the need to pay state and local taxes on account of the services she and her community received from the state (even when she believed that those services were lacking). So Day attempted to maximize her commitment to pacifism through federal income tax noncompliance, but she remained cognizant of the ways that taxes permeated many aspects of everyday life and that opting out of the

129 Dorothy Day, We Go on Record: CW Refuses Tax Exemption, Cath. Worker, May 1, 1972, at 1, https://thecatholicnewsarchive.org/?ad&d=CW19720501-01.2.3 [https://perma.cc/2JJZ-JDHI].

130 See Selected Writings, note 40, at 138 (describing Hennacy’s activism).

131 Id.

132 Id.

133 Id.

134 Dorothy Day, Are the Leaders Insane?, Cath. Worker, Apr. 1, 1954, at 1, https://thecatholicnewsarchive.org/?a=d&d=CW19540401-01.2.4&e [https://perma.cc/YU7X-BH6E]. Indeed, Day recognized that those who participated in the (taxed) wage economy were the ones in a position to make financial contributions to her organization’s work:

I realize how difficult this is to decide. If one is unmarried and strong physically, it is easier to make a decision to do only day labor or work without pay. But there are many whose mental and physical strength is not equal to this decision and there is a withholding tax taken from even the smallest salary. Sometimes one can only make a gesture of protest. It is not for any one to judge his fellow man on how far he can go in resisting participation in preparation for war. In the very works of mercy which we are performing, we at the Catholic Worker are being aided by those who earn what they do only because they pay income tax for war. Oh yes, the editors of The Catholic Worker know only too well how far we too are involved in the city of this world.

Id.

tax system might not be feasible for all. Indeed, as explored later in Part III, widespread noncompliance with the income tax system would jeopardize the ability of the government to provide even the most basic of services, let alone the kind of direct aid that Day herself acknowledged was necessary at times.

B. Voluntary Poverty

In her public writings, Dorothy Day framed her income tax noncompliance in language that had intuitive appeal. As she reasoned, no Catholic Worker had an obligation to pay taxes because none drew a salary:

The C.W. has never paid salaries. Everyone gets board, room, and clothes (tuition, recreation included, as the C.W. is in a way a school of living). So we do not need to pay federal income taxes. Of course, there are hidden taxes we all pay. Nothing is ever clear-cut or well defined. We protest in any way we can, according to our responsibilities and temperaments.

Day explained the absence of salaries as a matter of administrative convenience. She posited that any hypothetical salary paid would be returned immediately to support the Catholic Worker’s provision of direct services to the poor:

It would complicate things rather, I can only explain, to give Roger a salary for his work of fourteen hours a day in the kitchen, clothes room, and house; to pay Jane a salary for woman’s [sic] house, and Beth and Annabelle for giving out clothes; for making stencils all day and helping with the sick

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136 Day, note 129.
137 See Part III and note 27 and accompanying text.
138 See, e.g., Selected Writings, note 40, at 312-13 (reasoning that if someone did not receive a salary, they were not being compensated). As to her own speaking fees, Day characterized these as mere reimbursements for expenses or donations for her charitable work. See Dorothy Day, On Pilgrimage, Cath. Worker, Jul.-Aug. 1972, at 1 (“[L]ecture fees which were not really fees but offerings made to the work which covered all expenses of travelling and supported the work besides”), https://thecatholicnewsarchive.org/?a-d&d=CW19720701-01.2.2 [https://perma.cc/RKP2-X58R]. This position is almost certainly incorrect as a matter of federal income tax law. See, e.g., Felton v. Commissioner, 116 T.C.M. (CCH) 365 (2018) (finding that amounts voluntarily paid by conregants to a minister in the form of a collection for “pastoral” purposes constituted taxable income to the minister).
139 Selected Writings, note 40, at 312-13.
and the poor... and then have them all turn the money right back in to support the work. Or to make it more complicated, they might all go out and get jobs, and bring the money home to pay their board and room and the salaries of others to run the house.\textsuperscript{141}

Thus, in her mind, "It is simpler just to be poor" and decline a salary.\textsuperscript{142} "It is simpler to beg. The main thing to do is not to hold out on anything."\textsuperscript{143} Thus declining a salary was not only an economic or political move; it was a spiritual one as well.\textsuperscript{144} By assuming voluntary poverty, she believed, one became truly free to serve others.\textsuperscript{145}

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C. Fiscal Entanglement

Day's desire to minimize her own and the Catholic Worker's legal and fiscal entanglement with the state is illustrated well by three of Day's positions. First, in 1958 the New York City government seized one of the Catholic Worker houses in order to build a subway line and then paid the organization, on a delayed basis, for the property it seized.\textsuperscript{146} The Catholic Worker community accepted the payment for the property, but returned approximately $3,600 in interest to the City, asserting that lending for interest was prohibited by the Church.\textsuperscript{147} Day could have used the interest to further finance the di-

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\footnote{141}{Id.}
\footnote{142}{Id.}
\footnote{143}{Id.}
\footnote{144}{See, e.g., Dorothy Day, Poverty Without Tears, Cath. Worker, Apr. 1, 1950, at 3 ("To love the poor, one must be one with them. There is always the yearning for union, for the close embrace, even if it leads to depths unutterable. We must show our love for Christ by our love for the poor, so how can there be but a rejoicing at the chance to show this love."). \url{https://theatholicnewsarchive.org/?a=d&d=CW19500401-01.2.5} [https://perma.cc/P6MH-ZEWK].}
\footnote{145}{For example, Day wrote that, "Once we begin not to worry about what kind of a house we are living in, what kind of clothes we are wearing—once we give up the stupid recreation of this world—we have time, which is priceless, to remember that we are our brother's keeper and that we must... try to build a better world." Dorothy Day, Why Poverty?, Cath. Worker, Jan. 1, 1946, at 3, \url{https://theatholicnewsarchive.org/?ad&d=CW19460101-01.2.13} [https://perma.cc/2P8M-LPDR].}
\footnote{146}{Roberts, note 27, at 41 ("[I]n 1960 they returned nearly $3,600 to the City of New York, the interest on the delayed-sale payment for their Chrystie Street House of Hospitality which the City bought to augment the subway.").}
\footnote{147}{See Selected Writings, note 40, at 294 ("We are returning the interest on the money we have recently received because we do not believe in 'money lending' at interest. As Catholics we are acquainted with the early teaching of the Church. All the early councils forbade it, declaring it reprehensible to make money by lending it out at interest.").}
\end{footnotes}
rect provision of services to the poor, but she declined to do so as a doctrinal matter.¹⁴⁸

Next, Day steadfastly refused to invoke the law in order to formally organize any aspect of the Catholic Worker’s operations.¹⁴⁹ To do so, Day believed, would be inconsistent with the group’s core activities: “A great many of our friends urge us to put our paper on a business-like basis. But this isn’t a business, it’s a movement,” Day said.¹⁵⁰ “[Y]ou don’t need to be incorporated to wash a man’s feet.”¹⁵¹

Finally, Day declined to seek formal recognition as a charitable organization, even if doing so might have meant additional support from individuals or foundations.¹⁵² In Day’s view, keeping the organization on unstable financial footing was to adopt humility.¹⁵³

Day believed that too much entanglement with the state in some sense corrupted the nature of the charitable work; to be involved with the state was to lose one’s free will, to a certain extent.¹⁵⁴ Day nevertheless recognized that contact with the state could not be avoided entirely. She reflected that one could never be entirely free from the state: “Of course we are involved in paying taxes, in living on money

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¹⁴⁸ According to one writer who worked alongside Day, this “acceptance of traditional Catholic condemnation of usury, meaning any interest, not exorbitant interest!” was one of “the Catholic Worker’s most controversial positions.” Eileen Egan, The Final Word Is Love: Dorothy Day and the Catholic Worker Movement, 30 Crosscurrents 377, 382 (1980-81).

¹⁴⁹ See, e.g., Dorothy Day, Day After Day, Cath. Worker, Sept. 1, 1942, at 1, reprinted in Dorothy Day’s Writings, Cath. Worker Movement (“We were unincorporated and we did not wish to be incorporated. Nor did we intend to be, either for five hundred or five thousand dollars. It is hard for our friends and readers to get the point of this. It is difficult to explain, too. It is one of those ephemeral things, felt rather than understood, even on our part.”), https://catholicworker.org/385-html/ [https://perma.cc/AP79-876L].

¹⁵⁰ Day, Another Miracle, note 109.

¹⁵¹ See Roberts, note 27, at 41 (quoting Day).


¹⁵³ See Day, Another Miracle, note 109; see also Roberts, note 27, at 41 (quoting Day as saying that “[i]t is better that we remain poor and dependent on the small contributions of those who can send a dollar now and then. That keeps us humble.”).

¹⁵⁴ Day, note 135 (noting that, with such entanglement, “[t]he whole element of freedom is lost, the whole element of man’s free will, the primacy of conscience is lost.”). Day’s concern about the state’s encroachment on the charitable obligations of the individual was not limited to the tax arena—she objected to social security legislation on similar grounds. Dorothy Day, More About Holy Poverty, Which Is Voluntary Poverty, Cath. Worker, Feb. 1, 1945, at 1 (arguing that “social security legislation, now hailed as a great victory for the poor and for the worker, is a great defeat for Christianity” because “[i]t is an acceptance of the idea of force and compulsion.”), https://thecatholicnewarchive.org/?a=d&d=CW19450201-01.2.3 [https://perma.cc/RS38-2U92]. Day tied these beliefs to the Catholic social teaching principle of subsidiarity (discussed more fully in Part III), which, as Day articulated it, states “that governments should never do what small bodies can accomplish, such as unions, credit unions, co-ops, St. Vincent de Paul Societies, etc.” Day, note 129.
which comes from our industrial capitalist way of life. But we can try, by voluntary poverty and labor, to earn our living, and not to be any more involved than we can help.” Indeed, in many respects, Day believed that the complexity of the tax system made even obtaining a tax exemption a matter of entanglement. On this point, her words are worth quoting in full:

Our refusal goes deep. Our motivation is fundamentally religious. We are told by Jesus Christ to practice the works of mercy, not the works of war. And we do not see why it is necessary to ask the government for permission to practice the works of mercy which are the opposite of the works of war. To ask that permission to obey Christ by applying for exemption, a costly and lengthy process, is against our religious principles. It is an interference of the state which we must call attention to again and again. A father who educates a young man or woman other than a blood relative is taxed for his generosity. A poor family who takes in another poor family (as many of them do in time of unemployment or crisis), cannot count that as tax deductible. Of course the poor suffer from the withholding tax which is taken from their weekly pay. To understand their rights, they must plough through booklets and forms put out by the government (which I am sure I could not manage to do) before they are able to collect money at the end of the year which is owing to them due to some change of circumstance. To get the advice of the Internal Revenue Department means standing in lines, paying excessive fares by bus or subway, with generally little redress of their grievances.156

To incorporate or even register as a nonprofit would have "violated the movement's personalist principles."157 It represented a waste of

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155 Selected Writings, note 40, at 298.
157 Roberts, note 27, at 166; see also Day, We Go on Record, note 129 (noting that "[a]s personalists, as an unincorporated group, we will not apply for this 'privilege' "). Interestingly, Day’s resistance to entangling her charitable work with the state in any capacity is a view that has found some support with some tax scholars, whose work suggests that charities are perhaps best viewed as being “limited co-sovereigns” with the state and thus must be free to operate with complete autonomy from the state. See Johnny Rex Buckles, Does the Constitutional Norm of Separation of Church and State Justify the Denial of Tax Exemption to Churches that Engage in Partisan Political Speech?, 84 Ind. L.J. 447, 460 (2009); Evelyn Brody, Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption, 23 J. Corp. L. 585 (1998); Edward A. Zelinsky, Are Tax “Benefits” for Religious Institutions Constitutionally Dependent on Benefits for Secular Entities?, 42 B.C. L. Rev. 805
time and resources that could have been better spent serving the poor.\textsuperscript{158} Day refused to comply with the income tax laws her entire life.

D. The IRS’s Response

Both during her lifetime and today, Day’s position on her individual federal income tax liability likely was incorrect as a matter of law. In 1933, the year the Catholic Worker first appeared, the threshold triggering an individual’s obligation to file an income tax return was $4,000.\textsuperscript{159} At the time of Day’s death in 1980, the threshold was $2,300.\textsuperscript{160} After her novel, The Eleventh Virgin, in 1924,\textsuperscript{161} Day published five more books during her lifetime.\textsuperscript{162} If her revenues from book sales exceeded the filing threshold then she would have been obligated to file an income tax return.\textsuperscript{163} Day was certainly free to use or donate all of her income as she saw fit, turning it over to support direct services for the poor, but doing so would not have alleviated her filing obligations.\textsuperscript{164} There are three different relevant factors.

First, the 1930 decision by the Supreme Court of the United States in Lucas v. Earl made it clear that income is taxed to the person who

\textsuperscript{158} See Day, On Pilgrimage, note 156.


\textsuperscript{160} See id.

\textsuperscript{161} See note 89 and accompanying text (discussing Day’s sale of the rights to her novel).

\textsuperscript{162} They are From Union Square to Rome (1938), On Pilgrimage (1948), The Long Loneliness: The Autobiography of Dorothy Day (1952), Therese (1960), and Leaves and Fishes (1963).

\textsuperscript{163} See, e.g., IRC § 11 (1939) (imposing a tax on the “net income of every individual”), § 21 (1939) (defining net income as “the gross income computed under section 22” minus certain deductions), § 22 (1939) (defining gross income to include “gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales, or dealings in property, whether real or personal”); IRC § 1 (1954) (imposing a tax on “taxable income”), § 63 (1954) (defining taxable income as “gross income” minus certain deductions), § 61 (1954) (defining gross income as “all income from whatever source derived, including (but not limited to)” fifteen enumerated items), https://www.govinfo.gov/content/pkg/STATUTE-68/pdf/STATUTE-68A-Pg1.pdf.

\textsuperscript{164} See note 7 and accompanying text (for a different account of how Day used any money she received from her writing or speaking).
earns it.\textsuperscript{165} Even if Day had some sort of formal agreement directing that her earnings from writing and speaking be paid for charitable purposes (and there is no evidence that she did), Day still would have been required to file a tax return if her income exceeded the threshold amount.\textsuperscript{166}

Second, even if Day did give away all of her income, assuming that she did so by using her money directly for the poor, or that she turned over her earnings to the Catholic Worker community for the same purposes, she would not have been entitled to a charitable income tax deduction. Only transfers to organizations that meet certain specific requirements are eligible for a deduction.\textsuperscript{167} In the case of a charitable organization based in the United States, the charity must be a corporation, trust, community chest, fund, or foundation.\textsuperscript{168} Nonorganized groups do not qualify, no matter how charitable their work, and transfers by one individual to another are not deductible, no matter how deserving the recipient is.\textsuperscript{169}

Finally, even if Day had given away all of her income and she had done so in a manner that qualified for the income tax charitable deduction, she would have been subject to a cap on deductions in some years.\textsuperscript{170} For the period from 1924 to 1976, the income tax charitable

\textsuperscript{165} 281 U.S. 111 (1930) (holding that although a lawyer's agreement with his wife that one-half of his earnings would belong to her was valid as a matter of state property law, "the tax could not be escaped by anticipatory arrangements and contracts, however skillfully devised").

\textsuperscript{166} See id. But see Commissioner v. Giannini, 129 F.2d 638 (9th Cir. 1942) (finding that the taxpayer did not recognize taxable income to the extent that he declined to receive a compensatory payment due from his employer and the employer instead made the payment to charitable organizations the taxpayer had supported in the past). Although this case would not likely be decided the same way today, it has not been explicitly overruled.

\textsuperscript{167} The income tax charitable deduction is available with respect to transfers to organizations described in and meeting the requirements of I.R.C. § 170(c)(1)-(5).

\textsuperscript{168} I.R.C. § 170(c)(2).

\textsuperscript{169} See I.R.C. § 170(c)(2). In that sense, a New York Times headline proclaiming "Dorothy Day's Group Wins U.S. Tax Exemption" was somewhat misleading. See Dorothy Day's Group Wins U.S. Tax Exemption, note 9. According to that news report, the organization received a notice from the Internal Revenue Service stating, "After examining your financial records and reviewing your activities for the above years (1966-1970), we find that you are not required to file annual returns for the years show, and no further action is necessary." Id. The organization did not receive a formal determination of its tax-exempt status. See id. Some contemporary Catholic Worker communities have sought tax exemption. See, e.g., Tax-Exempt Status, Casa Alma (explaining the decision of the Catholic Worker community in Charlottesville, Virginia, to seek and obtain tax-exempt status "in order to own and steward property for the common good, to develop a broad base of services, and to divert funds from the works of war to serve the poor" and further noting that Day would disagree with that decision), https://casa-alma.org/tax-exempt-status. Most Catholic Worker communities are not tax-exempt. See FAQs, How Can I Make a Contribution to the Catholic Worker?, Cath. Worker Movement, https://www.catholicworker.org/faq.html.

\textsuperscript{170} See I.R.C. §§ 170(a)(1) (1977) (allowing an income tax deduction for certain charitable contributions), (b)(1) (providing limitations on deductions, as a percentage of the tax-
deduction was largely unlimited. But in the last four years of her life, Day's deductions would have been capped at a percentage of her adjusted gross income. She would have owed tax on the remaining amount, even if she had given it away.

Given that Day's approach to taxation likely ran afoul of the law, it is not surprising that the IRS eventually took notice. In 1972, Day received a notice for nearly $300,000 in back taxes, fines, and penalties, presumably for her individual taxes and those for unincorporated Catholic Worker activities. In response to Day's publicity of the notice, a New York Times editorial quipped, "Surely the I.R.S. must have genuine frauds to investigate." Day acknowledged that it was perhaps "simpistic" to claim that because she and others associated with the Catholic Worker drew no salary, they had no income tax obligations. In fact, the dispute with the IRS did not last long; the gov-

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172 See, e.g., IRC § 170 (1969); see also Eugene Willis, The Amount of a Charitable Contribution of Property, 52 Acct. Rev. 498, 498 (1977) (providing a step-by-step approach to determining a taxpayer's deductions for charitable contributions for donations in 1977 and explaining the limitations of 20%, 30%, or 50% of adjusted gross income, depending on whether the donee organization was a public charity, whether the sale of such property would have resulted in ordinary income or capital gain, and if the latter, whether such gain would have been long term or short term).

173 See IRC § 170 (1969) (capping the income tax charitable deduction).

174 See Day, note 138 (describing the notice from the IRS).

175 Letter to the Editor, Imagination Please, N.Y. Times, May 24, 1972, at 46.

176 Day, On Pilgrimage, note 138. Another minor tax issue is whether, as a technical matter, Day and others in the Catholic Worker community should have included in their gross income the value of meals and lodging furnished to them. See notes 139-141 and accompanying text (concerning lodging provided to those who worked in the houses of hospitality); Reg. 118, § 29.22(a)-3 (1951) (containing Treasury Regulations under the Internal Revenue Code of 1939, as amended, concerning employer-provided meals and lodging); and IRC § 119 (1954) (reflecting the first statute governing employer-provided meals and lodging). Because the IRS does not appear to have raised the issue, we flag it here only as a matter of possible interest to tax scholars.
ernment quickly gave up, stating that it determined that there was no requirement for Day to file returns for the years in question.  

While we only have Day's account of the discussions with the IRS and her speculation about the reasons for the IRS concession, she credited the public support that she had received from the *New York Times* and the *New York Post*. She reported that the IRS attorney had acknowledged that no enforcement action would stop them from their work, recognizing that "you could not kill an idea." Despite having a clearly winnable case on both the facts and the law, then, the IRS effectively exercised its enforcement discretion in Day's case, either because she and other members of the Catholic Worker community were complying with the law's spirit, despite their steadfast refusal to comply with its formal requirements, or because the IRS did not want to risk the bad press.

III. TAX PROTESTS IN THE CONTEXT OF CATHOLIC SOCIAL TEACHING

Dorothy Day's tax compliance positions may have been incorrect as a matter of tax law, but did they comport with Catholic social teaching regarding the obligation to pay taxes? To understand why this question is important requires spoiling the answer: It is likely that Day's views were inconsistent with Catholic social teaching as it existed during her lifetime. Her views are almost certainly inconsistent with the Church's positions today. However, Day sincerely believed that her nonpayment of tax was entirely consistent with Church teaching. Exploring the reasons for this illustrates how difficult it is to generate a standard for objections that relies on sincerity. The importance of this analysis comes to the fore in subsequent Sections in which we discuss what, if anything, the government might do to accommodate these types of objections.

Beginning with the foundational question of whether Day's views can be properly grounded in the religious tradition that served as the basis for her objection, Catholic social teaching appears to be more deferential than Day was to the needs of a society to have a functioning tax system in which all taxpayers pay what they owe. To be sure, tax systems have not spawned the same breadth of analysis from Catholic thinkers as other legal issues have, but Catholic thought never-

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177 Day, On Pilgrimage, note 138 (providing a summary of the meeting with the IRS and a copy of the letter from the IRS indicating that it was terminating its enforcement action against Day).
178 See id.
179 Id. at 2.
180 See id.
181 See, e.g., Recovering Self-Evident Truths: Catholic Perspectives on American Law (Michael A. Scaperlanda & Teresa Stanton Collett eds., 2007) (including chapters on labor
theless has wrestled with the moral dimensions of taxation. Indeed, unlike many contemporary social issues that have drawn significantly more discussion from the Catholic Magisterium, taxation is one that Jesus addressed explicitly in his teaching.\footnote{See, e.g., Mary Anne Case, After Gender the Destruction of Man? The Vatican’s Nightmare Vision of the “Gender Agenda” for Law, 31 Pace L. Rev. 802 (2011) (providing an overview of the limited Catholic writing on just systems of taxation and noting that there has been a “lack of an in-depth, systematic discussion of the justice of taxation in both the theological literature and in the official Catholic teaching.”).} When the Pharisees asked Jesus whether it was moral to pay taxes to the Roman government, Jesus responded that they should “[g]ive therefore to the emperor the things that are the emperor’s, and to God the things that are God’s.”\footnote{See, e.g., John Connery, S.J., Abortion: The Development of the Roman Catholic Perspective 34 (1977) (“If anyone expects to find an explicit condemnation of abortion in the New Testament, he will be disappointed. The silence of the New Testament regarding abortion surpasses even that of the Old Testament.”).} Admittedly, what this means precisely in terms of a citizen's obligations to pay all government-imposed taxes is the subject of some debate.\footnote{Matthew 22:15-22 (New Revised Standard Version Catholic Edition).}

Contemporarily with the development of Day’s own thoughts on taxation, Catholic theologian Martin Crowe published his dissertation as a book called The Moral Obligation of Paying Just Taxes.\footnote{See, e.g., Robert W. McGee, Is Tax Evasion Unethical? 42 U. Kan. L. Rev. 411, 411 (1994) (arguing that there is “nothing sinful or ethically wrong with tax evasion”); Patrick McKinley Brennan, 56 Cath. U. L. Rev. 1221, 1224 (2007) (reading the teaching of Jesus on taxation to apply to broader questions of the citizen's relationship to the state generally).} There is no direct evidence that Day read Crowe’s work, but one can detect similarities between their positions. Crowe surveyed centuries of debate within the Catholic Church on issues of taxation and opined that “[i]n determining the morality of tax-evasion . . . there are two questions to be answered: (1) Is the law violated a just law? (2) If the law is just, to what extent and under what virtue does it bind in conscience?”\footnote{Martin T. Crowe, The Moral Obligation of Paying Just Taxes (1944).} While Crowe’s work was more preoccupied with the second of these questions,\footnote{Id. at ix.} he did articulate a test for how to evaluate whether a tax law is “just.”\footnote{Crowe’s dissertation focused primarily on what the nature of the moral obligation to comply with a presumably just tax system would be rather than determining whether any particular tax system satisfied the requirements of being just. See id.} First, the taxing authority must have

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\textit{law, contract law, property law, tort law, criminal law, family law, immigration law, and international law; Charles E. Curran, Just Taxation in the Roman Catholic Tradition, 13 J. Religious Ethics 113, 115-117 (1985) (providing an overview of the limited Catholic writing on just systems of taxation and noting that there has been a “lack of an in-depth, systematic discussion of the justice of taxation in both the theological literature and in the official Catholic teaching.”).}
\end{flushright}
lawful power to legislate, subject to the limitations of any higher reviewing authority. Second, the tax must have a just cause, which could either be social or fiscal.

Almost sixty years later, in expanding upon Crowe’s test, Robert G. Kennedy interprets current Catholic social teaching to require an analysis of: (1) the tax’s purpose; (2) the form of the tax; and (3) the distribution of the tax burden. Each of these factors then influences what the citizen’s compliance obligation is and what levels of mitigation or outright protest are deemed permissible. It is through this lens that we evaluate Day’s views on taxation and suggest what they portend for the smooth administration of tax systems. To be clear, neither Crowe nor Kennedy represents the official view of the Catholic Church, given that the official view is limited to passing references in the Catechism of the Catholic Church to the general obligation to comply with tax laws. Rather, their writings provide a framework for better understanding Day’s views and locating them in the context of other Catholic interpretations of Church teaching that arose during and after Day’s lifetime.

A. Purpose

Beginning with the question of purpose, such an examination is a way of evaluating the government’s proper role in society. From the perspective of the Catholic tradition, the government’s primary purpose is to promote the common good. This aim arises out of the principle of solidarity, described by Saint John Paul II as “a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.” While the government can advance the common good through a variety of mechanisms, the most common throughout history have been (1) legislation; (2) executive administration; (3) judicial activities; (4) military defense; (5) issuance of cur-

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190 Id. at 22-23.
191 Id. at 23.
192 Robert G. Kennedy, Justice in Taxation 73 (2018). The Pontifical Council for Justice and Peace’s Compendium of the Social Doctrine of the Church supports these requirements for a just tax, stating, “Public spending is directed to the common good when certain fundamental principles are observed: the payment of taxes as part of the duty of solidarity; a reasonable and fair application of taxes; precision and integrity in administering and distributing public resources.” Pontifical Council for Justice and Peace, Compendium of the Social Doctrine of the Church para. 355, at 201 (2004).
194 Catechism of the Catholic Church 2240, 2409 (2d ed. 1997).
195 Kennedy, note 192, at 73.
196 Id. at 74.
rency; (6) commerce regulation; (7) transportation infrastructure; and (8) facilitation of publication communication. In addition, there are other mechanisms that advance the common good that, while initially falling into the sphere of private activity rather than government activity, can be delegated to government by the citizenry, should the citizenry choose to do so. These include education, social insurance, provision of health care, and other similar social benefits.

Generally speaking, Catholic tradition eschews government efforts to control nuclear families, religion, and culture, or to prevent these institutions from performing charitable works. The traditional view of the Catholic Church is that governmental efforts to do so should be extremely limited because of the risk that the government might impermissibly substitute its own values and decisions into areas of personal responsibility. This view of what constitutes an illegitimate government purpose extends from the Catholic principle of subsidiarity, which as applied to the question of legitimate government purpose, is the idea that the government should not assign to itself duties that can be performed by more subordinate or local associations. This is consistent with the views Day expressed during her lifetime.

In this light, a tax’s purpose is legitimate, then, if it advances a legitimate government purpose. This legitimacy extends not only to taxes levied to provide revenue for the government to pursue these purposes, but also to regulatory taxation, meaning laws designed either to incentivize or discourage particular taxpayer behavior, or to recover the costs associated with negative externalities from taxpayer behavior. In this framework, some redistributive taxation efforts are legitimate, although the parameters for legitimacy for this type of taxation are much narrower. While Catholic tradition opposes the govern-

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198 See Kennedy, note 192, at 75.
199 See id. at 76, 78. Such delegation must be undertaken with care, however, so as not to ascribe to the government an outsized role that exceeds the responsibilities of private associations. See id. at 118 (noting that, “[t]he general posture of the Church has been to recognize a role for government in addressing social issues—a role that may naturally be larger in more complicated communities—but at the same time want to protect a sphere of action for private associations”).
200 See id. at 76.
201 See id. In addition, Catholic tradition would view government attempts to use public funds for activities that primarily benefit private individuals or that socialize risk while privatizing reward as illegitimate purposes. See id. at 77.
202 See id. at 76-77, 77 n.5.
203 Pope Pius XI, Quadragesimo Anno paras. 79-80 (May 1931).
204 See, e.g., notes 25-28 and accompanying text.
205 See Kennedy, note 192, at 78-81 (noting that such regulatory taxation would still have to advance the common good in order to have a legitimate purpose).
206 See id. at 81-85. Kennedy argues that the church’s position on wealth distribution is likely somewhat of a middle ground between the argument for state redistribution based
ment's taxing one group solely for the purpose of attempting to remedy inequality by transferring funds to another group. Catholic teaching does allow citizens to delegate to the government the ability to use the taxing power to provide relief and subsidies to the poor. The imperative to relieve the suffering of the poor is grounded in scripture, including the biblical story of Jesus comforting his mother while he was dying on the cross and the teaching in the parables that "just as you did it to one of the least of these who are members of my family."

The question of whether a particular purpose is legitimate is also foundational to the equally important question of how a society can properly balance how much revenue the government actually needs against how much of a tax burden the citizenry can bear. This is not an easy question to answer, particularly in the context of a constitutional democracy that protects the free exercise of religion. The needs of the government are a function of the will of the people; people with different religious sensibilities may come to different conclusions about what services are better provided by the government and what services are better provided by private charities, families, or individuals.

While he does not attempt to answer the question with specificity, Kennedy provides general guidance about how a society might determine its legitimate revenue needs, particularly in light of the size and complexity of modern states. As expansion of government services and responsibilities that improve the common good has increased the need for tax revenue, there is a risk that the government may start to lack a certain humility about what it can and cannot accomplish effectively. Government might attempt to take on too many responsibili-

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on reducing inequality and the argument against state redistribution based on a view that the state should only provide for equality of opportunity. See id. at 83-85. As Kennedy states:

Therefore, the state may not simply acquire private wealth by levying a tax for the purpose of redistribution. However, it can and should encourage wealthy persons to perform acts of generosity and benevolence. It may, and generally does, provide tax preferences for certain sorts of gifts as incentives. It is also true that citizens can delegate to the state the right to levy taxes in order to provide relief to persons in need and to subsidize opportunities for them.

Id. at 85.

207 See id. at 85.
209 See Kennedy, note 192, at 87-95.
210 See id. at 87-90 (citing Pope Pius XII, On Taxes, Address to the International Association for Financial and Fiscal Law (Oct. 3, 1956)), translated in The Pope Speaks, Am. Q. Papal Documents, Summer 1957, at 77, 77-80 (discussing Pope Pius XII’s comments on this tension).
ties that would be better left to individuals or private organizations.\textsuperscript{211} Adding to the complexity is the fact that the overall tax burden of the citizenry must account for multiple layers of tax (such as federal, state, and local taxes in the United States). The combined burden can be excessive even if any of the individual taxes in isolation are not.\textsuperscript{212} Furthermore, the government must act with fiscal responsibility in a manner that considers the needs of current and future taxpayers.\textsuperscript{213}

Taken together, these principles do not provide a definitive answer to the question of which responsibilities are better left to the state and which are better left to private charity (and correspondingly what the appropriate amount of revenue needed to execute these responsibilities would be). That, in turn, is inextricably connected to the discussion above about the proper purpose of a tax. Indeed, democratic societies will naturally come to differing and equally legitimate conclusions about those questions, which does not automatically elevate the decisions of one society over those of another.\textsuperscript{214}

Regardless of where a particular society comes out on the question about how to divide responsibility for providing services, particularly services to the most vulnerable, between government and private charity, a society choosing to have government take on this role through the tax system has been viewed as having a legitimate purpose in Catholic social teaching. Such a government must balance maintaining the common good with its commitment to respecting private ownership.\textsuperscript{215} Intellectually, this position relies on a third principle to resolve the tension between the other two: the "preferential option for the poor," which Saint John Paul II later described as, "The Church's love for the poor, which is essential for her and a part of her constant tradition, impels her to give attention to a world in which poverty is threatening to assume massive proportions in spite of tech-

\textsuperscript{211} See id. at 89-90. Because of concerns about the government's overreaching in what tasks it uses as a justification for tax revenue, "the thrust of the tradition is in favor of lower rather than higher levels of taxation so that individuals and families retain more of their money and can more effectively serve their communities through acts of charity and generosity." Robert G. Kennedy, Catholic Social Teaching and Tax Justice, Acton Inst. (Mar. 28, 2018), https://www.acton.org/pub/commentary/2018/03/28/catholic-social-teaching-and-tax-justice.

\textsuperscript{212} Kennedy, note 192, at 91.

\textsuperscript{213} Id. at 92.

\textsuperscript{214} See id. at 78 (noting "that citizens should have considerable freedom in determining which functions to assign to government").

\textsuperscript{215} See id. at 84 (citing Pope Leo XIII, Rerum Novarum 18-19 (1891)); Pope Pius XI, note 203, para. 49-51; Pope John Paul II, note 197, paras. 17-19; see also Michael A. Livingston, The Preferential Option, Solidarity, and the Virtue of Paying Taxes: Reflections on the Catholic Vision of a Just Tax System, 51 J. Cath. Soc. Thought 99 (2008) (arguing that the principles of solidarity and the preferential option for the poor provide a way to evaluate tax policy that respects private ownership and the obligation to the vulnerable while rejecting the extreme versions of both capitalism and Marxism).
nological and economic progress."\textsuperscript{216} Effectively, this means that the concerns of the poor and economically vulnerable, while not prioritized to the exclusion of the good of all other groups, nevertheless deserve to be considered first in any program design or operation.\textsuperscript{217} Doing so helps ensure that the needs of the poor are met before addressing the legitimate concerns of more secure groups.\textsuperscript{218} This preferential option for the poor continues to guide the United States Conference of Catholic Bishops in its approach to evaluating what the Conference views as the broad contours of what a tax system should look like if it is to be consistent with Catholic social teaching, as seen through the group's 1986 statement:

\textsuperscript{216} Pope John Paul II, Centesimus Annus para. 57 (May 1991) (noting that "different forms of poverty are being experienced by groups which live on the margins of society, by the elderly and the sick, by the victims of consumerism, and even more immediately by so many refugees and migrants"). Although Pope John Paul II was writing after the death of Dorothy Day, the preferential option for the poor is a long-standing feature of canon law. See 1983 Code c.222, § 2 (noting that the Christian faithful are "obligated to promote social justice, and mindful of the precept of the Lord, to assist the poor from their own resources"). The first use of the phrase "preferential option for the poor" is attributed to Fr. Pedro Arrupe, the Superior General of the Society of Jesus, in a 1968 letter to members of his order. The Latin American Episcopal Conference, a meeting of the Roman Catholic bishops in the region, first endorsed the principle at their meeting in 1968 in Medellín, Colombia, and again in 1979 in Puebla, Mexico. See Medellín (no. 7) and Puebla (no. 1134), in Conselho Episcopal Latino-Americano, Documentos do CELAM: Rio de Janeiro, Medellín, Puebla e Santo Domingo (2005). See generally Alexandre A. Martins, Ethics and Equity in Global Health: The Preferential Option for the Poor, J. Moral Theology 96, 99 (discussing the Latin American bishops' articulation of the preferential option for the poor at their conferences in 1969 and 1979). In addition, in 2005 the Pontifical Council for Justice and Peace articulated the preferential option as a mediating principle between solidarity and subsidiarity when it stated:

Solidarity without subsidiarity, in fact, can easily degenerate into a "Welfare State", while subsidiarity without solidarity runs the risk of encouraging forms of self-centered localism. In order to respect both of these fundamental principles, the State's intervention in the economic environment must be neither invasive nor absent, but commensurate with society's real needs (no. 351).

\ldots [T]he universal destination of goods requires that the poor, the marginalized and in all cases those whose living conditions interfere with their proper growth should be the focus of particular concern. To this end, the preferential option for the poor should be reaffirmed in all its force. \ldots It affects the life of each Christian inasmuch as he or she seeks to imitate the life of Christ, but it applies equally to our social responsibilities and hence to our manner of living \ldots (no. 182).


\textsuperscript{218} See id.; see also Curran, note 181, at 125 ("\ldots one important way to carry out this option in the United States is to recognize the obligation of the state to ensure that the poor have the minimum necessary for a decent human existence.").
The tax system should be continually evaluated in terms of its impact on the poor. This evaluation should be guided by three principles. First, the tax system should raise adequate revenues to pay for the public needs of society, especially to meet the basic needs of the poor. Secondly, the tax system should be structured according to the principle of progressivity, so that those with relatively greater financial resources pay a higher rate of taxation. The inclusion of such a principle in tax policies is an important means of reducing the severe inequalities of income and wealth in the nation. Action should be taken to reduce or offset the fact that most sales taxes and payroll taxes place a disproportionate burden on those with lower incomes. Thirdly, families below the official poverty line should not be required to pay income taxes. Such families are, by definition, without sufficient resources to purchase the basic necessities of life. They should not be forced to bear the additional burden of paying income taxes.219

The phrase “preferential option for the poor” was in circulation in Catholic teaching during Day’s lifetime.220 It reflects well-known Judeo-Christian concepts.221 In many ways, Day’s general aversion to a robust role for the government in providing relief to the poor, except in times of disaster,222 can be read as consistent with Catholic social teaching on the legitimate purposes of a tax system.223 The more complicated question is how to understand Day’s tax positions in light of the traditional Catholic analyses that emerged during her lifetime and that have been further elaborated since, specifically in the context of whether war can ever be a legitimate purpose of the government.

Day objected strenuously to the building and using of atomic bombs by the United States against Japan in 1945, calling it a “slaughter of the innocents” and lamenting the loss of human life.224 Day herself consistently asserted that 80% of all tax revenue was used to pay for

220 See note 216 (tracing first-known use of the term to 1968).
221 See notes 201-203 and accompanying text; Proverbs 14:31 (New Revised Standard Version Catholic Edition) (“Those who oppress the poor insult their Maker, but those who are kind to the needy honor him.”).
222 See notes 25-27 and accompanying text.
223 See notes 202-203 and accompanying text.
224 Dorothy Day, We Go on Record: The CW Response to Hiroshima, Cath. Worker, Sept. 1, 1945, at 1, https://the catholicnewsarchive.org/?a=d&d=CW19450901-01.2.4 [https://perma.cc/WZD4-MVVY].
wars, and framed her own nonpayment of income taxes in pacifist
terms. She essentially believed that the government used the in-
come tax system to raise more money to pay for war, something that
was well beyond the scope of the government's proper function.
Day opposed the draft and wrote publicly and vocally against the
Spanish Civil War, World War II, the U.S. involvement in Vietnam,
and other armed conflicts all over the world. To be clear, it was not
that Day believed that individuals, instead of governments, should
be waging war. She was a pacifist who believed that all wars were unjusti-
fied, regardless of who waged them.

This type of absolute pacifism, however, is not part of Catholic so-
cial teaching. In contrast with Day, the Catholic Church has a theory
of just war, tempered by the incorporation at the Second Vatican
Council of statements regarding the need to avoid war and to refrain
from the use of weapons of mass destruction. Yet formal Church
doctrine also provides that law should “make human provisions for

225 See id. (opining that 80% of income tax revenue was used for war); Day, Money and
the Middle Class Christian, note 135 (explaining that the Catholic Worker paid local taxes
in connection with its ownership of a farm in Tivoli, New York, although “we don’t get the
services we’re supposed to be getting,” but that “we’ve never paid income tax because 80
per cent is generally conceded to be what goes to the military. . . . [Speaking of] this whole
business of Caesar—the less you have of Caesar’s—and we’ve tried ourselves to do with-
out as much as possible.”).

226 See Roberts, note 27, at 10 (“Catholic Workers believe there is no such thing as a
“just war,” in the modern world of massive armaments and nuclear weapons—if there ever
was. They believe that if Christians and people of good will everywhere refuse to partici-
pate in war and to allow their governments to stockpile armaments, then war can no longer
exist.”).

227 See, e.g., Dorothy Day, The Use of Force, Cath. Worker, Nov. 1, 1936, at 4 (“The
Catholic Church cannot be destroyed in Spain or in Mexico. But we do not believe that
force of arms can save it. We believe that if Our Lord were alive today he would say as He
said to St. Peter, ‘Put up thy sword.’”), https://thecatholicnewsarchive.org/?a=d&d
=CW19361101-01.2.27 [https://perma.cc/7VF5-TH3P]; Dorothy Day, Our Country Passes
From Undeclared War to Declared War; We Continue Our Christian Pacifist Stand, Cath.
Worker, Jan. 1, 1942, at 1 (“We are at war, a declared war, with Japan, Germany and Italy.
But still we can repeat Christ’s words, each day, holding them close in our hearts, each
month printing them in the paper. . . . Our manifesto is the Sermon on the Mount, which
means that we will try to be peacemakers.”), https://thecatholicnewsarchive.org/
?a=d&d=CW19420101-01.2.2&srpos=1&e [https://perma.cc/SAM2-WAFS]; Dorothy Day,
In Peace Is My Bitterness Most Bitter, Cath. Worker, Jan. 1, 1967, at 1 (“It is not just
Vietnam, it is South Africa, it is Nigeria, the Congo, Indonesia, all of Latin America. . . .
The works of mercy are the opposite of the works of war, feeding the hungry, sheltering
the homeless, nursing the sick, visiting the prisoner.”), https://thecatholicnewsarchive.org/
?a=d&d=CW19670101-01.2.3 [https://perma.cc/PJ62-QTY3].

228 See, e.g., Catechism of the Catholic Church, 2307-2317 (recognizing the right of both
citizens and government to self-defense and establishing “strict conditions for legitimate
defense by military force”); Gaudium et spes 79 (on avoiding war), 80 (“Any act of war
armed indiscriminately at the destruction of entire cities of extensive areas along with their
population is a crime against God and man himself.”).
the case of those who for reasons of conscience refuse to bear arms, provided, however, that they agree to serve the human community in some other way. If the Church were to adopt a formal stance on the matter of tax protesters, it might argue for similar accommodations for taxpayers like Day who had conscientious objections to the payment of income taxes. In the absence of such accommodations, however, the Church would not likely take the position that a state’s decision to wage war is inherently illegitimate to the point of permitting noncompliance with tax laws.

B. Form

While Day’s objection primarily is largely purpose-based, the principles that Kennedy outlines regarding form, distribution, and noncompliance illuminate Catholic social teaching regarding the requirements of a just tax. These principles provide a touchstone for exploring Day’s objections. After a just purpose, the next inquiry is whether the tax has a just form, according to Kennedy. Catholic thought developed during and after Day’s lifetime provides little specific guidance on this matter. General principles regarding the importance of the common good would certainly apply, however (i.e., determining what to tax based on how the response to that tax might impact the common good, such as perhaps refraining from taxing food to the point that its cost would become out of reach for the poor).

Day’s refusal to incorporate the Catholic Worker or to seek its federal recognition as a tax-exempt organization appears to be potentially a form-based objection, although at first blush, such a position would appear to conflict with her purpose-based objection. In other words, there is a way to understand Day’s tax views as a sophisticated position on a just tax’s form, in the sense that she likely viewed “proper form” both positively in terms of what form of taxation she would consider to be moral but also negatively in whether a mechanism to receive exemption from taxation was in itself proper. The formal recognition of some groups and not others as tax-exempt organizations is itself a form of tax preference. Officially exempt organizations do not pay taxes, and gifts to many groups that apply for and receive such recognition typically are eligible for the income, estate,

230 Gaudium et spes 79.
231 See id.
232 Id. at 93-95.
233 See notes 9-10 and accompanying text.
234 See note 232 and accompanying text.
and gift tax charitable deductions. But Day believed "that the government has no right to legislate as to who can or who are to perform the Works of Mercy." People should give, according to Day, because it is the right thing to do, not because of the tax benefits (or lack thereof). As evidence that tax exemption was not as important as others might think, Day wrote that, to the best of her recollection, only two prospective donors ever declined to support the Catholic Worker after being informed that no tax deduction would follow.

Note that Day's objections to creating a formal organization were grounded in her belief about the personal obligation each individual has to help others in need. She called Catholic Workers "personalists" who oppose incorporation. At an initial level of analysis, Day appears to be overclaiming. The absence of legal structures for the movement's work does not mean that one or more groups do not exist. Indeed, the fact that the Catholic Worker newspaper continues to be printed today and that Catholic Worker communities exist all over the world speak to the existence of multiple de facto organizations.

Day was not per se opposed to the delivery of mutual aid through groups. "[T]here is a principle laid down," Day wrote, "much in line with common sense and with the original American ideal, that governments should never do what small bodies can accomplish: unions, credit unions, cooperatives, St. Vincent de Paul Societies." The crux of her objection to incorporation and tax exemption appears to be excessive government entanglement in activities that are properly personal duties. Only when individual "works of mercy" are insuffi-

236 See IRC §§ 170(c) (income tax charitable deduction), 2055 (estate tax charitable deduction), and 2522 (gift tax charitable deduction).
237 Selected Writings, note 40, at 314.
238 Id. at 294 ("In the Christian emphasis on the duty of charity, we are commanded to lend gratuitously, to give freely. . .").
239 Id. ("We have explained to our donors many times that they risk being taxed on the gifts they send us, and a few (I can only think of two right now) have turned away from us. God raises up for us many a Habakkuk to bring his pottage to use when we are in the lion's den, or about to be, like Daniel of old.").
240 See note 25 and accompanying text.
241 Selected Writings, note 40, at 314 ("As personalists, as an unincorporated group, we will not apply for this 'privilege' [of tax exemption].").
242 See FAQs, Cath. Worker, https://www.catholicworker.org/faq.html (providing information about subscribing to the Catholic Worker newspaper and a directory of Catholic Worker communities located in the United States and abroad).
243 Selected Writings, note 40, at 313-14.
244 See id. (In regard to this entanglement objection, modern legal commentators who have favored the tax exemption for religious organizations have come out the other way, arguing that the tax exemption is necessary to prevent excessive entanglement with the government.); Buckles, note 157, at 455-53, 473; Brody, note 157; Zelinsky, note 157, at 807; Halcom, note 157, at 773; Alan L. Feld, Rendering unto Caesar or Electioneering for Caesar? Loss of Church Tax Exemption for Participation in Electoral Politics, 42 B.C. L. Rev. 931 (2001).
cient should local mutual aid groups fill the gap, and only when mutual aid groups cannot serve the poor should the government do so. In all events, one should guard against "the growing tendency on the part of the State to take over . . . the job which our Lord Himself gave us to do, 'inasmuch as you did it unto one of the least of these my brethren, you have done it unto me.'"

No doubt Day was aware that most churches, credit unions, labor unions, St. Vincent de Paul Societies—typically parish-based groups that aid the poor—and similar organizations have formal legal structures and tax-exempt status. Indeed, Day did not claim to be free entirely from government systems, noting that the Catholic Worker received "second-class mailing privilege from the government." The group gladly complied with its state-law obligations to file annual reports of income and expenses, too. But for Day, the less one was involved in the federal income tax system, the more one was free to serve others in solidarity with all of humanity. Thus, for Day, if the mechanism by which an organization could become tax-exempt required entanglement with the tax system, then tax exemption was simply another unjust aspect of the tax system. Admittedly, taken to an extreme end, such a view could appear to be contradictory. After all,

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245 See Dorothy Day. Love Is a Warming Fire, Cath. Worker, Nov. 1, 1954 ("The ideal of course, is for each one of us, personally, to practice the works of mercy; or for the St. Vincent de Paul society in each parish to do so. The ideal would be for a mutual aid center in each parish to help neighbors with food, clothing, shelter . . . ."), https://thecatholicnewspaper.org/?a=d&d=CW1954:101-01.2.8 [https://perma.cc/D61K-RVPU]; Dorothy Day, More About Holy Poverty, Which Is Voluntary Poverty, Cath. Worker (Feb. 1, 1945) ("[A]ll are turning to the state, and when people are asking, 'Am I my brother's keeper?' Certainly we all should know that it is not the province of the government to practice the works of mercy, or go in for insurance. Smaller bodies, decentralized groups, should be caring for all such needs."), https://www.catholicworker.org/dorothyday/articles/150.html [https://perma.cc/59YR-PFTQ].

246 Day, Letter to Our Readers at the Beginning of Our Fifteenth Year, note 21.

247 See, e.g., IRS, Exempt Organization Types (listing as types of exempt organizations: charitable organizations, churches and religious organizations, private foundations, political organizations, and "other nonprofits"), https://www.irs.gov/charities-non-profits/exempt-organization-types (last updated June 5, 2023).

248 Day, note 138, at 2 ("We cannot ever be too complacent about our own uncompromising positions because we know that in our own way we too make compromises.").

249 Day, note 129 ("We always comply with this state regulation, because it is local - regional. We know such a requirement is to protect the public from fraudulent appeals and we feel our lives are open books - our work is obvious.").

250 See Day, Money and the Middle Class Christian, note 135 ("I've had college students, Catholic college students, get up and say everything we have comes from the state, our education, our GI bill . . . . So, of course, you pay your taxes . . . . you go when you're drafted, and so on. The whole element of freedom is lost . . . . the primacy of conscience is lost."); Dorothy Day, On Pilgrimage, Cath. Worker, Feb. 1, 1969, at 5 ("The impulse to stand out against the State and go to jail rather than serve is an instinct for penance, to take on some of the suffering of the world, to share in it."), https://thecatholicnewspaper.org/?a=d&d=CW19690101-01.2.6 [https://perma.cc/3ZTZ-9FZK].
were the government to eliminate the procedures for tax exemptions of charitable organizations and simply tax them like any other organization, the concerns about government entanglement with charitable practices might be mitigated. But these organizations would then have to pay more into the tax system, which, as discussed above, was also objectionable to Day. In Day’s mind, however, there was no contradiction. She simply thought that both things should be true: that citizens should not be forced to pay taxes for purposes they had moral objections to and citizens should not have to ask the government’s permission (by seeking tax-exempt status for a group) to provide direct services to the poor.

C. Distribution

Given the importance the poor and vulnerable play in Catholic social thought and the significance of the preferential option for the poor as an essential analytic lens for determining the legitimacy of a tax’s purpose, it is not surprising that this concern recurs in the analysis of the distribution of tax burdens. Despite the general support for income tax progressivity and concern for the poor in Church documents that address tax policy,251 Catholic social teaching does not prescribe how much progressivity is appropriate and how much of that progressivity should be used explicitly to redistribute wealth to the poor (versus simply reducing the poor’s tax burden).252 This is in part because the preferential option must be balanced against subsidiarity principles and the acknowledgment that, while the government plays a role in providing assistance to the poor, it should not take on such a role that it crowds out private associations and private charitable efforts.253 As a result, Catholic social teaching did not, during Day’s lifetime, and does not now, provide a definitive answer to how this balance should be struck. Instead, responsibility lies in the hands of the just legislator who is informed by these principles and the practical realities of what the citizenry is willing to accept in terms of progressivity, redistribution, and exemption from taxation.254 Although Day did not explain her views in these terms, it is likely in reliance on the

251 See notes 205-219 and accompanying text.
252 Kennedy, note 192, at 95-100, 115-21.
253 Id. at 119-20 (noting that Catholic social teaching does not require redistribution through taxation, although acknowledging the importance of balancing the government’s role with that of private action, because “[f]or the Church, the goal is not to equalize wealth in society but to encourage that wealth be used—generally be used by private initiative—for the common good.”).
254 Id. at 97-98. The reason why Catholic social teaching cannot prescribe a more precise formulation about who and what should be taxed, or how much tax should be collected, is that “there is, in other words, no perfect form of taxation, no ideal level of taxation, no
notion of a "just legislator" where she perceived the system broke down. Her absolute pacifism went considerably beyond Catholic social teaching; to Day, no wars were just. Therefore, using tax revenue to support wars was immoral; legislation need not be obeyed, and avoidance was justified.255 Yet Catholic social teaching does not necessarily reach its answer as easily.

D. Avoidance and Protest

Assuming that a tax system satisfies the conditions discussed above for being just (i.e., having a legitimate purpose,256 providing appropriate levels of revenue for the government, and having an appropriate form257), what then is the obligation of the citizen in regard to compliance and efforts to minimize the citizen's tax burden? Taking this inquiry a step further, what is the obligation of a citizen, if the citizen determines, as Day did, that the tax system does not in fact satisfy the conditions necessary to be a just one? And does this obligation change depending on whether the tax is unjust because it is based on an improper purpose, because it results in the government having more revenue than it needs, or because it is based on an improper form?

After thoroughly reviewing the range of opinions from Catholic theologians regarding the obligation to comply with tax laws, Crowe concluded when writing in 1944 that there is indeed a moral obligation to comply with just tax laws.258 In addition, the moral compliance obligation remains with the taxpayer even after the noncompliance has occurred (i.e., a taxpayer who has not complied with a just tax law would have an obligation of paying the avoided tax even after expressing sorrow and requesting forgiveness for the noncompliance).259

255 See generally Day, We Go on Record: The CW Response to Hiroshima, note 224; Day, Why Poverty?, note 145.
256 See Part III.A.
257 See Part III.B.
258 Crowe, note 186, at 151-63. Crowe recognizes that the theory of justice that gives rise to this obligation is uncertain, and that a case could be made for the obligation arising out of either the duties that the taxpayer owes to the state by virtue of it being the state (which Crowe considers the most likely source of the obligation) or out of commutative justice that governs the taxpayer's relationships and duties with respect to other members of the community. See id.
259 If the obligation is based on commutative justice, then there would be an obligation to make restitution for any intentional noncompliance. Id. at 160. If the obligation arises in legal justice or piety, "the obligation remains as long as the law imposing the obligation of paying taxes is effective...." Id. Note that the commutative justice theory provides the more lasting obligation, however, because the obligation under legal justice would presumably last only as long as the applicable statute of limitations, while the obligation under commutative justice would potentially have no such limitation. See id.
Contemporary Catholic writers have reached similar conclusions regarding the compliance obligation and just taxation. Writing many years after Day's death, in examining the nature of the obligation to pay taxes, Kennedy observes that the Catholic approach to the duty to comply with tax laws strikes a middle ground between the competing classical approaches taken by libertarians in the tradition of Locke, on the one hand, and collectivists, on the other. Kennedy describes the duties of state and citizen as follows:

Given their responsibility to order the community in support of the common good, civil authorities have a duty, under the rubric of legal justice, to enact legislation that provides for the revenue needs of the state. But the particular form this legislation takes must itself honor the common good. It must respect limits for government operations and not seek revenues for inappropriate objectives. It cannot create unnecessary distortions in economic and social life. It must apply the rules of distributive justice in apportioning duties to pay.

For their part, members of the community have a duty in legal justice to accept reasonable legislation about taxes peacefully and to comply in good time. The legislation enacted may be imperfect, it may not be the best alternative available, and it may impose real sacrifices on some members of the community. Nevertheless, in legal justice, as long as the plan is reasonable (with considerable latitude given to this judgment) and it complies in other respects with the requirements of a just law, it is morally binding. Taxpayers may argue for a better scheme—and they may even be right—but until a better scheme is properly enacted, they are still obligated in justice to submit to the law.

During Day's lifetime, there does not appear to have been any specific guidance from the Catholic Church about the obligations a conscientious objector to war may have to pay taxes, although a tax protest by the Archbishop of Seattle shortly after Day's death indicates that at least one high-ranking Catholic also believed that conscientious objec-

260 Interestingly, little of the discussion about the nature of the obligation, either from historical or modern Catholic thinkers, has made it into the Catechism of the Catholic Church, which does mention a tax compliance obligation, but only in passing. Catechism of the Catholic Church 2240 and 2409 (2d ed. 1997) (describing tax evasion as a form of theft and establishing that payment of taxes is part of the moral obligation to obey lawful authority).

261 Kennedy, note 192, at 71-72.

262 Id.
tion to war warranted a tax protest.\footnote{See id.} There is at least anecdotal evidence to suggest that had there been clear Church teaching on the issue that contradicted her position, Day would have followed it.\footnote{See id.}

Applying Kennedy’s contemporary understandings of a taxpayer’s obligations to Day does not point to a clear conclusion. On the one hand, under Kennedy’s analysis, Day would seem to have an obligation to comply with “reasonable legislation about taxes.”\footnote{See notes 225-226 and accompanying text.} On the other hand, such obligation assumes that war is not an “inappropriate objective.”\footnote{See Sara Ann Mehlertetter, Dorothy Day, the Catholic Workers, and Moderation in Religious Protest During the Vietnam War, 32 J. of Comm. and Religion 1, 2 (2009) (noting that the Catholic Workers attempted to both “challenge the USCCB’s pro-war stance, moderate the radicals [opposed to war], and yet remain within the fold of the Catholic Church”).} Day believed that war was always inappropriate.\footnote{See id. at 6 (“At no point [in their antirwar efforts] do the Catholic Workers cease to be Catholic. This, therefore, is one of their chief rhetorical problems: how to argue for radical change from within an institutional framework.”).} Yet the United States Conference of Catholic Bishops, for example, initially supported the U.S. government’s involvement in Vietnam, before it changed its position in November 1971.\footnote{Catechism of the Catholic Church 2306.} Day’s total pacifism at this time was out of step with mainstream Catholic thought regarding the Catholic just war doctrine at least until 1971, even though she located herself squarely within the Catholic religious tradition and was a faithful member of the Catholic Church as an institution.\footnote{Wallace Turner, Tax Refusal Completes Prelate’s Moral Journey, N.Y. Times, Apr. 19, 1982, sec. A (describing the tax protest of Archbishop Raymond G. Hunthausen based on his objections to nuclear buildup and quoting him as saying that “I am not in violation of anything the church would want me to say or not say.”).} It may be that Day found the ideological room to obey both conscience through the Church teaching that, “Those who renounce violence and bloodshed and, in order to safeguard human rights, make use of those means of defense available to the weakest, bear witness to evangelical charity, provided they do so without harming the rights and obligations of other men and societies.”\footnote{See id.}
In Kennedy's analysis, Catholic social teaching would consider an outright refusal to comply with tax laws (i.e., tax evasion through either deception or simply through a decision to refuse to take an act required by the tax laws) to be immoral in every instance, provided that the tax being evaded met the requirements of a just tax. Every-day avoidance and mitigation strategies that fall short of outright evasion occupy a grayer moral space. While Catholic social teaching recognizes the legitimacy of pursuing legal means to reduce one's tax liabilities, even mechanisms that technically comply with the letter of the law but that paint a false or deceptive picture of a taxpayer's financial positions are morally impermissible.

But what of the pacifist conscientious objector taxpayer like Day, who does not believe that the tax system is just, because the government is attempting to levy taxes that are too high, not distributing the tax burden correctly, or because legislators vote to use tax revenue for wars? In other words, what about tax protesters who refuse to pay taxes on moral grounds? Answering that question from the perspective of Catholic social teaching is difficult because "well-formed" consciences may reach different conclusions about the justness of the underlying tax laws. This is especially true because Catholic thought does not prescribe specific parameters for the rate of tax, the tax base, the distribution of tax, and the use of tax revenues.

Presumably noncompliance would be the most defensible in cases where the objection was that one or more of the requirements for just taxation are not satisfied. This would be true in cases involving objections to the uses to which tax revenue are put (e.g., waging war, providing government services like roads, funding a judicial system, etc.). Such cases are more easily located (even if still subject to debate) as either within or outside the parameters for activity considered to be legitimate. Noncompliance would be less defensible in cases involving more technical matters such as how much revenue a government needs or the proper form of a tax (i.e., an income tax versus a value added tax, for example). Certainly, while Day might have had multi-

271 Kennedy, note 192, at 101.
272 See id.
273 Id. at 101-13.
274 See Catechism of the Catholic Church 1783 ("Conscience must be informed and moral judgment enlightened. A well-formed conscience is upright and truthful. It formulates its judgments according to reason, in conformity with the true good willed by the wisdom of the Creator."). According to Catholic teaching, individuals have a moral obligation to obey the moral judgments of their consciences, provided that those consciences are properly formed, which creates the possibility that, in some areas of moral reasoning, two or more individuals, each with properly formed consciences, might reach different moral conclusions. See generally Catechism of the Catholic Church 1776-1802 (discussing role of conscience).
ple bases for her objections to the tax system, she most frequently and vocally based them on purpose-based terms.

In considering whether a Catholic's objection to particular government policies would be sufficient justification for that individual to refuse to pay taxes to the state, Kennedy states that disagreement with government policies is not a sufficient reason to refuse to pay taxes. Kennedy does, however, leave open the possibility that a government could be so illegitimate or immoral as to potentially justify the withholding of tax payments, although he implies that such situations would be rare. This is likely because the governing authority is due considerable deference in regard to determining how to allocate the tax burden fairly in order to meet its needs, given the lack of specific guidance as to what those determinations should be. If this is correct, then someone like Day, who believed that war was never justified (in contravention of Catholic social teaching that admitted to some justification for war while leaving open debate as to whether that justification was properly present in a particular case), would nevertheless be required to pay federal income taxes that were legally imposed upon her. This is because a government's decision to wage a war would likely not rise to the rare level of being an invalid government purpose per se.

On the question of whether Day had any obligation, consistent with Catholic social teaching, to formally incorporate the Catholic Worker or to apply for tax-exempt status, there is little guidance. Undoubtedly, there are legal reasons that a group of individuals, however loosely or closely associated, might choose to deliver services to the poor under the banner of a nonprofit corporation, but there is no legal obligation that they do so. And if donors are advised that there is

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275 Kennedy, note 192, at 108.
276 Kennedy considers this question as follows:

We might take a different view if the government itself were illegitimate or widely engaged in deeply immoral activities (which would itself call into questions its legitimacy). Even in such a case, while an individual might be objectively justified in protesting government actions by withholding tax payments, he or she would still be subject to penalties for doing so, in fact if not in justice. In any event, the tradition of the Church is very reluctant to support revolutionary activities.

277 Id. at 105-06 (arguing that "[n]o fair share can be calculated objectively because there are no commonly agreed on principles for doing so and no commonly agreed on priorities to determine what the needs of the government are. . . . [T]he fair share for taxpayer is defined by law and is precisely what the law says it is.").
278 See id.
279 See id.
280 See, e.g., Cassady V. Brewer, Lisa A. Runquist & Elizabeth Carrott Minnigh, Nonprofit LLCs, 2017 Bus. L. Today 1 (2017) (explaining that, in most cases, there is greater
no tax deduction associated with their gifts, there is no legal requirement that a de facto nonprofit must seek tax-exempt status.\textsuperscript{281} For that reason, it is unlikely that Catholic social teaching would require it either, although conditioning an organization's exemption on taking the necessary steps to become recognized as a tax-exempt organization likely would be treated as a just component of the tax system.\textsuperscript{282} Thus, while Catholic social teaching might not have required incorporation as a nonprofit, it would likely not object to the imposition of taxes on an eligible association of individuals that refused to incorporate.

Given Day's decision not to incorporate as a nonprofit and the unlikelihood that her absolute pacifist stands would be considered a valid reason to make a moral objection to the tax system, Day likely deviated from Catholic social teaching in failing to pay taxes due. Even if no tax were owed, her actions also fell short of accepted Church teachings in failing to comply with any federal income tax reporting obligations associated with the movement's activities, in the same way that the Catholic Worker made regular filings with the state government.\textsuperscript{283} Even without being a tax-exempt entity, Day might have been able to make a solid doctrinal argument that no tax was owed because the group spent all income it generated.\textsuperscript{284} For that rea-

\textsuperscript{281} Despite Day's statements to the contrary, see note 239 and accompanying text, there is some evidence to suggest that many donors are, in fact, motivated by tax deductions associated with their contributions. See, e.g., Bryan McQueeny, Opinion, The GOP Tax Reform Will Devastate Charitable Giving, L.A. Times (Dec. 27, 2017, 4:00 AM) (hypothesizing that the expansion of the standard deduction beginning with the 2018 tax year would cause a decrease in charitable giving, because fewer taxpayers would be able to itemize their charitable contributions), http://www.latimes.com/opinion/op-ed/la-oe-mcqueeny-charitable-giving-under-new-tax-law-20171227-story.html. That prediction was borne out. See Richard Eisenberg, Charitable Giving Took a Hit Due to Tax Reform, Next Avenue (June 18, 2019) (reporting a 5.7% decline in the number of taxpayers making charitable contributions from 2017 to 2018 and a 1.1% drop in aggregate donations for the same time period), https://www.nextavenue.org/charitable-giving-tax-reform.

\textsuperscript{282} One can reasonably infer that the Catholic Church does not object to the requirement of tax-exempt organizations incorporating as such given the large number of Catholic churches, charities, universities, and hospitals that have all taken the steps to be recognized as tax-exempt organizations, which one can verify by searching for the Catholic organization of one's choice at guidestar.org. On the other hand, Catholic organizations in other contexts, such as in the context of the contraception mandate in the Affordable Care Act, have expressed an unwillingness to comply with a ministerial act requested by the government on the grounds that doing so would violate their consciences. See Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 140 S. Ct. 2367 (2020).

\textsuperscript{283} See note 249 and accompanying text.

\textsuperscript{284} See IRS, Pub. 535 (2022), Business Expenses (explaining the deduction of expenses from income), https://www.irs.gov/publications/p535 (last updated Feb. 13, 2023). For this theory to be successful, however, the Catholic Worker would likely have to be viewed as a business entity in order to net out income and deductions for that taxpayer, which might have been difficult given its lack of formal organization. In that case, Day's doctrinal argu-
son, at least with respect to entity-level taxation, noncompliance did not give rise to any actual tax evasion, a position with which the government appears to have agreed, given that the IRS dropped its case against Day and the Catholic Worker.285

IV. RECONCILING THE CATHOLIC TAX PROTESTER INTO A TAX SYSTEM FOR THE COMMON GOOD

In addition to conflicting with the secular tax laws, Day's actions arguably conflicted in important respects with the prevailing Catholic social teaching as well.286 Admittedly, though, any conflict with Catholic social teaching is not as clear as the conflict with the secular tax laws. The Catholic Church would have required Day to follow the moral judgments of her properly formed conscience, even though it would still be possible for those judgments to be erroneous.287 Indeed, the Catholic Church celebrates her as a Servant of God, which is the first step on the path to a possible, although not guaranteed, canonization in the future.288 Is the lesson of Day's life and history of tax noncompliance simply that exceptions to the law should and will be made for individuals of such heroic virtue that their compliance with the spirit of the law completely obviates any need for the enforcement of its letter? Such a lesson would likely not do much for most other taxpayers with moral objections to government expenditures; they likely would be unable to show such heroic virtue that would exempt them from the tax laws. In fact, other Catholic Workers who have run afoul of the tax laws have not been as lucky as Day to have escaped enforcement actions.289

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285 See Part II.D.
286 See Part III.B.
287 Catechism of the Catholic Church 1776-1802.
288 The website of The Dorothy Day Guild notes:
   In the “cause” (or “case”) for Dorothy Day, the first steps have been completed. After initiating meetings with people who had known and worked closely with her, Cardinal John O'Connor in February 2002 formally requested that the Congregation for the Causes of Saints in Rome consider her canonization. Upon the Congregation's approval, Dorothy was officially named a “Servant of God.”

289 See, e.g., Day, We Go on Record: CW Refuses Tax Exemption, note 129 (“Another of our editors, Karl Meyer, recently spent ten months in jail for what the I.R.S. called fraudulent claims of exemption for dependents. He ran the C.W. House of Hospitality in Chicago for many years, working to earn the money to support the house and his wife and children. Erosanna Robinson, a social worker in Chicago, refused to file returns and was sentenced to a year in prison.”).
In Day's example, there is a larger lesson for tax policymakers. The government could establish a mechanism that accommodates the conscientious tax objector in a manner that still preserves the fisc, fosters an attitude of compliance rather than noncompliance as a religious or social virtue, and draws the attention of both the conscientious objector and society at large to the good that can be done for the most vulnerable through the tax system. Such a compliance-enhancing mechanism would consist of three broad areas: (1) increased taxpayer influence over tax revenue allocations; (2) welfare-based tax administration; and (3) values-based compliance communication. The remainder of this Part sketches these pillars in broad strokes, leaving specific implementation details to future research.

A. Increased Taxpayer Influence Over Tax Revenue Allocations

Before attempting to outline the broad contours of this mechanism, note that the government and many tax commentators have wrestled with this issue already (admittedly, without much success), specifically in the context of tax protesters who object to financing war efforts.

Admittedly, the government is not required to do so under the tax jurisprudence of the Religious Freedom Restoration Act. Michelle O'Connor, The Religious Freedom Restoration Act: Exactly What Rights Does It "Restore" In the Federal Tax Context?, 36 Ariz. St. L.J. 321, 401 (2004) (arguing that, while in her opinion courts have not properly applied RFRA's balancing test to tax cases, the reality is that "[u]nder the current approach [that courts take to RFRA tax cases], it thus seems highly unlikely that the courts will ever require the government to accommodate a taxpayer, even in a particularly compelling case.").

Even if the number of conscientious-objector taxpayers is small, the government has significant incentives to try to address their concerns if feasible, because a small number of conscientious objectors has the potential to cause a cascading effect of noncompliance that extends beyond the conscientious objector community. Marjorie Kornhauser describes this phenomenon as follows:

When taxpayers believe that others are not paying their full share of tax, they begin to perceive the tax laws as unfair. Thus, formerly compliant taxpayers become less compliant. Moreover, if fewer people pay their taxes, rates must increase to bring in the amount of revenue needed. This further increases discontent with the tax system. This negative perception of the tax laws can cause negative feelings about the government generally.

Kornhauser, note 19, at 990.

Indeed, the numbers of these types of taxpayers, while small as a percentage of the population, are still at least well into the thousands. See id. at 953-59 (providing an overview of the different types of individuals and organizations that engage in war tax protests): Colleen M. Garrity, Note: The Religious Freedom Peace Tax Fund Act: Becoming Conscious of the Need to Accommodate Conscience, 64 Ohio St. L.J. 1229, 1241 (2003) (noting that “[i]n 1990, the National War Tax Resisters Coordinating Committee approximated that between 10,000 and 20,000 Americans withheld a portion of their tax dollars because they could not in good conscience allow their tax dollars to be used to fund military endeavors . . . [and that] thousands of individuals are estimated to have made the decision to earn incomes below the taxable level in order to avoid the choice between following their beliefs and following the law). For many of these taxpayers, the conse-
In every session of Congress since 1972 (with historical antecedents dating as far back as 1958), multiple congressional representatives have introduced versions of what is known as a “Peace Tax Fund” bill; it has never gained any significant traction. The basic thrust of Peace Tax Fund legislation is to provide a mechanism through which taxpayers who object to funding military spending can pay their taxes, but direct that their tax payments be deposited into a separate fund that is not used to fund the military. The advantages of such a fund, in contrast with other proposals, is that, as Marjorie Kornhauser observed, the Peace Tax Fund “frees the largest numbers of conscientious objectors from the conflict between conscience and country, but neither decreases the amount of revenues collected, nor increases tax evasion opportunities or administrative costs.” In addition, a legislative solution offers the advantage of not trying to ground itself in a constitutional free exercise concern. Such might be the first thought of those with religious-based objections, but it is almost certain to be an unsuccessful strategy. Case law establishes that the need for a viable tax system satisfies strict scrutiny and thus free exercise challenges by conscientious tax objectors are certain to be rejected.

While a proposal like the Peace Tax Fund could be a workable solution for taxpayers whose moral objection is limited to war tax protesting, by itself it would not solve the problem of taxpayers who

quences of their noncompliance are more severe than the costs to Day were, given that most of these taxpayers did not enjoy Day’s reputational advantages, as Kornhauser illustrates with this example:

Consider the case of Randy Kehler and Betsy Corner. They did not deny their tax liability. In fact, they accurately reported their income and income tax liability every year and attached a letter explaining why they could not voluntarily contribute to defense or other military purposes. They did not profit from not paying their taxes. Rather, they initially placed the taxes in escrow, and in later years they contributed the money to organizations helping victims of the Contra war in Nicaragua and to local organizations helping the needy. In July 1989, after an earlier notice of seizure, their home was auctioned off for failure to pay income taxes. A federal district court judge in Springfield, Massachusetts held Randy Kehler in civil contempt when he refused to leave the home and sentenced him to six months in prison.

Kornhauser, note 19, at 941.


294 See Carr, note 293, at 185; Garrity, note 292, at 1246-47.

295 Kornhauser, note 19, at 985 (discussing how the Peace Tax Fund is a superior mechanism of accommodating protesters when compared to proposals to exempt them from paying all tax; to exempt them from the portion of tax that is allocable to military spending; or to exempt them from penalties).

296 See, e.g., Kornhauser, note 19, at 961-67 (surveying the primary cases addressing free exercise challenges brought by war tax protesters and illustrating that courts have routinely rejected this claim but noting that “[a]lthough courts have not granted war tax resisters constitutional protection under the Free Exercise of Religion Clause, this does not mean that Congress cannot accommodate these religious claims through legislation”).


object to other government expenditures on different moral grounds.\textsuperscript{297} Even considering only the group of taxpayers who may be guided by Catholic social teaching, there undoubtedly are many who object to having their tax payments used to fund abortion, contraceptives, the death penalty, and the enforcement of immigration laws considered to be inhumane, to name just a few areas of likely disagreement with government expenditures.\textsuperscript{298} Thus, if a Peace Tax Fund could be a viable solution to accommodate war tax protesters, could expanding the concept to allow for all taxpayers to have more control over how the government spends its tax revenue serve as a more broadly applicable accommodation to taxpayers whose moral objections to other expenditures might lead to noncompliance? Given Americans' generally negative attitudes to the way their tax dollars are spent, such a system might be difficult, if not chaotic and costly, to administer.\textsuperscript{299}

Perhaps recognizing a tension between the obligation to comply with tax laws and any moral concerns a taxpayer might have about the government's use of the raised revenue, Pope Benedict XVI explored a potential solution in his encyclical, \textit{Caritas in Veritate}, with a concept that he refers to as "fiscal subsidiarity," stating:

One possible approach to development aid would be to apply effectively what is known as fiscal subsidiarity, allowing citizens to decide how to allocate a portion of the taxes they pay to the State. Provided it does not degenerate into the promotion of special interests, this can help to stimulate forms of welfare solidarity from below, with obvious benefits in the area of solidarity for development as well.\textsuperscript{300}

Although the Pope was suggesting fiscal subsidiarity in the context of providing benefits for developing states, the suggestion is grounded in the reality that more taxpayer control over how tax dollars are spent can be a critical tool in enhancing both subsidiarity and solidarity in the tax system. For tax protesters like Day, a large part of her protest

\textsuperscript{297} It does not take much imagination to anticipate that there are taxpayers who would have moral objections to a variety of government expenditures. See id. at 1008.


can be characterized by her belief that the tax system did not promote solidarity and in fact directly conflicted with subsidiarity, given its centralized nature and the fact that taxpayers were forced to contribute to fund activities that they viewed as morally objectionable. A fiscal subsidiarity approach, through which taxpayers designate how some or all of their tax dollars are allocated across different government budget items, potentially solves this problem (except, perhaps, for taxpayers who take the position that all government spending is immoral). Under such an approach, a protester like Day could be much more confident that her tax dollars are not going toward military spending (or any other category to which she might object). In addition, she could also be more confident that the government was not hindering subsidiarity by depriving individual taxpayers of their agency, or what she would call their personal responsibility to help their fellow citizens, because of the ability of each citizen to influence the allocation of tax dollars.

Such a proposal would admittedly face numerous challenges, from the political to the practical. While Kornhauser, for example, argues for a limited use of taxpayer-directed taxation through a Peace Tax Fund, given the history of accommodation for conscientious objectors to war participation, she also recognizes that increased taxpayer influence over tax proceeds allocation creates a tension with Congress's role in controlling appropriations:

For example, a claim that the government cannot use a taxpayer's tax dollars for certain purposes has been viewed as undermining the country's representative form of government. Under this system, duly elected officials determine how governmental funds should be spent. Taxpayers should not be allowed to override this decision by being able to direct their tax dollars to particular governmental programs.

Furthermore, there is the risk that allowing for direct taxpayer allocation would not have the desired effect. A taxpayer-allocation model might be viewed as purely symbolic, given that money is fungible, which could allow the government to replace lost dollars for particular line items with dollars from taxpayers who did not request a specific allocation or simply from funds generated through increased borrow-

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301 See Parts III.A and III.B.
302 See notes 25-26 and accompanying text.
303 Kornhauser, note 19, at 992.
ing.\textsuperscript{304} Even if taxpayer allocation decisions really did result in those dollars not being replaced with other dollars, the government might run the risk of certain critical functions receiving insufficient funding.\textsuperscript{305} Finally, such a system would increase administrative complexity in the administration of the tax laws on an already overworked and underfunded IRS.\textsuperscript{306}

The challenges associated with a direct taxpayer allocation system are not insurmountable, however. In considering the thought experiment, author Daniel Indiviglio proposes one potential structure specifically focusing on the U.S. tax system.\textsuperscript{307} In his imagined system, Congress would not be entirely eliminated from the appropriations process: it would still determine which items are worthy of government funding and set recommended taxpayer contribution percentages as part of its budgeting process.\textsuperscript{308} The IRS could then leverage technological capabilities—admittedly ones that would have been unavailable until recently—to allow taxpayers to select what percentage of their tax payments should be allocated to each category.\textsuperscript{309} This could be done either through online selections or just through a breakdown on the individual tax return.\textsuperscript{310} Debt payments would be nondiscretionary, but would be combined with a requirement for a balanced budget to address the problem of government borrowing replacing taxpayer dollars in underfunded areas.\textsuperscript{311} The budget impact could lag the taxpayer allocation by a couple of years to give programs and agencies time to prepare.\textsuperscript{312}

If the purpose of a taxpayer allocation system is primarily to accommodate taxpayers with strong moral objections to areas of government spending, such a system also needs a mechanism to limit its use to those taxpayers, while encouraging others to pay taxes as usual,


\textsuperscript{305}Indiviglio, note 304.

\textsuperscript{306}See, e.g., Paul Kiel & Jesse Eisinger, How the IRS Was Gutted, Pro Publica (Dec. 11, 2018), https://www.propublica.org/article/how-the-irs-was-gutted; Indiviglio, note 304.

\textsuperscript{307}For a discussion of the mechanics of implementing a taxpayer-directed allocation model more generally and that considers a wider range of tax systems but comes to similar conclusions about the benefits of such a system, see Limor Riza, The Intrinsic Flaw in Taxation Impeding Tax Compliance, 18 U. Pa. J. Bus. L. 887 (2016).

\textsuperscript{308}Indiviglio, note 304.

\textsuperscript{309}See id. (noting that taxpayers could also choose just to select a box to allow the government to allocate the funds to wherever the government chooses).

\textsuperscript{310}Id.

\textsuperscript{311}See id. (noting that, to the extent that some programs did not receive expected funding, this would not result in underfunding because "[i]f Americans don't think a program is important enough to provide more funding, then in a democracy, by definition it isn't a priority so doesn't deserve more funding").
with the government deciding how to allocate the revenue. A reasonable limitation would strike a balance between accommodating conscientious objectors and retaining budgeting flexibility. Furthermore, limiting participation only to those who have strong moral objections, as opposed to other deeply held views, would mitigate the potential antidemocratic effects of a system in which taxpayers with zero tax liability effectively have less of a voice, because they have no tax dollars with which to express a preference.

If a taxpayer allocation model is to be limited to those with strong moral objections to how their tax dollars are allocated, there must be a way to determine whether an objection is in fact a moral one. Yet it will be virtually impossible to make that determination independently, apart from simply taking the taxpayer’s word that the taxpayer indeed has such an objection. Day’s case illustrates precisely that difficulty. Undoubtedly, she had a strong morals-based objection to the payment of taxes based on her religious beliefs. This is true, even though, as discussed above, her position might have in fact conflicted with the very religious beliefs that she relied upon for her objection. Thus, to effectively limit abuse, the government should not focus on whether the basis for the moral objection is legitimate but rather on exacting a cost for the privilege of exercising the objection by increasing the taxpayer’s contributions to areas that the taxpayer does not find objectionable. Were the taxpayer’s accommodations based on constitutional free exercise principles, this would be problematic; it would differentially burden people for exercising constitutional rights. Because the claim for accommodation, however, is unlikely to be successful if brought on constitutional grounds, requiring it to be based in legislative grace is a feasible solution, although an admittedly imperfect compromise.

The most straightforward allocation structure would simply involve increasing the tax cost of those taxpayers who wish to specify how their tax dollars are spent, under the theory that asking those taxpayers to bear a higher tax cost is a justifiable price for having increased

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313 See, e.g., IRS, The Truth About Frivolous Tax Arguments (Mar. 2022), https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction (providing a non-exhaustive list of common arguments that taxpayers make in attempting to justify their noncompliance with tax laws, with citations to accurate legal authorities). One common argument that taxpayers make is that federal income taxation constitutes a “taking” under the Fifth Amendment. See id.

314 Indeed, a significant number of Americans would not have a voice in allocating tax dollars, given that, typically 43-44% of households do not pay federal income tax (and this percentage was as high as 60.6% in tax year 2020). Tax Pol’y Ctr., T21-0161-Tax Units with Zero or Negative Income Tax, 2011-2021 (Aug. 17, 2021), https://www.taxpolicycenter.org/model-estimates/tax-units-zero-or-negative-income-tax-liability-august-2021/t21-0161-tax-units-zero.
discretion over tax dollar allocation.\textsuperscript{315} This cost could come in the form of a fee\textsuperscript{316} or simply the disallowance of certain itemized deductions or a portion of the standard deduction. Regardless of the form that is selected, the cost would have to be more than nominal; it might need to be set at a percentage of adjusted gross income in order to impact higher income individuals similarly.

Even if a broader taxpayer allocation system described above proves to be too difficult to implement, a more limited version of such a proposal through the Peace Tax Fund still would merit serious evaluation, given that the Peace Tax Fund has gained traction in the academic community and in Congress, at least insofar as successive lawmakers continue to propose legislation. A Peace Tax Fund could accommodate many taxpayers with moral objections to specific items of government spending and bring conscientious tax objectors like Day back into participation with the tax system.\textsuperscript{317} Nevertheless, the political reality is that a Peace Tax Fund is unlikely to become law.\textsuperscript{318} That forecast raises the question of whether there are any administrative steps that the Internal Revenue Service could take, within the confines of existing law, to ameliorate the concerns of conscientious tax objectors like Day. The next Section considers the possibility.

\textbf{B. Values-Based Compliance Communication}

The first administrative step that the government could presently take to address the concerns of conscientious tax objectors is to refine its communication strategy to emphasize the role that the tax system plays in advancing social justice, promoting the common good, and supporting families, particularly the most economically vulnerable.\textsuperscript{319} This might seem elementary, but even tax attorneys can struggle to understand the critical role that the tax system plays in ameliorating poverty and helping the poor meet their basic needs.\textsuperscript{320} Better com-

\textsuperscript{315} See generally W. Edward Afield, Getting Faith Out of the Gutters: Resolving the Debate Over Political Campaign Participation by Religious Organizations Through Fiscal Subsidarity, 12 Nev. L.J. 83 (2011) (proposing a self-directed tax in exchange for religious organizations becoming subject to taxation as a mechanism to allow religious organizations to be more involved in political participation).

\textsuperscript{316} See Kornhauser, note 19, at 985 (proposing the concept of a fee to help defray any costs associated with the administration of a Peace Tax Fund).

\textsuperscript{317} See id. at 1008-15 (describing benefits from a Peace Tax Fund that would be amplified with its broader application, while arguing that conscientious objection to military spending is deserving of unique protections).

\textsuperscript{318} See Indigvilia, note 304.


\textsuperscript{320} See, e.g., Leslie Book, Academic Clinics: Benefitting Students, Taxpayers, and the Tax System, 68 Tax Law. 449, 449 (describing the author’s personal experience as a tax
munication could take the form of the IRS's highlighting its role as a de facto benefits administrator as well as a revenue collector. A prominent example of the IRS's benefits role is its administration of the earned income tax credit ("EITC"), first enacted in 1975, and one of the most effective anti-poverty programs in the United States, and the Affordable Care Act's Premium Tax Credit. Because of these credits, the tax system plays an indispensable role in lifting families out of poverty and reducing childhood poverty specifically. These tax credits quite simply mean the difference in whether millions of taxpayers live in or out of poverty, at least as defined for federal purposes.

Admittedly, highlighting the important role that the tax system plays in providing social benefits can only go so far for some conscientious tax objectors. Day, for example, might have been eager to direct her tax payments away from war efforts, and it is unlikely that better information about the welfare aspects of the EITC or the child tax credit would address her other concerns. That is, in addition to her objections to war, she took issue with the government's intruding on the role of private citizens or local organizations through state administered welfare. Thus, a conscientious tax protester like Day might still be unconvinced by an argument that tax compliance is warranted. To be sure, the government would not have to rely on a welfarist

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322 See IRS, Off. of the Taxpayer Advoc., Pub. No. 5066, Low Income Taxpayer Clinic Program Report: Assisting Taxpayers Face-to-Face with an Increasingly Automated Tax System 5 (2018) ("Refundable credits such as the EITC and CTC [child tax credit] provide a significant portion of the annual budget for many low income families"); see also Lipman, note 321, at 1182 (noting that without the EITC, the number of children living in poverty would increase by one-third).


324 See, e.g., notes 243-246 and accompanying text.

325 See id.
framing; it could instead appeal to an individualized sense of virtue and charity that would be more in line with Day’s sensibilities.326

In order to address the concerns of tax protesters like Day, the government might properly frame EITC benefits not simply as a form of welfare or wealth distribution, but rather as a mechanism that is essential in enabling economically vulnerable taxpayers to become more self-sufficient and less reliant upon other forms of welfare.327 That, in turn, enables them to more fully participate in the community through the dignifying individual work that they must do in order to be eligible for the credit.328 But for Day, this iteration of personal responsibility is incomplete, because in her view, individuals, not the government, should be providing this kind of assistance to their fellow humans.329

Ultimately, framing alone cannot address every concern of all conscientious tax protesters. For someone like Day, alternate framing might at least move her in the direction of viewing the tax system as having some just aspects and to not opt out entirely. As discussed above, for someone like Day whose views were grounded in a distinctly Catholic religious perspective, this could represent a critical step toward compliance, given Catholic social teaching’s stance that

326 This view of social justice has been most recently and extensively articulated by Michael Novak and Paul Adams in their discourse on social justice. Novak and Adams work off of an initial Hayekian formulation of social justice simply being an environment in which a framework exists for individuals to exercise virtue in forming individual associations that benefit the community and that leave room for individuals to succeed or fail on their own terms. Michael Novak & Paul Adams with Elizabeth Shaw, Social Justice Isn’t What You Think It Is 19-50 (2015). Novak and Adams summarize this approach as follows:

Social justice rightly understood . . . is a specific habit of justice that is “social” in two senses. First, the specific skills which it calls into exercise are those of inspiring, working with, and organizing others to accomplish together a work of justice. These are the elementary skills of civil society, the primary skills of citizens of free societies, through which they exercise self-government by “doing for themselves” (without turning to government) those things that need to be done. The second characteristic of social justice rightly understood is that it aims at the good of the City, not at the good of one agent only. Citizens may band together, as in pioneer days in Iowa, to put up a school or to raise roofs over one another’s homes or to put a bridge over a stream or to build a church or an infirmary. They may get together in the modern city to hold a bake sale for some charitable purpose, to build or to repair a playground, to clean up the environment, or for a million other purposes to which the social imagination of individuals leads them. To recapitulate, social justice rightly understood is that specific habit of justice which entails two or more persons acting (1) in association and (2) for the good of the City.

Id. at 50.

327 Lipman, note 321, at 1181-83 (noting that the work incentives associated with the EITC led to taxpayers moving into higher levels of income that take them out of EITC eligibility sooner and that correspondingly allow them to better increase their earning capacity and participate in the economy).

328 See id.

329 See, e.g., notes 243-246 and accompanying text.
taxpayers have an obligation to participate in the tax system in most cases.\footnote{See notes 275-277 and accompanying text.}

\textbf{C. Welfare-Based Tax Administration}

In addition to framing the tax system in a manner designed to resonate with conscientious tax objectors, there are additional administrative steps that the IRS could take to address at least some of the concerns that objectors might have. Indeed, many of these steps tie directly into the framing discussion from the previous Section; they are available only because of the modern use of the tax laws in administering a de facto welfare program.

The IRS has considerable discretion in enforcing the tax laws. Indeed, the agency has little choice about whether it must set enforcement priorities. The very existence of discretion, though, means that some taxpayers will be subject to more scrutiny than others, because the limited budget makes it impossible for the IRS to apply the same level of scrutiny to all types of income, deductions, and credits, and to all taxpayers. The discretionary nature of enforcement priorities carries with it a built-in risk that some taxpayers will perceive the tax system to be unfair. A review of current IRS enforcement priorities suggests that this risk is a reality.

At present, the IRS prioritizes enforcement actions against the most economically vulnerable taxpayers over higher income taxpayers. In 2019, for example, the overall national audit rate for individual income tax returns was approximately 0.25\%.\footnote{See id. at 9; see also Paul Kiel & Hannah Fresques, Where in the U.S. Are You Most Likely to Be Audited by the IRS?, Pro Publica (Apr. 1, 2019) (illustrating how the poorest counties in the United States with the highest percentages of African Americans have some of the highest audit rates), https://projects.propublica.org/graphics/eitc-audit. A new study suggests that Black taxpayers are audited more frequently than non-Black taxpayers. See Hadi Elsayn et al., Measuring and Mitigating Racial Disparities in Tax Audits 3-4 (Stanford Inst. for Econ. Pol'y Res., Jan. 2023), https://siepr.stanford.edu/publications/measuring-and-mitigating-racial-disparities-tax-audits.} In contrast, those claiming the EITC are audited at a rate of 0.77\%.\footnote{See Kiel & Fresques, note 332.} Furthermore, the five counties with the highest audit rates in the nation are rural, southern, and have predominantly African American populations.\footnote{Treasury Inspector Gen. for Tax Admin., U.S. Dep't of Treasury, Report No. 2021-40-036, Improper Payment Rates for Refundable Tax Credits Remain High 3 (2021).} While some EITC examinations are admittedly necessary given the fact that the EITC error rate hovers around 24\%,\footnote{See Kiel & Fresques, note 332.} these examinations have a much more burdensome impact on the poor than audits on higher in-
come individuals. That is true for many reasons, including the fact that, during an EITC audit, the IRS freezes any potential refund until the audit is complete. In contrast, a higher income taxpayer whose deductions are being challenged does not face a similar “freeze” and may not be relying on the resolution of the tax dispute in order to meet day-to-day living expenses. Practically speaking, a low-income EITC claimant may be prevented from accessing those refunds for months or years (or permanently if they are unable to navigate the procedural maze involved in resolving a tax controversy).

For conscientious tax objectors like Day, IRS enforcement priorities that unduly burden the poor fly in the face of Catholic social teaching and contribute to the perception that the tax system is unjust (and that noncompliance is therefore justified). Thus, contemporary enforcement priorities are at odds with the preferential option for the poor, because of the emphasis on policing the poor over the rich. Furthermore, this enforcement regime cannot be explained away as somehow based on the government’s failure to appreciate the impact of the high EITC audit rate on the most economically vulnerable taxpayers. The Treasury Inspector General for Tax Administration recently argued for even more aggressive enforcement, despite a report by the Treasury Department’s Office of Tax Analysis noting that “a substantial portion of erroneous EITC claims likely helped support children in low-income families despite those children being claimed in error.”

Apart from any religious objections a taxpayer may have to the IRS’s

336 See id.
338 See, e.g., Paul Kiel, It’s Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%, Pro Publica (May 30, 2019, 10:16 AM) (reporting that after taxpayer Nastassia Smick and her husband were audited for claiming the EITC in a year they had earnings of $33,000, their refund was delayed for over fourteen months), https://www.propublica.org/article/irs-now-audits-poor-americans-at-about-the-same-rate-as-the-top-1-percent.
340 See Karie Davis-Nozemack, Unequal Burdens in EITC Compliance, 31 Law & Ineq. 37, 57 (2012) (arguing that the IRS prioritizes EITC audits because they require less resources and because low-income taxpayers are less likely to resist the audit than high net worth individuals would be).
discretionary enforcement priorities, secular tax policy commentators have called for enforcement reforms that better protect the interests of the poor.342

Recognizing that the IRS plays a strong role in administering social benefits,343 commentators have suggested reforms ranging from having the Social Security Administration take over the administration of the EITC,344 to creating a division within the IRS dedicated entirely to administering and enforcing programs that depend on a taxpayer’s familial status (which would effectively cover all the anti-poverty benefits programs administered through the tax system).345 In addition to the efficiency benefits emphasized in these commentaries, such reforms would have the additional advantage of speaking directly to some of the concerns Day identified.

While there is no way to eliminate completely anti-subsidiarity concerns that Day would have had,346 more subsidiarity-based administration could at least ameliorate them. By cordonning off the IRS anti-poverty benefits enforcement and administration function into one discrete unit solely responsible for such enforcement, the IRS would be demonstrating a commitment to more “localized” administration (albeit within the federal bureaucracy) with the sole purpose of providing essential benefits to the poor in as efficient and fair a manner as possible.347 For a conscientious tax protester with objections based in Catholic social teaching, this could make the noncompliance decision more difficult to justify; it would be harder to maintain that the tax system as a whole is unjust (or used to fund war efforts), if this aspect of tax administration clearly advances a preferential option for the poor through a mechanism grounded in subsidiarity.

Indeed, for Day, these efforts might not have been sufficient to change her convictions about whether she could morally comply with her federal income tax obligations, given her total commitment to pacifism. But not all conscientious objectors, whether in Day’s era or today, have precisely those objections; they could be effectively drawn to participate in a tax system that prioritizes the welfare of the most vulnerable in its approach to the administration of the tax laws.

342 See, e.g., Lipman, note 321, at 1197-08.
345 See Olson, note 343.
346 See note 301 and accompanying text.
347 See Afield, note 339.
V. Conclusion

That tax enforcement priorities can positively impact perceptions of fairness and justice is something that Day herself acknowledged, somewhat ironically, given her denunciation of the entire system. When the government dropped its tax case against her and the Catholic Worker, providing “absolution from the U.S. Government in relation to all our tax troubles,” Day praised the “human and satisfactory” outcome. Day asserted that the IRS declined to pursue legal action because government officials “were willing to recognize our undoubtedly religious convictions in our conflict with the state.” But this explanation is a simplification; religious convictions do not excuse compliance with the tax system, at least as far as the government is concerned. Rather, it is more likely the IRS decided that there was not enough tax revenue at stake to justify the negative publicity generated by pursuing an action against Day, who was already being called a “saint” during her lifetime.

Dorothy Day’s tax protest is indicative of the fact that there are taxpayers who care about their country and the community around them but who nevertheless feel that they cannot comply with the tax laws, not out of self-interested greed, but because they do not consider them to be just laws. While the government might be tempted to overlook these taxpayers if they are not overly numerous, doing so is shortsighted. Engaging the concerns that these types of tax protesters have and mitigating them when possible can pay dividends in terms of increasing taxpayer compliance, improving taxpayer buy-in, and improving the overall fairness of both legislative tax policy and administrative tax enforcement.

Tax protesters like Day who object to the use of tax revenue for war-related activities could be accommodated through something like the Peace Tax Fund (or an expanded version to account for other po-

349 Id.
350 See note 291 and accompanying text.
351 See, e.g., Saints Among Us: The Work of Mother Teresa, Time, Dec. 29, 1975, at 56 (including a profile of Mother Teresa and descriptions of “other spiritual heroes, whose special tasks or character draw attention and emulation,” including Americans Dorothy Day and John Lewis). Frequently attributed to Day is the statement, “Don’t call me a saint. I don’t want to be dismissed that easily.” See, e.g., James Martin, S.J., Don’t Call Me a Saint?, America (Nov. 14, 2012) (explaining that he had publicized that statement, but was uncertain of its origins: “Where did it come from? I can’t honestly say.”), https://www.americamagazine.org/content/4-all-things/dont-call-me-saint. Martin did later recall that Day had made a similar statement in his presence: “I do remember one time sitting at the kitchen table with [Day] at St. Joseph’s house, looking at an issue of Time magazine in which she was included in a list of ‘living saints.’ ‘When they call you a saint,’ she said, ‘it means basically that you are not to be taken seriously.’” Id.
tential moral objections to government-funded activities).\textsuperscript{352} Accommodating taxpayer objections to the government’s role in improving social welfare would be possible as well, although these types of accommodations would be better implemented through IRS framing and enforcement decisions that attempt to address such concerns by illustrating through word and action that the government takes seriously the responsibility to prioritize the welfare of the most vulnerable. Day, and presumably other tax protesters who shared her views, recognized the need for government intervention during the Great Depression based on the magnitude of the crisis. Compliance with the tax system thus should be understood as allowing the government to address concerns like those that existed during the Great Depression and that have been exacerbated in contemporary times, even in the absence of a declared economic crisis. In fact, wealth inequality in the United States is even greater now than it was during the Great Depression, the period of time when Day believed government aid was appropriate and helpful.\textsuperscript{353} As a result, the tax system can be framed as a critical tool in combatting this type of ongoing economic damage experienced by the poor, and this argument has several decades of data to bolster this framing. For example, since 1975, the tax system has played an effective role in widespread poverty relief that would be impossible to replicate with personal giving or the type of local initiatives that Day favored.\textsuperscript{354} Part of the problem may, in fact, lie in the tax system itself: The gap between the average tax rates paid by the top 1% and bottom 50% of national income earners has narrowed and income tax rates have become less progressive overall.\textsuperscript{355} In the twenty-first century, there is great need for reform-minded individu-

\textsuperscript{352} See Part IV.A.

\textsuperscript{353} In the fourth quarter of 2021, the top 1% of all American households held 32.3% of the nation’s wealth, compared to 25% in 1929. See Bd. of Governors of the Fed. Res. Sys., Distribution of Household Wealth in the U.S. Since 1989 (Dec. 16, 2022) (showing wealth by percentile group), https://www.federalreserve.gov/releases/z1/dataiz/dfa/distribute/chart?range:2006.4,2021.4,quarter:129,series:Net%20worth;demographic:networth;population:all;units:levels; Emmanuel Saez & Gabriel Zucman, The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts, 34 J. of Econ. Persp. 3, 10, Fig. 1 (showing percentage of wealth held by top 0.1% in 1929). Furthermore, unemployment levels during the ongoing COVID-19 pandemic have crept close to Depression-era levels. See Greg Iacurci, Unemployment Is Nearing Great Depression Levels, CNBC (May 19, 2020, 8:00 AM) (reporting a national unemployment rate of 14.7%, “its highest level since the Great Depression,” when the peak rate was 25.6%), https://www.cnbc.com/2020/05/19/unemployment-today-vs-the-great-depression-how-doth-eras-compare.html.

\textsuperscript{354} See notes 25-28 and accompanying text; see also notes 321-324 and accompanying text (discussing the EITC and child tax credits).

\textsuperscript{355} See Saez & Zucman, note 353, at 20-21 (showing average tax rate imposed on the two groups of earners and tax rates have fallen for members of the top group and risen for the bottom group); Emmanuel Saez & Gabriel Zucman, The Triumph of Injustice: How
als—whether motivated by a religiously informed commitment to a preferential option for the poor or a more general interest in a more equitable society—to turn their attention to the improvement, not abandonment, of the tax system. If the government does its part to take the concerns of these individuals seriously, perhaps the next future saint who lodges a tax protest will be protesting those who do not participate fully in a tax system that has been made more just.

the Rich Dodge Taxes and How to Make Them Pay 42, Fig. 2.2 (2019) (showing average tax rates on the top 0.1% versus bottom 90% of all income earners from 1910 to 1920).