

Yesterday’s Protestor May Be Tomorrow’s Saint: Reimagining the Tax System Through the Work of Dorothy Day

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ABSTRACT

When is the nonpayment of taxes justified by conscientious objections? Legendary Catholic social activist Dorothy Day refused to pay federal income taxes, because she was an avowed pacifist who also cautioned against government overreach into the lives of citizens. This article asks whether the tax system should accommodate those who have moral objections, and if so, how accomplish that. Through the lens of Dorothy Day, who devoted her adult life to workers’ rights, pacifism, and service to the poor, this article makes three contributions to the conversation about the administration of a fair tax system.

First, the article examines Day on her own terms. It is difficult, but not impossible, to reconcile Day’s tax resistance with the Catholic social teaching on taxation that was emerging during her lifetime. Second, the article considers what insights Catholic doctrine offers into the structure and substance of a just tax system. Although there is not as much theological writing on taxation as there is on other social issues, Catholic social teaching does provide some guidance about the purpose, form and operation of a just tax system. From these insights, the article moves to suggest specific improvements to the tax system: formal mechanisms that bring conscientious objectors into tax compliance; enhanced communication about the tax system’s role in administering the country’s most effective anti-poverty programs; and enforcement priorities that do not disproportionately target the poor. While these proposals might not be sufficient to have caused a steadfast antiwar protestor like Day to pay taxes, they illuminate a path toward much-needed reforms of the federal income tax system.

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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 co-founder of the Catholic Worker movement.¹ Day worked most of her adult life among the poor; she was a life-long advocate for workers’ rights and social justice. The Catholic Church named Day a “Servant of God” approximately twenty

¹ See *Dorothy Day, Outspoken Catholic Activist, Dies at 83*, N.Y. TIMES, Nov. 30, 1980 at 45, and James Terence Fisher, *Dorothy Day*, AM. NTL. BIOGRAPHY (1999), <https://doi-org.proxy.library.nyu.edu/10.1093/anb/9780198606697.article.0801725>

years after her death,² setting her on the path toward canonization as a saint.³ Despite her life of heroic virtue oriented towards advancing the common good, Day nevertheless resisted participation in the United States federal income tax system, despite its role (at least in part) in funding government efforts 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.⁴ With respect to her personal finances, Day seemed to have taken the position that she did not owe any taxes because she never benefitted from income she earned from her speaking engagements and book sales.⁵ According to one news report, Day had “no personal wealth or

² In March 2000, Pope John Paul II gave permission to the Archbishop of New York “open” Day’s “cause,” the first step toward sainthood in the Catholic Church. See Letter of Cardinal John O’Connor (Archbishop of New York) to Holy See, March 7, 2000, <http://www.cjd.org/paper/occonnor.html>. The proclamation of Day as a “Servant of God” is not without controversy: “By taking this action, the church is implicitly recommending Day’s vision of what constitutes a good and meaningful life.” Jim O’Grady, *The Givers*, N.Y. TIMES, Aug. 13, 2000 at 1. “The matter is controversial, especially at the Catholic Worker, where some worry that the search for miracles and other saint-making procedures will denature 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.*

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. *Divinus perfectionis Magister*, Congregation of the Causes of Saints, January 25, 1983, http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_25011983_divinus-perfectionis-magister_en.html. Members of the Vatican’s “Congregation for the Causes of Saints” then vote on the candidate. *Id.* There are 34 members of the Congregation and several consultants to it. Congregation of the Causes of Saints, http://www.vatican.va/roman_curia/congregations/csaints/documents/rc_con_csaints_pro_20051996_en.html. 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” demonstrated. MODERN CATHOLIC DICTIONARY (John Harden ed., 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. The Guild of Dorothy Day, Archdiocese of N.Y., <http://dorothydayguild.org/brochure.pdf>. 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 C. Beccari, *Beatification and Canonization* in THE CATHOLIC ENCYCLOPEDIA (Robert Appleton Company, 1907), <http://www.newadvent.org/cathen/02364b.htm>. 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 Hennessey reflecting that, “Mother Teresa, she got marginalized by becoming a patron saint against abortion when her whole life was about caring for the dying when nobody else would care for them. How did that get translated into anti-abortion?”).

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*, [NYACK] J. NEWS, Aug. 11, 1972, at 7 (noting that “There is no question that Miss Day has not been paying her taxes in the last few years. She has never paid them.”).

money of her own.”⁶ 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.⁷ This stance would have been one in common she shared with religious orders, such as the Benedictines and the Franciscans⁸ 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.⁹ To do so, she believed, “would mean an endorsement of the Federal Government’s military spending and continuation of the war” in Vietnam.¹⁰

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.¹¹ Factually speaking, though, Day’s tax positions were inarguably incorrect as a matter of tax law; yet the Internal Revenue Service (“IRS”) eventually abandoned its enforcement efforts against her despite having both the facts and the law on its side.¹² 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 and who was basing her noncompliance on a moral stance that she believed was justifiable under the Catholic social teaching that she was so known for exemplifying in her life.¹³ While we can only speculate as to the IRS’s motives for dropping its enforcement action against Day, the possibility that

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] 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 non-compliant with her tax obligations. *See* McCarthy, *supra* note 5 (quoting one of Day’s contemporaries as saying, “For 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* (Harper Collins 1997; originally published 1952) (providing on the copyright page that the intellectual property was “renewed 1980 by Tamar Teresa Hennessy”).

⁸ Fr. Dwight Longenecker, *Benedictine and Franciscan Poverty*, PATHEOS, Mar. 23, 2013, <https://www.patheos.com/blogs/standingonmyhead/2013/03/benedictine-and-franciscan-poverty.html>

⁹ *Dorothy Day’s Group Wins U.S. Tax Exemption*, N.Y. TIMES, Sept. 7, 1972, at 28 (quoting Dorothy Day).

¹⁰ *Id.*

¹¹ *See* McCarthy, *supra* note 5.

¹² *See* Seigel, *supra* 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”).

it was motivated by a respect of 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 taxpayer who might have a moral objection to tax compliance, which could include observant Catholics,¹⁴ non-observant Catholics, persons of other faiths, and those who profess no faith at all.¹⁵ From the perspective of anyone interested in a functioning tax system, Day's tax noncompliance is an example of one of the many challenges the government faces in raising revenue from those who have moral objections to how the government spends its revenue.¹⁶

This article is a critical exploration of Dorothy Day's views on the relationship between the tax system and Catholic social theory. Simply put, Day 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.¹⁷ Day had been a committed antiwar activist before she converted to Catholicism in 1927,¹⁸ and she integrated her pacifism with a deep religious commitment to a life carrying out what the Catholic Church calls “works of mercy.”¹⁹ Day's

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, L.I. 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, Apr. 19, 1982, sec. A.

¹⁵ For 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 Lutheran: Toward Borrowing the Wisdom of Faith Traditions*, 46 CLEV. ST. L. REV. 643, 643-44 (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 framework among many, acknowledging that this paper deploys a religious one. Compare CRITICAL TAX THEORY: AN INTRODUCTION xxiii (Anthony C. Infanti & Bridget J. Crawford eds., 2009) (calling critical tax theory “a lens that one can pick up and put down”).

¹⁶ See *infra* Part IV.

¹⁷ Dorothy Day, *Letter to Our Readers at the Beginning of Our Fifteenth Year*, CATH. WORKER, May, 1947, 3, <https://www.catholicworker.org/dorothyday/articles/155.html> (“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.”).

¹⁸ See MILLER, *supra* note 7, at 150 (describing Day's early labor activism) and THE DUTY OF DELIGHT: THE DIARIES OF DOROTHY DAY 57 n.54 (Robert Ellsberg ed., 2008) (reprinting Dorothy Day's writing in the June 1940 edition of the *Catholic Worker* that, “[I]n 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 those means.”).

¹⁹ 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

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.²⁰

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.²¹ Day 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.²² At the same time, however, she understood that economic tragedies like the Great Depression warranted extraordinary government intervention in ordinary citizens' lives.²³ Indeed, Day advocated for the redistribution of wealth from the rich to the poor.²⁴ Yet she herself opted out of the greatest redistribution program of them all: the federal income tax system.²⁵ 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.²⁶

harbourless; to visit the sick; to ransom the captive; to bury the dead. 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." *Works of Mercy*, THE CATHOLIC ENCYCLOPEDIA, available at <http://www.newadvent.org/cathen/>.

²⁰ See THE DUTY OF DELIGHT: THE DIARIES OF DOROTHY DAY, *supra* note 17.

²¹ See DAY, THE LONG LONELINESS, *supra* note 7, at 179 (1952, reprint 1997) (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 "It is not the function of the state to entire into these reals. 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 share their resources with poor neighbors").

²² 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), to government accepted no responsibility for children who became ill, on the grounds "that the children were malnourished anyway. So why blame the relief?" See *Just Enough Food for Life, Says "Welfare" Man: Cabbage Comedy and Meat Masquerade for the Unemployed*, CATH. WORKER, Jan. 1935, at 5, quotes in Murray, *supra* note 21, at 792.

²³ See DAY, THE LONG LONELINESS, *supra* note 7, at 179. See also NANCY L. ROBERTS, DOROTHY DAY AND THE CATHOLIC WORKER 116 (1984) (explaining that 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").

²⁴ See Dorothy Day, *Beyond Politics*, CATH. WORKER, Nov. 1949, <https://www.catholicworker.org/dorothyday/articles/166.html> ("[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....").

²⁵ See *supra* notes 6-10 and accompanying text.

²⁶ See *infra* Part III.

Dorothy 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.²⁷ 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 biographic sketch of Dorothy Day and an overview of the Catholic Worker movement. Part II explores Day's views on taxation, pacifism and social justice.²⁸ It attempts to reconcile her belief in wealth redistribution with her non-payment of federal income taxes and her failure to seek tax-exempt status for the Catholic Worker.²⁹ 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.³⁰ It explains how Day's views on taxation fit within or challenge the emerging contours 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 lead them to have objections similar to Day's.³¹

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.³² She was born in Brooklyn, New York in 1897 to

²⁷ See *infra* Part III.

²⁸ See *infra* Part I.

²⁹ 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 *infra* Part II.

³⁰ See *infra* Part III.

³¹ See *infra* Part IV.

³² See Fisher, *supra* 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.").

Episcopalian parents.³³ Her father, John, was a journalist.³⁴ His work took the Day family from Brooklyn to San Francisco, where they were living during the great earthquake of 1906.³⁵ 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.³⁶

From San Francisco, the Day family moved to Chicago, again for Mr. Day's work.³⁷ At age 16, Day enrolled in the University of Illinois.³⁸ Day 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 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."³⁹ While in college, Day read the works of Jack London, Upton Sinclair, Fyodor Dostoevsky and Leo Tolstoy.⁴⁰ 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."⁴¹ Day joined the Socialist Party, but she was not a significant participant in its activities.⁴²

Two years after Day's enrollment at the University of Illinois, her father took a job at the *Morning Telegraph* in New York.⁴³ Day felt that she could "not bear to have [her family] go so far without me,"⁴⁴ and so she

³³ See Jean K. Quam, *Dorothy Day*, OXFORD ENCYCLOPEDIA OF SOC. WORK (June 11, 2013), <https://doi.org/10.1093/acrefore/9780199975839.013.673>, and MILLER, *supra* note 7, at 7, 18, 21 (on the family's religious background).

³⁴ See ROBERT COLES, *DOROTHY DAY: A RADICAL DEVOTION* 1-2 (1987) (detailing John Day's career as a writer).

³⁵ *Id.*

³⁶ See DAY, *THE LONG LONELINESS*, *supra* 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") and 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 kindness of everyone afterward...[A]fter the earthquake everyone's heart was enlarged by Christian charity.").

³⁷ DAY, *THE LONG LONELINESS*, *supra* note 7, at 22 (describing the family's move to Chicago), and MILLER, *supra* note 7, at 16 (same).

³⁸ *Id.* at 39 ("I wanted every home to be open 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.").

³⁹ DAY, *THE LONG LONELINESS*, *supra* note 7, at 43.

⁴⁰ *Id.* at 42-43.

⁴¹ DAY, *FROM UNION SQUARE TO ROME*, *supra* note 36, at 14.

⁴² Robert Ellsberg, *Introduction*, in *SELECTED WRITINGS* xxi ("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.").

⁴³ DAY, *THE LONG LONELINESS*, *supra* note **ERROR! BOOKMARK NOT DEFINED.**, at 50.

⁴⁴ *Id.*

willingly left college to pursue a career as a writer in New York.⁴⁵ There she worked for a variety of radical publications including the Socialist daily newspaper *The Call*,⁴⁶ as well as *The Masses*, a class-oriented publication that attracted many young artists and writers as contributors.⁴⁷ In New York, Day joined the Industrial Workers of the World, or “Wobblies.”⁴⁸ She described this period as one in which she “wavered between my allegiance to socialism, syndicalism (the I.W.W.’s) and anarchism.”⁴⁹ Day’s circle of friends in New York included writer Eugene O’Neill and others associated with the Provincetown Playhouse.⁵⁰

Simultaneously, Day was developing into a spiritual seeker of sorts. She wrote that “[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.”⁵¹ 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.”⁵² 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.⁵³

In 1917, Day joined a planned picket for women’s suffrage in Washington, D.C.⁵⁴ The protestors were arrested outside the White House.⁵⁵ At least initially, the experience for Day was one of camaraderie.⁵⁶ Of the protesting group, Day wrote, “I had been part of an organized body of women

⁴⁵ Ellsberg, *supra* note 42, at xxi.

⁴⁶ *Id.* at xxi.

⁴⁷ *Id.* at xxii. See also John Sayer, *Art and Politics, Dissent and Repression: The Masses Magazines versus the Government, 1917-1918*, 32 AM. J. OF LEG. HIST. 42, 42 (1988) (describing *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 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 *The Masses* were tried, but not convicted, for violating the Espionage Act for interfering with the draft. See MILLER, *supra* note 7, at 121, and Sayer at 63-64, 74. Day was not among those tried. See MILLER, *supra* note **Error! Bookmark not defined.**, at 102.

⁴⁸ Ellsberg, *Introduction*, *supra* note 42, at xxi.

⁴⁹ DAY, THE LONG LONELINESS, *supra* note 7, at 62.

⁵⁰ Ellsberg, *Introduction*, *supra* note 42, at xxii.

⁵¹ DAY, THE LONG LONELINESS, *supra* note 7, at 84.

⁵² *Id.* at 86-87.

⁵³ *Id.* at 85.

⁵⁴ DAY, THE LONG LONELINESS, *supra* note 7, at 72-73.

⁵⁵ *Id.* at 73.

⁵⁶ *Id.* (describing how the picketing women marched two by two wearing purple and gold sashes and carrying banners).

of all ages and stations in life There had been schoolteachers, writers, ardent champions of feminism, women who had worked in the cause of England as well as in the United States. There had been the solidarity of the group.”⁵⁷ After the protestors received jail sentences of fifteen days to six months, and the court denied them treatment as “political prisoners” (a designation which would have given the women the right to wear their own clothes, to receive mail, to read periodicals), the protestors began a hunger strike.⁵⁸ 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.”⁵⁹

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

That I would be free in 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?⁶⁰

In this excerpt from her autobiography, Day voiced skepticism about the lines that laws draw between the legal and the illegal.⁶¹ She called into question the difference between “criminals” and “good businessmen.”⁶² Her first-hand 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.⁶³ Day found unexpected comfort in reading the Bible while in solitary confinement.⁶⁴

⁵⁷ *Id.* at 97-100.

⁵⁸ *Id.* at 78, 82.

⁵⁹ DAY, LONG LONELINESS, *supra* note 7, at 78.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ DAY, LONG LONELINESS, *supra* note 7, at 78.

⁶⁴ *Id.* at 80 (“I began asking for a Bible the second day I was imprisoned and by the fourth day it

After ten days, the protestors were transferred to the City Jail, where they were treated as political prisoners, and thus they ended their hunger strike.⁶⁵ In these less restrictive conditions, Day said that she “had no thought of religion” other than that she “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.”⁶⁶ Ultimately, Day was released after about three weeks in jail.⁶⁷

Back in New York, with World War I raging, Dorothy Day turned from journalism to nursing.⁶⁸ As she explained in a letter to a friend, “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.”⁶⁹ During a time of war, and Day sought a way to be useful: “What good am I doing by 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.”⁷⁰ Day worked for a year at Kings County Hospital in Brooklyn.⁷¹ There she dispensed medicine, bathed patients, made beds and generally witnessed all forms of illness and death.⁷²

Day considered nursing “the most noble work women could aspire to,” and yet she experienced an “irresistible urge to write.”⁷³ She fell in love with a fellow hospital worker,⁷⁴ had an intense affair and became pregnant.⁷⁵ She terminated the pregnancy;⁷⁶ she married another man on the rebound and

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 PsalmsYet all the while I read, my pride was fighting on. I did not want to go to God in defeat and sorry.... I tried to persuade myself that I was reading for literary enjoyment.”).

⁶⁵ DAY, LONG LONELINESS, *supra* note 7, at 82.

⁶⁶ *Id.* at 83.

⁶⁷ See MILLER, *supra* note 7, at 102.

⁶⁸ DAY, LONG LONELINESS, *supra* note 7, at 121.

⁶⁹ *Id.* at 88.

⁷⁰ *Id.*

⁷¹ *Id.* at 87-93.

⁷² *Id.* at 89-93.

⁷³ DAY, LONG LONELINESS, *supra* note 7, at 94.

⁷⁴ MILLER, *supra* note 7, at 124-25..

⁷⁵ Ellsberg, *Introduction*, *supra* note 42, at xxii-xxiii. One biographer reads Day’s novel *The Eleventh Virgin* as a thinly-veiled account of the affair and pregnancy. See MILLER, *supra* note 7, at 123-142. See DOROTHY DAY, *THE ELEVENTH VIRGIN* (1924).

⁷⁶ Ellsberg, *Introduction*, *supra* note 42, at xxii-xxiii.

traveled with him in Europe.⁷⁷ She left him shortly thereafter, calling this a period of “my own personal joy and heartbreak.”⁷⁸

After the time, Day lived briefly in Chicago.⁷⁹ In 1922, she was jailed after a raid on an IWW “safe house” in Chicago where Day was nursing a sick female friend.⁸⁰ Day recounted the experience as one of intense “shame and humiliation,” as the arresting officers charged Day and her friend with prostitution (she later learned) and forced them to stand on a street corner under a lamp until a police wagon came.⁸¹ Of being jailed with prostitutes, Day wrote of her few days in prison, “[i]t 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 them 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.”⁸² Day later reflected that “we as women had no right to be in that house,” because it had a reputation as a brothel.⁸³ She rued her decision to go there with the sick friend as a lapse of judgment for which she “deserved” to be punished.⁸⁴

Day returned to New York in 1924 after selling the film rights to her autobiographical novel, *The Eleventh Virgin*.⁸⁵ With the proceeds, she bought a small beach cottage on Staten Island.⁸⁶ She fell in love with, but never

⁷⁷ MINER, *supra* note 74, 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).

⁷⁸ DAY, LONG LONELINESS, *supra* note 7, at 95.

⁷⁹ DAY, LONG LONELINESS, *supra* note 7, at 94-95. 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 reminded me of God.” *Id.* at 94. Nevertheless, Day’s biographers have said that she always regretted the abortion. See Ellsberg, *Introduction*, *supra* note 42, at xxiii (“[T]he memory of this waste of life would remain with her always.”). See also Ellsberg, *Introduction*, *supra* note 42, at xxiii (on Day’s travels in the United States) and MILLER, *supra* note 7, 147-48 (on Day’s time in Chicago).

⁸⁰ DAY, LONG LONELINESS, *supra* 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 through persecution on the West Coast, made their escape out of fire escapes and over roofs.”).

⁸¹ SELECTED WRITINGS, at 17-18.

⁸² *Id.* at 18.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See ROBERTS, *supra* note 23, at 24 (1984) (reporting that Day received \$2,500 for the rights to her novel).

⁸⁶ *Id.* (calling the Raritan Bay community on Staten Island where Day’s home was located “a colony of radicals and beachcombers”).

married, a political anarchist named Forster Batterham.⁸⁷ Day gave birth to their daughter, Tamar, in 1927.⁸⁸ Shortly thereafter, Day converted to Catholicism, thereby alienating Batterham, who ended their relationship.⁸⁹ She later reflected that, “It 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.”⁹⁰ 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 praising and adoring God.”⁹¹ Day’s dilemma, then, was how to integrate her new religious identity with her commitment to social causes.⁹²

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 *Commonweal*.⁹³ In 1932, Day was covering a hunger march in Washington, D.C. for *Commonweal*.⁹⁴ 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?”⁹⁵ 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.”⁹⁶ 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.⁹⁷

⁸⁷ *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”).

⁸⁸ *Id.* at 26.

⁸⁹ *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).

⁹⁰ DAY, LONG LONELINESS, *supra* note 7, at 135.

⁹¹ *Id.*

⁹² See ROBERTS, *supra* note 23, at 27 (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).

⁹³ See DAY, LONG LONELINESS, *supra* note 7, at 155 (“Between means, 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 The Commonweal, a Catholic weekly.”)

⁹⁴ *See id.*

⁹⁵ DAY, LONG LONELINESS, *supra* note 7, at 160-61.

⁹⁶ *Id.* at 166.

⁹⁷ *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 leafletting and lecturing in Union Square about “radical action based on Christian values.”⁹⁸ Mutual acquaintances had directed Maurin to Day.⁹⁹ When they met, Maurin expounded his ideas about what one biographer has called “radical action based on Christian values.”¹⁰⁰ As Day understood Maurin’s “program,” it had three component parts: “clarification of thought, starting houses of hospitality, and organizing farm communes.”¹⁰¹ 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.”¹⁰² A few months later, the first issue of the *Catholic Worker* appeared.¹⁰³

The *Catholic Worker* sold for one cent on the streets.¹⁰⁴ The newsletter contained mostly opinion pieces about the injustice of war, the importance of fair labor practices and the obligation of society to provide food, clothing and shelter for the poor.¹⁰⁵ The purpose of the publication,

⁹⁸ ROBERTS, *supra* note 23, at 32.

⁹⁹ DAY, LONG LONELINESS, *supra* note 7, at 169 (recounting that Maurin explained to Day that, “George Shuster, editor of *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.”).

¹⁰⁰ ROBERTS, *supra* note 23, at 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—with no difficulty—that she should start a newspaper to communicate the idea of social action rooted in Christian principles”).

¹⁰¹ DOROTHY DAY, LOAVES AND FISHES 13, 7 (1963).

¹⁰² ROBERTS, *supra* note 23, at 33 and Dorothy Day, To Our Readers, *Cath. Worker*, May, 1933, <https://www.catholicworker.org/dorothyday/articles/12.html> (“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.”).

¹⁰³ See ROBERTS, *supra* note 23, 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 Dorothy Day, *Our First Editorial*, *CATH. WORKER*, May, 1933, 2, <https://www.catholicworker.org/dorothyday/articles/913.html> (“The money for the printing of the first issue was raised by begging small contributions from friends. A priest in Newark sent us a dollar. Another generous friend sent in twenty-five dollars. The rest of the money needed the editors squeezed out of their own earnings, and at that they were using money necessary to pay milk bills, gas bills, rent and electric bills.”).

¹⁰⁴ See DAY, LOAVES AND FISHES, *supra* note 101, 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.”).

¹⁰⁵ See, e.g., Dorothy Day, *The Listener*, *CATH. WORKER*, May 1933, 1, 5, <https://www.catholicworker.org/dorothyday/articles/934.html> (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), Dorothy Day, *Neighborhood Council in Action*, *CATH. WORKER*, Sept. 1933, 2, <https://www.catholicworker.org/dorothyday/articles/268.html> (describing the experiences of one low-income woman who was evicted from her apartment), and Dorothy Day, *Another Miracle, Please, St. Joseph!* *CATH. WORKER*, Feb. 1934, <https://www.catholicworker.org/dorothyday/articles/937.html> (thanking readers for donations of food and bedding for the poor and unemployed). See also ROBERTS, *supra* note 23, at 52-53 (“For more than fifty years, the Catholic Worker movement has addressed many social issues through its paper. The

according to Day, “to change public opinion, to indoctrinate, to set small groups to work here and there in different cities who will live a life of sacrifice, typifying the Catholic idea of personal responsibility.”¹⁰⁶ 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.¹⁰⁷ It also attracted people who needed a place to live.¹⁰⁸ With donated funds, Day, Maurin and a few of their associates rented two houses— one for men, one for women— where those who came to them seeking shelter could go.¹⁰⁹ They started a soup kitchen on the Lower East Side of Manhattan, too.¹¹⁰ 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.¹¹¹

major ones include labor relations, racism, anti-Semitism, militarism and conscription, Communism, the excesses of capitalism, voluntary poverty, and most prominently, pacifism. ...[P]acifism soon emerged as its most dominant issue.”).

¹⁰⁶ See ROBERTS, *supra* note 23, at 38 (quoting Day).

¹⁰⁷ See MILLER, *supra* note 7, at 258-71 (describing the multiple young people and many individuals in need who became part of Day’s regular orbit).

¹⁰⁸ 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 woman. Within a week we had a score of applicants at our doors...”) and Dorothy Day, *Fall Appeal-October 1958*, CATH. WORKER 2, Oct. 1958, <https://www.catholicworker.org/dorothyday/articles/745.html> (“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.”)

¹⁰⁹ See *id.* at 259-60 (describing the first houses of hospitality established by the Catholic Workers)

¹¹⁰ See, e.g., Helen Deines, *The Catholic Worker Movement: Communities of Personal Hospitality and Justice*, 35 SOC. WORK & CHRISTIANITY 429 (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”).

¹¹¹ 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, *supra* note 23, at 7.

Day spent the remainder of her life serving and advocating on behalf of the poor.¹¹² She was a sought-after speaker,¹¹³ interlocutor,¹¹⁴ organizer¹¹⁵ and fellow protestor.¹¹⁶ She died in 1980 at the age of eighty-three.¹¹⁷ 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.”¹¹⁸ The movement begun by Peter Maurin and Dorothy Day retains vitality today, carrying out “acts of mercy” and directly service serving the poor and disenfranchised.¹¹⁹

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.¹²⁰ Writing in 1935, one priest articulated the commitment

¹¹² See MILLER, *supra* 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.”).

¹¹³ In her diary for 1965, Day noted that her public speaking engagements were so numerous that they interfered with her writing. See Day, DUTY OF DELIGHT, *supra* note 18 (reprinting diary entry from October 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 November 6, 1965. *Id.* at 374. Day spoke at 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/>, e.g., Sara Ann Mehlretter, Dorothy Day, Union Square Speech, 1 *Voices of Democracy* 165, 166 (2006) (calling Day’s speech in Union Square “turning point in the growth of the Catholic peace movement”).

¹¹⁴ See, e.g., Dorothy Day, *The Mystery of the Poor*, CATH. WORKER, Apr. 1964, at 2, <https://www.catholicworker.org/dorothyday/articles/189.html> (responding to students who had written to her asking, “How do you see Christ in people?” with the explanation that “It 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...”).

¹¹⁵ 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, *supra* note 7, at 292 (discussing establishment of the farm) and 296-97 (providing an overview of challenges in running the farm), and 384 (the conclusion of that farm operation).

¹¹⁶ See, e.g., MILLER, *supra* note 7, at 520 (recounting Day’s joining a 1973 protest organized by the Unified Farm Workers, associated with Cesar Chavez) against the Teamsters Union.

¹¹⁷ See Dorothy Day, *Outspoken Catholic Activist, Dies at 83*, *supra* note 1.

¹¹⁸ See Directory of Catholic Worker Communities, CATH. WORKER MOVEMENT, <https://www.catholicworker.org/communities/directory-picker.html> (listing communities by location).

¹¹⁹ See Catholic Worker Movement, CATH. WORKER, <https://www.catholicworker.org> (“Today 187 Catholic Worker communities remain committed to nonviolence, voluntary poverty, prayer, and hospitality for the homeless, exiled, hungry, and forsaken. Catholic Workers continue to protest injustice, war, racism, and violence of all forms.”)

¹²⁰ See, e.g., Day, *Fall Appeal-October 1958*, *supra* note 108 (describing the message of the

thus: “The illnesses of injustice, prejudice, class war, selfishness, greed, nationalism, and war weaken the Mystical Body [of Christ] just as prayer and sacrifice of countless of the faithful strengthen it.”¹²¹ In secular terms, the idea of “Mystical Body of Christ” translates as the concept of shared humanity.¹²² Thus, if all people are “members or potential members of the Mystical Body of Christ,”¹²³ then peaceful relations among all people can be the only permissible state of existence, and all war must be opposed.¹²⁴ 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.”¹²⁵

For Dorothy Day and others, refusing to “participate in war” meant, at a most fundamental level, refusing to pay federal income taxes.¹²⁶ 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.¹²⁷ Day publicized Hennacy’s belief that, “If we pay taxes, we pay for the bomb.”¹²⁸ 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.¹²⁹ “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.”¹³⁰ 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.¹³¹ Finally, Day did not

Catholic Worker newspaper as “dedicated to the personalist and communitarian approach”).

¹²¹ Benedict Brady, *The Mystical Body of Christ*, CATH. WORKER, Mar. 1935 at 4, quoted in ROBERTS, *supra* note 23, at 9.

¹²² *See id.*

¹²³ Benedict Brady, *The Mystical Body of Christ*, CATH. WORKER, Mar. 1935 at 4.

¹²⁴ ROBERTS, *supra* note 23, at 10.

¹²⁵ *See id.*

¹²⁶ Dorothy Day, *We Go On Record: CW Refuses Tax Exemption*, CATH. WORKER, May 1972, at 1.

¹²⁷ *See* SELECTED WRITINGS at 138 (describing Hennacy’s activism).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Dorothy Day, *Are The Leaders Insane?*, CATH. WORKER, Apr. 1954, at 1,6. 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

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).¹³² So Day attempted to maximize her commitment to pacifism through federal income tax non-compliance, but she remained cognizant of the ways that taxes permeated many aspects of everyday life and that opting out of the tax system might not be feasible for all.¹³³ 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.¹³⁴

B. Voluntary Poverty

In her public writings, Dorothy Day framed her income tax non-compliance in language that had intuitive appeal.¹³⁵ 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.

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.

¹³² Dorothy Day, *Money and the Middle-Class Christian*, NATIONAL CATH. REP., Feb. 18, 1970, at 1.

¹³³ Dorothy Day, *We Go On Record: CW Refuses Tax Exemption*, CATH. WORKER, May 1972, at 1.

¹³⁴ See Part III *infra* and *supra* note 23 and accompanying text.

¹³⁵ See, e.g., SELECTED WRITINGS at 312-313 (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-July/August 1972*, CATH. WORKER (Jul.-Aug. 1972), <https://www.catholicworker.org/dorothyday/articles/523.html> (lecture fees which were not really fees but offerings made to the work which covered all expenses of travelling and supported the work besides"). This position is almost certainly incorrect as a matter of federal income tax law. See, e.g., Felton, T.C. Memo. 2018-168 (finding that amounts voluntarily paid by congregants to a minister in the form of a collection for "pastoral" constituted taxable income to the minister).

Nothing is ever clear-cut or well defined. We protest in any way we can, according to our responsibilities and temperaments.¹³⁶

Day explained the absence of salaries as a matter of administrative convenience.¹³⁷ She posited that any hypothetical salary paid would be returned immediately to support the Catholic Worker's provision of direct services to the poor:

I can only explain to such critics that it would complicate things to give a salary to Roger for his work of fourteen hours a day in the kitchen, clothes room, and office; to pay Jane a salary for running the women's house and Beth and Annabelle for giving out clothes, for making stencils all day and helping with the sick 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.¹³⁸

Thus, in her mind, "It is simpler just to be poor" and decline a salary.¹³⁹ "It is simpler to beg. The main thing is not to hold on to anything."¹⁴⁰ Thus declining a salary was not only an economic or political move; it was a spiritual one as well.¹⁴¹ By assuming voluntary poverty, she believed, one became truly free to serve others.¹⁴²

C. Fiscal Entanglement

¹³⁶ SELECTED WRITINGS at 312-13.

¹³⁷ Dorothy Day, *Poverty and Precarity*, CATH. WORKER, May 1952, 2, <https://www.catholicworker.org/dorothyday/articles/633.html>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See, e.g., Dorothy Day, *Poverty Without Tears*, CATH. WORKER, Apr. 1950, 1, 3, 6, <https://www.catholicworker.org/dorothyday/articles/230.html> ("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 help but be a rejoicing at the chance to show this love?").

¹⁴² For example, Day wrote that, "Once we begin not to worry about 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. 1946 at 3.

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.¹⁴³ 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.¹⁴⁴ Day could have used the interest to further finance the direct provision of services to the poor, but she declined to do so as a doctrinal matter.¹⁴⁵

Next, Day steadfastly refused to invoke the law in order to formally organize any aspect of the Catholic Worker's operations.¹⁴⁶ 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.¹⁴⁷ "[Y]ou don't need to be incorporated to wash a man's feet."¹⁴⁸

Finally, Day declined to seek formal recognition as a charitable organization, even if doing so might have meant additional support from individuals or foundations.¹⁴⁹ Keeping the organization on unstable financial footing was to adopt humility, in Day's view.¹⁵⁰

¹⁴³ ROBERTS, *supra* note 23, 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.").

¹⁴⁴ See SELECTED WRITINGS 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.").

¹⁴⁵ 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 was one of "the Catholic Worker's most controversial positions." Eileen Egan, *The Final Word is Love: Dorothy Day and the Catholic Worker Movement*, 4 CROSSCURRENTS 382, 377(1980-81)

¹⁴⁶ See, e.g., Dorothy Day, *Day After Day*, CATH. WORKER, Sept. 1942, 1, 4, <https://www.catholicworker.org/dorothyday/articles/385.html> ("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.").

¹⁴⁷ Dorothy Day, *Another Miracle, Please, St. Joseph!*, CATH. WORKER, Feb. 1934 at 4, <https://www.catholicworker.org/dorothyday/articles/937.html>.

¹⁴⁸ See also ROBERTS, *supra* note 23, at 41 (quoting Day).

¹⁴⁹ The income tax charitable deduction has been part of the law since 1917. See What Is the Tax Treatment of Charitable Contributions? TAX POLICY CTR. BRIEFING BOOK, <https://www.taxpolicycenter.org/briefing-book/what-tax-treatment-charitable-contributions>.

¹⁵⁰ Dorothy Day, *Catholic Worker Appeal*, *supra* note 147. See also ROBERTS, *supra* note 23, at 41 (quoting Day as saying that "it 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.").

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.¹⁵¹ Day nevertheless recognized that contact with the state could not be avoided entirely. Day reflected, though, that one could never be entirely free from the state: "Of course we are involved in paying taxes, in living on money 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."¹⁵² Indeed, in many respects, Day believed that the complexity of tax system made even obtaining a tax *exemption* a matter of entanglement. On this point, her words 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

¹⁵¹ Day, *supra* note 110 (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. 1945, at 1 (arguing "that social security legislation, now balled 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."). Day tied these beliefs to the Catholic social teaching principle of subsidiarity (discussed more fully in Section III), which, as Day articulated it, states "that government should never do what small bodies can accomplish: unions, credit unions, cooperatives, St. Vincent de Paul Societies." Day, *supra* note 111.

¹⁵² SELECTED WRITINGS at 298

Internal Revenue Department means standing in lines, paying excessive fares by bus or subway, with generally little redress of their grievances.¹⁵³

To incorporate or even register as a non-profit would have violated “the movement’s personalist principles.”¹⁵⁴ It represented a waste of time and resources that could have been better spent serving the poor.¹⁵⁵ 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 \$4,000.¹⁵⁶ At the time of Day’s death in 1980, the threshold was \$2,300.¹⁵⁷ After her novel, *The Eleventh Virgin*, in 1924,¹⁵⁸ Day published five more books during her lifetime.¹⁵⁹ If her revenues from book sales exceeded the filing threshold then she would have been obligated to file an income tax return.¹⁶⁰ Day was

¹⁵³ Dorothy Day, *On Pilgrimage*, CATH. WORKER, Feb. 1974, <https://www.catholicworker.org/dorothyday/articles/538.html>

¹⁵⁴ ROBERTS, *supra* note 144, at 166. and Day, *supra* note 111 (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. 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, 465; 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 (2001); Kenneth Halcom, *Taxing God*, 38 MCGEORGE L. REV. 729 (2007) (arguing that any attempt to tax religious organizations would constitute an “excessive entanglement” between the state and religion that would be unconstitutional under *Lemon v. Kurtzman*, 403 U.S. 602 [1971]); Keith S. Blair, *Praying for a Tax Break: Churches, Political Speech, and the Loss of Section 501(c)(3) Tax Exempt Status*, 86 DENV. U. L. REV. 405, 427 (2009) (describing the potential for excessive entanglement that can occur when the state has to monitor aspects of religious organizations).

¹⁵⁵ See Day, *On Pilgrimage-February 1974*, *supra* note 153.

¹⁵⁶ See Historical U.S. Federal Individual Income Tax Rates & Brackets 1862-2021, TAX POL’Y FOUND, <https://taxfoundation.org/historical-income-tax-rates-brackets/>

¹⁵⁷ See *id.*

¹⁵⁸ See *supra* note 85 and accompanying text (discussing Day’s sale of the rights to her novel).

¹⁵⁹ They are *From Union Square to Rome* (1938), *On Pilgrimage* (1948), *The Long Loneliness: The Autobiography of Dorothy Day* (1952), *Loaves and Fishes: The Inspiring Story of the Catholic Worker Movement* (1963) and *Therese: A Life of Therese of Lisieux* (1963).

¹⁶⁰ 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

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.¹⁶¹ 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 earns it.¹⁶² 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.¹⁶³

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 entities organizations that meet certain specific requirements are eligible for a deduction.¹⁶⁴ In the case of a charitable organization based in the United States, the charity must be a corporation, trust, community chest, fund or foundation.”¹⁶⁵ 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.¹⁶⁶

(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>

¹⁶¹ See *supra* note 7 and accompanying text (on different accounts of how Day used any money she received from her writing or speaking).

¹⁶² See *Lucas v. Earl*, 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”).

¹⁶³ See *id.* But see *Commissioner v. Giannini*, 129 F.2d 638 (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. See *id.*

¹⁶⁴ The income tax charitable deduction is available with respect to transfers to organizations described in and meeting the requirements of IRC § 170(c)(1)-(5).

¹⁶⁵ IRC § 170(c)(2).

¹⁶⁶ See *id.* 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*, *supra* 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.ORG, <https://casa-alma.org/tax-exempt-status/>

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.¹⁶⁷ For period from 1924 to 1976, the income tax charitable deduction was largely unlimited.¹⁶⁸ But in the last four years of her life, Day's deductions would have been capped at a percentage of her adjusted gross income.¹⁶⁹ She would have owed tax on the remaining amount, even if she had given it away.¹⁷⁰

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.¹⁷¹ 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."¹⁷² Day acknowledged that it was perhaps "simplistic" to claim that because she and others associated with the Catholic Worker drew no salary, they had no income tax obligations.¹⁷³ In fact, the dispute with the IRS

(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). Most Catholic Worker communities not tax-exempt. See *FAQs, How Can I Make a Contribution to the Catholic Worker?* CATHOLICWORKER.ORG, <https://www.catholicworker.org/faq.html>

¹⁶⁷ See IRC §§ 170(a)(1) (1977) (allowing an income tax deduction for certain charitable contributions), (b)(1) (providing limitations on deductions, as a percentage of the taxpayer's contribution base), which is adjusted gross income computed without regard to any net operating loss carryback to the taxable year).

¹⁶⁸ See War Revenue Act of 1917, Pub. L. No. 65-50, 40 Stat. 300 (1917) (providing for a deduction of up to 15% of taxable income), Revenue Act of 1924, Pub. L. No. 68-176, 43 Stat. 253 (1924) (waiving the limitation on the charitable deduction), Individual Income Tax Act of 1944, Pub. L. No. 78-315, 58 Stat. 231 (limiting the charitable deduction to 15% of adjusted gross income), and the Tax Reform Act of 1976, Pub. L. No. 94-555, 90 Stat. 2616 (1976) (imposing a cap on charitable contributions at 30% or 50% of adjusted gross income, depending on the type of property given). See also *The Charitable Deduction for Individuals: A Brief Legislative History*, CONG. RES. SERV., June 26, 2020, <https://sgp.fas.org/crs/misc/R46178.pdf> (tracking changes in the charitable deduction from 1917 to 2020) and *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, JOINT COMM. ON TAX'N, Mar. 11, 2022, JCX-2-22, 4-6 (providing a history of the income tax charitable deduction).

¹⁶⁹ 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)

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

¹⁷¹ See Dorothy Day, *On Pilgrimage-July/August 1972*, CATH. WORKER (Jul.-Aug. 1972), <https://www.catholicworker.org/dorothyday/articles/523.html> (describing the notice from the IRS).

¹⁷² *Imagination Please*, N.Y. TIMES, May 24, 1972, at 46;

¹⁷³ *Id.* Another minor tax issue is whether, as a technical matter, Day and others in the Catholic

did not last long; the government quickly gave up, stating that it determined that there was no requirement for Day to file returns for the years in question.¹⁷⁴

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.¹⁷⁵ 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."¹⁷⁶ 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 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.¹⁷⁷

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? Tax systems have not spawned the same breadth of analysis from Catholic thinkers as other legal issues have,¹⁷⁸ but Catholic thought nevertheless has wrestled with the moral dimensions of taxation.¹⁷⁹ Indeed, unlike many contemporary social issues that have drawn significantly more discussion from the Catholic Magisterium, taxation is one

Worker community should have included in their gross income the value of meals and lodging furnished to them. *See supra* note 138 and accompanying text (concerning lodging provided to those who worked in the houses of hospitality), Treas. Reg. 118, § 39.22(a)-3 (1951) (containing the 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.

¹⁷⁴ *Id.* (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).

¹⁷⁵ *See id.*

¹⁷⁶ *Id.*

¹⁷⁷ *See id.*

¹⁷⁸ *See, e.g.,* RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW (Michael A. Scaperlanda & Teresa S. Collett eds., 2007) (including chapters on labor law, contract law, property law, tort law, criminal law, family law, immigration law, and international law).

¹⁷⁹ *See, e.g.,* Mary Ann 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 Vatican opposition to certain uses of the term "gender" in international treaties, among other contexts) and Richard S. Myers, *An Analysis of the Constitutionality of Laws Banning Assisted Suicide from the Perspective of Catholic Moral Teaching*, 72 U. DET. MERCY L. REV. 773 (1995).

that Jesus addressed explicitly in his teaching.¹⁸⁰ When the Pharisees asked Jesus whether it was moral to pay taxes to the Roman government, Jesus responded that they should “render unto Caesar what belongs to Caesar and to God what belongs to God.”¹⁸¹ Admittedly, what this means precisely in terms of a citizen’s obligations to pay all government-imposed taxes is the subject of some debate.¹⁸²

Contemporarily with the development of Dorothy Day’s own thoughts on taxation, Catholic theologian Martin Crowe published his dissertation as a book called *The Moral Obligation of Paying Just Taxes*.¹⁸³ 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?”¹⁸⁴ While Crowe’s work was more preoccupied with the second of these questions,¹⁸⁵ he did articulate a test for how to evaluate whether a tax law is “just.”¹⁸⁶ First, the taxing authority must have lawful power to legislate, subject to the limitations of any higher reviewing authority.¹⁸⁷ Second, the tax must have a just cause, which could either be a social or fiscal.¹⁸⁸

Almost sixty years later, in expanding upon Crowe’s test, Professor Robert G. Kennedy interprets 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.¹⁸⁹ Each of these factors then influences what the citizen’s

¹⁸⁰ 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.”).

¹⁸¹ *Matthew* 22:15-22.

¹⁸² See, e.g., Robert W. McGee, *Is Tax Evasion Unethical?* 41 U. KAN. L. REV. 411, 411 (1994) (arguing that that is “nothing sinful or ethically wrong with tax evasion”) and 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).

¹⁸³ MARTIN T. CROWE, *THE MORAL OBLIGATION OF PAYING JUST TAXES* (1944).

¹⁸⁴ *Id.* at ix.

¹⁸⁵ 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.*

¹⁸⁶ *Id.* at 22–26.

¹⁸⁷ *Id.* at 22–23.

¹⁸⁸ *Id.* at 23.

¹⁸⁹ 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 in stating that: “[p]ublic spending is directed to the common good when certain fundamental principles are observed,” describes “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.”

compliance obligation is and what levels of mitigation or outright protest are deemed permissible.¹⁹⁰ It is through this lens that we evaluate Dorothy 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.¹⁹¹ Rather, their writings provide a framework for better understanding Day's views and location 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.¹⁹² From the perspective of the Catholic tradition, the government's primary purpose is to promote the common good.¹⁹³ This aim arises out of the principle of *solidarity*, described by St. 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."¹⁹⁴ 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 currency; (6) commerce regulation; (7) transportation infrastructure; and (8) facilitation of publication communication.¹⁹⁵ In addition, there 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.¹⁹⁶ These include education, social insurance, provision of healthcare, and other similar social benefits.¹⁹⁷

Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* 355 (Apr. 2005).

¹⁹⁰ See KENNEDY, *supra* note 159, at 101–13.

¹⁹¹ CATECHISM OF THE CATHOLIC CHURCH 2240 and 2409 (2d ed. 1997).

¹⁹² See *id.* at 73.

¹⁹³ See *id.* at 74.

¹⁹⁴ Pope John Paul II, *Sollicitudo Rei Socialis* 38–39 (Dec. 1987).

¹⁹⁵ See KENNEDY, *supra* note 159, at 75.

¹⁹⁶ 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 to want to protect a sphere of action for private associations").

¹⁹⁷ See KENNEDY, *supra* note 159, at 76.

Generally speaking, Catholic tradition eschews government efforts to control nuclear families, religion, and culture, or to prevent these institutions from performing charitable works.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰ This is consistent with the views Day expressed during her lifetime.²⁰¹

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.²⁰² In this framework, some redistributive taxation efforts are legitimate, although the parameters for legitimacy for this type of taxation are much narrower.²⁰³ While Catholic tradition opposes the government 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

¹⁹⁸ 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.

¹⁹⁹ 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.

²⁰⁰ Pope Pius XI, *Quadragesimo Anno* 79–80 (May 1931).

²⁰¹ See, e.g., *supra* notes 21–24 and accompanying text.

²⁰² See KENNEDY, *supra* note 159, at 78–81 (noting that such regulatory taxation would still have to advance the common good in order to have a legitimate purpose).

²⁰³ See *id.* at 81–85. Professor Kennedy argues that the Church's position on wealth distribution is likely somewhat of a middle ground between the argument for state redistribution based on reducing inequality and the argument against state redistribution based on a view that the state should only provide for equality of opportunity. *Id.* 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.

ability to use the taxing power to provide relief and subsidies to the poor.²⁰⁴ 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 “whatever you did for one of these least brothers of mine, you did for me.”²⁰⁵

This position that taxation can be used to assist the poor harmonizes Catholic social teaching’s concern with maintaining the common good with its commitment to respecting private ownership.²⁰⁶ Intellectually, this position relies on a third principal 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 technological and economic progress.”²⁰⁷ This preferential option for the poor continues to guide the United States Conference of Catholic Bishops in its approach to evaluating whether or not tax policy is just, as seen through the group’s 1986 statement:

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

²⁰⁴ See *id.*

²⁰⁵ *John* 19:25-27; *Matthew* 25:40.

²⁰⁶ See *id.* at 84 (citing Pope Leo XIII, *Rerum Novarum* [1891], 18-19; Pope Pius XI, *Quadragesimo Anno* [1931], 50-51; Pope St. John Paul II, *Sollicitudo Rei Socialis* [1987], 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* 7, https://privpapers.ssrn.com/sol3/papers.cfm?abstract_id=958806 (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).

²⁰⁷ Saint John Paul II, *Centesimus Annus* 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 ever more immediately by so many refugees and migrants”). Although Saint 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 (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 Theol.* 96, 99 (discussing the Latin American bishops’ articulation of the preferential option for the poor at their conferences in 1969 and 1979).

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.²⁰⁸

The phrase “preferential option for the poor” was in circulation in Catholic teaching during Day’s lifetime.²⁰⁹ It reflects well-known Judeo-Christian concepts.²¹⁰ 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,²¹¹ can be read as consistent with Catholic social teaching on the legitimate purposes of a tax system.²¹² 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. Thus, the next section turns its focus to considerations about the *form* of just taxation.

B. Form

In order to ask what form a just tax should take, it is first necessary to balance how much revenue the government actually needs against much of a tax burden the citizenry can bear.²¹³ This is not an easy question to answer; the analysis proceeds in two parts.

The first inquiry accounts for the size and complexity of modern states. As expansion of government services and responsibilities has

²⁰⁸ United States Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* ¶ 202 (1986).

²⁰⁹ See *supra* note 207 (tracing first-known use of the term to 1968).

²¹⁰ See *supra* notes 204-205 and accompanying text and *Proverbs* 14:31 (“Whoever oppresses the poor taunts their Maker, but whoever is kind to the needy honors Him.”).

²¹¹ See *supra* notes 20-22 and accompanying text.

²¹² See *supra* note 200 and accompanying text.

²¹³ See KENNEDY, *supra* note 159, at 87–95.

increased the need for tax revenue, there is a risk that the government may take on too many responsibilities that would be better left to individuals or private organizations.²¹⁴ 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). Their combined burden can be excessive even if any of the individual taxes in isolation are not.²¹⁵ Furthermore, the government must act with fiscal responsibility in a manner that considers the needs of current and future taxpayers.²¹⁶

Once the government's revenue needs are established, the inquiry moves to the second stage: a focus on the *form* of the tax. Catholic thought developed during and after Day's lifetime provides little specific guidance on this matter, although general principles regarding the importance of the common good would certainly apply (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 their cost would become out of reach for the poor).²¹⁷

Although Day did not speak about her refusal to participate in the tax system in terms of *revenue needs* or the *form* of the tax, there is a way to understand her objections in this way.²¹⁸ Day objected strenuously to the United States' building and using atomic bombs against Japan in 1945, calling it a "slaughter of innocents" and lamenting the loss of human life.²¹⁹ Day herself consistently asserted that eighty percent of all tax revenue was used to pay for wars, and framed her own nonpayment of income taxes in pacifist terms.²²⁰ Day essentially believed that the government used the

²¹⁴ See *id.* at 87–90 (discussing Pope Pius XII's comments on this tension in Pope Pius XII, "On Taxes" [Address to the International Association for Financial and Fiscal Law, 3 October 1956]. Translation from *The Pope Speaks* [Summer 1957], 77-80). Because of concerns about the government 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.ORG (Mar. 28, 2018), <https://www.acton.org/pub/commentary/2018/03/28/catholic-social-teaching-and-tax-justice>.

²¹⁵ *Id.* at 91–93.

²¹⁶ *Id.*

²¹⁷ *Id.* at 93–95.

²¹⁸ See *supra* notes 20-22 and accompanying text.

²¹⁹ Dorothy Day, *We Go on Record: The CW Response to Hiroshima*, CATH. WORKER, Set. 1945, 1, <https://www.catholicworker.org/dorothyday/articles/554.html>

²²⁰ See *id.* (opining that eighty percent of income tax revenue was used for war) and Dorothy Day, *Money and the Middle-Class Christian*, NTL. CATH. REP., Feb. 18, 1970, 1, 7-9, <https://www.catholicworker.org/dorothyday/articles/20.html> (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 without as much as possible.").

income tax system to raise more money to pay for war, something that was well beyond the scope of the government's proper function.²²¹ She opposed the draft and wrote publicly and vocally against the Spanish Civil War, World War II, the United States' involvement in Vietnam, and other armed conflicts all over the world.²²² To be clear, it was not that Day believed that individuals, instead of governments, should be waging war.²²³ She was a pacifist who believed that all wars were unjustified, regardless of who waged them.²²⁴

The Catholic Church, in contrast, 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.²²⁵ Yet formal Church doctrine also provides that law should "make human provisions for 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."²²⁶ If the Church were to adopt a formal stance on the matter of tax protestors, it might argue for similar accommodations for taxpayers like Day who had conscientious objections to the payment of income taxes.²²⁷

²²¹ See ROBERTS, *supra* note 23, 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 participate in war and to allow their governments to stockpile armaments, then war can no longer exist.").

²²² See, e.g., Dorothy Day, *The Use of Force*, CATH. WORKER, Nov. 1936, 4, <https://www.catholicworker.org/dorothyday/articles/306.html> ("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.');" Dorothy Day, *Our Country Passes From Undeclared War to Declared War; We Continue Our Christian Pacifist Stand*, CATH. WORKER, Jan. 1942, 1, <https://www.catholicworker.org/dorothyday/articles/868.html> ("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."); Dorothy Day, *In Peace Is My Bitterness Most Bitter*, CATH. WORKER, Jan. 1967, 1, <https://www.catholicworker.org/dorothyday/articles/250.html> ("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.").

²²³ See ROBERTS, *supra* note 23, at 10.

²²⁴ See Benedict Brady, *The Mystical Body of Christ*, CATH. WORKER, Mar. 1935, 4, quoted in ROBERTS, *supra* note 23, at 9 (referring to the concept of the "Mystical Body of Christ" and saying, "The illnesses of injustice, prejudice, class war, selfishness, greed, nationalism, and war weaken the Mystical Body just as prayer and sacrifice of countless of the faithful strengthen it.").

²²⁵ 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 aimed indiscriminately at the destruction of entire cities of extensive areas along with their population is a crime against God and man himself.").

²²⁶ *Gaudium et spes* 79.

²²⁷ See *id.*

Somewhat more complicated is Day's refusal to incorporate the Catholic Worker or to seek its federal recognition as a tax-exempt organization.²²⁸ There is a way to understand this aspect of Day's tax views as a sophisticated position on a just tax's *form*.²²⁹ That is, the formal recognition of some groups and not others as tax-exempt organizations is a form of tax preference.²³⁰ Those organizations do not pay taxes, and gifts to many groups that apply for and receive such recognition typically are eligible for the income, estate and gift tax charitable deductions.²³¹ But Day believed "that the government has no right to legislate as to who can or who are to perform the Works of Mercy."²³² People should give, according to Day, because it is the right thing to do, not because of the tax benefits (or lack thereof).²³³ 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.²³⁴

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.²³⁵ She called Catholic Workers "personalists" who oppose to incorporation.²³⁶ 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 world speak to the existence of multiple *de facto* organizations.²³⁷

²²⁸ See *supra* notes 9-10 and accompanying text.

²²⁹ See *supra* note 217 and accompanying text.

²³⁰ See, e.g., Bridget J. Crawford, *Taxation as a Site of Memory: Exemptions, Universities, and the Legacy of Slavery*, 73 SMU L. REV. F. 222, 227 (2020) (calling tax exemptions for educational and religious institutions "a form of tax subsidy").

²³¹ See 26 U.S.C. §§ 170(c) (income tax charitable deduction), 2055 (estate tax charitable deduction), and 2522 (gift tax charitable deduction).

²³² DAY, *SELECTED WRITINGS*, at 314.

²³³ *Id.* at 294 ("In the Christian emphasis on the duty of charity, we are commanded to lend gratuitously, to give freely.")

²³⁴ *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.")

²³⁵ See *supra* note 22 and accompanying text.

²³⁶ DAY, *SELECTED WRITINGS*, at 314 ("As personalists, as an unincorporated group, we will not apply for this 'privilege' [of tax exemption]").

²³⁷ See Frequently Asked Questions, 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).

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.”²³⁸ The crux of her objection to incorporation and tax exemption appears to be excessive government entanglement in activities that are properly personal duties.²³⁹ Only when individual “works of mercy” are insufficient should local mutual aid groups fill the gap, and only when mutual aid groups cannot serve the poor should the government do so.²⁴⁰ 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.’”²⁴¹

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.²⁴² 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.”²⁴³ The group gladly complied with its state-law obligations to file annual reports of income and expenses, too.²⁴⁴ 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.²⁴⁵ Thus,

²³⁸ *Id.* at 313-14.

²³⁹ *See id.*

²⁴⁰ *See* Dorothy Day, *Love is a Warming Fire*, CATH. WORKER, Nov. 1954, 2, <https://www.catholicworker.org/dorothyday/articles/676.html> (“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. . .”), Dorothy Day, *More About Holy Poverty. Which is Voluntary Poverty*, CATH. WORKER, Feb. 1945, 1-2, <https://www.catholicworker.org/dorothyday/articles/150.html> (“[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.”).

²⁴¹ Day, *Letter to Our Readers at the Beginning of Our Fifteenth Year*, *supra* note 17.

²⁴² *See, e.g.*, Exempt Organization Types, INTERNAL REV. SVC., IRS.gov, <https://www.irs.gov/charities-non-profits/exempt-organization-types> (listing as types of exempt organizations: charitable organizations, churches and religious organizations, private foundations, political organizations and “other nonprofits”).

²⁴³ Dorothy Day, *On Pilgrimage*, CATH. WORKER, Jul-Aug. 1972, 1, <https://www.catholicworker.org/dorothyday/articles/523.html> (“We cannot ever be too complacent about our own uncompromising positions because we know that in our own way we too make compromises.”).

²⁴⁴ Day, *We Go On Record: CW Refuses Tax Exemption*, *supra* note 133 (“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.”).

²⁴⁵ *See* Day, *Money and the Middle-Class Christian*, *supra* note 220 (“I’ve had college students, Catholic college students, get up and say everything we have comes from the state, our education, our

for Day, if the form required to get the government not to impose federal income tax on her required her to still entangle herself with the tax system in order to get approval for the required form, such a form in Day's mind would simply be another aspect of a tax system that she viewed as unjust.

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 analytical lens for determining the legitimacy of a tax's purpose, it is not surprising that this concern recurs in matters 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,²⁴⁶ 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).²⁴⁷ This is in part because the preferential option must be balanced against subsidiarity principles and the acknowledgement 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.²⁴⁸ 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 and redistribution.²⁴⁹ Although Day did not explain her views in these terms, it likely is here where Day believed the system broke

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.") and Dorothy Day, *On Pilgrimage*, CATH. WORKER, Feb. 1969, <https://www.catholicworker.org/dorothyday/articles/894-plain.htm> ("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.").

²⁴⁶ See *supra* notes 202-208 and accompanying text.

²⁴⁷ KENNEDY, *supra* note 159, at 95-100, 115-21.

²⁴⁸ *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 by used--generally by private initiative--for the common good").

²⁴⁹ *Id.* at 97-98. The reason why Catholic social teaching cannot proscribe 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 object of taxation that is ruled out in principle, . . . [and] no form, no level, no object, and no target group will be necessary in a just program of taxation." *Id.* at 117.

down: the absence of just legislators meant that tax funds were used for war.²⁵⁰

D. Avoidance and Protest

Assuming that a tax system satisfies the conditions discussed above for being just (i.e., having a legitimate purpose²⁵¹ and an appropriate form²⁵²), 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?

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.²⁵³ 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).²⁵⁴

Contemporary Catholic writers have reached similar conclusions regarding the compliance obligation and just taxation.²⁵⁵ Writing many years after Day's death, in examining the nature of the obligation to pay taxes, Professor Robert Kennedy observes that the Catholic approach to the duty to comply with tax laws strikes a middle ground between the competing

²⁵⁰ See generally Dorothy Day, *We Go on Record: The CW Response to Hiroshima*, *supra* note 219 and accompanying text.

²⁵¹ See *supra* Part III.A.

²⁵² See *supra* Part III.B.

²⁵³ CROWE, *supra* note 183, 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. *Id.*

²⁵⁴ 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.*

²⁵⁵ Interestingly, little of the discussion about the nature of the obligation, either from historical or modern Catholic thinkers, have 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).

classical approaches taken by libertarians in the tradition of Locke and collectivists.²⁵⁶ 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.²⁵⁷

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 from the Archbishop of Seattle shortly after Day's death indicate that at least one high-ranking Catholic also believed that conscientious objection to war would warrant a tax protest.²⁵⁸ 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.²⁵⁹

²⁵⁶ KENNEDY, *supra* note 159, at 71–72.

²⁵⁷ *Id.*

²⁵⁸ Wallace Turner, "Tax Refusal Completes Prelate's Moral Journey," *The New York Times*, April 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.").

²⁵⁹ *See, e.g.*, Dorothy Day, *Reflections During Lent*, *CATH. WORKER*, Dec. 1966, 20-23,

Applying Kennedy's contemporary understandings of a taxpayer's obligations to Day does not point to a clear conclusion, either. On the one hand, under Kennedy's analysis, Day would seem to have an obligation to comply with "reasonable legislation about taxes."²⁶⁰ On the other hand, such obligation assumes that war is not an "inappropriate objective."²⁶¹ Day believed that war was always inappropriate.²⁶² Yet the United States Conference of Catholic Bishops, for example, initially supported the United States government's involvement in Vietnam, before it changed its position in November 1971.²⁶³ Day's total pacificism 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.²⁶⁴ 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."²⁶⁵

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.²⁶⁶ Everyday avoidance and mitigation strategies that fall short of outright evasion occupy a grayer moral space.²⁶⁷ While Catholic social teaching recognizes the legitimacy of

<https://www.catholicworker.org/dorothyday/articles/562.html> ("One time I made the statement, whether in writing or in a speech I do not remember, that I was so grateful for the freedom we had in the Church that I was quite ready to obey with cheerfulness if Cardinal Spellman ever told us to lay down our pens and stop publication."). Day's obedience to the Church was, for her, an expression of faith: "I do know that my nature is such that gratitude alone, gratitude for the faith, that most splendid gift, a gift not earned by me, a gratuitous gift, is enough to bind me in holy obedience to Holy Mother Church and her commands." *Id.*

²⁶⁰ *See id.*

²⁶¹ *See id.*

²⁶² *See supra* note 224 and accompanying text.

²⁶³ *See* Sara Ann Mehlretter, *Dorothy Day, the Catholic Workers, and Moderation in Religious Protest During the Vietnam War*, 32 J. OF COMM. IN 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").

²⁶⁴ *See id.* at 6 ("At no point [in their antiwar 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").

²⁶⁵ CATECHISM OF THE CATHOLIC CHURCH 2306.

²⁶⁶ *Id.* at 101.

²⁶⁷ *See id.*

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.²⁶⁸

But what of the pacifist conscientious objector taxpayer like Day, who does not believe that the tax system is just, either 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 protestors 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.²⁶⁹ This is especially true because Catholic thought does not proscribe specific parameters for the rate of tax, the tax base, the distribution of tax, and the use of tax revenues.

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, Professor Kennedy states that disagreement with government policies would *not* be a sufficient reason to refuse to pay taxes.²⁷⁰ 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.²⁷¹ This is likely because the governing authority must be due considerable deference in regards 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.²⁷² If this is the case, then someone

²⁶⁸ *Id.* at 101–13.

²⁶⁹ 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).

²⁷⁰ *Id.* at 108.

²⁷¹ 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.

Id. at 108–9 n.8.

²⁷² *Id.* at 105–7 (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

like Day, who believed that war was never justified, would nevertheless be required to pay federal income taxes.²⁷³

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.²⁷⁴ 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.²⁷⁵ And if donors are advised that there is no tax deduction associated with their gifts, there is no legal requirement that a de facto nonprofit must seek tax-exempt status.²⁷⁶ For that reason, it is unlikely that Catholic social teaching would require it either, although an organization's taking the necessary steps to become recognized as a tax exempt organization likely would be treated as a just component of the tax system.²⁷⁷

Where Day possibly could have deviated from Catholic social teaching is 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.²⁷⁸ At the same time, though, if the group spent all income it generated, then it is

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.”).

²⁷³ See *id.*

²⁷⁴ See *id.*

²⁷⁵ 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 liability in tort for leaders of an unincorporated nonprofit organization than for officers of incorporated nonprofit organization).

²⁷⁶ Despite Day's statements to the contrary, see *supra* note 234 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 McQueeney, Opinion, *The GOP Tax Reform Will Devastate Charitable Giving*, L.A. Times (Dec. 27, 2017, 4:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-mcqueeney-charitable-giving-under-new-tax-law-20171227-story.html> (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). That prediction was borne out. See Richard Eisenberg, *Charitable Giving Took a Hit in 2018 Due to Tax Reform*, Next Avenue (June 18, 2019), <https://www.nextavenue.org/charitable-giving-tax-reform/> (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).

²⁷⁷ 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](http://www.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 that the organization on the grounds that doing so would violate their consciences. *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

²⁷⁸ See *supra* note 244 and accompanying text.

unlikely that there would have been any tax owed.²⁷⁹ For that reason, 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.²⁸⁰

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

In addition to conflicting with the secular tax laws, Day's actions arguably conflicted, at least at times, with the prevailing Catholic social teaching as well.²⁸¹ Admittedly, though any conflict with Catholic social teaching is not as clear as the conflict with the secular tax laws, and 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.²⁸² 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.²⁸³ 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 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.²⁸⁴

²⁷⁹ See PUB. 535 (2021), BUSINESS EXPENSES, INTERNAL REV. SVC., <https://www.irs.gov/publications/p535> (explaining the deduction of expenses from income).

²⁸⁰ See *supra* Part II.D.

²⁸¹ See *supra* Part III.B.

²⁸² CATECHISM OF THE CATHOLIC CHURCH 1776-1802.

²⁸³ The Dorothy Day Guild, Process of Canonization, <http://dorothydayguild.org/the-cause/process-of-canonization/>, noting that:

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."

Id.

²⁸⁴ See, e.g., Day, *We Go On Record, CW Refuses Tax Exemption*, *supra* note 133 ("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

In Day's example, there is a larger lesson for tax policymakers. The government could²⁸⁵ establish a mechanism that accommodates the conscientious tax objector in a manner that still preserves the fisc, fosters an attitude of compliance as a religious or social virtue rather than noncompliance, 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.²⁸⁶ 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 section 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 protestors who object to financing war efforts.²⁸⁷ In every session of

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.")

²⁸⁵ 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").

²⁸⁶ Even if the number of conscientious objector taxpayers is small, the government has significant incentives to try to address their concerns if feasible, because small number of conscientious objectors has the potential to cause a cascading effect of noncompliance that extends beyond the conscientious objector community. Professor 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.

Marjorie Kornhauser, *For God and Country: Taxing Conscience*, 1999 WIS. L. REV. 939, 990 (1999).

²⁸⁷ Indeed, the numbers of these types of taxpayers, while still 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

Congress since 1972 (with historical antecedents dating as far 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 towards it becoming law.²⁸⁸ 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.²⁸⁹ The advantages of such a fund, in contrast to other proposals, is that, as Professor 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.”²⁹⁰

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 object to other government expenditures on moral grounds.²⁹¹ Even considering only the group of taxpayers who may be guided by Catholic social teaching, there undoubtedly many who object to having their tax payments used to fund

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 consequences 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 Marjorie 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, *supra* note 194, at 941.

²⁸⁸ See Jennifer Carr, *Complicity and Collection: Religious Freedom and Tax*, 11 U. ST. THOMAS L.J. 183, 185 (2014); Garrity, *supra* note 195, at 1244–45; Kornhauser, *supra* note 194, at 985–90.

²⁸⁹ See Carr, *supra* note 196, at 185; Garrity, *supra* note 195, at 1246–47.

²⁹⁰ Kornhauser, *supra* note 194, at 985 (discussing how the Peace Tax Fund is a superior mechanism of accommodating protestors 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).

²⁹¹ 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.

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.²⁹² Thus, if a Peace Tax Fund could be a viable solution to accommodate war tax protestors, 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 about the way their tax dollars are spent, such a system might be difficult, if not chaotic and costly, to administer.²⁹³

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, *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.²⁹⁴

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 protestors like Day, a large part of her protest 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.²⁹⁵ A fiscal subsidiarity approach, through which

²⁹² See *id.*; United States Conference of Catholic Bishops, *Forming Consciences for Faithful Citizenship-Part II-Applying Catholic Teaching to Major Issues: A Summary of Policy Positions of the United States Conference of Catholic Bishops* (2020).

²⁹³ See, e.g., *Ntl. Survey of 1,000 Adults*, RASMUSSEN REPT., Feb 2-3, 2010, https://www.rasmussenreports.com/public_content/business/econ_survey_questions/february_2010/toplines_federal_deficit_i_february_2_3_2010 (reporting that 78% of adults surveyed answered "No" in response to the question, "Does the government spend taxpayers' money wisely and carefully?").

²⁹⁴ BENEDICT XVI, *CARITAS IN VERITATE* 125 (2009), https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html.

²⁹⁵ See *supra* Parts III.A and III.B.

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 protestor like Day could be much more confident that her tax dollars are not going towards 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 for each citizen to influence the allocation of tax dollars.²⁹⁶

Such a proposal would admittedly face numerous challenges, from the political to the practical. While Professor 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 proceed allocation creates a tension with Congress' 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.²⁹⁷

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 borrowing.²⁹⁸ Even if taxpayer allocation decisions really did result in those dollars not being so replaced with other dollars, the government might run the risk of certain critical functions receiving insufficient funding.²⁹⁹ Finally, such a system would increase

²⁹⁶ See *supra* notes 21-22 and accompanying text.

²⁹⁷ Kornhauser, *supra* note 194, at 992.

²⁹⁸ See Carr, *supra* note 196, at 224; Daniel Indiviglio, *What If Taxpayers Could Decide How Their Money Is Spent*, THE ATLANTIC (Oct. 3, 2010).

²⁹⁹ Indiviglio, *supra* note 203.

administrative complexity in the administration of the tax laws on an already overworked and underfunded IRS.³⁰⁰

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 focusin on the U.S. tax system.³⁰¹ 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.³⁰² 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.³⁰³ This could be done either through online selections or just through a breakdown on the individual tax return.³⁰⁴ Debt payments would be non-discretionary, but would be combined with a requirement for a balanced budget to address the problem of government borrowing replacing taxpayer dollars in underfunded areas.³⁰⁵ The budget impact could lag the taxpayer allocation by a couple of years to give programs and agencies time to prepare.³⁰⁶

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 other to pay taxes as usual, 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,³⁰⁷ would mitigate the potential anti-democratic effects of a system in

³⁰⁰ See, e.g., Paul Kiel & Jesse Eisinger, *How the IRS Was Gutted*, PRO PUBLICA (Dec. 11, 2018); Indiviglio, *supra* note 203.

³⁰¹ 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).

³⁰² Indiviglio, *supra* note 203.

³⁰³ 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).

³⁰⁴ *Id.*

³⁰⁵ See *id.*

³⁰⁶ 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”).

³⁰⁷ See, e.g., The Truth About Frivolous Tax Arguments, INTERNAL REV. SVC., Mar. 2022, <https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction> (providing a nonexhaustive list of common arguments that taxpayers make in attempting to justify their

which taxpayers with zero tax liability effectively have less of a voice, because they have no tax dollars with which to express a preference.³⁰⁸

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 discretion over tax dollar allocation.³⁰⁹ This cost could come in the form of a fee³¹⁰ 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.

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, the concept merits serious evaluation. 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.³¹¹ Nevertheless, the political reality is that a Peace Tax Fund is unlikely to become law.³¹² 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.

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.*

³⁰⁸ Indeed, a significant number of Americans would not have a voice in allocating tax dollars, given that, typically 43-44 percent of households do not pay federal income tax (and this percentage was as high as 60.6 percent in tax year 2020). T21-0161-Tax Units with Zero or Negative Income Tax, 2011-2031, TAX POL’Y CTR., Aug. 17, 2021, <https://www.taxpolicycenter.org/model-estimates/tax-units-zero-or-negative-income-tax-liability-august-2021/t21-0161-tax-units-zero>.

³⁰⁹ *See generally* W. Edward Afield, *Getting Faith Out of the Gutters: Resolving the Debate Over Political Campaign Participation by Religious Organizations Through Fiscal Subsidiarity*, 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).

³¹⁰ *See* Kornhauser, *supra* note 194, at 985 (proposing the concept of a fee to help defray any administrative costs associated with the administration of a Peace Tax Fund).

³¹¹ *But see id.* at 1008–15 (arguing that conscientious objection to military spending is deserving of unique protections, but also describing benefits from a Peace Tax Fund that would be amplified with its broader application).

³¹² *See* Indiviglio, *supra* note 203.

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.³¹³ 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.³¹⁴ Better communication could take the form of 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.³¹⁵ Because of these credits, the tax system plays an indispensable role in lifting families out of poverty and reducing childhood poverty specifically.³¹⁶ These tax credits quite simply mean the difference in whether or not millions of taxpayers live in or out of poverty, at least as defined for federal purposes.³¹⁷

Admittedly, highlighting the important role that the tax system plays in providing social benefits can only go so far for some conscientious tax

³¹³ See generally W. Edward Afield, *Social Justice and the Low-Income Taxpayer*, 64 VILL. L. REV. (2019).

³¹⁴ 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 attorney who, early in his career, "did not connect tax with broader issues of poverty law"); Anna C. Tavis, *Tax and Social Justice: Perspectives of a Brunswick Public Service Fellow*, 68 TAX LAW 455, 457–58 (2015) (noting that "many aspiring public-interest attorneys remain uninformed about the critical role of tax benefits in fighting poverty").

³¹⁵ See, e.g., Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103 (2006); Francine Lipman, *Access to Tax (In)Justice*, 40 PEPP. L. REV. 1173 (2013); ; Michelle Lyon Drumbl, *Those Who Know, Those Who Don't, and Those Who Know Better: Balancing Complexity, Sophistication, and Accuracy on Tax Returns*, 11 PITT. TAX REV. 113 (2013); Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZONA L. REV. 791 (2014); Dennis J. Ventry, *Welfare By Any Other Name: Tax Transfers and the EITC*, 56 AM. U. L. REV. 1261 (2007); Mary Leto Pareja, *Beyond the Affordable Care Act's Premium Tax Credit: Ensuring Access to Safety Net Programs*, 38 HAMLINE L. REV. 241 (2015).

³¹⁶ See Office of the Taxpayer Advocate, *supra* note 11, at 5 ("[r]efundable 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, *supra* note 315, at 1181 (noting that "[w]ithout the EITC, the number of children living in poverty would increase by one-third").

³¹⁷ See, e.g., Francine J. Lipman, Nicholas A. Mirkay & Palma Joy Strand, *#BlackTaxpayersMatter: Anti-Racist Restructuring of U.S. Tax Systems*, 46 HUM. RTS. 10, 12 (2020) (explaining that the EITC and child tax credit "lift more children and their families out of poverty than any other program").

objectors. Day, for example, might have been eager to direct her tax payments away from war efforts, but it is unlikely that better information about the welfare aspects of the EITC or the child tax credit would address her other concerns.³¹⁸ That is, she objected to the government's intruding on the role of private citizens or local organizations through state administered welfare.³¹⁹ Thus, a conscientious tax protestor 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 framing; it could instead appeal to an individualized sense of virtue and charity that would be more in line with Day's sensibilities.³²⁰

In order to address the concerns of tax protestors like Day, the government might properly frame EITC benefits not as simply 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.³²¹ That, in turn, enables them to become more fully participate in the community through the dignifying individual work that they must do in order to be eligible for the credit.³²² But for Day, this iteration of personal responsibility is incomplete, because in her

³¹⁸ See, e.g., *supra* notes 238-241 and accompanying text

³¹⁹ See *id.*

³²⁰ 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 exist 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 ET AL., 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.

³²¹ Lipman, *supra* note 315, at 1181–83 (noting that the work incentives associated with the EITC lead 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).

³²² See *id.*

view, individuals, not the government, should be providing this kind of assistance to their fellow humans.³²³

Ultimately, framing alone cannot address all concerns of all conscientious tax protestors. 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 towards compliance, given Catholic social teaching's stance that taxpayers have an obligation to participate in the tax system in most cases.³²⁴

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 some 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 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%.³²⁵ In contrast, those claiming the EITC are audited at a rate of 0.77%.³²⁶ Furthermore, the five counties with the highest audit rates in the nation are rural, southern, and have predominantly African-

³²³ See, e.g., *supra* notes 238-241 and accompanying text.

³²⁴ See *supra* notes 270-272 and accompanying text.

³²⁵ See Trends of IRS Audit Rates and Results for Individual Taxpayers by Income, U.S. GOV'T ACCT. OFFICE, May 17, 2022, <https://www.gao.gov/products/gao-22-104960>

³²⁶ See *id.* 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), <https://projects.propublica.org/graphics/eitc-audit> (illustrating how the poorest counties in the United States with the highest percentages of African-Americans have some of the highest audit rates).

American populations.³²⁷ While some EITC examinations are admittedly necessary given the fact that the EITC error rate hovers around 24%,³²⁸ these examinations have a much more burdensome impact on the poor than audits on higher-income individuals.³²⁹ 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.³³⁰ In contrast, a higher income taxpayer whose deductions are being challenged does not face a similar “freeze” and may not be relying the resolution of the tax dispute in order to meet day-to-day living expenses.³³¹ 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).³³²

For conscientious tax objectors like Dorothy Day, IRS enforcement priorities that unduly burden the poor fly in the face of Catholic social teaching and contribute the perception that the tax system is unjust (and that noncompliance is therefore justified).³³³ 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.³³⁴ 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

³²⁷ See Kiel & Fresques, *supra* note 326.

³²⁸ Treasury Inspector General for Tax Administration, *Improper Payment Rates For Refundable Tax Credits Remain High*, Nos. 2021-40-036, 3 (May 2021).

³²⁹ See, e.g., Paul Kiel, *You Don’t Earn Much and You’re Being Audited by the IRS. Now What?* PROPUBLICA (Oct. 4, 2018), <https://www.propublica.org/getinvolved/irs-audit-earned-income-tax-credit-refund-help> (explaining that during an EITC audit, “the IRS blocks the refund”).

³³⁰ See *id.*

³³¹ See, e.g., IRS Audits: Records We Might Request, INTERNAL REV. SVC., <https://www.irs.gov/businesses/small-businesses-self-employed/audits-records-request> (providing guidance for taxpayers being audited, but not mentioning any hold on taxpayer assets).

³³² See, e.g., Paul Kiel, *It’s Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%*, ProPublica, May 30, 2019, <https://www.propublica.org/article/irs-now-audits-poor-americans-at-about-the-same-rate-as-the-top-1-percent> (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).

³³³ W. Edward Afield, *Framing Tax Enforcement Against the Poor Through Catholic Social Teaching*, CANOPY FORUM (Oct. 2021).

³³⁴ Karie Davis-Nozemack, *Unequal Burdens in EITC Compliance*, 31 LAW AND INEQUALITY 37 (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).

error.”³³⁵ Apart from any religious objections a taxpayer may have to the IRS’s discretionary enforcement priorities, secular tax policy commentators have called for enforcement reforms that better protect the interests of the poor.³³⁶

Recognizing that the IRS plays a strong role in administering social benefits,³³⁷ commentators have suggested reforms ranging from having the Social Security Administration take over the administration of the EITC³³⁸ 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).³³⁹ In addition to the efficiency benefits emphasized in these commentaries, such reforms would have the additional advantage of speaking directly to the some of the concerns Day identified.

While there is no way to eliminate completely anti-subsidiarity concerns that Day would have had,³⁴⁰ more subsidiarity-based administration could at least ameliorate them. By cordoning 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.³⁴¹ For a conscientious tax protestor 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

³³⁵ Treasury Inspector General for Tax Administration, *supra* note 223; Kara Leibel et al., *Social Welfare Considerations of EITC Qualifying Child Noncompliance*, No. Office of Tax Analysis Working Paper 120, 31 (Jan. 2020).

³³⁶ See, e.g., Lipman, *supra* note 315.

³³⁷ National Taxpayer Advocate, *2010 Annual Report to Congress, MSP #2 15* (2010); Nina Olson, *Thinking Out Loud about the Advanced Child Tax Credit-Part 3: The Family and Worker Benefit Unit*, PROCEDURALLY TAXING (Jul. 1, 2021), <https://procedurallytaxing.com/thinking-out-loud-about-the-advanced-child-tax-credit-part-3-the-family-and-worker-benefit-unit/>.

³³⁸ See Kim Bloomquist, *IRS: We’re Not Unfair to Earned Income Tax Credit Taxpayers*, BLOOMBERG TAX (Jan. 13, 2021).

³³⁹ See Olson, *supra* note 227.

³⁴⁰ See Day, *supra* note 128.

³⁴¹ See Afield, *supra* note 224.

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.

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.³⁴² 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.”³⁴³ 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.³⁴⁴ Rather, it is more likely the IRS decided that there either 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.³⁴⁵

Dorothy Day’s tax protest is indicative of the fact that there are taxpayers who care about their county and the community around them but who nevertheless feel that they cannot comply with its 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 would be short-sighted. Engaging the concerns that these types of tax protestors have and mitigating them when possible can pay dividends in terms of increasing taxpayer compliance,

³⁴² Day, *On Pilgrimage*, CATH. WORKER, Jul-Aug. 1972, *supra* note 172.

³⁴³ *Id.*

³⁴⁴ See *supra* note 284 and accompanying text.

³⁴⁵ See, e.g., *Saints Among Us: The Work of Mother Theresa*, TIME MAG. (Dec. 29, 1975), <https://content.time.com/time/magazine/article/0,9171,945463,00.html> (including a profile of Mother Theresa 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, *Don’t Call Me a Saint?*, AMERICA (Nov. 14, 2012), <https://www.americamagazine.org/content/all-things/dont-call-me-saint> (explaining that he had publicized that statement, but was uncertain of its origins: “Where did it come from? I can’t honestly say.”). 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.*

improving taxpayer buy-in, and improving the overall fairness of both legislative tax policy and administrative tax enforcement.

Tax protestors 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 potential moral objections to government funded activities).³⁴⁶ 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.³⁴⁷ 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.³⁴⁸ In fact, wealth inequality in the United States is even greater now than it was during the Great Depression, period of time when Day believed government aid was appropriate and helpful.³⁴⁹ 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.³⁵⁰ In the twenty-first century, there is great need for reform-minded individuals—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

³⁴⁶ See *supra* Part IV.A.

³⁴⁷ See *supra* note 23 and accompanying text.

³⁴⁸ See *id* (discussing Day's views). See also *supra* notes 315-317 and accompanying text (discussing the EITC and child tax credits).

³⁴⁹ 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 *Distribution of Household Wealth in the U.S. Since 1989*, BD. OF GOV. OF THE FED. RES. SYS., <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/#range:2006.4,2021.4;quarter:129;series:Net%20worth;demographic:networth;population:all;units:levels> (showing wealth by percentile group) and 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).

Income and wealth disparities then and now. 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.COM, May 19, 2020, 8:00 AM, <https://www.cnbc.com/2020/05/19/unemployment-today-vs-the-great-depression-how-do-the-eras-compare.html> (reporting a national unemployment rate of 14.7%, “its highest level since the Great Depression,” when the peak rate was 25.6%).

³⁵⁰ See Saez & Zucman, 34 J. OF ECON. PERSP. at 51 (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 THE RICH DODGE TAXES AND HOW TO MAKE THEM PAY* 42, Fig. 2.2 (2019) 20 (showing average tax rates on the top 0.1% versus bottom 90% of all income earners from 1910 to 1920).

the improvement, not abandonment, of the tax system. If the government does its part to take the concerns of these individual seriously, perhaps the next future saint who lodges a tax protest will be protesting those who do not participate fully in tax system that has been made more just.