

**Death and Taxes:**

**On the Justice of Conscientious War Tax Resistance**

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**Abstract**

Resistance to paying war taxes that stems from a principled pacifism is not the same as tax-dodging and should be accommodated in the law by broadening the scope of Conscientious Objector (CO) status and by legislating a nonmilitary alternative fund so COs may redirect their tax money to peaceful uses. Using the religious example of the Society of Friends (Quakers) and various secular examples of pacifism I show that resisters' conscientious opposition to paying for war is of a kind with their conscientious refusal to carry arms. Their refusal to cooperate with military taxation is not disdain of the rule of law, but is a respectful form of civil disobedience. It is in the interest of justice for a liberal democracy to provide an option for conscientious objectors so they may satisfy their moral scruples without having to break the law.

*If a thousand men were not to pay their tax-bills this year, that would not be a violent and bloody measure, as it would to pay them, and enable the State to commit violence and shed innocent blood. This is, in fact the definition of a peaceable revolution, if any such is possible.*

- Henry David Thoreau<sup>1</sup>

## **Introduction**

It is said that the only certain things are death and taxes, but is it necessary that our taxes be used to finance death by paying for war? Current law does require all taxpayers to contribute to the military but there are individuals who are conscientiously opposed to war who decline to cooperate with that legal necessity. Of course hardly anyone *favors* war. We all say we want peace. But is there not some tension between our expressed wish and our actions? War tax resisters try to highlight this tension, querying “Do you pray for peace but pay for war?” Unable themselves to live with the inconsistency, they refuse to pay the military tax-collector. War tax resistance has a long history and it continues to this day. Are they wrong who stand on their pacifist convictions and intentionally break the law in this way? Should the government continue to prosecute pacifist resisters as it does—fining them, confiscating their property, imprisoning them for contempt—or does morality suggest that the law make some just accommodation to them?

In a dialogue with Crito, Socrates endorsed a pacifist viewpoint even while in his death cell awaiting execution for purportedly breaking the law, arguing that “one ought not to return a wrong or an injury to any person, whatever the provocation is.”<sup>2</sup>

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<sup>1</sup> Henry David Thoreau, “Civil Disobedience” in Wood Krutch (ed.) *Thoreau: Walden and Other Writings*. (New York: Bantam Books, 1971), 85-104, at 94.

<sup>2</sup> Plato. *Crito* in Hamilton, Edith and Huntington Cairns, ed. *The Collected Dialogues of Plato*. Bollingen Series LXXI. (Princeton: Princeton University Press, 1961), 27-39, at 34.

However, he admitted that, realistically, relatively few people have held or ever will hold this view. Persons who are unaware of or who do not understand or agree with the pacifist framework that undergirds the resister’s stand on principle are likely to look disapprovingly upon the practice of war tax resistance as mere immoral tax-dodging. My aim is to argue for the significant moral difference between tax-dodging and conscientious tax refusal, and for the justice of a policy that would allow conscientious objectors to redirect these taxes, thus providing a legal remedy to this dilemma of conscience.

Opponents of military taxation have traditionally appealed to religious scruples, but there are also secular philosophical arguments for war tax refusal. In this essay I will sketch both approaches. On the religious side I will use the example of the Religious Society of Friends (Quakers). There are others leading the war tax resistance movement besides Friends, but I focus on Quaker example because it has a well-established centuries-long history and because it is the religious tradition with which I am personally familiar. On the secular side I will draw upon a variety of sources, especially the work of Thoreau and of philosophers including James, Russell, Rawls and others. I will not here develop the arguments for why one should choose to be a pacifist or for why one should decline to pay to support war or the preparations for war, but will simply outline the move from pacifism to war tax resistance to show why it is reasonable to treat conscientious objection to participation in war and conscientious objection to paying for war in the same way, and thus why we should extend the current legal recognition of conscientious objector status from the former to also embrace the latter.

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F. J. Church *Euthyphro, Apology, Crito* (Indianapolis: Bobbs-Merrill, 1956), at 59, translates this as “We ought not to repay injustice with injustice or to do harm to any man, no matter what we may have suffered from him.”

### **How Pacifists resist**

My own involvement as a war tax resister was at the lowest level of commitment; during most of the 1980's I refused to pay the federal excise tax on my phone bill. Each month I would subtract the amount of the tax from my bill and would include a note with my check for the balance to the phone company explaining my refusal. Since the beginning of the 20th century the telephone tax has been used explicitly to raise money to help pay for specific wars. It was repealed or about to be phased out several times, only to be re-instituted or raised in response to new wars, such as a jump from a rate of 3% to 10% in 1966 to pay for escalating the war in Vietnam. The tax had been due to expire in 1983 but was extended to subsidize the military build-up under the Reagan administration. Refusing to pay the telephone tax is a small token gesture and some war tax resisters go no further than making this or a similar symbolic protest. Others take a stronger stand.

A natural next step that many take is to refuse to pay the portion of their income tax that goes to current military spending (varying from 25% to 40% during the past decade) or to the total of current plus past military spending<sup>3</sup> (which has ranged from 44% to 65% in the same period)<sup>4</sup>. Others refuse to pay any income tax knowing that

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<sup>3</sup> By “past military spending” is meant current spending that continues to pay for yesterday's wars. The largest portion of this shows up as interest payments on the national debt, most of which debt was built up during past wars. A small portion shows up as veterans' benefits. Neither of these amounts gets reported in the defense budget proper but are still recognized as military spending.

<sup>4</sup> The first figures in the set were the proportions for the 1.15 trillion dollar federal budget in 1996. These were compiled by the Friends Committee on National Legislation. The high for the decade comes from Ed Hedemann, *War Tax Resistance: A Guide to Withholding Your Support from the Military*. 4th ed., (New York, NY and Philadelphia,

they could not earmark the money they did send for non-military uses. By resisting or refusing in this way a person takes a greater personal risk.<sup>5</sup> Commonly, resisters contribute their resisted taxes directly to organizations that work for peace, but some put them in “escrow” accounts, expecting that the Internal Revenue Service will eventually force collection. Resisters have created many such “alternative funds” that use the money to make interest-free loans to peace and human service programs.<sup>6</sup> In tandem with rejecting military “solutions” to conflicts, pacifists feel a special responsibility to take these and other positive steps to try to prevent the circumstances that lead to wars before conflicts escalate to that point.

Some pacifists try to combine these forms of activism by choosing a simple lifestyle so that they may also avoid paying war tax by keeping their incomes below the taxable minimum while simultaneously reducing the pressures and inequalities that may lead to war.<sup>7</sup> In making this choice, many take inspiration from the words and example of

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PA: The War Resisters League and New Society Publishers, 1992), at 21, which charts percentage of military spending since 1790. In both cases the information originally was compiled from issues of the *Budget of the United States*.

<sup>5</sup> Although there are relevant moral differences between conscientious resistance and refusal they are not relevant to the argument of this essay so I will usually use the terms inter-changeably. Some people see both as forms of evasion, but philosophers like Burton Dreben and John Rawls have reserved this latter term for cases in which noncompliance is covert, so I will not use it to avoid confusion, since I am here defending only open noncompliance.

<sup>6</sup> Hedemann at 57-61 describes a variety of alternative funds.

<sup>7</sup> Clare Hanrahan and Susan Van Haitsma, *Low Income/Simple Living as War Tax Resistance*. Vol. 5. Practical War Tax Resistance, (Monroe, ME: National War Tax

18th century Quaker John Woolman, who counseled Friends to “look upon our treasures, the furniture of our houses, and our garments, and try whether the seeds of war have nourishment in these our possessions.”<sup>8</sup>

### **Why Pacifists resist**

Woolman’s counsel develops out of an emphasis upon peace that has been and remains a central characteristic of Quakerism. It is not possible in this short article to explain the idiosyncrasies of Quaker faith and practice, so I mention only a few salient points. In a similar manner that the Puritans founded the various Protestant sects against the backdrop of Catholicism in a series of attempts to return to a “purified” form of Christianity, Quakerism arose in the mid-seventeenth century together with other “radical” Christian sects that felt the Protestant churches had re-institutionalized just the same kinds of ritual forms and hierarchies of authorities that intervened between the individual and the original Spirit that moved the early Christians.<sup>9</sup> To truly live in that unity of Spirit, according to George Fox, the founder of the Society of Friends, is to live in the virtue of that life and power that takes away the occasion of all wars.<sup>10</sup> The Quaker witness against war and violence arises in large part from a belief that this peaceful Spirit (or “Wisdom” or “Voice of Truth” or “Inner Light” or “that of God”) may be found every one. Such elements form the foundation of the Quaker Peace Testimony,

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Resistance Coordinating Committee, 1996) is a brochure that describes this approach to war-tax resistance.

<sup>8</sup> Quoted in Hanrahan and Van Haitisma at 2.

<sup>9</sup> See Howard Brinton, *Friends for 300 Years*. (Wallingsford, PA: Pendle Hill Publications, 1952 (1994)) for this history.

<sup>10</sup> George Fox, *The Journal of George Fox*. Revised edition, ed. John L. Nickalls. (London: Religious Society of Friends, 1975), at 65.

one of the earliest formal expressions of which was made in 1661 in a declaration to Charles II:

All bloody principles and practices we... do utterly deny, with all outward wars, and strife, and fightings with outward weapons, for any end, or under any pretence whatsoever; and this is our testimony to the whole world. And we do certainly know, and so testify to the world, that the Spirit of Christ which leads us into all Truth, will never move us to fight and war against any man with outward weapons, neither for the Kingdom of Christ, nor for the kingdoms of this world.... So we, whom the Lord hath called into the obedience of his Truth, have denied wars and fightings, and cannot again any more learn of it:...

Of course, pacifism does not require a religious justification and may be held on moral grounds alone, as, for example, was the pacifism of William James<sup>12</sup> and Bertrand Russell.<sup>13</sup> Secular pacifism draws upon a network of roots. It arises in part from an understanding that *whatever* a person values, his or her life itself is a prerequisite for it, which makes the taking of a person’s life the most basic of evils that can be done to them.

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<sup>11</sup> Quoted in Constance Braithwaite, *Conscientious Objection to Various Compulsions Under British Law*. (York, England: Ebor Press, 1995), at 111.

<sup>12</sup> William James’s “The Moral Equivalent of War” (New York: American Association for International Conciliation, 1910), Leaflet No. 27 and reprinted in Staughton Lynd, *Nonviolence in America: A Documentary History* (Indianapolis: Bobbs-Merrill, 1966), 135-150, has been called by Lynd, at 135, “Next to Thoreau’s essay... probably the most influential statement in the history of American nonviolence.”

<sup>13</sup> Russell is a good case in point since he was well-known as an eloquent and out-spoken public defender of pacifism and also of atheism. Not content to rest with his philosophical work on the theory supporting pacifism, Russell actively applied his principles, co-founding the Committee of 100 in the early 1960s, which led a civil disobedience campaign against the British government’s nuclear policy that eventually

It comes in part from an ideal of rationality that requires that we resolve differences by fair and honest application of reason rather than by resort to physical violence. James wrote, “It would seem as though common sense and reason ought to find a way to reach agreement in every conflict of honest interests. I myself think it our bounden duty to believe in such international rationality as possible.”<sup>14</sup> It comes from a view that war is monstrous and that it is barbaric to think of it as a possibly legitimate instrument of policy. Beyond appealing to these and other general principles, many pacifists find support for their view in an empirical study of the history of wars and political power struggles from which they find that warfare only begets further warfare and conclude that nonviolence is the only way out of this deadly circle. Albert Einstein spoke to this point, opining that one cannot simultaneously prevent and prepare for war.

One could pursue these issues in much greater depth, but my purpose here is not to develop the theological and philosophical bases of pacifism and nonviolence but rather to show that it provides a platform for war tax resistance. The move is relatively straight-forward; if persons hold that it is wrong to kill other persons it is not much of a stretch to also hold that it is likewise wrong to pay others to do so. Resisters feel they would be being hypocritical to be pacifists and to refuse to fight wars and then to turn around and subsidize war and the preparation for war with their tax moneys. They see their stand against military taxation as being required to be consistent with their pacifism.

Again, this stance has a long history in the Society of Friends. Through the end of the seventeenth century and into the eighteenth century Quakers were often imprisoned for their pacifism. This was not just because they refused to serve personally in the military, for during certain periods, at least, British law allowed persons who did not wish

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involved tens of thousands of people. See Michael Randle, *Civil Resistance*. (London: Fontana Press, 1994), at 81.

<sup>14</sup> James in Lynd, at 139.

to serve to pay instead for a substitute. However, Quakers objected also to hiring a substitute, to contributing horses or carriages to the military, or to paying other “rates or assessments” for the militia.<sup>15</sup>

Christians who do not oppose the payment of military taxes often cite passages from Scripture that seem to endorse the payment of taxes, especially those in Mark (12:13-17) that describe Jesus’s response to a question about whether it was right to pay taxes to Caesar. Holding a coin upon which was engraved the portrait of Caesar, Jesus answered “Give to Caesar what is Caesar’s, and to God what is God’s.” However, some Christian resisters argue that this passage could reasonably be understood to mean something more like “Give this idol back to Caesar where it came from. Have nothing more to do with it. Rather, give to God what belongs to him,” though they admit this is not the standard interpretation.<sup>16</sup> In the end, however, Quaker war tax resisters at least do not find such passages problematic; Friends have never been Biblical literalists. Quakers consult the Bible and other wisdom literature as well for guidance but for them it is the Spirit rather than the letter that is primary and they find that the over-riding

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<sup>15</sup> See Braithwaite C. 1995. *Conscientious Objection to Various Compulsions Under British Law*, York, England: Ebor Press at 112-119 for a review of some of this history, and Lynd S, ed. 1966, *Nonviolence in America: A Documentary History*. Indianapolis: Bobbs-Merrill at xxi-xxii who describes how Friends found the specific question about whether to refuse payment of taxes a difficult one.

<sup>16</sup> Dale Brown, “The Bible on Tax Resistance,” *Sojourners*, March 1977, at 14. Quoted in Linda B. Coffin, ed. *Handbook on Military Taxes & Conscience*. (Philadelphia: Friends Committee on War Tax Concerns, 1988), at 30. An earlier Christian pacifist, Leo Tolstoy read the passage in a very similar manner: “To the Tsar or to any one all he wishes... but not what is contrary to God.” Leo Tolstoy, *Writings on Civil Disobedience and Nonviolence*. (Philadelphia, PA: New Society Publishers, 1987), at 266.

message of the Spirit here is expressed in Jesus’ teaching to “love your enemies.” Loving one’s enemies implies not only not killing them oneself, but also not paying a tax to support their destruction.

### **Arguments & Responses**

Such considerations show that war tax resistance is not mere tax-dodging. Pacifist resisters are not denying the legitimacy of taxation *per se*, nor are they attempting to evade payment for personal gain; rather they are driven to take action because their moral beliefs will not allow them to do otherwise—they cannot in good conscience contribute financially to the preparations for war. I now turn to several criticisms that may be made of war tax resistance, and will continue to develop my positive argument as part of the responses to them.

The first criticism we must consider against war tax refusal is based in political ethics. As participants in a democracy we bear certain rights and also certain responsibilities, one of which is to respect the laws that have been passed by our legislators, including the tax laws. After all, this is not a case of taxation without representation; it is our own duly elected governmental officials who imposed these taxes. As citizens in a representative democracy we have general political obligations that derivatively give rise to specific legal obligations. Furthermore, insofar as political obligations are a species of ethical obligation, then we also have a moral duty to abide by the laws of the land. To refuse is to disrespect the rule of law. If we do not agree with the laws our representatives make we always have the option to vote these legislators out of office and replace them with ones who will change the laws. Thus, until the time that we vote to rescind military taxation, it is unethical to refuse to pay.

Resisters agree that people should respect and obey the law, but argue that the moral law is higher than the law of the State and that the former should take precedence if there is a conflict. Some put this in religious terms, saying that they are beholden to

God’s law above human law. Others put it in secular terms, saying that laws must give way if they are unjust. Either way, they are appealing to a well-accepted philosophical distinction between legality and morality. Legality is a contextual political notion so, as such, whatever moral weight it carries it carries is necessarily derivative. Thus, knowing that doing something breaks the law is not by itself sufficient reason to think that it would be immoral to do it because the law itself may be immoral. Indeed, there is certainly a moral obligation to try to change immoral laws, and there can be a moral obligation to break them even before they are changed. Philosophers typically make use of several well-known cases to make these points, such as the slave laws in the United States before the Civil War—laws we now recognize as having been immoral. This particular case is a familiar model for Quaker war tax resisters, for Friends were early abolitionist leaders and were active on the Underground Railroad. To help an escaping slave was to violate the Runaway Slave Act, but conductors on the Underground Railroad concluded that it was their moral duty to do so.

It is not always easy to judge whether a law is unjust and should be broken or how one should go about it. In Socrates’ discussion with Crito he explains the he will not take advantage of an opportunity to escape his execution even though his sentence was unjust because to do so would be to disrespect the laws of Athens and to thereby break a covenant. To try to destroy the law in this way would be to return “wrong for wrong, and evil for evil,”<sup>17</sup> violating his original pacifist principle. However, he does not mean this to be a general argument never to break the law even if it be unjust, but rather an argument about the proper way to do so. After all, we know from the *Apology* that Socrates had already broken what was apparently the law by continuing to practice his philosophical activities and by believing in deities of his own rather than Zeus and the other official gods of the state. Indeed, he stated his intention to continue, respectfully,

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<sup>17</sup> Plato, *Crito*, in Hamilton at 39.

to do so: “Gentleman, I am your very grateful and devoted servant, but I owe a greater obedience to God than to you, and so long as I draw breath and have my faculties, I shall never stop practicing philosophy and exhorting you and elucidating the truth for everyone that I meet.”<sup>18</sup> Crawford argues that Socrates’ view is that one has a duty to break the law when it violates a higher moral law, but not when it simply goes against personal advantage, and so that one must accept the punishment for one’s disobedience.<sup>19</sup> If this interpretation is reasonable, then the notion of civil disobedience that is credited to Thoreau may be a developed footnote to Plato.

The form of war tax resistance that I am defending is a classic form of civil disobedience, for it is public noncompliance with a direct legal injunction or administrative order that one conscientiously believes to be unjust.<sup>20</sup> Indeed, the doctrine of civil disobedience is directly applicable to our current case in that it was originally put forward by Thoreau in the context of his own refusal to pay a tax for war. Thoreau’s resistance was in response to the Mexican-American War, which he opposed not only because it was an aggressive war of expansion that threatened to increase the number of slave states, but also because he felt it improperly violated individual liberty. Civil disobedience, whether of slave laws or war taxes, is an act of conscience that takes a principled stand for morality over mere legality. Thoreau put the point this way:

Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The

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<sup>18</sup> Plato, *Apology*, in Hamilton at 15.

<sup>19</sup> Curtis Crawford, *Civil Disobedience: A Casebook*. (New York, Thomas Y. Crowell Company, 1973), at 2 - 5.

<sup>20</sup> This definition is a slight modification of John Rawls’ definition of conscientious refusal in his *A Theory of Justice* (Cambridge, MA: The Belknap Press, 1971), at 368.

only obligation which I have a right to assume is to do at any time what I think right.<sup>21</sup>

By quoting Thoreau here I do not mean to imply that morality is nothing more than what any individual’s conscience says it is and that the law has no moral weight. For civil disobedience to be philosophically viable as an ethical form of protest it must tread a careful path between absolute individualistic morality and absolute legalism.<sup>22</sup> When Thoreau refused to pay his tax to support the Mexican War on the grounds that it was immoral he was not saying that it was wrong just *because* his individual conscience told him so but because it was objectively immoral, as least so far as he could tell by his lights. Of course it is possible that we may err in our judgment, but we can do no better than to act at each moment on our best ethical evaluation of the circumstances and watch out for self-righteousness. Thoreau recognized as much: “This is my position at present. But one cannot be too much on his guard in such a case, lest his action be biased by obstinacy or an undue regard for opinions of men. Let him see that he does only what belongs to himself and to the hour.”<sup>23</sup>

As for the criticism that civil disobedience indicates disrespect for the law, this could not be farther from the truth. Part of the theory of civil disobedience, as least in its classical form, is that the concept of the rule of law is important, so important that it is necessary to take a strong stand when some specific law is wrong and perhaps to suffer

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<sup>21</sup> Thoreau at 86.

<sup>22</sup> Alan Gewirth discusses how civil disobedience may negotiate the conflicting demands of moral and legal obligation in “Civil Disobedience, Law and Morality: An Examination of Justice Fortas’ Doctrine.” *The Monist* 54 (1970), at 536-555, which is reprinted in Paul Harris, ed. *Civil Disobedience*. (Lanham, MD: University Press of America, 1989), 107-124.

<sup>23</sup> Thoreau at 100.

the consequences while attempting to correct it. Martin Luther King Jr. expressed this well in his 1963 “Letter from Birmingham Jail”:

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.<sup>24</sup>

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One might, however, not be moved by the argument from civil disobedience, on the grounds that providing for the national defense is not immoral so neither are the tax laws that garner the funds for this purpose, unlike those laws that supported slavery or segregation. Indeed, the second major argument against war tax resistance is that maintaining the armed forces for the defense of the homeland is the most basic function of a national government, and thus that its upkeep is a necessary civic responsibility of every citizen. Because all persons benefit from military defense, so all persons have a duty to support it, perhaps even to the extent of being conscripted as a soldier. Given that the government has a political right to institute a military draft, certainly it has the corollary right to levy a tax for its upkeep.

Responding on the negative side, many resisters will challenge the premises of this line of argument, first noting that it is disingenuous to portray the military as though it did no more than “defend the homeland.” It is relatively rare that wars are fought just to repel an attack upon native soil. More often the government has used the military to threaten or directly force other nations to bend to its will. Pacifists are usually ready to review the history of declared and undeclared wars to make this point on a case by case basis. They will also point out aspects of military preparation, such as the development

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<sup>24</sup> Martin Luther King, Jr. “Letter from Birmingham Jail” in Harris 57-71, at 62 to 63.

and use of nuclear weapons, that they say violate international law and that, therefore, a law-abiding citizen has a duty to reject even if moral considerations could be set aside.<sup>25</sup>

This cannot be the end of the argument, of course, since there are true cases of invading armies as well as cases of tyranny and oppression that morality demands be opposed. Regarding these, pacifists have the more difficult side of the argument for they agree that the cause is just but hold that military means to a resolution is morally unacceptable, so here they turn to their positive arguments for active nonviolence.

Resisters will agree that a basic function of a national government is to preserve the common security, but may contest that maintenance of armed forces is the best way to achieve real security. If an ounce of prevention is worth a pound of cure, would we not be better off investing our tax dollars in building a just global society that would reduce the chances of conflict in the first place? As to how to respond to oppression already in place, pacifists promote the way of nonviolence. Bertrand Russell was one who recommended this approach, arguing in a 1915 article that after a generation of training in nonviolent resistance the British population would be able to defeat a German army of occupation by systematic non-cooperation.<sup>26</sup> For empirical test of such theory, we may cite the exemplars of Gandhi, Martin Luther King Jr., Corazon Aquino, and others who have provided successful nonviolent solutions to political conflict.<sup>27</sup> It is true

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<sup>25</sup> See Liane Norman, *Hammer of Justice: Molly Rush and the Plowshares Eight*.

(Pittsburgh, PA: Pittsburgh Peace Institute, 1989).

<sup>26</sup> Bertrand Russell, “War and Non-Resistance.” *Atlantic Monthly*, August 1915, 266-274.

For a review of some proposals for nonviolent civilian defense see chapters 5 and 6 of Randle M. 1994. *Civil Resistance*. London: Fontana Press.

<sup>27</sup> See Gene Sharp’s three volume study *The Politics of Nonviolent Action* (Boston, MA, Porter Sargent Publishers, 1973) for an encyclopedic scholarly review of the history,

that the way of nonviolence carries with it no guarantee of success (but of course neither do violent means), and even if there are situations in which nonviolent measures fail this is no good reason to depart from the moral high road.

To continue these lines of argument would quickly take us to issues of the practicality and efficacy of nonviolence, and from there to larger philosophical disputes about the appropriateness of consequentialist versus deontological reasoning in such matters. Rather than pursue the details of this line of argument, however, I turn to an alternative response. Whether or not we accept a right of the government to raise an army for broad or narrow purposes and to levy taxes to support it, there exists a model exception that should apply to support the plea of war tax resisters for exemption.

The argument that headed this section began with the assumption that the government has a right to conscript persons into the armed forces through a military draft. However, the law that grants this power has an important feature in that it explicitly recognizes the right of those who are conscientiously opposed to participation in war to be exempt from military service. The State’s recognition of Conscientious Objector (CO) status for pacifists has an established history and ample legal basis. Originally CO status was granted only to those who could claim a religious basis for their stand, making it harder for those who were not Quakers or members of one of the other historical peace churches to get their conscientious objection recognized, but over the years interpretation of the law was properly broadened to include those whose sincere opposition to participation in war was based on ethical and moral beliefs by themselves.<sup>28</sup> More recently the right of conscientious objection to compulsory military service was adopted

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techniques and dynamics of nonviolent action, written from a pragmatic, secular perspective.

<sup>28</sup> In America the law was broadened in two Supreme Court cases, *U.S. v. Seeger* 380 U.S. 163 (1965) and *Welsh v. U.S.*, 398 U.S. 340 (1970).

by the Council of Europe.<sup>29</sup> This precedent in the law could reasonably be extended from its application to the military draft to the present case of military taxation.

That it should be so extended makes sense for many reasons, not the least of which is that for resisters their conscientious stand against paying war tax is of a kind with their conscientious refusal to participate in active armed service. Also, by giving war tax resisters a legal way to follow the scruples of their conscience it removes the need for them to break the law and allows them to act conscientiously within the system. The history of resistance to military conscription and taxation indicates that pacifists are willing to suffer personal hardships including beatings, imprisonment and sometimes even execution rather than relinquish their scruples, and it is not in the State’s or the Law’s interest to alienate upstanding citizens or those who sympathize with a stand on conscience even if they do not share the specific scruple. If we give legal recognition to CO status for military taxation the worries about resistance undermining the rule of law do not arise, and the earlier arguments about civil disobedience need not even come into play.

It is important to recognize that, although some resisters base their conscientious opposition to paying military taxes upon religious principles, the argument in favor of a CO exemption for war tax, as for exemption from actual military service, is not itself a religious argument. Rather it has its basis first in legal precedent and, second, in broad

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<sup>29</sup> The “Basic Principle” of Recommendation No. R(87)8, which was adopted on 9 April 1987, is that “Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service... Such persons may be liable to perform alternative service.” Council of Europe, Committee of Ministers. *Conscientious objection to compulsory military service*. Strasbourg: Council of Europe, Publications and Documents Division, 1988, at 6.

considerations of justice. In Rawlsian terms it would come from a rational agreement we would make under the veil of ignorance. In the Original Position, not knowing what values we might hold or what place we might have in society, it would be in our enlightened self-interest to devise a system of law that would permit and protect the greatest possible latitude to religious expression. (American Constitutional law makes freedom of religion a basic right and this was taken to apply indirectly to give a right of religious conscientious objection to military service.)<sup>30</sup> The same argument applies to nonreligious moral values that also underlie conscientious objection.

It is only fair to point out that in Rawls’ own discussion of the justification of conscientious refusal he does not endorse general pacifism but rather “a discriminating conscientious refusal to engage in war in certain circumstances” and he considers only

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<sup>30</sup> One of the first statutes adopted by the Continental Congress in 1775 explicitly guaranteed that religious objectors would be exempted from military service. James Madison proposed an exemption of military duty for those with religious scruples to be included in the Bill of Rights of the new U.S. Constitution. (Twelve state constitutions already recognized this right.) The amendment passed the House but failed in the Senate and so was not included, but Maj. David M Brahms, USMC, argued in “They Step to a Different Drummer: A Critical Analysis of the Current Department of Defense Position Vis-A-Vis In-Service Conscientious Objectors” (*Military Law Review* 47: January 1970), at 6-11, that Madison and other proponents of the failed CO amendment assumed that the right would still be protected under the first and ninth amendments. For an overview of the legal history of conscientious objection in the United States see John Whiteclay Chambers II, “Conscientious Objectors and the American State from Colonial Times to the Present” in Charles C. Moskos and John Whiteclay Chambers II, ed. *The New Conscientious Objection: From Sacred to Secular Resistance*. New York: Oxford University Press, 1993, 23-46.

conscientious refusal based in principles of political justice rather than on religious scruples and concludes that “Given the often predatory aims of state power, and the tendency of men to defer to their government’s decision to wage war, a general willingness to resist the state’s claims is all the more necessary.” He sees general pacifism as an “unworldly view bound to remain a sectarian doctrine”<sup>31</sup> but agrees that it poses no challenge to the state’s authority and that a state may magnanimously grant it a special status, so there is no reason to think that he would object to the proposed argument for legally recognizing conscientious objection.

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A common argument against this sort of proposal appeals to the practical difficulties that would be involved in giving exemptions to war taxes. It asks where the exemptions will stop—if first we allow conscientious objectors to be exempt from war taxes, will we then not have to allow those who oppose foreign aid an exemption for the percentage of taxes for those expenditures? Will we not then soon find our tax forms crowded by a series of check box exemptions for those who do not want their money to go for farm subsidies, family planning or the National Endowment for the Arts?

As for the second point, such slippery slope arguments are never accorded much credence in philosophical circles and, furthermore, complaining about exemptions is particularly out of place in the present context. The tax code is defined more by what it exempts than by what it actually taxes and the vast fabric of the tax law is rife with specially tailored loop-holes. We need to reassess our system of values if we would protest when the conscientious resister wants to withhold money that would be used to

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<sup>31</sup> All three of these quotations are from Rawls at 382. I would want to argue for the legitimacy of Rawls’ notion of “discriminating conscientious refusal,” but must point out that the law currently only grants CO status for those who oppose war generally and, unfortunately, does not recognize “selective” conscientious objection.

kill and maim but raise no fuss about executives who argue for their need to write off business entertainment expenses. Be that as it may, I am not arguing here that resisters be able to subtract out military taxes as though they were unreimbursed employee expenses but that they be allowed to redirect them to peaceful purposes.

As mentioned previously, resisters already commonly redirect their resisted taxes to peacework through the use of alternative funds. Conscientious resisters would like to be able to do this in a legal manner and for decades have been lobbying for the establishment of a Peace Tax Fund. Conscientious objectors to military service were not asking to shirk civic responsibilities and were happy to be able to perform an alternative service. Similarly, conscientious objectors to military taxation wish to have a legally recognized alternative fund so that the portion of their tax that would have gone to military spending goes instead to non-military programs.<sup>32</sup> The simplest and morally most acceptable way to stop the illegal actions of most war tax resisters, obviating most of the arguments we have been considering, would be to institute such an alternative so they could satisfy their consciences without having to break the law.

Finally, war tax resisters hear the argument that their actions make and can make no real difference... that their resistance is futile. This, however, though it may be an argument against being a war tax resister, is no argument against extending CO status to cover those who nevertheless are sincere resisters. And, who knows...standing on principle *could* make a difference. As Thoreau wrote: “Action from principle, the perception and the performance of right, changes things and relations; it is essentially

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<sup>32</sup> The United States Institute for Peace, Head Start, and the Peace Corps are examples of possible alternative programs that would be appropriate. A Peace Tax Fund Bill that would have instituted such an option for CO’s was first introduced in Congress in 1972 and over the years has attracted dozens of cosponsors but has yet to garner sufficient support for passage.

revolutionary.”<sup>33</sup> Perhaps at first only a few religious conscientious objectors would take advantage of the Peace Tax Fund, but their example might eventually inspire many people to examine the ethics of warfare and to withdraw their tax-dollars from the support of war and redirect them to the support of peace. Indeed, this appears to be a real possibility if one extrapolates from the recent trend in conscientious objection to direct military participation, especially in evidence in Europe, in which the number of nonreligious COs has increased to the extent that it now dwarfs the number of those citing a religious basis.<sup>34</sup> This is just the sort of scenario for a peaceable revolution that war tax resisters dream of. However, even if their vision is but a hopelessly idealistic dream, principled action can be positively revolutionary at a personal level for, as Thoreau wrote, “it divides the *individual* separating [out] the diabolical in him from the divine.”<sup>35</sup>

## Conclusion

Resisting an imposed tax as a means of symbolically expressing moral outrage towards some governmental policy has a long history. For Thoreau it was a poll tax. For Gandhi it was a salt tax. For American colonists it was a tax on tea. Pacifists who resist military taxation are following in an honorable revolutionary tradition and they hope that their actions will lead, by example, to a peaceable revolution. And if their ideal is indeed

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<sup>33</sup> Thoreau at 91-92.

<sup>34</sup> See the articles in Moskos CC, Chambers II JW, eds. 1993. *The New Conscientious Objection: From Sacred to Secular Resistance*. New York: Oxford University Press that identified this new pattern in the development of conscientious objection especially beginning in the 1980’s in modern Western democracies, a pattern they term *the secularization of conscience*.

<sup>35</sup> Thoreau at 92.

hopeless and nations continue to study war they desire at least to be free of the immorality of supporting it themselves, directly or indirectly.

While speaking in favor of pacifism, Socrates noted, perhaps with resignation, that “between those who think so and those who do not there can be no agreement on principle; they must always feel contempt when they observe one another’s decisions.”<sup>36</sup> In this essay I have not tried to argue for pacifism itself but have tried to show how the pacifist may reasonably see conscientious opposition to participation in war and to payment of military taxes as being of a kind, and thus that there are good reasons for the law to recognize and exempt the latter as it does the former. Even someone who despises the scruples of pacifists may still recognize the independent arguments that it is reasonable for a government to make a way in the law for them to obey their consciences without having to commit civil disobedience. Establishment of a Peace Tax Fund or some equivalent, for which resisters have lobbied as an alternative so they might contribute their fair share to national (and thereby international) peace and security in good conscience, would provide the means for this win-win option.

Perhaps it is true that the only sure things are death and taxes, but as citizens of a liberal democracy the least we should do is see that our law respects the consciences of those who would not subsidize death by their taxes.

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<sup>36</sup> Plato *Crito*, in Hamilton, at 34.