Saying "No" to War in the Technological Age - Conscientious Objection and the World Peace Tax Fund Act

Charles R. DiSalvo
SAYING "NO" TO WAR IN THE TECHNOLOGICAL AGE—CONSCIENTIOUS OBJECTION AND THE WORLD PEACE TAX FUND ACT †

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In 313 A.D., a dramatic change took place in the Roman world: Constantine became the first Christian to rule the Roman empire. With the ascension of this warrior to the Emperor's throne, the early Church's centuries-old fidelity to pacifism came to a sudden end. Christianity and militarism, once polar opposites, became handmaidens of the new state.¹

Since the time of Constantine, governments have viewed pacifists as a minority to be enslaved in work camps, inducted forcibly into armed service, employed in menial alternative jobs, or simply ignored. The survival of pacifism evidences the movement's dedication to the idea of a witness to peace. One form that witness has taken, and continues to take, is religious resistance to war taxation. Because religious resisters posit that war is an absolute evil, they believe that helping to finance war is an evil itself. Although religious tax resistance in this country has placed its mark on virtually every period of American history, religious pacifists view tax resistance as more important today because of the increasingly technological character of war. Masses of infantrymen are now no longer necessary to launch and wage wars; they have been replaced by a few men capable of deploying thousands of costly, sophisticated nuclear missiles. Technology now supersedes the foot soldier in importance; the conscription of dollars precedes the conscription of persons.

Accordingly, religious objectors feel compelled to resist war both by withholding their tax dollars and their bodies. In the words of one pacifist poet, their "consciences are in His keeping and no other."² To honor their

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1. See R. Bainton, CHRISTIAN ATTITUDES TOWARD WAR AND PEACE 85 (1960). But see Letter from Prof. Joseph Fahey, Ph.D., Director, Peace Studies Institute, Manhattan College, to the author (Jan. 12, 1982). Prof. Fahey indicated that, according to legend, Constantine was not baptized until he was on his deathbed. Fahey also believes that pacifism did not cease to be a mainstream witness of the early Christians until the late fourth century with "the acceptance of SS. Ambrose and Augustine of the Just War principles which had earlier been developed by Plato, Cicero and others." Id.

2. D. Berrigan, (excerpt from an unpublished poem adapting prose originally found in NIGHT FLIGHT TO HANOI at xvi (1969)). Berrigan, noting the moral motivation of objectors, stated: "In a time of death, some men—they proclaim their love of the brethren." D. BERRIGAN, NIGHT FLIGHT TO HANOI at xix (1969) [hereinafter cited as NIGHT FLIGHT].
consciences on this matter, religious pacifists have tried numerous alternatives to paying for war: voluntarily earning so little that their incomes fall below taxable levels; refusing to file with the Internal Revenue Service (IRS); filing with the IRS but refusing to pay; filing and paying income taxes but seeking a "war tax refund"; paying their taxes to peaceful agencies and a host of other ad hoc solutions. Because these alternatives cause pacifists to change their lifestyles radically, force them to endure jail sentences, or worse, to violate their consciences, pacifists have found none of the alternatives to be satisfactory.

In recognition of this country's long-standing tax resistance history, and to solve the resister's dilemma, Sen. Mark Hatfield (R. Ore.) and others have proposed the World Peace Tax Fund Act (WPTFA). Specifically, the Act would require pacifists to tender 100% of the tax owed on their incomes but would restrict the government's use of these revenues to peaceful purposes.

This Article will analyze the constitutional dimensions of religious resistance to war taxation and propose that relief for conscientious objectors is sensible in light of this country's long and substantial history of such resistance. In addition, the World Peace Tax Fund Act will be explained briefly and consideration will be given to the issue of whether passage of the Act would be in the best interests of pacifism.

RELIGIOUS RESISTANCE TO WAR TAXATION IN AMERICA

Judicially created law in the United States is punctuated with frequent references to history as precedent. For example, in Walz v. Tax Commissioner, the United States Supreme Court relied in substantial part upon the long-standing historical tradition of granting property tax exemptions to churches to uphold the constitutionality of such exemptions.

In contrast, when considering the legitimacy of war tax resistance, nearly all courts steadfastly have refused to recognize, or simply have been ignorant of, the long history of religious resistance to war taxes in this coun-

3. See D. KAUFMAN, THE TAX DILEMMA: PRAYING FOR PEACE, PAYING FOR WAR 51-67 (1978) [hereinafter cited as TAX DILEMMA]. See also infra note 91 and accompanying text.
6. 397 U.S. at 676-78. As Justice Burger stated:
   Few concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference.
Id. at 676-77. See also Hurvich, Religion and the Taxing Power, 35 U. CIN. L. REV. 531, 534-35 (tracing tax exemption for the Christian church to that originated in the fourth century A.D. by the Roman emperor Constantine).
try. Likewise, Congress has refused to accommodate religious objectors to war through legislation. Yet, religious resistance to the conscription of dollars for war is a serious element of political and spiritual life that has surfaced throughout American history. This long history of resistance merits the attention of both judicial and legislative lawmakers.

The American Friends, commonly known as the Quakers, were the first, and remain the most famous, American resisters. The first instance of organized Quaker resistance to war taxes occurred between 1693 and 1711. During that period, various requests by the Crown to the Quaker-controlled Pennsylvania Assembly for monies to fight the French and Indians were either rebuffed or evaded on the basis of the religious principle that the Quakers were committed to giving witness to peace.

By 1755, Quaker religious sentiment had divided over war tax resistance, spurred on by the guilt that city-dwelling Quakers began to feel for not contributing to the defense of their compatriots who were subject to Indian attacks in the frontier areas. One prominent Quaker who resisted, and remained faithful to his religious principles, however, was John Woolman. In his famous journal, a literary masterpiece, Woolman recorded that “

7. See, e.g., Farmer v. Rountree, 149 F. Supp. 327 (M.D. Tenn. 1956) (court concluded it was without jurisdiction to review issues of military policy entrusted to other branches of government), aff’d per curiam, 252 F.2d 490 (6th Cir. 1958); Anthony v. Commissioner, 66 T.C. 367 (1976) (rejecting “war crimes” and free exercise arguments); Egnal v. Commissioner, 65 T.C. 255 (1975) (rejecting “war crimes” argument); Russell v. Commissioner, 60 T.C. 942 (1973) (rejecting free exercise and “war crimes” arguments); Muste v. Commissioner, 35 T.C. 913 (1961) (rejecting free exercise argument). The “war crimes deduction” unsuccessfully asserted by the petitioners in Anthony, Egnal, Russell, and other cases is based on the theory that payment of that portion of taxes that would be used to conduct the war in Indochina would amount to the petitioner’s complicity in the commission of war crimes in violation of the Nuremberg Principles. See Scheide v. Commissioner, 65 T.C. 455, 456 (1975).

8. I. SHARPLESS, A QUAKER EXPERIMENT IN GOVERNMENT 195-202 (1898). In 1693, Governor Fletcher, acting governor of Pennsylvania, knew the difficulties of levying taxes on Quakers to finance a war and therefore offered an alternative. “If there be any among you that scruple the giving of money to support war, there are a great many other charges in that government for the support thereof. . . . Your money shall be converted into these uses and shall not be dip in blood.” Id. at 196 (citing 1 COLONIAL RECORDS 361).

9. For example, when the Crown attempted to raise money to hire an army to fight the French in Canada, the Pennsylvania Assembly resolved that they could not directly or indirectly raise money for an expedition to Canada, but they had voted the Queen £ 500 as a token of their respect, etc., and that the money should be put into a safe hand till they were satisfied from England it should not be employed for the use of war.

10. For a vivid incident illustrating this point, see THE JOURNAL OF JOHN WOOLMAN 68-69 (J. Whitney ed. 1950) [hereinafter cited as JOURNAL]. See also J. WHITNEY, JOHN WOOLMAN, AMERICAN QUAKER 212 (1942) [hereinafter cited as QUAKER].

11. Woolman’s biographer, Janet Whitney, calls the JOURNAL “the first American classic” and relates that “Charles Lamb advised those who wished to write well ‘to get the writings of
spirit of truth required of him, as an individual, to suffer patiently the
distress of goods rather than pay war taxes actively.’’

Thus, when he ar-

rived at the Friends’ Yearly

Meeting, he led an effort to have the Friends
oppose the war tax the Pennsylvania Assembly was requesting of the
citzenry. As a result of his efforts, an appeal to conscience was sent to the
Assembly which summarized, perhaps more eloquently than any document
since, the dilemma that conscience tax resisters faced.

Although we shall at all times freely and heartily contribute according to
our circumstances either by the payment of taxes or in such other manner
as may be judged necessary towards the exigencies of government . . . yet
as the raising sums of money and putting them into the hands of commit-
tees who may apply them to purposes inconsistent with the peaceable
testimony we profess and have borne to the world appears to us in its
consequences to be destructive of our religious liberties, we apprehend
many among us will be under the necessity of suffering rather than con-
senting thereto by the payment of a tax for such purposes; and thus the
fundamental part of our constitution may be essentially affected and that
free enjoyment of liberty of conscience for the sake of which our
forefathers left their native country and settled in this, a wilderness, by
degrees be violated.

Nonetheless, the assembly, dominated by a majority that was only
nominally Quaker, turned a deaf ear to the appeal and decided to levy war
taxes. Clearly, Quaker unity on the war tax issue was eroding as principle
gave way to practicality.

Religious resistance to taxation experienced a revival among Quakers dur-
ding the American Revolution when they resisted taxes earmarked specifically
for war purposes, as opposed to multi-purpose, or “mixed” taxes. As one
historian has observed, “most Friends . . . had a clear sense that . . . both
payment and collaboration with the machinery of levying such tax[es] con-
stituted a contravention of the discipline.”

Quakers also suffered both the

John Woolman by heart.’’ Whitney, Preface to THE JOURNAL OF JOHN WOOLMAN at vii (J.
Whitney ed. 1950).

12. JOURNAL, supra note 10, at 66.

13. The Meetings were annual assemblies in which Quakers would discuss and adopt for-
mal positions on various moral issues. Cf. P. Brock, PACIFISM IN THE UNITED STATES 34
(1968) [hereinafter cited as PACIFISM].

14. QUAKER, supra note 10, at 210-11. Whitney suspects Woolman’s hand in the composi-
tion of this appeal. Id. It is certain that other of “the most influential and ‘weighty’ Quakers
were involved, notably Anthony Benezet, Anthony Morris, John Churchman, and Israel and
John Pemberton.” I. SHARPLESS, A QUAKER EXPERIMENT IN GOVERNMENT 219-20 (1898).

15. According to one historian, all but four Quaker assemblymen voted in favor of levying
a war tax “evidently regarding [their coreligionists’ plea] as an uncalled-for intervention in
what was none of their business.” PACIFISM, supra note 13, at 139. Woolman’s influence as an
individual resister continued, however, as fellow resisters turned to him for advice. See JOUR-
NAL, supra note 10, at 74; QUAKER, supra note 10, at 242.

16. PACIFISM, supra note 13, at 209-10. Brock notes that at least one Quaker, Eli Yarnell,
refused appointment as a tax collector because many of the taxes he would be obliged to col-
lect would be allocated for war purposes. Consequently, Yarnell suffered a fine and distraint.
Id. at 209 n.54 (citing BIOGRAPHICAL SKETCHES AND ANECDOTES OF MEMBERS OF THE RELIGIOUS
SOCIETY OF FRIENDS 326-28 (1870)).
customary distraint of goods as well as prison sentences for resistance to “mixed” and specific war taxes. 17 In addition to the Quakers, there was a substantial group of Mennonites in Pennsylvania who refused to comply with requests for war taxes. 18 Although suspicions abound that the Mennonites’ refusal was based on their respect of the King rather than on a religious doctrine, 19 at least one of their prominent members practiced principled refusal. The Mennonite Andrew Ziegler believed that forcing Mennonite people to pay war taxes was the equivalent of “forcing non-resistant people to go to war.” 20 Apart from the physical danger involved in war, Ziegler saw no difference between going to war and paying the tax which supported the war. 21

In both the Revolutionary War and the War of 1812, some Quakers perceived that levies attached to imported products were enacted for the purpose of supporting military activities. 22 Thus, Quakers like Joshua Evans (1731-1798) and Isaac Martin (1758-1828) refused to buy or sell imported items. As a result, Evans and Martin suffered social and financial setbacks for their witness. 23

The seizure of property was one inconvenience willingly suffered by early American war tax resisters that still is endured today. Neither seizure, nor apparently any other sanction, was feared by New Hampshire Shakers when, in 1818, their state attempted to extract taxes from them to support the state military. Their response to the state legislature was that the commands of individual conscience should be placed above those of men. It rivals the Pennsylvania Friends’ appeal 24 in eloquence:

[s]hould we consent to pay a tax as an equivalent this could be a virtual acknowledgement that the liberty of conscience is not our natural right; but may be purchased at a stated price.

Such a concession involves in it, a principle derogatory to the Almighty; because it requires us to purchase of government, liberty to serve God with our persons, at the expense of sinning against him with our property.

17. Pacifism, supra note 13, at 210-11. Some Pennsylvania Quakers spent periods of up to two years in prison for nonpayment of taxes. Id. at 211.
19. J. Wenger, A History of the Mennonites of the Franconia Conference 346 (1937). One author surmises that in influential Quaker circles, strong pro-British sentiment may have helped to exacerbate the reluctance to pay money to a rebellious administration. Pacifism, supra note 13, at 210.
21. Tax Dilemma, supra note 3, at 22 (citing J. Ruth, 'Twas Seeding Time: A Mennonite View of the American Revolution 163 (1976)).
22. Pacifism, supra note 13, at 353.
23. Id. at 353-54. Martin, especially, suffered financial loss because, as a shopkeeper, he had chosen not to sell such dutied goods even if he had them in stock. Id. at 354. Modern analogues to Evans and Martin are those resisters who keep their incomes below taxable levels to avoid the tax dilemma.
24. See supra note 14 and accompanying text.
Therefore viewing the liberty of conscience more dear to us than life itself, we feel ourselves impelled by the most sacred obligations of duty, to decline... doing any thing whatever to aid, or abet the cause of war, let the consequences be what they may.21

Quakers and some members of other peace denominations rarely hesitated in their refusal to pay levies that were clearly earmarked for financing war activities.26 One became a witness to peace by refusing to pay such taxes. No common agreement has existed, however, among tax resisters, Quakers, or others, regarding an appropriate stance toward "taxes in the mixture," general taxes levied for military and non-military purposes.

This issue was particularly acute on each side of the Mason-Dixon line during the Civil War. In the North, Joshua Maule was the leading exponent of the doctrine that payment of taxes known to be partially financing war efforts constituted a breach of faith with peace testimony. Maule practiced his understanding of Quaker principles by enacting a personal variation of the World Peace Tax Fund Act. In 1861, he calculated that 8.5% percent of his taxes were employed for the war effort. He then deducted this share and paid the balance. Consequently, the government seized his goods to remedy the deficiency.27 Maule continued this practice in the following years but he never was able to convince the Quaker majority of the propriety of his position. The Western Yearly Meeting of 1861 and the New England Yearly Meeting of 1862 refused to put their imprimatur on the Maule position and, thus, did not urge their members to refuse to pay mixed taxes.28

An equally moderate position in the North was taken during the Civil War by the Church of the Brethren. The Church's Annual Conference counseled members against paying bounty money for military substitutes but urged them not to resist the fines and taxes that inevitably followed such refusal.29

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25. A Memorial of the Society of People commonly called Shakers, containing a brief statement of the principles and reasons on which their objections and conscientious aversion to bearing arms, hiring substitutes, or paying an equivalent in lieu thereof, are founded (June, 1818), quoted in CONSCIENCE IN AMERICA 77 (L. Schlissel ed. 1968).

26. See PACIFISM, supra note 13, at 209, 417.

27. Id. at 761-62. Throughout the Civil War, Maule was troubled that most Quakers consented to paying general taxes just as they had in peacetime. He believed that these people had failed to truly examine the full implications of their pacifism. Maule attributed this failure to the fact that influential Quakers had advised tax payment. Id. at 762.

28. The Western Meeting stated, "We feel that we escape condemnation when the Magistrate and not the tax payer assumes the responsibility of its specific appropriations." Min. of the Meeting for Sufferings of Western Yearly Meeting 40 (Sept. 19, 1861), quoted in E. WRIGHT, CONSCIENTIOUS OBJECTORS IN THE CIVIL WAR 48 (2d ed. 1961). The New England Meeting urged members to continue to pay their taxes "cheerfully... without attempting to make any impracticable distinctions respecting such taxes as may be imposed upon them for the support of our Government." Min. of the Meeting for Sufferings of New England Yearly Meeting 274 (Aug. 20, 1862), quoted in E. WRIGHT, CONSCIENTIOUS OBJECTORS IN THE CIVIL WAR 48 (2d ed. 1961).

The question of tax resistance also was raised in the South with no clear resolution. Quakers in Virginia and North Carolina were urged by their respective Meetings to resist military service and the fines accompanying such resistance. These Meetings, however, specifically drew the line at that point; the payment of "all taxes" was to continue.

Religious resistance to war taxes virtually disappeared during World War I as the peace movement was challenged by the overpowering demand for ideological uniformity. The incidents of active resistance that did occur took the form of opposition to conscription and the refusal to buy the Liberty Bonds that the government depended upon to support the war effort. Between World War I and II, with the moral problems of financing war and patriotism no longer of immediate concern, the tax resistance movement remained dormant. Among churches, only the Church of the Brethren evinced an institutional concern, but this concern fell short of urging outright tax refusal. Resistance continued to be slight throughout most state, trying to attract settlers after the Civil War, excused Mennonites from the $30 tax levied on those who wished to be relieved of military service. Whatever the state's motivation, this is a rare example of an exemption for those taxpayers who conscientiously object. Tax Dilemma, supra note 3, at 36-37.

30. E. Wright, Conscientious Objectors in the Civil War 97 (2d ed. 1931). The Quakers of both Virginia and North Carolina endorsed the view that "we pay all taxes imposed on us as citizens, remembering the injunction, 'Tribute to whom tribute is due, custom to whom custom'; believing that upon the Government rests the responsibility of how they expend this tribute or custom." Id. (quoting Min. of Yearly Meeting for Sufferings of N. Carolina, 1861).

31. In the words of one author, "Their spirits low, sorrow in their hearts, they bowed to the inevitable." M. Curti, Peace or War, The American Struggle, 1636-1936, at 254-55 (1936). See also C. Chatfield, For Peace and Justice: Pacifism in America, 1914-1941, at 25 (1971) (when the United States entered World War I, new pacifist groups cast about for public support, as many former leaders of the pacifist movement accepted the war effort and gave up peace work).

32. One writer has documented the cases of three such bond resisters who were subjected to varying forms of mob violence. See Tax Dilemma, supra note 3, at 39-40. A minority of members of the Church of the Brethren also refused to purchase Liberty Bonds. R. Bowman, The Church of the Brethren and War, 1708-1941, at 94 (1971).

33. The troubles experienced by the pacifist movement in the inter-war period are illustrated in microcosm by the defections from, and changes in emphasis of, the American Fellowship of Reconciliation. For a summary of this period, see P. Brock, Twentieth Century Pacifism 142-50 (1970).

34. In response to a query from a West Virginia Brethren group, the Church's 1933 Conference advised resisters to:

1. Paste a small sticker in your income tax returns and other payments made to the federal government, which reads as follows: "That portion of this tax devoted to armaments and war preparedness is paid under protest." The Board of Christian Education will furnish these stickers.

2. Write a letter once a year to your congressmen protesting against the appropriation of funds for military and naval purposes.

3. Protest personally when paying federal taxes, such as the federal gasoline tax.

4. Protest through resolutions from local churches, district and Annual Conferences.

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of World War II because that war most closely approximated the "just" war. 35

In contrast to the relative indifference to the tax question that characterized the post-World War I period, the final weeks of World War II, specifically the atomic tragedies of Hiroshima and Nagasaki, left in their wake shocked consciences and renewed dedication to war tax resistance. Shortly after the war ended, a disparate group of pacifists met in Chicago and formed the Committee for Non-Violent Revolution (Committee). The Committee, a coalition of many groups, broadly attacked capitalism and militarism. In particular, the organization urged the citizenry to "refuse to serve in the armed forces, give financial support to the government, [and] work in war plants or cooperate with the conscription program." 36

The Committee did very little before it was absorbed into a more successful post-war group, the Peacemakers. Peacemakers was formed in April of 1948 as a "network of local, radical pacifist cells" openly urging resistance to war-making efforts, particularly to the draft. 37 More importantly, the Peacemakers made a specific, concerted effort to encourage tax resistance through a sub-group of Peacemakers, the Tax Refusal Committee, who vigorously promoted war tax resistance through publications and public statements. 38 The religious strain in the Peacemaker movement revealed itself in the words of one member who declared: "How can I in decency turn over money to pay another to make or use . . . atrocious weapons on other human beings and children of God?" 39

One Peacemaker who dominated the post-war tax resistance movement in the United States was A.J. Muste. 40 Beginning in January, 1948, Muste

35. Historian Roland Bainton has written:

All such discussion [of pacifism] was cut short in the United States by Pearl Harbor. As usual in war, pacifism receded . . . By and large . . . concerted opposition to the war had folded up. The main reason was that the Japanese attack had solidified the country . . . The Axis powers certainly did their best to provide for the United Nations all the normal conditions of the just war. Many former pacifists argued that under the circumstances the best way to further the peace was to finish the war.


37. WITTNER, supra note 36, at 157.

38. Id. at 158. "Non-payment took two forms: earning less than the minimum taxable balance, or earning more than the minimum but refusing to pay all or part." Id.

39. Id.

40. Muste, an eclectic religious figure, was ordained a minister of the Dutch Reformed Church in 1909, served as a pastor of a Congregational Church in Newtonville, Massachusetts during World War I, and was a member of the Society of Friends. When he became the executive secretary of the Fellowship of Reconciliation, a World War II pacifist group, Muste relinquished the pastorate of his last church. See generally N. HENTOFF, PEACE AGITATOR: THE STORY OF A.J. MUSTE (1963) [hereinafter cited as HENTOFF].
refused to voluntarily pay any of his federal income taxes because he "had to find every possible means to divorce [himself] from any voluntary support of the crowning irrationality and atrocity of atomic and bacterial war." His resistance eventually brought him into court in one of the early Tax Court decisions on religious resistance to war taxes, *Muste v. Commissioner.*

*Muste* previewed the arguments that were to be used, albeit unsuccessfully, in subsequent war tax resistance cases. Muste argued that the first amendment immunized him from paying war taxes; that he could not be compelled to pay war taxes "by virtue of the Nuremburg Principles of International Law"; and that, should he have been forced to pay, the Constitution excused him from affirmatively cooperating with the collection process.

Although the Tax Court rejected these arguments and refused to exempt Muste from taxation, the court did not find Muste guilty of tax fraud. By noting that Muste had not attempted to conceal his earnings from the Internal Revenue Service and had no evil motive in refusing to file, the court provided Muste with a limited victory.

Muste was undaunted by the court's decision that his religious beliefs did not excuse him from paying income taxes. He remained a strong leader in the Fellowship of Reconciliation, and continued to resist tax payments until his death in 1967. Muste, who served as a model for other religious tax resisters during his lifetime, died before he could witness the relatively broad-based resistance to war taxes that the Vietnam War sparked.

In the late 1960's, to help finance the military effort in Vietnam, the national government imposed an excise tax on telephone use, the proceeds from which tacitly were assumed to finance the war. The tax was an ideal

41. *Id* at 125 (quoting letter from Muste to *New York Times*, United States Attorney General, and Federal District Attorney in New York (1949)).
42. 35 T.C. 913 (1961).
43. See infra note 87.
44. *Id.* at 917. Muste's attorney, Cornell law professor Harrop Freeman, relied on the following statement of the Nuremburg Tribunal, citing the Atlantic Charter, to justify Muste's refusal to support war: "The very essence of the [Atlantic] Charter is that individuals have international duties which transcend the National obligations of obedience imposed by the individual State." *Hentoff, supra* note 40, at 127.
45. 35 T.C. at 917.
46. *Id.* at 921.
47. See *Hentoff, supra* note 40, at 127-28. Freeman, Muste's attorney, explained that he and Muste decided not to appeal because the tax fraud decision was resolved in their favor and they might have lost on appeal. *Id.*
49. One resister remarked, "When a man as respected as A.J. refuses to pay taxes, it's like Jeremiah walking down the street naked. People stop, look, and listen." *Hentoff, supra* note 40, at 129.
target for war resisters for several reasons. First, it was readily identifiable as a war tax because Congress had recognized it as such. Second, it was not the "tax in the mixture" that historically has given Quakers and others trouble. Third, individuals could resist the tax by simply omitting it when paying their telephone bills without running the risk of having the telephone company terminate service. Consequently, thousands of war protestors, including significant numbers of religious persons, resisted payment of this tax. In addition, some religious institutions, including a few Mennonite and Church of the Brethren congregations, withheld their telephone taxes as organizational actions.

Although non-religious resistance to this excise tax has declined today, many religiously motivated resisters still refuse to pay the tax. More im-


51. Telephone conversation with Rev. James B. Callan, Administrator of Corpus Christi Church, Rochester, N.Y. (Nov. 23, 1980). Father Callan was one of those who publicly refused to pay their phone taxes during the Vietnam War.

52. The Internal Revenue Service (IRS) monitored tax protest cases during the Vietnam War era. The following table is derived from figures reported in a series of memoranda, dated 1968 through 1973, from the IRS Program Review and Analytical Staff to the IRS Collection Division Director.


<table>
<thead>
<tr>
<th>Year</th>
<th>Telephone Tax</th>
<th>Income Tax</th>
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<tbody>
<tr>
<td>1968</td>
<td>17,631</td>
<td>557</td>
</tr>
<tr>
<td>1969</td>
<td>15,016</td>
<td>1,401</td>
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<td>1970</td>
<td>28,760</td>
<td>1,648</td>
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<td>1971</td>
<td>56,445</td>
<td>1,740</td>
</tr>
<tr>
<td>1972</td>
<td>70,545</td>
<td>303</td>
</tr>
<tr>
<td>1973*</td>
<td>34,738</td>
<td>644</td>
</tr>
</tbody>
</table>

* First six months only.


Because of the significant decrease in reported income tax protest cases from 1971 to 1972, the figure given for 1972 is suspect. In its memo for the period, the IRS itself confesses, "it is difficult for us to imagine why the income tax protests have shown such a drastic decrease." I.R.S. Memorandum, Vietnam Protest for CY 1972 (Jan. 24, 1973).

53. See Tax Dilemma, supra note 3, at 48.

portantly, however, resistance to the use of income taxes for military purposes again has become the subject of debate. One Catholic archbishop has publicly called for Catholics to consider resisting their income taxes to protest governmental spending on nuclear arms.35 Some individual Catholics and Protestants have joined forces with members of the historic peace churches to form the Center on Law and Pacifism. The Center, “a religious pacifist organization” in the “Jewish and Christian tradition,” has offered legal services to religious tax resisters.36 Finally, the National Council for a World Peace Tax Fund has lobbied Congress for an exemption for religious resisters from war taxes.37

**THE WORLD PEACE TAX FUND ACT**

Presently, all federal income tax is paid into the general fund of the United States Treasury. Consequently, once the annual federal budget is approved, taxpayers have no control over the use of their tax dollars. Because a large portion of the budget is devoted to spending for military purposes,38 pacifists justifiably fear that substantial portions of their taxes support such expenditures.39 Like their historical counterparts, today’s pacifists base their objection on the religious ground that one cannot follow the teaching to love one’s enemy and yet pay to kill that enemy.40

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57. NATIONAL COUNCIL FOR A WORLD PEACE TAX FUND, WORLD PEACE TAX FUND: TAXPAYERS IN PURSUIT OF PEACE (undated pamphlet). The World Peace Tax Fund has been endorsed by a number of religious bodies, including the United Methodist Church, the United Church of Christ, the Church of the Brethren, the Mennonite Church, the General Conference of the Mennonite Church, the U.S. Catholic Conference’s Division of World Peace and Justice, and the Friends Committee on National Legislation. Id.

58. The New York Times estimates that, as of June, 1980, military spending consumed 25% of the federal budget and would rise to 28% within the next five years. N.Y. Times, June 18, 1980, at A16, col. 1. The federal budget, of course, contains huge amounts of money from “trust funds” (e.g., Social Security, highway, and airport trust funds). When these budget outlays are set aside and only income tax revenue is examined, the percentage of military-related spending rises to 49.1%. NATIONAL COUNCIL FOR A WORLD PEACE TAX FUND, HOW MUCH OF YOUR TAX DOLLAR WENT FOR MILITARY PURPOSES? (1980).

59. The historic counterparts to today’s pacifists never reached a consensus regarding taxes in the mixture because many had no objection to paying such taxes. See supra text accompanying notes 23-25.

60. One pacifist has inquired:

How can one pray for peace and pay for war?

. . . .

If I were to say to you, “I will not kill my neighbor, but I will pay for someone else to do it,” would you not question my integrity? If we refuse to kill our
Tax resisters, however, have no desire to withhold that portion of their taxes allocated to non-military purposes.\textsuperscript{61} Because taxpayers are currently unable to restrict the use of their taxes to support only non-military programs, a dilemma arises: pacifists must either pay taxes and violate their consciences or resist payment and suffer civil and, possibly, criminal penalties.\textsuperscript{62} Ironically, the civil penalties resulting from resistance simply enrich the Treasury.

The World Peace Tax Fund Act\textsuperscript{63} is designed to rescue pacifists from this dilemma. Under the Act, the Comptroller General is obligated to determine “the percentage of actual appropriations made by the United States from the Federal Funds Budget during the preceding fiscal year which were made for a military purpose.”\textsuperscript{64} This percentage is multiplied by the sum of the federal income, estate, and gift taxes paid by the conscientious objector. The resulting amount, representing that portion of the objector’s taxes that otherwise would have been spent for military purposes, is then transferred to the World Peace Tax Fund (Fund).\textsuperscript{65} The balance of the objector’s taxes is deposited in the general fund, with the proviso that “no part of the

neighbor but allow our government to do it with our money, are we not to be held accountable?

\textsc{People Pay For Peace} 3-4 (W. Durland ed. 1980).

61. This position has its roots in the Quaker tradition of paying taxes “in the mixture”, which Quakers believe “Christ had required his followers to pay regardless of the fact that Caesar might apply a part for war purposes.” \textsc{Pacifism, supra} note 13, at 31.

62. For a discussion of the consequences of resistance, see \textsc{People Pay For Peace} 15-19 (W. Durland ed. 1980).

63. S. 880, \textit{supra} note 4.

64. \textit{Id.} at § 6(a). Obviously, the figure indicating the percentage of the budget that was spent for military purposes will be accurate only to the extent that the percentage of the preceding year’s military expenditures approximates the current year’s. The Act defines military purposes as “any activity or program conducted, administered, or sponsored by an agency of the Government which effects augmentation of military forces, defensive and offensive intelligence activities, or enhances the capability of any person or nation to wage war.” \textit{Id.} at § 11(1). The Act also states that “actual appropriations for military purpose” includes but is not limited to amounts appropriated by the United States in connection with:

(A) the Department of Defense;
(B) the Central Intelligence Agency;
(C) the National Security Council;
(D) the Selective Service System;
(E) activities of the Department of Energy that have a military purpose;
(F) activities of the National Aeronautics and Space Administration that have a military purpose;
(G) foreign military aid, and foreign economic aid made available to any country for the purpose of releasing local funds for military activities; and
(H) the training, supplying, or maintaining of military personnel, or the manufacture, construction, maintenance, or development of military weapons, installations, or strategies.

\textit{Id.} at § 11(2).

65. \textit{Id.} at § 6(b). The World Peace Tax Fund would be established under § 2 of the proposed Act. \textit{Id.} at § 2.
money [so] transferred to the general fund . . . shall be appropriated for any expenditures, or otherwise obligated for military purposes." 66

The Act directs that the Fund will be controlled by an eleven member Board of Trustees appointed by the President and Congress. 67 The Board is authorized to support a variety of peaceful activities through grants, loans, and other funding mechanisms. 68 Such activities would include efforts toward disarmament, the retraining of workers displaced by conversion from military construction, the improvement of international health, education, and welfare, and research directed toward peaceful resolution of international disputes. 69

**Taxpayer Eligibility**

The Act also delineates the standards for determining which taxpayers are eligible to have their taxes segregated between the Fund and non-military governmental spending. 70 These standards are based on section 6(j) of the Military Selective Service Act. 71 Essentially, an eligible individual is one who claims on his or her tax return to be conscientiously opposed to war in any form and who either has been given conscientious objector status by the Selective Service System, or can prove to the Secretary of the Treasury (Secretary) that he or she, by religious training and belief, is conscientiously opposed to participation in war in any form. 72 An important guideline supplied by the Selective Service Act provides that "religious training and belief" does not include "essentially political, sociological, or philosophical views, or a merely personal code." 73

From the preceding summary of the statute, one might deduce that the criteria necessary to be set forth on the tax return to enable a taxpayer to obtain objector status are: (1) that the taxpayer be opposed to participation in all wars; (2) that his objection be based on "religious training and belief"; and (3) that his objection not be based on political, sociological,

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66. Id. at § 6(c). The difficulty with this last provision is manifest: What guarantee will the objector have that these monies will not be used, as are other general funds, for military purposes? Although it appears that the sponsors of the Act wanted to insure that the non-military portion of objectors' taxes be used for non-military purposes, they failed to establish a special second fund for their disbursement.

67. Id. at §§ 7(a)-(b). Under the terms of the Act, the President would appoint nine of the eleven Board members with a maximum of five from the same political party. The President Pro Tempore of the Senate would appoint one Board member from the Senate membership and the Speaker of the House would appoint the last member from the House membership. Id.

68. Id. at § 8(a).

69. Id. at § 8(c).

70. See id. at § 3(a).

71. 50 U.S.C. app. § 456(j) (1976). Section 456(j) would be incorporated into § 3(a) of the proposed Act. Section 456(j) exempts from military service persons who "by reason of religious training and belief [are] conscientiously opposed to war in any form." Id.

72. S. 880, supra note 4, at § 3(a).

philosophical, or personal views. If these are the only criteria listed on the return, however, the Secretary will be doing many taxpayers a disservice in that a number of legally eligible objectors would not designate themselves as such. A simple listing of the statutory criteria, based in part on section 6(j) of the Selective Service Act, would be inadequate because it would not reflect the broader interpretation of section 6(j) that the Supreme Court provided in Welsh v. United States. Specifically, the Court held that persons qualify as conscientious objectors if (a) their opposition to war stems from their moral, ethical, or religious beliefs about what is right and wrong, and (b) these beliefs are held with the strength of religious convictions. Therefore, in fairness to taxpayers, the Secretary should be required to provide criteria consistent with the Welsh decision.

Should the Secretary believe that such liberalized criteria are being abused, the proposed Act enables him or her to require anyone claiming objector status on his or her income tax returns to "provide such additional information as may be necessary to verify his status" as an objector. This language will apply to a large part of the objector population and will include all persons never before the Selective Service System or its predecessors and all those objector applications that were rejected by the System or its predecessors. As a result, a significant part of the objector population unfortunately might be subject to the limited discretionary power vested in the Secretary. Far less discretion would be vested in the Secretary if pacifists were required to examine section 6(j) of the Selective Service Act and determine for themselves whether the criteria are met. Such a procedure would not encourage abuse because taxpayers do not escape any tax liability by determining that they are eligible to segregate tax funds.

Although the Secretary potentially could abuse his power of discretion in the same manner displayed by local draft boards during past wars, a solu-

74. 398 U.S. 333 (1970). The Welsh case involved a defendant who was convicted for refusing to serve in the Armed Forces despite his claim for conscientious objector status under § 6(j) of the Military Selective Service Act. Id. at 335. In filling out his exemption application, Welsh was unable to sign the statement as provided on the Selective Service form. The statement read: "I am, by reason of my religious training and belief, conscientiously opposed to participation in war of any form." Id. at 336-37. Welsh signed only after striking the words "my religious training and" because he had discontinued his childhood religious ties. Id. Nevertheless, because the defendant's beliefs functioned as a religion in his life, the Court held that he was just as entitled to a "religious" conscientious objector exemption under § 6(j) "as is someone who derives his conscientious opposition to war from traditional religious convictions." Id. at 340.

75. Id. at 339-40. The Welsh Court's holding was controlled by an earlier Supreme Court decision, United States v. Seeger, 380 U.S. 163 (1965). In Seeger, which involved strikingly similar facts, the Court stated that in determining whether one qualifies for the service exemption "[the] task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious." Id. at 185 (emphasis added).

76. S. 880, supra note 4, at § 3(a).

77. See, e.g., Wolff v. Selective Serv. Local Bd. No. 16, 372 F.2d 817 (2d Cir. 1967) (local board acted without authority in reclassifying registrants because of their demonstration against Vietnam conflict); Townsend v. Zimmerman, 237 F.2d 376 (6th Cir. 1956) (injunction
tion for arbitrary and inconsistent applications of the criteria is provided in the Act. Any time the Secretary determines that a taxpayer does not meet the requirements to qualify for tax segregation, the Secretary must seek a declaratory judgment in support of his decision from the United States District Court in which the taxpayer resides.\(^7\) Thus, objectors are protected from inconsistent and capricious applications of the Act without placing a heavy litigation burden upon them. By placing this burden on the Secretary on a case-by-case basis, the Act creates an incentive for the Secretary to bring only those cases that represent a serious challenge to his interpretation of the law. Consequently, although most objectors will be self-selected, a uniform characterization of objectors will prevail.

The Act limits participation to those who are opposed to war *in any form.*\(^8\) The Supreme Court has strictly interpreted the Selective Service Act, which also requires opposition to all wars,\(^9\) to exclude selective objectors from official objector status.\(^10\) Accordingly, selective conscientious objectors, such as Roman Catholics who hold to their church's traditional "just war" theology,\(^11\) would be excluded under the WPTFA just as they issued restraining induction order of local board which had reopened registrant's classification but had refused to allow appeal).

Claims that local boards have abused their discretion most often arose where a board had refused to reopen a registrant's classification after the registrant had presented new facts. The board was held to have abused its discretion if it had no basis in fact for refusing to reopen. See, e.g., United States v. Ransom, 223 F.2d 15 (7th Cir. 1955) (local board had no basis in fact for denying registrant ministerial classification); Olvera v. United States, 223 F.2d 880 (5th Cir. 1955) (local board's refusal to reopen registrant's classification was arbitrary and unreasonable where board maintained it did not have to do so); United States v. Majher, 250 F. Supp. 106 (S.D.W. Va. 1966) (local board acted without basis in fact in summarily refusing registrant a hearing on contention that he was a duly ordained minister).

Other courts, however, have spoken as if there were no limitations on a draft board's discretion. See, e.g., Smith v. United States, 157 F.2d 176 (4th Cir.) (whether additional evidence submitted to local draft board after classification of registrant is of sufficient weight to require a reopening of case is within board's discretion), *cert. denied,* 329 U.S. 776 (1946); United States v. Messerman, 128 F. Supp. 759 (M.D. Pa. 1955) (whether letter from registrant who claimed to be a minister therein was of sufficient weight to require reopening of case lay within discretion of local board); United States v. Blankenship, 127 F. Supp. 760 (S.D.W. Va. 1954) (decisions of local boards made in conformity with regulation are final and nonreviewable, even though erroneous).


78. S. 880, *supra* note 4, at § 3(a).

79. *Id.* at § 3(a) (amending I.R.C. § 6099(b)(1)(A)).


81. See Gillette v. United States, 401 U.S. 437, 443 (1971) (selective objectors, those who oppose only certain wars, are not termed conscientious objectors because phrase "conscientiously opposed to war in any form" can have only one meaning—opposition to personally participating in any and all wars).

82. See R. Bainton, *Christian Attitudes Toward War and Peace* 95-100 (1960) (based on the principles enunciated by St. Augustine, the "just war" is intended to restore peace, is
are under the Selective Service Act.

The WPTFA, in its most gracious provision, offers a form of amnesty to those who resisted war taxes prior to the enactment of the Act. Civil and criminal tax resistance penalties are to be vacated if the objector pays his back taxes plus interest and adequately demonstrates that his prior resistance was based on non-selective objection. Finally, to still any fear that amnesty is being purchased at the cost of conscience, the proposed Act assures the resister that his payments of back taxes and interest will be deposited in the Fund for expenditure solely on non-military projects.

**The Fate of Religiously-Based War Tax Resistance Under the Free Exercise Clause: Doomed to Failure?**

From the time of A.J. Muste to the present, religiously motivated objectors have looked to the aegis of the first amendment’s free exercise clause to support their resistance to war taxes. Yet, the courts consistently have rebuffed the resister’s free exercise argument as well as related arguments. In the context of the WPTFA, one must consider why the resister's arguments have failed and whether there is justification to believe such arguments will succeed in the future.

**Belief or Conduct**

As a starting point for an analysis of the failure of free exercise attacks on war taxation, one must ask whether religiously based tax resistance is religious belief or religious conduct. If resistance is unquestionably belief, the conclusion is clear and the analysis is simple: the government will not be permitted to penalize pure belief. If resistance is conduct, the conclusion is

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83. See S. 880, supra note 4, at § 3(e)(1)(A)-(B).
84. Id.
85. Id. at § 3(e)(2).
86. Muste was the first to raise an in-court free exercise challenge to war taxes. See Muste v. Commissioner, 35 T.C. 913, 917 (1961). See also supra notes 35-42 and accompanying text.
87. See, e.g., Lull v. Commissioner, 602 F.2d 1166 (4th Cir. 1979) (per curiam) (rejecting free exercise challenge), cert. denied, 444 U.S. 1014 (1980); Autenreith v. Cullen, 418 F.2d 586 (9th Cir. 1969) (rejecting free exercise and “war crimes deduction” arguments), cert. denied, 397 U.S. 1036 (1970); Scheide v. Commissioner, 65 T.C. 455 (1975) (rejecting “war crimes deduction” argument); Egnal v. Commissioner, 65 T.C. 255 (1975) (rejecting both “war crimes deduction” argument and alternative payment to a war tax resistance fund); Russell v. Commissioner, 60 T.C. 942 (1973) (rejecting both a free exercise challenge and “war crimes deduction” argument); Muste v. Commissioner, 35 T.C. 913 (1961) (rejecting free exercise challenge).
88. The Supreme Court has held that the constitutional guarantee of freedom of religious beliefs is absolute. See United States v. Ballard, 322 U.S. 78, 86 (1944) (first amendment

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motivated by love, with justice lying on one side only). See also ECONOMIST, Feb. 5, 1983, at 20 (a “just war” must be waged by a legitimate authority, in a just cause, undertaken with the intention of a just and lasting peace, used as a last resort, should have a reasonable chance of success, and be fought by morally legitimate methods).
unclear and the conduct must be subjected to further analysis.\textsuperscript{89}

There can be little doubt that war tax resistance is religiously based conduct. The resister does not merely think peaceful thoughts in the privacy of his living room but, rather, actively refuses on April 15th to tender to Caesar what, allegedly, is Caesar's. This active refusal takes a variety of forms: some resisters claim a "war tax exemption;" some claim a charitable deduction for donating that portion of their taxes that otherwise would go toward military spending; some refuse to pay the percentage of their taxes that would be devoted to military spending;\textsuperscript{90} and others, like Muste, simply refuse to pay all taxes.\textsuperscript{91} Regardless of the method the resister selects, however, he has chosen to confront the body politic. Whichever method the taxpayer pursues will have an effect on the social order because refusal to pay one's share of taxes saddles one's neighbor with a greater burden. In addition to his own tax liability, the neighbor must pay a proportionate share of the taxes the resister refuses to pay.

The Test for Religiously Based Conduct

Categorizing tax resistance as religious conduct does not automatically cloak the resister with the protection of the free exercise clause. Instead, it triggers a multi-part test to determine whether preeminence should be given to the resister's conduct or to the government's interest in the activity the resister opposes. In the last twenty years, the United States Supreme Court has decided a trilogy of cases from which the contours of this test can be deduced.

First, in \textit{Sherbert v. Verner},\textsuperscript{92} the Court articulated a two-step approach to determine whether religious conduct warrants protection under the free exercise clause of the first amendment. Speaking for the Court, Justice Brennan stated that, first, there must be some infringement by the state of a person's constitutional right to the free exercise of religion.\textsuperscript{93} Second,
there must be a “compelling state interest” that justifies placing this burden on the individual’s free exercise right.44

In Wisconsin v. Yoder,93 Chief Justice Burger used a “balancing process” rather than Brennan’s two-step approach.96 According to the Yoder Court, “[t]he essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.”97 Earlier in the opinion, however, Burger had expressed a standard somewhat similar to Brennan’s approach, stating that “it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause.”98

The confusion over whether the Court indeed was setting aside Brennan’s linear approach in favor of Burger’s balancing test remained until Thomas v. Review Board.99 Chief Justice Burger again wrote for the Court and adopted verbatim the “overbalancing” language from Yoder.100 His repetition of the Yoder language appeared only after he qualified the limited license the government has in the free exercise area. The opinion states: “[t]he state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest.”101

94. Id. (quoting NAACP v. Button, 371 U.S. 415, 438 (1963)).
95. 406 U.S. 205 (1972). In Yoder, Wisconsin, under the compulsory education statute, had attempted to force Amish children to attend school until reaching the age of 16. Id. at 207.
96. See id. at 214. Justice White also apparently endorsed a balancing approach, stating that “[c]ases such as this one inevitably call for delicate balancing of important but conflicting interests.” Id. at 237 (White, J., concurring). It is interesting to note that Justice Brennan, who had initiated the linear approach in Sherbert, joined in Justice White’s concurring opinion, thus, seemingly endorsing a balancing approach.
97. Id. at 215.
98. Id. at 214.
99. 450 U.S. 707 (1981). In Thomas, a Jehovah’s Witness was forced to quit his job for a foundry and machinery manufacturer when the firm insisted on transferring him from a division that produced industrial sheet steel to one that manufactured tank turrets. The employee, after struggling with his conscience and discussing the matter with at least one co-believer, concluded that his reading of scripture and his understanding of the principles of the Jehovah’s Witnesses prohibited him from accepting a transfer to a division so closely allied with the military effort. Faced with no alternative, he resigned and applied for Indiana unemployment benefits. Id. at 710-11. It should be noted, however, that Thomas’ co-believer argued to Thomas that their religion did not require that he refuse the assignment to the tank turret division. Id. at 711.
100. 450 U.S. at 718
101. Id. This reference to compelling state interest appearing immediately next to Burger’s words from Yoder regarding “interests of the highest order,” implies that the phrases are used synonymously, thus collapsing the apparent difference between Brennan and Burger on this score.
Thus, Thomas added a condition to the traditional balancing test.\textsuperscript{102} Assuming that the government's interest, in fact, outweighs the believer's interest, the government is free only to use means that are the least intrusive upon the believer's liberty.\textsuperscript{103}

When stripped of their semantic clothing, the tests proffered by Burger and Brennan do not differ in the essential process each requires. Essentially, the Court requires weighing the state's interests against the believer's free exercise interests. Only a compelling state interest that cannot be served by less restrictive means than those challenged can override the believer's free exercise claim.

\textit{Evaluating the Free Exercise Interest}

In evaluating the believer's interest, one must determine whether the resister's claim is "legitimate"\textsuperscript{104} and whether the state's burden on the interest is "substantial"\textsuperscript{105} rather than merely "incidental."\textsuperscript{106} Only such claims, \textit{Yoder} and \textit{Sherbert} infer, are eligible for protection. Yet the Court offers no formula for determining the legitimacy of the believer's interest. Consequently, legitimacy must be determined by examining how the Court has ruled on modern free exercise claims.

In \textit{Sherbert}, the interest involved was a Seventh-day Adventist's desire to

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\textsuperscript{102}The traditional test has been articulated as follows:

A thoroughgoing balancing test would measure three elements of the competing governmental interest: first, the importance of the secular value underlying the governmental regulation; second, the degree of proximity and necessity that the chosen regulatory means bears to the underlying value; and third, the impact that an exemption for religious reasons would have on the over-all regulatory program. This assessment of the state's interest would then have to be balanced against the claim for religious liberty, which would require calculation of two factors: first, the sincerity and importance of the religious practice for which special protection is claimed; and second, the degree to which the governmental regulation interferes with that practice.


\textsuperscript{103}The Court, however, had stated previously that the state must show that there are "no alternative forms of regulation [that] would combat such abuses without infringing First Amendment rights." \textit{Sherbert v. Verner}, 374 U.S. 398, 407 (1963).

\textsuperscript{104}Wisconsin v. \textit{Yoder}, 406 U.S. 205, 215 (1972). A claim is "legitimate" if the burden falls directly on a believer's religious faith, and not merely on his or her secular "way of life." \textit{Id.} at 215-16.

\textsuperscript{105}\textit{Id.} at 218.

\textsuperscript{106}\textit{Sherbert v. Verner}, 374 U.S. 398, 403 (1963). An incidental burden on the free exercise of religion may be overcome by "a compelling state interest in the regulation of a subject within the State's constitutional power to regulate." \textit{Id.} However, once the burden on free exercise is found to be substantial, a state may not justify that burden even by offering a compelling state interest.
\end{flushright}
honor her Sabbath day. She believed that laboring on the Sabbath violated a "basic tenet of the Seventh-day Adventist creed."\(^{107}\) Although stating in a footnote that "[n]o question has been raised . . . concerning the sincerity of [Sherbert's] religious beliefs,"\(^{108}\) the Court offered no characterization of her practice. From the Court's footnote, however, it is clear that the tenet-like nature of honoring the Sabbath, firmly rooted in Seventh-day Adventist belief, was an important consideration in determining the legitimacy of Sherbert's interest. Similarly, an apparent important factor in the Yoder Court's evaluation of the Amish claims was that the desire to protect their children from public schooling in favor of community-based vocational education was a long-standing and fundamental element of Amish religious practice.\(^{109}\)

Interests rising to the level of a tenet or precept of an organized religious community are not clearly present in the case of conscientious resistance to war taxation. Although some of the historic peace churches, including among others the Quakers and the Mennonites, have encouraged war tax resistance among their members, these churches have not made the practice of war tax resistance a sine qua non of their faiths. Moreover, beyond the walls of the peace churches, many other resisters find themselves without any official support from their churches. The divisions within the Catholic Church on this issue serve as one example. While many priests, nuns, and prominent laymen preached and practiced resistance to the Vietnam War excise tax on telephone use,\(^{110}\) such resistance has not become a "tenet" of the Catholic faith.

Despite the sincere belief of resisters,\(^{111}\) before Thomas it was doubtful

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107. Id. at 399 n.1.
108. Id.
109. 406 U.S. at 219. Furthermore, the Yoder Court concluded that the state's objective for requiring compulsory education was served by the Amish practice of vocational education:

Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education. In light of this convincing showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish.

110. See supra notes 51-53 and accompanying text.
111. At least one court that has confronted the issue of sincerity has found, virtually without any analysis, that the resister before it was sincere. See, e.g., Autenreith v. Cullen, 418 F.2d 586 (9th Cir. 1969) (conscientious objection to all wars was held sincerely by petitioner).
whether the Supreme Court would recognize a resister's belief as "legitimate" until it was expressed and practiced as a fundamental element of one or more church creeds. In *Thomas*, however, there was no discussion regarding the "legitimacy" of Thomas' belief. Instead, the Court considered whether his claim was "religious" simply by inquiring whether the believer had the "honest conviction" that his religious position was supported by his interpretation of his religion. In the process of considering whether Thomas' motivation was "religious," the Court overtly set aside the fact that the Jehovah's Witness religion did not necessarily require Thomas to take the position that he did. In so doing, the Court noted, "[i]ntrafaith differences . . . are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses." Thus, *Thomas* offers hope for tax resisters to substantiate their free exercise claims.

In summary, because no church prescribes the resistance of war taxes by its members, the thrust of *Sherbert* and *Yoder* had hindered resisters from meeting the legitimacy aspect of the Court's balancing test. Those decisions indicated that a person's belief was not significant unless it had roots in a religious tenet. Thus, resisters had no legitimate belief which legally could be burdened by the contested government action. Since the *Thomas* Court's departure from the *Sherbert-Yoder* view, this obstacle has been removed. Therefore, the question of whether the taxation scheme puts a substantial burden upon the resister's religious objection to killing in war now can be considered.

What are the hallmarks of a substantial burden on free exercise? In *Sherbert*, the Court likened the burden thrust on Sherbert by her forced choice between unemployment benefits and practicing her religion to the burden that would be placed on a believer who was fined for attending a Saturday worship service. The Court concluded that this type of choice clearly burdened Sherbert's free exercise. Likewise, *Thomas* concluded that the choice between "fidelity

113. Id. at 716. The Court found that "[t]he narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion." Id.
114. The Court will accept an individual's interpretation of his religion provided that it is not "bizarre" or "clearly nonreligious in motivation." Id. at 715.
115. Id.
116. See supra notes 51-53 and accompanying text.
117. 450 U.S. at 718. Even indirect compulsion is "substantial" infringement upon free exercise. For example, "[w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, . . . a burden upon religion exists." Id.
118. 374 U.S. at 404.
119. Id. at 403.
120. 450 U.S. at 717. The Court found that the choice between "fidelity to religious belief"
to religious belief” and “cessation of work” had a “coercive impact” on the petitioner “indistinguishable” from that placed on the petitioner in Sherbert. 121

The pressures found in Sherbert and Thomas are similar to those placed on the war tax resister. The resister believes that killing is unjustified as a matter of principle and that paying taxes in support of the military is no less immoral than killing itself. Every time the conscientious objector pays his federal income taxes he violates those beliefs. When he refuses to violate his beliefs, the government seizes his goods or garnishes his wages to cover the deficiency. Consequently, the tax resister ultimately is forced to support war. In Sherbert and Thomas, the individuals involved were excluded from benefits by virtue of their religious beliefs. The coercion to abandon religious beliefs is greater in the case of the war tax resister than that of Sherbert and Thomas. The believer is forced to support a program antithetical to intensely held beliefs, or face possible imprisonment. 122 It is difficult to imagine a more substantial burden on the resister’s right to free exercise.

The Government’s Burden

The first step of the second part of the Brennan/Burger test requires an assay of the governmental interest in taxation. 123 The court must decide whether the tax serves a “compelling” interest or is of the “highest order” in the hierarchy of public interests.

There are few governmental interests more important than the government’s interest in the collection of taxes. Every operation of government depends, of course, upon revenues produced by taxation. The operations of the government can easily survive, however, without the few dollars that war tax resisters might withhold if courts were to sanction the resisters’ first amendment arguments. 124 In the context of tax resistance, however, the

121. Id. at 718. This coercive element establishes a “burden” upon religion. Even where “the compulsion . . . is indirect, the infringement upon free exercise is nonetheless substantial.” Id.
122. From 1941 to 1981, 16 persons were imprisoned for war tax resistance. GUIDE TO WAR TAX RESISTANCE 72 (E. Hedemann ed. 1981).
123. The second step considers whether the means selected by the government to effect its purpose are the least restrictive means available. See supra text accompanying notes 115–18.
124. The Act’s sponsor, Sen. Hatfield, stated, An estimated 0.5 to 9 percent of income taxpayers would use the World Peace Tax Fund checkoff if it became law. This is based on the membership of the Church of the Brethren, Mennonites and Quakers—Friends—who are the principal supporters of WPTF, and have a combined membership of 540,000. A survey taken at the time of the Calley sentence in 1971 by Harris indicated 9 percent thought a soldier not justified in shooting an enemy in war, and is the only indication known of a poll of the public at large on conscientious objection. 125 CONG. REC. 7182 (1979) (statement of Sen. Hatfield).
government is not as interested in the payment of all tax dollars as it is in the payment of taxes by its citizens under some uniform system of assessment.\footnote{125. See Giannella, supra note 102, at 1409 (uniformity of treatment necessary for distributive justice).} As the Supreme Court recently has observed, a judicially created exemption for religious objectors to military taxation obviously would skew the uniformity that presently exists within the system.\footnote{126. See United States v. Lee, 455 U.S. 252, 259 (1982). In Lee, the appellee employer claimed that the Amish religion's mandate to care for the elderly prevented him and his Amish employees from conscientiously participating in the social security system. The Court rejected this argument, holding that the employer's religious beliefs did not exempt him from the provisions of the Social Security Act that require employers to withhold social security taxes from their employees' paychecks. In its reasoning the Court directly addressed the income tax question: Unlike the situation presented in \textit{Wisconsin v. Yoder}, . . . it would be difficult to accommodate the comprehensive social security system with myriad exceptions flowing from a wide variety of religious beliefs. The \textit{obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes}; the difference—in theory at least—is that the social security tax revenues are segregated for use only in furtherance of the statutory program. There is no principled way, however, for purposes of this case, to distinguish between general taxes and those imposed under the Social Security Act. \textit{If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief.} (Citations omitted). Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax. \textit{Id. at }\textit{--}, 102 S. Ct. at 1056 (emphasis added).}{127. Giannella, supra note 102, at 1409.}

As Professor Gianella has noted, there is a further problem beyond this one of a uniform system of tax assessment and payment. That is, resisters' opposing the use of their taxes for war purposes constitutes an attempt to "subvert" democratic judgments.\footnote{128. See United States v. Kissinger, 250 F.2d 940 (3rd Cir.) (wheat quota program was reasonable regulation to preserve economic order and thus, does not violate free exercise clause), \textit{cert. denied}, 365 U.S. 958 (1958).} One easily can imagine the fallout effect of the Court's sanction of war tax refusal. Pro-life resisters might refuse those taxes representative of the government's abortion and population control efforts while those against sex education in the public schools might withhold taxes to protest such programs. These cases are less difficult to imagine when one considers that courts already have had to restrain the efforts of religiously motivated taxpayers who objected to the government's wheat quota program\footnote{129. Crowe v. Commissioner, 396 F.2d 766 (8th Cir. 1968) (taxpayer cannot evade tax on the basis that he does not approve of distribution of income).} and similar efforts by those who objected to government welfare programs.\footnote{Given the ferocity of the general tax}
resistance of the 1980's, a judicially sanctioned exemption might pave the way for scores of both fraudulent and novel claims.

Unfortunately, the statutorily established and judicially interpreted exemption from military service does not present an analogy from which the religiously motivated tax resister can argue for a similar exemption under the tax laws. The critical difference is that the military service exemption for conscientious objectors requires alternative service. Thus, uniform treatment is preserved. There is no such official alternative for the tax resister; therefore, resisters simply avoid the exaction of taxes. Though some taxpayers attempt to pay that portion of their taxes representative of the military's share to charitable agencies, courts have consistently disallowed this practice as a tax substitute. Without some categorical, a priori ratification of this procedure, administrative chaos would result. Thus, there is a compelling governmental interest in maintaining a uniform system of tax assessment and payment.

The second step of the second part of the balancing involves the consideration of whether there is a less restrictive alternative to finance the military effort than by forcing the religiously motivated to pay war taxes. Resisters have argued that the World Peace Tax Fund Act is an appropriate alternative. Because Congress has not passed the Act, this argument places the Court in the position of considering whether it should require the executive branch of the government to offer the taxpayer an alternative that is not yet codified. However, this posture is not novel to the Court. In the past, the Court invalidated unreasonable regulatory schemes even though less restrictive means had not yet been enacted. Nonetheless, it is unlikely that the Court will find that the Act is a realistic alternative to the forced


132. See supra text accompanying notes 74-75.


134. See, e.g., Lull v. Commissioner, 602 F.2d 1166 (4th Cir. 1979) (per curiam) (individual taxpayers may not pay a portion of their tax liabilities to charitable agencies instead of the government); Russell v. Commissioner, 60 T.C. 942 (1973) (taxpayer cannot determine how 50% of her taxes will be expended).


payment of war taxes. If the Supreme Court found the Act to be such an alternative, the Court would be in a weak position to deny the same treatment to pro-life and other religiously motivated tax objectors. To collect one hundred percent of the taxes owed by the resisters in each of these categories, the Secretary of the Treasury would be forced to establish separate formulas for each type of objector. For example, the war tax resister would demand segregation from the general tax fund of the 49% of his tax dollar that normally goes to war-related spending. Similarly, anti-abortion tax objectors would demand that the .05% of their tax usually earmarked for family planning be withdrawn from the general tax fund. In each instance, these monies would need to be funneled into an alternative program the purpose of which the objector approved. The resultant complexity would be an administrative nightmare.

Nonetheless, the seriousness of the issue to the resister and the consequent burden on his free exercise rights might enable the Court to distinguish war tax resistance from many other types of resistance. Spending for military purposes consumes a huge portion of the objector’s tax dollar. In contrast, spending for abortion and birth control consumes only a miniscule portion of the pro-life taxpayer’s dollar. This distinction, however, is probably not sufficiently firm to rest an important constitutional right upon. Indeed, to do so would put the Court at the pinnacle of a very slippery slope. Such decisions are better left to Congress, which can hear the political arguments on behalf of various resisters and make policy judgments accordingly.

In short, Thomas supports the notion that the religiously motivated war tax resister’s beliefs reflect an honest conviction and are substantially burdened by the government’s exaction of taxes from him for the military effort. Thus, the resister’s case meets the first part of the Brennan/Burger balancing test. The resister’s case fails, however, at both stages of the test’s second step. First, there is a compelling public interest in uniform taxation that is imperative to the functioning of government. Second, there is no reasonable alternative to the forced exaction of taxes from the religious resister’s pockets that the Court will entertain. The resister, therefore, must look to legislative enactment of the WPTFA for relief.

137. See Wisconsin v. Yoder, 406 U.S. 205, 215-18 (1972). A fundamental aspect of the Old Order Amish religion in Yoder was the 300-year-old belief that members of the religion were to be separated from the outside world. Thus, by exposing their children to “worldly” influences, Wisconsin’s enforcement of its compulsory secondary education statute gravely endangered the practice of their religious faith. Id.

CAN THE ACT PASS CONSTITUTIONAL MUSTER?

The Constitution poses two problems for the World Peace Tax Fund Act. The first concerns the doctrine of equal protection while the second involves the difficulties of entanglement with religion.

Equal Protection

Under its traditional two-tiered analysis of equal protection problems, the Supreme Court applies either a "strict scrutiny" or a "rational basis" analysis. The Court applies strict scrutiny to any governmental action involving an individual's "fundamental rights." When such rights are at stake, the Court inquires whether the means chosen are necessary to achieve the "compelling" governmental interest.

In the context of the WPTFA, the fundamental right at stake is the free exercise of religion. The equal protection problem arises in that war tax objectors will be granted special treatment by the government under the WPTFA while persons who maintain religious objections to other govern-


Over the past decade or so, the Court seems to have departed from the two-tiered analysis in favor of a "sliding scale" or multi-tiered approach. Illustrative of this switch is the middle level of scrutiny now given by the court to sex-based discrimination. See, e.g., Cabar v. Mohammed, 441 U.S. 380 (1979) (invalidating New York law that allowed mother but not father to block adoption by withholding consent because there was no showing that the difference in treatment bore a substantial relationship to the proclaimed state interest in promoting adoption of illegitimates); Craig v. Boren, 429 U.S. 190 (1976) (Oklahoma statute that required males to be age 21 to buy 3.2% beer while females could buy at age 18 invidiously discriminated against males because the gender-based difference was not substantially related to achievement of the statutory objective); Frontiero v. Richardson, 411 U.S. 677 (1973) (statute that allowed male member of uniformed services to claim wife as dependent, while female member required to show husband relied on her for over 1/2 of his support in order to claim husband as a dependent, violated the equal protection clause in that it resulted in dissimilar treatment of men and women who were similarly situated); Reed v. Reed, 404 U.S. 71 (1971) (provision of Idaho probate code giving preference to men over women for appointments as administrators violated the equal protection clause in that it provided dissimilar treatment for men and women who were similarly situated). But see Sager, The Supreme Court, 1980 Term—Forward: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts, 95 HARV. L. REV. 17 (1981) (Court may have returned to the old two-tier mode of analysis).


141. The Court requires such a close congruence between the governmental means and ends that one scholar has observed that strict scrutiny usually invalidates the legislation. See Gunther, supra note 139, at 19.
ment spending purposes will not be afforded such treatment. Persons in this latter category, therefore, can be expected to demand similar treatment.

Singling Out the Pacifist Taxpayer

There is no greater state interest than preserving and promoting the exercise of a constitutional right. Although the war tax objector's first amendment free exercise rights do not support a judicially created exemption from taxation, those rights do make an appropriate subject for legislative action designed to relieve the war tax objector of a serious burden on his conscience. One need look no further for precedent than the special statutory treatment given particular religious sects under the Social Security Act. Such accommodations of constitutional values by the legislature constitute perhaps a paramount interest of a democratic government. Yet, despite this good reason for assisting the war tax objector in preserving his religious convictions, does the equal protection doctrine compel similar assistance to other types of objectors?

There are a number of reasons why the equal protection doctrine does not require assistance to all categories of objectors, the most important of which is the prevention of government entanglement with religion in violation of the establishment clause.

142. See supra notes 120-33 and accompanying text.
143. See I.R.C. § 1402(g) (1965) (originally numbered as § 1402 (h)(1)). Section 1402(g) provides, in pertinent part:
   (1) Exemptions.—Any individual may file an application . . . for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).

The policy behind this exemption was stated as follows:
The . . . problem of the conflict between the government's desire to operate an efficient and orderly social security system and a religious interest forbidding the aiding of society through life insurance was solved by the enactment of [this] section. . . . This section was enacted in response to appeals from members of religious groups who objected to the tax imposed by the Social Security Act. . . . Congress has limited the exemption by defining standards.
144. See generally L. TRIBE, AMERICAN CONSTITUTIONAL LAW 819-32 (1978) (accommodation to religious values is preferred in first amendment jurisprudence) [hereinafter cited as TRIBE].
146. See supra notes 74-75, 131 and accompanying text.
objectors to war, because of their historic relationship to the Selective Service System and because of the existence of a body of judicially defined standards for defining conscientious objection to war, constitute a group that is much more identifiable than other protest groups. The WPTFA takes advantage of this feature of war tax resisters by adopting the Selective Service System’s standards for objectors. Although the war tax resister’s objection to “all wars” is clearly definable as religious in nature, and therefore cloaked with free exercise, other groups of objectors are not categorized as easily. Unlike war resisters, no historical definition is available for those groups who object to contraception, abortion, welfare benefits, agricultural subsidies or limitations, public works, public education, or taxpaying itself. Thus, separating the legitimate religious objectors from the multitude of other objectors may place the government in the same entangling evaluation process that was viewed as an establishment clause danger in *Walz v. Tax Commission*.

Beyond the dangers of entanglement, however, there are other distinguishing factors between war tax objectors and other religious objectors. Perhaps the most significant distinction is that the war tax resister is more adversely affected because of the amount in the federal budget devoted to the military effort. The current federal administration plans to increase military spending to over one and one-half trillion dollars for the next five years. The 1982 budget alone will consume more than 221 billion tax dollars for military spending. In percentages, the military claims approximately 25-50% of every income tax dollar. These figures

[147. Recognizing the fact that spirited and articulate pacifists inevitably will challenge the organized draft, Congress consistently has provided conscientious objector status to enable qualified persons “to refuse to comply with the law while complying with it.” See Comment, *Conscientious Objection and the First Amendment*, 14 AKRON L. REV. 71, 72 (1980). The Supreme Court has justified this draft exemption, saying “that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state.” *United States v. Seeger*, 380 U.S. 163, 170 (1965).

148. *See, e.g.*, *Welsh v. United States*, 398 U.S. 333, 342-43 (1970) (to qualify for conscientious objector status, sincerity of belief in Supreme Being must be based upon “moral, ethical or religious principles” and objection to war cannot be grounded in considerations of “policy, pragmatism or expediency”); *United States v. Seeger*, 380 U.S. 163, 176 (1965) (in construing the meaning of the term “Supreme Being” under § 6(j) of the Draft Act of 1864, the Court established this test: “A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition”).

149. S. 880, supra note 4, at § 3.

150. 397 U.S. 664 (1970). *Walz* held that the government’s determination of which religion merits tax exemption would involve excessive entanglement. *Id.* at 674.


form the basis for the war tax resister's serious concerns. Because one of every two of his tax dollars is spent for purposes he considers immoral, compliance with the tax code seriously violates his beliefs. There is no fiscal comparison between the war tax objector and objectors to abortion or agricultural subsidies. Both in absolute dollars and in the percentages of the total budget, spending in these other areas is dwarfed by spending for the military effort. The burden on the war tax resister’s conscience, therefore, is the most serious of conscientious tax objections.

Finally, the administrative inconvenience of a plethora of permissive tax exemptions would be substantial. The Treasury not only would be required to discriminate among claims in its search for those that are legitimate, but it also would be forced to establish and administer hundreds of separate trust funds for comparatively small amounts of money. In short, there are compelling state interests for limiting, at least for the present, tax relief only to those conscientiously opposed to war.

The Establishment Clause

The establishment clause poses the second constitutional problem for the WPTFA. The tripartite analysis for testing the validity of a government action under the establishment clause asks whether the action has a secular purpose, whether it has a secular effect, and whether it would result in excessive government entanglement with religion.

As recognized by the Supreme Court, the analysis of secular purpose creates an overlay with the analysis required under the equal protection clause. In this instance, the purpose of the WPTFA is identical to the compelling interest underlying its enactment, namely the accommodation of legitimate religious conscientious objection under the free exercise clause of the first amendment. In the Court's words, "it is hardly impermissible for Congress to attempt to accommodate free exercise values..." In so doing, Congress does not put its imprimatur on an "extraneous theological viewpoint," nor does it attempt a "religious gerrymander".
of the law to favor particular religious organizations. Instead, Congress expands the range within which one may be true to his conscience regardless of "sectarian affiliation." \(^{161}\)

Neutral, secular purposes exist for limiting special treatment to war objectors as opposed to other types of conscientious objectors. With the exception of the government's war-making power, there is probably no governmental function more vital to its existence than the revenue-raising function. Providing special tax fund treatment to anyone who objects on religious grounds to any government spending program not only would unconstitutionally entangle the government with evaluating religious claims, but would hinder the government's ability to budget and spend tax dollars in a predictable manner. Rather, special tax treatment should be limited to war objectors because of their centuries-long resistance to payment of war taxes. Moreover, special tax treatment, without limitations, for anyone who desired it would begin to jeopardize the validity of democratic decisions. \(^{162}\)

Moreover, the WPTFA will have primarily a secular and neutral effect. The primary impact of the Act will be to allow persons of conscience to act in accordance with their scruples, an impact already identified by the Supreme Court as secular and neutral. \(^{163}\) Furthermore, no particular religious organization will benefit from the WPTFA because opposition to war taxation is found in virtually every sectarian affiliation. Thus, the Act is not an instance in which the government is using its power "to bring religion into the lives of its citizens." \(^{164}\)

A secondary secular effect of the Act will be to eliminate much of the unlawful tax resistance that presently occurs in response to the Internal Revenue Service's efforts to collect taxes from war resisters. The elimination of such resistance will reduce administrative costs and smooth the flow of tax dollars to the Treasury. Indeed, the Act also might have a slight effect in increasing revenues because some war tax objectors now voluntarily reduce their earned income below taxable amounts. \(^{165}\) The implementation of the WPTFA would encourage these people to earn taxable incomes.

The last phase of the establishment clause inquiry requires a determination of whether the Act results in government entanglement with religion. Most of the Supreme Court cases that have dealt with the entanglement test have discussed the necessity of monitoring various teaching-related activities

\(^{161}\) 401 U.S. at 454.  
\(^{162}\) See Gillette v. United States, 401 U.S. 437, 458-60 (1971). *Gillette* upheld § 6(j) of the Military Selective Service Act, which permitted conscientious objector exemptions only to those opposed to all wars. In so holding, *Gillette* concluded that exempting selective objectors would jeopardize the binding quality of democratic decisions. *Id.* at 459. *Gillette* reasoned that opposition to a particular war depends upon particularistic factual beliefs and policy that presumably were weighed and overridden by the government that decided to commit lives and resources to war. *Id.*  
\(^{163}\) *Id.* at 453.  
\(^{165}\) See *Tax Dilemma*, *supra* note 3, at 58-59.
within parochial schools. Of course, no such surveillance would be involved with the administration of the WPTFA.

Evaluating the validity of an objector's claim, one source of administrative entanglement, is minimized by two aspects of the proposed Act. One requirement is that the taxpayer render the full amount of the taxes he or she owes; thus, there is no apparent incentive, at least in financial terms, for a taxpayer to falsely claim objector status. A second related aspect allows the taxpayer, not the government, to make the first determination of his status. This self-selecting system is sensible in light of the lack of financial incentive to deceive the government and it also requires much less administrative involvement than does the Selective Service Act. Under that Act, Selective Service boards first determine whether one qualifies as a conscientious objector. In contrast, the proposed Act's self-selecting system with no initial governmental involvement provides very little potential or incentive for the government to become administratively entangled with religion in the operation of the program. The government only becomes involved in the WPTFA evaluation process when the Secretary has reason to ask for additional verifying information. If the Secretary remains unconvinced, he must go to a United States District Court for a declaratory judgment on the issue.

Finally, it is obvious that political entanglement of the type recognized by the Supreme Court in Lemon v. Kurtzman is not a potential problem.
here. In *Lemon*, the Court feared that allocation of aid between private and public schools would divide the legislature along religious lines. The Act will not cause clear divisions among religions that lead persons to take positions based on sectarian beliefs.

In sum, the WPTFA poses no establishment clause danger when analyzed under the three-pronged test for examining the validity of government actions. The proposed Act is secular both in purpose and effect and poses no threat of excessive entanglement with religion.

**WOULD PASSAGE OF THE ACT BE IN THE INTERESTS OF THE CONSCIENTIOUS OBJECTOR? OF THE NATION?**

In light of the failure of the resister's free exercise arguments, there appears to be no resolution of his dilemma other than the congressional enactment of the World Peace Tax Fund Act. There is, however, a serious question of whether the Act actually will advance, or instead, retard the resister's cause. A review of the effects of enactment from the resister's view, as well as from the perspective of the population in general, is necessary to answer this question.

Passage of the Act would give legal rights to a beleaguered minority. Since the first resistance of the colonial Quakers, war tax resisters have been forced to live outside of the law to follow the dictates of their consciences. Although the courts cannot employ the free exercise clause to liberate resisters from what resisters perceive as an oppressive scheme, Congress can legislate a solution that takes the resister out of bondage without giving him a financial windfall. The conscientious objector's centuries-old history of patient suffering demands this legislative recognition and relief.

Congressional enactment of qualified exemptions for taxpayers conscientiously opposed to war would be consistent with this country's traditional emphasis on freedom of conscience. The significance of this freedom to the founding fathers is evident from the wording of the original religion amendment to the Constitution: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." Moreover, Congress has recognized the right to freedom of

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176. See supra notes 40-49, 86-87 and accompanying text.
177. As one of the Act's sponsors remarked:

[O]ur present tax system is working a grievous injustice against people who, while not required to bear arms, must still pay for others to do so and for the continuing and widening arms race. Requiring taxes for current military outlay from people whose moral and spiritual background and framework forbid them participation in violent means of conflict resolution is a dark blot upon our human rights policy.


conscience in every war since the Civil War by providing for conscientious objector exemptions to military service. In United States v. Seeger, the Supreme Court, quoting Harlan Fiske Stone, acknowledged the preferred place of conscience in relation to the state.

Both morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of the self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process.

Thus, there is both inherent and practical value in adopting the Act: inherent in that this country's founding principles would be served by freeing resisters to act within the law; practical in that the state's best defense against dissent is to allow it.

Beyond these values, enactment of the WPTFA also would promote the cause of peace in a number of ways. First, if a significant portion of American taxpayers vote with their dollars against war, Congress may respond by moving toward a federal budget that is less devoted to military spending. Second, public awareness of the issues of war and peace will increase because each federal taxpayer will be forced to assess his objector status when filling out the federal tax form. Finally, the cause of peace might be aided further if tax dollars that otherwise would be spent on the military were invested in peace research, such as that proposed by the Act. Although difficult to imagine, by adoption of the Act a state of peace might become more of a reality.

Critics of the Act might contend that resisters are misleading themselves by advocating its enactment. The Act requires the government to place that portion of the resister's taxes that represent the percentage of the federal budget devoted to non-military spending in the general fund on the condition that "no part of the money transferred . . . shall be appropriated for any expenditures, or otherwise obligated, for military purposes." As the


181. Id. at 170 (quoting Stone, The Conscientious Objector, 21 COLUM. U.Q. 253, 269 (1919)).

182. See S. 880, supra note 4, at § 3(a) (amending I.R.C. § 6099(a)). Each tax form will have a provision, much like the $1 presidential election campaign contribution check-off, which will force the taxpayer to claim or disclaim conscientious objector status. As a result, public awareness of the issues of peace and war inevitably will increase.

183. Id. at § 6(a).
cynic would point out, the resister has no guarantee that his tax dollars actually will be segregated from the billions of dollars in the general fund each year. Accordingly, the Act is simply a formal, paper technicality designed for people who naively think the Treasury deals in bags of money. Thus, it is useful only for assuaging the conscience of the resister without actually assuring that only non-military purposes are served by the resister’s dollars.

Perhaps the most serious criticism of the Act is that, in reality, it is designed for political, not religious, ends. The Act, it is argued, does not really affect spending, for there are no “bags of money” being moved about. Rather, it is only a barometer of political opinion regarding the country’s military posture at any point in time. Objectors’ desire to direct their tax dollars toward peace goals can represent a political position on the nation’s military posture, and thus, serve group political goals rather than simply individual religious values.

As far as the citizen-pacifist is concerned, however, the most serious ill effect of the Act is that it might work too well. For centuries, the tax resister has been called to be a prophetic witness to peace. His refusal to “do business as usual” has forced his fellow citizens to reflect upon the correctness of their conduct. Institutionalizing conscientious objection to taxation by way of the Act might result in the extinction of the tax resister as a moral beacon. The community of citizens will lose a public standard by which it might judge its conduct. With resisters officially appeased, the issues they have traditionally raised by their civil disobedience will be more easily swept aside.

It is not difficult to resolve this conflict between the costs and benefits of the Act in favor of passage of the Act. The cynic’s objection that no money will actually be segregated and diverted from military purposes can be met with the aid of the equity courts and the watchful eye of the private citizen. A citizen-suit provision, if added to the proposed Act, would further lessen the fear of government non-compliance.

The argument that the Fund would support political ends unrelated to the problems of individual conscience is a more substantial argument. Nevertheless, it is important to remember that to prevent the conscientious objector from benefitting from a windfall tax rate, he must continue to be taxed at one hundred percent of liability. Since a sizeable portion of this one hundred percent cannot be devoted to military spending, other uses must be determined. If the government were to put these taxes toward non-military spending, then the tax burden on non-objectors would be lessened in this area, freeing those dollars for military spending. That result is hardly consistent with the thrust of the Act. Thus, there seems to be no other choice than to find projects outside the normal governmental sphere for funding.

Although this alternative is novel because it involves using tax money for non-traditional governmental purposes, it is difficult to imagine any serious objection to devoting relatively small amounts of money toward the pursuit of peace.

The danger of assimilating the resister into the mainstream, so that society loses sight of the moral alternative to war he offers, is no danger at all. Instead, the resister will simply find new and more creative methods to promote his case for peace in the public mind. In this decade objectors have already been at work, using a variety of schemes outside the tax-resistance field, to protest the power of the Pentagon, the danger of nuclear war, and over-militarization in general.186

**Conclusion**

No court has ever granted constitutional protection to taxpayers who have conscientiously resisted the payment of war taxes. The judiciary realizes that our uniform system of taxation, in which the government has a compelling interest, would not survive long if courts accorded resisters special tax treatment. Therefore, if relief is to be afforded the long-suffering conscientiously objecting taxpayer, it must come from the political and legislative process.

The World Peace Tax Fund Act would be an appropriate congressional response to the resister’s plight. From a practical perspective, it works to eliminate the objector’s scruples without excusing him from the obligation to pay his full share of taxes. From a constitutional point of view, the secular and neutral effect of the Act would allow its implementation without excessive entanglement between church and state.

Finally, an important potential benefit of enacting the WPTFA should not be overlooked. Given the intensity with which resisters hold their beliefs, it is certain that without the WPTFA, resisters will continue to say “no” to war by withholding taxes. Thus, they will still suffer the seizure of their goods, civil fines, and criminal penalties. To effect their spiritual mission, resisters do not need the Act. Yet to reach a plane where religious freedoms are honored in deed as well as in constitutional word, society does.
