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NOTES AND COMMENTS

THE HISTORY OF SELECTIVE SERVICE

Conscription, the exaction by the state of military service, is not new. Since the seventeenth century many experiments have been made in compulsory service. Insufficient standing armies, unreliable reserves, and volunteers resulted in a system of universal conscription. Its adoption by one nation led to emulation by others.

The first moves toward conscription in the modern sense were made by the French monarchy in the late seventeenth century.¹ The statesman Louvois in 1688 conscripted certain non-exempt groups of citizens for temporary service. They were drawn by lot in the parishes of the kingdom. They were not amalgamated with the regular troops but were used at interior posts, on lines of communication, and for the occupation of conquered areas.²

In the period of the French Revolution, various measures embodying the idea of conscription were attempted. The most successful was the 1793 plan which made all able-bodied men between 18 and 25 liable to service.³ Under the Napoleonic regime universal military service led to many of Napoleon's victories and furnished the outline for extension of the system into newly-annexed territory. Because of the abuse of buying exemptions under the French Act, conscription did not persist in France.

It remained for Prussia to furnish the truest example of conscripted military service.⁴ Humbled by Napoleon's Treaty of Tilsit (1807), Prussia was compelled to reduce her army to 42,000. The glory of Frederick the Great's professional force was destroyed and Prussia was receptive to a peace-time plan of compulsory military service. Between 1807 and 1813 Baron Von Stein and General Von Scharnhorst effected military reforms in Prussia which had far reaching effects in the subsequent use of conscription. They discarded hired mercenaries, stopped the enlistment of foreigners, abolished class distinctions, special municipal and class exemptions, and apportioned military service territorially. Germany owed her strength during the 19th century to this plan and all Europe was affected by it.⁵

¹ 23 ENCYC. BRITANNICA, *War*, 322 (1936); 6 *id.* *Conscription*, at 283. See JEAN, *L'ARMÉE NOUVELLE* (Paris, 1914).

² Colby, *Conscription* 4 ENCYC. SOC. SCIENCES (1931) 220. See Marcus, *Some Aspects of Military Service* (1941) 39 MICH. L. REV. 913, 928.

³ "In 1798 at the instance of General Jourdan the principle of conscription was incorporated in the constitution, and thus the French army became entitled to the service of every able-bodied citizen between the ages of 20 and 25." 4 ENCYC. SOC. SCIENCES (1931), *op. cit. supra* at 221.

⁴ Colby, *Conscription in Modern Form* (1929) 34 INFANTRY JOURNAL 645, 648. Note (1915-16)) 6 ACADEMY OF POLITICAL SCIENCE PROCEEDINGS 4.

⁵ "German effectiveness in 1870 startled the world, and since that time England has been the only great power in Europe that has not adopted conscription as a defensive measure even in peace-time." Ford, *Boyer's Military Law* (1915) 20 AM. HIST. REV. 528.

The effect of conscription in Japan is especially significant. When the nation developed beyond the tribal system, the Samurai, a military caste, became the exclusive fighters of the country. After the Meiji restoration in 1868 there came a great increase in national spirit. The first step was the destruction of feudalism and of the military class, whose exclusive possession of political power had resulted in a decline in imperial strength. In 1873 under the influence of a French military mission, conscription was adopted and military service was opened to all classes. A German mission carried on instruction from 1885 to 1894, and since that time, the army, conscripted from what previously had been considered the non-fighting classes, has been a well organized unit.⁶

The term "universal selective service" has added significance in the light of English history. Under the Tudors, Stuarts and other kings there were sporadic but unsuccessful attempts to raise armies by conscription.⁷ Cromwell's advent to power created a well-disciplined standing army. His military rule, however, made standing armies so unpopular that the American colonies resisted their establishment even in behalf of the Revolutionary cause.⁸ In 1803, there was a draft of all men from 17 to 55 to meet anticipated French invasion. However, during the remainder of the 19th century Britain fell away from universal military training and employed professional troops for colonial warfare.⁹

At the beginning of the World War, Britain relied wholly on the already established system of voluntary enlistment to supply the need for manpower. The plan, however, was ineffective. A subsequent conscription attempt failed; and thus in 1915 a complete inventory of England's manpower was taken as a result of the National Registration Act.¹⁰ A general conscription act was passed in 1916.¹¹ Poor methods of classification and exemption were employed. Thus this plan partially failed also.¹²

As a result of the World War, conscription was forbidden in Austria, Germany, Hungary, Bulgaria and Turkey.¹³ But in March, 1935, Chancellor Hitler announced universal military conscription in Germany despite protests from Great Britain, France and Italy.¹⁴

⁶ TAKATA, CONSCRIPTION SYSTEM IN JAPAN (1921) *passim*.

⁷ See brief of plaintiff-in-error, page 9 Selective Draft Law Cases, 245 U. S. 366 (1917). See (1941) 39 MICH. L. REV. *op. cit. supra* at 929.

⁸ Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939); CROWDER, THE SPIRIT OF SELECTIVE SERVICE (1920) 51 *et. seq.*

⁹ PRENDERGAST, THE LAW RELATING TO OFFICERS IN THE ARMY (1855) 38 (referring to service expeditions to Ireland).

¹⁰ 5 & 6 GEO. V, c. 60 (1915).

¹¹ 6 & 7 GEO. V, c. 15 (1916).

¹² Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939).

¹³ (1935) International Conciliation 264, 271. See, ARMY WAR COLLEGE, STATISTICAL COMPARISON OF UNIVERSAL AND VOLUNTARY MILITARY SERVICE (1915) 9.

¹⁴ 7 ENCYC. AMERICANA, *Conscription* (1938) 544. *But see*, LEAGUE OF NATIONS ARMAMENTS YEAR BOOK 1928-29 (Geneva, 1929) (contains

The impending threat of war and a growing belief in the inefficacy of the appeasement policy led Great Britain to enact the "British Military Training Act" in May 1939.¹⁵ With the declaration of war in September of 1939 the act was superseded by the National Service (Armed Forces) Act of 1939.¹⁶

The American Experience

As early as 1774 some of the colonies were preparing for war with England. In 1775 the Continental Congress passed measures recommending the creation of a militia. There was no strong central government and the burden of raising and equipping troops was placed wholly on each colony. Thus, there was no national control and direction permitting utilization of resources to the greatest wartime advantage. Voluntary enlistment proved wholly inadequate although large bounties were offered as inducements. Short training periods created only raw troops which had little chance for success against the well-trained opposition.¹⁷

The Constitution of the United States authorized the federal government to raise and maintain an army,¹⁸ and it was the manifested intent to give this power exclusively to the federal government and leave none to the states.¹⁹ Public opinion, however, was in favor of leaving national defense to the militia, and it took generations to overcome these prejudices.²⁰ Washington, Jefferson, Adams, Knox, and other leaders of the period urged the adoption of a selective service plan to create a well regulated army, but they did not live to see it become law.²¹ Instead, the militia of 1792 was organized, and it

detailed information concerning the extent and duration of compulsory military service among the principal nations).

¹⁵ 2 & 3 GEO. VI, c. 25 (1939); Keith, *Notes on Imperial Constitutional Law* (1939) 21 J. COMP. LEG. INT. L. 251, 252. ("This act is remarkable as the first enactment to be passed in time of peace authorizing a form of conscription in this country. It is of a temporary character to continue in force for three years from the date of its passing May 26, 1939. This act applies generally to male British subjects between 20 and 21 years of age ordinarily resident in Great Britain with special provisions for Scotland with power given to extend it to British subjects ordinarily resident outside Great Britain and to the Isle of Mann.")

¹⁶ 32 HALSBURY, LAWS OF ENGLAND (1939) 591 to 592; 2 & 3 GEO. VI, c. 81 (1939). See (1941) 39 MICH. L. REV. *op. cit. supra* at 930 for the provisions of compulsory military service as applied by the dominions and colonies of Great Britain.

¹⁷ Selective Draft Law Cases, 245 U. S. 366, 379 (1917). Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939) 7; PALMER, WASHINGTON, LINCOLN, WILSON: THREE WAR STATESMEN (1930) 35, 84, 263; WOOD, AMERICA'S DUTY AS SHOWN BY OUR MILITARY HISTORY (1921) 84-116.

¹⁸ U. S. CONST. ART. I, § 10.

¹⁹ Selective Draft Law Cases, 245 U. S. 366, 381 (1917).

²⁰ Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939) 7.

²¹ WOOD, AMERICA'S DUTY AS SHOWN BY OUR MILITARY HISTORY (1921) 53-83.

proved to be less effective than the one employed during the Revolution.²²

During the war of 1812, the volunteer system of enlistment again failed in spite of extravagant bounties. The militia claimed constitutional exemption from foreign service and often refused to leave the United States. The national government conducted the war, but the troops were supplied by and were responsible to the state governments from which they came.²³ Throughout the war the record of our navy was excellent, but that of our army was poor. The United States repeated every major blunder of the Revolution.²⁴

In the ensuing Florida and Indian wars, our regular army was slightly increased;²⁵ but nevertheless it was too small to meet the opposition, and was supplemented with a poorly trained militia which increased the cost of fighting by prolonging the duration of the war.²⁶

By the time of the Mexican War the United States had profited somewhat by past mistakes. But failure to make enlistments for the duration of the war prolonged hostilities.²⁷ The regular army was small and many volunteers had to be used. Less reliance was placed on the militia, which was beneficial as the regular army was composed of better trained soldiers.²⁸ Thus far, however, the war had been our best conducted and most successful; the systems employed had been equally inefficient as those of previous years, and our success was attained, not as a result, but in spite of them.²⁹

At the outset, the Union enlisted only 75,000 militia for a period of three months and expected to win the war within that time. The South began with a one year enlistment period, giving them a decisive advantage. Lincoln soon recognized the weaknesses of the plan and immediately introduced recruiting for three years or the duration. There were practically no volunteers, however, so the government ordered a draft of 300,000 militia to serve nine months. This militia draft and the volunteer plan, which still remained, created a most confusing system of recruiting. The call did little but provide green troops at great expense. As a last resort, National Conscription was introduced in 1863, and was not successful.³⁰

The draft was introduced two years too late and was only a means of forcing those to fight who had failed to volunteer. Volunteering continued and the draft was applied to only those districts which failed

²² Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939) 7.

²³ *Id.* at 18.

²⁴ WOOD, AMERICA'S DUTY AS SHOWN BY OUR MILITARY HISTORY (1921) 124-129.

²⁵ *Id.* at 134.

²⁶ PALMER, WASHINGTON, LINCOLN AND WILSON: THREE WAR STATESMEN (1930) 148.

²⁷ Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939) 8.

²⁸ WOOD, OUR MILITARY HISTORY (1916) 145-148.

²⁹ *Ibid.*

³⁰ Army and Navy Selective Service Com., AMERICAN SELECTIVE SERVICE (1939) 9.

to fill their quotas by other methods. Hence the drafted man and the district from which he came were labeled as disloyal. Inefficient house to house registration was conducted solely by the federal government. Recruiting costs were thirty times as great as necessary. Furthermore, the drafted man could hire a substitute which tended to lower the standards of patriotism.³¹ In almost every respect, the draft and volunteer plan failed.³²

The United States entered the World War and simultaneously adopted compulsory military service. The plan authorized: (1) selective service for those between twenty-one and thirty years of age, (2) concurrent voluntary recruiting, and (3) prescribed service for the duration of the emergency. Bounties, substitutes, and purchased exemptions were forbidden. Only ministers, divinity students, and high public officials were exempt. Conscientious objectors were only freed from actual fighting. The state was the unit established for quota allotments which were based on total population.³³ Subsequent amendments changed the quota basis from total population to total Class I registrants, provided for registration of new men, and extended the draft age.³⁴ Responsibility for registration, classification, physical examination, induction, transportation, and related problems were placed in local boards.³⁵ The plan was considered a success because it was efficient and fostered the theory of military obligation of citizenship.³⁶

The World War did not pass without its mistakes, however. At the time of our entry we were unprepared, unorganized, and unequipped. The regular army and the reserves were not well trained in war methods. The cost of the war was excessive and our errors caused losses from which it took years to recover.³⁷

While the United States has relied upon voluntary enlistment for the maintenance of a small standing army since World War I, Congress in 1920 placed upon the General Staff the problem of preparing plans for the mobilization of the manpower of the nation.³⁸ In accordance with this congressional mandate the Joint Army and Navy Selective Service Committee, formed in 1926, prepared rules and regulations for mobilizing the manpower of the nation. The adoption of the present Selective Service System, patterned after that of 1917-18, represents every major aim decided upon by this Joint Committee.³⁹ Following the United States' declaration of war, the

³¹ SECOND REPORT OF THE PROVOST MARSHAL GENERAL TO THE SECRETARY OF WAR ON THE SELECTIVE SERVICE SYSTEM (1919) *passim*.

³² WOOD, OUR MILITARY HISTORY (1916) 157-158.

³³ 40 STAT. 76, 50 U. S. C. A. § 226 (1917).

³⁴ 40 STAT. 557-558, 40 STAT. 995, 50 U. S. C. A. § 226 note (1918).

³⁵ SECOND REPORT OF THE PROVOST MARSHAL GENERAL TO THE SECRETARY OF WAR ON OPERATIONS OF THE SELECTIVE SERVICE SYSTEM (1919) 279-280.

³⁶ WOOD, AMERICA'S DUTY (1926) 216-237.

³⁷ *Ibid.*

³⁸ *Hearings on H. R. 10132*, 76th Cong., 3rd Sess. (1940) 67, 112.

Selective Training and Service Act was amended to provide for registration of all male residents of the United States between the ages of 18 and 65.⁴⁰

Conscription as a recruiting measure in war time has proved to be inevitable. Moreover, the conscription system produces a leveling, a community of citizenship, and an awakening realization of the pertinence of the burdens of government which arises from the basic conception that military service should rest not upon ardor, mercenary motive, or social class but simply upon the duties of membership in the political association for whose maintenance and defense an army is formed.

CLASSIFICATION

In conscription, just as in other activities where government assumes the task of directing the actions of individuals, rules of procedure are necessary. Thus, a rigid adherence to rules prescribing procedure for registration, classification and induction are necessary if the policy of equal treatment is to be effective.¹ In the case of classification, prejudice to a registrant may arise where he seeks to introduce claims for deferment.² Such claims must be presented to the local board before classification has been made.³ After classification the registrant may take advantage of the provisions of the Selective Service Regulations concerning reopening of classification,⁴ appeal,⁵ or personal appearance⁶ for determining questions of deferment.

The registrant may be considered *classified* only when he has been

³⁹ *Conscription*, THE AMERICANA ANNUAL (1941) 184; *Selective Service*, BRITANNICA BOOK OF THE YEAR (1941) 604 et seq. (a detailed discussion of the organization of the Joint Army and Navy Selective Service Committee).

⁴⁰ 55 STAT. 627 (1940), 50 U. S. C. A. § 357 et seq. (Supp. 1941). For a detailed discussion of the provisions of the Selective Training and Service Act of 1940 as amended see Notes (1942) 17 IND. L. J. *infra*.

¹ Sel. Ser. Reg. § 623.1 (c) (1942).

² *Application* of Greenberg, 39 F. Supp. 13, 15 (D.N.J. 1941). A registrant was placed in Class I on December 3, 1940. On January 3, 1941 he was given his physical examination. The following day he was married. On January 7 registrant was placed in class I-A. The court found that January 7 was the date of classification and therefore, the local board properly considered registrant's claims for deferment because of dependency. The Board of Appeal considered December 3, 1940, as the date Greenberg was classified and disregarded any information in the registrant's file concerning the question of dependency. Thus the Board of Appeal in effect denied Greenberg a right of appeal on the question of dependency.

³ Sel. Ser. Reg. § 623.2 (1942)

⁴ Sel. Ser. Reg. Part 626 Reopening and Considering Anew Registrants' Classification (1942)

⁵ Sel. Ser. Reg. Part 627 Appeal to Board of Appeal (1942)

⁶ Sel. Ser. Reg. § 625.1 (1942)