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Religious Deferments

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RELIGIOUS DEFERMENTS

The provisions of the Selective Service Law relating to religious deferments represent an attempt to balance two conflicting ideals of a democratic and Christian people. Men must fight so that our freedom may be preserved, yet in the process of waging war we cannot destroy the very things for which we strive. Without our country's freedom, individual liberties may become ghosts of the past. Freedom of religious thought has been part of our heritage since the early settlement of New England.

Thus although the act "declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service"¹ some exceptions are made for persons because of religious belief and training.

²⁸ *Information for Institutions of Higher Education as to Class V-1* (Navy Dept. 1942) 3-10. For physical requirements for Classes V-1, V-5, and V-7, see *Id.* at 17-21.

²⁹ *Id.* at 5. The examination to be given in March, 1943 will cover the material in the beginning college courses in mathematics and physics as well. *Id.* at 9.

³⁰ "Approximately 5,000 of these will be accepted from standard engineering courses and the remainder from programs acceptable to the Navy Department." *Id.* at 6.

³¹ *Id.* at 5 and 6.

¹ 54 STAT. 885, 50 U.S.C.A. § 301 (Supp. 1940).

Students preparing for the ministry in recognized schools are required to register but will be deferred if they seek deferment as provided by the Act.² Regular³ or duly ordained⁴ ministers must register but will be deferred if they comply with the statutory requirements.⁵ A duly ordained minister who does not continue the practice of his profession is subject to military service.⁶ "Jehovah's Witnesses" claim that all "Witnesses" are ministers⁷ and even though they are regular or duly ordained ministers they are required to register.⁸ They may be classified as conscientious objectors, however.⁹

It is difficult to rationalize the position of the conscientious objector. He demands all the privileges of freedom of religion without accepting the corollary responsibility of preserving it. Nevertheless, Congress has not required *bona fide* conscientious objectors to act contrary to their scruples in the matter of military service. Uniformity of decisions under the Act is desirable in the interests of justice, but is unlikely.¹⁰

Persons conscientiously opposed to participating in war because of religious training and belief are not to be subjected to combatant training and service.¹¹ Registrants opposed to both combatant and noncombatant duty may be assigned to work of national importance

² 54 STAT. 885, 50 U.S.C.A. § 305 (Supp. 1940); Sel. Ser. Reg. 622.44(a) (1942).

³ Sel. Ser. Reg. § 622.44(b) (1942). "A regular minister of religion is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister."

⁴ Sel. Ser. Reg. § 622.44(c) (1942). "A duly ordained minister of religion is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

⁵ 54 STAT. 885, 50 U.S.C.A. § 305 (Supp. 1940).

⁶ *Ex parte* Short, 253 Fed. 839 (N.D. Cal. 1918).

⁷ Note (1941) 15 ST. JOHN'S L. REV. 346.

⁸ Under Selective Service interpretations some Jehovah's Witnesses are regarded as in the same status as ministers, such as members of the "Bethel Family" and "Pioneers." By the terms of the Act ministers and students preparing for the ministry in theological or divinity schools recognized for more than one year prior to October 16, 1940 are exempt from service.

⁹ 54 STAT. 885, 50 U.S.C.A. § 305 (Supp. 1940); Sel. Ser. Reg. §§ 621.3, 622.14, 622.51, 622.52 and 622.53 (1942).

¹⁰ Disparity in such decisions is feared by the American Civil Liberties Union. N.Y. Times, October 13, 1940, § 1, p. 7, col. 4.

¹¹ 54 STAT. 885, 50 U.S.C.A. § 305 (Supp. 1940); Sel. Ser. Reg. §§ 622.12, 622.14, 622.51, 622.52, and 622.53 (1942). But persons who oppose participation in war because of non-religious scruples are not to be deferred. Note (1940) 9 INT. JURID. ASS'N. MONTH BULL. 13.

under civilian direction.¹² Registrants opposed only to combatant duty may be assigned to noncombatant duty.¹³ Some noncombatant duties may be as equally important to the nation as combatant service and just as dangerous.

Membership in a church is not essential to classification as a conscientious objector.¹⁴ Registrants claiming to be conscientious objectors must secure Form 47 from their local board and supply the required information.¹⁵ Registrants will not be classified as conscientious objectors if entitled to deferment for any other cause.¹⁶

A decision classifying a person claiming to be a conscientious objector is final when affirmed by the appeal board, if the local board had jurisdiction and allowed the registrant a fair opportunity to be heard and present evidence.¹⁷ A mere assertion that one is a conscientious objector is insufficient. The strongest available proof is long membership in a well recognized pacifist church such as the Quakers, Mennonites, or Brethren. Once a registrant is inducted, jurisdiction over him passes from local board to military tribunal.¹⁸ Such a body does not violate the constitutional provision regarding religious liberty when it enforces military regulations.¹⁹ Conscientious objectors can only obtain deferment in the manner provided by the Act, there being no constitutional right to deferment from military service.²⁰

¹² Sel. Ser. Reg. §§ 622.51 and 622.52 (1942). The English go further, providing for an additional class of those who are opposed even to civilian service. National Service (Armed Force) Act, 1939, 2 & 3 GEO. VI, c. 81, § 5.

¹³ Sel. Ser. Reg. §§ 622.12 and 622.14 (1942).

¹⁴ Note (1941) 9 DUKE B.A.J. 9. The present Act differs in this respect from the Act of 1917. "Both statute and administration in the last war were unsatisfactory in that they exempted only well-established pacifist sects and exposed many objectors to unsympathetic army officers." Joint Note, *Mobilization For Defense — I. Conscription of Men for the Armed Services* (1940) 40 COL. L. REV. 1374, 1377, 54 HARV. L. REV. 278, 281, 50 YALE L. J. 250, 254.

¹⁵ Sel. Ser. Reg. § 622.3 (1942).

¹⁶ Sel. Ser. Reg. § 622.51 (1942), Note (1941) 45 DICK. L. REV. 129.

¹⁷ *Franke v. Murray*, 248 Fed. 865 (C.C.A. 8th, 1918). The provisions of the 1917 Act were similar to the present Act in this respect. 40 STAT. 76 (1917), 50 U.S.C.A. § 201 (Supp. 1940). Certiorari will not lie where boards act within the authority granted. *Shimola v. Local Board No. 42 For Cuyahoga County*, 40 F. Supp. 808 (N.D. Ohio 1941). No appeal by registrant to the President will lie from a decision of an appeal board concerning a claim for deferment as a conscientious objector. Sel. Ser. Reg. § 628.2 (1942), Note (1941) 45 DICK. L. REV. 129.

¹⁸ Sel. Ser. Reg. § 642.5 (1942). This is more liberal than the World War I Act, which was held to subject the selectee to military law upon notice to report. *Franke v. Murray*, 248 Fed. 865 (C.C.A. 8th, 1918).

¹⁹ *McCord v. Page*, Provost Marshall of Brooks Field, 124 F. (2d) 68, 70 (C.C.A. 5th, 1941). One ordained a minister subsequent to voluntary enlistment petitioned for writ of habeas corpus on the ground that his religious convictions were incompatible with saluting his superior officers and the flag. Writ was denied.

²⁰ See *Hamilton v. Regents of the University of California*, 293 U.S. 245, 264 (1934); *United States v. Macintosh*, 283 U.S. 605, 623

(1931); *United States v. Schwimmer*, 279 U.S. 644, 650 (1929); *Selective Draft Law Cases*, 245 U.S. 366, 378 (1918); *Jacobsen v. Massachusetts*, 197 U.S. 11, 29 (1905); Geraghty, *Judicial Protection of Individuals Under the Selective Training and Service Act of 1940* (1941) 36 ILL. L. REV. 310, 313; Notes (1941) 45 DICK. L. REV. 129, 15 ST. JOHN'S L. REV. 235.