
CONSCRIPTION AND THE "CONSCIENTIOUS OBJECTOR"

Facts regarding exemption from military service
under the conscription act.

NOTE:

The facts contained in this pamphlet are gathered entirely from official sources. Those statements which do not appear in official documents have been verified by consultation with officials of the War Department. The purpose of this pamphlet is to enable any interested citizen to get accurate information on the relation of conscription to the "conscientious objector," not to aid or influence men to resist the conscription act. The pamphlet should be read in connection with the accompanying leaflet, kindly furnished by the Provost Marshal General. The Bureau stands for a liberal, statesman-like solution of the problem of liberty of conscience.

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FOREWORD

Liberty of conscience is essentially an Anglo-Saxon tradition for which our ancestors fought and died, and for which thousands emigrated to America. Indeed liberty of conscience is so essential a feature of our traditional liberties, that of 36 states whose constitutions or statutes provide for drafting men for military service, 28 of them specifically exempt from bearing arms those who have conscientious scruples against it. (See Note below.)

The American Union Against Militarism and other organizations made every effort to get Congress to include a liberal provision in the conscription act covering conscientious objectors, similar to that in the British act, and permitting men opposed to participation in war to accept other forms of service. The efforts were not successful, chiefly because the War Department opposed any other provision than one covering "members of well-recognized sects." The Department decided not to recognize individual conscience—and conscience is nothing if it is not individual—fearing that such recognition would leave the doors too wide open to slackers, and because individual conscience would be difficult for the local boards to determine.

Under the Conscription Act certain classes of men of military age (21 to 30 inclusive) may be exempted from service. Among these are members of "well-recognized religious sects or organizations whose creed or principles are opposed to participation in war." While this definition, if rigidly interpreted, may be held to apply only to Quakers and similar sects, it at least offers opportunity to all "conscientious objectors," whether opposed to participation in war on religious, on humanitarian or on economic grounds, to state their cases before the local boards dealing with exemption, even though their chances of recognition seem slight.

NOTE—Exemption from military service is granted for conscientious scruples against bearing arms, in the constitutions or statutes of the states of *Colorado, *Idaho, *Illinois, Indiana, *Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Missouri, New Hampshire, North Carolina, *North Dakota, Ohio, Oklahoma, *Oregon, Pennsylvania, Rhode Island, South Carolina, *South Dakota, Tennessee, Texas, Vermont, Virginia, *Washington, Wyoming.

* In times of peace only.

THE PROVISIONS OF THE CONSCRIPTION ACT RELATING TO EXEMPTIONS

The act passed by Congress and approved by the President May 18, 1917, providing for raising an army of 1,000,000 men by the "selective draft," permits exemption from military service for certain groups of men.

In this connection the essential facts are:

1st—The act provides for raising at once an army of 500,000 men between the ages of 21 and 30 years, both inclusive, and for an additional army later of 500,000 more between the same ages.

2nd—The act holds for military service all men in the United States who had reached their 21st birthday on June 5, and who had not yet reached their 31st birthday on that date.

3rd—The act provides three kinds of exemption—absolute, non-combatant and conditional.

(1) Those who are entirely exempt under the act are the officers of the United States and of the several states and territories; regular or duly ordained ministers of religion; students now in recognized theological or divinity schools; and persons now in the military and naval service of the United States.

(2) Those exempt from combatant service but who may be assigned to "non-combatant service" are those found to be members of "any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or the participation therein."

(3) Those who may be altogether exempted by the President or assigned by him to "partial military service" (a phrase which the War Department is not yet prepared to define) under regulations prescribed by him are:

(a) County and municipal officials.

(b) Customhouse clerks; clerks; persons employed in mail service; men employed in armories, arsenals and navy yards; other classes of federal employes to be specifically named by the President.

(c) Pilots; mariners "actually employed in the sea service of any citizen or merchant within the United States."

(d) Persons "engaged in industries, including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective operation of the military forces or the maintenance of the national interest during the emergency."

(e) Those "in a status with respect to persons dependent upon them for support which renders their exclusion or discharge advisable."

(f) Those "found to be physically or morally deficient."

4th—The men who are drafted will be notified to appear before exemption boards to take a physical examination and to present their claims for exemption, if any. **Every man drafted has the right to make a claim, whether or not he stated a claim for exemption on his registration blank June 5.**

Two different sets of boards are established throughout the United States for the purpose of hearing claims for exemptions,—local boards and district boards.

Local boards are to be established one in each county or similar sub-division of a state and one for every 30,000 population in cities. These boards, composed of three or more citizens of the district "none of whom shall be connected with the military establishment," are appointed by the President "from among the local authorities or from citizens residing in the sub-divisions." **These boards will hear every claim for exemption except those made under clause (d) above,** (namely persons "engaged in industries, including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective opposition of the military forces or the maintenance of national interest during the emergency.")

This latter group of claims for exemption will be heard before the **district boards**, appointed one in each federal judicial district in the same manner as the local boards. These district boards will have not only original jurisdiction over this class of cases, but the right to hear all appeals from the local boards. **Any claim for exemption may be appealed from the local to the district board, either by the applicant or by the Government.**

The decisions of the District Board are final in all cases appealed from the local boards. An appeal may be taken to the President of the United States from decisions of the District Boards on cases **originally** heard by them under clause (d) above.

HOW THE LAW OPERATES

The operation of the law in relation to "conscientious objectors," is as follows:

1st. Those objectors to war who refused or failed to register on June 5, or within the period of grace allowed thereafter, are subject to arrest and conviction in the Federal District courts and the penalty of imprisonment for not more than one year and forcible registration. **Registration and liability to military service under such a conviction does not place a man under military law. He is still under the civil law until he has been physically examined and refused exemption. He then comes under military law upon notification of acceptance into the army. The Provost Marshal General has informed us that any act in resistance to the law up to that point subjects a man to indictment and trial in the Federal Courts under the penalty section of the Conscription Act (Section 6).**

2nd. Those who registered June 5, when drafted, will be notified to appear before a local or district board to present whatever claims for exemption they may have. These claims can be made regardless of whether any claim was made on the registration blank June 5. Those who claimed on their registration blanks "conscientious objections to war," and those who did not, but wish to make that claim before the board, will have the right to file such claims. **The boards, however, are instructed to recognize no "conscientious objector" unless he is a member of a "well-recognized religious sect or organization opposed to participation in war."**

The claim is to be made in **writing only** on forms provided. There are no forms for conscientious objectors as such, but the form for members of "religious sects or organizations" can be used for the purpose. The local boards will determine whether applicants are members of organizations coming within the meaning of the law. The government has not issued any statement designating the sects or organiza-

tions included. Each board will determine which will be recognized. Some conscientious objectors have announced that they would claim exemption under that definition as "Christians," and others have suggested that they would test the indefinite language of the section on the ground of membership in internationalist or pacifist organizations.

If the exemption is refused, the applicant will have the right to appeal from the local to the district board. Legal aid can be chiefly given in securing uniform and liberal rulings under this section.

3rd. Each exemption board will have on it one physician, who will make a physical examination of all men drafted as they come before the board. **These examinations will be made before any claim for exemption is heard.** If the applicant passes this physical examination, and his claim for exemption is refused, he then is accepted into the army. He will have a subsequent physical examination made by the regular army physician. He comes under military control, however, before this second examination. Passing the first physical examination and failing to secure exemption thus brings a drafted man automatically under military law. "Failing to secure exemption" means failing either before the local board, or the district board on appeal. Drafted men who refuse to comply with any provision of the Conscription Act up to acceptance into the army are subject to arrest, trial and conviction in the Federal District Courts. Men who are accepted into the army and then refuse to undergo military training are subject to court martial and any penalty that may be ordered.

The drafting of names of the first 687,000 men to be selected is done at Washington by means of a numerical system. The numbers will be transmitted at once to the local boards and the men whose names fit the numbers will be notified to appear before the boards. It is possible that over a million names of the 9,500,000 registered will be chosen from which to select the first 687,000.

It has been reported that aliens who have only taken out their first papers would not be drafted. No official statement has been made to indicate that such persons are not required to serve the same as full-fledged citizens, although the matter is before the State Department for determination under our treaty agreements.

There has also been no official statement in regard to the exemption of men whose dependent relatives do not live in the United States. It is assumed that this matter will be left to the local boards for decision in each case.

THE ATTITUDE OF THE ADMINISTRATION IN REGARD TO CONSCIENTIOUS OBJECTORS

Representatives of the American Union Against Militarism have held a number of conferences with the War Department and officials of the Administration, in an effort to learn:

1st. Whether the Administration would interpret liberally or rigidly the clause of the Conscription Act covering "members of well recognized religious sects or organizations opposed to war."

2nd. Whether a workable plan of procedure could not be agreed upon for dealing with all conscientious objectors tried or courtmartialled in order to avoid the scandals and brutalities that seem inevitably to accompany the handling of such men by military officers.

3rd. Whether the Administration would favor new legislation specifically recognizing individual conscience as well as the group conscience of those who are members of well-recognized religious sects or organizations.

A memorandum of the two sets of recommendations made to the War Department will be found on pages 11-14.

The officials made it clear that the law is to be enforced to the letter, and that no "conscientious objectors" can be exempted except the members of well-recognized religious sects or organizations opposed to war. They also made it clear that they desired to avoid any brutalities, and would provide some uniform, orderly method for dealing with conscientious objectors who come under military law.

On the matter of new legislation recognizing individual conscience, no definite reply has been received.

We are at liberty, however, to say that our representatives are encouraged by the open-minded consideration of the suggestions, and by the evidently earnest desire of all officials to avoid injustice and brutalities.

AID FOR CONSCIENTIOUS OBJECTORS

Men who claim exemption on conscientious grounds can get help from the following sources:

1st. On questions of fact about the operation of the law, from the office of the Provost Marshal-General, Washington, D. C.

2nd. On matters relating to making out the affidavits claiming exemption, from the local board. Lawyers can help in this matter. **They will not be allowed, however, to appear before any board. All proceedings before every board are to be by written statements and affidavits only.**

3rd. Conscientious objectors may, of course, secure counsel to advise them at any point in the proceedings.

4th. The Civil Liberties Bureau of the American Union against Militarism, 70 Fifth Ave., New York, will answer all inquiries.

Members of churches who are conscientious objectors may be able to get help from local clergymen or by addressing the Federal Council of Churches of Christ in America, 105 East 22nd St., New York City, which adopted a strong resolution in the interest of conscientious objectors at its special meeting on war problems, May 8th and 9th.

CONSTITUTIONALITY OF THE CONSCRIPTION ACT

It seems likely from present indications that the conscription law will be tested in the courts. The issue has never been before the United States Supreme Court. For the benefit of those interested, we include the following brief memorandum prepared by two of our attorneys.

The Act entitled: "An Act to authorize the President to Increase Temporarily the Military Establishment of the United States," approved May 18, 1917, is unconstitutional for the following reasons:

1. It violates Articles I of the Constitution and particularly Subdivision 15 of Section 8 thereof, which confines the purposes for which the militia may be called to the following:

- a. To execute the laws of the Union.
- b. Suppress insurrection.
- c. Repel invasion.

and Subdivision 16 of Section 8, Article I, which specifically reserves to the states the control of the militia.

2. It violates Article I of the Constitution and particularly Section 1 and Subdivision 1 of Section 8 of the said Article in that it assumes to delegate the powers specifically reserved to Congress, to wit: legislative powers and the power to raise and support armies, to the President of the United States.

3. It violates Section 1 of Article XIII of the Constitution which prohibits involuntary servitude except as a punishment for crime, whereof the party shall have been duly convicted.

4. It violates the first Amendment to the Constitution prohibiting Congress from making any law respecting an establishment of religion in that it assumes to recognize a certain religion and to discriminate in favor of the adherents of such religion. It denies the "free exercise of religion" guaranteed by the amendment.

5. It violates the fifth Amendment to the Constitution in that it subjects citizens to deprivation of life, liberty or property without due process of law in that it assumes to confer upon the President of the United States discretionary and arbitrary powers in the selection of citizens for drafting into the army.

6. It violates Section 4 of Article IV of the Constitution which guarantees to every state of the union a republican form of government. By the terms of the Act of May 18, 1917, citizens of the various states may be kept in the army in foreign service during "the period of emergency," which may be forever, subject to military law and possibly under the command of a foreign non-republican government. If two million citizens can thus be drafted and kept under martial law, ten million can be so drafted, and the entire male population may be kept in the army indefinitely, thus substituting military autocracy for the republican form of government.

SUGGESTIONS made to Secretary of War Baker by the American Union Against Militarism for dealing with "Conscientious Objectors" under the present law,—the "Selective Service" Act.

1. **Civil and Military Trials:** Men who are unwilling to engage in military service for conscientious reasons will, after failing to secure exemption, either refuse to take the physical examination, or having taken the examination and being accepted into the army, refuse to undergo military training. Although the man refusing physical examination is tried in a Federal Court and the man accepted into the army, by court-martial, both are in fact the same type of offender and we urge that they be dealt with similarly.

2. **Prompt Trials:** In the case of a man courtmartialled, the trial should take place immediately after arrest, not after he has been held in a barracks guard-house subject to possible brutality on the part of soldiers. The British experience shows that the average soldier's contempt for a man whose psychology he does not understand, prompts brutal and unwarranted treatment.

3. **Uniform Penalties:** The penalties fixed by the court-martials should be standardized. There is no reason why a courtmartial in San Francisco should impose on a conscientious objector a different or longer sentence than one in Boston. As men who are drafted for military service are required to serve the length of the war, it is reasonable to limit the sentence of conscientious objectors to the same length of time. One of the great evils in England has been that the court-martials sentenced men recurrently for short periods for the same offense. As soon as a man came out of prison, he was arrested again by the military authorities, courtmartialled, sentenced and imprisoned. This performance each time subjected a man to renewed brutality in the barracks at the hands of soldiers and petty officers.

4. **Detention Camps Under Civil Authority:** In regard to the imprisonment of these men, we suggest that they can be best handled, not in military prisons, federal penitentiaries or local jails, but in detention camps under civil authority for the following reasons:

1st—Men who are imprisoned for their opinion about war are not in the same class with the ordinary offender against law. Most of them would be glad to render some form of national service except under military authority, but the

law does not give them that chance. They will not, if properly handled, require the restraints of the ordinary penal institution.

2nd—Sending these men to ordinary penal institutions will embitter them, their families and their friends. It will tend to raise an issue throughout the country, similar to that in England, where these men have become martyrs, arousing the sympathy of the whole country, forcing the Government to liberal treatment.

3rd—The one or more reservations to which such men are sent should be preferably under civil, not military control. It is difficult for army men to understand the point-of-view of men opposed to participation in war, and even the best of them will be inclined to deal with them harshly, if not brutally.

June 30, 1917.

RECOMMENDATIONS FOR NEW LEGISLATION

These suggestions are based upon the principle of recognizing in new legislation, individual conscience rather than the "corporate" conscience of members of "well recognized religious sects opposed to war," which is the narrow provision of the present law. The first group is intended to overcome the difficulties of determining what men have real conscientious scruples against participating in war. The second group covers the proposed treatment of such men by the Government.

The suggestions embody the solution finally accepted in England after one and a half years' experience and represent the best judgment of those who have studied the problem.

I. Evidence of Conscience Before the Local Boards

1. **Members of organizations opposed to war.** The difficulty in presenting evidence of conscience before local boards can be somewhat overcome by recognizing those who were members, before the draft act was passed, of an established organization whose purposes are opposed to war—such as, for instance, the Fellowship of Reconciliation, the Socialist Party, and other political, industrial and pacifist groups whose principles are opposed to war and to participation in it by their members.

2. **Individuals.** Persons not members of such organizations should be required to present legal evidence before the local boards, either by witnesses or by affidavits of trustworthy citizens of the district, to the effect that the applicant is well-known to have been opposed to war and to participation therein. Questions to be asked of such applicants by the board, which would help determine their attitude toward participation in war, might well be formulated and sent out to the boards by the War Department in their confidential instructions.

II. *Provision for Conscientious Objectors*

1. **Non-combatant service.** Men who are unwilling to engage in combatant service and to undergo military training should be assigned to non-combatant service, either at home or abroad, according as they may be willing.

2. **Alternative service.** Men who are unwilling to engage in either combatant or non-combatant service under military authority should be released under a written agreement to engage in some occupation essential to the national welfare, reporting periodically to the local exemption board. Such occupations should be determined and listed.

3. **Treatment of "Absolutists".** Men who are unwilling either to engage in combatant or non-combatant service, or to accept alternative service under agreement as outlined above, might be temporarily exempted, if engaged in occupations essential to the national welfare. If not engaged in such occupations and unwilling to change they would presumably have to be tried or courtmartialed.

4. **Penalties.** In connection with the latter group, men who are unwilling to accept any national service under compulsion or agreement on the ground that any such service helps in carrying on war—we desire to call attention to the English experience and to suggest that in the case of men who are to be tried or courtmartialed the following procedure be followed:

1st.—That the trial or courtmartial take place immediately after the refusal of a board to exempt a drafted man.

2nd.—That arrangements be made to place such a man either in a detention camp or prison under civil, not military, authority, and

3rd.—That the penalties for men who refuse any service under compulsion or agreement be standardized.

PROPOSED BILL

A bill to amend Section 4 of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States" approved May 18th, 1917.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States" approved May 18th, 1917, is hereby amended by adding after the first paragraph thereof a new paragraph to read as follows:

"No person, who submits satisfactory proof under rules and regulations to be prescribed by the President, that he has conscientious objection to undertaking combatant service and that he had such objection prior to April 6th, 1917, shall be required or compelled to serve as a combatant in the forces herein provided for. Any such person, and any person exempted as provided in this section from such service because of membership in a well-recognized religious sect or organization whose creed or principles are against war or participation therein, shall be assigned for the period of the existing emergency unless sooner excused, to service in any capacity that the President declares to be non-combatant, unless he shall agree to engage for the same period in an occupation, trade or industry, which the President declares to be essential to the national defense. Whoever, being so assigned to non-combatant service, refuses to undertake such service, or who having agreed to engage in such occupation, fails or neglects fully to carry out such agreement, shall be guilty of a misdemeanor and upon conviction in the District Court having jurisdiction, shall be punished by imprisonment for not more than one year, and shall not be punished under military law, or the articles of war."

Address all communications to:
Civil Liberties Bureau
AMERICAN UNION AGAINST MILITARISM
70 Fifth Ave., New York City

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Civil Liberties Bureau :**

1. By joining an established local committee or group,
2. If no such group exists, by starting one, either as a local branch of the Union or under some other name,
3. By sending us the names of lawyers willing to help,
4. By informing us immediately of any cases of unwarranted arrest, denial of free speech, unlawful search and seizure, interference with peaceful assembly, etc., arising in your community by reason of the war, especially where the injured parties cannot afford to employ counsel,
5. *By contributing to the Civil Liberties Defense Fund.*

From Fred W. Benz