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THE CONSCIENTIOUS OBJECTOR UNDER THE SELECTIVE SERVICE
ACT OF 1940

In the celebrated *Selective Draft Cases* it was held that the very conception of a just government includes the right to compel its citizens to render military service in case of need.¹ Yet from the beginning of our history, Quakers and other conscientious objectors² have been exempted as an act of grace from military service.³ Such exemption, however, "is dependent upon the will of Congress and not upon the scruples of the individual, except as Congress provides. No constitutional provision . . . but only the policy of Congress (exempts the conscientious objector)."⁴ Moreover, this exemption has been strictly limited to military service and no conscientious objector can claim exemption from war taxes,⁵ from military training required by a state university which the conscientious objector may wish to attend,⁶ or from the clause in the naturalization oath regarding the bearing of arms in defense of the nation.⁷

I

In the Selective Service and Training Act of 1940,⁸ the clause⁹ requiring the registration of all male citizens and resident aliens between the ages of 21 and 35 made no provision for the designation of a registrant as a conscientious objector. But prior to the registration day, October 16, 1940, the Acting Director of Selective Service notified all State Directors of Selective Service that registration cards should not be considered invalid if a registrant wrote on the card that he was registering as a conscientious objector.¹⁰

Little opposition to the registration had been anticipated, but a number of individuals¹¹ refused to register, and after trial and con-

¹ *Arver v. United States*, 245 U. S. 366, 38 Sup. Ct. 159 (1918).

² The words "conscientious objector" are commonly abbreviated to c. o.

³ *Hamilton v. University of California*, 293 U. S. 245, 266, 55 Sup. Ct. 197 (1934).

⁴ *United States v. Macintosh*, 283 U. S. 605, 623, 51 Sup. Ct. 570 (1931). But *cf.* Hughes, C. J., dissenting.

⁵ *Cf.* *Hamilton v. University of California*, 293 U. S. 245, 268, 55 Sup. Ct. 197 (1934).

⁶ *Hamilton v. University of California*, 293 U. S. 245, 55 Sup. Ct. 197 (1934).

⁷ *United States v. Schwimmer*, 279 U. S. 644, 49 Sup. Ct. 448 (1929); *United States v. Macintosh*, 283 U. S. 605, 51 Sup. Ct. 570 (1931).

⁸ 54 STAT. —, 50 U. S. C. A., App., § 301 (Supp. 1940).

⁹ 54 STAT. —, 50 U. S. C. A., App., § 302 (Supp. 1940).

¹⁰ Pamphlet No. 163, p. 5. Issued Oct. 1940 by American Friends Service Committee, 20 So. 12th St., Philadelphia, Pa.

¹¹ Most publicized was the case of a group of students from the Union Theological Seminary who resigned from the Seminary in order to avoid being exempted as students for the ministry [54 STAT. —, 50 U. S. C. A., App., § 305(d) (Supp. 1940)] and then announced their conscientious objection to the

viction were sentenced to a year and a day in a federal penitentiary and, in one Oregon case,¹² to a road gang.

For the most part, however, it has been the policy of the conscientious objectors to accept the registration as a sort of census and to look to the further provisions of the Selective Service Act for the vindication of their rights.¹³ The Selective Service Act of 1917 had provided exemptions only for those members of any well recognized religious sect or organization whose creed or principles forbade its members to participate in war in any form.¹⁴ The 1940 Act, however, while not so liberal as the English conscription act,¹⁵ provides for the exemption from combatant service of all those who by reason of religious training or belief are conscientiously opposed to participation in war in any form.¹⁶

II

Foremost among those whose training and belief inclines them to conscientious objection to war are members of the Society of Friends.¹⁷ The Friends, or Quakers, believing that there is "that of God, in every man," and recognizing the "Inner Light" as the presence of God in every human being, have maintained for almost 300 years that no Quaker is conscience-free to destroy another human life, no matter what the provocation.¹⁸ Other religious bodies such as the Church of the Brethren and the Mennonites¹⁹ have likewise been historically opposed to war.²⁰

During the World War there were many individual conscien-

registration. They were tried, convicted and sentenced to a year and a day in a federal penitentiary. *N. Y. Times*, Nov. 15, 1940, p. 30. A similar sentence was received by James Ball in Des Moines, Iowa. *N. Y. Times*, Dec. 1, 1940.

¹² 58 *THE CHRISTIAN CENTURY*, Jan. 15, 1941.

¹³ Such, also, was the attitude of the Civil Liberties Union which advised the Union Theological students to register and then claim exemption as conscientious objectors. (1940) 151 *THE NATION* 328.

¹⁴ 40 *STAT.* 78 (1917), 50 U. S. C. A., App., § 204 (Supp. 1940).

¹⁵ The National Service (Armed Forces) Act, (1939) 2 & 3 *Geo. VI*, c. 81, § 5, provides complete exemption for those proving absolute objections to military service.

¹⁶ 54 *STAT.* —, 50 U. S. C. A., App., § 305(g) (Supp. 1940).

¹⁷ It is an error, however, to assume that Quakerism is completely pacifist. There are Quaker Meetings where the military viewpoint has a majority. (1941) 6 *FELLOWSHIP* 22.

¹⁸ *BROOKS AND LEACH, HELP WANTED* 3.

¹⁹ *YODER, WHAT ABOUT WAR?* 6.

²⁰ During the last war, in addition to four bodies of Friends, 16 bodies of Mennonites and the Church of the Brethren (Conservative Dunkers), the following religious organizations were listed as holding the doctrine of non-resistance: Brethren in Christ, Christadelphians, Amana Society, Churches of Christ, Old Order German Baptist, Brethren Church (Progressive Dunkers), German Seventh Day Adventists, Church of God (New Dunkers). 2 *REP. PROVOST-MARSHAL-GEN.* (1919) 56-57.

tious objectors²¹ among the Protestant denominations and, since that time, Protestant groups in general have taken an active part in the parades,²² meetings,²³ and other activities²⁴ of the pacifist movement.²⁵ Although the nature of Protestantism and its emphasis upon the doctrine of private judgment precludes an official or authoritative position on the subject of war, the House of Bishops of the Episcopal Church declared in November, 1939, that war is "wholly incompatible with the teachings of Our Lord Jesus Christ".²⁶ The majority of Protestants are not pacifists, but the number of conscientious objectors is considerable and most denominations have authorized the establishment of a system of registration for the conscientious objectors among their members.²⁷

Conscientious objection has found little support in Orthodox Judaism. There is some support for the movement among the Reform²⁸ and Conservative²⁹ branches of Judaism, but here also there

²¹ Prominent among these was John Haynes Holmes who stated on March 17, 1915 that "war is never justifiable at any time or under any circumstances. No man is wise enough, no human interest is precious enough, to justify the wholesale destruction and murder which constitute the essence of war." Dr. Holmes still retains these convictions: "I would rather die than kill, and see my country conquered than a conqueror." (1940) 57 CHRISTIAN CENTURY 1546-9.

²² Fourteen Protestant organizations took part in the Peace Parade of May 19, 1934 in New York City. N. Y. Times, May 20, 1934.

²³ Peace Conference held at Broadway Tabernacle Church, New York City. N. Y. Times, May 8, 1934.

²⁴ Protest by a score of ministers against the Vinson Navy Bill. N. Y. Times, Feb. 11, 1934. Protest by Wyoming conference of the Methodist Episcopal Church against Navy War Games. N. Y. Times, April 26, 1935.

²⁵ For a representative account of present-day Protestant opinion, see series of articles by "ten Christian leaders, five pacifists and five non-pacifists." (Dec. 4, 1940-Feb. 5, 1941) 57 CHRISTIAN CENTURY.

²⁶ (1940) 57 CHRISTIAN CENTURY 1548.

²⁷ Protestant groups prepared to register affiliated noncombatants are: Episcopalian Fellowship Against War, Northern Baptist Council, General Council of Congregational and Christian Churches, Church of the Brethren, Disciples of Christ, Evangelical Synod of America, Presbyterian Church in the United States, Protestant Episcopal Church, Reformed Church in America, American Unitarian Association, Executive Committee of Federal Council of Churches, Oxford Conference on the Church Community and State, World Council of Churches, United Lutheran Church in America, The Society of Friends, The Mennonite Church. *Hearings before Committee on Military Affairs on S. 4164*, 76th Cong., 3d Sess. (1940) 308-10. But since the passage of the bill some have thought such registration unnecessary.

²⁸ In 1940 the Central Conference of American Rabbis reaffirmed the right of the conscientious objector to refuse on religious and humanitarian grounds to bear arms. But great opposition met the statement that "participation in war is irreconcilable with the highest implications of Judaism." Finally a motion that the C. C. A. R. refuse to participate in the registration of the conscientious objectors was carried 50-20. C. C. A. R. 1940 YEARBOOK 119, 125.

²⁹ In June, 1934 the Rabbinical Assembly of America Convention recognized the right of the conscientious objector to claim exemption from military service in any war to which he cannot give his moral assent, and pledged itself to support him in his determination to refrain from any participation in it. PREPARED STATEMENT OF THE R. A. A. ON THE CONSCIENTIOUS OBJECTOR. Cf. also Ben Zion Bokser, *The Jews and War* (1940) 6 THE RECONSTRUCTIONIST 7.

is no official, and little unofficial, encouragement for conscientious objectors. An effort was made³⁰ to set up machinery for registering Jewish conscientious objectors, but the proposal has been abandoned.³¹

The Roman Catholic Church has made no definitive pronouncement on the morality of war.³² Some of the early Christians³³ entertained some doubt concerning the morality of war, in view of the emphasis which Christ placed on the love that men ought to have for one another.³⁴ Gradually,³⁵ however, it became more obvious that the State, as well as the individual, may resort to force in defense of its rights, and that at times the State may be morally obligated to defend the rights of its citizens even though the citizens as individuals might lawfully waive those rights.³⁶ Today, the opinion is universal

³⁰ Cf. letter of July 19, 1940 from the Rabbinical Assembly of America to the Central Conference of American Rabbis. C. C. A. R. 1940 YEARBOOK 124.

³¹ After the passage of the Selective Service Act it was felt that the provisions for the conscientious objectors therein contained, made registration of Jewish conscientious objectors by the Rabbinical Assembly unnecessary. Form Letter of the Rabbinical Assembly of America, Oct. 1, 1940.

³² It seems to be the policy of the Church to leave to its moral theologians the discussion and tentative interpretation of the natural moral law (that part of the Eternal Law of God which governs the actions of men) until the special exigencies of the times or the danger of false moral teachings evoke an authoritative declaration.

³³ Tertullian (though only after he had embraced the heresy of Monatanism, c. A. D. 211) DE CORONA II; DE IDOLATRIA, c. XIX. Hippolytus of Rome, CANONS OF HIPPOLYTUS, cans. 13, 14. Lactantius, DE DIVINIS INSTITUTIONIBUS, c. VII, 20. Origen, CONTRA CELSUM, c. VII, 25-6, but cf. note 35, *infra*.

³⁴ Christ had addressed Himself mainly to the individual whose chief purpose in life was to win eternal salvation. Therefore it sometimes happened that a literal and indiscriminate application of His words to the state which has no such exalted purpose, gave rise to misconceptions concerning the morality of war. These misconceptions were finally corrected by applying to the problem of war the doctrines derived from the other ("Many other things . . . Jesus did, which if they were written . . . the world itself . . . would not contain the books which should be written." JOHN XXI, 25.) source of Divine Revelation which the Church recognizes in addition to the Sacred Scriptures, *viz.*, the body of truths preserved and promulgated through the teaching office of the Church. ("Going, therefore, *teach* ye all nations . . . to observe whatsoever I have commanded you." MATT. XXVIII, 18-20.) But during the first few centuries of the Church's existence, other and weightier problems claimed the attention of the theologians and prevented for a time their formulating a complete and concrete doctrine on the morality of war. Cf. EPPSTEIN, THE CATHOLIC TRADITION OF THE LAW OF NATIONS (1935) 28. For a detailed and technical treatment see NEWMAN, JOHN H., ESSAY ON THE DEVELOPMENT OF CHRISTIAN DOCTRINE (1845).

³⁵ In the middle of the third century Origen speaks of "just and unjust wars," (CONTRA CELSUM, VIII) and by the end of the fourth century the doctrine of the lawfulness of war had become sufficiently clear to enable St. Athanasius to declare, ". . . We find that certain distinctions must be made. Thus it is not permitted to kill; but to kill the enemy in battle is both lawful and worthy of praise." EPIST. AD AMUNEM MONACHUM, P.G., 26, COL. 1173.

³⁶ An individual, for instance, might, for a higher motive (*e.g.*, supernatural charity), decline to resist a thief who intended to steal the individual's property. A police officer, however, as a representative of the state would have no such election but would be bound to defend the rights of the individual, even at the cost of personal injury or death.

among Catholic theologians, that war is not essentially (*per se*) evil and that a just war is possible.³⁷

In recent years many Catholic moralists have seriously questioned the practical possibility of a just war on the grounds that the evils of modern war are so great as to outbalance, by far, the good to be derived therefrom.³⁸ And so, since participation in an *unjust* war is morally wrong,³⁹ a Catholic conscientious objector is not an impossibility. The objector would have to be certain of the injustice of the war, however, because otherwise his duty as a soldier or as a conscript would be to obey the commands of his lawful superiors.⁴⁰ Another ground upon which several Catholics have indicated⁴¹ their intention to base their conscientious objections is summarized by Msgr. Barry O'Toole as follows: "Christ's injunction against bloodshed or violence under any form, while not a *commandment*, is nevertheless a *counsel of Christian perfection* proposed to all the faithful and imposed by Canon Law⁴² upon the clergy. Consequently Cath-

³⁷ 2 PRÜMMER, *THEOLOGIA MORALIS* § 130. The conditions necessary and sufficient to justify a state in entering in a war are laid down by St. Thomas Aquinas, *SUMMA THEOLOGICA*, II, IIae qu. 40, and, in more detail, by later theologians as follows:

"1. Actual or certainly imminent violation of national rights; 2. moral certainty that this is really the situation; 3. a degree of evil in the injury or danger proportionate to the evils involved in war; 4. inefficiency, or failure, of peaceful means; 5. a well grounded hope of bringing about better conditions." RT. REV. JOHN A. RYAN, *INTERNATIONAL ETHICS* 30. Cf. 2 VERMEERSCH, *THEOLOGIA MORALIS* § 637; 2 NOLDIN, *TH. MOR.* § 352; 2 PRÜMMER, *TH. MOR.* § 130. For treatises in English see 2 DAVIS, *MORAL THEOLOGY* 148-51; REV. CYPRIAN EMANUEL, O.F.M., *THE ETHICS OF WAR* 21-46; REV. JOHN K. RYAN, *MODERN WAR AND BASIC ETHICS* 104; REV. FRANZISKUS STRATMANN, O.P., *THE CHURCH AND WAR* 47-95; Vermeersch, *Is a Just War Possible?* (March, 1935) *THE MODERN SCHOOLMAN*; Alfred E. Schwind, *Just Cause for War* (1940) 17 *MODERN SCHOOLMAN* 63; Philip Hughes, *War and the Christian Tradition* (Sept. 2, 1939) *THE TABLET* (London); Msgr. Barry O'Toole, *THE CATHOLIC WORKER*, Oct. 1939-Feb. 1941 (a series of articles on the ethics of war).

³⁸ JOHN A. RYAN, *op. cit. supra* n. 37; STRATMANN, *op. cit. supra* n. 37, p. 71; JOHN K. RYAN, *op. cit. supra* n. 37, p. 104. But Fr. J. K. Ryan defines "modern war" not as "present day war" but as "a war that employs means that are objectively evil" (*e.g.*, the direct bombing and killing of civilian populations to destroy morale). Of course there can be no controversy with his conclusions concerning "modern war" in that sense of the term.

³⁹ No Catholic can unqualifiedly assent to Stephen Decatur's cry, "... right or wrong, my country." Cf. Rev. Robert I. Gannon, S.J. (1940) 38 *THE CATHOLIC MIND* 431.

⁴⁰ REV. CYPRIAN EMANUEL, O.F.M., *ETHICS OF WAR* 54; 2 NOLDIN, *THEOLOGIA MORALIS* § 354.

⁴¹ *THE CATHOLIC WORKER*, Jan. 1941, pp. 2, 3. At least four Catholics associated with the Catholic Worker peace movement have already been classified as IV-E (conscientious objectors) by their local boards. At least one of these men has been allowed to continue his work at one of the Houses of Hospitality of the Catholic Worker group. These houses are engaged in caring for the destitute (mainly transient) who seek their aid, and the workers receive no remuneration beyond their maintenance.

⁴² Cf. *CODEX JURIS CANONICIS*, c. 121. "All clerics are immune from military service . . ."; c. 987, § 5, "They are impeded (from receiving Holy Orders)

olics have the *right*, though not the *duty*, to be conscientious objectors. The only condition upon which this right hinges is that their motivation must be a *sincere* desire for Christian perfection and not simply a trumped-up pretext for evading military service."⁴³ (Italics Fr. O'Toole's.)

There will undoubtedly be claims to exemptions based on grounds not usually recognized as religious. But whether broad interpretations of the word *religious*, such as those suggested,⁴⁴ by the War Resisters League⁴⁵ will be accepted by the government, remains to be determined. The validity of objections on grounds of loyalty to humanity, to the international working class or to political philosophies is also in doubt.⁴⁶ A number of Jehovah's witnesses⁴⁷ have indicated their intention to claim exemption either on grounds of conscientious objection or as ministers of the gospel.⁴⁸ Because of

who have not yet fulfilled a term of military service which the civil law demands of them"; c. 141 forbids clerics to volunteer for military service or to take part in civil wars. Any infraction of this rule is punished (in the case of clerics in minor orders) by *ipso facto* deposition from the clerical state.

⁴³ MSGR. BARRY O'TOOLE, WAR AND CONSCRIPTION AT THE BAR OF CHRISTIAN MORALS 79; THE CATHOLIC WORKER, Nov. 1940, p. 4.

⁴⁴ SUGGESTIONS IN ANSWERING FORM 47, p. 1. Many quotations of definitions of "religious" are listed, e.g., WEBSTER'S NEW INTERNATIONAL DICTIONARY (1934) ("Religious . . . 4. Scrupulously exact; strict; zealous").

⁴⁵ In addition to the War Resisters League there are a number of other civic or non-religious groups interested in the welfare of conscientious objectors including the Civil Liberties Union, the Ethical Culture Society and the Peace House. The Peace House, founded in 1926 by Mrs. J. Sergeant Cram, has been an ardent advocate of the "passive resistance" theory of Mahatma Gandhi. The Civil Liberties Union takes no official position on the subject of conscientious objection but interests itself in cases of alleged injustice towards conscientious objectors. The Ethical Culture Society maintains an attitude of official neutrality similar to that of most of the Protestant Churches and its support for the conscientious objectors among its members is limited to that of a moral nature. Cf. *The Conscientious Objector*, which will soon appear in the (May, 1941) STANDARD published by the American Ethical Union, 2 W. 64th St., New York City.

⁴⁶ Cf. (1940) 151 THE NATION 328. No opinion upon the construction of the word "religious" as used in the Selective Service Act of 1940 has been rendered by the Attorney General. But in answer to an inquiry addressed to the Dept. of Justice, it was stated in a letter of March 21, 1941 by an Assistant to the Attorney General, that the Act permits the classification as conscientious objectors of those who base their stand "upon a personal religious, moral, ethical or humanitarian conscientious objection to participation in war, regardless of sectarian affiliation."

⁴⁷ The witnesses of Jehovah deny that they are a sect or even an organization, but claim to be individuals who have made a pact with Almighty God, whose name is Jehovah, to do His will and who devote themselves "faithfully and sincerely to the worship and active service of God and His King, Christ Jesus." (1940) 22 CONSOLATION 24, 30. For a more complete treatment see J. F. RUTHERFORD, THEOCRACY 18. For a different viewpoint, cf. H. C. McGinnis (1941) 64 AMERICA 481, 512, 542, 569; Stanley High, *Armageddon, Inc.* (Sept. 14, 1940) SATURDAY EVENING POST 18.

⁴⁸ Under the provisions of 50 U. S. C. A., App., § 305(d) (Supp. 1940). But this clause specifies "ministers of religion", not "ministers of the gospel". Cf. note 49, *infra*.

their singular definition of "religion",⁴⁹ however, and because they claim that there are as many ministers of the gospel as there are witnesses of Jehovah,⁵⁰ the problem of their classification promises to be a difficult one.⁵¹

III

In the process of classifying registrants, conscientious objection is the last ground of exemption to be considered. But if the other grounds have been exhausted an individual claiming exemption as a conscientious objector may fill out form 47 and if the claims therein are verified by his local board, he "shall be assigned to noncombatant service or to work of national importance under civilian direction."⁵² Noncombatant service has been defined: "1. Service in any unit which is unarmed at all times; 2. Service in the Medical Department wherever performed; 3. Service in any unit or installation, the primary function of which does not require the use of arms in combat, provided the individual's assignment within such unit or installation does not require him to bear arms or to be trained in their use."⁵³

The alternative for those whose consciences will not even allow them to participate in noncombatant work of this sort is to be assigned to "work of national importance under civilian direction under such rules and regulations as may later be prescribed".⁵⁴ The provision for civilian, rather than military supervision, was included to prevent the infliction of excessive or even illegal punishment at the hands of overzealous officers such as was alleged to have been meted out to individual conscientious objectors during the last war.⁵⁵

⁴⁹ "Religion" is defined by J. F. Rutherford as "Doing anything contrary to the will of God." THEOCRACY 18.

⁵⁰ (1940) 22 CONSOLATION 30.

⁵¹ One witness of Jehovah was forcibly put into an army truck and taken to Camp Upton after having refused to salute the flag, answer questions or take the oath. (N. Y. Times, March 20, 1941, p. 16, col. 3.) His case will probably be appealed.

⁵² 3 SELECTIVE SERVICE REGULATIONS XXV, 363. EXECUTIVE ORDER 8560, Oct. 4, 1940. C. C. H. WAR LAW SERVICE ¶63,535.

⁵³ EXECUTIVE ORDER 8606, Dec. 6, 1940. 9 U. S. L. WEEK 2341. The Seventh Day Adventists are already training men to serve as stretcher bearers, etc. in medical units. N. Y. Herald Tribune, Dec. 1, 1940.

⁵⁴ 3 SELECTIVE SERVICE REGULATIONS XXV, 365. EXECUTIVE ORDER 8560, Oct. 4, 1940. C. C. H. WAR LAW SERVICE ¶63,535.11.

⁵⁵ There were reports that a number of conscientious objectors were hung by their hands in the Leavenworth Barracks at various intervals between early November and December 6, 1918. It was also charged that on Angel Island, in San Francisco Bay, conscientious objectors were "tortured, drenched with cold water in the middle of the night and flung on an icy floor to lie in their wet clothes". Oswald Garrison Villard, *They Know War Is a Failure* (July 8, 1939) CHRISTIAN SCIENCE MONITOR. Four Seventh Day Adventists were court-martialed and sentenced to 20 years in Leavenworth for their repeated refusals to pull up weeds on the Sabbath Day, on the grounds that such work was not so essential that it could not be deferred to a week day. *Hearings before Com-*

The work of national importance will probably be some sort of soil conservation, reforestation, etc., in camps erected through the joint efforts of the Director of Selective Service⁵⁶ and the National Service Board for Conscientious Objectors.⁵⁷ The government may furnish the camp sites as well as bedding, tents, tools, etc., but no food will be supplied and no salary will be paid to the workers. Since the number of conscientious objectors will average about 20,000 per year for five years, the cost of maintaining camps for them at the estimated rate of \$35 per man per month, will amount to some \$40,000,000 over the five-year period which marks the duration of the present Act. The burden on the individual conscientious objector will be a crushing one unless aid is forthcoming from organizations interested in the welfare of the conscientious objectors. Whether those religious bodies whose members are for the most part not opposed to military service will contribute substantial financial, as well as moral, support to the individual conscientious objectors among their numbers, is one of the vital factors upon which the continuance of the camps will depend.⁵⁸

IV

Should an individual's claim to exemption from military or non-combatant service be disallowed by his local board, recourse may be had to an appeal board. The appeal will be referred by the board to the Department of Justice for a hearing and inquiry, and upon the completion of its investigation, the Department of Justice will then

mittee on S. 4164, 76th Cong., 3d Sess. (1940); NORMAN THOMAS, *THE CONSCIENTIOUS OBJECTOR IN AMERICA*, c. 8, pp. 143-64.

⁵⁶ The work of "national importance" has been put in charge of the Director of Selective Service. EXECUTIVE ORDER 8675 (1941) 9 U. S. L. WEEK 2477.

⁵⁷ Membership in the National Service Board for Religious Objectors includes: American Friends Service Committee, Brethren Service Committee, Commission on World Peace of the Methodist Church, Disciples of Christ (Dept. of Social Welfare), Fellowship of Reconciliation, Mennonite Central Committee, Molokan Advisory Committee. A consultative member is the Committee on the Conscientious Objector of the Federal Council of the Churches of Christ in America.

⁵⁸ (1941) 2 BULLETIN ON THE CONSCIENTIOUS OBJECTOR 2, 3 (published by the Federal Council of Churches of Christ in America); (1941) 3 *Id.* 3, 4. Neither the government nor the National Service Board is irrevocably committed to the camp program as the best or only means of carrying on the "work of national importance under civilian direction". At the end of the first year of the program, both parties may reconsider the plan and decide whether a continuance is advisable. In the meantime, five camps have already been established and it is expected that ultimately the number will reach 35 or 40 under the direction of the Friends, Mennonites, Church of the Brethren or (perhaps) the Catholic Worker group. This last group has eleven farms which are part of its agrarian program and some of these may be utilized for the conscientious objectors among the members.

make a recommendation to the appeal board. Such recommendation is purely advisory, however, and the board need not follow it.⁵⁹

Because the adjudication of another man's conscience is always a delicate task and often an impossible one, the provisions for determining and classifying conscientious objectors will never be entirely satisfactory. The formulation of determined methods of procedure and rules of evidence in the examination of those claiming to be conscientious objectors would undoubtedly lessen, but could hardly eliminate, the dissatisfaction and charges of injustice that will inevitably arise. The chief difficulties, however, will probably grow out of the human element in the machinery of administration and in this regard the close cooperation which has been effected between the Director of the Selective Service Act and the National Service Board for Conscientious Objectors seems to indicate that the treatment of those, at least who are finally classified as conscientious objectors, will be as satisfactory as can reasonably be expected.

REV. JOSEPH T. TINNELLY, C.M.

THE PROJECTOR'S REMEDIES TO ENFORCE A PROPERTY RIGHT
IN AN IDEA *

Recently, the courts of New York have rendered several decisions which involved the problem as to whether there is a property right in an idea. All the courts have sustained the general rule of law that an idea cannot be the subject of a property right¹ unless the projector creates a contract protecting it,² or reduces it to concrete form in order to subject it to patent or copyright. The word "idea" covers a wide range of possibilities but, for convenience sake, it is capable of being classified under three general divisions: (A) Literary ideas, *i.e.*, in a strict sense an artistic or dramatic writing or thought, as all ideas are literary until set into concrete form; (B) mechanical ideas, *i.e.*, new devices or inventions; (C) business ideas, *i.e.*, plans for development of business, trades secrets, etc. The

⁵⁹ 3 SELECTIVE SERVICE REGULATIONS XXVII, 375, EXECUTIVE ORDER 8560, Oct. 4, 1940. C. C. H. WAR LAW SERVICE ¶ 63,537.14.

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¹ *Haskins v. Ryan*, 71 N. J. Eq. 574, 64 Atl. 436, *aff'd*, 75 N. J. Eq. 623, 73 Atl. 1118 (1909); *Anderson v. Distler*, 173 Misc. 261, 17 N. Y. S. (2d) 674 (1940).

² *Peabody v. Norfolk*, 98 Mass. 452 (1868); *Bristol v. Equitable Life Assurance Society of N. Y.*, 132 N. Y. 264, 268 N. E. 506 (1892); *Rodriguez v. Western Union Telegraph Co.*, 259 App. Div. 224, 18 N. Y. S. (2d) 759 (1st Dept. 1940); *Stone v. Liggett & Myers Tobacco Co., et al.*, 260 App. Div. 450, 23 N. Y. S. (2d) 210 (1st Dept. 1940).