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Conscientious Objectors--Civilian Work as an Alternative to Military Duty

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Traffic Laws,[24] which provides for the administering of chemical tests to automobile drivers to determine intoxication.

As was pointed out in the *Kovacik* case, the drunk driver has been a problem for a number of years. The National Safety Council reports that twenty per cent of all traffic fatalities or 6840 deaths are attributable to the drunk driver annually. Yet there has been a high rate of acquittals in drunk driving prosecutions because the judge has had to make determinations based solely on the observations of lay persons, usually police officers. Perhaps, if more states would adopt these scientific devices for determining intoxication, the problem of conviction would be lessened to the extent that there would be a deterrent to the person who is inclined to drive after imbibing in intoxicating beverages.

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CONSCIENTIOUS OBJECTORS. CIVILIAN WORK AS AN ALTERNATIVE TO MILITARY DUTY.

The Universal Military Training and Service Act[1] provides for the assignment of conscientious objectors who are opposed to participation in both combatant and non-combatant service, "to such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate . ." The Director of Selective Service has defined this work as (1) employment by the U.S. Government, or by a State, Territory, or possession of the U.S. or by a political subdivision thereof, or by the District of Columbia, (2) employment by a non-profit organization which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof.[2]

This provision and its subsequent interpretation was challenged for the first time in peace-time in the recent case of *United States v. Niles*,[3] where the defendant was under indictment for his refusal to report for work offered him by his draft board. The positions offered, in the alternative, were: (1) institutional helper at the County of Los Angeles, Dept. of Charities, (2) psychiatric technician helper at Camarillo or Mendocino State Hospitals, (3) building-maintenance man, salesman, truck driver, etc., for the Goodwill Industries, a charitable organization. The defendant took the position that the Military Training & Service Act, as defined by the Director of Selective Service and applied by the local board, called for a private non-federal labor draft in requiring services that were not exceptional or related to the national defense, in violation of the 13th Amendment of the U.S. Constitution.

The court denied the defendant's motion for an acquittal, relying on *Heflin v. Sanford*,[4] which held that the 13th Amendment was never intended to limit the war powers of the government, or its right to exact by law, service from all to meet the public need and that Congress had the power to require a conscientious objector to serve in the army, or in lieu thereof, to perform other work of *national impor-*

[24] NEW YORK VEHICLE AND TRAFFIC LAW, § 71-a.

[1] 62 STAT. 604 (1948), 50 U.S.C.A. § 456(j) (1952) as amended, 65 STAT. 83 (1951).
[2] 32 C.F.R. 1660.1 (CUMM. SUPP. 1953).
[3] 122 F. Supp. 382 (N.D. Cal. 1954).
[4] 142 F.2d 798 (5th Cir. 1944).

tance. The court in the *Niles* case held that the work offered to defendant contributed to the national welfare which in turn bore a sufficient relation to national defense to escape the prohibition of the 13th Amendment.

The *Heflin* case was one of a number of cases which arose during the years of World War II wherein a similar provision in the Selective Service Act of 1940, which assigned conscientious objectors to "work of national importance under civilian direction"[5] was attacked as being unconstitutional. Those cases held substantially the same as did the *Heflin case,* to wit, that Congress had the power to require a conscientious objector to perform work of national importance, but they are noteworthy here in that they attempted to define "national importance" as used in the 1940 Act.

In *U.S. ex rel Zucker v. Osborne,*[6] a conscientious objector sought release from a Civilian Public Service Camp upon the ground that Congress was without the power to conscript for a non-military, non-defense purpose. The court pointed out the power to declare war, and to raise and support armies, and said:

> "Having power to draft men for military service, it must follow that Congress has the power to draft men for work in aid of military service, and that is what work of national importance in time of war is."

In reference to the conservation work to which the petitioner had been assigned, they said:

> "Well may it be said that it is in aid of military service for it releases other men for . service."

In *Rodenko v. United States,*[7] the petitioner claimed that the work to which he had been assigned, a local reclamation water storage and irrigation project, was not of national importance and had no connection with the war effort. The court held otherwise, saying:

> "The proper maintenance of agriculture, civilian business, transportation, sanitation, health, and many other civilian activities are as essential to the successful prosecution of the war and as much a part of the war effort as the production of munitions of war and the arming and equipping of military forces "

In *Atherton v. United States,*[8] the defendants insisted that the provision "shall be assigned to work of national importance" failed to set forth standards of what work of national importance shall be, and therefore Congress had unconstitutionally delegated its powers. That court said:

> "We hold that a sufficient standard is provided by the words The act is a war measure and it is clear that it means not all work, but work which will assist in the preservation of the nation by winning the war."

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[5] 54 STAT. 885 (1940), 50 U.S.C.A. § 305(g). Under the 1940 Act, a majority of the conscientious objectors had been assigned to Civilian Public Service Camps, which were under the supervision of a group of religious organizations who had volunteered to assume the civilian direction of the work of national importance. A number of the abandoned CCC camps around the country were reopened and the bulk of the work consisted of conservation and forestry

[6] 54 F Supp. 984, 987 (W.D.N.Y. 1944).

[7] 147 F.2d 752, 755 (10th Cir. 1944).

[8] 176 F.2d 835, 840 (9th Cir. 1949).

In *U.S. v. Brooks*,[9] where the provision was again under attack, the court said:

> "The asserted incompatibility . . with the 13th Amendment is predicated upon treatment by the defendant of the provisions of work of national importance as completely severed and independent from the comprehensive mobilization contemplated by the Selective Service Act . . . The regulations as well as the provisions for work of national importance must be construed, as indeed they are, as part of a comprehensive scheme for the utilization of the able-bodied manpower of the nation for its defense."

In wartime then, the work to which the conscientious objector is assigned need only be identified with the war effort. He cannot be heard to complain that congress is making an unconstitutional imposition of involuntary servitude, so long as his work can be said to contribute to the successful prosecution of the war.

When congress maintains a peacetime draft, however, as it is doing today, the conscription cannot be sustained on the basis of the successful prosecution of a war, but rather under the power to raise and maintain armies. Concededly, this power confers the authority to maintain a state of national preparedness. To say that it confers any less authority might render futile the need for the war powers. There might be no war to fight if mobilization could only commence at the outbreak of hostilities. But national preparedness can be effected with less federal control of civilian activity than the successful prosecution of a war might necessitate. For example, there would be no need in the first instance to control agriculture, civilian business, transportation and other activities which the *Rodenko* case[10] intimated might be necessary under the war power. To assert that the power to maintain a state of national preparedness is as broad as the war power would be to amplify the federal powers to a virtually unlimited degree whenever any unfriendly nation showed aggressive tendencies.

Applying this reasoning to the position taken by the peacetime conscientious objector, it would follow that if congress again elected to excuse him from military service out of deference to his beliefs, and assign him to civilian work, the scope thereeof should not be as broad as that permissible in wartime. But no such limitations are found in our present draft law,[11] for the relevant section there provides that the conscientious objector can be assigned to "such civilian work contributing to the national health, safety or interest . . ." The Selective Service Regulations[12] construing this provision, in so far as they authorize assignment to "organizations engaged in a charitable activity . or in carrying out a program for the improvement of the public health or welfare" manifestly do not appear to be in furtherance of the object of maintaining a state of national preparedness sought to be achieved by conscription. The alternatives offered to Niles in the principal case, all of which he refused to accept, were work in charitable activity or work in a state mental hospital. It may be argued that a conscientious objector could be assigned to work in a mental hospital because it would release other men for military service, but such a proposition will not support his assignment to the Goodwill Industries or the Los Angeles County Department of Charities. It is difficult to conceive that charitable activity as such has any appreciable effect upon the training of the nation's manpower; in fact, it would be difficult to bring this kind

[9] 54 F. Supp. 995, 997 (S.D. N.Y. 1944).
[10] See note 7 *supra*.
[11] See note 1 *supra*.
[12] See note 2 *supra*.