
The Quakers and Conscientious Objection

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Introduction

The legacy of the Religious Society of Friends, more commonly known as the Quakers, is varied, including William Penn's settlement of Pennsylvania, their efforts to abolish slavery, and an oatmeal trademark. However, their importance and influence on the legal and legislative standing of conscientious objecting is less well known. It is the purpose of this paper to provide the historical and religious background of conscientious objection (CO), and to discuss the congressional legislation and the Supreme Court decisions that have affected, altered and advanced the CO's status. It is my intention to illustrate that the legal definition of a CO has evolved from a very specific, strict classification into a modern characterization that is complex and ambiguous. I will also demonstrate how the progression of the CO's legal status has been linked to the development of the awareness that every human being has a right to the same level of respect and merit, and that each individual has the right to be sovereign with his/her own personal beliefs. I will reveal how the peace churches - specifically the Quakers - initiated, defined, sustained, protected, lobbied and advanced the concept of conscientious objecting in America. I will show how the Quaker "traditions have provided a favorable context: first, religious toleration and later, the protection of civil liberties,"¹ and how, as a result, "the liberal state in the United States has recognized a continuing and even an expanding basis for conscientious objection through legislative, executive, or judicial response."²

The Religious Society of Friends

In order to comprehend the foundation and purpose of conscientiously objecting to military service, it is essential to understand Quaker theology. Because "it was the Quaker nonresistance and unconditional adherence to pacifism that opened up issues such as the moral legitimacy of militia fines and war taxes, the nature and function of alternative services, and the practical meaning of liberty of conscience - all of which have caused reflection on the fundamental

¹ Charles C. Moskos and John Whiteclay Chambers II, ed. *The New Conscientious Objection: From Sacred to Secular Resistance* (New York: Oxford University Press, 1993), 46.

²Ibid., 46.

relationship between conscience and society and influenced later generations of conscientious objectors.”³

The doctrine of the Society of Friends (Quakers) is that God created all beings in His image and that “the manifestation of the Spirit is given to every man that cometh into the world.” (1 Cor. 12. 7.). Every

soul, as it comes into the world, is an object of Redeeming love.... Thus, the seed of the kingdom, as a redeeming principle, is placed in the heart of every individual, ready to expand with the opening faculties of the soul, and to take the government of it, from the first dawn of intellectual life.... Through Jesus Christ, a remedy sufficient for salvation has been provided for every individual soul: and nothing but individual disobedience can deprive us of the offered salvation.⁴

Basing their theology on the changes that the Reformation introduced, Quakers deem that it is only through living a good Christian life, not through religious ceremonies or sacraments, that salvation may be obtained. Therefore, salvation and conscience is the individual’s responsibility.

An individual is personally responsible to obey the Ten Commandments and “hearken diligently unto the voice of the Lord thy God” (Deut. 11. 26.). An individual’s responsibility for salvation was founded in the concept of the “Inner (or Inward) Light.” The Friends maintain that within each soul there is the light of Christ and that, if they heeded, that Inward Light would show them their sinful conditions and their need for Christ, and would lead them to salvation. But if they ignored it or failed to heed its admonitions, they would be lost and ultimately damned.⁵ As stated by George Fox, the religious founder, “the same Spirit that had inspired the writers of the Bible was still available to humans, and that past written work of that Spirit, while it should be valued, should not be placed about the Spirit itself,”⁶ and that “I will hear what the Lord my God will say within me.” (Book 3, c.1, Discip.1). This belief led to the practice of sitting in silence in a meetinghouse waiting on the Spirit to move a member of the sect.

³ Yuichi Moroi, *Ethics of Conviction and Civic Responsibility: Conscientious War Resisters in America during the World Wars* (New York: University Press of America, 2008), 29.

⁴ Elisha Bates, *Doctrines of Friends: Principles of the Christian Religion as Held by The Society of Friends, Commonly Called Quakers* (Mount Pleasant, 1831) 39.

⁵ Thomas D. Hamm, *The Quakers in America* (Columbia University Press, New York, NY, 2003), pp. 15.

⁶ *Ibid.*, 16.

When a number of individuals thus sit down, in solemn silence, waiting upon God – their minds being abstracted from all inferior objects...a spiritual communion is felt.... The heavenly virtue and solemnity is felt to flow, as from vessel to vessel. For when a meeting is thus gathered, in the name and power of Christ, he is often pleased to appear among them in great glory...which is the effect of his own divine work in their hearts...There is, in silent worship, something so beautiful, so sublime, so consistent with the relation in which we stand to God, that it appears strange there should exist a single doubt of its propriety.⁷

Once a member was moved by Spirit, they would speak and then either have an open discussion with the other members, or retake their seats until another person was impelled to speak. Speaking during worship, “requires neither wealth nor learning, nor extraordinary natural abilities, to perform it. It is within the reach of the simple, the illiterate, and the poor.”⁸ The belief that the Spirit of God moved within each individual, regardless of age, sex or race, was for the Quakers, the beginning of individual conscientiousness. The conviction that the Spirit of God is within each human being, and that each individual is responsible for his/her own salvation and moral conscience was the foundation of conscientiously objecting to war and military service.

Two significant passages in the Bible that the Quakers adhere to faithfully in regard to bearing arms and serving in the military are “thou shalt love thy neighbor as thyself,” (Matt. 22.37, 39) and “He shall judge among the nations, and shall rebuke many people; and they shall beat their swords into ploughshares, and their spears into pruning-hooks: nation shall not lift up sword against nation, neither shall they learn war any more” (Isa. 2. 4, 5). These are the passages that are most often referred to by Quakers and other religious groups as the foundation for objecting to violence and war.

Along with the Quakers, there were other “peace churches” that were also against serving in the military and considered COs and deserve mention. Most of the “other denominations may have had a central authority but lacked sufficient consensus of opinion to act officially on conscientious objection.”⁹ The peace churches that were established in America between the seventeenth and late eighteenth centuries were the Amish, Mennonites, Shakers, and the German

⁷ Elisha Bates, *Doctrines of Friends: Principles of the Christian Religion as Held by The Society of Friends, Commonly Called Quakers* (Mount Pleasant, 1831) 191.

⁸ *Ibid.*, 187.

⁹ U.S. National Interreligious Service Board for Conscientious Objectors, *Religious Statements on Conscientious Objection* (Washington, D.C., 1970), 2.

Baptist Brethren. After the Civil War, other pacifist religions appeared throughout the continent. However, the Quaker sect has been accredited with the introduction of conscientious objection.

When the Quakers arrived in America, they brought with them a strong, religious based conviction that every human being not only had the “Inner Light” of God, but that each individual was responsible for his/her own salvation and personal conscience. The Quakers stood behind these beliefs and pressed the newly formed United States government to recognize their individual liberty to religiously object to serving in the military or to aid a war effort in any way—it was the beginning of conscientious objecting in the United States.

The Bill Of Rights and the Constitution

When the Founding Fathers were preparing to write the Constitution, they carried in their memories the dangers of having established religions, such as they had experienced in Europe. Many of the settlers, such as the Puritans and the Quakers, had come to America to escape religious persecution. The Founding Fathers, especially James Madison, envisioned the newly forming country to be based upon a liberal republic with the idea of accommodation of religion. Within a liberal republic, the state was not to put one religion above another. “The individual must do what he thinks right; the state (that is, the citizens collectively) must do what it thinks right...the liberal state itself cannot ultimately be the source (though it can be the reflection) of the people’s values...It leaves to the citizens the right and responsibility for determining their own interests and values.”¹⁰ The Founders’ intention in the creation of a liberal republic was to develop a democracy in which men of intelligence and virtue would be chosen by the people. These men would put their personal agendas aside and work freely with their fellow men to create a civil society for all people.

While trying to create a liberal republic, the issue of “exemption from military service for conscientious objectors first became a national issue when ratification of our present Constitution was debated and then later when the First Congress debated what provisions to include in a bill of rights.”¹¹ The Quakers were active lobbyists trying to ensure the new Constitution had a provision for COs. One such Quaker was Edmund Quincy, who made appeals based on religious privileges and freedom of conscience. He claimed,

¹⁰ Michael W. McConnell, “Accommodation of Religion,” *The Supreme Court Review*. Vol. 1985 (1985): 15-16.

¹¹ Ellis M. West, “The Right to Religion-Based Exemptions in Early America: The Case of Conscientious Objectors to Conscription,” *Journal of Law and Religion*. Vol. 10, No. 2 (1993-1994): 395.

Liberty of conscience is but very imperfectly understood and secured, if men are to be required by human enactments to do that which they conscientiously believe to be a violation of a divine command. It is but of little moment to us that we are permitted by the laws of our country to enjoy and express without interruption, our peculiar speculative views of theology, if we are to be forbidden to apply our religious belief to the business of life. Our liberty to interpret the world of God for ourselves is of but little value to us, if we are not permitted to obey the divine commandments which we find there promulgated.¹²

In 1789, James Madison addressed the House of Representatives and outlined his proposed Bill of Rights, which would have acknowledged Quincy's claims. In what would be rewritten and ratified as the First Amendment (which contains the Establishment and the Free Exercise clause), Madison proposed that the Amendment state that "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed."¹³

Madison believed that a person who was conscientiously and religiously against war should not be coerced into fighting. He wanted to include a constitutional exemption for COs and proposed that the Second Amendment would state, "The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no persons religiously scrupulous of bearing arms shall be compelled to render military service in person."¹⁴ The First and Second Amendment were both altered and changed before ratification, and any mention of religiously based conscientious objection was deleted.

Several Congressmen argued against including COs in the Constitution. Representative James Jackson of Georgia thought it unfair to allow some areas of the country to be defended without contributing to the effort, whether in men or materiel. Jackson was willing to compromise as long as the COs were required to pay a substantial fine for the privilege of not fighting. Another, more forceful, challenger was Representative Benson. Benson wanted the responsibility for exemption to remain within the power of the state legislature. He maintained that,

¹² Yuichi Moroi, *Ethics of Conviction and Civic Responsibility: Conscientious War Resisters in America during the World Wars* (New York: University Press of America, 2008), 41.

¹³ Lillian Schlissel, *Conscience in America* (New York: E.P. Dutton & Co., Inc., 1963), 47.

¹⁴ *Ibid.*, 47.

No man can claim this indulgence of right. It may be a religious persuasion, but it is no natural right, and therefore ought to be left to the discretion of the Government...I have no reason to believe but the legislature will always possess humanity enough to indulge this class of citizens in a matter they are so desirous of; but they ought to be left to their discretion.¹⁵

Madison's proposals had some support in Congress, but did not pass the House of Representatives. There were a majority of representatives that had "the desire of the individual states to retain their own separate militias without interference from the federal government."¹⁶ That was exactly what happened. The state militias and state legislation were responsible for providing CO exemptions. States varied in CO policy, but the majority required a small fee be paid for service exemption. Since there was not a legal demand on the individual states to provide soldiers, it was not necessary to compel individuals to fight. The states did not have any major difficulties with COs throughout the War of 1812 and the Mexican War, but this would change when President Lincoln initiated the first federal draft during the Civil War.

The Founding Fathers' vision of a liberal republic and individual religious freedom did pass Congress, but "the new Constitution did not provide the pacifists with the protection to which they thought they were entitled by the principle of religious liberty."¹⁷ The concept of individual responsibility within the government had been provided with the forming of a democracy, and an individual's right to religious freedom was guaranteed with the First Amendment. However, an individual's right to conscientiously object to military service had not been settled, and would be questioned again with the start of the Civil War, when the "more than two hundred thousand Quakers and a smaller community of Mennonites and Brethren"¹⁸ in the North would press Congress for legal exemption to the Enrollment Act of 1863.

¹⁵ Michael W. McConnell, "Accommodation of Religion," *The Supreme Court Review*. Vol. 1985 (1985): 21.

¹⁶ Peter Brock, *The Quaker Peace Testimony: 1660-1914* (England: Sessions Book Trust, 1990), 157.

¹⁷ Ellis M. West, "The Right to Religion-Based Exemptions in Early America: The Case of Conscientious Objectors to Conscription," *Journal of Law and Religion*. Vol. 10, No. 2 (1993-1994): 393.

¹⁸ Charles C. Moskos and John Whiteclay Chambers II, ed. *The New Conscientious Objection: From Sacred to Secular Resistance* (New York: Oxford University Press, 1993), 30.

The Enrollment (Draft) Act of 1863

Prior to the Civil War, the Quakers and their allies were marginally successful in obtaining legal exemption as COs by using writing campaigns and lobbying state legislators. According to Edwards Needles Wright, “Those states whose constitutions provided for exemption from service in the militia upon the payment of some equivalent were Indiana, Iowa, Illinois, Kansas, Kentucky, and Pennsylvania...The constitutions of other states, such as Michigan, Minnesota, New York, Ohio, and Vermont placed the question of militia in the hands of the Legislature.”¹⁹ But even with state constitutions exempting COs, their federal legal status was not explicit, and with the impending draft(s) the Quakers and other pacifist churches were placed in a precarious situation.

By the summer of 1862, military volunteers had decreased and troops were desperately needed to meet demands. The first military act was the Militia Act of July 17, 1862, which was issued as an initiative to strongly compel the Northern states to upgrade their militia systems. The act stipulated that unless the states complied, “the Secretary of War could draft militiamen for nine months.”²⁰ After a long winter, Congress decided that aggressive measures had to be taken to obtain the men needed to fight the war.

Congress passed “the first conscription law in the Union during the Civil War, which was the Enrollment Act of March 3, 1863”²¹ (which would expire at the end of the war). The Quakers and the other peace churches were not mentioned or provided with an exemption in this act. The Quakers had been confident of receiving a legal exemption because they had been diligently lobbying Congress and knew that Secretary of War, Edwin M. Stanton and President Lincoln were both known to be sympathetic to their cause. “The President himself was descended from Friends and had a Quaker Cabinet. Stanton’s mother was the head of a Friend’s meeting, Bates and Chase were connected with Friends, and General Halleck remained by accident a member of a Meeting during the entire war.”²² But even with an understanding administration, the Quakers were not provided exemption.

Realizing the situation that faced them, the Quakers were determined to acquire a legal guarantee against conscription. They organized a committee that traveled to Washington to meet with

¹⁹ Edwards Needles Wright, *Conscientious Objectors in the Civil War* (New York: A.S. Barnes & Company, Inc., 1961), 39.

²⁰ Eugene C. Murdock, *One Million Men: The Civil War Draft in the North* (Connecticut: Greenwood Press, Publishers, 1971), 6.

²¹ Leon Whipple, *The Story of Civil Liberty in the United States*. (Connecticut: Greenwood Press Publishers, 1970), 159.

²² *Ibid.*, 161.

Stanton. After debating the issue of CO exemption on several occasions, Stanton and the Quaker representatives finally reached an agreement. And on February 24, 1864, the following exemption clause was included as an amendatory to the Enrollment Act.

Members of religious denominations who shall by oath or affirmation declare that they are conscientiously opposed to the bearing of arms, and who are prohibited from doing so by the rules and articles of faith and practice of said religious denominations, shall, when drafted into the military service, be considered non-combatants, and shall be assigned by the Secretary of War to duty in the hospitals, or to the care of freedman, or shall pay the sum of \$300 to such person as the Secretary of War shall designate...to be applied to the benefit of sick and wounded soldiers: Provided that no person shall be entitled to the benefit of...this section unless his department has been uniformly consistent with such declarations.²³

Through their vigilant work, the Quakers received legal classification as COs for the first time in American history. If an individual wanted to claim a CO exemption, he had to complete a special form similar to the one shown for the State of Pennsylvania, which would then need approval from the Provost Marshal before the CO would be excused from service.

There were, however, some members who believed that working in hospitals or in other non-combatant positions was aiding the war effort, and against their religious principles. "Those who held deep convictions on the subject, and were unwilling to evade the test by hiring a substitute or paying an exemption fine, were taken into the army."²⁴ The COs who were enlisted, but still refused to fight or perform non-combatant jobs, caused many problems for the Lincoln administration. Many were placed in confinement and Union prisons waiting on a decision by Lincoln. The President and his administration finally concluded that the COs being held caused an unnecessary hardship upon the Union Army, and that it would be better for all concerned if the COs were allowed to return home. "From 1863 onwards a parole system came informally into force to deal with such cases. Through these men received no written certificate of exemption,

²³Ibid., 162.

²⁴ Paul Comly French, *We Won't Murder* (New York: Hastings House, 1940), 54.

they were furloughed indefinitely—and remained free of conscription for the war's duration."²⁵

Even though there are no recorded deaths of imprisoned or detained COs during the Civil War, they did endure many hardships, such as forced detention, imprisonment, confiscation of land, harassment by local officials and neighbors, and being heavily taxed. However, it was their determination not to bear arms and to maintain their religious beliefs which

began the claim that the right of conscience was a fundamental right of citizens...In their defense of the rights of conscience, arguments for citizenry rights begin to emerge in the context of the obligations of religious duty: considering the realm of conscience as the realm of one's duty to God, which is beyond the reach of authority in this world, the sectarian objectors begin to claim its rights as natural, inherent, and constitutionally secured to all citizen of this country.²⁶

The Supreme Court never tested the constitutionality of the Enrollment Act during the Civil War. Several lower state courts did, however, hear cases regarding COs. They concurred that the Constitution stated that "Congress shall have power to raise and support armies," and that since that was the sole purpose of the Act, it was legal. The idea of the federal government having the power to issue a draft was not constitutionally settled, "until World War I, when the Supreme Court unanimously upheld the Selective Service Act of 1917."²⁷

The Selective Service Act of 1917

Six weeks after the United States entered World War I, President Wilson implemented the first draft since the Civil War. Remembering the difficulties Lincoln encountered with the COs during the Civil War, Wilson understood that the any new draft provision should not be administered by the executive or military branch of the government, and should provide an army that was "raised primarily through conscription and that the modern selective draft should prohibit substitutions and commutation fees as a matter of equity."²⁸ On

²⁵ Peter Brock, *The Quaker Peace Testimony: 1660-1914* (England: Sessions Book Trust, 1990), 178.

²⁶ Yuichi Moroi, *Ethics of Conviction and Civic Responsibility: Conscientious War Resisters in America during the World Wars* (New York: University Press of America, 2008), 37.

²⁷ Eugene C. Murdock, *One Million Men: the Civil War Draft in the North* (Connecticut: Greenwood Press, Publishers, 1971), 25.

²⁸ Charles C. Moskos and John Whiteclay Chambers II, ed. *The New Conscientious Objection: From Sacred to Secular Resistance* (New York: Oxford University Press, 1993), 32.

May 18, 1917, Wilson established a civilian-operated agency to oversee the draft process—the Selective Service System (SSS).

The newly formed agency was responsible for overseeing the entire draft process, and granting exemptions for COs. Just like the Enrollment Act of 1863, which specified exemptions for members of peace churches, the Selective Service Act of 1917 (SSA) stated,

Nothing in this Act shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member 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...but no person so exempted shall be exempted from service in any capacity that the President shall declare to be noncombatant.²⁹

With this Act, Wilson had effectively removed the provision for substitutes and commutations that had caused so many problems during the previous war, and, again, limited the exemptions to members of peace churches. The SSA also removed any politically motivated objectors and/or selective conscientious objectors (“morally objecting to participation in a particular war, or type of warfare”³⁰) from exemption.

But before the end of World War I’s first year, the Wilson administration started receiving pressure from the newly formed National Civil Liberties Bureau (predecessor of the American Civil Liberties Union), Quakers and other pacifists, insisting that “all” COs be legally acknowledged. The administration was also having “difficulties in determining which sects were both religious and traditionally pacifist and the basic unfairness of the pacifist sect limitation were quickly recognized.”³¹ In December 1917, the Wilson administration issued an executive order which acknowledged “all draftees conscientiously opposed to combatant service, either on religious or nonreligious grounds, be assigned to noncombatant duty.”³² Wilson’s executive order would continue to outline the status of COs throughout World War I.

The importance of individual liberty and self-determination was realized after the United States experienced the brutality and devastation of World War I. The war helped foster a post-war feeling that all human life was valuable, and that the United States should be

²⁹ Ibid., 32–33.

³⁰ C.A.J. Coady, “Objecting Morally,” *The Journal of Ethics*. Vol. 1, No. 4 (1997): 378.

³¹ Ibid., 586.

³² Charles C. Moskos and John Whiteclay Chambers II, ed. *The New Conscientious Objection: From Sacred to Secular Resistance* (New York: Oxford University Press, 1993), 34.

protecting personal liberties, and not taking them away. The importance of self-determination for individuals and nations became part of the American psyche. Even though these views had already begun to form, they would become firmly planted in American culture following World War II.

United States v. Schwimmer

With the end of the draft, the need to conscientiously object became a mute subject – at least in regard to serving in war. The time period between WWI and WWII saw no COs objecting to war, but there were two substantial Supreme Court decisions that would affect future CO claims. Both of the cases dealt with individuals wanting to become nationalized American citizens. The first case to reach the Supreme Court in 1929 was *United States v. Schwimmer*, in which a woman claimed she was conscientiously opposed to swearing an oath to defend the country.

Roszika Schwimmer was a feminist and a pacifist who had held a diplomatic position prior to leaving her native country of Hungary. She came to the United States in 1921 and was speaking and lecturing in Illinois. Schwimmer made the decision to become nationalized in 1926, and began completing all the required documentation. When she answered Question 22 on the nationalization form, which asked if the applicant was willing to take up arms in defense of the country, Schwimmer replied, “I am willing to do everything that an American citizen has to do except fighting...I am an uncompromising pacifist...I have no sense of nationalism, only a cosmic consciousness of belonging to the human family.”³³

The Supreme Court decision stated that aliens could only receive the same privileges of a native-born citizen through naturalization, and that aliens did not possess any natural right to become citizens—it is only through Congress and statute that naturalization is achieved. Since Schwimmer refused to swear an oath to defend the Constitution and the government, which would have completed the requirements for citizenship, she did not have any constitutional rights. The Court also concluded that language had not clarified her attitude toward the Constitution, “and that her opinions and beliefs would not prevent or impair the true faith and allegiance required by the Act.... The District Court was bound by the law to deny her application.”³⁴

In his dissenting opinion, (Justice Brandeis concurred) Justice Holmes felt that since Schwimmer was a female over fifty years of age, it was very unlikely that she would ever have to defend the country. He thought Schwimmer was an optimist who believed in organized

³³ Lillian Schlissel, *Conscience in America* (New York: E.P. Dutton & Co., Inc., 1963), 188.

³⁴ *Ibid.*, 190.

government, the abolition of war and world peace. In one of the more moving lines of his dissent, Holmes acknowledged the optimistic tone of Schwimmer's naturalization examination and stated,

Some of her answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country...I would suggest that the Quakers have done their share to make the country what it is, that many citizens agree with the applicant's belief and that I had not supposed hitherto that we regretted our inability to expel them because they believed more than some of us do in the teachings of the Sermon on the Mount.³⁵

With this dissent, Holmes illustrated how important individual thought, freedom and liberties were for the American people, and accredited Quakers with the advancement of individual consciousness and civil liberties. Holmes would find himself dissenting again two years later when the next naturalization case came before the Court, only this time he would be joined by Justices Hughes, Brandeis and Stone.

United States v. Macintosh

A Canadian Baptist Minister, Douglas Clyde Macintosh, applied for citizenship in 1925. His application for naturalization indicated that he was not a pacifist and was willing to bear arms if necessary, but would only swear an oath if he could "interpret it as not inconsistent with his position...and that he would have to believe that the war was morally justified before he would take up arms in it or give it his moral support."³⁶ Macintosh was willing to give his allegiance to the United States, "but he could not put allegiance to the government of any country before allegiance to the will of God."³⁷ Macintosh wanted to decide for himself the validity and necessity of a war before agreeing to fight – he was considered a selective conscientious objector. He stated in his brief, that he believed it was his constitutional right to object to fighting.

The Supreme Court decided this case with basically the same reasoning as *Schwimmer*, stating that it was the duty of every citizen to

³⁵ *Ibid.*, 191-192.

³⁶ *Ibid.*, 195.

³⁷ *Ibid.*, 195.

defend the country, and that since Macintosh did not complete the naturalization process he did not maintain any privileges of citizenship. Justice Sutherland took this opportunity to clarify and explain that conscientious objecting was not a constitutional right. The Court stated,

The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, express or implied: but because, and only because, it has accorded with the policy of Congress thus to relieve him...The privilege of the native-born conscientious objector to avoid bearing arms comes not from the Constitution, but from the acts of Congress. That body may grant or withhold the exemption as in its wisdom it sees fit; and if it be withheld, the native-born conscientious objector cannot successfully assert the privilege.³⁸

With this decision, the Supreme Court outlined the Constitutional position of conscientious objectors. Even though COs did not have constitutional protection against bearing arms, with the help of the Quakers, “the right of the individual to follow the dictates of his conscience had been an established tradition in the United States and as such was treated with respect for its historic past.”³⁹

Selective Service Act of 1940

A fundamental concept within American culture has been the place of the individual within the structure of society and civil government. “From one vantage point, that history might be characterized as the continuous struggle to define and to secure the rights of the human person in society. The task of defining and guaranteeing ‘freedom of conscience’ becomes an increasingly urgent one in the present age of burgeoning collectivism.”⁴⁰ And, indeed, when the United States faced another world war, individualism again came to the forefront.

In September 1940, the United States feared another war, and Congress took preventative steps to increase America’s military defenses by passing the first peacetime conscription act – the Selective Service Act of 1940. The previous draft act had a strict requirement of belonging to a peace church in order to be granted exemption. The new

³⁸ Lillian Schlissel, *Conscience in America* (New York: E.P. Dutton & Co., Inc., 1963), 199.

³⁹ Charles B. Hirsch, “Conscientious Objectors in Indiana During World War II,” *Indiana Magazine of History* Vol. 46, No. 1 (1950): 62.

⁴⁰ Richard Niebanck, *Studies in Justice, Peace and Freedom: Conscience, War, and the Selective Objector* (United States: Board of Social Ministry Lutheran Church in America, 1972), 10.

legislation, “largely through the legislative efforts of the peace churches, especially the Friends, the requirement of membership in a pacifist sect was eliminated, the exemption being extended to anyone who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.”⁴¹ Congress intended to broaden the exemptions away from just religious membership, but at the same time did not want to include immunity based upon political, ethical or social beliefs.

To avoid the difficulties the COs experienced during WWI, this Act indicated the specific procedures required to receive exemption. The process began when first registering for the draft. If the applicants intended to claim a CO status, they were required to complete Form 100 which was included with their registration information. If, and when, the applicants’ “lottery number” was drawn, the Selective Service System would send them Form 150, called the Special Form for Conscientious Objectors. This form would have to be completed and returned to the local board before the date indicated on the form. These two forms had to be completed prior to the induction process or the CO claim would not be considered.

Once the local board received all the required documentation, a meeting would be scheduled and the applicant notified. The individual had a right to attend the board meeting if desired, but it was not required. When the board had reached a decision on the COs claim, it would mail a Notice of Classification Form which indicated the draftees’ classification. The Act stated that anyone claiming CO status may be ordered to perform “for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board pursuant to Presidential regulations may deem appropriate.”⁴² Therefore, each registrant received a classification and must perform some function for the government.

COs were usually placed within two classifications, which were known as “Class I-A-O which recognized those who were willing to render noncombatant service, and Class IV-E, which applied to those who were opposed to both combatant and noncombatant service”⁴³ After receiving a classification, and if, and when, the COs lottery number was drawn, he would receive notification to report for induction. Before reporting for induction, the CO must complete Form 155, the Selection

⁴¹ Kent Greenawalt, “All or Nothing at All: The Defeat of Selective Conscientious Objection,” *The Supreme Court Review* Vol. 1971 (1971): 36.

⁴² Arlo Tatum, editor, *Handbook for Conscientious Objectors* (Pennsylvania: Central Committee for Conscientious Objectors, 1970), 29.

⁴³ Charles B. Hirsch, “Conscientious Objectors in Indiana During World War II,” *Indiana Magazine of History* Vol. 46, No. 1 (1950): 67.

for Alternate Service: Rights and Obligations of Conscientious Objectors in the Alternate Assignment Process. This form would allow the CO to specify the type of non-combatant work he was willing to perform. The CO was also given the option to work for the American Friends Service Committee, which was a Quaker organization created specifically to perform civil work jobs for the military that would not be against the pacifists' convictions.

The classifications and enrollment process for COs during WWI were altered to reflect the changing attitudes towards individual consciences. "The state's requirement imposed upon COs has evolved gradually. Over time this "equivalency" has changed from arrangements for payment of fines or commutation fees or the provision of a substitute (all of which were disallowed as undemocratic in the early twentieth century) to the provision of noncombatant service in the military or alternative service in civilian society."⁴⁴

United States v. Kauten

The language of the Selective Service Act of 1940, which stated that COs could only be qualified for exemption if "by reason of religious training and belief," provided a wider classification for exemption and resulted in the first atheist claiming CO status. Mathias Kauten was a quiet, sensitive artist, who was a professed atheist. His strong conviction to the importance of human life and "a sense of the brotherhood of man,"⁴⁵ made him unwilling to fight in a war, and he refused to report for induction. His failure to appear would be the reason he lost his case in the lower court, and would eventually lose on appeal.

Judge Hand decided the case for the New York State Circuit Court of Appeals and determined,

That the humanitarian views of a conscientious objector are the proper test for exemption, not his theological beliefs.... It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few worlds. Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow men and to his universe—a sense common to all men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to

⁴⁴ Charles C. Moskos and John Whiteclay Chambers II, ed. *The New Conscientious Objection: From Sacred to Secular Resistance* (New York: Oxford University Press, 1993), 45.

⁴⁵ Julien Davis Cornell, *The Conscientious Objector and the Law* (New York: The John Day Company, 1944), 15.

be limited by it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets...A compelling voice of conscience.⁴⁶

Judge Hand altered the COs requirements by encompassing a wide range of individual beliefs. For the first time, the Court removed the religious requirement for claiming a CO classification. "Thus, *Kauten* is important for its recognition that the compelling experience of conscience is analogous to the compulsion of a religious belief and that such conscience-based beliefs should have analogous legal protection."⁴⁷

Applying the same theological principles as the Quakers, Judge Hand described a compelling voice of conscience as "a religious impulse...an inward mentor...call it conscience of God."⁴⁸ The Quakers had been applying the same concept of the Inner Light, or "inward mentor" for their motivation to conscientiously object for generations. The judicial system had accepted and applied this notion to *Kauten*, but Congress would soon step in and change the language for CO exemption with the Selective Service Act of 1948.

Selective Service Act of 1948

Following the *Kauten* decision, Congress wanted to make sure that draftees could not claim political, ethnical or social claims for CO exemptions. In 1948, Congress passed a revised version of Selective Service Act. The application process for COs remained the same, and continues to be the same today - it was the language of the classification that was modified. The Act kept the "religious training and belief" clause but clarified it by adding "meaning, an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but do not include essentially political, sociological, or philosophical views or a merely personal moral code."⁴⁹ Ignoring the recent judicial language of "compelling voice of conscience," Congress was reigning in and narrowing the possible reasons for CO exemption. The Supreme Being clause remained in force until 1965 when the Supreme Court heard *United States v. Seeger*. It is

⁴⁶ Julien Davis Cornell, *The Conscientious Objector and the Law* (New York: The John Day Company, 1944), 15-16.

⁴⁷ University of Chicago Law Review, "The Legal Relationship of Conscience to Religion: Refusals to Bear Arms," *University of Chicago Law Review* Vol. 38, No. 3 (1971): 590.

⁴⁸ Julien Davis Cornell, *The Conscientious Objector and the Law* (New York: The John Day Company, 1944), 17.

⁴⁹ Kent Greenawalt, "All or Nothing at All: The Defeat of Selective Conscientious Objection," *The Supreme Court Review* Vol. 1971 (1971): 38.

important to note, that “through the whole course of governmental changes has run a thread of increased power and right for the individual and a greater freedom for the individual conscience.”⁵⁰

United States v. Seeger

The United States had been through two world wars and had witnessed mass numbers of individuals lose their lives. The world had experienced an outpouring of support for civil rights and liberties, and many organizations, such as the United Nations, were created to secure these rights in the future. America had undergone a culture change with the Civil Rights Movement and the passing of the Civil Rights Act in 1964. The concept of individual consciousness, which had “traditionally held a place of prominence in Western secular thought,”⁵¹ was being accepted by the majority of Americans, even the Supreme Court.

In 1965, Daniel Andrew Seeger’s case went before the Supreme Court. His case included two other appellants, Arno S. Jakobson and Forest Britt Peter, who were convicted for failing to submit to the induction process. The Court focused on Seeger, who had claimed CO status in 1958 stating he was against taking part in war by reason of his religious beliefs, but he did not complete the question regarding his belief in a Supreme Being. He stated that he held a “belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed...without belief in God, except in the remotest sense.”⁵² Seeger referred to Plato, Aristotle and Spinoza for his source of intellectual, ethical and moral convictions.

The lower Court had convicted him, but the Court of Appeals reversed the decision declaring “that the Supreme Being requirement of the section distinguished between internally derived and externally compelled beliefs and was, therefore, an impermissible classification under the Due Process Clause of the Fifth Amendment.”⁵³ The Court concluded that,

Both morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep in its significance and vital, indeed, is it to the integrity of man’s moral and spiritual nature that nothing short of the

⁵⁰ Paul Comly French, *We Won’t Murder* (New York: Hastings House, 1940), 15.

⁵¹ Richard Niebanck, *Studies in Justice, Peace and Freedom: Conscience, War, and the Selective Objector* (United States: Board of Social Ministry Lutheran Church in America, 1972), 13.

⁵² Lillian Schlissel, *Conscience in America* (New York: E.P. Dutton & Co., Inc., 1963), 260.

⁵³ *Ibid.*, 261.

self-preservation of the state should warrant its violation...Seeger professed "religious belief" and "religious faith"...He decried the tremendous "spiritual" price man must pay for his willingness to destroy human life.... We think it clear that the beliefs which prompted his objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers.... We therefore affirm the judgment.⁵⁴

In the decision, the Court instituted a "test," that would become known as the Seeger test, which would advance the requirements for COs farther than ever before. In order to obtain CO exemption, the applicant must maintain "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption."⁵⁵ By formulating the new definition, which was broad enough to include Jakobson and Peters, the Court avoided deciding the case on the constitutional issue. Also, by "omitting the Supreme Being clause it (the Court) simply removed one of the hurdles the Court had already cleared on its way to a broader understanding of religious training and belief."⁵⁶ The Court's decision in *Seeger* notably extended the scope of conscientious objection.

Subsequent to Seeger, Congress enacted the Military Selective Service Act of 1967, deleting the Supreme Being requirement from the statute's definition of religion. The definition now reads: "As used in this subsection, the term religious training and belief does not include essentially political, sociological or philosophical views or a merely personal code."⁵⁷ The Seeger test has withstood time, and is still currently being applied for determining CO status. During the Vietnam War there were several occasions when the Seeger test was questioned and challenged, and there were applicants who spent time in jail and/or prison for failing to comply with the Selective Service Act's requirements. But overall, the test seems to be holding up to the demands of the American society.

Conclusion

The progression of the classification for COs has, indeed, been altered and advanced by Congress and the Supreme Court. The first requirement for CO exemption was very narrow and strict –

⁵⁴ *Ibid.*, 267.

⁵⁵ *Ibid.*, 267.

⁵⁶ John A. Rohr, *Prophets without Honor: Public Policy and the Selective Conscientious Objector* (New York: Abingdon Press, 1971), 35.

⁵⁷ Timothy G. Todd, "Religious and Conscientious Objection," *Stanford Law Review* Vol. 21, No. 6 (1969): 1739.

membership in a peace church. The strict requirement would gradually be modified to reflect the changing American attitude towards individual liberties and civil rights. Membership in a peace church would be replaced by “religious training and belief,” and then “a compelling voice of conscience,” followed by “religious training with an individual relationship to a Supreme Being,” and finally the requirement for a relationship to a Supreme Being was dropped leaving “conscientiously opposed to combatant service, either on religious or nonreligious grounds.” Over the years, the Supreme Court and Congress have adapted the CO exemption requirement to reflect the rise of civil liberties within American culture.

The development of civil liberties within America started with peace churches, especially the Quakers, who established the idea of individual consciousness through their religious belief and set the groundwork for all past and future conscientious objectors. The Quakers diligently pressed the government for legal recognition to conscientiously object to military service, and during the process the American people took notice of their cause – individual consciousness and rights. The Quakers’ belief in the Inner Light and personal consciousness provided the foundation for their claims as conscientious objectors and for civil rights. As Justice Black stated, “The Quakers have had a long and honorable part in the growth of our nation.”⁵⁸

Since America now has a volunteer military, there has been no need to conscientiously object to service. There has not been a draft since the Vietnam War, and there is not a draft foreseen in the near future. If, however, Congress is compelled to issue a draft again, the Selective Service System would be responsible for the process and would presumably apply the same procedures as before. Currently, it is required of all males when they reach the age of eighteen to register with the Selective Service System, and if CO status is desired, they must inform the local board and complete all the necessary documentation during the registration process.

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⁵⁸ Lillian Schlissel, *Conscience in America* (New York: E.P. Dutton & Co., Inc., 1963), 207.