

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Individual Rights/Religion/Free Exercise

Conscientious Objectors and the Draft (1864)¹

Most states and the federal government granted religious pacifists legal exemptions from draft laws during the Civil War. Twenty states in 1861 mandated exemptions either in the state constitution or state law. The Constitution of Oregon declared, "Persons whose religious tenets, or conscientious scruples forbid them to bear arms shall not be compelled to do so." The Federal Draft Act of 1863 made no exception for religious believers, although recruiters were informed to follow state law. This practice meant that the federal government did not draft religious pacifists who had state exemptions from military service. Many Congressmen objected to the lack of a federal law exemption for conscientious objection. In 1864, the Federal Draft Act was amended. A new provision providing exemptions was inserted. That provision declared

That 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 freedmen, or shall pay the sum of three hundred dollars to such person as the Secretary of War shall designate to receive it, to be applied to the benefit of the sick and wounded soldiers; Provided, That no person shall be entitled to the benefit of the provisions of this section unless his declaration of conscientious scruples against bearing arms shall be supported by satisfactory evidence that his deportment has been uniformly consistent with such declaration.²

This was the first time that Congress provided religious believers with an exemption from a federal law.³

Consider the significance of exemptions when reading the materials below. To what extent did proponents believe they were constitutionally obligated to grant religious pacifists exemptions from the draft? To what extent did they believe exemptions merely good policy? How should the debate over draft exemptions influence the interpretation of the rights protected by the Fourteenth Amendment?

SENATOR HENRY B. ANTHONY (Republican, Rhode Island)

...

The object of this bill is to amend the defects which experience has found in the working of the enrollment act, and I submit to the Senate that the invasion of the rights of conscience is one of the most serious of those defects. There has not been a single man added to the Army who was worth the rations that he ate by the refusal to exempt persons of conscientious scruples as to bearing arms.

I know the argument that every man who enjoys the protection of the Government is bound to render it defense in arms; but these men enjoy the protection of the Government, so far as that protection

¹ *Congressional Globe*, 38th Cong., 1st Sess. (1864), 204–05.

² 13 U.S. Stat. 6, 9 (1864).

³ For more information, see Kurt T. Lash, "The Second Adoption of the Free Exercise Clause: Religious Exemptions Under the Fourteenth Amendment," *Northwestern University Law Review* 88 (1994) 1106:1141–46.

is enforced by arms, under compulsion, not voluntarily. They should ask the protection of no laws which require the shedding of human blood. I think something should be conceded from the fact that the largest class of men affected by this provision has always borne their testimony against the great wrong, moral, social, and economical, which has produced this rebellion. They have not been slaveholders. . . .

SENATOR JOHN C. TEN EYCK (Republican, New Jersey)

. . . We must not only relieve them from the draft, but from the liability of paying the commutation money, for I have always understood that Friends, as they call themselves, not only object to the performance of military service, but to the payment of any fine or commutation in lieu thereof; and many of them, even who were possessed of large estates, have lain for months in jail rather than violate what they understood to be a principle of their faith by paying a miserable fine of from one to five dollars for not discharging military duty under the militia system in the States. . . .

SENATOR JOHN CONNESS (Republican, California)

. . . I am opposed to this amendment. . . . The object of this act is to get soldiers. The purpose of the soldiery to be obtained is to preserve the institutions under which we live. . . .

. . . [I]t is a Quaker's war. For two hundred years they have taught that slavery was the greatest evil that ever cursed the earth, and they have borne their universal testimony against it everywhere. They have gone to making up that sentiment that aggressed slavery as an institution barbarous in its character, and against the civilization of the world. They have, I say, been making up that opinion, and that aggression did take place under their fostering care and direction.

. . .
I say, sir, that no citizen, be he Jew or Gentile, be he Quaker or Catholic, be he what he may, to whatever religious persuasion he may belong, can perform a higher duty, nor, in my opinion, a more ennobling one, than to go to the field and to fight this great battle of civilization for the preservation of human liberty; and I am opposed to every amendment of this kind. . . . I am opposed to this exemption for consciences' sake. I believe, as I live and exist, that the shortest and truest way to heaven is to strike down a rebel wherever you can reach him.