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Conscientious Objection and Compulsory R.O.T.C.

By RICHARD W. RABINOWITZ

A Study in Institutional Practices

AT A time when discussion of intellectual freedom in the academic world centers about the question of the place of the Communist in the university, it might not be inappropriate to examine the pattern of practices adopted by our universities to deal with a problem involving respect for individual opinion in a sphere somewhat less laden with tensions. We refer to the problem of the conscientious objector in universities having compulsory military-science training. The fact that few individuals are involved, and that the problem is not one of surpassing importance in any immediate sense, heightens the significance of the manner in which the problem is handled. A survey of the subject affords interesting insight into the manner in which institutions of higher learning deal with the problem of individual respect in an area far from the limelight.

On two occasions cases involving the constitutionality of required military science as a condition of matriculation in state land-grant universities have reached higher courts.¹ In *Hamilton v. Regents of the University*

of California, the Supreme Court of the United States, speaking through Justice Butler, held that it lay within the province of a board of regents to require military training as a condition of attendance at a state school. The court pointed out that students were not drafted or compelled to attend the university, and then held that every citizen owed the duty to support and defend the government against all enemies. While conceding that the liberty protected by the Fourteenth Amendment included the right to entertain the beliefs, adhere to the principles, and teach the doctrines espoused by the student, the court asserted that it was for the state to determine how best to prepare its citizenry for defense. One permissible procedure was to require those attending its universities to take a course in military science.² In *University of Maryland v. Coale*, the same conclusion was reached on substantially the same facts. The only observable difference in the facts is that here, unlike the *Hamilton* case, the student based his objections solely on religious grounds.³ It is clear that the law in the United States

Regents from requiring military training was denied.

²293 U.S. 245 (1934).

³165 Md. 224 (1933).

¹One other case on the subject has been found. *McMahon v. Board of Regents*, Kansas (District Court, Shawnee County, 1935), is an unreported case in which a petition to enjoin the Board of

is that a state may require compulsory military-science courses of those who wish to matriculate in its universities. There is no constitutional inhibition against such exercise of discretion.⁴

NO COMPREHENSIVE survey having been found bearing upon the manner in which the states have handled this problem in practice, the author undertook to survey the field by sending a questionnaire to those universities whose catalogues indicated that military science was a required course of instruction. Of the sixty schools questioned, fifty-five, or 92 per cent, had responded by January 1, 1950.⁵ The following is a summary of the answers received.

Pursuant to the Morrill Act of 1862, federal funds were to be given the states for the endowment of

... at least one college where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts.⁶

Every state has complied with the Act to the extent of establishing at least one land-grant college in which a course in military science is offered. While the Act requires that such a course be offered, it is silent as to the compulsory nature of the course for all students. In the past, there had been some doubt

⁴A short discussion of these two cases will be found in Rubenstein, I. H., *A Treatise on Contemporary Religious Jurisprudence* (Chicago: Waldin Press, 1948. pp. 108-10).

⁵Answers were prepared by the following: presidents, 20; chancellors, 1; vice-presidents, 7; deans, 15; military-science committees, 3; professors of military science, 2; law school deans or professors, 2; university or regent counsels, 2; administrative assistants to presidents, 2. Almost 15 per cent of those responding evidenced sufficient interest in the subject to request copies of the results.

⁶12 Stat. 504 (1862), 7 U.S.C. sec. 304 (1946).

as to the proper construction of the Act. One view adopted was that at the time the Act was passed all college courses were required, which would imply that the course in military tactics was required also.⁷ This interpretation was rejected by Attorney-General Mitchell, who said:

I . . . advise you that you are justified in considering that an agricultural college which offers a proper, substantial course in military tactics complies sufficiently with the requirement as to military tactics . . . even though the students at that institution are not compelled to take that course.⁸

This administrative interpretation would appear to have been adopted by the courts. In the *Hamilton* case, the Supreme Court nowhere indicates that it was mandatory upon the states, as a condition precedent to receipt of funds under the Morrill Act, to require all students to take the military-science course offered. The Maryland court asserted that the state was authorized to require such training; it did not assert that it was mandatory to do so.

As the source of the compulsory character of military-science courses is not found in federal law, to what extent is the requirement sourced in state law? In only four states do there appear to be statutes making it mandatory upon school officials to insist that all students take military-science training. In Kansas,⁹ Washington,¹⁰ and West Virginia,¹¹ statutes

⁷Johnson, S. "Military Training in the Land Grant Colleges," *Illinois Law Review*, XXIV (November, 1929), pp. 271-95.

⁸United States. *Opinions of the Attorney-General* 36 (1930), 297. Also see Note, *Idaho Law Journal*, I (February, 1931), pp. 90-92.

⁹*Kan. Gen. Stats.* (1947 Supp.), sec. 76-436. Applies to Kansas State College.

¹⁰*Session Laws* (1897), c. 118, sec. 193. Applies to Washington State College.

¹¹*W. Va. Code* (1949), sec. 1873.

provide that such training shall be required of all male students. The Maine statute on its face applies to all students, although it has not been suggested as yet that it applies to females.¹² In all other cases statutes merely provide that the Morrill Act applies, that a course in military training be offered, or some similar general enabling act.¹³ It is possible to say, therefore, that only four of the sixty schools whose catalogues indicate that military science is compulsory are required to so provide in order to comply with provisions of law. In all other cases, the compulsory requirement derives from purely administrative fiat.

Specific information was received from forty-one schools regarding the source of the military-training requirement and possible exemptions from it. As has been pointed out, in four cases the requirement is found in state law. In eighteen other cases the source of the regulation was found to be in a board of regents or similar body. In another thirteen it appears that the compulsory nature of the requirement derived from university administrative policy. In six cases there was indication that the policy adopted had been approved by the faculty through some body such as a university senate.

In thirty of the sixty cases in which the university catalogue indicated that military science was compulsory for all male students, some form of exemption is available to conscientious objectors.¹⁴ In four cases, catalogues contain specific pro-

¹²*Private and Special Laws* (1865), c. 532, sec. 10.

¹³The Wisconsin statute requires military training of all save those granted exemption under rules prescribed by the board of regents. *Wisc. Stats.* (1947), sec. 36.15.

¹⁴The five institutions not reporting are treated as making no provision for exemption.

visions indicating that conscientious objectors may be exempted.¹⁵ In nine cases ambiguous phraseology appearing in exempting provisions has been or would be construed to apply to conscientious objectors.¹⁶ Administrative officials in other institutions assert that similar ambiguous provisions in their catalogues are not intended to apply to conscientious objectors.

In seventeen cases in which catalogues specifically listed as the sole grounds for exemption physical condition, citizenship, and so on, and contained no ambiguous phrases which might be construed to apply to conscientious objectors, the schools indicate that they have in the past, or would in the future, exempt a conscientious objector if he raised objection. In four of these cases, the policy was adopted by the regents or a similar body. In eight cases, the policy was arrived at by the university administration or a faculty military-affairs committee. In five cases, the policy emanates from the military-science department itself. In such cases, the view of the professor

¹⁵University of Akron: "Men who submit written declaration of valid religious or conscientious objections to military service similar to those in effect during the war entitling one to exemption from service." *Bulletin*, 1946, p. 44.

Massachusetts Institute of Technology: "Individuals may be exempted on grounds of conscience." *Bulletin* LXXXIV, No. 4, 1949, p. 79.

University of Oregon: "As grounds for exemption, consideration is given to . . . conscientious objection to military service." *Bulletin*, No. 188, Part I, 1948, p. 239.

Rutgers University: ". . . unless excused by reason of conscientious scruples. . . ." *Bulletin*, Twenty-fourth Series, No. 7, 1948, p. 21.

¹⁶Such phrases include: "those offering other reasons satisfactory to the military science committee," "exemption to those rules only by the Board of Trustees," "unless excused for cause," "excused by proper authorities," "excused for cogent reasons," "other exemptions only in exceptional cases," "petitions for exemption on grounds other than those listed," and "students who for other reasons are exempted by the Department of Military Science."

of military science seems to be that the presence of a student holding such views will be detrimental to the *esprit de corps* of the R.O.T.C. and that he should not be given the benefit of such training.¹⁷

THE obvious discrepancy between catalogue provision and actual practice was commented upon by two officials. In both cases the official responding indicated that the exemption was not mentioned in the catalogue for fear that it would encourage students who were not sincere objectors to use this device as grounds for avoiding military training. Doubtless, similar motivation has actuated officials in other schools in which a disparity exists between enunciated policy and actual practice. That such a fear appears to be completely unfounded is apparent from the fact that none of the institutions which have specific exempting provisions in their catalogues seem to have had any difficulty in dealing with this problem.

In twenty-three cases it has been possible to obtain some information as to the nature of the objection which has been or would be recognized. Two universities indicate that the exemption applies only to members of the Society of Friends. Four have stated that membership in a pacifist sect is a prerequisite to exemption. Two schools indicate that the individual must be a member of

¹⁷The basis would appear to be United States, Department of the Army, *Army Regulations*, which provide: ". . . the authorities of an institution may, in an exceptional case for sufficient reason, upon the recommendation of the professor of military science and tactics, discharge a member of the Reserve Officers Training Corps from such Corps and from the necessity of completing the course of training as a prerequisite for graduation." Washington, 1931, No. 145-10, paragraph 23a.

some religious denomination, but not necessarily a pacifist sect. Seven schools require that the objection be based on religious belief, although there is no insistence on religious affiliation. In nine cases there is indication that any objection, regardless of the presence of lack of religious motivation, will be honored.¹⁸

A wide variety of practices exists regarding alternative courses required of the student in the event that he satisfies the exemption requirements at the particular institution he attends. In two cases noncombatant work under the direction of the military-science department is required. In five cases the student substitutes an equivalent number of hours in physical education. In one case there would appear to be a punitive element involved, for the student exempted is required to take more than an equivalent number of hours in physical education and other courses. One university requires that a course in hygiene be substituted. Another institution provides the interesting alternative of a course in international arbitration. In all other cases no specific alternative seems to be required, the student being required to accumulate the requisite number of credits ordinarily necessary for graduation.

Various administrative procedures have been followed to determine whether or not a student is to be granted an exemption. The problem involved, essentially no different from that facing the usual administrative

¹⁸"All conscientious objectors," "person honestly and sincerely a conscientious objector," "any basis so long as conscientious," "religious but would include ethical," etc., "conscientious scruples," "personal reasons, religious, moral, humanitarian," "any objections," have been held to be recognized categories.

tribunal, is a twofold one of determining the *bona fides* of the student's claim and then ascertaining whether his objection is of such a nature as is recognized in the particular school. In most institutions the procedure is of the greatest informality. Some one in the administrative structure, the president, the dean, the head of the military-science department, or faculty committee on military training determines, on the basis of examination of written statements or, more usually, written statements and oral discussion, the *bona fides* of the claim.

A few institutions provide a somewhat more formalized procedure. Thus one school which recognizes only such objection as is derived from membership in a pacifist sect, requires a record of the official action of the church body in which membership is claimed, a statement from the student which includes in detail the student's understanding of the meaning of the phrase "conscientious scruples" and the effect of such scruples upon him as an individual and upon the community of which he is a member, as well as a statement prepared by the minister of the church to which the student belongs, that to his personal knowledge the student is a conscientious objector. Following this the university investigates the claim and a faculty committee on military affairs interviews the student. The committee then submits a recommendation to the president for his action. At another institution it is provided that in no case shall a student's petition for exemption be denied without his being given an opportunity for a personal hearing before the military-affairs committee. This particular committee has formu-

lated a policy of not committing itself to a definition of conscientious objection, but will decide each case upon its merits, looking primarily to the sincerity of the petitioner. In another case, the proceeding is initiated by a written application from the student to the commandant of cadets, who may of his own volition grant the request. Should the petition be denied, the student may appeal to the dean upon presentment of a written statement from the commandant, containing the facts of the case and the grounds for the denial of the petition. The matter is then discussed by the dean, the chancellor, and the commandant, who make a final decision. A formal oath containing an affidavit that the student swear he is conscientiously opposed to war and to all forms of compulsory military service, and would refuse to bear arms in time of war, is required in another university as a prerequisite to a decision on the merits by a faculty committee which includes the professor of military science. This affidavit is made part of the student's permanent record. None of the schools reporting on their investigatory procedures indicates that any difficulty is encountered in determining the *bona fides* of the claim being asserted by the student.

The number of individuals involved in such programs is small. Probably not more than fifteen students in some eight institutions had received some form of exemption during the 1949 fall term. Thirteen schools which did not have any objectors exempted that year indicated that they have exempted in the past. Several schools which refuse to grant an exemption for conscientious objectors have indi-

cated that individuals have been refused admission or dismissed after admission because of their stand on this issue. One school indicated that it strongly urged such students not to register because they would be "unhappy" at a school where all others were taking military training. Another indicates that perhaps a half-dozen men have been refused throughout the history of the school. Not a single institution whose catalogue specifically lists exemption or which construes an ambiguous exempting provision to apply to objectors has faced the problem of wholesale attempt to evade the requirement.

THERE is no federal law requiring that a state educational institution must provide a compulsory military-science course in order to bring itself within the provisions of the Morrill Act pertaining to land-grant colleges. In only four states is there law requiring schools to make the course in military science compulsory. In the remaining states it is possible to establish a rational system for recognizing the claims of all those who assert they are conscientious objectors regardless of the manifest content of the symbol being invoked by the individual as a sanction for his behavior; there is no need to discriminate between the religious and non-religious conscientious objector. As one prominent psychologist has so cogently asserted:

So far as the strength of a conviction is concerned or the extent to which it enters into strong aversions and dislikes or loyalties, I do not know any reason for differentiating between religious and non-religious convictions.¹⁹

¹⁹Letter from E. R. Guthrie, September 30, 1949.

The most desirable procedure which suggests itself to the author would be to set up a committee to hear all such claims. Members of the committee could include an administrative official in charge of student affairs, a professor of philosophy, a professor of theology, the professor of military science, and one other member drawn from the faculty at large. The committee would make a written determination, granting or denying the claim, containing findings of fact based upon such written and oral evidence as they deem desirable to admit. Such procedure would tend to ensure the student of a fair determination of his claim and would protect the institution from frivolous petitions. The student may be required to substitute a course in physical training as a condition of his exemption. He could be required to substitute such a course if the rationale of the military-training requirement is, as some officials have asserted, to ensure the physical fitness of the students. On the other hand,

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Footnote 19 [Cont.]

In answer to a query from the author as to whether, from the point of view of systematic psychology, the manifest content of the symbol bears a necessary relationship to the intensity of belief and whether an objection in terms of philosophy can be as sincere as an objection in terms of religion, E. R. Hilgard stated that such matters are general knowledge (private communication, September 30, 1949). E. C. Tolman in a private communication, October 26, 1949, asserts: "It is probably true that non-religious conscientious objectors are usually just as 'sincere' as religious objectors. They, like the latter, have had objections to war built into their super ego structures, and their reactions will therefore often be just as basic and as emotional and as truly a part of 'conscience' as those of the religious objectors." Dr. M. J. Pescor of the United States Public Health Service also believes no distinction should be made (private communication, November 29, 1949). Dr. D. C. McClelland, who was closely associated with C.O.'s during the war, believes no such distinction should be made (private communication, October 26, 1949).

The Scholar and the World

HOWARD MUMFORD JONES

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which students, faculty and administrators feel free to speak, act, and think independently.

It is against the encroachment of the world upon the scholar, when it takes this form, that the scholar must take his stand. Today the struggle to retain for our people the primary concept of intellectual freedom against the pressures of the time is a major contest. It is the scholar's obligation to maintain, among the pressures of our industrial society and amid the tensions of world conflict, a proper place for proper scholarship—the voice of man thinking. The voice of the scholar shall not be timid and lost and little, but confident, proud, and bold. Scholarship is not bookishness but mastery, intellect, courage. Its aim is not passivity but, on the highest plane, action—that action which alone brings wisdom to the nations. And wisdom, God knows, is what the nation needs.

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if the rationale of requiring a military-science course is that it is a means of ensuring a reservoir of men upon whom to draw in times of crisis when it is deemed necessary to resort to state-organized violence, the substitution of a course in international arbitration for one who rejects violence would not be inappropriate.

It is clear from this study that in the vast majority of states it is not necessary to predicate differential access to institutions of enlightenment upon an individual's attitude toward war. There is no reason at law for not showing greater respect for the intellectual integrity of those students who deviate from the group norm.

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Publishing in the South

LOUIS R. WILSON

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after having made every effort to suggest constructive measures for improving them. Let them see to it that every manuscript stands or falls on the basis of its merits or in the light of the functions of the university rather than commercial publishing. Let them apply all the publishing know-how they can to all aspects of the complex publishing process, set up accounting systems in keeping with their needs, and watch out for the manuscripts that will bring in golden harvests. But, in addition, they must do two other things. First, constantly criticize the product of the university presses. If, for example, scholars are too preoccupied with certain aspects of American history as contrasted with the history of other countries or with American social or economic problems, such limitations must be pointed out and subjects sought that will more adequately cover the special fields of university publishing. Second, it must always be remembered that the presses, in co-operation with the administrative officers and faculties of the colleges and universities with