

# Conscientious Objectors: Ali and the Supreme Court

Currently, there is no draft, so there is no occasion for conscientious objection. However, men must still register when they are 18 years old in order to expedite induction into the Armed Forces in the event the draft is reinstated. Upon reinstatement, the historic rules for conscientious objection would apply.

Conscientious objectors are eligible men who are opposed to serving in a war because it is against their deeply held moral or religious beliefs. There are two main classifications for conscientious objectors:

- Classification 1-A-O - Men who are morally opposed to serving in combat
- Classification 1-O - Men who are morally opposed to serving the military in any capacity

Men classified as 1-A-O are assigned to military service not involving combat or weaponry. Men classified as 1-O are assigned to the alternative service program run by the SSS. This program assigns conscientious objectors to work with local employers in fields that would contribute to the nation's well-being, e.g., health care, education, conservation or a number of other areas.

A man can only be classified as a conscientious objector if he demonstrates that his opposition to war is based on moral, ethical or religious beliefs, not on political beliefs. The man must be opposed to all war, not only the specific war at hand.

There are a number of ways for a man to persuade the board of his beliefs. First of all, he has to explain in a detailed written statement his convictions and how these affect his life. He also has to answer any questions the Board may have. Statements by his friends and acquaintances supporting his bona fides as a conscientious objector and historical evidence of his beliefs, such as membership in an anti-war organization or church dedicated to peace, enhance the chances of being granted CO status. Showing that he held these beliefs before he received a notice of induction is a helpful, but not a necessary factor.

If the board members were convinced of his sincerity, they would reclassify him, and the SSS or military would assign him to appropriate duty. If the board decided not to reclassify him, they would notify him of their reasons for denial. At this point, he would have an opportunity to appeal the decision.

During the course of the 20<sup>th</sup> Century, the grounds for claiming conscientious objector status were progressively broadened and the number of men granted CO status greatly increased.

### World War I Conscientious Objectors

Conscientious objector exemptions were allowed only for the Amish, Mennonites, Quakers, and Church of the Brethren. All other religious and political objectors were forced to participate. Some 64,700 men claimed conscientious objector status; local draft boards certified 57,000, of whom 30,000 passed the physical and 21,000 were inducted into the U.S. Army. About 80% of the 21,000 decided to abandon their objection and take up arms, but 3,989 drafted objectors refused to serve. Most belonged to historically pacifist denominations, especially Quakers, Mennonites, and Moravian Brethren, as well as a few Seventh-day Adventists and Jehovah's Witnesses. About 15% were religious objectors from non-pacifist churches.

### World War II Conscientious Objectors

Of the more than 72,000 men registering as conscientious objectors, nearly 52,000 received CO status. Of these, over 25,000 entered the military in noncombatant roles, another 12,000 went to civilian work camps, and nearly 6,000 went to prison. Draft evasion only accounted for about 4% of the total inducted. About 373,000 alleged evaders were investigated with just over 16,000 being imprisoned.

Draft legislation passed in 1948 specifically allowed for conscientious objection. The number of conscientious objectors grew in proportion to those drafted but remained low. Fewer than 35,000 men declared conscientious objector status between 1948 and 1965.

### Vietnam War Conscientious Objectors

In 1965 the Supreme Court heard the landmark conscientious objection case of *United States v. Seeger*. The two defendants claimed religious exemption but were not members of traditional pacifist religious groups and had no religious training as required under the 1948 legislation. One defendant professed that he believed in a "supreme reality" while the other asserted belief in "a universal reality." The court ruled that an individual's understanding of his own religious beliefs must be considered when determining conscientious objector status. The case greatly expanded the religious basis for conscientious objection to incorporate "people with general theistic belief systems" whether or not they had any formal religious training. The Court also included for the first time "nontraditional variances" of pacifist religious expression such as Judaism, Islam, and Buddhism.

The unpopularity of the Vietnam War increased both the number and the visibility of conscientious objectors. Between 1965 and 1970 more than 170,000 registrants applied for conscientious objector status. The *Seeger* ruling arguably did not have a wide impact on conscientious objection because local draft boards were free to interpret the ruling as they saw fit. Many men genuinely objected to the war in Vietnam on moral, but not religious, grounds. No law covered their beliefs until *Welsh v. United States* (1970). In that ruling, the Supreme Court held that a man could claim conscientious objector status based on the "depth and fervency" of his beliefs, even if they were not religious in

character. Welsh himself had declared that his objection to Vietnam was based on historical and sociological grounds.

### Mohamed Ali, Conscientious Objector

Mohamed Ali, originally Cassius Clay, registered for conscription in the United States military on his 18th birthday and was classified 1-A in 1962. In 1963, he became a member of the Nation of Islam (the "Black Muslims") and at that point changed his name. In 1964, he was reclassified as Class 1-Y, i.e., fit for service only in times of national emergency, after he failed the U.S. Armed Forces qualifying test because his writing and spelling skills were sub-standard. By early 1966, the Army had lowered its standards to permit induction of soldiers previously classified 1-Y and Ali was again classified 1-A, meaning he was eligible for the draft and induction into the U.S. Army.

When notified of this status, Ali declared that he would refuse to serve in the army and publicly considered himself a conscientious objector. Ali stated: "War is against the teachings of the Qur'an. I'm not trying to dodge the draft. We are not supposed to take part in no wars unless declared by Allah or The Messenger. We don't take part in Christian wars or wars of any unbelievers." He stated: "Man, I ain't got no quarrel with them Viet Cong."

On April 28, 1967, Ali appeared in Houston for his scheduled induction into the U.S. Armed Forces, but he refused three times to step forward when his name was called. He was subsequently indicted for the felony of refusal to submit to induction and convicted of the charge by a jury in federal district court in Texas. The trial judge sentenced him to five years in prison and a fine of \$10,000. On appeal the United States Court of Appeals for the 5<sup>th</sup> Circuit, quoted extensively from a Department of Justice letter submitted in a previous administrative hearing. The letter opposed Ali's CO status on the ground that his objections to participation in war insofar as they were based upon the teachings of the Nation of Islam "rest on grounds which are primarily political and racial. These constitute objections to only certain types of war in certain circumstances, rather than a general scruple against participation in war in any form" and only a general scruple against participation in war in any form can support a claim for conscientious objector status. The letter also pointed out that Ali had not consistently manifested his conscientious objector claim and had not shown overt manifestations sufficient to establish his subjective belief where his claim was not asserted until military service became imminent, not having been mentioned at all prior to his being reclassified 1-A in February 1966.

In *Clay v. United States*, 397 F.2d 901 (5<sup>th</sup> Cir. 1968), the Court of Appeals affirmed the judgment of the district court, noting "Whether the registrant's beliefs are 'truly held' is the threshold question of sincerity which must be resolved by the board". Apparently giving substantial weight to the Justice Department letter, the Court found that "the 'basis in fact' test applied to the conscientious objector claim of registrant was fully met in this case. There was more than adequate evidence to justify the rejection of his claim."

Clay v. United States, 403 U.S. 698 (1971)

When the ruling of the 5<sup>th</sup> Circuit was reviewed by the Supreme Court, Justice Thurgood Marshall recused himself because he had been involved in the case earlier as Solicitor General. According to *The Brethren* by Robert Woodward and Scott Armstrong, the initial vote of the justices was 5 to 3 to affirm the conviction. Then Justice Harlan changed his mind, raising the prospect of an evenly divided court, which would have resulted in affirming the lower court's judgment of conviction. To avoid such a default affirmance, Justice Stewart agreed to vote for reversal provided the ruling was based on a technical flaw in the government's case rather than on the merits. The result of Stewart's change of heart was an 8-0 opinion in favor of reversal: "Since the Appeal Board gave no reasons for its denial of the petitioner's claim, there is absolutely no way of knowing upon which of the three grounds offered in the Department's letter it relied." Consequently, the decision of the 5<sup>th</sup> Circuit was reversed and Ali's conviction was vacated. Although the Court's decision was based on a technicality, the opinion is clearly sympathetic to the underlying merits of the claim. In a concurring opinion Justice Douglas found that Ali had proved his case, writing:

What Clay's testimony adds up to is that he believes only in war as sanctioned by the Koran, that is to say, a religious war against nonbelievers. All other wars are unjust. That is a matter of belief, of conscience, of religious principle . . . . That belief is a matter of conscience protected by the First Amendment which Congress has no power to qualify or dilute as it did in the Military Selective Service Act of 1967 when it restricted the exemption to those "conscientiously opposed to participation in war in any form." . . . [T]hat construction puts Clay in a class honored by the First Amendment, even though those schooled in a different conception of "just" wars may find it quite irrational.

In the both the opinion of the Court and Justice Douglas's concurrence, the longstanding principle that a claimant to CO status must object to all wars and cannot base his claim on an objection to a particular war appears to have been rejected, although Justice Douglas noted that Ali did object to all wars of a particular type, namely those "not sanctioned by the Koran." In describing Ali's objection in this way, Justice Douglas softened Ali's own words ("We are not supposed to take part in no wars unless declared by Allah or The Messenger. We don't take part in Christian wars or wars of any unbelievers. . . . Man, I ain't got no quarrel with them Viet Cong") and tacitly rejected the view that Ali's objection was political, a view that had found support in the lower courts based on Ali's argument that the absence of African-Americans from the nation's draft boards reflected racial discrimination and resulted in a denial of due process.

Elijah Muhammad, the head of The Nation of Islam at the time Ali became a member, had assumed control of the organization in 1931. When he was drafted in 1942, during the early months of World War II, he claimed conscientious objector status based on arguments that were very similar to Muhammad Ali's. Nevertheless, Elijah Muhammad was convicted of draft evasion, but unlike Ali, his conviction wasn't reversed and he

spent several years in prison. In fact, while Ali was never jailed, remaining free on bond until the Supreme Court overturned his conviction in 1971, hundreds of Muslims, especially black Muslims, were sent to prison during the war because courts refused to accept their religion as the basis for conscientious objection.

Although by 1971 the legal standards for conscientious objector status had become more lenient than in earlier 20<sup>th</sup> Century wars, it is likely that extra-judicial factors, such as the widespread opposition to the war by protesting students, the mainstream media, and the nation's elite, helped Ali prevail before the Supreme Court. On the other hand, although counter-factual history is a perilous undertaking, it seems probable that had the threat to the nation and the public's support of the war effort during the Vietnam War been similar to that which existed during World War II, Ali, like Elijah Muhammad before him, would have gone to prison.