Wife's Rights for Loss of Consortium Occasioned by the Sale of Intoxicants to Her Husband

Norman R. Bradley
WIFE'S RIGHTS FOR LOSS OF CONSORTIUM OCCASIONED BY THE SALE OF INTOXICANTS TO HER HUSBAND

There are three classes of torts by an outsider which involve a violation of a marital right of one spouse against the world.¹

I. Those relating to alienation of affections and criminal conversation.

Under the common law anyone who enticed, alienated, or carnally knew the husband of a married woman could not be sued by the wife.² The reason for such rule was that a married woman could not maintain an action in her own name without the joinder of her husband and that any recovery she might receive would be-

²Marri v. Stamford St. R. Co., 84 Conn. 9; 78 Atl. 582 (1911); Doe v. Roe, 82 Me. 503, 20 Atl. 83 (1890); Kroessin v. Keller, 60 Minn. 372, 62 N.W. 438 (1895).
come his property, thereby permitting the debauching husband to profit by his own misdeeds.

In the very early case of *Winsmore v. Greenback*, the court held that a husband had a common law cause of action for the loss of his wife's consortium against anyone who enticed, alienated, or deprived the husband of his conjugal rights of his wife. And in *Silvernali v. Westerman*, the court decided that a husband has a common law cause of action in tort against the paramour of his wife. Therefore under this rule the wife had no right of recovery for the loss of the consortium of her husband, whereas the husband could recover for a similar loss of the wife's consortium. While the injurious consequences of a wife's adultery may be far more reaching because of the illegitimacy of the children, nevertheless her conjugal rights are in principle the same substantially as are his.

By the Married Women's Property Acts of the several states, the common law disability of a married woman to maintain an action in her own name was removed. Such acts had the effect of treating a married woman as a feme sole, with certain few well-recognized exceptions, and as such she is capable of suing and being sued without the joinder of her husband.

That a married woman may now enforce a cause of action for the loss of her husband's consortium just as the husband could for the loss of his wife's consortium under the common law is well settled.

II. Those relating to diminution of consortium resulting from injuries to the other spouse caused by intentional or negligent acts, tortious also as to the other spouse, as where a third person through negligent operation of an automobile injures one spouse and thereby effects a diminution of services, society, solace, etc., of the injured spouse to the other spouse.

"One who by reason of his tortious conduct is liable to a married woman for illness or other bodily harm is subject to liability to her husband for the resulting loss of her services and society, including any impairment of her capacity for sexual intercourse, and for any reasonable expense incurred by him in providing medical treatment."

That the wife does not have the corresponding cause of action for injuries to her husband is well-settled law in every jurisdiction.

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3Willes Rep. 577 (1745).
51893, P.L. 344, 48 P.S., sec. 111.
"A married woman is not entitled to recover from one who, by his tortious conduct against her husband, has become liable to him for illness or other bodily harm, for harm thereby caused to any of her marital interests or for any expense incurred in providing medical treatment for her husband.""9

III. Those relating to diminution of consortium resulting from injuries to the other spouse caused by acts not tortious to that spouse, as where a third person knowingly sells a habit-forming drug to one spouse to be used to satisfy craving, and not for medicinal purposes.

It is with this last type that we are currently interested.

In Hoard v. Peck,10 an action was brought by a husband against a druggist to recover damages for selling to the plaintiff's wife large quantities of laudanum to be used by her as a beverage, as a result of which the wife was made ill, her mind so affected that she was unable to perform her duties as a wife, and the husband lost her affection and society. The defense relied upon the theory that the wife, having consumed it voluntarily, the proximate cause of the injury was the consumption and not the vending. The court in upholding the right of action said:

"The sale of laudanum as a beverage is very uncommon. It is well known to be poisonous. It cannot be used as a beverage without impairing the physical and mental energies and this is generally well known, and it certainly is to all druggists. The druggist, by the act of handing it to her for that purpose, is as much responsible for the consequences as though he assisted her directly in pouring it down her throat."

This is the first case which discussed and recognized the now universally accepted principle that there are certain substances, which when steadily consumed, destroy the consumer's power to resist them and as a result destroy his physical and mental health. This rule was cited and followed in the case of Holleman v. Howard,11 wherein the husband brought an action against a druggist for selling his wife laudanum to be used as a beverage whereby she became a mental, moral, and physical wreck. The court said:

"Whoever does an injury to another is liable in damages to the extent of that injury. It matters not whether the injury is to the property, or the right, or the reputation of another. The defendants owed the plaintiff the legal duty not to sell to his wife opium in the form of large quantities of laudanum as a beverage, knowing that she was, by using it, destroying mind and body and thereby causing a loss to the husband."

9Restatement, Torts (1934) Sec. 695.
1056 Barb. (N.Y.) 202 (1867).
11119 N.C. 150, 25 S.E. 972 (1896).
Hence we see that in both these cases the husband was permitted a recovery for the loss of his wife's consortium occasioned by the sale of drugs. This rule is followed in the Restatement:12

"One who without a physician's direction sells or otherwise supplies to a married woman a habit-forming drug with knowledge that it will be used in a way which will cause harm to any of the legally protected marital interests of the husband is liable for harm caused by such drug to those interests unless the husband consents to the wife's acquisition or use of the drug."

In Flandermeyer v. Cooper,13 the court held for the first time that a wife was entitled to recover damages for loss of consortium against one who repeatedly and against the protests of the wife sells morphine to the husband until by the use thereof his mind becomes so impaired and destroyed that it is necessary to institutionalize him. So also in Moberg v. Scott,14 a wife was permitted to recover damages for loss of consortium brought about by the sale of opium to her husband. This rule is recognized in the Restatement of Torts:

"One who sells or otherwise supplies to a married man a habit-forming drug is liable for harm caused by such drug to the legally protected interests of his wife under the same conditions that would permit the husband to recover for the sale of such drug to his wife."15

We have thus far seen that the wife's right to recover for loss of consortium occasioned by alienation of affections and criminal conversation has been brought about through legislative enactments and for loss of consortium caused by a sale of drugs has been recognized by judicial decisions, thus abrogating the common law rule denying recovery in these instances.

We shall now determine whether the wife can maintain a similar action for loss of consortium occasioned by the sale of intoxicating liquors to her husband.

Under the common law rule the selling of intoxicants to the husband or wife which resulted in injury to the other spouse did not give rise to damages. The theory followed in practically every case was:

1. The mere sale of intoxicating liquor is perfectly lawful.
2. Conceding the sale to be illegal, it can do no harm unless consumed.

The cases seem to be decided upon the principle that since consumption is necessary to render one intoxicated, it is the consumption and not the sale that is the prox-
mate cause of any injury that might follow intoxication, and whenever the husband or the wife is the plaintiff the consumer’s contributory negligence is imputed to the other spouse, the plaintiff, and recovery fails.

To correct this defect of the common law and to remedy the abuse which afforded no remedy for injury or damage caused by the sale of intoxicants, some legislatures have passed Civil Damage Acts. Some statutes provide a remedy to anyone who is injured by such furnishing of intoxicants. Other statutes authorize a recovery by the intoxicated person himself. The first Pennsylvania Civil Damage Act\(^\text{16}\) gives to any party that is aggrieved the right to recover damages brought about by intoxication. The Act is as follows:

"Any person furnishing intoxicating drinks to any other person in violation of any existing law, or of the provisions of this act, is civilly responsible for any injury to person or property in consequence thereof and anyone aggrieved may recover full damages."

In *Fink v. Garman*,\(^\text{17}\) the court held that under the Act of 1854, *supra*, even a widow may maintain an action for damages against an innkeeper for furnishing her husband liquor while intoxicated, as a result of which he fell under the wheel of his wagon and was killed. This case disregards the common law rule that consumption is the proximate cause of intoxication, and established the now accepted rule that under the Civil Damage Act, *supra*, such a recovery could be had against the saloon-keeper. In *Davies v. McKnight*,\(^\text{18}\) the court held that a widow may maintain an action for the death of her husband against one causing it by furnishing liquor to him, he being of intemperate habits or intoxicated at the time and “the consumption by the husband is not such contributory negligence as will preclude a recovery by the wife.” The common law rule of *volentia non fit injuria* was held inapplicable in *Littell v. Young*,\(^\text{19}\) wherein the court said that an habitual drunkard or one under the influence of liquor at the time has no control of his will and is therefore incapable of consenting. In *Lang v. Casey*,\(^\text{20}\) the court said:

"The act of furnishing intoxicating drinks to a person who is intoxicated or of known intemperate habits renders the one supplying the liquor liable for the proximate result and the recipient is not guilty of contributory negligence."

In *Bradford v. Boley*,\(^\text{21}\) it was held that under the act of 1854, *supra*, the wife was given a right to maintain an action for an injury to her personal property in consequence of a liquor dealer’s unlawful negligence. The court further said by way of

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\(^\text{16}\) 1854, P.L. 663, 47 P.S. Sec. 643.
\(^\text{17}\) 1840 Pa. 95 (1861).
\(^\text{18}\) 1846 Pa. 610, 23 Atl. 320 (1892).
\(^\text{19}\) 185 Pa. Super. 205 (1897).
\(^\text{21}\) 167 Pa. 506, 31 Atl. 751 (1895).
dictum that if the wife's right of support was impaired because of such furnishing of intoxicating liquor, then she would have a cause of action against the one so vending.

The Second Civil Damage Act of Pennsylvania provides:

"Any person who shall sell spirituous or other intoxicating liquors as aforesaid, to any person who shall drink the same on the premises where sold and become thereby intoxicated shall besides his liability in damages under any existing law, be fined five dollars for every such offense, to be recovered in debt, before any alderman or justice of the peace, by any wife, husband, parent, child, relative or guardian of the person so injured, and levied upon the goods and chattels of the defendant without exemption: Provided that suits shall not be instituted after twenty days from the commission of the offense in this and the preceding section."

This act gives the wife, among others, the right to recover what is in essence exemplary damages for a violation thereof.

The third Pennsylvania Civil Damage Act provides:

"The husband, wife, parent, child, or guardian of any person who has or may hereafter have the habit of drinking intoxicating liquor to excess, may give notice in writing signed by him or her to any person not to sell or deliver intoxicating liquor to the person having such habit; if the person so notified, at any time within twelve months after such notice sells or delivers any such liquor to the person having such habit the person giving the notice may, in an action of tort, recover of the person notified any sum not less than fifty nor more than five hundred dollars, as may be assessed by the court or judge as damages. A married woman may bring such action in her own name, notwithstanding her coverture and all damages recovered by her shall go to her separate use. In case of the death of either party, the action and the right of action shall survive to or against his executor or administrator without limit as to damages."

In *Mardorf v. Hemp*, the court in construing the above act said that it is applicable to Allegheny County only, and that where the wife notified the saloon-keeper not to sell to her husband because he was becoming an habitual drunkard and squandering his earnings and thereby depriving her of support, she was entitled to recover the full five hundred dollars for the failure of the saloon-keeper to comply with the act. In passing it is interesting to note that this act gave a married woman the right to maintain an action in her own name and provided that any recovery she might receive would become her separate property, whereas a
married woman's right to sue generally was not given until the Married Women's Property Acts, supra.

In the very recent case of Pratt v. Daly, the plaintiff, the wife, brought an action for the loss of her husband's consortium against the saloon-keeper for selling liquor to her husband who was an habitual drunkard. The court, following the rule laid down in Hoard v. Peck, supra, said that the consumption and the sale are merged into one and become the act of the vendor; and that the sale is the proximate cause of the loss of consortium, the consumer having lost his volition to act cannot be guilty of contributory negligence.

Although most states today have enacted Civil Damage Acts, giving either spouse the right to sue in this class of cases, yet in Arizona, the jurisdiction wherein Pratt v. Daly, supra, was tried, no such act exists. The court in the absence of such a statute said:

"It would be a narrow and illogical limitation of the rule to say that in the case of drugs the wife could maintain the action, but because this case involved liquor her rights would be lost."

This case stands for a complete abjuration of the common law rule and is predicated not upon legislative enactments or precedents, but rather upon good logic and sound reasoning.

The habit-forming drug rule first laid down in Hoard v. Peck, supra, seems to have been followed in the few cases that have arisen since that time whether they have been cases dealing with habit-forming drugs or liquors. A careful survey of these cases will show that the theory upon which they are based is that certain substances, whether they be drugs or liquors, if used habitually, destroy the volition of the consumer to such a degree that he has lost all power to resist them. In Pratt v. Daly, supra, the court said by way of dictum that since there is not the same presumption that the use of liquor will eventually cause the loss of volition that there is with habit-forming drugs, it is incumbent upon the plaintiff to prove that to the knowledge of the defendant such a stage has been reached by the consumer, and once this has been established the right of action in drug cases should be identical with the liquor cases.

By the connubial ties each spouse is entitled to the conjugal society and comfort of the other, and this association is one of the mutual obligations growing out of the union of husband and wife. If this comfort and conjugal society is sacred enough to be protected from encroachments by paramours or those selling habit-forming drugs, then there does not seem to be any logical reason why this same comfort and conjugal society should not be protected from similar encroachments by the sale of intoxicating liquors.

Charles C. Hobek

25104 Pac. (2nd) 147 (Arizona) (1940).
A conscientious objector owes his exemption under the Selective Service and Training Act of 1940 not to any constitutional right, but only to the considerations of public policy which prompt Congress to exempt certain classes of persons from service. Article I, § 8, of the United States Constitution provides that Congress has the power "to declare war" and "to raise and support armies." Under this express grant of power Congress may provide that military forces shall be raised by draft or conscription, and it may require that every citizen render military service, at home or abroad. This is summarized in Corpus Juris thus:

"Congress, having the power to summon all citizens to the military service, may summon such of them as it desires, and who may or may not be excused from service depends on the terms of the conscription act and whether the individual is within the classes excused by it."

It is stated by dictum in Jacobson v. Massachusetts that a citizen "... may be compelled, by force if need be, against his will and without regard... even to his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense."

There are no cases specifically defining a conscientious objector; the matter appears to be not one for legal definition. It is said in People v. Stewart that a conscientious scruple is an objection or repugnance growing out of the fact that a person believes the thing demanded of him to be morally wrong, his conscience being the sole guide to his decision. This is distinguished from an "objection on principle" which is dictated by the reason and judgment, rather than the moral sense, and may relate only to the propriety or expediency of the thing in question. Reason and judgment are not the criteria for exemption; one must conscientiously object.

"Conscience is defined to be internal or self-knowledge... the principle within us which decides on the lawfulness or unlawfulness of actions and affections, and instantly approves or condemns them. ... Conscience springs from some internal source of self-knowledge which acknowledges no superior. ... It ignores reason, defies argument, and is unaccountable and irresponsible to all human tests and standards."

*Further information, not within the scope of this note, can be found in pamphlets obtainable at a nominal cost from the American Friends Service Committee, 20 S. 12th Street, Philadelphia, Pa.

1Pub. L. No. 783, 76th Cong., 3rd Sess. (Sept. 16, 1940) §5(g).


86 C.J.S. 398.

4197 U.S. 11 (1905).

67 Cal. 140, 144 (1857).

8id, at p. 143.
In the light of present-day psychology such a judicially recognized distinction does not seem founded upon fact. Rather, this alleged schism in the human mind appears to be simply another example of a judge's wandering in fields other than the one in which he is qualified to speak authoritatively. One should certainly be allowed to support his conscientious objection with arguments based upon "reason and judgment."

It may be said that in common understanding a conscientious objector is one who, because of religious and moral scruples, refuses to kill his fellow man whether or not such killing is sanctioned by the government. The Selective Training and Service Act of 1940 limits the exemption to conscientious objection based on religious convictions, which of itself seems sufficient to preclude any claim based solely upon pacifism or a sense of the international brotherhood of man:

"Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

One may be a conscientious objector because of recognized membership in an established religious organization holding such views, or he may be a bona fide conscientious objector by virtue of his own religious or conscientious belief without being a member of any established religious group. In either event, the establishment of his position is to be made in each individual case before the local board having jurisdiction over the classification of the individual concerned. Appeal may be had therefrom to the appropriate appeal board.

It was held in Dole v. Allen that a certificate from the Quaker overseers (stating that the defendant "measurably" conformed to the usages of the Society) was sufficient to indicate his conscientious objection. Other courts have not been so lenient. In Lees v. Childs it was held that a conscientious objection to bearing arms had to be shown affirmatively before a member of the Society could claim exemption. Under the Confederate conscription act during the Civil War only members of certain named religious sects were exempted. In ex parte Stringer a petition for habeas corpus was denied one who had not established himself as a member of one of the sects named in the statute. Under the Selective Draft Act of the past war it was held that one wishing exemption must claim it, and in the manner prescribed by the Act; and that he must have shown himself to be within

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7 supra, note 1.
8 Italicics added.
9 Selective Training and Service Act, supra, note 1, §10(a)(2).
10 Maine 527 (1827).
11 Maine 351 (1821).
12 Ala. 457 (1863).
the class which the regulations required for exemption.14

It would seem that even having established one's status as a member of a class specifically allowed exemption, there is not necessarily a guarantee that one will be exempted. This is because it appears to be a matter solely for the decision of the local and appellate boards provided by the statute, not subject to review by civil courts. And the civil courts have been loathe to attempt any review. In Angelus v. Sullivan15 an alien who had not declared his intention to become a citizen claimed exemption from the draft. This was refused by the local board and the ruling affirmed by the district (appeal) board, even though the claimant was admittedly an alien and as such specifically exempted. The Federal District Court refused to review the board's findings, and the Circuit Court of Appeals affirmed the decision, holding that the decision of the appeal board was final, as provided by the Act. Apparently the courts will review the board's decision only to determine whether the board had jurisdiction and whether the complainant was given a hearing. But the courts will not hear the case to pass on the merits.

In Franke v. Murray16 the petitioner claimed exemption as a conscientious objector on the basis of his religious convictions. The local board refused exemption and he was notified to report. He failed to do so, whereupon he was court-martialed and convicted as a deserter. The judgment of the Federal District Court discharging a petition for habeas corpus was affirmed. The swearing-in requirement is not necessary to establish his status as a soldier. The Court said:

"The claim of the appellant that he is a member of a well-recognized religious sect or organization whose creed and principles forbid the members participating in war in any form cannot be raised in a collateral proceeding like this. That was a question to be determined under the act of Congress, first by the local board, and upon appeal by the district board... It is only when the action of such a board was without jurisdiction, or if having jurisdiction it failed to give the party complaining a fair opportunity to be heard and present his evidence, that the action of such a tribunal is subject to review by the courts."17

The Selective Draft Law Cases18 dismissed all of the contentions by defendants that the draft was unconstitutional. The Conscription Act was held to be within the power of Congress, both under the express terms of the Constitution itself and in fact under the "inherent" power of government to call men to sup-

15246 Fed. 54 (C.C.A. N.Y., 1917).
16248 Fed. 865 (C.C.A. Mo., 1918).
17id, at p. 869.
port it. The Court went on to say that the act was not an unlawful delegation of authority by Congress, nor did it impose involuntary servitude in violation of the prohibition of the Thirteenth Amendment. The Court concluded by saying that it was not repugnant to the provisions of the First Amendment against interference with the free exercise of religion.

Two relatively recent cases in which the United States Supreme Court has expressed its views on compulsory military training, and conscientious objection thereto, involved the denial of citizenship. In *U. S. v. MacIntosh* an alien was held not entitled to citizenship under the Naturalization Act because of his refusal to answer "yes" to a question in the application: "If necessary, are you willing to take up arms in defense of this country?" The petitioner was a man of high intelligence and education, a minister, a Professor of Theology at Yale University, and had been a chaplain with the Canadian Army at the front during the World War. His counsel argued that it was a "fixed principle" of the Constitution that a citizen cannot be forced to bear arms in a war if he has conscientious religious scruples against doing so. The Supreme Court said:

"This is an astonishing statement. Of course there is no such principle of the Constitution, fixed or otherwise. 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. . . . No other conclusion is compatible with the well-nigh limitless extent of the war powers as above illustrated, which include, by necessary implication, the power in the last extremity to compel the armed service of any citizen in the land without regard to his objections or his views in respect to the justice or morality of the particular war or of war in general."

There was a dissenting opinion by Mr. Chief Justice Hughes, concurred in by Justices Holmes, Brandeis, and Stone.

This decision was an expression of similar views to those given in the opinion of *U. S. v. Schwimmer*, where citizenship was denied a woman fifty years old who refused to answer "yes" to the same question. The applicant did not object on religious grounds, but upon her sense of "internationalism" and "pacifism." In private correspondence she had said, "I am an uncompromising pacifist. . . . I have no sense of nationalism, only a cosmic consciousness of belonging to the hu-

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1 Accord, *Claudius v. Davie*, 175 Cal. 208, 165 Pac. 689 (1917).
3 283 U. S. 605 (1931).
4 *Id*, at p. 623. Most of the majority are no longer on the Court, and there is some possibility that the present personnel would overrule this decision.
5 279 U. S. 644 (1929).
man family." However, a dissenting opinion concurred in by Justices Brandeis and Sanford and written by Mr. Justice Holmes concluded:

"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 believe more than some of us do in the teachings of the Sermon on the Mount."

Following are some of the more important regulations,24 pertinent to conscientious objectors, under the Selective Training and Service Act of 1940. The registrant is entitled to present with the questionnaire all written evidence bearing on his proper classification, including documents, affidavits, and depositions, which must be as concise as possible.25 At his appearance before the local board, the registrant may not introduce any new evidence not already in his file unless the consent of the board members is obtained, except to support a claim that evidence contained in the file is false or misleading.26

The claim of a conscientious objector is not passed on if he is otherwise entitled to a deferred classification. Thus, a conscientious objector having dependents will be deferred because of them, and his claim to deferment as a conscientious objector will not be considered.27 Appeals may be taken from the local board's classification, but no appeal may be made by a person placed in one deferred classification in order to establish a lower classification. Thus, one placed in a deferred classification because of dependents cannot appeal on the grounds that he should have been classified as a conscientious objector.28

Persons classified as available for service, and as conscientious objectors (class IV-E) shall have an opportunity to appear before the local board in person.29 But no registrant may be represented before the local board by an attorney.30

In cases of appeals on grounds of conscientious objection, the Department of Justice, upon receiving all the records and evidence before the appeal board, shall make an inquiry and hold a hearing at which the registrant shall have an opportunity to be heard. Although the regulations are silent on the point, it is expected that the registrant may have an attorney and witnesses at the hearing. The Department of Justice makes a recommendation to the appeal board, which it must

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24 Selective Service Regulations, vol. 3, "Classification and Selection." Regulations prescribed by Executive Order No. 8560, signed by the President October 4, 1940.
25 id., regulation 322.
26 id., 369 b.
27 id., 363.
28 id., 370.
29 id., 367.
30 id., 369.
consider but need not follow. No new evidence may be presented on the appeal. It is noteworthy that an appeal may be made to the President on grounds of dependency only.

**CONCLUSION**

The establishment of one's status as a conscientious objector and his rights as such are administrative rather than "legal" problems. It appears to be for the boards provided by the Act to decide whether any given individual is a conscientious objector, and if he is, whether to exempt him completely from military duties, assign him to non-combatant duties, or not to exempt him at all. Appeal from the local boards is limited to the appeal boards; no appeal on the merits will lie in any civil court, nor has the conscientious objector any constitutional basis for exemption. The essence of the problem has been synthesized thus by Irion in "The Legal Status of the Conscientious Objector":

"More broadly stated, this problem in its essence is not so much a legal as an ethical one, and is identical with that which Hegel answered negatively, namely, can man ever possess a moral right to disobey the law?"

In a plea for a recognition of the extremely individual nature of the conscience, and for a realization that not all who object to bearing arms are "slackers," Irion suggests "... that a tolerant and civilized attitude toward minorities in war time should inform itself as to the rationale lying behind the actions of those minorities."

**NORMAN R. BRADLEY**

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21 *id.*, 375.  
22 *id.*, 372.  
23 *id.*, 379.  
24 The Selective Service Act specifies that conscientious objectors may be assigned work of "national importance under civilian direction." § 5(g).  
25 By an executive order issued December 11, 1940, the President declared, "Non-combatant training consists of training in all military subjects except marksmanship, combat firing, target practice, and those subjects relating to the employment of weapons." The following categories were outlined: (1) Service in any unit which is unarmed at all times. (2) Service in the medical department wherever performed. (3) Service in any unit the primary function of which does not require the use of arms in combat, provided the individual's assignment within such unit does not require him to bear arms or to be trained in their use.  
26 (1939) 8 Geo. Wash. L. Rev. 125, 130.  
27 *id.*, at p. 135.