

# ALTERNATIVES TO MANDATORY MILITARY SERVICE IN SOUTH KOREA: A PUNISHMENT WITHOUT REAL CHOICE

## INTRODUCTION:

Conscientious objection to military service, and the treatment of such objectors when they refuse service, is at the forefront of the ever-evolving human rights discussion across the world. Conscientious objection in the context of military service refers to the refusal of individuals, for religious, moral, or sometimes other policy-related reasons, to take up arms and serve in combat.<sup>1</sup> Objection to military service as an idea has been recorded as early as Ancient Rome in 295 AD, with that objector being subsequently executed for his refusal to participate in service.<sup>2</sup> As will be shown in this note, governmental regimes from countries across the world have struggled with balancing the need for equity and manpower in the armed forces and the human right to abstain from violence if their religion mandates them to do so.<sup>3</sup> This note examines the evolution of the treatment of conscientious objectors from three countries who have all had similar, yet distinguishable, paths to recognition of their right to conscientiously object, and attempts to apply the lessons learned from those countries to another in the midst of legal<sup>4</sup> and cultural<sup>5</sup> challenges to its current mandatory military service regime—South Korea.

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<sup>1</sup> *International Conscientious Objectors Day*, NAT'L TODAY, <https://nationaltoday.com/international-conscientious-objectors-day/> (last visited Mar. 15, 2024). This paper uses the terms “Korea” and “South Korea” interchangeably.

<sup>2</sup> *Id.*

<sup>3</sup> See Mascari, *infra* note 54; Jager, *infra* note 79.

<sup>4</sup> See Min-Kyung Kim, *infra* note 13.

<sup>5</sup> See Yoon *infra* note 7.

## BACKGROUND:

Military service has been an integral part of every young male's life in South Korea since it was officially made mandatory in 1957.<sup>6</sup> Since its inception, compliance with the Mandatory Military Service Act (the "Act") has been a rite of passage for all males aged 19-28, but the Act has had some high-profile scandals and remains a source of controversy.<sup>7</sup> However, even with tensions between North and South Korea still at a high level, as the two nations are technically at war with each other spanning back seventy years to the Korean War,<sup>8</sup> public support for the Act is dropping rapidly.<sup>9</sup> Those who wish to avoid the draft face brutal punishments, including serving time in prison, fines, and the permanent stain of desertion on their record that carries great weight of shame in the community at large.<sup>10</sup> Hye-Min Kim, a South Korean Jehovah's Witness, was a conscientious objector who refused to take up arms for

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<sup>6</sup> Go! Go! Hanguk Staff, *Why is Military Service Mandatory in South Korea*, GO! GO! HANGUK (Feb. 23, 2022), <https://gogohanguk.com/en/blog/why-is-military-service-mandatory-in-south-korea/>. The Mandatory Military Service Act was based on the Constitution of Korea, which states that "every citizen has the obligation to devote himself to national defense." *Id.* Tensions with their Northern neighbors in recent years have only exacerbated the commitment to keeping a strong national defense and military. *Id.*

<sup>7</sup> *Id.* See also John Yoon, *South Korea Reconsiders a Rite of Manhood: The Draft*, N.Y. TIMES (Oct. 17, 2021), <https://www.nytimes.com/2021/10/17/world/asia/south-korea-conscription.html>. For peace activists, like Kim Hyeongsu, a 32-year-old South Korean male who recently completed his service, their time can be "painful" to complete. *Id.* Kim told stories of basic training, of trainees getting hand sanitizer squirted on their faces, and watching others attempt to flee only to be recaptured hours later. *Id.* He faced turmoil throughout his time in the military, as he only enlisted to avoid living as a convict for the rest of his life. *Id.*

<sup>8</sup> Justin McCurry, *North and South Korea Relations: What's Behind the Tensions – in 30 Seconds*, GUARDIAN (Aug. 15, 2022), <https://www.theguardian.com/world/2022/aug/15/north-and-south-korea-tensions-relations-issue-conflict-division-explained-in-30-seconds>.

<sup>9</sup> John Yoon, *supra* note 7. Public support for the Act was measured in a poll in 2014, with 56% of people saying the system should be maintained. This number has since dropped to 42% in recent years and support for the Act has been steadily declining since 2016. *Id.*

<sup>10</sup> *Id.* Hyeongsu Kim was sentenced to 6 months in prison, 400 hours of community service, and fines equal to 677 USD. *Id.* However, the dishonor one could sustain from refusal to complete their service can follow them for the rest of their lives. Go! Go! Hanguk Staff, *supra* note 6.

It is not uncommon for a South Korean company to make military service a requirement for work, and companies will place in their descriptions that they are looking for "men with military service." *Id.* Because most men in South Korea have served, there is a pressure on others to follow in their footsteps because everyone else has sacrificed through service, and those who have served can view it as "unfair" if others are given an exemption. *Id.*

religious or moral reasons<sup>11</sup> and was prepared to face said prison time to defend his beliefs.<sup>12</sup>

Stunningly, Kim, unlike the hundreds of Jehovah's Witnesses before him who faced trial and received punishment for their refusal to comply with the Act, was acquitted of his violation at the trial level.<sup>13</sup> This acquittal was upheld by the Appeals Court<sup>14</sup> and eventually by the Supreme Court of Korea, with the court holding conscientious objection to be "justifiable"<sup>15</sup> under section 88(1) of The Act.<sup>16</sup>

This ruling meant that it was inappropriate to punish people who refused service on religious grounds.<sup>17</sup> Kim's case was the first time that a conscientious objector was found not guilty at the appellate level in

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11 Jehovah's Witnesses have historically refrained from acts of violence because of their rigid followings of the teachings of the Bible. *Jehovah's Witnesses*, CTR. ON CONSCIENCE & WAR (2000), <https://centeronconscience.org/jehovahs-witnesses/>. Many conscientious objectors have been persecuted throughout history in mandatory military regimes and have been readily willing to accept the consequences for their position on the matter. *Id.* In South Korea, Jehovah's Witnesses make up the large majority of those imprisoned for conscientious objection over the years. Justice Jae Hyung Kim, *The Judicial Responsibility to Guarantee Fundamental Rights: Reviewing the Decision of the Supreme Court of Korea on Conscientious Objection to Military Service*, 22 ASIAN-PAC. L. & POL'Y J. 1, 11 (2020) (discussing the Supreme Court of Korea's rationale when deciding conscientious objection cases in recent years).

12 Chad de Guzman, *Inside South Korea's Harsh Alternative to Military Service*, TIME (Sept. 1, 2022, 11:19 PM), <https://time.com/6208211/south-korea-military-service-draft-conscription-conscientious-objector/>.

13 This was not the first time a conscientious objector had been acquitted at the trial level; however, none of these not guilty verdicts withstood the appellate level, and all 12 previously found not guilty were eventually convicted. Min-Kyung Kim, *In a First, S. Korean Appeals Court Finds Conscientious Objector Not Guilty*, HANKYOREH (Oct. 19, 2016), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/766406.html](http://english.hani.co.kr/arti/english_edition/e_national/766406.html).

14 *Id.*

15 Sayuri Umeda, *South Korea: Supreme Court Finds Conscientious Objection to Military Service Justifiable*, LIBR. CONG. (Nov. 16, 2018), <https://www.loc.gov/item/global-legal-monitor/2018-11-16/south-korea-supreme-court-finds-conscientious-objection-to-military-service-justifiable/>; Military Service Act, art. 88(1) (S. Kor.), *translated in* Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required).

16 Section 88(1) of the Act states:

Any person who has received a notice of enlistment for active duty service or a notice of call (including a notice of enlistment through recruitment) and fails to enlist in the military or to comply with the call, even after the expiration of the following report period from the date of enlistment or call without justifiable grounds, shall be punished by imprisonment for not more than three years.

Military Service Act, art. 88(1) (S. Kor.), *translated in* Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required).

17 The principal defendant at the Supreme Court was a Jehovah's Witness named Oh Seung-heon who was sentenced to one year and six months for violating the Act in 2013 by refusing to enlist. Yeo Hyeon-ho, *Supreme Court Rules that Conscientious Objection to Military Service Is Not a Crime*, HANKYOREH (Nov. 2, 2018), [https://english.hani.co.kr/arti/english\\_edition/e\\_national/868615](https://english.hani.co.kr/arti/english_edition/e_national/868615). This ruling impacted 227 other similar cases and 930 conscientious objectors who were currently on trial, including Hye-Min Kim's pending case, and affirmed that the Supreme Court upheld the initial acquittal he was given by the District Court. *'Religious Belief Valid for Refusing Military Service': Supreme Court*, KOREA TIMES (Nov. 1, 2018), [https://www.koreatimes.co.kr/www/nation/2022/03/356\\_257990.html?WA](https://www.koreatimes.co.kr/www/nation/2022/03/356_257990.html?WA).

South Korea—a historic feat.<sup>18</sup> The subsequent Constitutional<sup>19</sup> and Supreme Court<sup>20</sup> rulings put immediate pressure on the legislative bodies of Korea to create a meaningful alternative to service program for conscientious objectors like Kim and others after him.<sup>21</sup>

This alternative system was put into place at the end of 2019,<sup>22</sup> marking what should have been the end of an incredible and long-fought battle for human and religious rights in South Korea by allowing conscientious objectors to refrain from military service by serving their country in civilian service. Unfortunately, objectors like Kim are faced with a new, more complex problem, and Kim is faced with another trial, this time for refusing to enlist in the alternative service.<sup>23</sup>

Of note, Kim is no longer a follower in a line of other Jehovah’s Witnesses who came and went to jail for their beliefs before him. He is now a trailblazer, one of the first South Korean men to refuse the alternative service.<sup>24</sup> In his initial case, Kim had no reason to expect any reprieve from the prison sentence that thousands had been subjected to previously for having the same beliefs as him.<sup>25</sup> Now, similarly, he is facing an uphill battle, asking the Court that found his initial departure justifiable to also hold the alternative service too punitive to function as a true and effective protection of objectors’ rights.<sup>26</sup> Kim, who originally was no more than someone prepared to go to prison for his beliefs, is now a figurehead in a wider movement hoping to affect a change for the better in his country for those with similar beliefs. Kim is attempting to publicize his trial through international organizations, such as Amnesty International, to “improve the current situation” and draw more attention to the true nature of the alternative service scheme in South Korea.<sup>27</sup>

This paper analyzes the “punitive”<sup>28</sup> alternative system that Korea has set into place for conscientious objectors by comparing its exemptions with other countries that have developed similar conscience carve-outs

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<sup>18</sup> Min-Kyung Kim, *supra* note 13, at 1.

<sup>19</sup> Interestingly, the Constitutional Court ruled that punishing objectors was constitutional; however, the Court found that not allowing for an alternative was unconstitutional. Umeda, *supra* note 15. This ambiguous ruling was clarified and built upon in the later Supreme Court decision. Yeo Hyeon-ho, *supra* note 17.

<sup>20</sup> Daebeobwon [S. Ct.], Nov. 1, 2018, 2016do10912 (S. Kor.).

<sup>21</sup> Guzman, *supra* note 12.

<sup>22</sup> Umeda, *supra* note 15.

<sup>23</sup> Guzman, *supra* note 12.

<sup>24</sup> *South Korea: Drop Charges Against First Conscientious Objector to Refuse Alternative Service*, AMNESTY INT’L (Aug. 22, 2022), <https://www.amnesty.org/en/latest/news/2022/08/south-korea-conscientious-objector-military-service-hye-min-kim/> [hereinafter Drop Charges].

<sup>25</sup> Min-Kyung Kim, *supra* note 13, at 1.

<sup>26</sup> Drop Charges, *supra* note 24.

<sup>27</sup> Guzman, *supra* note 12. Kim notified the government that he had “no intention of reporting” to the alternative system and is ready to face trial again over this new problem. *Id.*

<sup>28</sup> Drop Charges, *supra* note 24.

to mandatory military service. Further, this paper comments briefly on the general need for the compulsory service in South Korea in the rapidly changing military landscape of the modern world.<sup>29</sup> The goal of this paper is to shine light on the conditions that conscientious objectors are working under in their alternative systems and to suggest other potential systems that would solve the major concerns of those who still cling to the mandatory military system, while adequately providing those who genuinely object to violence a path to nonviolent service of their country without punishment.

### *1. Brief Legislative History of the Act:*

Before discussing the punitive versus non-punitive nature of the alternative service requirement, it would be beneficial to outline the legislative history of the Act and the general rationale for its passage in the first place. The Act receives its power from Article 39 of the Constitution, which states “All citizens shall have the duty of national defense under the conditions as prescribed by Act.”<sup>30</sup> It mandates that all male citizens of Korea are required to perform the duties of military service until they reach a certain age, based on the “principle of equal sharing of military service burden.”<sup>31</sup> The length of the term of service has decreased over the years and currently stands at eighteen months.<sup>32</sup>

Proponents of the Act, including the dissenters in the Supreme Court case,<sup>33</sup> have argued that the geographic location of South Korea, together with its other national security concerns, requires a strict application of the compulsory service to all citizens.<sup>34</sup> These fairness and national security arguments are the key pushbacks against a strong alternative service

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29 This paper does not address much of the underlying rationale of why the Supreme Court reversed its prior decisions regarding conscientious objection and instead focuses on what the country and legislature should do now that the Supreme Court has made that decision. For a more in-depth perspective on the actual reversal, *See* Jae Hyung Kim, *supra* note 11.

30 DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION], amended by Constitution no. 10, Oct. 29, 1987, art. 39 (S. Kor.).

31 Daebeobwon [S. Ct.], Nov. 1, 2018, 2016Do10912 (1, 5-6) (S. Kor.) (dissenting opinion).

32 Guzman, *supra* note 12.

33 The concurring opinion in the Supreme Court case summarizes the dissent’s national defense argument as follows:

In the Dissenting Opinion, the Justices opine that conscientious objection should not be permissible by reasoning that: (i) an individual’s fundamental rights such as the freedom of conscience cannot be guaranteed without the assurance of national security and homeland defense; (ii) that being said, the duty of national defense and the duty of military service cannot be refused by anyone who is a constituent member of a community state; and (iii) this is all the more true in the case of Korea with a security environment that is [more] unstable and unpredictable than any other country in the world.

34 Daebeobwon [S. Ct.], Nov. 1, 2018, 2016do10912 (S. Kor.) (1, 59) (concurring opinion).

34 For the rationale of the majority and concurring opinions explaining how they addressed these specific problems, see Jae Hyung Kim, *supra* note 11, at 42.

program. With the legitimate concerns both sides of the issue raise, debate around the formation of an alternative to military service brings criticism on both sides.

*2. South Korea's Alternative System:*

Under the new system, the alternative to military service is a thirty-six-month tenure working in a jail or other correctional facility.<sup>35</sup> This tenure is twice the length of the jail time previously assigned to conscientious objectors, which is also double the length of time that a citizen would have to complete if they had chosen to serve in the military instead.<sup>36</sup> This is the longest alternative service requirement in the world.<sup>37</sup> Further, the objectors must live at the prisons and are given only a few weeks leave each year. Their movement is tracked and regulated throughout their stay in the prison.<sup>38</sup> Further, the workers have a curfew and their phones are confiscated during working hours.<sup>39</sup> The Act itself enumerates that those in civilian service can work in “areas of public interest,”<sup>40</sup> although, in practice, conscientious objectors are only being assigned to work in prisons.<sup>41</sup> On its face, this application of the statute seems punitive at best and plainly discriminatory at worst, especially considering the fact that there is nothing in the text of the legislation requiring such extreme measures to be taken.

However, it can be argued that for something to be “punitive” in comparison to an extended military service the bar must be set high. Military service in Korea is already a harsh reality,<sup>42</sup> and there is merit to the

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<sup>35</sup> *South Korea: Alternative to Military Service Is New Punishment for Conscientious Objectors*, AMNESTY INT'L (Dec. 27, 2019), <https://www.amnesty.org/en/latest/press-release/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors/>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Guzman, *supra* note 12.

<sup>39</sup> *Id.* at 5.

<sup>40</sup> *Id.*

<sup>41</sup> Guzman, *supra* note 12.

<sup>42</sup> See *South Korea: Why Has the Conscription System Made Victims of Young Men?*, ASIAN HUM. RTS. COMM'N (Sept. 23, 2008), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-249-2008/>. This article notes the culture shock one can have coming into a militaristic regime, especially from a young age. Inability to cope with the change, and adapt to one's new surroundings, brands you as a “socially weak” member of society in need of “special attention” from the institutions. *Id.*

The three men on whom this article focuses struggled deeply with mental illness, one going as far as attempting suicide while a part of the regime. *Id.* It is commonplace in the military to be subjected to harsh conditions as a way to ensure one is ready for what the military would need them to do, even something as demeaning as training while having to yell repeatedly “I am a Tax Waster!” because of a poor score on a riflery test. Yoon, *supra* note 7.

While this paper does not speak to the efficacy of this approach, it is worth mentioning, for the sake of the argument to be raised later, that the alternative to service should not be “easy” compared to the actual service.

argument that military service is critical to the survival of the nation.<sup>43</sup> Further, alternative service cannot be so attractive as to incentivize those who do not have legitimate claims of conscientious objection<sup>44</sup> to attempt to dodge their mandatory time in the service,<sup>45</sup> especially in the light of the rapid population shrinkage facing the country currently.<sup>46</sup> The Korean Supreme Court accounted for the incentivization problem, setting forth an extensive test to determine whether someone is truly a conscientious objector.<sup>47</sup>

The other issues can be addressed when one considers that meaningful civilian work, as opposed to the current punishment objectors are given now, can genuinely help the military by reducing the amount of time, money, and manpower the government must devote to those

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43 South Korea is technically still at war with North Korea, and this likely will not change soon. Torunika Roy, *Population Crisis: A Challenge to South Korea's Military*, DEF. HORIZON J. (May 26, 2022), <https://www.thedefencehorizon.org/post/population-crisis-a-challenge-to-south-korea-s-military>.

44 The delicate balance between allowing those with legitimate claims to alternative service and preventing those from taking advantage of the alternative system is present throughout the dissenting opinion. Daebeobwon [S. Ct.], Nov. 1, 2018, 2016do10912 (S. Kor.). A Jehovah's witness with a "devout, firm, and sincere" belief would likely qualify as one with a legitimate claim to alternative service; however, inherently, this standard is impossible to determine objectively, as it requires proving the "inner conscience" of a human being, and the court elaborated that they must look to the facts and circumstances of each case to determine the nature of the belief. *Id.* at 54.

45 The dissenters of the 2018 Supreme Court opinion, and the majority as well, both referenced the potential impact that could be had on the military if South Korea could not differentiate between those who had legitimate religious reasons for refusal of service with those who simply wanted to skip serving in the military. Daebeobwon [S. Ct.], Nov. 1, 2018, 2016do10912 (S. Kor.).

46 Research suggests that the South Korean military currently has a manpower of about 600,000 personnel, and the number of men eligible for conscription is projected to fall to below 200,000 by the year 2039. Roy, *supra* note 43.

47 Daebeobwon [S. Ct.], Nov. 1, 2018, 2016do10912 (514) (S. Kor.).

Key determinants as to the assertion of conscientious objection to military service based on a religious belief are: (i) the religious creed the conscientious objector believes in; (ii) whether refusal of military service is ordered by that religious dogma; (iii) whether such believers are actually objecting military service; (iv) whether said religion recognizes the defendant (conscientious objector) as an official member; (v) whether the defendant is familiar and complies with the basic tenet; (vi) whether the defendant's assertion of conscientious objection solely or mainly follows such religious doctrine; (vii) the motive and developments surrounding the defendant's vanguard of the religion; (viii) if the defendant converted to said religion, the background and reason thereof; and (ix) the defendant's period of having that religious belief and performing actual religious activities. Repeated instances where people possessing conscientious belief identical to that of the defendant are already serving a prison sentence on the ground of conscientious objection can serve as an affirmation element for consideration.

*Id.* at 3.

Furthermore, this is not even an exhaustive list; the court continues to state that it is important to consider the Defendant's "overall life" to determine whether they should qualify for the exemption. *Id.*

While many people may be incentivized to apply for an alternative service, they do not have to be selected. The standards to choose are set forth by the Commissioner of the Military Manpower Administration, so they can be as stringent in selection as desired up to this Constitutional limit. Military Service Act, art. 26(4) (S. Kor.), *translated* in Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required).

potential civilian areas.<sup>48</sup> Opportunities to serve as a medic or to complete other civilian training programs without having to jeopardize one's religious beliefs are critical to well-functioning, meaningful conscientious objector work.<sup>49</sup> If these programs are implemented with genuine care as to the quality of work provided, they can even greatly benefit the military.<sup>50</sup> Put simply, the rigidity with which the system in Korea is currently applied functions as both a punitive measure for objectors and a detriment to the military, which undermines the progress that was made by the South Korean Supreme Court in recent years in the human rights field.

#### HOW OTHER COUNTRIES SYSTEMS HAVE CHANGED OVER TIME:

##### *1. United States:*

Although the systems are not directly comparable<sup>51</sup> the text of the conscientious objection carve-out in the United States Selective Service Act is very similar the public duty personnel portion of the South Korean Military Service Act almost one to one.<sup>52</sup> However, as discussed

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<sup>48</sup> See generally Steve Elliot, *Selective Service Expands Alternatives for Conscientious Objectors*, U.S. ARMY (Apr. 22, 2010), [https://www.army.mil/article/37811/selective\\_service\\_expands\\_alternatives\\_for\\_conscientious\\_objectors](https://www.army.mil/article/37811/selective_service_expands_alternatives_for_conscientious_objectors). Perhaps the most famous American example of a conscientious objector who was given critical work while still being able to respect his religious beliefs was Desmond Doss, an objector credited with saving over 100 lives during WWII while in service. *Id.* He would have never been given the opportunity to serve as a medic in the war effort if the United States did not allow for an expansive training program for conscientious objectors. *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> While Korea has a compulsory service system, where almost all able-bodied male citizens serve unless granted an exemption, the United States implements a Draft system, where almost all men ages 18-25 must register with the Selective Service and in the case of a national emergency, can be conscripted to join the United States military forces in whatever capacity deemed necessary. *Register for Selective Service (the Draft)*, USA.GOV (Dec. 6, 2023), <https://www.usa.gov/register-selective-service>.

<sup>52</sup> Compare Military Service Act, art. 88(1) (S. Kor.), translated in Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required), stating:

Public duty personnel shall perform any of the following duties: 1. Duties to support social service affairs, such as social welfare, hygiene, medical service, education, culture, environment, safety, etc. necessary for public interest sought by State agencies, local governments, public organizations and social welfare facilities . . . .

with The Military Selective Service Act, 50 U.S.C. app. § 456(j) (2003) (current version at 50 U.S.C. § 3806(j)), stating:

Nothing contained in this title (sections 451 to 471a of this Appendix) shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title (said sections), be assigned to noncombatant

previously, the application of the Act in Korea falls short of what would be possible under its plain text by only allowing work in the prison and correctional system.<sup>53</sup> A comparison between South Korea's narrow interpretation contrasted with the United States broad allowance for alternative service work shows how drastic the disparity truly is between the two systems and highlights how punitive the South Korean system seems.

It is important to note that the United States system in its own right is far from perfect, and it took years to get to even where the United States currently is.<sup>54</sup> Further, the last implementation of a draft in the United States was 1973,<sup>55</sup> so the United States has not developed its alternative service system since then. However, when examining the shift that the United States has evolved through, from the first usage of the draft up until 1973, one can see a clear shift of increasing the availability and efficacy of alternative service programs, something that South Korea could look towards for guidance in its advancement through the process of making alternative service more available to those in need.<sup>56</sup>

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service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) (section 454(b) of this Appendix) such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate . . . .

*Id.*

Interestingly, the Korean Act does not explicitly have a carve-out for conscientious objection, by name, whereas the United States specifically addresses conscientious objectors in the act itself, perhaps signaling greater statutory protection in the United States scheme for objectors. *Id.*

53 Similar to the Selective Service Act, which states "The Director shall be responsible for finding civilian work for persons exempted from training and service under this subsection and for the placement of such persons in appropriate civilian work contributing to the maintenance of the national health, safety, or interest," the Korean Act specifies that "Public duty personnel to serve in social welfare facilities under paragraph (1) shall be chosen by the director of a regional military manpower office and matters necessary to set standards and procedures for choosing them shall be prescribed by the Commissioner of the Military Manpower Administration." Military Service Act, art. 88(1) (S. Kor.), *translated* in Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required); The Military Selective Service Act § 456 *et seq.*

54 See John Mascari, *U.S. Conscientious Objectors in World War II*, FRIENDS J. (Dec. 1, 2006), <https://www.friendsjournal.org/u-s-conscientious-objectors-world-war-ii/>; Kali Martin, *Alternative Service: Conscientious Objectors and Civilian Public Service in World War II*, THE NAT'L WWII MUSEUM (Oct. 16, 2020), <https://www.nationalww2museum.org/war/articles/conscientious-objectors-civilian-public-service>.

55 The total number of inductions in the 1973 draft was 1,857,304 people throughout the course of the Vietnam War. *Induction Statistics*, SELECTIVE SERV. SYS., <https://www.sss.gov/history-and-records/induction-statistics/> (last visited Apr. 5, 2024). Over 170,000 men were registered as conscientious objectors during the course of the Vietnam War—more than a 100,000-person increase compared to the 43,000 who registered as objectors during WWII. *Conscientious Objection Has a Unique Place in United States History*, THE PEACE ABBEY, <https://www.peaceabbey.org/programs-projects/conscientious-objectors/> (last visited Mar. 21, 2024).

56 See Elliot, *supra* note 48.

Conscientious objection has evolved over time in the United States, with the first exemptions to military service being granted during the Civil War.<sup>57</sup> The Enrollment Act of 1863 provided exemptions only to those who could pay for an adequate substitute to take their place in the draft.<sup>58</sup> After multiple protests surrounding this discriminatory substitution system,<sup>59</sup> Congress created the first alternative service provisions for religious reasons, which were then finalized by the 1940 Selective Training and Service Act. This act provided for mandatory alternatives for objectors refusing because of “reason of religious training or belief.”<sup>60</sup> This eventually became the aforementioned Military Selective Service Act, which provides for the same widely interpreted number of alternative service programs.<sup>61</sup> In addition, there are also a number of non-

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<sup>57</sup> John H. Matheson, *Conscientious Objection to Military Service*, FREE SPEECH CTR. (Feb. 18, 2024), <https://www.mtsu.edu/first-amendment/article/912/conscientious-objection-to-military-service>.

<sup>58</sup> See Ryan McMaken, *The Heroic Draft Dodgers of the American Civil War*, MISES INST. (Nov. 27, 2021), <https://mises.org/wire/heroic-draft-dodgers-american-civil-war>; Rebecca Onion, *The Man Who Fought in Lincoln’s Name*, SLATE (Jan. 10, 2013, 9:30 AM), <https://slate.com/human-interest/2013/01/abraham-lincoln-the-president-paid-a-substitute-to-enlist-in-the-union-army.html>. The actual text of the since-changed statute read:

And be it further enacted, That any person drafted, and notified to appear as aforesaid, may, on or before the day fixed for his appearance, furnish an acceptable substitute, to take his place in the draft; or he may pay to such person as the Secretary of War may authorize to receive it, such sum not exceeding three hundred dollars, as the Secretary may determine, for the procreation of such substitute; and thereupon such person, so furnishing the substitute, or paying the money, shall be discharged from further liability under that draft.

An Act for Enrolling and Calling National Forces, and for Other Purposes (Conscription Act), ch. 75, § 13, 12 Stat. 731 (1863).

The 300-dollar substitution fee was equivalent to about 5,000 dollars in 2013 terms, allowing rich men like John D. Rockefeller to take advantage of the exemption. *Id.* Even Abraham Lincoln used this provision to hire a substitute voluntarily, although he was not actually drafted, in an attempt to encourage others who were already disqualified by age or other reasons to support the war effort. *Id.*

<sup>59</sup> There were violent riots in New York and Ozaukee County, Wisconsin, mostly targeted at draft agents attempting to stop them from carrying out their duties, with the Wisconsin rioters trampling the local draft commissioner and hurling him down the courthouse steps to stop him from conducting a draft. McMaken, *supra* note 58. Peaceful riots consisted of men developing sudden inexplicable health conditions and fleeing to Canada to gain medical treatment. *Id.* A study conducted recently concluded that about 20% of the men called by the draft in these times simply did not report for duty. *Id.*

<sup>60</sup> Matheson, *supra* note 57. Alternative service programs during World War II included forestry work, firefighting, farm work, hospital attendants, and other like jobs. Martin, *supra* note 54. Perhaps the most dangerous jobs included human testing and smoke jumping, which some hypothesize were taken on by conscientious objectors to show their bravery in light of them not fighting in the war. *Id.* Even with the absurdity of these jobs, and their poor working conditions, which included not receiving any pay for the time spent while in alternative service, these conscientious objectors made lasting, meaningful impacts in the areas that they worked. *Id.* Conscientious objectors improved the treatment of patients with mental illnesses, built new dams and highways to improve US infrastructure, and went on to lead other groundbreaking desegregation movements across the United States, with their lasting impact still appreciated even in today’s times. *Id.*

<sup>61</sup> The Military Selective Service Act, 50 U.S.C. app. § 456 *et seq.* (2003) (current version at 50 U.S.C. § 3806 *et seq.*)

combatant positions, such as army medics or chaplains, who still serve in the military.<sup>62</sup>

By examining the evolution of conscientious objection in the United States, from both a governmental and societal perspective,<sup>63</sup> one can draw numerous similarities to South Korea.<sup>64</sup> Currently, the United States is much more progressive in its approach to conscientious objection than South Korea, and it is important to examine the evolutionary period of the United States exemption, not just the current system, to see how Korea could take incremental steps to adapting its current policy.<sup>65</sup> By allowing for greater freedom and autonomy in its conscientious objection program like the United States, not only would citizens benefit, but Korea's military could benefit as well.<sup>66</sup>

An issue that Korean legislators and justices who oppose the civilian service system misunderstand is that it is not a major problem to incentivize alternative service, so long as the military remains a similarly attractive option.<sup>67</sup> The goal of a strong alternative service program should be to provide meaningful work to those who truly have moral or religious reasons for opting out, while also ensuring that the environment in the military itself is habitable enough that people do not wish to dodge

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62 Martin, *supra* note 54.

63 A Vietnam era conscientious objector noted the shame he received from his family and community when he announced that he was applying for conscientious objector status during the Vietnam War. Thom Nickels, *My Time as a Vietnam War-Era Conscientious Objector*, HUFFINGTON POST (Jan. 23, 2014), [https://www.huffpost.com/entry/conscientious-objector\\_b\\_4029879](https://www.huffpost.com/entry/conscientious-objector_b_4029879). Eventually though, he stated that he was gradually re-accepted by those who shunned him, as the public opinion changed on the war in Vietnam and those who objected from participation to a more positive light. *Id.*

64 A similar change is happening in Korea, with public opinions on compulsory military service falling in recent years. Yoon, *supra* note 7.

65 Citizens in the United States have greatly benefited from the movement towards a wider variety and breadth of alternative programs for conscientious objectors, and Korean citizens would similarly benefit as well from the wider array of societal programs objectors could participate in. See Martin, *supra* note 54.

66 By removing members of the military who are unfit to serve or refuse to serve, the units left in the military would be made up of members who were more dedicated to the program, as opposed to members who wish they were elsewhere. Further, the morale of these groups would be higher, and there would likely be less of a need for the hazing rituals so common in the current Korean military because there would be fewer people seen as "unfit" for service. See Adam Beaumont, *Four out of Ten Conscripts Unfit for Duty*, SWISSINFO.CH (Jan. 4, 2007), <https://www.swissinfo.ch/eng/four-out-of-ten-conscripts-unfit-for-duty/5653186> (generally explaining that the Swiss government instituted more lenient protocols for mental health objections and noting that the government was attempting to use these protocols to ensure that the members who were left over were as fit to serve as they required in their everyday operations.)

67 See Jae Hyung Kim, *supra* note 11. Kim states that the dissenting opinion in the recent conscientious objector case was concerned about the upkeep of the personnel of the Korean military given its "Unique National Security Environment." This necessarily reflects on the concern that a robust alternative service requirement would entail a lowering of the manpower involved in the military itself. As this note argues, however, it is very possible to keep a robust military while maintaining a solid alternative service program as well. *Id.*

their service requirements without a legitimate reason.<sup>68</sup> In an ideal world, the creation of robust social service programs for conscientious objectors would take pressure off of the government in those served areas and allow for additional resources to be devoted to creating a more professional, new age military.<sup>69</sup>

The dissenting opinion in the Kim case notes that Korea should not blindly follow the ideologies or evolution of the United States, especially when it comes to conscientious objection.<sup>70</sup> This is largely because the dissenting opinion notes their belief that conscientious objection is a Christian ideology, which is not an ideology widely recognized in Korean culture.<sup>71</sup> The dissent notes that because of the geographic, ideological, population, and national security concerns that differentiate Korea from Christian nations, the concept of conscientious objection itself may not fit into the moral framework of Korea.<sup>72</sup>

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68 If the programs balance, or even if the incentives to joining the military are higher than the alternative service, those who truly object to joining the military will remain in the civilian program, and those who are indifferent will remain in the military, protecting the rights of those who object while maintaining a strong force capable of adequate defense. *See* Matheson, *supra* note 57.

69 *See* Martin, *supra* note 54, which noted that conscientious objectors in the United States were able to make meaningful improvements to societal mental illness programs, and infrastructure as well, which would hopefully remove some of the strain the government would have in administering these programs on a volunteer or employee program, as opposed to a mandated alternative service provider.

70 Kim, *supra* note 11.

The dissenting opinion states that conscientious objection is historically and realistically based on a Christian belief in most cases. It argues that while it may not be too difficult to form a social consensus of acceptance and tolerance for conscientious objection in the Western nations with a Christian tradition, this would not be the case for Korea, which is not a traditionally Christian society.

*Id.*

71 The dissent states:

In full view of such circumstances, within our society, Christian ideology is not universally recognized as a social ethic, and conscientious objection based thereon remains an unfamiliar ideology or term among most constituent members of society. Based on our historical and religious tradition or experience, the assertion of conscientious objection underpinned by a Christian ideology or dogma is difficult to be accepted among the general public.

Daebeobwon [S. Ct.], Nov. 1, 2018, 2016do10912 (S. Kor.).

72 Stating:

With the country's security and defense hanging in the balance upon military invasion from neighboring powerful nations, such as China and Japan, and thus in urgent need to organize a military force, our ancestors naturally took a step back from such individual and religious ideology or precept and organized military force comprised of civilians and monks who did not hesitate to carry a weapon and engage in war to fight foreign enemies. Furthermore, with respect to such acts as fulfilling the righteous duty as a constituent member of society, this clearly contrasts with the underpinning ideology or belief of conscientious objectors as history has proven.

Today's situation is not that different even if compared with such prevalent historical traditions or changing of the times. That is, amid military and political conflicts with neighboring powers, it is quite natural that the familiar attitude of our ancestors with regard to national defense known as "the service of gratitude to one's country (保國獻身)," i.e., respecting life, avoiding killing and war, and fulfilling one's

The majority argued that their approach did not take an overtly Christian view of conscientious objection, but rather on the importance of freedom of conscience.<sup>73</sup> Further, the majority found a flaw in the dissent's argument, stating that if it followed their logic, the concept of conscientious objection would be foreign to any nation without a primarily Christian religious system, which simply cannot be correct.<sup>74</sup> There are countries not rooted in Christian ideologies that recognize some form of conscientious objection. Israel is one of note. It has a conscientious objection system in which people must interview in front of a panel to determine if they are a true conscientious objector, and Israel's committee grants several hundred applications for exemption a year.<sup>75</sup>

Regardless of whether it is correct to link conscientious objection with primarily Christian beliefs or whether it is supportable as its own separate ideology, there are nations similarly situated enough with Korea to draw ample comparisons without a notable Christian backdrop. As previously mentioned, Israel is one such nation. It has a compulsory military service regime—sharing Korea's innate sense of duty in the citizenry surrounding compulsory service<sup>76</sup>—and similar national security concerns.<sup>77</sup>

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responsibility by pursuing harmony between an individual's religious and ideological belief and secular community, is sealed in the minds of most Koreans.

*Id.*

73 Kim, *supra* note 11.

However, the majority opinion does not purport that Korea should acknowledge conscientious objection on the grounds that Christianity is a dominant religion in Korea and that conscientious objection is accepted in the West. It also does not overlook our nation's unique history and culture. The majority opinion merely places emphasis on the importance and guarantee of the freedom of conscience. So long as democracy and human rights are pursued, the freedom of conscience is a significant and universal value that transcends periodic, regional, religious, and cultural differences.

*Id.*

74 *Id.* Further, this view entirely disregards the notion that Christian sects clash often. *Id.* The majority opinion simply used religion as the crux of the matter because the present case involved a Jehovah's Witness imprisoned for his beliefs. *Id.* However, the majority states that it would be inappropriate to characterize the argument as one relying on religion, as "the freedom of conscience is a significant and universal value that transcends periodic, regional, religious, and cultural differences," and "[c]riticizing the issue of conscience by confining it to a religious issue deviates from the essence of the instant case." *Id.*

75 Joshua Pex, *Exemption from IDF Service – Legal Information*, DECKER, PEX, LEVI, <https://lawoffice.org.il/en/exemption-from-idf-service/> (last visited Apr. 3, 2024).

76 Joshua Mitnick, *The Israel Defense Forces*, MY JEWISH LEARNING, <https://www.myjewish-learning.com/article/the-israel-defense-forces/> (last visited Apr. 3, 2024).

77 This paper was written before the conflict on the Gaza Strip between Israel and Hamas. Since the writing of this paper, many people who have had the ability to be exempt from service in the IDF have volunteered to join regardless, potentially giving credence to the idea that a robust exemption system allows for better morale or efficiency. See Ruby Mellen et al., *Israel's Ultra-Orthodox, Exempt from Military Service, Now Enlisting*, WASH. POST (Dec. 28, 2023, 3:20 PM), <https://www.washingtonpost.com/world/2023/12/28/ultra-orthodox-israel-defense-forces/>. Notably, Israel's neighbors, Iran and Syria, as well as inside its borders in the Gaza Strip are all priority defense problems facing Israel currently. Jacob Nagel, *Security Challenges Facing the New Israeli*

## 2. Israel:

Of the numerous countries with mandatory military service regimes still active across the world, Israel seems to be one of the best comparisons in terms of geographic challenges and service being engrained in the culture of the community.<sup>78</sup> Further, with Israel's Defense Force ("IDF") changing greatly in the twenty-first century due to demographic changes and military exemptions being utilized by the general public more frequently,<sup>79</sup> one can see from Israel where South Korea's military could head towards in the next few decades. Especially relevant is Israel's response to the diminished manpower plaguing the military system in the current national climate,<sup>80</sup> as this has been a question raised previously by those in Korea against a more robust alternative service program.

While there are many comparisons to be made across the two systems, it must be noted that the Israeli Defense Service Law applies to both men and women, as opposed to the all-male Korean system, but the exemptions to service are much more available to women than men in the Israeli system.<sup>81</sup> This paper does not address the fairness of allowing

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*Government, FOUND. DEF. DEMOCRACIES* (Jan. 12, 2023), <https://www.fdd.org/analysis/2023/01/12/security-challenges-new-israeli-government/>.

78 Enlistment, although decreasing, is still engrained in the culture of the citizenship of Israel, with families throwing parties for their children at induction centers once they are of age to enlist. The elite units carry the most prestige to be enlisted in, and like Korea, taking lower-ranking jobs can be met with adversity from the rest of the community. Mitnick, *supra* note 76.

79 Avi Jager, *The Myth of Compulsory Military Service in Israel*, JERUSALEM POST (Oct. 18, 2018), <https://www.jpost.com/opinion/the-myth-of-compulsory-military-service-in-israel-569779>. Like Korea, service numbers are falling in Israel, with close to 65% of the population, which includes Arab Israelis as well as Jewish citizens, avoiding military service without suffering any consequences through different exceptions. The reality is that even with draft dodgers, most cases are simply ignored at the national level. *Id.*

80 Jager, *supra* note 79. In response to the reality of a smaller military, the IDF has adopted new policies aimed at optimizing the resources they have available to them while investing heavily into upgrading the systems they have in place now aimed at less traditional warfare capabilities. *Id.* Israel is shifting away from being a "people's army" to a more professional army, one which aims at being more efficient than previously used. *Id.* While the author notes potential issues with this approach, none of the issues cited, such as a lack of representativeness across the population in the military, would affect South Korea, and they could learn well from the innovations that Israel has made in recent years in response to a diminished force. *Id.*

81 The following exemptions for women apply:

- (a) The following persons shall be exempt from the duty of defense service -
  - (1) the mother of a child;
  - (2) a pregnant woman.
- (b) A married woman shall be exempt from the duty of regular service.
- (c) A female person of military age who has proved, in such manner and such authority as shall be prescribed by regulations, that reasons of conscience or reasons connected with her family's religious way of life prevent her from serving in defense service shall be exempt from the duty of that service.
- (d) A female person of military age who considers herself aggrieved by decision of an authority as referred to in subsection (c) may, on such conditions and in such manner as shall be prescribed by regulations, object thereto before an objection committee appointed by the Minister of Defense.

women exemptions to service men do not have access to. Instead, this paper focuses on the exemptions available to men in Israel and the alternative service program possible for men, as it draws a more apt comparison to South Korea.<sup>82</sup>

Israel's Defense Service Law, as it applies to men, is similar in text to that of the Act.<sup>83</sup> Where men are concerned, the only exemption noted in the statute is generally that the Minister of Defense may exempt

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§ 40, Defense Service Law (Consolidated Version), 5746-1986, 40 LSI 112 (1985-86) (Isr.), <https://www.jewishvirtuallibrary.org/israel-defense-service-law-1986>.

Further, by the text of the statute, only women are allowed an exemption for purely religious reasons:

A female person designated for defense service who declares in writing under section 15 of the Evidence Ordinance (New Version), 5731-1971[13], before a judge (shofet, i.e. a judge of a civil court - Tr.) or a judge of a rabbinical court (dayan)

- (1) that reasons of religious conviction prevent her from serving in defense service and
- (2) that she observes the dietary laws at home and away from home and
- (3) that she does not ride on the Sabbath shall be exempt from defense service after delivering the affidavit, in the manner and at the time prescribed by regulations, to a calling-up office empowered in that behalf.

*Id.*

82 Military Service Act, art. 88(1) (S. Kor.), *translated in* Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required).

83 Compare § 36, Defense Service Law (Consolidated Version), 5746-1986, 40 LSI 112 (1985-86) (Isr.), <https://www.jewishvirtuallibrary.org/israel-defense-service-law-1986>, stating:

The Minister of Defense may, by order, if he sees fit to do so for reasons connected with the size of the regular forces or reserve forces of the Israel Defense Forces or for reasons connected with the requirements of education, security settlement or the national economy or for family or other reasons:

- (1) exempt a person of military age from the duty of regular service or reduce the period of his service;
- (2) exempt a person of military age from the duty of reserve service for a specific period or absolutely

with Military Service Act, art. 64 (S. Kor.), *translated in* Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required), stating:

- (1) The director of a regional military manpower office may exempt any person in the first citizen service and falling under subparagraph 1 (limited to persons whose physical grade falls under Grade VI) or 2 from military service without a draft physical examination upon his request, and any person whose physical grade falls under Grade V and subparagraph 3, among persons who fall under subparagraph 1, may be transferred to the second citizen service without a draft physical examination upon his request: <Amended by Act No. 9946, Jan. 25 2010>
  - 1. A person who is incapable of performing military service due to an overall deformity, disease, mental or physical disorder, etc.;
  - 2. A person who has immigrated from the north of the Military Demarcation Line;
  - 3. A person who falls under a reason prescribed in Article 65 (1) 2.
- (2) Matters necessary for the scope of a person referred to in paragraph (1) and the procedures for filing an application, etc. shall be prescribed by Presidential Decree.

<Amended by Act No. 9946, Jan. 25 2010> [This Article Wholly Amended by Act No. 9754, Jun. 9, 2009]

anyone for a variety of reasons.<sup>84</sup> This is similar to that of Korea's blanket exemption for public duty personnel noted earlier, which simply states that the regional military manpower office determines the number of public duty personnel and the standards and procedures for selection into the alternative service.<sup>85</sup> Much like how the United States interprets similar text differently than Korea, as noted earlier in this paper, Israel gives this blanket exemption much greater credence than Korea.<sup>86</sup>

However, where males are concerned, it is still somewhat rare to get an exemption purely based on the idea of conscientious objection.<sup>87</sup> Haredi men, who are studying at yeshivot, typically have specific agreements<sup>88</sup> in place to exempt them from military service.<sup>89</sup> In terms of a non-religious, purely moral, conscientious objection, men would have to undergo an interview before a specialized committee which would determine whether they met the criteria set forth by the government to qualify for exemption.<sup>90</sup> Instead of this, the majority of people receive exemptions in other areas, such as mental health or even an inability to adapt to the system.<sup>91</sup> These broad-reaching exemptions allow for far more flexibility for citizens who do not wish to serve.

Further, these exemptions are full exemptions from service which is very different than being placed in a secondary service such as prison work in South Korea.<sup>92</sup> There is a program called Sherut Lemui,<sup>93</sup> which is akin to an alternative service program,<sup>94</sup> in which young people who are exempted from working in the IDF can receive the benefits of working in the military through the volunteer work that they do in the

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<sup>84</sup> § 39, Defense Service Law (Consolidated Version), 5746-1986, 40 LSI 112 (1985-86) (Isr.), <https://www.jewishvirtuallibrary.org/israel-defense-service-law-1986>.

<sup>85</sup> Military Service Act, art. 64 (S. Kor.), *translated in* Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required).

<sup>86</sup> In recent years, one out of every three Jewish Israelis do not enlist in the IDF, with no repercussions, if they obtain an exemption from the proper legal body. Pex, *supra* note 75.

<sup>87</sup> *Id.*

<sup>88</sup> The Torato Omanuto agreements allow for Haredi men, who believe that studying the torah is the best way to protect Israel, to be automatically exempt from service. *National (Civil) Service - Sherut Leumi*, ISRAEL4US, [https://israel4us.com/israel\\_national\\_service.html](https://israel4us.com/israel_national_service.html) (last visited Apr. 3, 2024).

<sup>89</sup> These agreements have come under scrutiny in recent years from secular Israeli citizens and are likely to continue to change in the upcoming years. See Mitnick, *supra* note 76.

<sup>90</sup> Pex, *supra* note 75.

<sup>91</sup> *Id.*

<sup>92</sup> See Guzman, *supra* note 12. In Israel, the primary alternative to service for many people, Sherut Lemui, is still purely voluntary. *National (Civil) Service - Sherut Leumi*, *supra* note 88.

<sup>93</sup> There are various types of Sherut Lemui, such as Amutat Shlomit, or Bat-Ami, open to both male and female participants, aimed at different areas important to national infrastructure. *Id.*

<sup>94</sup> If one qualifies for an exemption from military service under either the statutory or other non-enumerated exemptions, they can participate in an alternative service program to receive the benefits afforded to one who would complete their military service.

program.<sup>95</sup> It is rare for men to participate in this program, but there is still male participation, and the opportunities include working in special education, hospitals, nursing homes, disadvantaged communities, and much more.<sup>96</sup>

The voluntary nature of Sherut Lemui is an interesting idea and would certainly be a step towards more complete autonomy in military service; however, I do not believe it would be applicable to the sacrifice-through-service-oriented culture of South Korea. However, a melding of the two systems could lead to a solution to numerous problems that both sides are facing.<sup>97</sup> A mixture of the two systems, one which still mandates service for all peoples (like the South Korean system which mandates participation in some public service program) but also provides meaningful alternative service work (akin to the voluntary service that objectors can participate in through the Israeli program), would create a potential solution. It would help solve the morale crisis seen in South Korea while increasing the numbers and encouraging more youths in Israel to enlist to the benefit of at least the general public.

The most important takeaway Korea can learn from examining the Israeli system is the fact that military service is simply not appropriate for every citizen in a country. People have difficulty adjusting to rapid changes in lifestyle, and while this cannot be an excuse for every person who simply does not wish to serve, those who truly find it impossible to adjust to the military lifestyle, those who, because they could not adjust, would do more harm serving in a unit by adversely affecting team morale or efficiency, should be given a more gracious exemption than currently afforded by the South Korean government. A reframing of the general issue away from exemptions and laziness, and shifting the discussion to alternative service and how the government can better incentivize youths to want to serve their country, would help to create a more level and balanced system for all parties involved.<sup>98</sup> A new, all-encompassing carve-out, which combines the strict Korean conscientious objection

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<sup>95</sup> *Alternative to Military Service and Possibility of Serving with Modified Duties*, IMMIGR. & REFUGEE BD. OF CAN. (Mar. 12, 2009), <https://www.refworld.org/docid/4a7040a437.html>.

<sup>96</sup> *National (Civil) Service – Sherut Leumi*, *supra* note 88.

<sup>97</sup> See Kim, *supra* note 11 (noting the South Korean tension between national security considerations and individual's rights); see also Jager, *supra* note 79 (noting the Israeli tensions between declining participation in the IDF and the potential problems that could arise as a result of the younger generation not participating as heavily as they once did).

<sup>98</sup> “The right not to serve in the military might win more hearts if it were framed as the right to serve in a non-military setting.” Tal Kra-Oz, *What Happens if You Refuse to Serve in the IDF?*, TABLET (Mar. 16, 2021), <https://www.tabletmag.com/sections/israel-middle-east/articles/idf-conscientious-objectors>.

standard<sup>99</sup> and the lenient mental health exemptions provided by the IDF,<sup>100</sup> would allow for the greatest flexibility in the application of exemptions to military service and the assignment of public duty personnel.

The legislative bodies of both countries, along with the actual military regimes conducting the interviews and examinations to determine whether one qualifies for the exemption, could determine the level of veracity in the claims required to qualify.<sup>101</sup> However, even a minimally more inclusive mental health exemption in Korea would help to eliminate the daily grief that numerous youths face<sup>102</sup> in the program when they are unable to adjust to the lifestyle. Further, if they are instead given meaningful work outside of a military setting to complete their service to their country, the work that they do would likely be far more effective and beneficial to the country as a whole.

South Korea is almost one step further along than Israel in its ability to incorporate a more objector-tolerant system, as its alternative service program is mandatory and viewed as a completion of service to one's country, as opposed to the voluntary nature of Israel's Sherut Lemui.<sup>103</sup> If anything, the mandatory nature of the public service requirement in Korea creates an even greater need for flexibility in job assignment and treatment.<sup>104</sup> Such a solution would have lasting impacts on the country, while generating meaningful experiences for youths that they can carry into their professional lives without incurring the damage that someone who is incompatible with the military yet still forced to serve, or someone sent to jail for adhering to their beliefs, would experience.

The systems of the United States and Israel can be used as guides for Korea in determining what to do in its implementation of a stronger alternative to military service. In addition, a final country with a unique alternative service program, Switzerland, provides another beneficial example which South Korea could look to in its development of a more objector-friendly environment.

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<sup>99</sup> See Guzman, *supra* note 12, (citing Military Service Act, art. 26(1) (S. Kor.), *translated in* Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lan=ENG&chseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lan=ENG&chseq=25744) (search required).

<sup>100</sup> Tal Kra-Oz, *supra* note 98.

<sup>101</sup> See Pex, *supra* note 75. This screening system would be similar to the current committee that Israel already employs to screen candidates for their fitness for alternative service.

<sup>102</sup> *South Korea: Why Has the Conscription System Made Victims of Young Men?*, *supra* note 42.

<sup>103</sup> *National (Civil) Service – Sherut Lemui*, *supra* note 88.

<sup>104</sup> *South Korea: Why Has the Conscription System Made Victims of Young Men?*, *supra* note 42 (generally arguing that the military lifestyle is not applicable to all citizens, and can be greatly detrimental to the health of those who are not able to handle the demeaning and difficult challenges they may face on a daily basis in the military).

### 3. Switzerland:

The final country to be examined in this note, which has different ways opting out of service, is Switzerland. Switzerland's original constitution included that "Every Swiss man is required to do military service."<sup>105</sup> The Constitution also enumerates that the penalty for non-service is a fine;<sup>106</sup> however, the military code of Switzerland states that refusal of military service is a criminal offense, although these cases are exceedingly rare.<sup>107</sup> Further, there are specific mandates in the Constitution to provide for lost income and fair compensation during one's service.<sup>108</sup> Military and alternative service for women is strictly voluntary.<sup>109</sup>

In 1996, the clause "Alternative Civilian service shall be provided for by law"<sup>110</sup> was added to the Constitution.<sup>111</sup> Unlike Korea, it is far easier to be accepted into the civilian service in Switzerland, with anyone who is liable for military service able to apply by declaring oneself "unable to serve in the military for reasons of conscience."<sup>112</sup> The opportunities available are vast, including healthcare, environmental work, work abroad in other countries, and even opportunities to gain specialized talents in fields that they can continue in after their service is through.<sup>113</sup>

The program is one and a half times the length of the military service in Switzerland,<sup>114</sup> which is close in length to the doubling of service that

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105 BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 59, para. 1 (Switz.).

106 *Id.* para. 3.

107 See Tognina, *infra* note 111.

108 BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 59, para. 4 (Switz.). In terms of lost income, the Swiss government is somewhat generous, allocating 80% of a person's previous income from a job to their current salary while in service, which can create ample compensation for the work being done. CHRISTOPHE BARBEY, CONSCIENTIOUS OBJECTION IN SWITZERLAND, INFODROIT.CH (Feb. 13, 2017), <https://www.ohchr.org/sites/default/files/Infodroit.pdf>.

However, for those that did not have a prior job, they are given a stipend that barely covers the expenses they will incur during the program. *Id.*

109 BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 59, para. 2 (Switz.).

110 *Id.* para. 1.

111 Andrea Tognina, *Is It Possible to Refuse Military Service in Switzerland*, SWISSINFO.CH (Nov. 26, 2019), [https://www.swissinfo.ch/eng/politics/conscientious-objection\\_is-it-possible-to-refuse-military-service-in-switzerland-/45306024](https://www.swissinfo.ch/eng/politics/conscientious-objection_is-it-possible-to-refuse-military-service-in-switzerland-/45306024).

112 *Civilian Service*, CH.CH, <https://www.ch.ch/en/safety-and-justice/military-service-and-civilian-service/civilian-service/#who-can-serve-in-the-civilian-service> (last visited Apr. 3, 2024).

113 *Id.* A small percentage of recruits are afforded the opportunity to travel abroad and complete work, such as teaching in foreign countries, installing solar power, and more. There are specific requirements in place for people to qualify for these positions; however, the availability of intensive, meaningful, unique work in the alternative service program shows how dedicated the Swiss government is in their implementation of the alternative service program. Gabriele Ochsenbein, *Aid Work: An Alternative to Army Service*, SWISSINFO.CH (Feb. 28, 2013), <https://www.swissinfo.ch/eng/life-aging/aid-work-an-alternative-to-army-service/35097560>.

114 *Switzerland*, EUR. BUREAU FOR CONSCIENTIOUS OBJECTION, <https://ebco-beoc.org/switzerland> (last visited Apr. 3, 2024).

South Korea imposes; however, the time commitment is less of an issue when one considers the pay available, the meaningful work programs, and the general quality of life improvements in Switzerland compared to Korea's. Another major difference between the Swiss and the Korean systems is that, in Switzerland, one can opt out of military service and join the civilian service during the process of their military training if they feel they are unfit to serve.<sup>115</sup>

Switzerland's strong alternative service program has led to an abundance of Swiss men joining the alternative service as opposed to the military.<sup>116</sup> This initial opt out of candidates who would not fit well in the military<sup>117</sup> allows for a stronger overall defense force.<sup>118</sup> Further, the knowledge that someone can change their mind throughout the program allows for able-bodied individuals who pass the initial screenings to participate in the military, knowing that if they have a crisis of conscience causing them to rethink their participation in the program, they still have a safety net allowing them to choose a more apt position.<sup>119</sup> This permits those who are on the fence about joining to participate in the program where they may have otherwise opted out immediately without the safety net, and creates the potential for more, and better, soldiers to be available to the government.

South Korea would do well to include such an ability to change from military to civilian service without punishment, especially given the harsh nature of hazing in the beginning of military service.<sup>120</sup> If soldiers

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115 Someone who wishes to opt out during service must continue to serve while their application is being processed; however, the ability to change commitments during the process is highly beneficial to those who are unable to adapt. *Civilian Service*, *supra* note 112.

116 Although the process of opting out is dissuaded by the authorities in charge of it, numerous people still find the benefit to outweigh the costs. See *Government Seeks to Curb Interest in Civilian Service*, *infra* note 123 (discussing the government's interest in curbing alternative service applications).

117 Switzerland has an entirely separate program designed for people who are unfit to serve in the military, known as the Civil Defense Organization. The Civil Defense Organization protects during disasters and emergencies. *Civil Protection*, CH.CH, <https://www.ch.ch/en/safety-and-justice/civil-defence/#who-is-required-to-do-civil-defence-service> (last visited Apr. 3, 2024). The Civil Defense Organization has been critical in helping during the Coronavirus pandemic, working on the front lines of hospitals and other aid organizations to ensure that people can recover from the illness. Cecile Mantovani, *Pandemic Hospital Duty Tests Swiss Civil Defense*, REUTERS (Nov. 28, 2020, 5:06 AM), <https://www.reuters.com/article/us-health-coronavirus-swiss-civilprotect/pandemic-hospital-duty-tests-swiss-civil-defense-idUSKBN2880B9>.

118 Four out of every ten conscripts do not pass the mental health and physical requirements set in place by the Swiss government to qualify for the military. However, the government notes that these figures are actually intended as a part of their new tougher tests to determine if recruits will pass the military. Adam Beaumont, *supra* note 66. With their tougher testing procedures, the Swiss government is able to stop washouts of conscripts further into the process who should have never been let into the program to begin with, and therefore save taxpayer money that would be wasted on their training after an inevitable departure from the program. *Id.*

119 See *Civilian Service*, *supra* note 112.

120 See *South Korea: Why has the conscription system made victims of young men?*, *supra* note 42.

who were unable to adapt to the program had the opportunity to leave to do meaningful work elsewhere, the overall effectiveness of the unit would be improved by leaving the “strongest” soldiers in the unit. While this note takes no stance on the efficacy of hazing recruits in the beginning of a military service, the fact that such a process exists must have some sort of rationale behind it, whether to teach obedience in recruits or otherwise. If those who thrive in the harsh environment the South Korean military creates are the people that the military desires, then it stands to reason that those left after people who cannot adapt are allowed to leave the program would be the “strongest” and most fit for service.

Further, and probably more importantly, if the ability to switch out of the service was present, it is not unreasonable to think that the hazing elements present would possibly begin to diminish. This is because without the threat of jail time for leaving, those who are unable to deal with the repeated and aggressive hazing that drill instructors in Korea subject their soldiers to<sup>121</sup> could leave the program, and the “strong” soldiers left over would require less direct hazing to get to a point that the military deems desirable.<sup>122</sup>

Not everyone in Switzerland agrees that the alternative service programs are ideal, with numerous calls to make civilian service less inviting in recent years.<sup>123</sup> However, these measures failed in 2020,<sup>124</sup> meaning that, at least for the moment, the Swiss civilian service program will remain a strong guide for how an alternative service program can benefit

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121 See Yoon, *supra* note 7.

122 See Adam Beaumont, *supra* note 66. See also Andrew Salmon, *South Korea Military Under Fire Over Abuse*, BBC (Aug. 27, 2014), <https://www.bbc.com/news/world-asia-28933724>. Further, the drill instructors would need to somewhat adjust their approach to ensure adequate manpower and incentivize recruits to stay in the program, rather than have them wish they were elsewhere. A delicate balance would need to be struck to ensure that soldiers could still be trained adequately if the government believes that their methods are the best way to do so and to ensure that recruits do not just leave the program when it becomes challenging. However, a moderate diminishing of the harsh reality of military training could help to resolve part of the manpower problems facing Korea currently.

123 *Government Seeks to Curb Interest in Civilian Service*, SWISSINFO.CH (Feb. 20, 2019), [https://www.swissinfo.ch/eng/politics/civilian-service\\_government-seeks-to-boost-attractiveness-of-military-service/44772120](https://www.swissinfo.ch/eng/politics/civilian-service_government-seeks-to-boost-attractiveness-of-military-service/44772120). The typical concerns of manpower were the driving force behind these calls for change. However, the government never looked to seriously eliminate the attractivity of the program and instead focused on increasing the number of days that one may have to complete or eliminating the ultra-attractive posts, such as foreign assignments, which could help to ensure that the incentivization problem at the heart of civilian service does not overtake the need for an alternative program. *Id.*

124 *Access to Civilian Service Will Not Be Restricted After All*, SWISSINFO.CH (Jun. 19, 2020), <https://www.swissinfo.ch/eng/politics/access-to-civilian-service-will-not-be-restricted-after-all/45848372>. Likely the coronavirus and its impact on the country played a part in not reducing the civilian program, as many civilians were volunteering in the hospitals during the pandemic, which affected the final result. *Id.* Opposers of restricting the civilian program say that the army itself needs to become a more attractive option, instead of reducing the impact and efficacy of the strong civilian program that the Swiss people have access to.

the participants of the program without being to the detriment of the country as a whole.

However, it is important to note that the opposition to Swiss civilian service is not to the idea as a whole, but more to the incentive that their service provides. The opposition to civilian service in Switzerland wants to reduce the number of trips abroad and attractive foreign posts offered to disincentivize the number of people who are applying for the program.<sup>125</sup> Whereas, in Korea, the program keeps civilian workers in prison, ensuring that they are unable to gain meaningful work or skills that could help them in their careers.<sup>126</sup> This certainly puts into perspective how far Korea is from truly being up to par with the conscientious objection protections of these other nations.

#### CONCLUSION:

It seems the current iteration of the alternative service system in South Korea functions as a punitive measure that not only deters people who rightly qualify to work in alternative service, but also accomplishes little in terms of actual value that conscientious objectors could be providing their country if they were given other opportunities to work outside of the prisons where they are currently placed. The statutory framework to make this change is already present, and there would not need to be new amendments or changes to the Military Service Act to make this change.<sup>127</sup> Instead, those currently in charge of the alternative service program and the Military Manpower Administration could simply broaden their interpretation of the Act to effect real change.

However, an examination of the sample countries selected shows how the implementation of a strong alternative service program can help the government.<sup>128</sup> A strong combination of a professional military with an efficient and work-ready civilian force can create the greatest benefit

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125 *Government Seeks to Curb Interest in Civilian Service*, *supra* note 123.

126 See Jae Hyung Kim, *supra* note 11. See also Chose Sang-Hun, *South Korean Jehovah's Witnesses Face Stigma of Not Serving in Army*, N.Y. TIMES (Oct. 3, 2015), <https://www.nytimes.com/2015/10/04/world/south-korean-jehovahs-witnesses-face-stigma-of-not-serving-in-army.html>.

127 Military Service Act, art. 26 (S. Kor.), *translated* in Korea Law Translation Center's online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=25744](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=25744) (search required).

128 The simple act of providing numerous fulfilling alternatives can completely change the morale of the alternative workforce, while also providing a massive boost to the country's critical infrastructure as well, as shown in the United States. See Martin, *supra* note 54.

After examining the Swiss government's approach to exemptions to compulsory military service, one can see that an all-encompassing system taking mental health, fitness, and subjective beliefs into account can not only greatly benefit an individual's ability to serve their country, but also can benefit the military as a whole. See Adam Beaumont, *supra* note 66. Further, it can be seen from Israel's adoption of exemptions to compulsory military service that even when faced with neighboring countries that are dangerously close to going to war at any given time, a strong and fit military can be established while reducing manpower. See Avi Jager, *supra* note 79.

to a country overall, ensuring that infrastructure and critical systems have able-bodied workers to maintain them while counterbalancing that need with the need to have an ample defense.

However, what is lost in arguing how the new system could benefit Korea is the simple understanding of why conscientious objection should exist in the first place. The Constitution of South Korea provides that “All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status,”<sup>129</sup> while further maintaining that “All citizens shall enjoy freedom of religion.”<sup>130</sup> While it is important to note that conscientious objection does not directly fall under a religious belief, as one can object for purely moral reasons, the two certainly are linked. With the vast majority of those previously imprisoned or currently required to do alternative service as conscientious objectors in Korea being Jehovah’s Witnesses,<sup>131</sup> it is difficult to argue that the current system does not unfairly discriminate against them solely because of their religious beliefs. Especially given the ease with which meaningful alternative jobs could be created through the already present statutory scheme, South Korea could take a strong leap forward in protecting its citizens’ rights by revamping its alternative service program to follow along the lines of other countries who are now protecting citizens’ rights.

Alexander Goffinet\*

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<sup>129</sup> DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION], amended by Constitution no. 10, Oct. 29, 1987, art. 11 (S. Kor.).

<sup>130</sup> *Id.* art. 20.

<sup>131</sup> Jae Hyung Kim, *supra* note 11.

\* Alexander Goffinet is the Managing Editor of Operations at *Washington University Global Studies Law Review* and a J.D. Candidate at Washington University School of Law (Class of 2024).