RECENT CASES

existed before the enactment of the statute, the legislature may have had a "logical basis" for continuing the differential during the emergency in order to maintain the same facilities for distribution, to the end that both milk producers and consumers would be benefited. Cf. Block v. Hirsh, 256 U.S. 135 (1921) (rigid housing regulation during an emergency sustained).

An undesirable feature of the price differential, not mentioned by the court, is that it was definitely fixed at a certain amount by the statute. N.Y. Cahill's Consol. Laws (supp. 1933), c. 1, § 317. If the purpose of the statute is to maintain the balance of bargaining power, it seems that an administrative board would be in a better position to adapt the differential to changing conditions. See People of N.Y. ex rel. Liberman v. Van de Carr, 199 U.S. 552 (1905).

The conservatism of the opinion in the principal case may indicate that the liberal Nebbia decision will not be applied as extensively as has been suggested. See 82 U. of Pa. L. Rev. 619 (1934).

Constitutional Law—Religious Freedom—Compulsory Military Training—[U.S.]—Plaintiffs, students at the University of California, a state university, had been suspended on their refusal, because of conscientious religious objections to war, to take a compulsory course in military science in the Reserve Officers Training Corps offered by the university as a land grant college under the Morrill Act, 7 U.S.C.A. §§ 301–308 (1927). In a suit by plaintiffs for reinstatement, held, that though the due process clause of the 14th amendment may protect religious liberty, it confers no right to attend a land grant college free from the compulsory military training requirement. Hamilton v. Regents of the University of California, 55 Sup. Ct. 197 (1934).

The same result was reached in Pearson v. Coale, 165 Md. 224, 167 Atl. 54 (1933), cert. denied 290 U.S. 597 (1933).

Despite the fact that it has been held that states have almost unlimited power to determine the conditions of attendance in state schools; North v. Board of Trustees of the University of Illinois, 137 Ill. 296, 27 N.E. 54 (1891) (trustees can make chapel attendance compulsory); Waugh v. Board of Trustees of the University of Miss., 237 U.S. 589 (1915) (requirement that students not belong to fraternities held constitutional); it can be argued that an "arbitrary and unreasonable" regulation violates the protection given the liberty to acquire an education by the due process clause. Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Pierce v. Society of Sisters, 268 U.S. 510, 518 (1925).

Although the 14th amendment has been quite consistently held not to apply the restrictions on the federal government contained in the first ten Amendments to the states; Slaughterhouse Cases, 83 U.S. 36 (1872); Twining v. N.J., 211 U.S. 78 (1908); in the principal case the court assumed "that the religious liberty protected against invasion by the nation in the 1st Amendment is protected by the 14th Amendment against invasion by the States." Cf. Gillov v. N.Y., 268 U.S. 626 (1925); Near v. Minnesota, 283 U.S. 697 (1931). See Dodd, Cases on Constitutional Law (1932), 1366, 1367; 2 Cooley, Constitutional Limitations (8th ed. 1927), 983.

Religious liberty, however, has been held to be limited when the exercise of the religious belief would contravene a well-established governmental policy. Reynolds v. U.S., 98 U.S. 145 (1878) (religious liberty does not excuse polygamy); People v. Pierson, 76 N.Y. 201, 68 N.E. 243 (1903) (failure to call a physician); Sweeney v. Webb, 33 Tex. Civ. App. 324, 76 S.W. 766 (1903) (use of sacramental wine).
Maintenance of an adequate national defense seems to be regarded as a fundamental governmental policy. A citizen "may be compelled—against his will and without regard to his religious 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." Jacobson v. Mass., 197 U.S. 11, 29 (1905); cf. U.S. v. Schwimmer, 279 U.S. 644 (1929) and U.S. v. McIntosh, 283 U.S. 605 (1931) (denying citizenship to aliens who, because of religious belief, refused to take the oath to defend the nation).

In view of the above cases and the fact that the plaintiffs were neither compelled to go to the state university nor required to enter military service upon the completion of the course, the court felt that the infringement on religious liberty was not as great as others previously held constitutional. A desire for less restricted religious freedom and doubt as to the desirability of military training is reflected in popular criticism of the case. 51 Christian Century 1651 (i934); 52 Christian Century 8 (1935). But cf. 81 New Republic 113 (1934); Literary Digest, Dec. 15, p. 7 (1934). It would seem, however, that an organized society cannot allow the performance of this citizenship obligation to rest solely within the discretion of its individual members.

Legislation providing for optional military training in land grant colleges may be a possible way to make provision for conscientious objectors. 36 Ops. Atty. Gen. U.S. 297 (1930); 7 Idaho L. Rev. 90 (1931); though it has been suggested that even this method is not available. Johnson, Military Training in Land Grant Colleges: Is it Optional or Mandatory? 24 Ill. L. Rev. 271 (1929).

Corporations—Power of Corporation To Acquire Its Shares—Voting Privileges of Prior Preference Shareholders—[Virginia].—The capital structure of a corporation consisted of shares of $100 par value 7 per cent cumulative dividend prior preference stock, $100 par value 6 per cent cumulative participating preferred stock, and no par common stock. By charter provision, so long as the prior preference stock outstanding should be in excess of $10,000,000 par amount, the holders of such stock were to have the right, voting separately as a class, to elect a majority of the board of directors of the corporation. The charter also provided: (1) that the board of directors could redeem all or part of such stock on payment of $110 per share, plus unpaid dividends, such shares to be cancelled and not to be reissued; (2) that a sinking fund be set up out of the net earnings for the preceding year for the purpose of retiring such stock. Pursuant to authority, given by the board of directors, the corporate officers had purchased "for investment" enough prior preference stock at prices below par to reduce the total amount held by the public to a figure considerably below $10,000,000, and the corporation now holds such shares in its treasury. At an annual meeting the majority of the board of directors was elected by prior preference shareholders though less than $10,000,000 of shares were outstanding and entitled to vote. Plaintiff, owner of 400 shares of preferred stock, was granted an order restraining the newly elected board from exercising its duties on the ground that the election was invalid because the purchase of prior preference stock by the corporation had reduced the amount outstanding below $10,000,000 par amount. Held, on appeal, that the injunction be dissolved because the purchase of the prior preference shares adversely affected a substantial right of such shareholders, which could not be extinguished except by compliance with charter provisions. Kemp et al. v. Levinger, 174 S.E. 820 (Va. 1934).