

that contracts of seamen, involving to a certain extent the surrender of personal liberty, may be enforced without regard to the Amendment.³⁵ Similarly, enforcement of those duties that individuals owe the government, “such as services in the army, militia, on the jury, etc.,” is not covered.³⁶ A state law requiring every able-bodied man within its jurisdiction to labor for a reasonable time on public roads near his residence without direct compensation was sustained.³⁷ A Thirteenth Amendment challenge to conscription for military service was summarily rejected.³⁸ A state law making it a misdemeanor for a lessor, or his agent or janitor, intentionally to fail to furnish such water, heat, light, elevator, telephone, or other services as may be required by the terms of the lease and necessary to the proper and customary use of the building was held not to create an involuntary servitude.³⁹ A federal statute making it unlawful to coerce, compel, or constrain a communications licensee to employ persons in excess of the number of the employees needed to conduct his business was held not to implicate the Amendment.⁴⁰ Injunctions and cease and desist orders in labor disputes requiring return to work do not violate the Amendment.⁴¹

³⁵ *Robertson v. Baldwin*, 165 U.S. 275, 282 (1897).

³⁶ *Butler v. Perry*, 240 U.S. 328, 333 (1916) (“the term involuntary servitude was intended to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results,” *id.* at 332).

³⁷ *Butler v. Perry*, 240 U.S. 328 (1916).

³⁸ *Selective Draft Law Cases*, 245 U.S. 366 (1918). The Court’s analysis, in full, of the Thirteenth Amendment issue raised by a compulsory military draft was the following: “as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation, as the result of a war declared by the great representative body of the people, can be said to be the imposition of involuntary servitude in violation of the prohibitions of the Thirteenth Amendment, we are constrained to the conclusion that the contention to that effect is refuted by its mere statement.” *Id.* at 390.

Although the Supreme Court has never squarely held that conscription need not be premised on a declaration of war, indications are that the power is not constrained by the need for a formal declaration of war by “the great representative body of the people.” During the Vietnam War (an undeclared war) the Court, upholding a conviction for burning a draft card, declared that the power to classify and conscript manpower for military service was “beyond question.” *United States v. O’Brien*, 391 U.S. 367, 377 (1968). *See also* *United States v. Holmes*, 387 F.2d 781, 784 (7th Cir. 1968) (“the power of Congress to raise armies and to take effective measures to preserve their efficiency, is not limited by either the Thirteenth Amendment or the absence of a military emergency”), *cert. denied*, 391 U.S. 936 (1968) (Justice Stewart concurring and Justice Douglas dissenting).

³⁹ *Marcus Brown Co. v. Feldman*, 265 U.S. 170, 199 (1921).

⁴⁰ *United States v. Petrillo*, 332 U.S. 1, 12–13 (1947).

⁴¹ *UAW v. WERB*, 336 U.S. 245 (1949).