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Conscientious Objectors--Religious Training and Belief--New Test [*Umted States v'. Seeger*, 380 U.S. 163 (1965)]

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of legally constituted review boards in institutions where human subjects are used. Perhaps a joint lay and medical board might have been the answer, rather than lay control imposed upon unwilling doctors with the blessing of the law court.[39]

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CONSCIENTIOUS OBJECTORS — RELIGIOUS TRAINING AND BELIEF — NEW TEST

United States v. Seeger, 380 U.S. 163 (1965).

The need for an exemption from military service for those persons conscientiously opposed to participation in war has been recognized by the leaders of our country from its earliest origins.[1] Prior to 1864, the exemption was given meaning by state constitutional provisions[2] and statutes[3] excusing members of specific religious sects, typically those denominated as the historic peace churches,[4] from service in the state militias. The first federal conscription act, passed in 1864,[5] nullified all prior state provisions and provided an exemption to members of religious denominations who were conscientiously opposed to bearing arms and were prohibited from doing so by the tenets of their church.[6]

The 1864 exemption was limited by the Draft Act of 1917,[7] which excused only those individuals conscientiously opposed to participation in war who were also members of a well-recognized religious sect or organization whose tenets forbade participation in war.[8] However, in 1918 President Wilson issued an executive order[9] extending the exemption to any individual having a personal scruple against participation in war. Subsequently, Congress placed the exemption on a personal basis in the Selective Service Act of

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[39] A sequel to the *Hyman* fact situation occurred in January, 1966, when the New York Board of Regents, the licensing authority for physicians in New York State, charged the doctors involved in the cancer injection experiment with fraud and deceit. The doctors' licenses to practice were suspended for one year and they were placed on probation for two years. On the issue of the impropriety of the experiments, where the courts had refused to rule, the Board of Regents said: "We trust that this measure of discipline will serve as a stern warning that zeal for research must not be carried to the point where it violates the basic rights and immunities of a human person." Langer, *Human Experimentation: New York Verdict Affirms Patient's Rights*, 151 SCIENCE 663, 666 (1966).

1940[10] by extending the provisions to individuals of all faiths. Membership in a religious sect opposed to participation in war was not required. While the individual's objection had to be religious, the effect of the act was to extend the exemption to non-church members.

United States v. Seeger[11] concerns the construction of section 6(j) of the Universal Military Training and Service Act of 1948[12] which amended the 1940 act by inserting a congressional definition of "religious training and belief." It provides:

> Nothing contained in this title . . . shall be construed to require any person to be subject to combatant training and service in the forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or merely a personal moral code.[13]

Judicial interpretation of the 1948 act prior to the *Seeger* decision resulted in a construction requiring an individual to believe in an orthodox concept of a Supreme Being in order to qualify for the exemption.[14]

Seeger is a consolidation of three separate cases involving ob-

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[1] 1 ANNALS OF CONG. 434, 436, 729, 731 (1789); 2 ANNALS OF CONG. 1818, 1821-27 (1790).

[2] *E.g.*, N.Y. CONST. art. XL (1777), which provides: "All such of the inhabitants of this state (being of the people called Quakers) as, from scruples of conscience, may be adverse to the bearing of arms, be therefrom excused by the legislature, and do pay to the state such sums of money, in lieu of their personal service, as the same may, in the judgment of the legislature, be worth." See also MacIntosh v. United States, 42 F.2d 845, 848 n.2 (2d Cir. 1930).

[3] See generally MacIntosh v. United States, *supra* note 2 at 847 n.1.

[4] Mennonites, Church of the Brethren, and Quakers.

[5] Act of Feb. 24, 1864, ch. 13, 13 Stat. 6.

[6] Act of Feb. 24, 1864, ch. 13, § 17, 13 Stat. 9.

[7] Act of May 18, 1917, ch. 15, 40 Stat. 76.

[8] Act of May 18, 1917, ch. 15, § 4, 40 Stat. 78.

[9] CONSCIENTIOUS OBJECTION 56 (Selective Service Monograph No. 11, 1950).

[10] Selective Training and Service Act of 1940, ch. 720, § 5(g), 54 Stat. 887.

[11] 380 U.S. 163 (1965).

[12] 62 Stat. 609 (1948), as amended, 50 U.S.C. APP. § 456(j) (1964) [hereinafter cited as 1948 Act].

[13] 1948 Act § 6(j), 62 Stat. 609, as amended, 50 U.S.C. APP. 456(j) (1964).

[14] *E.g.*, Clark v. United States, 236 F.2d 13 (9th Cir.), *cert. denied*, 352 U.S. 882 (1956); United States v. Bendik, 220 F.2d 249 (2d Cir. 1955); George v. United States, 196 F.2d 445 (9th Cir.), *cert. denied*, 344 U.S. 843 (1952).

jectors Seeger, Jakobson, and Peter.[15] In each case the defendant was tried and convicted in a federal district court for failure to submit to induction in the armed forces. Upon appeal, the convictions of Seeger and Jakobson were reversed, but that of Peter was affirmed.[16] Subsequently, the government appealed the decisions in favor of Seeger and Jakobson, and Peter appealed his own conviction. Certiorari was granted.[17] Before the Supreme Court, each defendant claimed conscientious objector status because of individual beliefs[18] allegedly falling within the ambit of the statutory definition.[19]

Seeger believed in the intellectual and moral integrity of man.[20] He believed in a devotion to good and virtue for their own sake. Thus, it could be said that Seeger's humanitarianism had assumed a religious nature, but for Seeger, God Himself was remote. Jakobson believed that the Creator of the universe exists in the sense of a Supreme Reality from which man's own existence is the ultimate result.[21] Peter concluded that religion is the "consciousness of some power manifest in nature which aids man in ordering his life in harmony with its demands."[22] This power is made manifest to man through an abstract awareness of an ideal man acting on the highest possible moral plane. Peter believed that he was required to emulate that ideal. Hence, he could not countenance the taking of human life.[23]

Therefore, none of the defendants believed in the orthodox concept of God required by earlier court decisions. Each professed a sincere faith of a religious nature which could be supported in some fashion by various religious authorities.[24]

Seeger claimed that section 6(j) of the 1948 act violated the due process clause of the fifth amendment because it discriminated between different forms of religious expression. The claim was upheld by the Second Circuit Court of Appeals; the Supreme Court entirely

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[15] Seeger v. United States, 326 F.2d 846 (2d Cir. 1964); Jakobson v. United States, 325 F.2d 409 (2d Cir. 1963); Peter v. United States, 324 F.2d 173 (9th Cir. 1963).

[16] See cases cited note 15 *supra.*

[17] United States v. Seeger, 377 U.S. 922 (1964).

[18] United States v. Seeger, 380 U.S. 163, 166-69 (1965).

[19] 1948 Act § 6(j), 62 Stat. 609, as amended, 50 U.S.C. APP. § 456(j) (1964).

[20] United States v. Seeger, 380 U.S. 163, 166-67 (1965).

[21] *Id.* at 167-68.

[22] *Id.* at 169.

[23] *Ibid.*

[24] *Id.* at 180-83.

avoided this issue and based its decision in *Seeger* upon a new judicial interpretation of the 1948 act. Thus the question before the court became whether section 6(j) of the 1948 act[25] was intended by Congress to apply only to those individuals professing a belief in the commonly understood, orthodox concept of God. The Supreme Court answered in the negative, holding that the addition of a statutory definition of "religious training and belief" in the 1948 act was intended to expand the exemption to include all individuals believing in a power, or being, or a faith to which all else is subordinate or upon which all else is dependent.[26]

To enable the courts and local draft boards to determine whether the individual claim falls within the provisions of section 6(j),[27] the Supreme Court adopted a new test: "Does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for the exemption?"[28] In applying this test, the courts are permitted to inquire only into the sincerity with which the individual's belief is held and, from the objective facts, to determine whether these beliefs are, in the individual's own scheme of things, religious. No basis for the religious doctrines expressed by the claimant is required nor are beliefs to be rejected because they are incomprehensible.[29]

The decision of the Court in *Seeger* effectively adds new scope to the conscientious objector exemption. As a result prior court decisions[30] requiring that a conscientious objector profess a belief in an orthodox Supreme Being are nullified. The new test obviates much of the inquiry into the actual substance of the claimant's belief since the claimant's own statement that his belief is religious is to be given great weight.[31]

Perhaps of more importance to future claimants than the new test itself is the effect of the following language used by the Court when construing the statute:

> We have construed the statutory definition broadly and it follows that any exception to it must be interpreted narrowly. The use by Congress of the words "merely personal" seems to us to restrict

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[25] 62 Stat. 609, as amended, 50 U.S.C. APP. § 456(j) (1964).

[26] United States v. Seeger, 380 U.S. 163, 176 (1965).

[27] 1948 Act § 6(j), 62 Stat. 609, as amended, 50 U.S.C. APP. § 456(j) (1964).

[28] United States v. Seeger, 380 U.S. 163, 184 (1965).

[29] *Id.* at 185.

[30] See cases cited note 14 *supra.*

[31] United States v. Seeger, 380 U.S. 163, 184 (1965).

> the exception to a moral code which is not only personal but which is the sole basis for the registrant's belief and is in no way related to a Supreme Being.[32]

It would seem that as long as a belief was held with sincerity, and the believer considered it religious, he would be entitled to the exemption even though he also held strong political, sociological, or philosophical beliefs forbidding his participation in combat or war.[33]

The *Seeger* decision is the most recent development in a long line of statutes and cases which have tended to expand the conscientious objector exemption from one strictly limited in application to one based upon a broad and liberal concept of religion. The *Seeger* decision seems to indicate a trend toward the position taken by the American Civil Liberties Union during the hearings[34] on the 1940 act to the effect that the exemption should apply to any individual conscientiously opposed to participation in war irrespective of any religious basis for the objection, with sincerity being the only requirement to be met by the claimant.

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[32] *Id.* at 186.

[33] An example of this observation may be found in Fleming v. United States, 344 F.2d 912 (10th Cir. 1965), which was decided after *Seeger*. The court stated:

> The entire record clearly shows that his beliefs are, in part at least, based upon religious convictions. It may be true that appellant has been influenced, in the words of the hearing examiner "* * * more by sociological and philosophical views than by religious beliefs or the dictates of a diety." But, it is also clear that he has been influenced by religious training and belief. Therefore, Fleming comes clearly within the definition of a "conscientious objector" as defined by the Supreme Court. *Id.* at 916.

[34] *Hearings on H.R. 10132 Before the House Committee on Military Affairs*, 76th Cong., 3d Sess. 184, 189-91 (1940).