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May 30, 2012: Seeger—an Extraordinary Case

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In one of these contexts I am using as a model the Supreme Court's Vietnam Era Draft cases to illustrate a new way for Americans today to think about belief and nonbelief. The title of one of the pieces I am working on is "We Are All Religious Now" because of the extremely broad way that the Supreme Court understood religion in these cases.

Thus I have had an occasion to revisit three remarkable cases: US v Seeger (1965), Welsh v US (1970) and Gillette v US (1971). In terms of religion, some would add Wisconsin v Yoder in 1972, but that was not a draft case, so I will leave it out for now.

Seeger is the most thorough exploration by the Supreme Court of an important realm of learning outside law that I can remember. The context of the case is three claimants of conscientious objector status during the Vietnam era draft: Daniel Seeger, Arno Jakobson, and Forest Peter.

Congress had broadened the exemption statute to include "persons who by reason of their religious training and belief are conscientiously opposed to participation in war in any form." Religious training and belief were defined in the Act "as an individual's belief in a relation to a Supreme Being, involving duties superior to those arising from any human relation, but (not including) essentially political, sociological or philosophical views or a merely personal moral code."

The three claimants challenged the constitutionality of this definition as excluding the nonbeliever and some religious believers, but Peter and Jakobson also claimed that their beliefs met the statutory definition. The Court held in a unanimous opinion by Justice Clark, but one that Justice Harlin later repudiated (Welsh), that all three claimants met the statutory definition, thus avoiding the constitutional question. By using the term Supreme Being rather than God, Congress had intended "to embrace all religions." And the proper test of religion "is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption."

As became clear later in the opinion, the reason the Justices felt they could not distinguish between traditional theism and nontheism is the broad understanding that religious thinking applies to the question of God. Justice Clark concluded that God does not just mean the orthodox God, but "the broader concept of a power or being or faith, to which all else is subordinate or upon which all else is ultimately dependent." And he seemed to think of religion as "dealing with the fundamental questions of man's predicament in life."

This broad approach "embraces the ever-broadening understanding of the modern religious community". Clark then quoted the theologian Paul Tillich, Bishop John Robinson, Vatican II and perhaps most revealingly David Muzzey, "a leader in the Ethical Culture Movement." For Muzzey, everybody except the comparatively few avowed atheists believes in some kind of God. In a similar tone, the opinion quoted Tillich as referring to the God above the God of theism, "the seriousness of that doubt in which meaning within meaningless is affirmed."

Under this understanding of existence, who is not religious and who would not want to be religious?