uting wealth differ in principle from mere tyrannical expropriation? And if there is a theoretical distinction, is it practically significant?

But Stack’s strongest and most interesting line of analysis is that, insofar as “economic humanism” rests on government coercion, it is not Christian charity. I mostly agree, but I wonder whether or not the application of charity to politics does not make some dilution of the Christian virtue of charity unavoidable. His criticism would have been more persuasive had he addressed this possibility.

I have a personal affection for this book which stems from it being put into my hands my Senior year in high school by Sister Mary Francesca, B. V. M. Her instructions were to give a report on it to the class. Evidently Sister saw something in me which this book might cultivate. It was the first serious, reflective book on America I ever read. And it may have helped arm me against the cynical and hostile view of America which would shortly come to predominate in social theory and commentary. In the succeeding forty years, thirty-five of which have been spent studying and teaching political philosophy and American political thought, my gratitude to her has only increased, though I now see that Maritain’s thought about the nature of America is less instructive than Tocqueville’s.

In Sincerity We Trust?:
The Supreme Court on Freedom of Conscience
-by Robert J. Phillips

This paper examines the United States Supreme Court’s decisions in three cases—U.S. v. Seeger, Welsh v. U.S. and Gillette v. U.S—which involved conscientious objectors (COs) to war. While these cases are undoubtedly familiar to both students of religion and politics and/or constitutional law, my reason for examining them is not. That is, my concern is not with whether the Court has rightly or wrongly interpreted the First Amendment religion clauses in these cases, nor is it to argue that the Court (or Congress) should (or should not) heed the request made by the U.S. Bishops, among others, to extend the exemption from military service to include those whose conscientious objection is limited to a particular war rather than all wars. Instead, my concern is with the understanding of conscience promulgated by the Court in these cases. While these cases and the issue of conscientious objection to military service might appear to be a matter of little concern for political scientists, I hope to prove that they are by drawing out the political implications of the Supreme Court’s understanding of conscience, and considering whether or not this understanding works to solidify or undermine the protection for freedom of conscience.
I

Seeger v. United States (1965)

The controlling legislation in this case was Section 6(j) of the Selective Service Act of 1948, which stated that a CO exemption would be granted to all who were opposed to all wars on the basis of “religious training and belief.” This phrase was defined to mean “an individual’s belief in a Supreme Being involving duties superior to those arising from any human relation, [but not including] essentially political or sociological or philosophical views, or a merely personal moral code.” At a minimum, this statute understands conscience as both particular to religion and as a faculty which responds to an externally imposed command. If it did not, there would be no need for the prohibition against “merely personal moral codes.”

While Seeger maintained that his CO was “religious,” he preferred to leave it open as to whether or not he believed in a Supreme Being. He stressed, however, that his “skepticism or disbelief in the existence of God” should not be mistaken for a “lack of faith in anything whatsoever.” Indeed, he held a “belief in and a devotion to goodness and virtue for their own sakes and a religious faith in a purely ethical creed.” While the local draft board found Seeger’s beliefs were insufficiently religious to qualify for a CO exemption, the Court, in a unanimous decision, disagreed.

The test to determine whether or not one qualifies for a CO exemption, according to the Court, is whether the registrant possesses a “sincere and meaningful belief which occupies . . . a place parallel to that filled by the God of those admittedly qualifying for the exemption.” Given this standard, a draft board’s task is to determine whether “the beliefs possessed by a registrant are sincerely held and whether they are, in his own scheme of things, religious.” What a draft board may not do is try and determine the truth or falsity of the registrant’s beliefs. Drawing upon Douglas’s opinion in U.S. v. Ballard (1944) the Court stated that “Men may believe what they cannot prove. They may not be put to the proof of their doctrines and beliefs.”

But if the registrant can decide for himself whether or not his beliefs are religious, how can the board distinguish between beliefs which arise from “religious training and belief” and those which are a “merely personal moral code”? On the one hand, the Court maintained that no one else can distinguish between the two beliefs. That is, if the registrant claims that it is a religious belief, then it cannot, by definition, be a “merely personal moral code.” However, the Court also stated that “‘merely personal’ seems to us to restrict the exemption 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 connected to a Supreme Being.” While this might lead some to believe that the Court had retained the identification of conscience with a command which is externally imposed, their belief is quickly disposed of in the next paragraph. Here, the Court maintained that it is, in practice, impossible to determine whether or not a set of beliefs is internally or externally imposed and besides, Congress “intended no such distinction.”
Welsh v. United States (1970)

Welsh’s application for CO status was originally denied because the draft board claimed it was unable to find “any religious basis for the registrant’s beliefs, opinions and convictions.” In a 5-3 decision, the U.S. Supreme Court held that Welsh was eligible for an exemption under the newly revised Selective Service Act.

The U.S. government advanced a pair of arguments to distinguish Welsh from Seeger. First, it argued that Welsh insisted that his CO was not based on his religious beliefs. In addition to deleting the phrase “my religious training and” from his application for CO status, Welsh explicitly stated that his beliefs were the product of his reading “in the fields of history and sociology.” The Justices rejected this argument because “it places an undue emphasis upon the registrant’s interpretation of his own beliefs.” But this patently contradicts the Seeger argument that only the registrant can interpret his beliefs as to whether or not they are “religious” as distinguished from “merely personal.” The Court tried to rescue itself by noting that a registrant who thinks his beliefs are not religious may simply be unaware of the broad meaning given to the word by the Court. It seems that no one but the registrant can interpret his beliefs—except the Court. Moreover, what is “religious” for purposes of CO status is decisively defined by the Court not the registrant.

The second argument advanced by the government to distinguish Welsh from Seeger was that the former’s views are “essentially political, sociological or philosophical or a merely personal moral code.” While the Court admitted that Welsh’s CO “is undeniably based in part on his perception of world politics,” the Court majority argued that Section 6(j) “was not meant to exclude those who hold strong beliefs about our domestic or foreign affairs or even those whose conscientious objection to participation in all wars is founded to a substantial extent upon considerations of public policy.” However, if views based “substantially” upon policy arguments do not disqualify a person for an exemption, what does? The Court maintained that the statute only bars “those whose beliefs are not deeply held,” that is, not sincere enough, and “those whose objection to war does not rest at all upon moral, religious or ethical principle but instead rests solely upon considerations of policy, pragmatism or expediency.”

Analysis of Seeger and Welsh

In addition to making it easier for more individuals to qualify for a CO exemption, Welsh in particular would also appear to make CO more relevant to political life. It does this by remedying an alleged defect of the “traditional” understanding of CO as embodied in the Selective Service Act of 1948. That defect was that the rigid distinction between religious and political objections allowed the government to ignore the implicit political criticisms embodied in the religious CO’s position. Welsh appears to change this because now the
registrant is able to object to government policy on essentially policy grounds. However, the Court’s emphasis upon sincerity works to prevent the CO from making a reasoned contribution to the policy debate. That is, by denying that COs must give reasons for their objections to war, the Court encourages an “emotivist” brand of politics. Something similar to this political emotivism can be seen in the sphere of religion in Patrick McNamara’s interviews with mostly young Catholics who dissent from Church teachings.

Finally, the Court’s emphasis upon sincerity ensures the political marginalization of the CO. That is, while objecting to service in the military for reasons of conscience is an act carried out by a single individual; for those who believe it is required by God’s law, it also calls out for imitation. This “classical” form of CO is not simply saying: “This is what I think is right.” Instead, through words and deed, it also tells others “This is what I think you should do as well.” But the Court’s new form of conscience as sincerity, deprives COs of conveying this message because, in the Court’s view, the sincerity of the non-CO must be considered as genuine as that of the CO; legally, there is no other standard.

However, even if the above criticisms are accepted without reservation, many might maintain that the Court’s decisions were both necessary and beneficial. That is, since many Americans no longer believe in the Biblical God, it was necessary to formulate an understanding which does not rely upon this belief. By equating conscience with sincerity, the Court found a way to protect the conscience of both “non-traditional” believers (as well as unbelievers) while simultaneously doing nothing to harm the position of those who steadfastly believe in the God of the Bible. Thus, Seeger and Welsh should be considered a win-win proposition for all of those who believe conscience should not be violated. While these decisions did make it possible for many more individuals to become eligible for a CO exemption, it remains to be seen whether or not understanding conscience as sincerity works to strengthen or undermine freedom of conscience. Gillette v. United States appears to suggest the latter.

IV

Gillette v. United States (1971)

As Kent Greenawalt notes, many legal commentators believed that the above cases paved the way for the Court to extend the exemption to those who conscientiously objected only to a particular war rather than all wars. The Court, however, refused to take this step when given the opportunity in Gillette.

Gillette maintained that while he would willingly serve in a war of national defense or peace-keeping mission sponsored by the UN, he would not take part in the Vietnam War because he found it unjust. His evaluation of the war was based upon a “humanist approach to religion.” The Court did not question whether Gillette’s position was sufficiently religious, nor did the Justices raise the question of the sincerity of his beliefs. What then were the grounds for not granting Gillette an exemption?
The Court first noted that Section 6(j) can only be read as granting CO exemptions to those who are opposed to all wars. Moreover, the Court stated that “valid neutral reasons exist for limiting the exemption to objectors to all war.” In addition to the government’s obvious need for manpower, the conscription laws are designed to provide a “fair system for determining ‘who serves when not all serve.’” Since objections to a particular war are “intrinsically a claim of uncertain dimensions,” it becomes much more likely that the draft law will be administered in an “erratic or even discriminatory” manner. But why are such objections “intrinsically a claim of uncertain dimensions?”

The Court claimed that a “virtually limitless variety of beliefs are subsumable under the rubric ‘objection to a particular war.’” To begin with, it is difficult to separate those objections which are solely political from those which have “roots in conscience and religion.” While this difficulty alone would make it hard to determine who should be granted an exemption, the matter is further complicated by the fact that “‘objection to a particular war’ is by its nature changeable and subject to nullification by changing events.” Finally, since a multitude of factors may determine one’s opinion of the justice of the war, all such opinions must be considered “subjective.” For instance, “an objector’s claim to exemption might be based upon some feature of a current conflict that some would regard as incidental or might be predicated on a view of the facts that most would regard as incidental or might be predicated on a view of the facts that most would regard as mistaken.”

The Court’s emphasis here on the particular, contingent and prudential is quite reasonable. However, they are precisely the kind of things which Seeger and Welsh said that neither the draft board nor the Court could Constitutionally consider. Thus, Gillette reads as if the Court threw out Seeger and Welsh. However, the problem runs much deeper than the Court’s failure to take its own previous reasoning seriously.

Here is the deeper problem. All governments are faced with the same three options regarding COs. They may accept (or reject) all such claims or they may accept some and reject others. In Gillette, the Court makes a number of reasonable arguments as to why the government should reject the claims of a conscientious selective objectors (CSO). While the short-term problem for the individual CSO is that he must either report for military duty or to jail, the longer-term problem for not only this particular CSO, but all who are similarly situated in the future, is that the sincere CSO has no place to “appeal” this decision. Put simply, in Gillette sincerity has collided head-on with military necessity and only the latter is left standing. By contrast, if conscience is rooted theoretically (as it clearly was historically) in a belief in the Biblical God, the CSO can appeal to a higher authority and standard. Such an appeal not only provides a transcendent basis by which to judge the government’s decision, but a lost CSO claim is not simply lost. A transcendent standard keeps alive the possibility of an argument because CSO who bases his claim on the Natural Law can also provide reasons for his position. That possibility in turn keeps alive the hope, however slim, of an eventual political and legal victory when his fellow citizens discern the justice of his position.
V

Conclusion

I hope to have encouraged serious consideration of whether freedom of conscience can be sufficiently protected legally on grounds other than belief in the Biblical God. This question is outside the purview of secular political science partly because it assumes the sufficiency of secular grounds for legal rights. And, for some, omitting God increases human freedom. I hope to have raised doubts as to the adequacy of this secular world view, at least regarding freedom of conscience.

Comments on Phillips on Conscientious Objection

-by Gary D. Glenn

A right to exemption from military service for those “conscientiously scrupulous of bearing arms” was one of the proposed amendments to the Constitution submitted to the First Congress by James Madison as part of what became known as “The Bill of Rights.” This amendment failed but apparently because such exemptions, while permissible, should be matters of legislative grace not constitutional right. The framers wanted to “promote religion by encouraging legislatures to write exemption for religious objectors to otherwise valid laws.” And each time Congress instituted conscription (during the Civil War, the two World Wars, the Korean and Vietnam Wars), it included the exemption while requiring such evidence as membership in a recognized “peace church” to show that the registrant believed that God prohibited his participation in all war. In this way, whether as a matter of right or of grace, Congress accommodated the view that obligations to the state should give way to obligations to God.

Two practical conditions permitted this accommodation, without interfering with the capacity to raise an army 1) Few citizens were religious pacifists. 2) The vast majority of non-pacifist Americans were willing to so accommodate their fellow citizens. This willingness goes beyond mere toleration which would have required, as Locke and Jefferson said, no more than allowing pacifists to worship freely provided that nothing in their worship violated the civil law applicable to all. Mere toleration did not require exemption from civil duties required of others. Such exemption, then, seems to imply a kind of positive respect and even esteem for the higher fidelity of their pacifist brethren to the morality of the Sermon on the Mount.

Originally, then, the American statutory right of conscientious objection presumed belief in God duties to whom took legal priority over duties owed to government. This view was articulated by Justice Hughes in U.S. v. Macintosh (1931).