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Belief in God and Transcendental Meditation: The Problem of Defining Religion in the First Amendment

I. Introduction

What is the meaning of the word "religion" in the first amendment?¹ In particular, how far does the constitutional definition of religion extend beyond theism?² Whatever that definition may be, should it be the same for both the free exercise and establishment clauses? Recently, the Federal District Court for New Jersey³ and the Court of Appeals for the Third Circuit⁴ struggled with these questions in *Malnak v. Yogi*,⁵ which involved the teaching of the Science of Creative Intelligence - Transcendental Meditation (SCI/TM) in New Jersey public high schools. Even though SCI/TM involves no belief in a Supreme Being, both courts found it to be a religion for first amendment purposes, and held that an establishment of religion had occurred.

This note suggests a possible definition of religion by focusing on Judge Adams's concurring opinion to the court of appeals *per curiam* affirmance in *Malnak*.⁶ Judge Adams's opinion sets forth guidelines which offer a coherent approach to defining religion that is in harmony with society's changing experience of religion and with the underlying purposes and values of the first amendment. These guidelines not only help to clarify recent Supreme Court attempts to define religion, but also suggest that, despite arguments to the contrary, a unitary definition of religion

1. U.S. CONST. amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." *Id.*

2. Theism is the "belief in the existence of one God who is viewed as the creative source of man, the world, and value and who transcends and yet is imminent in the world." WEBSTER'S THIRD NEW INT'L DICTIONARY 203 (unabridged ed. 1971).

3. *Malnak v. Yogi*, 440 F. Supp. 1284 (D.N.J. 1977), *aff'd per curiam*, 592 F.2d 197 (3d Cir. 1979).

4. *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979).

5. *Id.*

6. *Id.*

for the two religion clauses is both possible and necessary.

Before analyzing Judge Adams's opinion, this note first reviews previous cases and past attempts by the courts to define religion in a manner that accounts for the growth of non-theistic beliefs. Second, it looks at how the district court's opinion and the court of appeals' *per curiam* opinion in *Malnak* fail to move beyond the vague standards established by the previous cases. Finally, in the context of this review of the previous cases and the other opinions of *Malnak*, it analyzes Judge Adams's concurring opinion and argues for a unitary definition of religion.

II. Belief in God and the Struggle to Define Religion

Traditionally, religion in the United States was thought to involve some form of belief in a Supreme Being. James Madison expressed this view in his famous *Memorial and Remonstrance Against Religious Assessments*⁷ when he defined religion as "the duty we owe our Creator and the Manner of discharging it."⁸ Numerous United States Supreme Court cases⁹ have echoed the same sentiment. In 1890, in *Davis v. Beason*,¹⁰ the Supreme Court stated that "'religion' has reference to one's views of his relationship to his Creator, and the obligations they impose of reverence for his being and character, and of obedience to his will."¹¹ As recently as 1952, the Court said, "[w]e are a religious people whose institutions presuppose a Supreme Being."¹²

In more recent years, however, there has been a move away from this uniform viewpoint. Certain theologians and philosophers of some of the established theistic religions have become dissatisfied with traditional concepts of God, and are now mov-

7. Madison, *A Memorial and Remonstrance Against Religious Assessments*, in *THE COMPLETE MADISON, HIS BASIC WRITINGS* 299 (S. Padover ed. 1973). The text of the *Memorial* is also reproduced in the Appendix to Justice Rutledge's dissenting opinion in *Everson v. Board of Education*, 330 U.S. 1, 63 (1947) (appendix to Justice Rutledge's dissenting opinion).

8. *Id.* at 299.

9. See, e.g., *McGowan v. Maryland*, 366 U.S. 420 (1961); *Zorach v. Caluson*, 343 U.S. 306 (1952); *Davis v. Beason*, 133 U.S. 333 (1890).

10. 133 U.S. 333 (1890).

11. *Id.* at 342.

12. *Zorach v. Caluson*, 343 U.S. 306, 313 (1952); also quoted in *McGowan v. Maryland*, 366 U.S. 420, 563 (1961) (Douglas, J., dissenting).

ing towards new, non-theistic concepts.¹³ Interest has also grown in several of the traditional Eastern religions¹⁴ which contain beliefs that may appear unorthodox to Westerners. Due to these developments, the traditional conception of God as a Supreme Being and Creator of the universe has been challenged,¹⁵ and with this challenge has come a disturbance in the traditional legal view of what constitutes a religion.¹⁶

This changing perception and experience of religion has been acknowledged in several recent court decisions. In 1943, in *United States v. Kauten*,¹⁷ Judge Augustus Hand formulated a new definition of religion while interpreting the conscientious objector exemption of the Selective Service Act of 1940. Hand stated:

[r]eligious belief arises from a sense of inadequacy of reason as a means of relating the individual to his fellow-men and to his universe. . . . Conscientious objection . . . may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse.¹⁸

This definition hinges not on the content of the belief, but on the central function it serves in the life of the individual of forming a bridge between his innermost being - be it his conscience or his God - and the rest of the world. Belief in a Supreme Being, according to this definition, is not necessary to make a belief religious; it is only necessary that the belief serve the appropriate central function in the individual's life.

Eighteen years after *Kauten*, in *Torcaso v. Watkins*,¹⁹ the Supreme Court defined religion in the first amendment to en-

13. See Comment, *Towards A Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1068-69 (1978) [hereinafter cited as Comment].

14. *Id.* at 1069 n.80; *Malnak v. Yogi*, 592 F.2d at 207 (Adams, J., concurring).

15. See Comment, *supra* note 13, at 1068-72.

16. See *Malnak v. Yogi*, 592 F.2d 197 (Adams, J., concurring); *Welsh v. United States*, 398 U.S. 333 (1970); *United States v. Seeger*, 380 U.S. 163 (1965).

17. 133 F.2d 703 (2d Cir. 1943).

18. *Id.* at 708. One commentator has summarized this definition as follows: "[R]eligion is a belief in a final reality, based not entirely on reason, relating the individual to his fellow man and the universe, and finding expression in veneration and in an inward mentor called conscience." Boyan, *Defining Religion in Operational and Institutional Terms*, 116 U. PA. L. REV. 479, 485 (1968) [hereinafter cited as Boyan].

19. 367 U.S. 488 (1961).

compass religious concepts that do not include a belief in God.²⁰ *Torcaso* involved a provision of the Maryland Constitution that required certain state officials to declare a belief in God as a prerequisite for taking office. The Court struck down the provision on both free exercise and establishment grounds, stating that the state and federal governments cannot "aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."²¹ In an often cited footnote, the Court added that "[a]mong religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."²² Thus, the Court recognized that non-theistic beliefs can be characterized as religious for purposes of the first amendment. Although the Court in *Torcaso* had begun to move away from a content based definition of religion, and particularly away from a theistic definition, it did not give any guidelines to determine which non-theistic concepts might fall within the bounds of the first amendment's religion clauses.

In *Welsh v. United States*²³ and *United States v. Seeger*,²⁴ the Supreme Court was forced to consider the problem again in the context of defining what constituted "religious training and belief" for section 6(j) of the Universal Military Training and Service Act.²⁵ Both cases involved conscientious objectors who sought exemption from military service, but who refused to af-

20. *Id.* at 495 n.11.

21. *Id.* at 495.

22. *Id.* at 495 n.11.

23. 398 U.S. 333 (1970).

24. 380 U.S. 163 (1965).

25. Universal Military Training and Service Act § 6(j), ch. 144, 65 Stat. 75 (1951) (codified as amended at 50 U.S.C. § 456(j) (1976)). The Act read in part as follows: Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war of 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 relationship, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

Id. § 6(j). The Supreme Court in *Welsh v. United States*, 398 U.S. 333, 336 n. 2 (1970), pointed out that the reference to a "belief in a relation to a Supreme Being" was deleted following the decision in *Seeger*.

firm a belief in a Supreme Being, as required by the Act. Although neither decision was constitutionally based, it has been argued that the Court's approach as seen in *Seeger* and *Welsh* is indicative of the approach the Court would take in formulating a constitutional definition of religion.²⁶

The Supreme Court in *Seeger* acknowledged "the ever-broadening understanding of the modern religious community" as to the concept of God,²⁷ and cited Protestant theologian Paul Tillich's concept that the source of meaning and certitude in life "is not the God of traditional theism but the 'God above God', the power of being, which works through those who have no name for it, not even the name of God.'" ²⁸ Tillich described God as the "ground of our being" and spoke of how "the God of both religious and theological language disappears."²⁹ In light of these and other progressive views of the nature of belief in God,³⁰ the Court defined religious belief broadly to include a sincere belief "based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent."³¹ To be religious, a belief need only involve an individual's "ultimate concern."³²

The *Seeger* Court implicitly deleted from section 6(j) the requirement that a registrant's objection to war be based on a belief in a Supreme Being, reading the statute only to require a belief that "occupies in the life of its possessor a place parallel to that filled by . . . God" in traditionally religious persons.³³ The Court in *Welsh* developed this concept further, stating: "The central consideration in determining whether the registrant's be-

26. Comment, *supra* note 13, at 1064. See *Welsh v. United States*, 398 U.S. at 356 (Harlan, J., concurring). In discussing this point, the district court in *Malnak v. Yogi*, 440 F. Supp. at 1314, pointed out that in the realm of statutory construction, the Supreme Court "is far more circumscribed in defining terms than it is in the area of constitutional interpretation." The court of appeals in *Malnak* made the same point. *Malnak v. Yogi*, 592 F.2d at 204-05 (Adams, J., concurring).

27. *Id.* at 180.

28. *Id.* (quoting P. TILlich, II SYSTEMATIC THEOLOGY 12 (1957)).

29. *Id.*

30. See *United States v. Seeger*, 380 U.S. at 181-83.

31. *Id.* at 176.

32. P. TILlich, DYNAMICS OF FAITH 1-2 (1958).

33. *United States v. Seeger*, 380 U.S. at 176. The Court enthusiastically applied this test in *Welsh*, and even extended it to include beliefs of only moral or ethical nature. *Welsh v. United States*, 398 U.S. 333, 340 (1970).

liefs are religious is whether these beliefs play the role of a religion and function as a religion in the registrant's life."³⁴ This approach to testing whether a belief is religious is reminiscent of Judge Hand's approach in *United States v. Kauten*.³⁵ Both approaches stress the function and importance of the belief in the adherent's life; but whereas the Supreme Court's approach relies more heavily on a comparison to traditional theistic beliefs, Judge Hand's approach begins to consider the manner in which the belief actually operates in relating the individual to the larger universe and orienting him within it.

Both approaches suffer from the same problem, however: they are vague and rely heavily on uncertain analogies to traditional religions. One commentator has written that the Supreme Court's approach "is little more than a point of departure and gives minimum guidance to courts in determining what beliefs are fundamental enough to be taken seriously as matters of ultimate concern."³⁶ Although the Supreme Court has acknowledged the deficiency of a purely theistic definition of religion and religious belief,³⁷ it has not supplied a clear, new definition to replace the old. Rather than embark on that unsure voyage, the Court apparently has been content to leave the lower courts to draw open-ended analogies to the older and more familiar religious traditions.

III. *Malnak v. Yogi*

A. The Facts

*Malnak v. Yogi*³⁸ involved an elective course on the Science of Creative Intelligence - Transcendental Meditation (SCI/TM) offered in five New Jersey public high schools during the 1975-76 school year.³⁹ The class instructors were employees of the World Plan Executive Council - United States,⁴⁰ a non-profit or-

34. *Welsh v. United States*, 398 U.S. at 339.

35. 133 F.2d 703 (2d Cir. 1943). See *supra* notes 17-18 and accompanying text.

36. Gianella, *Religious Liberty, Nonestablishment, and Doctrinal Development, Part I: The Religious Liberty Guarantees*, 80 HARV. L. REV. 1381, 1425-26 (1967) [hereinafter cited as Gianella].

37. See *supra* notes 19-34 and accompanying text.

38. 440 F. Supp. 1284 (D.N.J. 1977), *aff'd per curiam*, 592 F.2d 197 (3d Cir. 1979).

39. *Malnak v. Yogi*, 592 F.2d at 198.

40. *Malnak v. Yogi*, 440 F. Supp. at 1289.

ganization dedicated to teaching SCI/TM throughout the country.⁴¹ None of the instructors were paid by the respective school boards involved nor were they certified by the State Board of Examiners.⁴² The program, however, received \$40,000 from the Department of Health, Education and Welfare and used school facilities.⁴³

Classes met four or five times a week,⁴⁴ but only ten to fifteen minutes of class time was devoted to teaching⁴⁵ the techniques of transcendental meditation.⁴⁶ The rest of each class was spent studying the nature and characteristics of the "field of pure creative intelligence,"⁴⁷ which is the central principle of the Science of Creative Intelligence and which supplies the theoretical underpinnings of TM.⁴⁸ One textbook, which described in detail the qualities of creative intelligence, was used in all the courses.⁴⁹ Each student was required to attend a ceremony called a Puja, at which the student was given his mantra.⁵⁰ The Puja was held privately, away from school property and on Sundays. The ceremony was conducted in front of a picture of Guru Dev, the deceased teacher of Maharishi Mehesh Yogi, the founder of SCI/TM. Before giving the student his mantra, the instructor sang a chant, in Sanskrit, devoted to the memory of Guru Dev.⁵¹

Twelve plaintiffs brought suit to enjoin the teaching of SCI/TM on the grounds that it violated the establishment clauses of

41. *Id.* at 1287.

42. *Id.* at 1289.

43. See Note, *T.M. and the Meaning of Religion Under the Establishment Clause*, 62 MINN. L. REV. 887, 888 n.7 (1978)[hereinafter cited as Note].

44. *Malnak v. Yogi*, 592 F.2d at 198.

45. *Malnak v. Yogi*, 440 F. Supp. at 1323.

46. Transcendental Meditation will hereinafter be referred to as TM. TM was introduced into the United States in 1959 by Maharishi Mahesh Yogi. It is a technique for reducing stress and expanding conscious awareness through silent repetition of a Sanskrit word known as a "mantra." Through the meditation process, the mind allegedly reaches the source of all thought, the so-called "field of pure creative intelligence." See Note, *Malnak v. Yogi*, 10 SETON HALL L. REV. 614, nn. 1 and 7 (1980) [hereinafter cited as Note].

47. *Malnak v. Yogi*, 440 F. Supp. 1284, 1323 (D.N.J. 1977).

48. *Id.*

49. *Id.*

50. *Id.* at 1305-09. See *supra* note 46.

51. *Id.*

both the federal and the New Jersey constitutions.⁵² Although the defendants asserted that SCI/TM was not religious,⁵³ Judge Meanor of the district court enjoined further teaching of SCI/TM in New Jersey public high schools.⁵⁴ In a lengthy opinion, he held that the teaching of SCI/TM was a religious activity that violated the establishment clause of the first amendment.⁵⁵ The Court of Appeals for the Third Circuit affirmed in a *per curiam* opinion that relied heavily on Judge Meanor's analysis.⁵⁶

B. *The District Court's Opinion*

The district court addressed two issues. First, and most important for this discussion, was whether SCI/TM should be considered religious for purposes of the establishment clause, even though its proponents asserted it was secular in nature. Second, was whether there had been an impermissible establishment of religion, provided that SCI/TM was found to be religious.

With respect to SCI/TM's religious character, the court said it was "unnecessary to improvise an unprecedented definition of religion under the First Amendment" because the case was governed "by the teachings of prior Supreme Court decisions."⁵⁷ Although admitting that SCI/TM constituted a form of religion "unknown in prior decisional law,"⁵⁸ the court nonetheless analogized it to beliefs or practices described as religious under landmark establishment clause cases.⁵⁹ In particular, the court found the concept of the "field of creative intelligence," as described in the textbook, to be analogous to the traditional concept of God,⁶⁰ and the chant sung at the Puja to be analogous to

52. *Id.* at 1284. The New Jersey constitution states that "[t]here shall be no establishment of one religious sect in preference to another." N.J. CONST. art. I, § 4.

53. *Malnak v. Yogi*, 440 F. Supp. at 1315 (D.N.J. 1977).

54. *Id.* at 1324-27.

55. *Id.* at 1324. The claims under the New Jersey constitution were not reached. *Id.* at 1324 n.27.

56. *Malnak v. Yogi*, 592 F.2d at 198.

57. *Malnak v. Yogi*, 440 F. Supp. at 1320.

58. *Id.* at 1315.

59. *Id.* citing *Engel v. Vitale*, 370 U.S. 421 (1963); *DeSpain v. DeKalb County Community School District*, 384 F.2d 836 (7th Cir. 1967), *cert. denied*, 390 U.S. 906 (1968); *United States v. Seeger*, 380 U.S. 163 (1965); *Torcaso v. Watkins*, 367 U.S. 488 (1961).

60. *Malnak v. Yogi*, 440 F. Supp. at 1314. The court relied heavily on the following cases: *Welsh v. United States*, 398 U.S. 333 (1970); *Founding Church of Scientology v.*

prayer.⁶¹

The SCI/TM textbook described the "field of creative intelligence" as being an infinite field of life that contains "love, justice, and truth in their pure and infinite forms;"⁶² it was also described as being the "ultimate reality of everything in the universe" and the "source of all power in the universe."⁶³ Contact with this field of life through meditation is supposed to bestow "upon individuals the ability to choose between right and wrong spontaneously, without regard to moral codes and laws."⁶⁴ The court found these, and other descriptions, analogous to concepts in traditional world religions. In particular, it compared specific descriptions of the field of creative intelligence from the textbook with the following: 1) Buddhist concepts such as the "Great Self" and "Nirvana"; 2) the Hindu concept of the "Supreme Being as Truth, Knowledge, and Bliss"; 3) the Catholic concept of "God as Truth"; and 4) the Protestant concept of God as "the very ground of our being."⁶⁵ The court concluded that "the characteristics which are attributed to pure creative intelligence are parallel to characteristics which are attributed to the supreme being or ultimate reality by mankind."⁶⁶

The district court also looked carefully at an English translation of the chant recited at the Puja,⁶⁷ and found it to be an

United States, 409 F.2d 1146 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969); *United States v. Seeger*, 380 U.S. 163 (1965); *Torcaso v. Watkins*, 367 U.S. 488 (1961).

61. *Malnak v. Yogi*, 440 F. Supp. at 1323. The court relied on the following cases: *DeSpain v. DeKalb County Community School District*, 384 F.2d 836 (7th Cir. 1967), *cert. denied*, 390 U.S. 906 (1968); *Engel v. Vitale*, 370 U.S. 421 (1962).

62. *Malnak v. Yogi*, 440 F. Supp. at 1320.

63. *Id.*

64. *Id.*

65. *Id.* at 1321-22. In making these comparisons, the court relied heavily on the majority's opinion in *United States v. Seeger*, 380 U.S. 163 (1965), which detailed the Christian concepts. It also relied on Justice Douglas's concurring opinion in *Seeger* which detailed the Buddhist and Hindu concepts.

66. *Malnak v. Yogi*, 440 F. Supp. at 1323.

67. *Id.* at 1306-07. The chant read in part as follows:

White as camphor, kindness incarnate, the essence of creation garlanded with Brahman, ever dwelling in the lotus of my heart, the creative impulse of cosmic life, to That, in the form of Guru Dev I bow down. . . . The Unbounded, like the endless canopy of the sky, the omnipresent in all creation, by whom the sign of That has been revealed, to Him, to Shri Guru Dev, I bow down.

Id.

invocation of a deified human being that was a type of prayer which had been recognized as religious in several cases.⁶⁸ The court found immaterial that the chant was sung in Sanskrit and only once for each student.⁶⁹ The chant along with other aspects of the ceremony, such as offerings made to the picture of Guru Dev, combined in the eyes of the court to make the Puja a clearly religious ceremony.⁷⁰

Before the court could satisfy itself that SCI/TM was religious for first amendment purposes, however, it had to answer the defendant's argument that determinative weight should be given to their own subjective characterization of SCI/TM as not being religious. The court answered this by saying that their characterization, although relevant, could not be determinative, because beliefs "which society recognizes as religious in nature" were involved.⁷¹ After a lengthy discussion, the court concluded that the subjective standard advocated by defendants was inappropriate where aid was involved in possible violation of the establishment clause.⁷² In so arguing, the court relied heavily on *Welsh*,⁷³ where the Supreme Court found a registrant's beliefs to be religious, despite his avowal otherwise.⁷⁴

Once the district court determined that SCI/TM was religious, it quickly concluded that governmental support of SCI/TM in public schools constituted an establishment of religion. The court applied the well settled three part test described in *Committee for Public Education v. Nyquist*.⁷⁵ Under this test, a government action will constitute an establishment of religion

68. *Id.* at 1323, citing *Engel v. Vitale*, 370 U.S. 421 (1962), and *DeSpain v. DeKalb County Community School District*, 384 F.2d 836 (7th Cir. 1967), *cert. denied*, 390 U.S. 906 (1968).

69. *Id.* at 1323 n.25.

70. *Id.* at 1323.

71. *Id.* at 1320.

72. *Id.* at 1315-20.

73. *Welsh v. United States*, 398 U.S. 333 (1970). *See supra* notes 23-26, 33-37 and accompanying text.

74. *Malnak v. Yogi*, 440 F. Supp. at 1319. The defendants also argued that a narrower definition of religion should be given for the establishment clause than for the free exercise clause. In a lengthy footnote, the court upheld a unitary definition of religion for both clauses, and pointed out that the protection, application, and function of each clause differs. *Id.* at 1316 n.20.

75. 413 U.S. 756, 773 (1973); *See Stone v. Graham*, 449 U.S. 39, 40 (1980); *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

unless it 1) reflects a clearly secular purpose, 2) has a primary effect that neither advances nor inhibits religion, and 3) avoids excessive governmental entanglement with religion. Applying the first part of this test, the court held that even though the government may have had a secular purpose,⁷⁶ it had chosen inappropriate means that propagated religious beliefs.⁷⁷ Applying the second part of the test, the court held that the promulgation of the SCI religious concepts and practices "clearly had a primary effect of advancing religion and religious concepts."⁷⁸ And finally, because state and federal aid helped bring the SCI/TM courses to the public schools, the court found that there was a clearly excessive governmental entanglement in religion.⁷⁹ Thus, under the three part test the court concluded that the SCI/TM course constituted an unconstitutional establishment of religion, and granted the plaintiffs' motion for a summary judgment.⁸⁰

C. *The Per Curiam Opinion and Judge Adams's Opinion*

The court of appeals' *per curiam* opinion added little to Judge Meanor's opinion, except perhaps to offer a short and readable summary of its reasoning. Both opinions followed the traditional approach by making comparisons to prior decisions that described what were thought to be religious concepts and practices analogous to those of SCI/TM. But as Judge Adams points out, this approach ignores some of the unique facts and legal issues of this case.⁸¹ The result reached by both courts was based upon 1) cases which are factually and legally quite different from the present case, and 2) an unprecedented application of an interpretation of religion drawn from free exercise and conscientious objector cases to an establishment clause case.⁸²

76. The secular purposes were stated as follows: "to make available the alleged benefits of TM - reduced stress, and better educability and sociability." *Malnak v. Yogi*, 440 F.Supp. at 1323.

77. *Id.* at 1324. The implication of the court's analysis seems to be that the teachings of TM alone, without the overlay of SCI religious concepts and practices, might be constitutionally permissible. *Contra* Note, *supra* note 43, at 935-46.

78. *Malnak v. Yogi*, 440 F. Supp. at 1324.

79. *Id.*

80. *Id.* at 1327.

81. *Malnak v. Yogi*, 592 F.2d at 200-01 (Adams, J., concurring).

82. *Id.*

Judge Adams reasoned that the district court's opinion extended previous case law and thus required an explanation and a justification.⁸³ In the process of giving this explanation, however, Judge Adams supplied guidelines that move first amendment jurisprudence closer to a clearer definition of religion and helped to clarify the Supreme Court's vague definition found in *Seeger*⁸⁴ and *Welsh*.⁸⁵

The first section of Judge Adams's opinion reviewed existing precedent, dividing it into four categories: 1) cases dealing with the traditional theistic definition of religion; 2) the school prayer cases; 3) the conscientious objector cases, and 4) cases which suggest a new definition of religion.⁸⁶ First, because the traditional cases stressed a belief in a Supreme Being, which is lacking in SCI/TM, Judge Adams reasoned they were not dispositive.⁸⁷ Second, the so-called school prayer cases involved obviously religious activity of a traditionally theistic nature which was voluntary in form, but not in practice.⁸⁸ In contrast, the Puja was part of an elective course that was clearly voluntary.⁸⁹ The chant was in Sanskrit and neither the students nor the instructors knew the meaning of the words.⁹⁰ The defendants insisted that it was a "secular Puja" with no religious meaning; the students were apparently told this and believed it to be so.⁹¹ Thus, Judge Adams concluded that the prayer cases are factually distinguishable from the present case thereby making comparison difficult, and that, in any case, they do not address the legal question of which non-theistic beliefs should be considered religious.⁹²

In the final two categories of cases, which included *Seeger*,⁹³

83. *Id.*

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

85. *Welsh v. United States*, 398 U.S. 333 (1970). *See supra* notes 23-37 and accompanying text.

86. *Malnak v. Yogi*, 592 F.2d at 201 (Adams, J., concurring).

87. *Id.* Adams cites *Davis v. Beason*, 133 U.S. 333 (1890), and *United States v. MacIntosh*, 283 U.S. 605, 633-34 (1931) (Hughes, C.J., dissenting).

88. *Malnak v. Yogi*, 592 F.2d at 203 (Adams, J., concurring).

89. *Id.* at 203. *But see Malnak v. Yogi*, 440 F. Supp. at 1323 n.25, where Judge Meanor argues that attendance at the Puja was a mandatory part of an elective course.

90. *Malnak v. Yogi*, 592 F.2d at 203 (Adams, J., concurring).

91. *Id.*

92. *Id.*

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

Welsh,⁹⁴ and *Torcaso*,⁹⁵ Judge Adams found support for a definition of religion "broader than the Theistic formulation of the earlier Supreme Court cases."⁹⁶ In particular, he found the approach taken in *Seeger* and *Welsh*, which he called "definition by analogy," helpful, but lacking clear guidelines that could be used to avoid ad hoc adjudication.⁹⁷ Further, *Seeger* and *Welsh* were conscientious objector cases that did not deal with the establishment clause,⁹⁸ and *Torcaso*, although suggesting a non-theistic definition of religion, actually involved a traditional concept of God.⁹⁹ These cases, Judge Adams concluded, did not address the unique legal questions presented to the court in *Malnak*, and could not be relied upon without some explanation.¹⁰⁰

In an attempt to supply that explanation, Judge Adams formulated the following three guidelines to be used in analyzing a belief system with respect to its religious content: 1) does the belief system deal with ultimate concerns? 2) is it comprehensive in nature? 3) are there formal "signs" such as rituals, ceremony or a clergy, of which a court can take notice?¹⁰¹ These guidelines seem to have been distilled from previous cases,¹⁰² legal commentaries,¹⁰³ the views of theologians,¹⁰⁴ and a sensitivity to the purposes and values that support the first amendment.¹⁰⁵

The first guideline stresses that a religious belief should address fundamental questions about the nature of reality and

94. *Welsh v. United States*, 398 U.S. 333 (1970).

95. *Torcaso v. Watkins*, 367 U.S. 488 (1961).

96. *Malnak v. Yogi*, 592 F.2d at 207 (Adams, J., concurring).

97. *Id.*

98. See *supra* notes 23-26 and accompanying text.

99. See *supra* notes 19-22 and accompanying text.

100. *Malnak v. Yogi*, 592 F.2d at 207 (Adams J., concurring).

101. *Id.* at 208-09.

102. *Id.* at 208. In formulating his opinion, Judge Adams relied on *United States v. Seeger*, 380 U.S. 163 (1965), *Welsh v. United States*, 398 U.S. 333 (1970), and *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969).

103. *Id.* at 208 n.38, 41, 44. *E.g.*, Gianella, *supra* note 36; Comment, *supra* note 13; Note, *supra* note 43; Note, *Freedom of Religion and Science in Public Schools*, 87 YALE L.J. 515 (1978).

104. *Malnak v. Yogi*, 592 F.2d at 208-09 nn. 37, 42 (Adams, J., concurring). *E.g.*, P. TILLICH, DYNAMICS OF FAITH 1-2 (1958); Aquinas, *Prologue to Commentary IV of Books of Sentences*, in AN AQUINAS READER (M. Clark ed. 1972).

105. *Malnak v. Yogi*, 592 F.2d at 208 (Adams, J., concurring).

man's place in it.¹⁰⁶ This is similar to Paul Tillich's characterization of religion as involving an "ultimate concern."¹⁰⁷ Religious beliefs are those that are of the "greatest depth and utmost importance" to the individual;¹⁰⁸ they are "the sum and essence of one's basic attitudes to the fundamental problems of human existence . . ." ¹⁰⁹ and, as such, are the most "intensely personal" of beliefs to the believer.¹¹⁰

The second guideline is intimately related to the first, and clarifies its scope. The beliefs in question cannot address isolated "ultimate concerns." Rather, they must also form a comprehensive belief system that "lays claim to an ultimate and comprehensive 'truth.'" ¹¹¹ Science, for example, addresses isolated "ultimate" questions, such as the origin of life in its theories of evolution and the origin of the universe in its Big Bang theory,¹¹² but unless it ties those isolated answers into a comprehensive belief system that creates a unified world-view, Judge Adams would not consider it religious.¹¹³ It is this stress on a belief's comprehensiveness that truly distinguishes Judge Adams's approach from that in *Seeger* and *Welsh*, which merely stressed that a belief involve an ultimate concern.

The third guideline Judge Adams sets forth is whether there are "any formal, external, or surface signs that may be analogized to accepted religions."¹¹⁴ Examples of such signs are "formal services, ceremonial functions, the existence of a clergy, structure and organization, efforts at propagation, observance of

106. *Id.* Judge Adams also quotes the opinion of *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir.), *cert. denied*, 396 U.S. 906 (1969), as saying that recognized religions are characterized by "underlying theories of man's nature or his place in it . . ." *Malnak v. Yogi*, 592 F.2d at 208 (Adams, J., concurring).

107. *Malnak v. Yogi*, 592 F.2d at 208 (Adams, J., concurring) (quoting P. TILICH, *DYNAMICS OF FAITH* 1-2 (1958)). See *supra* text accompanying note 28.

108. *Malnak v. Yogi*, 592 F.2d at 208 (Adams, J., concurring).

109. *Id.* (quoting *United States v. Seeger*, 380 U.S. 163, 168 (1965)).

110. *Id.* (quoting *United States v. Seeger*, 380 U.S. 163, 184 (1965)).

111. *Id.* at 209.

112. "Thus the so-called 'Big Bang' theory . . . may be said to concern an 'ultimate' question, but it is not, by itself a 'religious' idea." *Id.* at 208.

113. *Id.* For this reason, Judge Adams concluded that science courses in public high schools do not implicate the religion clauses. For the same reason, government programs that touch on an isolated "ultimate concern" are also not religious for first amendment purposes. *Id.* at 209.

114. *Id.*

holidays”¹¹⁵ The existence of such “signs” is not determinative, however, in finding that a set of beliefs is religious. A religion can exist without rituals and structure, but when such signs do exist, they can be helpful to a court in making a determination as to religiosity.¹¹⁶ These outward signs are important because religious belief is often expressed within the social setting of a group of individuals coming together to share common experiences and ideas. And “[t]he social institutions of a religious group [can be] forceful witnesses to the solitary meaning [or existence] of its innermost faith.”¹¹⁷ Religion, although based in the final analysis on deeply held personal convictions, may have, and traditionally has had, a social side as well.

Having set forth these guidelines, Judge Adams quickly found that their application qualified SCI/TM as a religion. After a brief analysis of its beliefs and practices, he concluded that

SCI/TM . . . concerns itself with the same search for ultimate truth as other religions and seeks to offer a comprehensive and critically important answer to the questions and doubts that haunt modern man When government seeks to encourage this version of ultimate truth, and not others an establishment clause problem arises.¹¹⁸

Judge Adams then applied the three part *Nyquist* test,¹¹⁹ and, like the district court, found a violation of the establishment clause.¹²⁰

IV. Analysis: Towards a Unitary Definition of Religion

Judge Adams’s guidelines describe a type of belief which plays a unique function in an individual’s life and which the first amendment was drafted to protect from governmental interference. The historical motivation for the adoption of the religious guarantees in the first amendment was to free the citizenry from

115. *Id.*

116. *Id.* at 210.

117. Storm, *The “Path of Law” and the Via Salutis: A Naturalistic Perspective*, 26 CATH. U. L. REV. 35, 46 (1976) [hereinafter cited as Storm].

118. *Malnak v. Yogi*, 592 F.2d at 214 (Adams, J., concurring).

119. *Committee for Public Education v. Nyquist*, 413 U.S. 756, 773 (1973). See *supra* notes 75-80 and accompanying text.

120. *Malnak v. Yogi*, 592 F.2d at 214-15 (Adams, J., concurring).

the practice, transplanted from England, of having governmentally sanctioned and supported churches in the American colonies.¹²¹ This practice resulted in the persecution of dissenters, state imposed taxes for the support of the established faith, and violation of the individual's freedom of choice in religious matters.¹²² From these abuses grew the conviction that "individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group."¹²³

This respect for the idea of religious liberty was based on the traditions of Protestant dissent and humanist rationalism. These traditions

conjoined to place the individual conscience beyond the coercive power of the secular state. For the Protestant dissenter there was a Higher Power claiming his ultimate allegiance. For the rational humanist the individual was anterior to the state; in the social contract with the state he had properly reserved the right to his opinions and beliefs on matters of ultimate concern.¹²⁴

The pursuit of God or ultimate meaning and the response of the individual to deeply held convictions or some inner spiritual reservoir are internal activities made inviolable by the first amendment.¹²⁵ Religious beliefs occupy too important and fundamental a position in many individuals' lives to have the government tampering with them.¹²⁶ Judge Adams's guidelines try to iden-

121. *Everson v. Board of Education*, 330 U.S. 1, 8-16, (1947).

122. *Id.*

123. *Id.* at 11.

124. Gianella, *supra* note 36, at 1386. In his dissent in *McGowan v. Maryland*, 366 U.S. 420, 562-63 (1961) (Douglas, J., dissenting), Justice Douglas writes, "[t]he institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights, conferred by the Creator, which government must respect." *Id.*

125. See generally Comment, *supra* note 13. Quoting Dean Pound, Justice Douglas writes that our constitutional and common law "put individual conscience and individual judgment in the first place." *McGowan v. Maryland*, 366 U.S. 420, 563 (1961) (Douglas, J., dissenting) (quoting POUND, *THE SPIRIT OF THE COMMON LAW* 42 (1921)).

126. As Judge Adams recognizes, "[t]he first amendment demonstrates a specific solicitude for religion because religious beliefs are in many ways more important than other ideas. New and different ways of meeting those concerns are entitled to the same sort of treatment as the traditional forms." *Malnak v. Yogi*, 592 F.2d at 208 (Adams, J.,

tify those beliefs and pursuits which occupy that position and for which the first amendment has given its special protection.¹²⁷

Religious beliefs, however, are not merely one concern among others; they form a *Gestalt* that "provides a basic framework for perceiving, interpreting, and evaluating"¹²⁸ the world of the believer. Because religious beliefs try to address the fundamental questions of existence, they tend to occupy a central position in an adherent's life and structure his entire world-view.¹²⁹ Such comprehensiveness, which Judge Adams's second guideline stresses heavily, increases a belief's personal nature, and puts the belief firmly into that realm of the "inviolability of the individual conscience"¹³⁰ that the first amendment was designed to protect.¹³¹

concurring). See *Engel v. Vitale*, 370 U.S. 421, 432 (1963): "religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate." *Id.* (quoting Madison, *A Memorial and Remonstrance Against Religious Assessments* in *THE COMPLETE MADISON, HIS BASIC WRITINGS* 187 (S. Padover ed. 1973)).

127. It should be pointed out that a religion often may contain certain beliefs that do not always address ultimate concerns. On this point Judge Adams reasoned that if a belief system is labeled "religious" because of its comprehensiveness and ultimate nature, then its teachings on other related matters should be considered religious also. *Malnak v. Yogi*, 592 F.2d at 208 n.40 (Adams, J., concurring). He referred specifically to matters such as "diet, periods of rest, and dress" which, although not matters of ultimate concern themselves, may be "intimately connected to such concerns." *Id.*

128. Storm, *supra* note 117, at 46.

129. "By its nature, religion . . . is an aspect of human thought and action which profoundly relates the life of man to the world in which he lives." *McGowan v. Maryland*, 366 U.S. 420, 461 (1961) (Frankfurter, J., separate opinion).

130. Comment, *supra* note 13, at 1058; Gianella, *supra* note 36, at 1386.

131. "[B]ecause religious belief provides a comprehensive and potentially pervasive explanation of existence, its adoption or rejection by an individual is perhaps the most personal and significant decision he can make. Thus, choices with respect to religious belief are uniquely sensitive to governmental interference." Note, *supra* note 43, at 900.

These views of the fundamental and comprehensive nature of religion appear not only to be consistent with the purposes and values underlying the first amendment, but also with modern religious thought. For instance, Mircea Eliade has defined the heart of the religious experience to be the appearance of "the Sacred" in life, which then provides structure, meaning and pattern for one's life. Storm, *supra* note 117, at 45 (citing M. ELIADE, *THE SACRED AND THE PROFANE* 8-18 (1959)). Erich Fromm called religion a "frame of orientation and an object of devotion" which made sense of the world. Storm, *supra* note 117, at 44-45 (quoting E. FROMM, *PSYCHOANALYSIS AND RELIGION* 21-26 (1950)). Louis Monden described religion as the selection of a "fundamental option . . . with respect to the totality of existence, its meaning and its direction." Storm, *supra* note 117, at 44, (quoting L. MONDEN, *SIN, LIBERTY, AND THE LAW* 31 (1965)). And finally, there are the influential ideas of Paul Tillich, which have been discussed at length in the literature. See *supra* notes 28-29 and accompanying text, and Comment, *supra* note 13,

Judge Adams's approach to defining religion amounts to a broad characterization of religious belief. In the context of *Malnak v. Yogi*, this approach was applied to the establishment clause. Some scholars, as well as the defendants in *Malnak*, have argued that such a broad definition should only be used for the free exercise clause, and that a narrower one should be used for the establishment clause.¹³² Judge Adams, as well as the district court, believed a unitary definition to be more appropriate.¹³³

The arguments for a unitary definition are twofold. First, the actual language of the first amendment seems to require a unitary definition.¹³⁴ Second, and much more important, the purpose of the amendment demands it. Those beliefs which are protected from government interference under the free exercise clause, and which comprise a comprehensive belief system that makes claims to an ultimate truth, are the very beliefs which the establishment clause seeks to prevent the government from imposing on the public.¹³⁵ Such an imposition by the government not only violates the individual's freedom of conscience and choice,¹³⁶ but also creates a severe possibility of religiously motivated civil strife,¹³⁷ and undermines the pluralism that is thought to be necessary for a healthy and free democratic society.¹³⁸ Simply, the government is prohibited from advancing or inhibiting any specific version of ultimate truth. Therefore, if a belief qualifies as being religious under the free exercise clause because of its fundamental and comprehensive nature, then surely the government is prohibited under the establishment clause from advancing it.

The fear engendered by a unitary definition is that numer-

at 1066-67.

132. See *Malnak v. Yogi*, 440 F.Supp. at 1316 n.20 (D.N.J. 1977); *Malnak v. Yogi*, 592 F.2d 197, 210-11 (3d Cir. 1979)(Adams, J., concurring).

133. *Id.*

134. See *Malnak v. Yogi*, 592 F.2d at 211 (Adams, J., concurring); Judge Adams quotes Justice Rutledge's dissent in *Everson v. Board of Education*, 330 U.S. 1, 32 (1947) (Rutledge, J., dissenting).

135. See generally Comment, *supra* note 13, at 1058-60, for a discussion of the purposes of the establishment and free exercise clauses.

136. *Id.* at 1058-59.

137. *Id.* at 1059. See *McGowan v. Maryland*, 366 U.S. 420, 430 (1961); *Everson v. Board of Education*, 330 U.S. 1, 68-70 (1947) (Appendix to Justice Rutledge's dissenting opinion); Note, *supra* note 43.

138. See Comment, *supra* note 13, at 1058.

ous government programs will be invalidated because they might be perceived as advancing some "ultimate concern," such as a humanitarian ideal, that will be defined as religious.¹³⁹ Perhaps a strict adherence to the *Seeger/Welsh* approach to identifying religious belief in establishment clause cases¹⁴⁰ would produce this result, but no such problem would develop if the guidelines formulated by Judge Adams are applied. He writes,

[a]ll programs or positions that entangle the government with issues and problems that might be classified as "ultimate concerns" do not, because of that, become "religious" programs or positions. Only if the government favors a comprehensive belief system and advances its teaching does it establish a religion. It does not do so by endorsing isolated moral precepts or by enacting humanitarian economic programs.¹⁴¹

"Ultimate concern" is not enough; a comprehensive belief system must also be implicated. Clearly, the advancement, or inhibition, of such a belief system cannot be tolerated under the establishment clause, just as interference with such a belief system cannot be tolerated under the free exercise clause.

It should be noted that a unitary definition of religion does not mean a fusion of the two clauses. The two are still distinct, with clearly different focuses. As one commentator has written,

[w]hile a focus on the actual belief of a practice's participants is appropriate in applying a test for religion in the free exercise context, in an establishment clause case the focus is on the likelihood that the practice will promote [or inhibit] religious belief.¹⁴²

Whereas the same definition of religion might be used, there would still be different standards of application and analysis under each clause.

V. Conclusion

In light of modern religious experience, a purely theistic definition of religion for the purposes of the first amendment is

139. *Malnak v. Yogi*, 592 F.2d at 210-11 (Adams, J., concurring); See Comment, *supra* note 13, at 1084; L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 827-28 (1978).

140. See *supra* notes 23-40 and accompanying text.

141. *Malnak v. Yogi*, 592 F.2d at 212 (Adams, J., concurring).

142. Note, *supra* note 43, at 922.

no longer tenable. In several cases the Supreme Court has apparently recognized this, and has offered a vague and ad hoc approach to defining certain non-traditional and non-theistic beliefs as religious. In the conscientious objector cases of *Seeger* and *Welsh*, the Court formulated a definition-by-analogy approach which stresses that the adherent's belief be of a "fundamental" or "ultimate" nature similar to that of a belief in God in the traditional religions.¹⁴³

In *Malnak v. Yogi*,¹⁴⁴ the Federal District Court for New Jersey adopted this approach as it faced the problem of characterizing the non-theistic belief system of SCI/TM as religious for purposes of the establishment clause, although defendants claimed that their beliefs were not religious in any way. In reasoning that SCI/TM is religious, the district court and the third circuit in its *per curiam* affirmance compared SCI/TM's beliefs and practices to those found in previous cases that involved traditional religious beliefs and practices or which were not establishment clause cases.

Judge Adams, in his concurring opinion in *Malnak*,¹⁴⁵ criticized the reasoning of the district court and moved beyond it by clarifying the Supreme Court's approach with its stress on vague analogy and "ultimate concern."¹⁴⁶ Specifically, he expanded the approach to include an examination of a belief system's comprehensiveness, as well as a review of any rituals, ceremonies, or other external signs that might act as indicators of the comprehensive and fundamental nature of a belief system. This expanded and flexible approach looks carefully at the function religious beliefs play in individuals' lives, and is reminiscent of Judge Hand's definition of religion in *Kauten*.¹⁴⁷ More importantly, this stress on function brings Judge Adams's approach in line with the purpose of the first amendment to safeguard individual conscience from governmental involvement.

143. See *supra* notes 23-34 and accompanying text.

144. *Malnak v. Yogi*, 440 F. Supp. 1284 (D.N.J. 1977), *aff'd per curiam*, 592 F.2d 197 (3d Cir. 1979).

145. *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979) (Adams, J., concurring).

146. *Id.* See generally Comment, *supra* note 13; P. TILICH, DYNAMICS OF FAITH 1-2 (1958).

147. *United States v. Kauten*, 133 F.2d 703 (2d Cir. 1943). See *supra* text accompanying notes 17-18.

Finally, Judge Adams's approach allows for a unitary definition of religion in both clauses by resolving the tension between them which is created by adopting a definition of religion based only on a belief's "ultimate" nature. By adding the requirement that religious beliefs must involve more than just an isolated ultimate concern, and must, rather, implicate an entire world-view, the fear that a unitary definition might invalidate many of the government's humanitarian programs on establishment grounds is quieted. Even though any given program might involve an "ultimate concern," that concern is not generally part of a unified and comprehensive belief system. If it were, then surely it should be invalidated as a prohibited governmental advancement of religion. Under this reasoning, a unitary definition is not only possible, but required by the first amendment's purpose of keeping government from fostering one unified world-view over another.

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