

Clay, aka Ali v. United States (1971): Muhammad Ali, Precedent, and the Burger Court

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On April 28, 1967, Muhammad Ali, the reigning heavyweight champion of boxing, in an act of defiance, refused induction into the United States military on the grounds that as a conscientious objector he should be exempt from participation in the Vietnam War. Four years later, his case, Clay, aka Ali v. United States (1971) reached the U.S. Supreme Court. Ali had, by then, become a lightning rod for Americans who debated the role of the United States in the war. In Clay, the justices, gave clear definition to the “conscientious objector” legal designation. Until then, since first introduced to the High Court in 1918, decisions on religious conviction as a defense to evade the draft generally favored the federal position. Still, the designation remained loosely defined. In subsequent challenges, the justices attempted to fine-tune the legal guidelines for this claim but continued to find new loopholes and problems in the application of the law. Thus, the justices of the Warren Burger court faced not only the challenge to clarify the “conscientious objector” definition but did so in the contentious social and political environment of the Vietnam War of which the petitioner had become a symbol. The essay is an examination of not only Muhammad Ali’s defiance to the draft law, but of those cases most pertinent to his quest, as well as the intangible factors, which the justices took into consideration as they deliberated on Clay, aka Ali v. United States (1971).

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BY ALL APPEARANCES, APRIL 28, 1967, WAS NOT A NORMAL DAY at the United States Armed Forces Examining and Entrance Station on San Jacinto Street in Houston, Texas. Though protestors to the war in Vietnam stood outside to express their disenchantment with the draft, to the staff working there this did not seem out of the norm. But on this day, Muhammad Ali, the heavyweight boxing champion of the world, appeared on the sidewalk on his way for apparent induction into the military. "Don't go! Don't go!" chanted some from the gathering crowd. Other protestors shouted, "Draft beer, not Ali!" H. Rap Brown, there for the Student Nonviolent Coordinating Committee, led the cheers and exchanged the Black Power raised fist signs with the champ.¹

Ali did not disappoint his supporters. After he entered the building, he calmly followed the instructions given to him that included a physical examination and the filing of applications. By that afternoon, all that remained was for the new recruit to board a bus for formal entry into the armed services. However, when the officer in charge twice barked out the name "Cassius Clay," Ali stood still. Officials led him away and reminded the champ that should he continue to balk a federal prison sentence was his likely end. Aware of his circumstances, Ali wrote a statement: "I refuse to be inducted into the armed forces of the United States because I claim to be exempt as a minister of the religion of Islam."²

With these words, Muhammad Ali took the initial legal steps on a path that, four years later, eventually landed at the feet of the United States Supreme Court. Though he faced tremendous odds, the heavyweight champ, who was a Black Muslim, confronted the United States government in a case that involved neither race nor athletics. His claim, instead, rested entirely on the grounds that he was a conscience conscientious objector to war. As a result, Ali became a lightning rod during one of the most contentious periods in United States history. Furthermore, by the time his case reached the High Court of Warren Burger, the very meaning of the term "conscientious objector" had, by virtue of legal precedent, been redefined. Thus, although Ali was among the most recognizable blacks in the world and outspoken on issues of race and, to be sure, the most celebrated athlete of his time, at issue in *Clay, aka Ali v. U.S.* (1971) was neither race nor sports. It was about the law and how it was defined.³ At the outset of this odyssey the news of Ali's actions in Houston predictably triggered harsh reaction.

Ali's religious convictions mattered little to his critics. For instance, on the very day that he left the Armed Forces station in Houston, one flag-waving woman in his path yelled, "You're headin' straight for jail! You get down on your knees and beg forgiveness from God! My son's in Vietnam and you are no better than he is. I hope that you rot in jail."⁴ In reality, Ali, who had by then taking a public position against the Vietnam War, saw criticism against him on the rise for several months prior to his date in Houston. Thus, the protestor he encountered at the induction center was only the latest in a growing avalanche of feelings against him.

A year and a half earlier, Ali's position first appeared on the national media radar screen when he blurted to a reporter that "I ain't got no quarrel with them Vietcong."⁵ His perspective, then, was initially driven by his attitudes on race. But as he traveled throughout the country and fielded questions, he learned that the complicated nature of the war was one of much greater depth. As such, throughout 1966, he strove to understand better the many fronts of the Vietnam War and, in doing so, stiffened his political stance against

the conflict. United States policymakers, he concluded, acted duplicitously in their attempts to impart democracy in a foreign land while race relations in his own country were tenuous, at best. Moreover, as the intensity of the war and the casualty figures increased, he viewed it as being immoral. As he toured the country with this message, critics mounted their own campaign against him.

Old school sportswriters, who saw the Joe Louis prototype as the model for appropriate black behavior for athletes at the level of a heavyweight champion, led the charge. Mocking Ali by describing him only by his birth name, Red Smith wrote, "Cassius makes himself as sorry a spectacle as those unwashed punks who picket and demonstrate against the war."⁶ As popular opinion increased against him, even his own attorneys wilted over the prospects of facing federal prosecutors on the issue of the draft. "It looks like trouble, Champ," said Hayden C. Covington. "This isn't like any case I've had before. They want to make an example out of you," he warned.⁷

Covington was correct. On the very day of Ali's refusal to be inducted, even though no official charges had been levied against him, the New York Athletic Commission suspended him.⁸ Shortly thereafter, the World Boxing Association stripped him of his title. But Ali was unrepentant. In fact, only minutes after his induction episode, he recalled a sense of euphoria: "[T]his is the biggest victory of my life. I've won something that's worth whatever price I have to pay."⁹ As spring turned into summer, government attorneys mounted their case against one of the most high profile sportspersons of that era. As they prepared to take on Ali, the champ had his supporters. Writer Gerald Early, in reflection, recalls, "When he refused, I felt something greater than pride: I felt as though my honor as a black boy had been defended, my honor as a human being."¹⁰ One elderly gentleman, who came upon the champ, told him: "They can take away the television cameras, the bright lights, the money, and ban you from the ring, but they can't destroy your victory. You have taken a stand for the world and now you're the people's champion."¹¹

However, for everyone who supported Ali, there seemed to be dozens of others whose comments were less than generous. "They gotcha! They gotcha! Sonofabitch!" yelled American Legion members in Chicago when they saw Ali.¹² One dramatic episode took place on a flight to Houston when, after the plane encountered harsh turbulence, a rattled woman seated across from the champ pointed to him and yelled, "God is punishing us because he's on the plane! Forgive us, Jesus! God is punishing us! God wants you off of this plane!"¹³

Following a brief trial, on June 20, government prosecutors won their case against Ali. Bent on preventing a snowball effect, one attorney introduced race as a factor to convict the defendant. "We cannot let this man get loose, because if he gets by, all black people who want to be Muslims will get out for the same reasons," he argued.¹⁴ Convicted of draft evasion, Ali stood in front of U.S. District Judge Joe E. Ingraham and requested immediate sentencing. "I'd appreciate it if the court will do it now, give me my sentence now, instead of waiting and stalling for time," stated the twenty-five-year-old boxer.¹⁵ Ingraham complied; he fined Ali \$10,000 and sentenced him to five years in prison, the maximum for draft evasion. Covington, who had developed a reputation for having handled Jehovah's Witness cases, appealed the ruling and, thus, took the champ on yet another step towards the High Court.¹⁶

Interestingly, as the Ali case made headlines, two years earlier, a little-known college student named Daniel Seeger, who was an atheist and a pacifist, had walked out of the United States Supreme Court with a victory that later had important implications to the champ. To be sure, Muhammad Ali was not, in the Vietnam era, the only person to utilize the designation of conscientious objector as a claim to sidestep the military. According to historians Lawrence M. Baskir and William A. Strauss's study of the draft in that period, approximately 172,000 of those drafted applied for the status as conscientious objector.¹⁷ But, until 1965, the Selective Service Board had only granted latitude to those who had clearly been in affiliation with recognized religious organizations. Most specifically, Jehovah's Witnesses, Quakers, and Mennonites fell into this category.

Of course, resistance to the draft predated the 1960s. As early as 1794, upon hearing President George Washington's call for conscription to quell rebels in the Whisky Rebellion, outbreaks in resistance to that call occurred in western Pennsylvania and Maryland. Ironically, protesters, as a means to send a message to the "father" of the nation, placed poles in varied locales with signs that read, "Liberty or Death."¹⁸ Resistance to the draft took a similar turn during the Civil War as President Abraham Lincoln sought to force those loyal to the Union into service against the rebellious South. Such was the climate against the draft that, in July of 1863, resisters launched a riot in New York City that resulted in several deaths.¹⁹

However, not until 1918 did the issue of conscription reach the nation's highest court. A year earlier, with great prodding from the Woodrow Wilson administration, Congress passed the Selective Service Act; a law that compelled men aged from twenty-one to thirty to register for possible induction into the armed services. Before the war came to its conclusion, approximately 2,800,000 entered the military via the draft. There were, of course, challenges to the law. The case on behalf of Joseph F. Arver and Otto H. Wangerin was the most significant. Having refused induction and subsequently being convicted of breaking the federal ordinance in 1917, given the wartime environment and a concern of wholesale evasion of the draft, their case quickly moved into the area of the U.S. Supreme Court. Defense attorneys on their behalf largely based their case on the notion that the Selective Service Act of 1917 was tantamount to slavery. Therefore, they claimed, the entire notion of conscription was in violation of the Thirteenth Amendment. The High Court, however, saw otherwise. Basically, they saw no relationship between slavery and conscription. The justices, instead, claimed that the provisions in the constitution granted the government the authority, among other things, to declare and wage war effectively. To do so, and, by extension, waging an effective war in defense of the Union, included "the authority to draft citizens directly into the national army."²⁰

The Selective Service Act of 1917 did include provisions for pacifists and conscientious objectors. Insomuch that the history of conscientious objection had its roots in the Revolutionary War, the framers of the 1917 act took into consideration that draft boards were likely to encounter several of these claimants. Under that provision, members of a "well-recognized religious sect or organization" were, in lieu of fighting, assigned to non-combatant duties. Though on appearance this option seemed lax, in reality those who exercised this option often endured ridicule and violence from those assigned to manage them. Deemed to be cowards and unpatriotic, conscientious objectors could count on

long hours of hard labor and mistreatment. Moreover, further attempts to exempt them completely from military conscription suffered another blow when the Supreme Court, in *U.S. v. MacIntosh* (1931), held that the Constitution did not relinquish conscientious objectors from the draft.²¹

Nine years later, President Franklin D. Roosevelt signed into law the Burke-Wadsworth Act, the first peacetime draft. The act better clarified the boundaries by which conscientious objection might be adjudicated. Accordingly, anyone “who, by reason of religious training and belief, is conscientiously opposed to war in any form” could be exempt from military activity. More importantly, the provision went on further to state that civilian overseers would supervise conscientious objectors. This was a distinct improvement from the First World War when conscientious objectors endured hardships under military control.²²

By the time of the Korean War, the 1940 Burke-Wadsworth Act continued as the guideline for the draft. From 1950 to 1953, the military conscripted approximately 1.5 million men.²³ As the draft continued into the immediate postwar period, protest to its existence appeared. Anthony Sicurella, a Jehovah’s Witness, convicted for draft evasion in 1953, saw his case appear before the High Court in 1955. Claiming to be a conscientious objector, he looked to have his conviction overturned. Several of the justices, however, believed Sicurella’s claim to be duplicitous. While, for instance, he was unwilling to defend the nation, he was quite willing to fight in defense of his ministry and church. The defense, led by Hayden C. Covington, who Ali later employed, argued that the petitioner was as a “soldier of Jehovah’s appointed Commander Jesus Christ,” and, as such, “not authorized by his Commander to engage in carnal welfare of this world.”²⁴ The skeptical justices, as it turned out, did not rule on the merits of the case but found fault in the Department of Justice protocol that had initially led to the conviction. “The Department of Justice’s error of law in its report to the Appeal Board must vitiate the entire proceedings,” the Court determined.²⁵ While the Court’s decision did not set a precedent, its actions in 1955 proved, for Ali in 1971, vital to his own case and fate.

Anthony Sicurella was a religious man in a conventional sense; Daniel Seeger was not. Seeger, a college student in New York, first claimed exemption as a conscientious objector when, in 1957, the government drafted him for duty. Seeger, whose case reached the High Court in 1964, argued that his conviction should be overturned because the bar, which allowed exemption for those who practiced faith only from recognized and established religions, was unfair. Once there, the justices learned that Seeger’s position on God did not necessarily mean “a lack of faith in anything whatsoever.” Seeger, instead, opted to believe in “goodness and virtue for their own sakes and a religious faith in a purely ethical creed.”²⁶ The justices of the Warren Court agreed and ruled unanimously in his behalf. In doing so, the Court effectively expanded the definition of conscientious objector. The new ruling, thus, gave legitimacy to nontraditional variances of monotheism on an equal basis with the same rights as those from traditional faiths.

In the midst of an era that saw the Vietnam crises continue to get out of control, Seeger’s case, and ultimate conclusion, grew in importance. Only a year earlier, Congress had voted into passage the Gulf of Tonkin Resolution. As a result, troop levels rose significantly. Adopting a plan called “Rolling Thunder,” in early 1965 President Lyndon Johnson

approved the military request for an additional 100,000 combat troops to South Vietnam. By the end of the year, U.S. troops fighting in that region totaled 500,000. Bent on the notion that U.S. military might was the key to success, the president and General William Westmoreland, his commander in that war, aggressively sought to keep a large military presence on the ground. With the Gulf of Tonkin Resolution in his hip pocket, Johnson believed he had *carte blanche* approval to conduct the war as he saw fit. Though major anti-war protests did not appear in large scale until after 1968, concerns about the war, nonetheless, started to mount. For many young men, the draft was at the top of that list.²⁷

In the same year that the Court put *Seeger* to rest, the Selective Service System drafted 230,991. In 1966 and 1967, the government inducted 610,273 more men into the armed services.²⁸ The increased efforts in Vietnam that led to the high number of inductees sent a wave of alarm among those of draft age. As a result, with *Seeger* now a precedent, approximately 170,000 applied for status as conscientious objectors. The avalanche of requests overwhelmed Selective Service System administrators. They, according to Lawrence M. Baskir and William A. Strauss, “had no mechanism for supervising the implementation of new case law, and local boards were not eager to suffer an intrusion upon their discretion.”²⁹ As such, the draft boards continued to induct in a manner based upon the pre-*Seeger* guidelines. By doing so, “many would-be conscientious objectors were wrongfully denied CO status without realizing it.”³⁰ As the Selective Service System’s deviation of the law became clear, challenges to draft board decisions started to climb. However, those charged with evasion of the draft still ran the high risk of conviction and stiff sentences. “No matter how egregious the draft board error, courts refused to intervene unless the individual refused induction and sought release from the military through a writ of habeas corpus,” claimed Baskir and Strauss.³¹

On the other hand, justices and their clerks did not live in a vacuum. Outside of the courtrooms, the war, they realized, was vicious and unpopular. Following the 1968 Tet Offensive, the Vietnam conflict took center stage. Television newscasts kept tabs on the growing number of casualties, and the ire of the American public turned on Lyndon Johnson. In March, the president could take no more and announced his decision not to seek re-election. As anti-war movements captivated attention on the home front, sentiments inside the courtrooms also exhibited some change. “Convictions were met with light sentences,” said Baskir and Strauss.³² Law clerks, many of whom shared sentiments with the anti-war protesters, began to spend their free time enlightening prospective recruits on their legal options. Paul Harris, a San Francisco law clerk, recalled the day he shared a high school stage with an agent from the Selective Service System. “He only told [the students] about their obligations,” said Harris. “So, I had to tell them about their rights.” Routinely he told students, “[I]f you refuse induction, there is a good chance you will not be found guilty because the Selective Service has violated its own regulations when it tried to draft you.”³³

In the meantime, between 1967 and 1970, Muhammad Ali had become a symbol that transcended the ring. Not coincidentally, Ali’s popularity was greatest among young black athletes. In keeping with the mood of the nation, by the late 1960s sports figures such as Ali, “instead of using their position to bolster the status quo, these athletes would become agents for freedom and change,” observed historian Jeffery Sammons. “Playing

the part of the 'good Negro' was no longer acceptable."³⁴ For many of them, Ali's defiance to the draft, the boxing establishment, and the mainstream press trumpeted a call to arms. "He was," said Sammons, "an inspiration to black youths, especially proud, dissatisfied young athletes."³⁵ Indeed, in 1968 Harry Edwards, a black sociologist at San José State University successfully convinced many notable black U.S. Olympians to bypass the summer games in Mexico City. Those who did attend, such as sprinters Tommie Smith and John Carlos, saw the games as a platform to exhibit their criticism of the racial dynamics in the United States. Raised fists and other forms of protest, however, were but topical exhibitions for what was a much deeper problem. No matter how successful black athletes might be, Edwards, states sport historian Michael Lomax, claimed that any black achievement in sport "would never result in 'proving themselves' in the eyes of white racists."³⁶ Edwards, in fact, sarcastically pointed out that "the only difference between a black man shining shoes in the ghetto and the champion black sprinter is that the shoe shine man is a nigger, while the sprinter is a fast nigger."³⁷

Outside of the sports world, Ali had also become a lightning rod for both black and white activists and anti-war demonstrators. Among the most high profile people in the United States, the champ, states Sammons, "became the undisputed champion of the anti-establishment crowd."³⁸ Indeed, as a heavyweight champion, only Joe Louis had found an accepting audience among whites. But those whites who supported Louis largely did so because of Louis' tempered traits. In short, to them, he was a "good nigger." Ali, Edwards, and those proponents of Black Power strove to undermine that characterization. As such, for many young rebellious whites, Ali was the perfect tonic for their own frustrations. "Students seemed willing to overlook his positions on integration, intermarriage, drugs, and the counterculture, all of which followed from his Islamic faith," claims Sammons.³⁹

In the meantime, Richard Nixon won the 1968 presidential election and, upon assuming office, implemented varied strategies that inevitably polarized the U.S. public along ideological and racial lines. Antiwar advocates, to be sure, were at the top of Nixon's "enemies list." To that end, his administration employed various government agencies, among them the Central Intelligence Agency, the Federal Bureau of Investigation, and even the Internal Revenue Service, to maintain surveillance on those who opposed the dictates of his presidency. Moreover, like his predecessor, Nixon was determined to achieve a military victory in Vietnam. Though the president announced and employed his "Vietnamization" program, one that called for a slow withdrawal of U.S. troops in 1969, there appeared to be little evidence that the war in Vietnam was coming to an end. As such the draft continued with vigor and offered little mercy to those who attempted to evade it.⁴⁰

Federal judges under Nixon were relentless in their convictions of draft evaders. "By 1969, Selective Service cases had become the fourth largest category on the criminal docket," claim Baskir and Strauss. "They were a common topic of discussion at judicial conferences and sentencing institutes."⁴¹ In a year in which 283,586 men were inducted, approximately 100,000 continued to resist. Muhammad Ali was one of them.

Since his 1967 conviction, Ali remained outside of prison due to effective counsel and his financial resources. Two years later, Ali appealed his case to the United States Supreme Court. The Court did not initially take the case. Instead it remanded it back to the original

district court so that it might review the protocol of the conviction. In short, the Court wanted to see if any evidence against Ali had been obtained as a result of illegal wiretaps. After extensive review, the district court concluded that their slate was clean and, as such, returned Ali's case to the court of Warren Burger.⁴²

Ali's appeal to the Supreme Court seemed to be at an inopportune time. Richard Nixon took his 1968 victory to be a mandate for the "silent majority" of law-abiding Americans whose mantle he believed he carried. To that end, he salivated at the thought that soon he would have the opportunity to select members of the High Court. The president's opportunity arrived when the venerable Earl Warren, a longtime bane to the conservatives, stepped down from his post as chief justice. By then, Nixon's choice to replace Warren was a *fait accompli*. Burger's conservative principles on justice, by this time, were well known. In a 1967 speech, for instance, the Minneapolis native, according to journalists Bob Woodward and Scott Armstrong, "had charged that criminal trials were too often long delayed and subsequently encumbered with too many appeals, retrials, and other procedural protections for the accused that had been devised by the courts."⁴³ By 1969, Burger's reputation remained intact. Thus, "Burger was chosen because of his judicial experience, his opposition to Warren Court criminal procedure decisions, his criticism of judicial activism, and because his career was free of ethical blemishes," states legal historian Kermit L. Hall.⁴⁴

This, of course, did not bode well for the Ali legal team. In the midst of the Nixon "Southern Strategy," the odds for any kind of victory seemed unlikely. However, though the connotations of a "Burger Court" gave raise to the notion of a rigidly conservative Court, in 1969 the ideological profile of the associate justices painted a different picture. William Brennan, Hugo Black, William O. Douglas, and Thurgood Marshall were well-known liberals. Byron White, a moderate, was a John F. Kennedy selection. And though John Harlan and Potter Stewart were appointees of Dwight Eisenhower, they were hardly rigid conservatives in their judicial temperament. The Warren Court carry-overs, were, so states legal historian Alpheus Thomas Mason, "grounded in American ideological and constitutional taproots." Also, by the time that *Clay, aka Ali v. U.S.* made it to the Court, Harry Blackmun, like Burger from the Twin Cities, had joined the justices.⁴⁵

Clay, aka Ali v. U.S. brought to the High Court one of the most well-known public figures of the time. Since his conviction in 1967, Muhammad Ali's image, as a result of his global exposure and continued stance against the war, had grown considerably. "The hero and the villain of the late sixties became more thoroughly heroic in the seventies, yet without being reduced to a single dominant image," observes historian Michael Oriard.⁴⁶ In spite of Ali's celebrity, there seemed to be no indication from the justices that sport clouded their vision, though the Court had its fair share of sports enthusiasts. Harry Blackmun was an avid sports fan, as was his fellow Minnesotan, Chief Justice Burger. William O. Douglas, too, enjoyed recreation and was an avid hiker. Finally, Byron "Whizzer" White, as a result of his distinguished college and professional football career, was the most notable name on the High Court in relation to sport. Nor did personal military bias seem to come into play. Only Stewart and White served. Burger, himself, never wore a military uniform.⁴⁷

The Vietnam War, however, had affected the Court. For instance, six of the justices, Douglas, Stewart, Black, Harlan, White, and Brennan were all on the bench when, in

1965, *Seeger* had visited the Court. Douglas' observations and comments on the *Seeger* case are particularly worth noting. Driven by his convictions regarding the issue of religious freedom, the left-leaning veteran justice, in agreement with the majority opinion, added that "any person opposed to war on the basis of a sincere belief, which in [Seeger's] life fills the same place as a belief in God fills in the life of an orthodox religionist, is entitled to exemption under the statute."⁴⁸ Hardly a fan of the Vietnam War, Douglas' comments on *Seeger* did not exhibit the depth of his disgust for U.S. policy leaders who supported that conflict. Unlike his colleagues who saw the war as defined only in the political arena, Douglas believed that the "extremely sensitive and delicate questions" regarding the legal appropriateness of the war "were a matter for judicial resolution." Douglas, claims his biographer Bruce Allen Murphy, "single-handedly tried to either stop the war or keep people from being forced to serve against their will."⁴⁹

Hugo Black, like Douglas, was not shy on his feelings about the Vietnam War. "Vietnam is the worst thing that has ever happened to this country: it's insanity."⁵⁰ But, by the time Ali's case had arrived at the High Court in 1969, Black's chief concern was that the fallout of the war had created an atmosphere of domestic chaos. Responding to the majority opinion in the *Tinker v. Des Moines Independent Community School District* (1969) case, one in which the High Court ruled on First Amendment grounds that a school ban to prevent students from wearing black armbands in protest of the war was unconstitutional, Black lashed out in his dissent, "Uncontrolled and uncontrollable liberty is an enemy to domestic peace."⁵¹

Liberal leanings alone, however, did not give Ali an edge. Nor, indeed, did race. Thurgood Marshall was the lone black on the High Court, and his propensity to vote as a liberal was well known. But his fame as a great pioneer for civil rights did not equate to a favored attitude towards those parties with whom the heavyweight champ was affiliated. Since his ascendancy to the Lyndon Johnson administration as solicitor general and, later, his 1967 appointment to the High Court, black militants and those in the Nation of Islam targeted Marshall for harsh criticism. Seen "as a middle-class lawyer with strong ties to the black elite and white establishment," young black radicals followed the lead of their angry leaders who routinely referred to Marshall as "a half-white nigger."⁵² Not to be outdone, Marshall won no friends among that crowd after labeling the Nation of Islam as a "bunch of thugs organized from prisons and jails."⁵³

While the High Court collage contained a mixed bag of social positions, *Clay, aka Ali v. U.S.* was not the only case that challenged the Selective Service System appearing on their dockets. Since the 1965 *Seeger* case, the Court found itself expanding its definition of religion as it related to the judicial criteria of conscientious objectors. In *Seeger*, the Court granted conscientious objection status to those outside orthodox religion. The Court, five years later, then held in *Welsh v. U.S.* (1970) that one could be exempt from the draft solely on philosophical or moral objections to war. On March 8, 1971, the justices rendered a decision in *Gillette v. U.S.*, a case by which the petitioner hoped to avoid the draft for having been solely against the Vietnam War. In an eight-to-one decision, the majority drew a boundary for conscription. "We conclude not only that the affirmative purposes underlying [the law] are neutral and secular, but also that valid reasons exist for limiting the exemption to objectors to all war, and that the section therefore cannot be said to reflect a religious preference," stated Justice Thurgood Marshall for the majority.⁵⁴ With

pacifism and boundaries defined and precedent etched in stone, the stage was set for *Clay, aka Ali v. U.S.* to visit the High Court.

Only weeks after the Court's decision on the *Gillette* case, on April 19, Chauncey Eskridge stood before the justices on behalf of Muhammad Ali. Eskridge was well known to the hierarchy of the Civil Rights movement. He had served as legal counsel for Dr. Martin Luther King, Jr. and the Southern Christian Leadership Conference. Moreover, he had been with King at the time of his assassination. The other members of the champ's legal team also had civil rights connections. They included Jack Greenberg, a veteran from the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund who played an instrumental role in the 1954 *Brown v. School Board of Topeka, Kansas* case, and James M. Nabrit III, whose distinguished father also participated in that monumental case. Nabrit, in fact, returned the next day on behalf of the petitioner to hear the Court's decision in the *Swann v. Charlotte-Mecklenberg School Board* (1971) busing case.⁵⁵

Solicitor General Erwin Griswold, who first served in that capacity under Lyndon Johnson and continued under Richard Nixon, argued on behalf of the government. Griswold's connection to the Civil Rights movement was also interesting. He served as an expert witness for Thurgood Marshall in several cases leading up to *Brown*. In the mid 1960s, he worked on Johnson's Civil Rights Commission. By 1971, after having served as the government's counsel on the *Welsh* and *Gillette* cases, he was well versed in conscientious objector arguments.⁵⁶

In the Ali case, Griswold made a sound argument that the champ's aversion to war had been, among other things, a selective one. Doing so, of course, was in keeping with the boundaries the Court had established in the *Gillette* case. Indeed, on several public occasions and based on Federal Bureau of Investigation tapes of Elijah Muhammad, Griswold reminded the justices that Nation of Islam members were not opposed to holy war.⁵⁷ On that ground, alone, Griswold's argument seemed to carry the day and, with it, an apparent jail sentence for the champ. Chief Justice Burger handed John Harlan the responsibility for writing the majority opinion, but Harlan's clerks were not sold on the notion that a holy war was relevant to the principles of the qualifiers for evading the draft. As recounted by historian Jeffery Sammons, "The holy war was really Armageddon, the war of good against evil, the same war that Jehovah's Witnesses would fight—and they were accepted as conscientious objectors."⁵⁸

Another issue included the level of sincerity brought by the petitioner in the objection to war. The "sincerity" gauge along with the criteria of being opposed to war in any form, and opposition based on religious training and belief was part of the triad that the justices used to adjudicate the Ali case. Convinced of the Armageddon position that his clerks had reinforced and having determined that Ali's position as a minister of the Nation of Islam gave him the appropriate credentials for religious training and belief, Harlan faced only the "sincerity" criteria to determine the champ's fate. On that count, Harlan's clerks again came to the rescue. As a means to enlighten the justice, they gave him copies of *Autobiography of Malcolm X* (1965) and Elijah Muhammad's *Message to the Blackman in America* (1965). The books made an apparent impact on the justice's thinking and, according to Sammons, "Harlan returned to work a changed man."⁵⁹ He determined that the govern-

ment had mischaracterized both Ali as being a racist and also the pacifist principles of his defense. Harlan's shift, thus, created a deadlock among the justices and the prospects of a decision against the champ without comment. "It would be as if the Court had never taken the case," reflects Bob Woodward and Scott Armstrong.⁶⁰

At this point, Justice Potter Stewart stepped in and offered an alternative plan. Turning to *Sicurella* for guidance, Stewart carefully studied the case from its origins and found that the Draft Appeal Board gave only vague reasons for its denial of Ali's claim. Not to include specific reasons for such a denial, based on the *Sicurella* decision, was grounds for reversal of the conviction. "Since the Appeal Board gave no reasons for its denial of the petitioner's claim, there is absolutely no way of knowing upon which of the three grounds offered in the Department's letter it relied," read Justice Harlan when rendering the Court's decision.⁶¹ The Court also considered, and incorporated, *Welsh v. United States*, a case decided in 1970. As Jeffrey Sammons points out, in that case the Court "had ruled that moral and ethical objection to war was as valid as religious objection, thus broadening the qualifications."⁶² As the Court neared the end of its term, all but Burger had been won over with Stewart's position. Faced with the uncomfortable prospect of being the lone dissenter, which, according to Woodward and Armstrong, "might be interpreted as a racist vote," the chief justice relented. In doing so, he put the final stamp on a decision *per curiam*.⁶³ In Chicago, where the decision was announced on June 28, the champ beamed. "I thank Allah and I thank the Supreme Court for recognizing the sincerity of the religious teaching that I've accepted," he told reporters.⁶⁴ Four years after he had entered the judicial ring, Ali's victory was complete.

In 1973, President Nixon called an end to the draft. Thus, *Clay, aka Ali v. U.S.*, and its predecessors, were put to rest. The importance of the case cannot be understated. Since first introduced to the High Court in 1918, the series of conscientious objector decisions was the picture of a claim under constant flux. Claimant Joseph F. Arver, who argued that his World War I conscription was akin to slavery, had little in his defense that resembled Ali's claim nearly fifty years later. In between, resistance to the draft on religious grounds left the justices with the unenviable burden of defining religion. In *Clay*, the Court, for the first time, took into consideration variables of all prior conscientious objector decisions and streamlined them into a three-part evaluation. In doing so, it widened the bar for petitioners to make their claims. But it also gave the justices a needed guide for which to adjudicate cases of this nature. Precedent also played a paramount role in this realm. Since the 1965 *Seeger* decision, the Department of Justice and Draft Appeals Board rejection of claimants were often loosely defined. In the Vietnam War years, the federal government's appetite to conscript prospective troops overshadowed the need to follow proper protocol when challenges to the draft occurred. "The 1971 *Clay* (Muhammad Ali) case confirmed what many had argued, that the Selective Service had misread or ignored *Seeger*, and that many accused draft offenders had been wrongly denied conscientious objector exemptions in the late 1960," observes Baskir and Strauss.⁶⁵

On legal grounds alone, *Clay, aka Ali v. U.S.* was paramount. Muhammad Ali helped to shape and define the meaning of conscientious objector. In doing so, he also became a symbol who sought justice in the face of overwhelming criticism and tremendous legal odds. Reflecting on Ali, basketball icon Kareem Abdul-Jabbar said, "He gave so many

people courage to test the system.”⁶⁶ The champ never wavered from his principles. As such, the commitment to his cause forced the justices of the Burger Court to fine-tune a designation in the draft that, for too long, continued to exist with critical loose ends that victimized the claimants. With so much on the line for himself, Muhammad Ali’s victory in the arena of the High Court was, indeed, his greatest.



¹David Remnick, *King of the World: Muhammad Ali and the Rise of an American Hero* (New York: Random House, 1998), 290.

²Ibid., 291.

³While race and sport was not at issue in the petitioner’s claim, those two components did, of course, factor into the thinking of some, if not all, of the justices in the 1971 Burger Court. For the greater social and cultural implications of *Clay, aka Ali v. U.S.* (1971), historian Jeffrey T. Sammons, as noted in several citations within this essay, has contributed the topic’s most insightful work.

⁴Remnick, *King of the World*, 291.

⁵Ibid., 287.

⁶Ibid., 288.

⁷Ibid., 289.

⁸Benjamin G. Rader, *American Sports: From the Age of Folk Games to the Age of Spectators* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1983), 331.

⁹Muhammad Ali with Richard Durham, *The Greatest: My Own Story* (New York: Alfred A. Knopf, 1975), 175.

¹⁰Rader, *American Sports*, 291.

¹¹Ali, *The Greatest*, 175.

¹²Ibid., 156.

¹³Ibid., 157.

¹⁴Jeffery T. Sammons, *Beyond the Ring: The Role of Boxing in American Society* (Urbana: University of Illinois Press, 1988), 203.

¹⁵“Clay Guilty in Draft Case; Gets Five Years in Prison,” 20 June 1967, <<http://www.nytimes.com/learning/general/onthisday/big/0620.html>> [5 May 2006].

¹⁶Ibid.

¹⁷Lawrence M. Baskir and William A. Strauss, *Chance and Circumstance: The Draft, the War, and the Vietnam Generation* (New York: Alfred A. Knopf, 1978), 77.

¹⁸John Whiteclay Chambers II, *Draftees or Volunteers: A Documentary History of the Debate over Military Conscription in the United States, 1787-1973* (New York: Garland Publishers, 1975), 77.

¹⁹Leslie M. Harris, “The New York City Draft Riots of 1863,” excerpt from *In the Shadow of Slavery: African Americans in New York City, 1626-1863*, <<http://www.press.uchicago.edu/Misc/Chicago/317749.html>> [6 November 2006].

²⁰Ibid., 297; *Arver v. U.S.*, 245 U.S. 366 (1918).

²¹Kermit H. Hall, ed., *The Oxford Companion to the Supreme Court of the United States* (New York: Oxford University Press, 1992), 178.

²²<<http://www.selectiveservice.us/military-draft/7-use.html>> [25 November 2006].

²³Chambers, *Draftees or Volunteers*, 418-419; Selective Service System, <<http://www.sss.gov/induct.htm>> [24 November 2006].

²⁴*Sicurella v. United States*, 348 U.S. 385 (1955).

²⁵Ibid.

²⁶*United States v. Seeger*, 380 U.S. 163 (1965).

²⁷On the issue of the draft, see Baskir and Strauss, *Chance and Circumstance*, 70. On the general issue of the Vietnam War, see George Herring, *America's Longest War: The United State in Vietnam, 1950-1975* (New York: McGraw-Hill Publishers, 2001).

²⁸Selective Service System, <<http://www.sss.gov/induct.htm>> [24 November 2006].

²⁹Baskir and Strauss, *Chance and Circumstance*, 70.

³⁰Ibid.

³¹Ibid.

³²Ibid., 74.

³³Ibid.

³⁴Sammons, *Beyond the Ring*, 204.

³⁵Ibid.

³⁶Michael E. Lomax, "Revisiting *The Revolt of the Black Athlete*: Harry Edwards and the Making of the African-American Sport Studies," *Journal of Sport History* 29 (2002): 469-479.

³⁷Ibid.

³⁸Jeffrey Sammons, "Rebel with a Cause: Muhammad Ali as Sixties Protest Symbol," in *Muhammad Ali: The People's Champ*, ed. Elliott J. Gorn (Urbana: University of Illinois Press, 1995), 170.

³⁹Ibid.

⁴⁰For an excellent account of the Richard Nixon administration in this era, see Jonathan Schell, *The Time of Illusion: An Historical and Reflective Account of the Nixon Era* (New York: Vintage Books, 1975).

⁴¹Baskir and Strauss, *Chance and Circumstance*, 77.

⁴²Sammons, *Beyond the Ring*, 215.

⁴³Bob Woodward and Scott Armstrong, *The Brethren: Inside the Supreme Court* (New York: Simon and Schuster, 1979), 12.

⁴⁴Hall, ed., *Oxford Companion*, 104.

⁴⁵Alpheus Thomas Mason, *The Supreme Court from Taft to Burger* (Baton Rouge: Louisiana State University Press, 1980), 316 [QUOTATION]. On the judicial philosophies of the U.S. Supreme Court under Chief Justice Warren Burger, see the following: Vincent Blasi, ed. *The Burger Court: The Counter-Revolution that Wasn't* (New Haven, Conn.: Yale University Press, 1983), 216; Dennis J. Hutchinson, *The Man Who Once Was Whizzer White: A Portrait of Justice Byron R. White* (New York: The Free Press, 1998); Earl M. Maltz, *The Chief Justiceship of Warren Burger, 1969-1986* (Columbia: University of South Carolina Press, 2000); Bruce Allen Murphy, *Wild Bill: The Legend and Life of William O. Douglas* (New York: Random House, 2003); Roger K. Newman, *Hugo Black: A Biography* (New York: Pantheon Books, 1994); and Juan Williams, *Thurgood Marshall: American Revolutionary* (New York: Random House, 1998).

⁴⁶Michael Oriard, "Muhammad Ali: The Hero in the Age of Mass Media," in Gorn, ed., *Muhammad Ali*, 16.

⁴⁷On Associate Justice Harry Blackman's affinity for baseball, see Edward Lazarus, "Blackman, Baseball, and the Mel Ott Bat: A Justice With a Passion For the Game and the Country That Invented It," <<http://writ.news.findlaw.com/lazarus/20011115.html>> [October 1, 2006]. See also Hall, ed., *Oxford Companion*, 551; Hutchinson, *The Man*; Maltz, *The Chief Justiceship*; and Murphy, *Wild Bill*.

⁴⁸*U.S. v. Seeger*.

⁴⁹Murphy, *Wild Bill*, 415-416.

⁵⁰Newman, *Hugo Black*, 580.

⁵¹Ibid., 592.

⁵²Williams, *Thurgood Marshall*, 275-276.

⁵³Ibid., 278.

⁵⁴*Gillette v. United States*, 401 U.S. 437 (1971).

⁵⁵Sammons, *Beyond the Ring*, 214; *Clay v. U.S.*; *Swann v. Charlotte-Mecklenberg School Board of Education*, 402 U.S. 1 (1971).

⁵⁶On Erwin Griswold, see Williams, *Thurgood Marshall*, 178; and United States Department of Justice <<http://www.usdoj.gov/osg/aboutosg/griswolderwinbio.htm>> [1 December 2006].

⁵⁷Sammons, *Beyond the Ring*, 216.

⁵⁸*Ibid.*, 217.

⁵⁹*Ibid.*

⁶⁰Woodward and Armstrong, *The Brethren*, 138.

⁶¹*Clay v. U.S.*

⁶²Sammons, *Beyond the Ring*, 215; *Welsh v. United States*, 398 U.S. 333 (1970).

⁶³Woodward and Armstrong, *The Brethren*, 138.

⁶⁴*Ibid.*, 138-139.

⁶⁵Baskir and Strauss, *Chance and Circumstance*, 79.

⁶⁶Othello Harris, "The Revolt of the Black Athlete," in Gorn, ed., *Muhammad Ali*, 66.