

For the sake of conscience

by [Franklin I. Gamwell](#) in the [July 14, 1999](#) issue

With Liberty for All: Freedom of Religion in the United States.

By Phillip E. Hammond. Westminster John Knox, 123 pp.

The U.S. Supreme Court's opinions about the relationship between religion and the state have been increasingly separationist, argues Phillip Hammond, a distinguished sociologist of religion and contributor to the so-called civil religion discussion. Although the nation "began as a de facto Protestant society," it has since the close of the Civil War moved toward greater and greater government neutrality not only toward differing religions but also toward the difference between religion and irreligion. This is as it should be, Hammond thinks. Behind the Constitution, he contends, is a "constitutional faith," and separationism, rightly understood, is its legal or judicial expression.

The long-term shift toward greater neutrality is "structural," the "inevitable consequence of certain other changes," above all increasing religious pluralism and increasing "government regulation . . . [of] citizens' lives, including their religious lives." This shift has been resisted by "accommodationists," who hold that government may or should facilitate or encourage religion. Indeed, several of them seem now to sit on the Supreme Court. But Hammond argues only that the direction of change is clear. He makes his point through a lucid and accessible review of court decisions, especially those focused on the religion clauses of the First Amendment.

While some identify the shift with an increasing hostility to religion, Hammond sees it as a move toward "the radical principle of liberty," which says that the individual conscience is what deserves protection under the First Amendment. The distinction between religion and conscience is fundamental to Hammond's case. Here is the difference: Religion involves a conviction that the ultimate context of human life is a transcendent reality. But "in modern societies religion is not the only language through which conscience is expressed." Conscience, defined by an "ultimate perspective" or "ultimate values" that may or may not be religious, is "that component of the self that is regarded as sacred" and on which one's "concept of morality" depends.

In its applications of the free-exercise clause, therefore, the court has increasingly recognized that all people have an inalienable right to conscience. Correspondingly, the no-establishment clause must mean that government may never endorse or infringe on any conviction of conscience. These judicial interpretations mark the separationist direction of change.

In the eyes of the law, Hammond continues, conscientious conviction is a "residual category" defined as "nonsecular." "Secular," on the other hand, designates beliefs and purposes that can be justified by "offering reasons that in principle make sense to everyone," whatever their conscientious differences. Contrary to its critics, separationism does not create a "naked public square" by excluding religion from public affairs. It requires only that convictions of conscience, religious or otherwise, be articulated publicly in terms of secular purposes or "translated for all to understand."

Hammond is aware that, according to his use of the terms, the Constitution's stipulation of radical liberty cannot itself be given a secular justification. It expresses a conscientious conviction. This is why he speaks of a "religion behind the Constitution" that includes "a certain conception of humankind, a conception of persons with inalienable rights as individuals." Hence, the structural shift that sociological changes have required has also been the working out of our "constitutional faith." This faith, articulated by Jefferson and Madison, finds continuing expression when the judiciary protects these inalienable rights "from the vicissitudes of political controversy."

Hammond's case against the accommodationist reading of the religion clauses is convincing and important. But the concept of a religion behind the Constitution introduces confusion. Because the state may teach its Constitution to citizens, a "constitutional faith" would permit the state to inculcate a conviction of the very type toward which freedom of conscience requires governmental neutrality. The Constitution would become self-contradictory.

That this constitutional faith is in fact the kind of establishment the Constitution proscribes becomes apparent when Hammond explicates the implied prescription for political participation. To require that political purposes be justifiable by reasons everyone could accept, conscientious differences notwithstanding, is to deny what many religious adherents affirm—that no purpose can be justified independently of their ultimate perspective.

Indeed, any conviction on which one's "concept of morality" depends implies that no political purpose can be authorized by reasons that do not include one's ultimate values. Hammond's view of secular politics seems to assume that differences among convictions of conscience are nonpolitical, so that justice can be separated from them. Thereby, his solution is "liberal" in a widely used sense of the term. He misses the point of accommodationists who protest that such liberalism privatizes religion by establishing a secularistic conviction. The issue is further obscured when Hammond speaks of "translating" convictions of conscience into secular terms. It is one thing to represent one's conviction independently of the specific symbols of one's religion; it is something else to argue for political proposals independently of the ultimate perspective those symbols express.

The meaning of religious freedom can be coherently articulated only if we reject what both accommodationists and separationists like Hammond have in common: the assumption that the question of conscience does not define a rational order of reflection, so that convictions about ultimate values cannot be assessed by public argument. Hammond notes the importance of Enlightenment thinkers to the emergence of religious freedom, but he fails to credit the grounds for their belief that religious plurality is consistent with political unity. In Jefferson's words, "Truth is great and will prevail . . . unless disarmed of her natural weapon, free argument and debate."

The First Amendment stipulates nonestablishment and free exercise in order to constitute the body politic by the question of ultimate values to which all conscientious convictions are answers and, therefore, to unite them through debate. All citizens must have religious freedom because it is a necessary condition of full and free political discourse. The explicit meaning of this radical principle of liberty for political participation is only that all conscientious citizens should pursue their political purposes through public discourse. This prescription is not itself another "faith" just because it is affirmed by every citizen who claims truth and, therefore, political importance for an ultimate perspective.

Every governmental decision will imply one or another understanding of ultimate values; the whole point of the discourse is to maximize the measure in which these implications are true. Moreover, a full and free political debate itself implies some "conception of humankind." But the state may never explicitly endorse or teach any ultimate perspective or, without a compelling state interest, burden the teaching thereof, and this is the sense in which political purposes must be "secular." To teach

the Constitution is to teach only that the political community is constituted by way of reason.