V

Conclusion

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

Comments on Phillips on Conscientious Objection

-by Gary D. Glenn

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

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

Originally, then, the American statutory right of conscientious objection presumed belief in God duties to whom took legal priority over duties owed to government. This view was articulated by Justice Hughes in U.S. v. Macintosh (1931).
When one’s [religious] belief collides with the power of the state, the latter is supreme within its sphere and submission or punishment follows. But in the forum of conscience, duty to a moral power higher than the state has always been maintained . . . by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation...One cannot speak of religious liberty . . . without assuming the existence of a belief in supreme allegiance to the will of God. 75

Hughes’s understanding is compatible with the traditional Catholic understanding in connecting the binding power of conscience to its rootedness in duties to God. 76 However, Phillips shows that the Vietnam era Court rejected this understanding of freedom of conscience and replaced it with one which does not rest on a paramount duty to God. The paramount duty is to one’s own beliefs whose grounds, reasonableness, or sincerity cannot be questioned by any government authority. 77

Under this new secular freedom of conscience, CO exemptions are available to everyone, not merely to the relatively small number of pacifists from religious principle. Thus one condition which made the old CO compatible with raising an army has disappeared in (constitutional) principle. Whether or not it has disappeared in practice will not be known until we have another war fought with conscripts. If it is then widely taken advantage of, Americans will have to decide between abolishing CO exemptions altogether and being unable to raise an army. The latter circumstance would undermine the other condition which made possible the old CO exemption, namely, the willingness of non-pacifist Americans to legally accommodate conscientious objectors. That willingness is surely also undermined as it comes to be understood that exemptions will now be given, not merely to enable citizens to obey divine law, but out of personal convictions the grounds of which are unknown. That is, Americans were previously willing to accommodate a relatively few people’s religious scruples on this matter by exempting them from the considerable burden and danger of fighting in wars because they did not want to interfere with those people’s view of their obligation to God. But why should they so accommodate everyone’s merely personal conscience which, as Phillips with charitable gentleness and indirection refrains even from hinting, cannot be distinguished from whim, fear, or cowardice?

Why did the Court deny legal recognition to citizens’ paramount duty to God? Clearly the Court wanted a policy grounded on and reflecting secularism not religious claims. That is why it rejected Congress’s limited exemptions. Congress meant the claims to have a religious basis. It meant to limit them to those who believed they owed higher duties to God than to government. The Court will not tolerate this legislative concession if it applies only to religious people. But, since the Court was not willing to declare CO unconstitutional, it redefined and justified it on secular and egalitarian grounds.
Phillips questions whether or not freedom of conscience is sufficiently protected legally "on grounds other than belief in God." The Court shows here that it is possible to legally protect freedom of conscience on non-religious grounds. However, doing so certainly has disastrous theoretical, and may have disastrous practical, consequences. For the secular and egalitarian defense endangers the government's ability to raise an army in a way the old religious exemption did not. It also is unable to explain to citizens why some individuals' merely personal scruples should exempt them from the inconvenience and danger to which everyone else is required to be exposed.

When either of these theoretical consequences works themselves out in practice, I would not predict continuation of CO exemptions. The insufficiency of a secular basis for freedom of conscience will then be revealed even to those who sought in secularism an escape from God's law.

Notes

1. See the collection edited by Ellis Sandoz, Political Sermons of the Founding Era: 1730-1805 (Indianapolis: Liberty Press, 1991). None of the fifty-five sermons is by a Catholic. The Maryland Religious Toleration Act (1649), established by the Catholic Proprietor Lord Baltimore, was undoubtedly important as the first such Act here. However, it existed only for five years and stands alone representing Catholic colonial thought.

2. For a recent popular and accurate treatment of this matter see Matthew Spalding, "Faith of Our Fathers," Crisis (May 1996), 30-34. Spalding says only 1% of the population were Catholics at the time of the Founding.

3. The Charles Carroll Papers, edited by Ronald Hoffman, are to be published by the University of North Carolina Press and The Institute of Early American History and Culture.


5. Although the sign is popularly remembered as having read, "It's the economy, stupid," it in fact read simply, "The economy, stupid." By including but bracketing the word "It's” in the above quotation, I have tried to maintain historical accuracy while
rendering the exhortation in the manner in which it is likely to be familiar to most readers. See Mary Matalin and James Carville, with Peter Knobler, All’s Fair: Love, War, and Running for President (New York: Random House, 1994), 244.


9. “The federal government is hardly concerned with anything except foreign affairs; it is the state governments which really control American society.” Democracy in America, I, II, 7, p. 246.

10. All parenthetical page references are to Jacques Maritain’s Reflections on America (New York: Charles Scribner’s Sons, 1958).

11. Newsweek’s description of Reflections appears on the cover of the 1958 edition: “A clear-eyed, richly thoughtful love letter to the land in which he has lived so long.”

12. Americans of the mid-1950s, as described by Maritain, are hereafter referred to as “Maritain’s Americans.”

13. “Work is more than a way to make a living, it is a vocation, [a] participation in creation.” Quoted from the Statement of the United States Catholic Conference administrative board, September, 1995. See also John Paul II, Encyclical Letter Centesimus Annus (May 1, 1991), 12.


17. Thomas C. Reeves, “Not So Christian America,” First Things, October 1996, 20. Reeves points out that this is still 22% higher than the national average.


23. For example, in *Evans v. Romer*, 882 P.2d 1335 (Colo. 1994), the Colorado Supreme Court held that religiously based objections to homosexuality are an impermissible intrusion of religious views into public policy.

24. He has worked for conservative Republicans like Trent Lott (MS), Majority leader of the United States Senate, and Senator Dan Coates (IN); and for liberal Democrats such as President Bill Clinton, Senator Howard Metzenbaum (OH) and Congresswoman Bella Abzug (NY). Dick Morris, *Behind the Oval Office: Winning the Presidency in the Nineties* (New York: Random House, 1997), 19.

25. During the 1996 Democratic Convention, Morris, the creator of its “family values” theme, was compelled to resign as President Clinton’s adviser after it was discovered that he had paid numerous visits to a high-priced prostitute. Morris (1997), 333.


30. Socrates observed that tyranny “takes away what belongs to others, both what is sacred and profane, private and public.” Allan Bloom, Trans. *The Republic of Plato* (New York: Basic Books Inc. 1968), 344a, 3-5. “The tyrants are compelled most of the time to plunder unjustly both temples and human beings, because they always need additional money to meet their necessary expenses.” Xenophon, *Hiero or Tyrannicus*, Ch. 4.11. Cf. Chs. 1.34; 7.12; 8.9. Xenophon has his young Cyrus beaten by the teacher of justice because Cyrus thought government should redistribute coats on the basis of need rather than of ownership. *Cyropaedia* I, 3.16-17.

31. See Leo XIII, Encyclical Letter *Rerum Novarum* (May 15, 1891), 99-107 and John Paul II, Encyclical Letter *Centesimus Annus* (May 1, 1991), 43-63. These Papal encyclicals defend the right of private property. The right to the “redistribution of income from the well-to-do to the less well-to-do,” which Maritain supposes but does not demonstrate, requires an argument to show its compatibility with that right.


33. “Malfunctions and defects” in the welfare state lead “to a loss of human energies and an inordinate increase of public agencies, which are dominated more by bureaucratic ways of thinking than by concern for serving their clients and which are accompanied by an enormous increase in spending. In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbors to those in need.” *Centesimus Annus* (Boston: St. Paul Books & Media, 1991), 69.

35. It is for this reason that I am unpersuaded about the desirability of economic humanism administered through secular government.


37. It is an indicator of Maritain's greatness as a philosopher that, even if not fully persuaded of the merits of his political proposals, we can return to Reflections after forty years for instruction in how we have changed.


41. This was true of Tocqueville even for those who came approximately as long after his book as we are after Maritain's. See James Bryce, "The Predictions of Hamilton and Tocqueville" reprinted in The American Commonwealth (Indianapolis: Liberty Fund, 1995), with an introduction by Gary McDowell.

42. First Things, No. 72, (April 1997), 60.

43. Due to space limitations, the abbreviation CO is used when any form of the phrase “conscientious objector” appears in the text.


46. 380 U.S. 166.

47. 380 U.S. 176.

48. 380 U.S. 185.

49. 380 U.S. 184.

50. 380 U.S. 186.

51. 398 U.S. 338.

52. In response to the Court's decision in Seeger, Congress passed a new selective service act which dropped the reference to a Supreme Being. Military Selective Service Act of 1967, 81 Stat. 100, 104 (1967).

53. 398 U.S. 337. When applying for a CO exemption, the registrant was required to sign a form which read: "I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form."

54. 398 U.S. 341.

55. Ibid. For examples of how broadly the Court defined religion see 380 U.S. 180-3.

56. 398 U.S. 342.

57. 398 U.S. 342-343.

58. For an example of religious pacifism which includes a substantial political component, see John Howard Yoder, The Politics of Jesus (Grand Rapids, MI: Eerdmans, 1972).

59. In Seeger the Court noted that "political, sociological or economic considerations . . . have historically been reserved for the government, and in matters which can
be said to fall within these areas the conviction of the individual has never been per­mitted to override that of the state.” 380 U.S. 173 (1975).

60. Here I follow Alasdair MacIntyre, After Virtue (Notre Dame, IN: University of Notre Dame Press, 1981), 22-34. It is conscience as sincerity which encourages “emotivist” forms of religious belief.

61. McNamara interviewed younger Catholic dissenters from Church teaching. They typically defended their dissent on the grounds of freedom of conscience. These interviews reveal three noteworthy things about this defense. First, many appear to accept the idea that conscience is an expression of sincerity. Next, few have a clear idea as to what the Church actually teaches. Finally, even fewer are willing to advance any reasonable arguments on behalf of their dissent. See Patrick McNamara, Conscience First, Tradition Second: A Study of Young American Catholics (Albany New York: The State University of New York Press, 1992). It should be emphasized that McNamara does not himself argue for the emotivism thesis.


64. 401 U.S. 439.
65. 401 U.S. 440.
66. 401 U.S. 443.
67. 401 U.S. 454.
68. All of the above quotes are taken from 401 U.S. 455.

70. While those who object to only some wars are usually referred to as selective conscientious objectors (SCOs), Capizzi points out that this phrasing is misleading because it implies that the individual has a less than rigorous conscience. This of course, should not be assumed. See Joseph E. Capizzi, “Selective Conscientious Objection in the United States,” Journal of Church and State, Vol. 38, No. 2, (Spring 1996), 339-363.

71. All of the above would apply with equal weight to those who conscientiously object to all wars.


74. See what is also a concise and accurate secondary discussion of Jefferson and Locke on toleration in Malbin (1978), 29-36. I stress this since I believe Malbin is mistaken in his broad thesis that “The framers of the Constitution and the Bill of Rights wanted to created a secular liberal democracy…” (39). I would characterize “their” (that is, the framers’ and not just Jefferson’s) intention as being to create a liberal democracy characterized by public religious pluralism rather than secularism. Indeed, “secularism” did not yet exist as a word in 1787-91. According to the Oxford English Dictionary, it comes into being only in 1851 in the writings of G. J. Holyoake.
and means "that morality should be based solely on regard to the well-being of mankind in the present life, to the exclusion of all considerations drawn from belief in God or in a future state."

75. 283 U.S. 633-34.

76. See Catechism, secs. 1783, 1785. "In the formation of conscience the Word of God is the light for our path" citing Psalms 119 verse 105.

77. Walter Berns suggests that "this development may be implicit in liberalism." Because "the liberal state is indifferent to religious belief . . . [b]elief will be left to the private conscience, and one effect of this will be to exalt the belief that is idiosyncratic, resting solely on the individual will, which in turn rests on the passions, not, as orthodox Christianity or Judaism would have it, on the will of a providential God." This is the how Berns explains the process by which "sincerity" or strength of belief, not its substance, comes to be what is important about belief. The First Amendment and the Future of American Democracy (Chicago: Regnery, 1985), 78-79.