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*Confessions of a Religious Liberal: Ronald Dworkin's Religion Without God*

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In the mid-1990s, I had the privilege of attending a number of Oxford seminars on jurisprudence offered by Ronald Dworkin, Joseph Raz, and John Finnis. I was studying theology, another of Kant's "higher" faculties. But their overcrowded seminar rooms attracted all manner of interlopers. I do not recall any focused attention on religion as such, but I vividly recall the spirited way they worked through fundamental questions about the nature of law and legal reasoning. Finnis, of course, had written explicitly about God and about religion as among the basic forms of the human good.<sup>1</sup> We now have Dworkin's provisional views in a single posthumous volume. Unfortunately, the book itself was cut short by his death.

*Religion Without God* opens with the claim that "religion is deeper than God."<sup>2</sup> Appeals to depth can be understood in different ways. They can reflect normative evaluation of paired objects that reveal a value preference, such as between two composers or two poems. Or, they can contrast objects as broad as visions of life or ways of apprehending reality. For example, to claim something as "deeper" is to mark it as more profound, more serious, more beautiful, or more truthful. Such claims are

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<sup>1</sup> John Finnis, *Natural Law and Natural Rights* (Oxford 1980), especially IV.2 and XIII. According to his admittedly "lame" definition, following Cicero, Finnis holds that religion involves responses to "questions of the origins of cosmic order and of human freedom and reason" (89) and "an order of things 'beyond' each and every man" (90). Dworkin, to my knowledge, does not address Finnis on either religion or God. The relation between religion and God in Finnis' theory is a matter of some dispute. See, for example, Mark C. Murphy, "Finnis on Nature, Reason, God," *Legal Theory* 13 (2007): 187-209.

<sup>2</sup> Ronald Dworkin, *Religion Without God* (Harvard 2013), 1. Future references appear in the text.

necessarily normative. They also can be polemical. They often emerge when a once prevailing view or cultural ideal no longer commands assent. There have been many such proposals in the wake of classical theism and religious language grown old and tired.

From Spinoza to Shelley to Einstein, *Religion Without God* refers to several illuminating examples of a religious attitude that respects but transcends the epistemic authority of natural science. Religion is taken to be an *interpretive* concept with consequences for both political morality and philosophy. It can be distinguished from beliefs about gods and the teachings of institutionally organized religious bodies. Dworkin appeals to various theorists, but he does not linger to explore the many historical conceptions of religion (especially ancient and modern ones that emphasize its social function). A religious attitude, according to Dworkin, is “the drive to live well” based on “the conviction that there is, independently and objectively, a right way to live” (RwG, 155). This confession troubles a confident distinction between the religious and the secular even as it denies the foundation of value in a divine will. Following Hume, the interesting part of religion for Dworkin is the “value” side. Belief in God is only one way of subjectively being religious. As he puts it, “what divides godly and godless religion—the science of godly religion—is not as important as the faith in value that unites them” (RwG, 28-29). That faith affirms “life’s intrinsic meaning and nature’s intrinsic beauty” (RwG, 11). By my lights, he makes this affirmation in the hope of having a richer conversation about religion in both the academy and our public life torn apart by fundamentalisms of various kinds.

The book creates welcome space for a religious atheism in danger of being overwhelmed by a narrow public imagination for both theism and atheism, not to mention the objectivity of morality. Here Dworkin shares Thomas Nagel's desire to bridge secular philosophy and a religious temperament.<sup>3</sup> We now know something like a religious temperament motivated the writings of another significant liberal political philosopher in the Anglo-American tradition, the late John Rawls.<sup>4</sup> Historicizing Rawls and the lingering traces of his theology throughout his teaching and writing is a promising yet contested feature of his reception.<sup>5</sup> Suffice it to say that Rawls' religious atheism bears the marks of his earlier Christian concerns about grace, love, natural law, and the relationship between persons and community.

Dworkin's rather different sublime is registered in the book's final chapter with characteristic clarity and elegance. His confession of faith invokes quantum fluctuation, the goodness and intelligibility of the world, and a romantic spirit joined to fierce commitment to the objectivity of ethical values. In this sense, though not his primary sense, Dworkin adopts a normative stance that "religion" is deeper than both God and metaphysical naturalism. The book can be read as an elaboration of his earlier efforts to describe a non-theistic sense of the sacred and reverence as a form of objective value.<sup>6</sup>

His religious ethics risks accusations of idealism, evangelism, and a loss of atheistic

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<sup>3</sup> See Thomas Nagel, *Secular Philosophy and the Religious Temperament* (Oxford 2010). Dworkin dedicates *Religion without God* to "Tom—who led me into the mysteries of the secular temperament."

<sup>4</sup> See John Rawls, *A Brief Inquiry into the Meaning of Sin and Faith*, ed., Thomas Nagel (Harvard 2010). Paul Weithman details the many ways in which Rawls was always more than a social choice or decision theorist. According to Weithman, Rawls was "moved by deep questions about the goodness of humanity and the world," in *Why Political Liberalism?: On John Rawls' Political Turn* (Oxford 2011), 5.

<sup>5</sup> Notably, see Eric Nelson, *The Theology of Liberalism: Political Philosophy and the Justice of God* (Harvard 2019).

<sup>6</sup> On the sacred, see especially Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (Knopf 1993), and on objective value, *Justice for Hedgehogs* (Belknap Press 2011).

nerve. It cuts against the grain of ideology critique practiced as a relentless hermeneutics of suspicion so dominant in the academy where even my earnest Princeton undergraduates no longer believe the arc of the universe bends towards justice. While popular culture is awash in religious confessions and denials, it is refreshing that someone of Dworkin's stature was willing to make his own commitments explicit and subject his wonder to criticism.

And critics there have been. Materialists might have their own accusations of caricature in the book. But some religious respondents have weighed in on the side of a purported reductionism. Here are just four examples:

“Dworkin had one of the most supple and subtle minds of his generation, but he had a tin ear for theological concepts.”<sup>7</sup>

“It is typical but nonetheless disappointing that Dworkin asks his questions...but does not stay for answer. He admits as much when he says, somewhat defensively, that ‘sophisticated theologians will no doubt judge my argument ignorant and puerile.’ ‘Puerile’ goes to far, but ‘ignorant’ is fair. Judging from his notes, he read much more thoroughly in recent popular scientific writing than in the history of theology or even philosophical discussions of religion.”<sup>8</sup>

“The book repeats familiar, even ancient, objections to the idea of a personal God and proposes a legal definition of religion that is decades old...it reflects an increasingly important strategy in the Left's battle to minimize protection for traditional religion.”<sup>9</sup>

“One cannot but admire his desire to build a bridge between theistic and non-theistic epistemologies. But Dworkin's approach to the problem in *Religion without God*, whatever its intentions, can only reinforce the conviction of many among the religious that liberalism counts it as an enemy...Dworkin's principal whipping boy is not religion in general, but Christianity.”<sup>10</sup>

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<sup>7</sup> Timothy Jackson, “The Relevance of God: A Reply to Ronald Dworkin,” *Journal of Law and Religion* 29:3 (October 2014), 535-546.

<sup>8</sup> Charles Mathewes, “What's God Got to Do with Religion,” *The American Interest* 9:6 (June 2014).

<sup>9</sup> Mark L. Movsesian, Book Review, *Religion and Human Rights* 9 (2014): 93-99.

<sup>10</sup> Stephen Carter, “Dworkin Versus Tillich,” *Journal of Law and Religion* 29:3 (October 2014): 510-525.

These initial responses may not be representative. They differ in tone and substance from the treatment by other critics, especially that of Cecile Laborde in her important book *Liberalism's Religion*.

Laborde's analysis of Dworkin's version of a liberal egalitarian theory of religion is perhaps the most developed response in the massive literature on law and religion. It includes several models that share his effort to abandon "the idea of a special right to religious freedom" in favor of a "more general right to ethical independence" (RwG, 132). Drawing from scholars in multiple fields, Laborde adopts Dworkin's interpretive concept of religion as a way of broadening how we think about "religion" in a nonsectarian way. She also shares his liberal commitment to the value of ethical integrity that does justice to both religion and political equality. But she finds his account of public justification and equal inclusion troubled to the extent it undertheorizes religion. She raises various objections to his way of "dissolving" differences between religious and non-religious conceptions of the good rather than "disaggregating" religion into a plurality of normative dimensions, at least for legal and political purposes.<sup>11</sup> Her criticisms focus on supposed internal contradictions and difficult cases of religious practices that do not easily fit under the category of freedom of conscience. It is revealing, however, that I was unable to find discussion of this book by any theologian, sophisticated or not, Christian or otherwise.

Confessions of religion deeper than God find counterparts in those that confess a God deeper than religion. Such theists, whether or not they have read Marx, might agree

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<sup>11</sup> Cecile Laborde, *Liberalism's Religion* (Harvard 2017). Elsewhere, she characterizes her disaggregation approach as "religion-blind without being religion-insensitive," in "Religion in the Law: The Disaggregation Approach," *Institutionalizing Rights and Religion* (Cambridge 2017), 9-25, at 25.

that human beings collectively make religion. This does not condemn religion so much as decenter it, especially if reduced to a static set of propositional beliefs. The nature of religious beliefs and how they relate to other beliefs or attitudes like trust is itself a difficult question now pursued by cognitive scientists, anthropologists, and philosophers of mind. Such efforts constitute an important theme in religious thought suspicious of the ways doctrines themselves promote idolatry. Theists also have offered many *theological* defenses of secular (rather than secularist) politics, including liberal egalitarian ones that played a decisive role in the actual historical expansion of liberty through democratic social movements. With the exception of the writings of Paul Tillich, it is a shame these efforts are not directly pursued in Dworkin's democratic piety.<sup>12</sup> It might explain some of the reactions described above.

To trade in Dworkin's aesthetic register, these readers find his discussion of theology dull and monochromatic. For example, the picture of God that emerges in the book tends to be a hyper-voluntarist one: a God whose normative authority is based in an absolute will unbound by reasons of law and morality. This familiar picture plays an important role in recent discussions of political theology given Carl Schmitt's account of the sovereign's decision of the exception as a necessary political moment beyond the law. But Dworkin seems uninterested in the renaissance of divine command morality in contemporary analytic philosophy attentive the very issues he addresses (often in conversation with him, as in the writings of Robert M. Adams). This seems another opportunity lost and funds the appearance of his indifference to them. I say this not to

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<sup>12</sup> I here trade on Jeffrey Stout's emphasis on piety as a virtue rather than a feeling. Such piety, annexed to justice, "concerns proper acknowledgment of the sources of our existence and progress through life." See, Jeffrey Stout, *Democracy and Tradition* (Princeton 2003), 9. Stout is a fellow religious atheist.

dismiss Dworkin so much as to suggest godless religion might have learned more from the godly even for its own purposes.

No doubt this book might inspire what used to be called “faith seeking understanding.” Here is one way to read *Religion without God* as an exercise in heterodox, revisionist theology. Of course, Dworkin was not a theologian. He not only does not *believe* in God, he shows no *affective* interest in a God in whom he no longer believes or finds impossible to believe.<sup>13</sup> He does want to make the very idea of God irrelevant to the most important things, including religion. With Dworkin, however, bracket the question the truth of a possible God’s existence as “a very exotic kind of scientific fact” (RwG, 27). Some readers will get off the boat at this point. I don’t think this requires denying the desirability of at least being able to think like a theologian, even about a fictional God beyond our theoretical cognition. In fact, Dworkin speculates that if God exists, that God “cannot of his own will create right answers to moral questions or instill the universe with a glory it would not otherwise have” (RwG, 26). Belief in the God of nominalism, on this view, may jeopardize the status of such believers’ attitude toward religious value. Despite his irenic posture, I am not sure if Dworkin believed such believers and their God were themselves a threat to morality. That view, religion *against* not simply *without* God, might make him a religious antitheist as well as religious atheist.

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<sup>13</sup> Unlike Nietzsche, Dworkin does not seem to think religious questions arise from “bad instincts of sick natures” (Friedrich Nietzsche, *Ecce Homo* (Cambridge 2005), 98). I am not sure where Dworkin stands with respect to the axiological position known as “antitheism,” the view that the universe would be worse off with a God. On antitheism, see Thomas Nagel, *The Last Word* (Oxford 1997), and Guy Kahane, “Should We Want God to Exist,” *Philosophy and Phenomenological Research* 82:3 (May 2011): 674-696.

What type of being would be worthy of being called “God”? Intense debates within monotheistic traditions often turn on that question. Augustine, for example, regularly blames his earlier religious self with making God an idol of his false imagination. His fellow mystics carried forth this tradition of saying and unsaying things about God, the Holy One to whom Eckhart prayed to “rid me of God.” Spinoza and a host of 19<sup>th</sup> century Jewish and Christian theologians also sought to purge their traditions of anthropomorphic conceptions. They moved well beyond Augustine, leaving highly ethicized images of God that played an important role in the development of modern liberalism. Some relate to traditional religious traditions, like Kant, as historical vehicles of rational faith. Some make use of notions like symbol and metaphor, as in Dworkin’s brief discussion of Tillich “affirming and denying a personal god simultaneously” (RwG, 36).<sup>14</sup> Others, like my colleague Mark Johnston, come to identify God as a process, rather than a substance. His God is a process, only *analogous* to a person in “the self-disclosure of Being.”<sup>15</sup> At this point, confirming more orthodox suspicions of natural theology, Dworkin will protest “we no longer need the obscure idea of a nonpersonal God” (RwG, 43). The heterodox theist might respond, borrowing Dworkin’s charge against the naturalist: “you just do not have the religious point of view” (RwG, 21).

Recall theological truth or falsity is not the theme of Dworkin’s book. He admits that no confession appears capable of achieving consensus about whether the beauty and goodness of the universe gives witness to a creator. But this is not the primary sense of

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<sup>14</sup> Strangely, Dworkin neglects the influence of Kant on Tillich’s conception of religious faith and symbolism.

<sup>15</sup> Mark Johnston, *Saving God: Religion after Idolatry* (Princeton 2011), 158.



depth that motivates this short book. Its appeal to depth is that of breadth: the logical priority of religion to God, and so their separability.

These two appeals to priority and to separability can be (and often have been) married in longstanding debates about the relation of religion and morality. They populate the history of philosophy and theology at least since Plato's *Euthyphro*. Accounting for their relation implicates the accountant in all manner of controversial positions. Ronald Dworkin is no stranger to controversy about principles or philosophy. Given the thrust of his broader argument and the structure of his rhetoric, however, I take Dworkin to be emphasizing the *breadth rather than comparative value* of religion for pragmatic purposes. By distinguishing religion from God, he hopes to defend a more permissive notion of religion with important cultural and political benefits. These benefits are substantial.

*Religion Without God* does refer—often at central moments—to Dworkin's considered views on controversial issues in the metaphysics of value, epistemology, political theory, and jurisprudence. The substance of these views, and their relation to his liberal idea that the state must be neutral with respect to any particular question of the good life is defended in much greater detail elsewhere in his corpus. For Dworkin, neutrality is linked to equal concern and respect for citizens. Imposing a preferred conception of the good violates a citizen's sense of equal worth. Helpful footnotes and self-quotations will direct the curious reader, especially those unfamiliar with Dworkin's distinctive defense of egalitarian liberalism and alternative to legal positivism. Those steeped in Dworkin's philosophy will find suggestive connections between these contributions and his views on religion. His comprehensive position on the "unity of

value” demands them. The connections, for the most part, require considerable reconstruction by the reader. The arguments are not made explicit in this volume. Again, it is a work of inspiration and aspiration.

Scholars of religion will want different things from the book than a theologian. For example, Dworkin’s “ungrounded value realism” might helpfully be compared and contrasted with various discussions in post-foundationalist philosophy of religion.<sup>16</sup> His conception of the sacred could be compared and contrasted with theistic interpretations of the same datum, especially by those who do not “make a sharp distinction between religious and moral questions of the good.”<sup>17</sup> An imagined version might have incorporated more detailed attention to relevant disanalogies between concepts and practices that refer to God and those that refer to religion.

That religion is an interpretive matter would be a platitude in the discipline of religious studies. Many argue that “religion” is a peculiarly modern concept, wedded to modern distinctions between “religious” and “secular” that themselves are often correlated with declines in the practices of religion. These scholars, with plenty of historicizing and genealogizing, argue the concept of religion is a characteristic feature of modern Western secular imaginary rather than a universal essence. Defending “religion” is, perhaps ironically, a very secular thing to do. I suspect Dworkin’s secularity allowed him to overcome any anxiety about being religious. At the same time, Dworkin’s focus on the centrality of a belief-conduct distinction, “private religious exercise,” and a universally shared “fundamental religious impulse” reveals a particular

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<sup>16</sup> See, for example, Andrew Chignell and Andrew Dole, eds., *God and the Ethics of Belief: New Essays in the Philosophy of Religion* (Cambridge 2009).

<sup>17</sup> Robert M. Adams, *Finite and Infinite Goods* (Oxford 1999), 337.

account of religion (RwG 136, 146). It is one that has been heavily criticized in religious studies for what it excludes by mediating a certain kind of Protestant liberalism.<sup>18</sup>

Dworkin does offer readings of early contributors to the study of religion, including William James, Rudolf Otto, and Paul Tillich. They help him get an argument for non-theistic religious experience off the ground, including the appeal to a “fundamental religious impulse that has manifested itself in various convictions and emotions” (146). The word “numinous” appears frequently, often as if it were a natural kind open to impartial, empirical investigation. From the vantage of contemporary religious studies, Dworkin’s discussion follows 19th and 20th century methodological battles as the academic study of religion began to define itself over against theology. Despite his effort to expand notions of religion beyond God, Dworkin’s account bears all the marks of post-Reformation and post-Enlightenment thought.<sup>19</sup> Dworkin on ritual, liturgy, or what scholars today call “lived religion”: relative silence. He shows little interest in the genealogy of religion, and the historical context in which his particular views on religion might be located. His interests are conceptual rather than historical, but the distance between the two in this work is limiting.

These criticisms may reflect the special pleading of disciplinary conceit. As evident in the work of Laborde, however, these issues bear on how the field of law and religion comes to terms with such criticism. Yet another imagined version of this book might have distinguished its casuistry from other proposals that challenge (and demote) the specialness of religious freedom in light of a more general right or broader application

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<sup>18</sup> For a helpful introduction, see, Robert Orsi, ed., *The Cambridge Companion to Religious Studies* (Cambridge 2012), and Winnifred Sullivan, *The Impossibility of Religious Freedom* (Princeton 2005).

<sup>19</sup> See, for example, Leora Batnitzky, *How Judaism Became a Religion* (Princeton 2011).

of equality.<sup>20</sup> These wishes and frustrations, on my view, are warranted. Concision is a scholarly virtue. Dworkin earned an audience without demand for engaging secondary literature. But his foray into religion is concise to a fault, and I suspect will not find much of an audience in either religious studies or theology.

Such criticisms, including my own, may be demanding too much from this book. It is not a book full of arguments. It can be approached, perhaps more charitably, from a different angle. The book can stand on its own if one reads it as a public intervention rather than scholarly analysis. Its goals can be taken to be more expressive, crystallizing a general position that expresses hope for the future by trying to dissolve persistent obstacles in the background of our common life. It would be a misleading and ironic exaggeration to describe this work in the Rawlsian language of “political, not metaphysical.” Dworkin’s criticisms of Rawls still matter. He was skeptical of Rawls’ effort to distinguish political values from comprehensive moral convictions.<sup>21</sup> But, as a thought experiment, I want to approach it as a book that may be philosophically unsatisfying even as it is politically salutary.

Like his earlier efforts to highlight the sacred in our public life, it is a contribution to our ongoing debate about the role of religion in our public life and legal systems.<sup>22</sup> It tries to accommodate insights from both the religious and the godly, upsetting traditional views that do not account for the wild diversity of religious faith. Such conventionalism

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<sup>20</sup> See, among others, Christopher L. Eisgruber and Lawrence G. Sager, *Religious Freedom and the Constitution* (Harvard 2007) and Brian Leiter, *Why Tolerate Religion?* (Princeton 2012).

<sup>21</sup> See, for example, Ronald Dworkin, “Rawls and the Law,” *Fordham Law Review* 72.5 (2004): 1387-1406, and “The Original Position,” *University of Chicago Law Review* 40.3 (1973): 500-533.

<sup>22</sup> For an excellent discussion of the sacred in recent debates about torture, including the work of Dworkin, see Stephen Bush, “Torture and the Politics of the Sacred,” *Soundings* 97.1 (2014): 75-99.

truncates the possibility of transcending our current impasses with respect to this diversity.

To be sure, *Religion without God* is a brief for religious atheism. This willingness to articulate religious commitment in the spirit of inquiry is part of its virtue. Dworkin, like many other fellow liberals, begins with reflections on the intensity of religious conflict since the early modern period. “Religious war,” he tells us, is “like cancer, a curse of our species” (RwG, 7). Dworkin worries such conflict, especially in advanced Western democracies, again finds expression in our politics. We face “not battles between different organized religions; they are wars between the believers and nonbelievers” (RwG, 137). Dworkin’s concerns are grounded in historical and contemporary reality. They are concerns shared by religious theists and atheists alike, even if responses to them vary widely. But the mood of this book is sociologically curious.

At times, one feels that Dworkin remains distractingly embedded in the culture wars of the 1980s and the political battles of the 1990s. There is no reference to Jerry Falwell or Pat Robertson, but it would not be out of place in his ominous reference to “zealots” and “the so-called religious right” (8). Of course, theocrats remain. Heirs of the religious right are deeply complicit in Trump’s assault on liberal values, albeit increasingly divided among themselves. They also have many competitors in terms of threats to constitutional norms and liberties. But it is not clear in this text if Dworkin bothered to examine the empirical realities of the current role of religion in American conservative politics. I would simply speculate that belief in a personal God is not at the root of our current social and political challenges. Lost coalitions of the religious and

non-religious might be. *Religion Without God*, however, is not another contribution to the sort of militant atheism that inspires resistance among the pious by making them its target.

The primary goal of this work is to transcend familiar disputes between theists and some atheists by demonstrating a shared commitment to the independent reality of objective value. It is here—within the logical order of argument—that Dworkin finds religion deeper than God. Dworkin hopes separating God from religion will lower the temperature of culture wars carried out in law and politics by “separating questions of science from questions of value” (RwG, 9). Certain kinds of religious beliefs can be bracketed without being denied. This art of separation will expand our conceptual repertoire for thinking about religion and religious “others” in ways consequential for law and politics. The sacred may be supernatural, but does not require belief in a personal or even nonpersonal God.

Belief in God, he holds, is only “one possible manifestation” of a more fundamental religious attitude (RwG, 2). In this sense, something called “religion” is a broader category that might include divinity as part of what Dworkin calls its “science.”<sup>23</sup> But it need not. Indeed, more strongly for Dworkin, the validity of religious values is independent of convictions about the sort of God that does or does not exist.

How law negotiates religious freedom can be distinguished from how philosophers and anthropologists theorize religion or imagine God. But, like Laborde, I found his legal reasoning to stand in tension with the more permissive notion of religion

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<sup>23</sup> Dworkin admits his idiosyncratic definition of science. Different notions of science can relieve tensions between the religious and the godly. If Dworkin pursued an Aristotelian rather than Humean approach, even further bridges might be built. For one such effort in relation to Thomas Aquinas’ definition of science and modes of knowing, see Victor Prellar, *Divine Science and the Science of God* (Princeton 1967).

he proposes. The chapter on religious freedom does not explicitly follow from the previous philosophical reflections on religious value, or to my mind, even Dworkin's lexical account of religion deeper than God. In fact, at times, his focus on ethical independence and symbolic expressions of religious traditions risks undermining the work he has done in affirming the distinctive value of religious attitudes. Difficult questions about law and religion shift semantically to the category of "ethical independence." The idea of religion as a distinctive value practically informs much of the Anglo-American legal tradition. Dworkin's view seems implicated by this history in his (non-theistic) account of sacredness. It is not clear to me that Dworkin had adequately counted the costs of shifting away from this admittedly messy history given his own concerns for the special burdens that a law might place on what a group considers a sacred duty (especially when analogous burdens are not forthcoming). The chapter does rely on Dworkin's overall claim that religion can, and should, be separated from (belief in) God. His audience is what he takes to be the majority of ordinary citizens and constitutional documents that understand reference to "religion" as implicating "a belief in some form of god" (RwG, 108). Whether or not this observation still holds true, Dworkin offers persuasive reasons why such a view is untenable.

How might the law respect religion deeper than God in a principled way? Must a liberal constitutional order be neutral on the value of the goods of religion itself? Here we enter familiar debates about the right and the good, and elusive definitions of religion. What I find intellectually fertile and politically salient is Dworkin's case for justifiable restrictions on what counts for "special" religious protection and the scope of this supposed moral right. Religious freedom, he argues, cannot include "all passionately

held conviction” (RwG, 117). An overly elastic definition, for example, leaves societies vulnerable to those who appeal to religious liberty in order to evade taxes or promote racism. It would leave no way of “excluding even the wildest ethical eccentricity from the category of protected faith” (RwG, 124). Of course, appeals to God invite ethical eccentricity, but Dworkin rightly frames the important question. He now doubts “substantive definitions” that focus on the content of certain religious convictions and their place in one’s understanding of what it means to live well, including his own early efforts in debates about a woman’s right to early abortion. Substantive restrictions invite government overreach in its interrogation of religious attitudes, exacerbating apparent conflict between religious liberty and religious accommodation. For Dworkin, this violates “the basic principle that questions of fundamental values are a matter of individual, not collective, choice” (RwG, 123).

A just state, according to Dworkin, must respect ethical independence. Civic identity should not be confused with religious identity. He hopes to shift the ground away from accounting for “religion” to legitimate public reasons for action. Like others, Dworkin suggests abandoning religious freedom as a special right with “its high hurdle of protection and therefore its compelling need for strict limits and careful definition” (RwG, 132). This right, presumably, can still preserve the respect that previous jurisprudence sought to protect under the category of religion but in a more ecumenical manner.

Such a general right permits government regulation of religious practice for compelling reasons (i.e., the use of peyote), even as it might exempt others (though not because religion deserves special rights). In short, he argues for the “priority of non-



discriminatory collective government over private religious exercise” (RwG, 137). What criteria might still inform such decisions? Does it still implicate the state in determining what is religious or not, or even protecting ethical independence as itself a religious matter broadly construed? In a pregnant passage, Dworkin declares government intervention through the coercive use of the law is justified “to protect other people from harm, for example, or to protect natural wonders, or to improve the general welfare” (RwG, 130). Again, Dworkin admits that whether or not government regulation violates ethical independence is “often an interpretive question, and sometimes a difficult one” (RwG, 142). In a series of frustratingly brief pages, he offers his own interpretations of their relevance to abortion, same-sex marriage, the funding of Catholic adoption agencies, and the teaching of intelligent design in public schools.

Despite the bold declarations that can characterize his rhetoric, Dworkin ends his penultimate chapter with skepticism about his own hope that distinguishing God from religious value will bear fruit. As mentioned, some reviewers have read *Religion Without God* as further evidence of the depressingly shallow state of our public discourse about religion. Such discourse is depressing and shallow. The shortcomings of this book reveal how even our best public intellectuals find it difficult to engage the complexity of religion, especially in an era where religious freedom is itself increasingly recognized as deeply political. But I take this pessimistic assessment to be too extreme, especially given Dworkin’s stated goal to “extend his treatment of the subject over the next few years” (RwG, ix). Indeed, we should be grateful for Dworkin’s intellectual courage and political hope for the rule of law. His religious confession might help us now interpret

his own liberalism. And, better yet, it might help recognize the historical contingency of our own.

One final informal thought, by way of another hedgehog who risked confession and would encourage his readers to “philosophize in a religious spirit.”<sup>24</sup> Augustine was no liberal. His exilic pilgrim anthropology was darker than even Dworkin’s melancholy assessment of the possible future of a religion without God. But he shared Dworkin’s wonder with the world, resistance to tragedy, and opposition to the skeptics and value pluralists of his day. He too was unwilling to separate law and morality and held that “the universe and its creatures are awe-inspiring, that human life has purpose and the universe order” (RwG, 1). Augustine did not dream of a final theory with systematic completeness, though he too lived by faith and not by sight. For him, “the way of the good and blessed life is to be found entirely in the true religion wherein one God is worshipped and acknowledged with purest piety to the beginning of all existing things, originating, perfecting, and containing the universe.”<sup>25</sup> Dworkin’s religion is at once more theoretical and more down to earth in its moral vocation. Augustine’s native language is that of love and dependency, not rights and autonomy. It is vulnerability to anarchic grace in communion with others that gives birth to freedom, not self-assertion or critical legal reasoning. In fact, this side of Luther’s reading of Augustine and Paul, the status of law and concern for merit remain ambivalent notions. But, like Dworkin, Augustine saw law as a command of universal reason rather than a mere expression of convention or power. He too was enamored with the beauty of the whole, that which is beyond the human knower. Law participates in this beauty, perhaps again like Dworkin,

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<sup>24</sup> Augustine, *On True Religion*, vii, 12.

<sup>25</sup> *Ibid.*, i, 1.

as a part of morality that shapes our social practices and institutions. But *Religion without God* is curiously silent about the beauty of law (save perhaps laws of nature). Dworkin gave himself to the law almost as a communal spiritual exercise, and elsewhere displayed what might be called religious wonder at the fitting application of laws. Why is that not a part of his confession? Perhaps they are all too human artifacts, even for a religious atheist. Those of you who knew Dworkin and his work better than me might have an answer.