

The Sublime Dworkin

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Ronald Dworkin, [*Religion Without God*](#), **New York Review of Books**, April 4, 2013.

Ronald Dworkin's death in February, at the age of 81, was surely a deep personal loss for those who knew and loved him, and marked the end of an epoch, an after-the-fact close to the late twentieth century, in liberal legal thought. The loss was of less moment, perhaps, to current work in constitutional law and theory. Dworkin's missiles against the current Supreme Court, which continued to land in the pages of the *New York Review of Books*, were more than merely transatlantic missiles; they seemed to have been launched from another time and place altogether. Still, until the end, he wrote with grace, clarity, and an air of authority. I'm grateful that what appears to be his last major work was in one of my own areas of interest, the relationship between law and religion.

One of the bigger-picture theoretical questions that seems to have sparked renewed interest in this field is whether "religion"—whatever that is—is "special" for constitutional purposes. That question has been raised in a variety of ways. Chris Eisgruber and Larry Sager have asked, from an egalitarian perspective, whether religious claims can be set apart from claims of conscience. Both Brian Leiter and Micah Schwartzman have questioned from a philosophical perspective whether the distinctive treatment of religion is capable of coherent justification. Others, such as Caroline Mala Corbin and Nelson Tebbe, have approached things from a different but complementary position, asking whether nonbelievers are unfairly disadvantaged in the current legal regime. And religion's specialness, as an intrinsic matter or for more earthbound legal purposes, has its defenders, too, prominent among them such writers as Michael McConnell and Andy Koppelman. It's a question that certainly has an air of the abstract, but it has important implications for Religion Clause doctrine.

In *Religion Without God*, an excerpt from a forthcoming book of the same title that was recently published in the *New York Review of Books*, Dworkin offers his own take on this question. "The familiar stark divide between people of religion and without religion," he begins, "is too crude." Both believers and non-believers can and often do share a similar set of "convictions and experiences" about both "moral truth and natural wonder" that partake in a sense of awe and wonder. If we can reach a proper sense of what "religion" is, then we might be able to cool, if not end, the culture wars. This requires us to "separate God from religion"—to show "what the religious point of view really is and why it does not require or assume a supernatural person."

For Dworkin, the religious attitude is not about theism. Rather, it is one that "accepts the full, independent reality of value." It holds to two basic principles: that "human life has objective meaning or importance," and that "what we call 'nature'—the universe as a whole and in all its parts—is not just a matter of fact but is itself sublime: something of intrinsic value and wonder." Both of these two convictions, of "life's intrinsic meaning and nature's intrinsic beauty," make up the "paradigms of a fully religious attitude to life," one that is comprehensive, pervasive, and full of a profound sense of mystery. That attitude, Dworkin argues, is present across the dividing line between believers and non-believers.

To this argument, Dworkin adds three points, none of them novel but all of them eloquently stated. First, if "the religious attitude rests finally on faith," so too does any effort to find certainty in truth, including mathematic and scientific truth. Here, too, there is no way to reach an independent

certification of the truth of those views. Second, the idea of faith takes on a special importance when we refer to convictions about value rather than convictions about matters of fact. Our “convictions about value are emotional commitments” that “must have a grip on one’s whole personality.” They must take on a sense of the numinous, one that “find[s] the universe awe-inspiring and deserving of a kind of emotional response that at least borders on trembling.” This sense of the numinous has been pointed to by both believers and non-believers, with Einstein serving as the patron saint (so to speak) of those falling in the latter category.

Finally, and perhaps more controversially, Dworkin argues that the religious attitude, whether it involves a believer or non-believer in God, involves a necessary separation between what he calls “religious science” and “religious value.” Many religious traditions “make claims about matters of fact and about historical and contemporary causes and effects.” They claim, for instance, that God exists, that there is a soul that continues after physical death, and that Jesus healed the sick. But they also make claims about value, such as the claims about “the intrinsic wonder and beauty” of nature and of human existence. And those value claims are independent of religious claims about matters of fact. Even if the God of monotheistic tradition exists, “such a god’s existence cannot in itself make a difference to the truth of any religious values.” God may be capable of judging the living and the dead, but the fact of his judgment cannot “create right answers to moral questions or instill the universe with a glory it would not otherwise have.” For such value judgments, the question of God’s existence is “only a minor premise.” In short, Dworkin concludes, “What divides godly and godless religion—the science of godly religion—is not as important as the faith in value that unites them.”

There is much to question here. One can do so from a non-“religious” perspective, from a worldview that rejects claims to objective truth or value altogether. This, Dworkin writes, “is not an argument against the religious worldview. It is only a rejection of that worldview,” one that “produces, at best, a standoff.” Certainly he does not attempt here to end the standoff.

One can also question Dworkin’s perspective from a theistic perspective, one that argues that claims of truth and claims of value are inseparable—that, say, the fact of salvation is precisely what gives meaning to claims about what invests life with value. Those of us who come from non-salvific traditions may question that assertion. Jews, for instance, have a long history of arguing with the very God that they believe in. (Or don’t believe in; disbelief in God has never stopped Jews from arguing with him.) From that perspective, the prospect of eternal life doesn’t strike us as a very good reason not to tell God he’s dead wrong.

But there are other traditions, and for them the effort to separate factual claims from claims about value may seem unacceptable. In a review of Dworkin’s final full opus, *Justice for Hedgehogs*, for example, Robert Rodes objected that a similar move in that book ended up treating God as “cosmically irrelevant,” as a mere matter of fact with little or no bearing on matters of value. Whether Dworkin’s claim on this point is rejected as offensive or ignored as esoteric, it is not likely to cool the culture wars appreciably.

There are also reasons to be skeptical about where Dworkin is going as a matter of legal doctrine. He argues, for instance, that courts have often defined religion in something like the expansive way he does. But his assertion, in a fairly typical Dworkinian move, rests on a questionable interpretation of the caselaw. He writes later in the piece that his goal is “to produce an account of religion that we can use to interpret the widespread conviction that people have special rights to religious freedom”—the very point that is at issue in current debates about whether religion is “special” for constitutional purposes. But this is a slippery use of the word “religion,” and it is doubtful that the widespread conviction Dworkin refers to embraces anything like the expansive definition of religion that he favors. Finally, I can’t help but wonder what his expansive view of the religious attitude portends for the Establishment

Clause, and particularly for his earlier, creative—but unpersuasive—effort to use it as a foundation for abortion rights. We will have to wait for the full book to see where he goes.

At the same time, there is much to be said for Dworkin’s focus on a sense of the sublime and transcendent as fundamentally “religious,” whether the person who has that sense is a theist or not. Even if we are unwilling to call this sense of the sublime religious, it is still widely shared. It is what makes it possible for most of us to appreciate the pull of indisputably “religious” claims, and thus the importance of religious liberty; and it also makes it possible for most of us to appreciate the importance of conscience itself, religious or not. Even in what Charles Taylor called a “secular age,” as long as there is a residue of the sublime, we can still at a minimum appreciate the idea of religious experience, respect the force of religious conviction, and enter the mind of the religious believer in a way that gives us an adequate sense of the importance of his claims to religious liberty. Whether that residue of the sublime also requires us to give equal weight to non-theistic claims of conscience as a legal matter is a separate question, but at a minimum it gives us a sense of the reasons for religious liberty, and also gives theists a sense of the importance of non-theistic claims of conscience.

It’s not clear, then, that Dworkin’s swan song succeeds in telling us what “religion” is, or whether it is unique. But it does suggest something about why religion, whatever that is, is “special,” is a vital part of the human condition as most of us—believers and non-believers alike—experience it, and why it’s worth protecting.

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