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James E. Fleming

*Boston University School of Law*

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#### Recommended Citation

James E. Fleming, *Introduction, Symposium on Ronald Dworkin's Religion Without God*, in 94 Boston University Law Review 1201 (2014).

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**Introduction to the Symposium on Ronald Dworkin's *RELIGION WITHOUT GOD***

94 *Boston University Law Review* 1201 (2014)  
*Boston University School of Law Public Law & Legal Theory Research Paper No. 15-14*  
(March 20, 2015)

**James E. Fleming**  
Boston University School of Law

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## Abstract

Boston University School of Law and the *Boston University Law Review* are proud to publish this Symposium on Dworkin's final book, *Religion Without God* (Harvard University Press, 2013), as a sequel to our 2009 Symposium on his *Justice for Hedgehogs*. The Symposium includes an introduction and eulogy by James E. Fleming and contributions by a number of the most distinguished scholars of law and religion in the United States and the United Kingdom: Jeremy Waldron, Stephen L. Carter, Paul Horwitz, Andrew Koppelman, Cécile Laborde, Linda C. McClain, Micah Schwartzman, and Steven D. Smith.

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# SYMPOSIUM

## A SYMPOSIUM ON RONALD DWORKIN'S *RELIGION WITHOUT GOD*

### INTRODUCTION TO THE SYMPOSIUM ON RONALD DWORKIN'S *RELIGION WITHOUT GOD*

JAMES E. FLEMING\*

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#### I. RONALD DWORKIN: A EULOGY

Ronald Dworkin is widely and rightly viewed as the most important legal philosopher and constitutional theorist of our time, and as one of the leading figures in moral and political philosophy. In the words of Marshall Cohen, Dworkin's *Taking Rights Seriously* "is the most important work in jurisprudence since H.L.A. Hart's *The Concept of Law* and, from a philosophical point of view at least, the most sophisticated contribution to that subject yet made by an American writer."<sup>1</sup> And Cohen wrote those words about Dworkin's first book in 1977! Dworkin's many outstanding subsequent books and articles made good on that early, prescient assessment. Dworkin is unmatched and unrivaled in legal philosophy and constitutional theory.

Over the years, I have organized a number of conferences in constitutional theory, and Dworkin was often the most appropriate keynote speaker. In conferences at Fordham University School of Law on "Fidelity in Constitutional Interpretation" and "Rawls and the Law,"<sup>2</sup> and at Boston

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\* Professor of Law and The Honorable Frank R. Kenison Distinguished Scholar in Law at Boston University School of Law. This Introduction draws from a fuller eulogy. See Jim Fleming, *Ronald Dworkin: A Eulogy*, BALKINIZATION (Feb. 17, 2013), <http://balkin.blogspot.com/2013/02/ronald-dworkin-eulogy.html>, archived at <http://perma.cc/C4JS-FJ4A>.

<sup>1</sup> Marshall Cohen, *He'd Rather Have Rights*, N.Y. REV. BOOKS (May 26, 1977), <http://www.nybooks.com/articles/archives/1977/may/26/hed-rather-have-rights>, archived at <http://perma.cc/6XBF-VPRF> (reviewing RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977)).

<sup>2</sup> Ronald Dworkin, *The Arduous Virtue of Fidelity: Originalism, Scalia, Tribe, and Nerve*, 65 FORDHAM L. REV. 1249 (1997); Ronald Dworkin, *Rawls and the Law*, 72

University School of Law on his book, *Justice for Hedgehogs*,<sup>3</sup> Dworkin delivered powerful and eloquent keynote lectures. The readers of this Symposium are likely familiar with the countless accounts of Dworkin's brilliance as a lecturer, of how he spoke without notes and with great flair, making it all seem so graceful and effortless. Even more impressive, in my experience, was how seriously he took his lectures and how energetically he responded to his interlocutors. In the conference at Boston University on the penultimate draft of *Justice for Hedgehogs*, held in 2009 when Dworkin was seventy-eight years old, he demonstrated his characteristic energy by responding extemporaneously to all thirty-one commentators, one panel at a time, and elaborating those initial thoughts in a published response.<sup>4</sup> I had the privilege of writing the biographical entry on Dworkin in the *Yale Biographical Dictionary of American Law*, and closed that entry by stating: "His work abounds with indefatigable energy, giving the impression that he would not stop making arguments until he put the clamps of reason upon every rational being."<sup>5</sup> Dworkin substantially revised the draft of *Justice for Hedgehogs* in light of the Boston University Symposium and incorporated many of his responses.

Dworkin's work in legal philosophy and constitutional theory was so powerful and fecund that it could inspire many careers wholly dedicated to building upon it and working out its implications. Dworkin (along with John Rawls) has been a powerful inspiration for my own work in constitutional theory. My *Securing Constitutional Democracy: The Case of Autonomy* puts forward a "'Constitution-perfecting' theory" that aims, in the spirit of Dworkin, to interpret the U.S. Constitution so as to make it the best it can be.<sup>6</sup> Sotirios Barber's and my book, *Constitutional Interpretation: The Basic Questions*, is a response to Dworkin's call, in *Taking Rights Seriously*, for a "fusion of constitutional law and moral theory."<sup>7</sup> And Linda McClain's and my book, *Ordered Liberty: Rights, Responsibilities, and Virtues*, responds to charges that liberals like Dworkin take rights too seriously, developing a civic liberalism that takes responsibilities and civic virtues – as well as rights – seriously.<sup>8</sup>

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FORDHAM L. REV. 1387 (2004).

<sup>3</sup> Ronald Dworkin, *Justice for Hedgehogs*, 90 B.U. L. REV. 469 (2010).

<sup>4</sup> Ronald Dworkin, *Response*, 90 B.U. L. REV. 1059 (2010).

<sup>5</sup> James E. Fleming, *Ronald Dworkin*, in THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 178, 179 (Roger K. Newman ed., 2009).

<sup>6</sup> JAMES E. FLEMING, *SECURING CONSTITUTIONAL DEMOCRACY: THE CASE OF AUTONOMY* 4-6, 73-74, 210-11 (2006).

<sup>7</sup> SOTIRIOS A. BARBER & JAMES E. FLEMING, *CONSTITUTIONAL INTERPRETATION: THE BASIC QUESTIONS*, at xiii (2007) (quoting DWORKIN, *supra* note 1, at 149).

<sup>8</sup> JAMES E. FLEMING & LINDA C. MCCLAIN, *ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES* 3 (2013).

Dworkin's successor as Professor of Jurisprudence at Oxford University, John Gardner, put it well when he said: "The loss of Ronnie takes a bit of the sparkle out of life as a philosopher of law."<sup>9</sup> But those who knew Dworkin and learned from his teaching and writing will never forget the thrill of engaging with him and building upon his work. His sparkling prose, the staggering ambition and monumental achievements of his works, and the flair and gusto of his arguments and insights will never cease to illuminate and inspire. We shall not look upon his like again. Ronald Dworkin made legal philosophy and constitutional theory the best they can be.

## II. DWORKIN'S *RELIGION WITHOUT GOD*: AN INTRODUCTION

We at Boston University and the *Boston University Law Review* are proud to publish this Symposium on Dworkin's *Religion Without God* as a sequel to our 2009 Symposium on his *Justice for Hedgehogs*. As Linda McClain puts it in her contribution:

It has been a palpable if bittersweet pleasure to read Dworkin's final book, *Religion Without God*, mindful that he had "planned to greatly extend his treatment of the subject over the next few years," but was prevented from doing so by illness. The book is based on lectures, which are so vividly and characteristically in Dworkin's voice that it is really like being in a room hearing him speak again.<sup>10</sup>

The book displays many of Dworkin's characteristic argumentative strategies as well as characteristic substantive arguments.<sup>11</sup> In *Religion Without God*, as in his prior books, *Life's Dominion*<sup>12</sup> and *Is Democracy Possible Here?*,<sup>13</sup> Dworkin tackles a polarizing issue where parties are at "war" and proposes that, by dispelling "intellectual confusion" and offering a fresh understanding of what is really at issue, they may be able to have a cease fire or, at least, a substantial reduction of hostility and conflict.<sup>14</sup> In *Religion Without God*, Dworkin takes on the seemingly "wholly unbridgeable gap"<sup>15</sup> between "believers and nonbelievers" in "the new religious wars" in politics.<sup>16</sup> He argues that "[i]f we can separate God from religion," this new

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<sup>9</sup> Ronald Dworkin, *1931-2013*, UNIV. OF OXFORD (Feb. 15, 2013), <http://www.law.ox.ac.uk/newsitem=537>, archived at <http://perma.cc/F9NS-R3TW>.

<sup>10</sup> Linda C. McClain, *Can Religion Without God Lead to Religious Liberty Without Conflict?*, 94 B.U. L. REV. 1273, 1319 (2014) (footnote omitted) (quoting RONALD DWORKIN, *RELIGION WITHOUT GOD*, at ix (2013)).

<sup>11</sup> See *id.* at 1288-98 (fully exploring Dworkin's characteristic argumentative strategies and substantive arguments as carried forward in *Religion Without God*). I draw from McClain's account here.

<sup>12</sup> RONALD DWORKIN, *LIFE'S DOMINION* (1993).

<sup>13</sup> RONALD DWORKIN, *IS DEMOCRACY POSSIBLE HERE?* 1, 2 (2006).

<sup>14</sup> DWORKIN, *supra* note 10, at 4, 10-11.

<sup>15</sup> *Id.* at 147.

<sup>16</sup> *Id.* at 9, 137.

understanding of “what the religious point of view really is” has the potential to “shrink both the size and importance” of such wars, or at least to “lower . . . the temperature of these battles.”<sup>17</sup>

Further, by framing religious freedom around protecting “a [general] right to ethical independence” rather than a “troublesome special right” for theistic religious people – a characteristic substantive argument in *Life’s Dominion, Is Democracy Possible Here?*, and *Justice for Hedgehogs* – Dworkin calls for a “radical reinterpretation of all the constitutions, [human rights] conventions, and human rights covenants.”<sup>18</sup> In all four works, the new understanding Dworkin urges rests on principles about dignity, responsibility, and the intrinsic value of human life, with implications for limitations upon governmental authority. He gave these principles their fullest formulation in *Justice for Hedgehogs*, and many in this Symposium no doubt observe the continuity in substantive arguments between that work and *Religion Without God*.

Above all else, Dworkin’s *Religion Without God*, like all his works, manifests an unwavering confidence in the power of reasoning.

Some critics will point out that Dworkin is not likely to persuade all religionists, and certainly not all conservative religionists, to adopt liberal positions on issues such as the right of a woman to decide whether to terminate a pregnancy or the right of same-sex couples to marry. Or to persuade them to adopt his view that there can be such a thing as “religion without God” or, heaven forbid, a “religious atheist”!

But, with all due respect, that surely should not be the criterion for judging whether the book is a success or whether it might help moderate the culture wars surrounding these issues. I would suggest that the book might be a success, even if it fails to persuade a single religionist to change his or her substantive position on religious liberty, abortion, or gay and lesbian rights, if:

1. the book powerfully recasts and articulates the arguments of religious atheists;
2. this articulation persuades some religionists to accord greater respect to the arguments and positions of religious atheists;
3. this articulation persuades some atheists to recast their arguments in religious atheist terms so as to moderate the disagreement and to promote dialogue with religionists on terms of greater respect and civility; and
4. this articulation firms up liberal arguments for the rights to reproductive freedom and same-sex marriage, thereby solidifying the positions of some liberals who have doubts about the basis for those rights (based perhaps on the relentless criticism of *Roe v. Wade*<sup>19</sup> all these years).

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<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.* at 133.

<sup>19</sup> *Roe v. Wade*, 410 U.S. 113 (1973).



Judged by such criteria, I daresay, Dworkin's *Religion Without God* is a splendid success!

We are honored to include in the Symposium contributions by a number of the most distinguished scholars of law and religion in the United States and the United Kingdom. We are especially honored to include a piece by Jeremy Waldron, colleague of and partner with Dworkin and Thomas Nagel in the famous New York University Colloquium in Legal, Political, and Social Philosophy. We believe that this Symposium is worthy of Dworkin. We are confident that he would have relished the criticism and would have enjoyed the forceful engagement with his arguments!