

*University of Southern California Law  
School*

Legal Studies Working Paper Series

---

*Year 2010*

*Paper 70*

---

**Taking Blessings Seriously: A Comment on  
Ronald R. Garet's "To Secure the Blessings"**

Nomi M. Stolzenberg\*

\*USC Law School, [nstolzen@law.usc.edu](mailto:nstolzen@law.usc.edu)

This working paper is hosted by The Berkeley Electronic Press (bepress) and may not be commercially reproduced without the permission of the copyright holder.

<http://law.bepress.com/usclwps-lss/art70>

Copyright ©2010 by the author.

# Taking Blessings Seriously: A Comment on Ronald R. Garet's "To Secure the Blessings"

Nomi M. Stolzenberg

## **Abstract**

This short piece provides the outline of a commentary on Professor Garet's work, "To Secure the Blessings." In it, I attempt to isolate what the distinctively "liberal" aspect of Professor Garet's reading is, what the distinctively "Christian" aspect is, and in so doing to reconstruct the tradition of liberal Christian constitutional thought which Professor Garet is recuperating by way of a close reading of the "blessings" paragraph in the Constitution's preamble.

TAKING BLESSINGS SERIOUSLY:  
A Comment on Ronald R. Garet's "To Secure the Blessings" (USC Law Legal Studies  
Paper No. 10-11)

Nomi M. Stolzenberg

- 1) What Ron's doing: offering an interpretation of the Constitution that takes the use of the word "blessing" seriously and in so doing he is elaborating a vision of Liberal Christian Constitutionalism that he also is offering us
- 2) Points up the normative and intellectual affinities between this Constitutional vision and the family of liberal constitutional theories of which Dworkin's Taking Rights Seriously is an exemplar. In so doing, Ron is challenging the prevailing conventional liberal wisdom, which holds that liberalism and liberal theory must be wholly secular. Here it's important to distinguish between two different conceptions of secularism, the modern and the premodern. According to the modern conception of secularism, for the public realm of political practice and discourse to be secular, religion is required has to be swept away – if not into the dustbin of history then into the closets where liberalism's other skeletons are kept: the point being it can't "come out" in the public domain at all. As we shall say, keeping religion in the closet is not the way that secularism and the notion of the separation of church and state were originally conceptualized. There is premodern notion of secularism which, I think, Ron is implicitly reclaiming which stands as a rebuke to the prevailing liberal assumption that religion has to say in the closet and cannot openly contribute faith-based claims to the philosophical foundations on which are Constitution is based, and according to which it is to be interpreted. OTOH, Ron is also offering a rebuke to the prevailing view of Christian constitutionalism promoted by the religious right, according to which we are a "Christian nation," but not a liberal one, and therefore the Constitution need not be interpreted in accordance with liberal principles of human equality and individual freedom and rights. Ron does all this by taking the term "blessings" as it's used in the preamble very, very seriously. Out of the analysis of this single potent word, Ron unfurls a full-fledged theory of constitutionalism which is at once liberal and religious, and more specifically, Christian in its philosophical orientation: a liberal Christian vision of constitutionalism.

Rather than summarize Ron's paper, which in its suppleness and suggestiveness really defies summary, I'm going to schematize what I take to be the intellectual propositions that constitute Ron's LCC vision that Ron is presenting. At the same time, I'm going to present in a rather schematic form what I take Ron's arguments secularist liberalism, on the one hand, and conservative Christian constitutionalism, on the other. I do this with some trepidation (a) because Ron is not making all of these points explicitly, so I fear that I may be imputing to him contentions that he is not actually proposing; (b) even if I am correct about the argument, the reductiveness of my presentation will surely do violence to the infinitely subtle and

suggestive style of close reading and interpretation that is Ron's preferred mode of analysis; (c) most important – I think that one of Ron's arguments is precisely that there are limits to human reason, limits to intellectual argumentation, and therefore liberal constitutionalism as a theory and as a practice requires something more than philosophical argument to support it. What that something is, and whether it is something that can only be supplied by religious faith, are amongst the most important questions that Ron is raising. But before addressing these issues, let me put them in intellectual context by bringing what I take to be the latent arguments of Ron's paper to the surface.

- I. What's constitutionalist about Ron's vision.
- II. What's liberal about it.
- III. What's religious (more specifically Christian) about it.

I. WHAT CONSTITUTIONALIST ABOUT IT.

II. WHAT'S LIBERAL ABOUT IT.

A. LIBERAL VALUES

- (1) Human **equality; universalism**
- (2) Human **liberty; individual rights**
- (3) **Limited government**; power can't be exercised in violation of rights
- (4) **Moral necessity of government.** \* premodern conception of secularism

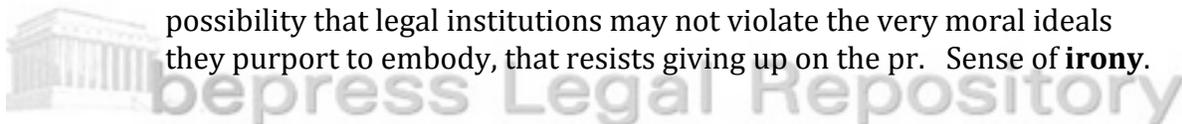
B. LIBERAL REASON: philosophical grounding, derivation of values

- (1) Reason (vs revelation, submission to authority)
- (2) "**Public reason**" (Rawls) (reasoning that all people can endorse if they are sincerely committed to the universalist principles of equality and liberty)

C. LIBERAL ATTITUDE: combines

- (1) **distrust of authority** and ever-present possibility of abuse of power (unjust law) w/
- (2) recognition of moral necessity of positive law and established political authority
- (3) neither overly optimistic
- (4) nor overly skeptical
- (5) simultaneously hopeful and skeptical: alert to the possibilities of moral error and political self-deception; simultaneously alert to the dangers of attacks on govt and the need for legal authority.

What's required is something more complicated than either radical skepticism or boundless optimism: moral vigilance, alertness to the possibility that legal institutions may not violate the very moral ideals they purport to embody, that resists giving up on the pr. Sense of **irony**.



### III. WHAT'S RELIGIOUS (CHRISTIAN) ABOUT IT.

2 religious routes to liberalism:

- (1) Imago dei – “all people created in the image of God” implies universalist principle of human equality; all people created in the image of God endowed with liberty and reason asserts the existence of inviolable rights (to life and liberty). Principles of human equality and liberty in turn imply moral limits on the exercise of governmental power; political power may not be exercised in ways that interfere with people’s inviolable rights to liberty and equality = doctrine of limited government.
  - (2) Fallibilism – God alone is perfect (omniscient, omnipotent, good); human beings are imperfect; human reason fallible (owing to the “circumstances of human reason”). Fallibilism has two equally important aspects: on the one hand, it sounds a cautionary, pessimistic note about the exercise of human reason, and, by extension, about the exercise of statecraft and manmade law, reminding us of our propensity to abuse power and misuse reason in the service of moral atrocities, like slavery and empire and all the routine denials of rights and liberties that seem to be an inevitable part of our legal and political practices. OTOH, fallibilism resists the conclusion drawn by radical skeptics, the antirationalist and antinomians whose response to the frailty of reason and human frailty more generally is to withdraw from worldly affairs and renounce the practice of politics and the project of law altogether. Fallibilism resists such extreme skepticism about the ability of positive law to serve justice at the same time as it resists an unfounded optimism about the justice of human law. What it does dictate is the recognition and the institutionalization of moral – constitutional – limits on the exercise of governmental power. IOW, it dictates the political theory of liberalism and, more specifically, liberal constitutionalism.
- A. Easy to see how these two theological ideas lead to the espousal of liberal values, and the insistence that these values serve as constitutional limits on the way that governmental power is exercised and positive law is implemented.
  - B. Less obvious how either of these ideas supports the claim that religious constitutionalism comports with the canons of public reason. Perhaps the argument is that people of faith who subscribe to this religious position can appeal to the liberal values to which this theological position subscribes – i.e., the values of universalism,



equality, and liberty – without explicitly appealing to the notions of the imago dei or God’s perfection and man’s imperfection and thereby they can participate in the Rawlsian overlapping consensus without any direct appeal to God. Alternatively, the argument might be that the concept of public reason needs to be reconceived so as not to require that faith-based claims remain in the closet. Not clear which of these arguments Ron is implicitly relying to make the case that this theological position comports with the requirements of public reason. His contention that LCC comports with public reason is clear, the argumentative support for that conclusion less so.

- C. What is perfectly clear and persuasive is the way that this religious position produces the complex attitude toward human reason and government that liberalism requires. Indeed, I think that this is perhaps the most valuable contribution to liberal constitutional theory that Ron’s paper makes: not just to demonstrate the way that a religion produces the requisite attitude, but to show the importance of that attitude to liberalism. We are accustomed to defining liberalism in terms of the values it endorses, and we are also accustomed to defining it in terms of its insistence on reason to supply the philosophical basis for endorsing those values. What Ron’s analysis of “blessings” is reminding us of is that intellectual foundations alone are not enough: they are essential, but not sufficient. Something more than intellectual arguments supplied by reason is necessary to prevent the confidence that we place in reason and government from becoming overweening confidence and degenerating into political self-deception, blinding ourselves to the ways in which our practices fall short of our ideals.

Return to this issue at the end of my remarks. Before that, I want to raise a few questions about what the point of Ron’s paper is.

Two audiences – Christian and liberal. Focus on the liberal audience.

Clearly the main point addressed to the liberal audience is that there is a place for this kind of faith-based position in liberal constitutional theory.

Two basic questions:

- (1) Does the paper succeed in making the case that LCC can come out of the closet and join the public liberal conversation. Does it succeed in persuading us that LCC can be viewed as philosophical pillar of the Constitution, dictating its content and shaping its interpretation, without running afoul of liberal values and the requirements of public reason?

- (2) What kind of consistency claim is Ron actually making? Clearly he is claiming that LCC is consistent with liberalism. But that could mean at least 3 different things:

A. COMPATIBILISM: LCC/R is compatible with liberalism



- B. CONTRIBUTIONISM: LCC has something to add to liberalism – it's an intellectual resource, a source of insight, an inspiration
- C. NECESSITARIAN: LCC is not just compatible with liberalism, it is crucial, it is indispensable to liberalism. This position turns the tables on conventional (secular) liberalism, asking not whether liberalism can accommodate religion, or include faith-based claims in theories about its grounding, but rather whether liberalism can dispense with such religion? Can liberalism do without the kind of faith-based claims that Ron is advancing, or other faith-based claims?

Unlike some philosophers who have addressed this question, Ron does not explicitly espouse a necessitarian position. Compare to Waldron.

Waldron relies on the imago dei argument to make the claim that

I think that Ron is right to avoid making this argument.

But it seems to me that the argument unlike the argument from the imago dei, the argument fallibilism on which Ron implicitly relies points toward a stronger argument in favor of religion's indispensability.

Fair question what can take the place of religion in cultivating the kind of awareness that is necessary to prevent liberal optimism in reason and government from degenerating into overweening arrogance ...

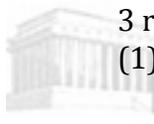
In conclusion: several possibilities.

1. Religion is neither compatible with, nor necessary to liberalism. The conventional liberal wisdom of today – Ron succeeds in offering a serious challenge to this view.
2. Religion is incompatible with liberalism but not necessary – not necessary to constitutionalism. This is the view of the religious right, which Ron also effectively challenges.
3. Religion may be neither necessary nor incompatible with liberalism. It can be admitted into the overlapping consensus, but need not be.
4. Religion may be necessary to liberalism and incompatible.

Paradox of universalism

3 responses:

- (1) secular versions of liberalism and universalism aren't any better at escaping this paradox



Legal Repository

(2) Religion may be better at cultivating the sense of irony and awareness that may be the only viable response to this paradox

(3) Attending to the difference between Jewish and Christian political theologies.

Rabbinic conception identical except that it embeds the case for the establishment of secular positive law and political sovereigns within a system of legal pluralism.

Connection between legal pluralism and exceptionalism.

Aspirational view of legal pluralism

Dangers of legal pluralism = dangers of exceptionalism.

