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DWORKIN'S LAST WORD: *RELIGION WITHOUT GOD*

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If people tend to become conservative with age, this is certainly not Ronald Dworkin's case. Dworkin's posthumous book *Religion without God* is a vivid testament of his capacity to surprise and provoke. There is continuity between this short book and his previous work, yet Dworkin thinks anew problems of metaphysics, moral philosophy, philosophy of science, and legal theory. The impetus to write this book is practical: it is a reaction to the "religious wars" in the United States, and an attempt to contribute to their overcoming. How is it possible to find a *terra firma* of morality, law and politics shared by religious and atheist people alike? Dworkin's answer to the deep disagreement generated around the place of religion in the public sphere connects him with the beginnings of liberalism up to J. Rawls's and J. Habermas's dominant public reason approach. Dworkin is not, however, a typical rationalist. While Rawls banks on self-standing reason and overlapping consensus, and Habermas on translation and public reason, Dworkin's intriguing response is a religion without god or a religious atheism. Rawls and Habermas are zealous guardians of the walls of the fortress of reason, sworn to keep it safe from the invading forces of faith and metaphysics. Dworkin does not abandon the claims of public reason, yet he connects them with a head-on engagement with themes such as faith, transcendence, immortality, metaphysics and God. In so doing, he provides a post-Kantian attempt to reconcile Enlightenment and religion, which is based on an alternative understanding of the relation between *ratio* and *fides*.¹

Dworkin's argument is structured in four chapters. The first chapter ("Religious Atheism?") defines the notion of religion without God in terms of a universal faith in objective and independent values. The second chapter ("The Universe") defends the argument that religion (as defined by Dworkin, namely as faith in value) and science are not in a relationship of mutual exclusion, but of fruitful interaction. The third chapter ("Religious Freedom") draws radical consequences of his view of religion for legal-constitutional debates. The final chapter ("Death and Immortality") treats briefly a question with a Kantian ring: what can we hope for? Dworkin's short response envisages a kind of immortality that even atheists can *reasonably* aspire to.

Dworkin does not make a single reference to Kant's project on religion, yet his book bears its imprint. Dworkin carries on Kant's reflection on a universal and rational faith/religion, even if he dilutes Kant's stiff rationalism, and adds a Romantic sensibility for the "mysterious." Kant asked "how is it possible to think religion within the boundaries of reason alone?"², and claimed to retrieve a rational and universal core of faith/religion by piercing through their historical shell. Not unlike him, Dworkin is concerned with the question of the reasonable and universal essence of religion. Similarly to Kant - and to post-Kantians from E. Cassirer to J. Derrida -, Dworkin distinguishes between two strata of religion - one that is fundamental and universal, and another one that

is "accidental." Common knowledge notwithstanding, Dworkin's claim is that the belief in god is the superficial or external stratum of religion, not the essential one. God is an "accident": true, the majority of religious people believe in it; yet other people who are, for Dworkin, religious, do not. Here Dworkin's intriguing thought is that, in spite of their self-understanding, many atheists are religious. This is in virtue of their belief in religion's more profound stratum and universal essence. As the very first sentence of Dworkin's book goes, "(r)eligion is deeper than god (p. 1). The essence of religion is both independent from, and more profound than, theistic beliefs and is constituted of two elements: faith in the full independence and objectivity of values; and faith in the objective beauty of nature.

To better grasp Dworkin's view of the universal faith in value, consider a continuum whose extremities are Kant's view of moral and rational faith and Kierkegaard's conception of faith at odds with morality and reason. On this continuum, Dworkin is close to Kant. Kant included universal faith (i.e., the essence of religion) *within* the domain of reason and rational morality, and ultimately justified it by means of our participation in the noumenal world. The essence of faith/religion is rational and moral.³ In contrast, S. Kierkegaard's Abrahamic "model" projects an "irrational" and "mad" faith in God. This faith in *das ganz Andere* is at the core of Abraham's readiness to sacrifice his son Isaac; as such, it is rigorously at loggerheads with moral-universal norms. In turn, for Dworkin, faith is understood as belief in objective values in morality and science: "(t)he religious attitude ... insists on the full independence of value: the world of value is self-contained and self-certifying" (16). But isn't this view of moral values circular? Dworkin's answer is positive. However, he points out that in science we encounter a similar circularity; in science we also have to rely on the faith in some fundamental truths and axioms (e.g. that the external world exists; basic mathematical axioms, etc.) (16-17). But Dworkin does not propose a mere conceptual or transcendental argument by way of analogy with science. Faith represents ultimately a kind of *existential affirmation* of value regarding the moral and their natural world, an affirmation of their rationality and objectivity. As Dworkin claims, "(t)his kind of faith is not just passive acceptance of the conceptual truth that we cannot justify our science or our logic or our values without appealing to science or logic or value. It is a positive affirmation of the reality of these worlds and of our confidence that though each of our judgments may be wrong, we are entitled to think them right if we have reflected on them responsibly enough" (19). In some sense, there is in Dworkin a late and pale echo of Nietzsche's will to affirm life: the core of a "fully religious attitude to life" is, for Dworkin, faith as the "positive affirmation" of "life's intrinsic meaning" and "nature's intrinsic beauty" (11). However, there is a difference between science and morality. In the case of moral value, faith signifies something more, as our

convictions about value are emotional commitments as well (“...they must also feel right emotionally, 19). In sum, Dworkin’s faith is neither strictly speaking rational (Kant), nor “irrational” (Kierkegaard): it does not depend on the faith in a specific god, but it is a reasonable faith in objective and independent value – in the rationality of the worlds we live in. It is this faith that is universalizable, and that could appeal to and reconcile believers and atheists alike. As Dworkin claims, “(w)hat divides godly and godless religion – the science of godly religion – is not as important as the faith in value that unites them” (29).

Regarding scientific research, Dworkin argues that, just as common people are capable of feeling the sublime and “objective beauty” of nature, outstanding scientists often experiment religious feelings before the universe. Consider Einstein’s invoking religion in relation to his feelings of mystery and transcendence of the universe, and Carl Sagan’s talking about states of awe and wonder in front of nature: these experiences of the transcending, miraculous and objective beauty of nature are not reducible to gaining evolutionary advantages or some deep psychological need. In addition, Dworkin claims that the value of “objective beauty” in science is not simply something external to scientific theorization. As Dworkin asserts, “the beauty of a scientific hypothesis is evidence of its truth” (51). By building on philosophers of science such as H. Putnam and on representative scientists’ self-understanding, Dworkin argues that faith in the objective value of beauty and symmetry can play a substantial role in scientific research and theory building.

Regarding the legal realm, Dworkin asks a fundamental and hotly debated question: is religion entitled to special protection? Is freedom of religion a special or a general right? Dworkin’s argument is that there is no solid ground for granting a special right and, therefore, special protection to religion. Religious freedom cannot be only about god (or about theistically understood religions), since atheists can have obligations and convictions that are equally imperative (e.g. pacifism; deep ecologism; vegetarianism). But a society cannot expand the special protection “to all passionately held convictions”, since this would entail protecting a too broad array of eccentric and/or unfair “imperative” convictions and duties (e.g. racism). This results in a dilemma: the protection of a distinct moral right to freedom of choice about religious practice cannot be limited to godly religions; yet a government cannot protect all the convictions that fall under a broader understanding of religion including deep, passionate beliefs.

Dworkin’s way out of this dilemma is a “radical approach” that entails a significantly different reading of national and international legal documents concerning religion (133). Dworkin argues that political liberty has two components: the right to ethical independence and a special right to particular liberties (e.g. freedom of speech; the right to due process and a fair trial) (130). The special right of religion (government must not

constrain religion in any way, absent an extraordinary emergency) should be replaced by a general right that limits the reasons government may offer for any constraint on a citizen's freedom at all. The right to ethical independence is defined as follows: "government must never restrict freedom just because it assumes that one way for people to live their lives... is intrinsically better than another" (130). The two strategies to provide a restrictive definition of legally relevant convictions, i.e. *functional* - in terms of their intensity and sincerity - and *substantive* - in terms of their worth -, fail. Governments in pluralist societies should neither assess the sincerity of a belief nor its worth: one's values should be a matter of individual choice. It follows that granting special protection and exemptions from general rules to religion (consider the peyote case; the Religious Freedom Restoration Act) is not acceptable. In a liberal and pluralist society freedom cannot be restricted on account of privileging specific values: the general right to ethical independence will do.

How persuasive is Dworkin's view of a "religion without god"? His conception runs into difficulties at a general-theoretical and legal-practical level. Dworkin's understanding of religion and values is *ahistorical*, as it does not take into account the plurality of religious experiences, and is tributary to questionable metaphysical dichotomies. Echoing Kant's notion of pure reason as completely independent of history, Dworkin affirms the "radical independence of value from history" (22). But history, driven out through the door, comes back through the window. In effect, Dworkin surreptitiously injects a historically modern understanding of value into religion in general. According to Dworkin, having a religious attitude means that "(e)ach person has an innate and inescapable responsibility to make his life a successful one: that means living well..." (10). Yet this is a problematic overgeneralization: Dworkin projects a combination of modern individualism and universalism into religious experiences regardless of circumstances and historical period. Dworkin also argues that the religious attitude implies as a second central element according to which "what we call 'nature'...is not just a matter of fact but is itself sublime: something of intrinsic value and wonder" (10). Again, as historians of mentalities have long argued, the general perception of nature as something sublime and valuable in itself is a modern phenomenon; it does not characterize religions in general, but it has become extended as attitude and sensibility starting, in good part, with Romanticism.

His view of two strata of religion is residual of an old metaphysical-hierarchical scheme (essence/accident; universal/particular) that is in need of questioning. For all their differences, Kant, Marx, Freud, Durkheim, Frazer, Cassirer, Levi-Strauss, Bourdieu and Dworkin, have in common this dualistic metaphysical scheme. They all claim to have unearthed the secular essence of the religious phenomenon: in turn, this essence is considered to be moral reason, sexuality, economic interests,

society, natural forces, ethical values, structure, and interest (material/symbolic). It is true that religious experience has been deeply connected with morality, power, sex, society, economic interests, and so on. But this foundationalist approach runs into the insurmountable difficulty of demonstrating that the variety and complexity of religious phenomena can be ultimately reduced to or derived from something that is its ultimate *Grund*. The philosopher places himself/herself in a dubiously privileged position: while the universal essence is hidden to participants, the philosopher claims to have a totalizing view and a special access to the ultimate foundation of religion. To illustrate, consider what seems to be the most fundamental experience for a Buddhist – the experience of nirvana. What is the evidence of a Dworkinian claim that the essence of Buddhism is the belief in objective value, given that Buddhists themselves claim that the most fundamental experience is one of extinction (nirvana) where values and differences in values – all pertaining to the illusory domain of *maya* – are all overcome⁴? Dworkin's generalization is a misunderstanding of such religious experiences rather than the expression of what's fundamental in them.

In the attempt to ground his claim about the essence of religion Dworkin resorts sometimes to general anthropological claims. For Dworkin, "...people share a fundamental religious impulse... For most of history, that impulse has generated two kinds of convictions: a belief in an intelligent supernatural force – a god – and a set of profound ethical and moral convictions. These two kinds of belief are both consequences of the more fundamental attitude, but they are independent of one another" (146). Yet while Dworkin rejects "grounded realism" (13-14), his general anthropological claims are residual of it. His talk about a "fundamental religious impulse" is a fiat not backed by any empirical evidence from anthropological studies. My suggestion is that instead of hopelessly looking for the ultimate criterion or essence of religion, a more flexible Wittgensteinian approach to the "liquid" religious phenomenon is more convincing. The Wittgensteinian approach takes into account family resemblances amongst the variety of religious phenomena, and acknowledges borderline cases (consider Confucianism; scientology, etc.), as well as the changeability of religious practices.

Dworkin overgeneralizes from a different perspective as well. There are contemporary religious experiences and conceptions that explicitly severe the question of religion from that of the belief in history-transcending value objectivity. Consider contemporary theologians or religious philosophers who have been developed, in different ways, the intuitions of the long tradition of negative theology as of Heidegger's critique of onto-theology in relation to religion and god. Not objective truth or value, but (impossible) love is at the core of these experiences and views of religion. To illustrate, John Caputo and Gianni Vattimo are two representative Christian believers and philosophers who have developed a

historicist understanding of religion that systematically severs a religious experience centred on God as love from questions of truth and value objectivity.

Apart from the difficulties in Dworkin's attempt to define religion, it is unclear why we need a faith in fully independent and objective values. Even if one accepts – as I tend to do – that there is an element of faith or belief in the projections and idealizations that are inherent in our pursuit of democratic justice, moral truth, and a better life, it is unconvincing to claim that we need *ultimate* transhistorical idealizations. In a modern democracy, socio-political forces do not aspire to ultimate truth and objectivity, but engage – with their specific interests, value commitments, beliefs and myths – in the political battle of producing and, at once, representing the “people”, “general will” and “popular sovereignty”. Therefore, an alternative approach that grants importance to intersubjectivity and history, and that envisages faith, transcendence and idealizations not as necessarily universal and ultimate but as embedded in concrete contexts, may be more persuasive. This approach would not depend on the fiction of an abstract faith – a ghost hovering above historical practice and context.

Dworkin's conception runs into difficulties at the constitutional-legal as well. I am persuaded by his argument that there should *not* be a special right of religion. Religion does not have the monopoly over deep values. It is thus a positive development in all Western democracies that Courts have – albeit reluctantly – started to take more and more into account non-religious beliefs as a reason for granting exemptions from general rules. This positive trend will hopefully gain in importance in plural societies. But Dworkin's radical-individualistic solution (resonant of Brian Barry's vitriolic *Culture and Equality*)⁵ that rejects any religious-cultural exemptions is questionable. His dichotomist option between (religious) majoritarianism and atomized individualism is too rough; in-between there is a social space of deep value practices that is relevant for law making. Deep experiences and collective beliefs in worthwhile values have been and should continue to be reflected in law making. Consider the famous peyote case discussed by Dworkin. If peyote puts at “serious risk” (136) the member of the Native American Church, as Dworkin (amongst others) argues, then he is right to reject granting a religious exemption. But one can imagine granting a *legitimate* exemption if usages of something like peyote in ceremonies by a traditional community is rigorously limited so that no significant harm is likely to happen. The general right to ethical independence would not suffice to justify such exemptions from general rules.

In effect, Dworkin's position does not seem consistent. He claims that “government can interfere with people's chosen way of life to protect natural wonders or to improve general welfare” (130-131). But I do not see how the protection of natural wonders, helping the poor, or sponsoring

the National Opera are not based on taking a stand on values that – even if controversial and not shared by everybody – are generally worth pursuing. Such values are not always matter of simple individual preference, and the law cannot ignore this. Isn't the political-legal battle in democracy often about these values? Even in the absence of consensus, legal and political rules/policies that entail a relative limitation of individual freedom could be legitimately developed so as to pursue values of general significance. Likewise, courts need sometimes to make evaluations when it comes to petitions of exemptions from military service, hospital practices, and so on that are based on deep values and convictions. In assessing the legitimacy of exemptions, the active belief in God of a long-term member in Christian Action cannot have the same weight as the membership in the Church of the Flying Spaghetti Monster.⁶ True, however, there is an intrinsic difficulty in determining which value or conviction is deep, salient and worthy as a reason for granting exemptions for general rules. There is no ultimate and unique criterion for granting exemptions, just like there is no final criterion to decide what is religion. Yet only a nostalgic metaphysician would look for absolute and transhistorical criteria. Given changes in any society, the criteria for determining when exemptions should be granted are not cast in stone; in addition, there will always be borderline cases: think of controversies around scientology – is it religion or lucrative business wrapped up in shallow spiritualist claims? In muddling through the labyrinth of normative practices, judges will have sometimes difficulties in distinguishing relevant deep beliefs and values. But isn't this preferable to the denial of societal complexity? Taking into account this complexity does *not* necessarily entail an ad hoc approach that would undermine the requirement of a minimal legal consistency. In conditions of deep pluralism, I think it is needed to make the passage from exclusive religious tests based on the questionable belief that religion is special to cultural-religious tests that take into account both religious and non-religious deep convictions. These tests – as developed in various ways in the US and Canada –, would incorporate substantial and functional criteria (intensity, sincerity, worth) for assessing the relevance of specific beliefs. While not cast in stone, these criteria are general enough to avoid falling into a case-by-case approach.

In sum, while I am sceptical that Dworkin demonstrates the universal salience of religious atheism, I am persuaded by the general intention of his argument, which challenges the existence of an abyss between religion and reason, as well as the idea of a special right to religious freedom. Even if Dworkin glosses over the significance of history and context, he is persuasive in claiming that experiences of faith and transcendence are neither irrational per se nor the monopoly of conventional religion, nor irrelevant for ethics and political philosophy.

Dworkin's book, in spite of its shortness, touches upon a wealth of problems that either I could not treat here, or I've treated only

superficially. I am persuaded that Dworkin's last book has opened a field of debate that will bear new and fascinating fruits in the years to come.

Notes

¹ This book is part of a broader turn of analytical philosophers such as John Rawls and Thomas Nagel to the question of religion. It is worth noting that analytical philosophers arrive now at problems and themes (faith, transcendence, sublime, transfiguration, mystical experience, god) that have "obsessed" continental philosophers for quite a while (consider the work of J. Derrida, E. Levinas, J. Caputo, J.-L. Nancy, etc.)

² Immanuel Kant, *Religion and Rational Theology*, trans. and edited by Allen W. Wood and George di Giovanni (called "*Theology*") (New York: Cambridge University Press, 2001).

³ See Chris L. Firestone and Nathan Jacobs, *In Defense of Kant's Religion*. (Bloomington: Indiana University Press, 2008), and Chris L. Firestone and Stephen R. Palmquist (eds), *Kant and the New Philosophy of Religion*, (Bloomington: Indiana University Press, 2006).

⁴ See the *Buddhist Scriptures*, translated and edited by Edward Conze, (Penguin Classics, 1959).

⁵ Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, (Blackwell, 2002).

⁶ In the final analysis, notwithstanding Dworkin's sympathetic treatment of religion, his conclusions at the legal-constitutional level amount to a hostile stand towards religion that is common to the secularist worldview and ideology.