RELIGIOUS FREEDOM WITHOUT GOD? RONALD DWORKIN'S CONCEPT OF RELIGIOUS FREEDOM AND ITS CRITICS

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Abstract

The eminent American legal philosopher Ronald Dworkin in his last book redefined the religious freedom. Dworkin's proposals have raised numerous polemics. The aim of the paper is to analyze both the positions of Dworkin and those polemics. Dworkin's main postulate is to reduce the religious freedom to the more general right to ethical independence. The paper points out, however, that his approach completely ignores the collective aspect of the religious freedom and tends to eliminate it.

Key words: *Roland Dworkin, religious freedom, sublime, Immanuel Kant, religious communities, American legal philosophy*

The eminent American legal philosopher Ronald Dworkin in his last book, published after his death, presented proposals to redefine religious freedom. Dworkin's proposals have raised much controversy in the scholar literature and numerous polemics. The aim of this study is to analyze both the positions of Dworkin and those polemics. It should be noted firstly that Dworkin's purpose is to defend the neutrality of the state and the moral neutrality of the law[2] against religious fanaticism, i.e. to protect the state's neutrality against the radical protestant fundamentalist right-wing[3] which demands to take into account the religious values in social and political life on a much larger scale than currently.[4] It is worth noting that –

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[2] As Michał Błachut, the most widespread, procedural version of the postulate of the moral neutrality of the law means the prohibition of "decision [in the lawmaking process – annotation: P.Sz.] solely motivated by the conviction of a lesser or greater value of particular concepts of a good life": M. Błachut, *Postulat neutralności moralnej prawa a konstytucyjna zasada równości* ('The postulate of the moral neutrality of the law and the constitutional principle of equality'), Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2005, p. 172.

[3] According to Bassam Tibi, it is difficult to talk about one religious fundamentalism, but the common feature of all movements and political ideologies marked with this label is a kind of "patriarchal neo-traditionalism"; cf. B. Tibi, *Fundamentalizm religijny* ('Religious fundamentalism'), translated by J. Danecki, Warszawa: Państwowy Instytut Wydawniczy, 1997, pp. 23–26; A. Wejkszner, *Ewolucja terroryzmu motywowanego ideologią religijną na przykładzie salafickiego ruchu globalnego dżihadu* ('Evolution of terrorism motivated by religious ideology – the example of the global Salafi jihad movement'), Poznań: Wydawnictwo Naukowe Wydziału Nauk Politycznych i Dziennikarstwa Uniwersytetu im. Adama Mickiewicza w Poznaniu, 2010, pp. 83–89.

[4] The American religious right, on the one hand, rejects the concept of human rights, regarding it as leftist and contrary to the tradition of American democracy, and on the other hand it is in favor of strong protection of some – treated selectively – freedoms and rights of individuals, which are considered to be in scope of the "democratic standards" created by the Founding Fathers of the United States political system. Among these standards religious freedom, which, according to the American religious right, has to be interpreted broadly, occupies a very important position. Cf. M. Pomarański, 'Fundamentalizm a prawa człowieka. Amerykańska prawica polityczno-religijna wobec idei ochrony praw człowieka' (Fundamentalism and human rights. The attitude of the American political-religious right towards the idea of protection of human rights), in: J. Jaskiernia

unlike other concepts in the field of philosophy of law diagnosing the threats associated with fanaticism[5] – Dworkin's project is not aimed at limiting Islam. Just the opposite, Dworkin argues that a ban on the building of minarets voted in a referendum in Switzerland is contrary to "the egalitarian ideal of ethical independence".[6]

The starting point for Dworkin is a reflection about the very essence of religion, in which he argues that religion is a broader concept than the belief in a certain god. In his opinion, it is nothing but "a deep, distinct, and comprehensive worldview", and it includes a very extensive set of beliefs which common denominator is the belief that "inherent, objective value permeates everything", as well as "that human life has purpose and the universe order".[7] Therefore, according to Dworkin, religious freedom not only concerns the views relating to the person and nature of god, but also "embraces all deep convictions about the purpose and responsibilities of life".[8] In support of his views, Dworkin recalls the examples of worldviews which are traditionally classified as religions, but which do not use the typical concept of God Confucianism might be an example. Dworkin cites the views of many modern representatives of science – especially theoretical physicists – who present the belief in elementary order and beauty of the Universe. Thus, he thinks that speaking of a "religious atheism" as a kind of religious attitude is by no means a *contradictio in adiectu*.[9] Refraining from presenting here more in-depth analysis and critique of the Dworkinian notion of religion,[10] we confine ourselves to the statement that it raises two serious – and indeed interrelated – doubts.

Firstly, Dworkin's view reduces religion essentially to the Kantian notion of the sublime[11] and the religious experience to the aesthetic experience, namely to the experience of the sublime in the Kantian sense. According to Kant – however, it seems, unlike Dworkin's view according to Dworkin – the judgment concerning the sublime is an autonomous judgment of reason in the sense that the sublime as such is not incorporated in things, including nature, but based on the concept of the sublime contained in the human mind: "Thus the wide ocean, enraged by storms, cannot be called sublime. Its visage [*Anschauung*] is horrible; and one must already filled the mind with the sort of ideas if by means of such an intuition it is to be put in the mood for a feeling which is itself sublime, in that the mind is incited to abandon sensibility and to occupy itself with ideas that contain a higher purposiveness".[12] However, as Stefan Harassek, the Polish scholar of the prewar period, aptly wrote about the feeling of the sublime in Kant's philosophy: "The greatness and

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(ed.), *Uniwersalny i regionalny wymiar ochrony praw człowieka. Nowe wyzwania – nowe rozwiązania* ('Universal and regional dimension of human rights protection. New challenges – new solutions'), Volume 2, Warszawa: Wydawnictwo Sejmowe, 2014, pp. 297–307.

[5] For example, the concept of the "Enemy Criminal Law" (*Feindstraftrecht*) by Günther Jakobs.

[6] R. Dworkin, *Religion without God*, Cambridge, Mass./London: Harvard University Press, 2013, pp. 145–146.

[7] R. Dworkin, *Religion without God…*, p. 1.

[8] *Ibid.*, p. 107.

[9] Cf. *ibid*., p. 45 ff.

[10] See another critique of the Dworkinian concept of religion, focusing on the notion of value utilized in his reflection – A.S. Greene, 'Religious Freedom and (Other) Civil Liberties: Is There a Middle Ground?', *Harvard Law & Policy Review*, 2015, Vol. 9, pp. 173–174.

[11] Jeremy Waldron suggests also the relation between the positions of Kant and of Dworkin, however, he does not elaborate the subject. Cf. J. Waldron, '"Religion without God" by Ronald Dworkin – Review', *Boston University Law Review*, 2014, Vol. 94, p. 1208.

[12] I. Kant, *Critique of the Power of Judgment*, translated by P. Gruyer and E. Matthews, Cambrigde, UK/New York: Cambridge University Press, 2002, § 23, 5, 245–246, p. 129.

power of nature and man's moral character constantly aroused in Kant the lively aesthetic reaction, although its philosophical interpretation underwent fundamental changes over time. Aesthetic feelings, caused by images of nature, accompanied in his consciousness the moral feelings and the deep moral experiences were accompanied by the aesthetic feelings".[13] And then we read further that in Kant's work an "impenetrable greatness", symbolized by the "starry sky" in the *Critique of Practical Reason*, "the infinite time, the infinite itself raises, (...) as we learn from the multiple confessions and statements of Kant, presented in different times, the feeling of the sublime".[14] Such an experience of the sublime, when not accompanied by the image of God, is in Dworkin's view the foundation of what he called the "religious atheism". It is, however, necessary to mention that for Kant in his pre-critical period – unlike as for Dworkin – the source of the sublime is clearly God. Moreover, Kant – during his critical period – did not remove completely the idea of God from the realm of practical reason, pointing out that metaphysical concepts such as God and immortality are the "stimulators of moral conduct".[15] Therefore, Kant recognizes that "Religion, subjectively considered, is the acknowledgment and recognition of all our duties as if they were divine commandments".[16] While according to Kant, the proper religion, i.e. the religion of reason or natural religion (*Naturreligion*), turns to God – understood as a regulative idea, and thus such an idea that cannot be proved – guaranteeing the sublime moral law (based on categorical imperative), in the scope of Dworkin's concept religion is seen as a set of views about the place of man in the world and the duties established on the contemplation of the sublime world, but not necessarily referring to the idea of God. It can be said, therefore, that Dworkin significantly transforms the Kantian conception of religion within the limits of reason alone.

Secondly, the view of author of *Taking Rights Seriously* excludes from the set of religions these views which admittedly recognize the role of a deity, but not necessarily attribute to it a feature of being a promoter of order and beauty. Different types of Manichaeism, as well as, say, the beliefs of the worshippers of the Hindu goddess Kali[17] can be considered as such views. Dworkin's position rises an important question whether such

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[13] S. Harassek, 'Ze studiów nad zagadnieniem wzniosłości w filozofji Kanta' (From the studies on the issue of the sublime in Kant's philosophy), in: *Prace historyczno-literackie: księga zbiorowa ku czci Ignacego Chrzanowskiego* ('The historico-literary works: the collective book in honor of Ignacy Chrzanowski'), Kraków: Kasa im. Mianowskiego, 1936, p. 308.

[14] *Ibid*., p. 309. Cf. R. Specht, 'Pojęcie wzniosłości w filozofii Kanta' (The notion of the sublime in Kant's philosophy), *Studia z Historii Filozofii*, 2013, No. 2 (4), pp. 167–183; S. Harassek, 'Krytyka rozumu praktycznego jako etap kształtowania się pojęcia wzniosłości Kanta' (Critique of practical reason as a stage of the development of Kant's concept of the sublime), *Kwartalnik Filozoficzny*, 1937, Vol. XIII, No. III, pp. 215–244; M. James, *Reflections and Elaborations upon Kantian Aesthetics*, Uppsala: Uppsala University, 1987, pp. 16–20 (the author writes: "insofar as the sublime is concerned we assume the existence of moral feeling and on this assumption attribute necessity to the judgement. It is this necessity, concludes Kant, which lifts these judgements out of the sphere of empirical psychology and places them in the universe of transcendental philosophy": *ibid*., p. 19; herein see also the remarks on the differences between concepts of the beautiful and the sublime). For the interpretations which indicate a connection between Kantian ethics and aesthetics, see: J.P. Hudzik, *U podstaw estetyki. Główne problemy Kantowskiej Estetyki w świetle współczesnej filozofii i kultury* ('At the core of aesthetics. The main problems of Kant's Aesthetics in the light of contemporary philosophy and culture'), Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 1996, pp. 79–98.

[15] H. Borowski, *Kantowska filozofia religii* ('Kant's philosophy of religion'), Lublin: Uniwersytet Marii Curie-Skłodowskiej, 1982, p. 112.

[16] I. Kant, *Religion within the Boundary of Pure Reason*, translated by J.W. Semple, Edinburgh: Thomas Clark, 1838, p. 203.

[17] Although the cult of the mentioned goddess undoubtedly stems also from contemplation of nature, but of its forces that are terrible and dangerous rather than sublime.

doctrines, however not gaining a wide approval, can benefit from freedom of worship, at least until they lead to someone's harm.[18]

Pointing out the element which, according to Dworkin, is a very essence of religious views is used by him to present, in the next step, his own concept of religious freedom, which aims at the response to the present-day challenges. In his opinion, there are serious reasons for considering – as already mentioned – that nowadays not only typical theistic Weltanschauung can be considered as a religious worldview. This, however, causes difficulty concerning the juridical operationalization of the concept of religious freedom. Dworkin mentions that from a theoretical point of view there are two ways of defining religion in the context of this very freedom. The first one is based on a functional definition, and the US Supreme Court appealed to it when analyzing the possibility of alternative military service due to pacifist beliefs.[19] According to the recognition of the Supreme Court it concerns "sincere and meaningful" beliefs, occupying in person's life "a place parallel to that filled by the God".[20] Against this understanding Dworkin put forward an objection that, according to it, every view, if it is sufficiently sincere and rooted deeply enough in someone's mind, can be classified as religious one. Hence, e.g., someone's materialistic hedonism combined with the conviction of the role of money in human happiness could be counted as such a view. In turn, substantive definitions that attempt to determine the nature of religious beliefs and recognize them on the basis of their content are, according to Dworkin, inadequate on the grounds that they are always contaminated with a large dose of arbitrariness and even paternalism. Therefore, the philosopher writes that the attractiveness of the latter of the mentioned approaches to defining the religious views "relies on the assumption that it lies within the power of government to choose among sincere convictions to decide which are worthy of special protection and which not".[21]

Taking all this into consideration, Dworkin came to the conclusion that we should abandon "the idea of a special right to religious freedom with its high hurdle of protection and therefore its compelling need for strict limits and careful definition. We should consider instead applying, to the traditional subject matter of that supposed right, only the more general right to ethical independence".[22] It must be mentioned that Christopher L. Eisgruber

[18] It is known that between the seventeenth and mid-nineteenth centuries the followers of the cult of the goddess Kali in India attacked and murdered travelers to give her, in their opinion, a proper honor. There is no doubt that such religious organizations cannot enjoy freedom of religion in any state which guarantees the minimum rights of individuals.

[19] It was the case *United States v. Seeger*, 380 U.S. 163 (1965). On the decision – see S.P. Mroz, 'True Believers?: Problems of Definition in Title VII Religious Discrimination Jurisprudence', *Indiana Law Review*, 2005, pp. 152–156, 174–175 (here also remarks on the decision *Welsh v. United States*, 398 US 333 [1970], continuing the line of the case-law starting in the judgment *United States vs. Seeger*). The author argues that the Supreme Court did leave space to separate properly "religion" from other beliefs, as well as she questions the test of "sincerity" of beliefs, used by the Court as an indicator of whether they are religious in nature, since – as she points out – almost every person in his or her life has moments of behaving contrary to his or her own views. Finally, she suggests that the case-law, defining the notion of religion, should focus – according to the approach proposed by such scholars as Émile Durkheim – on communitarian or social elements in the phenomenon of religion or – following Mircea Eliade – on the concept of holiness.

[20] R. Dworkin, *Religion without God…*, pp. 118–120. The original formulation of the opinion presented in the judgement: "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God (…)": *United States v. Seeger*, 380 U.S. 163 (1965), p. 380 U.S. 166. Available at: https://supreme.justia.com/cases/federal/us/380/163/case.html [access: 30.08.2015].

[21] R. Dworkin, *Religion without God…*, p. 123.

[22] *Ibid.*, p. 132.

and Lawrence G. Sager in their book *Religious Freedom and the Constitution* (2007), as well as Charles Taylor and Jocelyn Maclure came to somewhat similar conclusions. Taylor and Maclure think that the protection of religious beliefs must be regarded as a subcategory of the protection of the conscience's convictions which include the "meaning-giving beliefs and commitments".[23] However, Charles Taylor – unlike Dworkin – does not want to deprive these beliefs of special legal protection. According to Cécile Laborde, the concepts of all these authors, as well as of Dworkin (and maybe also Brian Leiter), can be classified as the "egalitarian theories of religious freedom", highlighting the following three common assumptions: they claim that "(i) what we conventionally call religion should be seen a subset of a broader category of morally respectable beliefs and practices; (ii) traditional believers do not have a special, a priori right to be exempted from general laws; and (iii) the state must guarantee the equal status of all citizens".[24]

To strengthen further his view, Dworkin gave the historical argument, according to which traditionally understood religious freedom – coupled with the idea of tolerance – was important in the seventeenth century, because it led to calm the religious wars, but in the conditions of modern pluralistic and largely secular society it has lost its original meaning.[25] Here we come to the substance of Dworkin's position. Since – let us refer to the example given by Dworkin – there is no way to distinguish the views of the followers of the Native American Church, declaring that it is necessary for them to use hallucinogens (peyote)[26] to the religious practices, from any well-established view in which the true meaning of human existence can be discovered thanks to psychoactive substances. In both cases there are no theoretical impediments to subsume the use of these substances under religious freedom. At the same time there are sufficient social reasons to reduce drug use, such as concern for public health and social consequences of their use or the cost of treatment of addicts.

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[23] J. Maclure, C. Taylor, *Secularism and Freedom of Conscience*, Cambridge, MA: Harvard University Press, 2011, pp. 75–76; see also: F. Boucher, 'Exemptions to the Law, Freedom of Religion and Freedom of Conscience in Postsecular Societies', *Philosophy and Public Issues (New Series)*, 2013, Vol. 3, No. 2, pp. 169–172 (here similar positions are also presented).

[24] C. Laborde, 'Dworkin's Freedom of Religion without God', *Boston University Law Review*, 2014, Vol. 94, pp. 1256–1257. Cf. also; M. L. Movsesian, 'Defining Religion in American Law: Psychic Sophie and the Rise of the Nones', *European University Institute Working Papers. Robert Schuman Centre for Advanced Studies RELIGIOWEST*, RSCAS 2014/19, pp. 5, 11–12.

[25] Cf. R. Dworkin, *Religion without God…*, pp. 107–108. In his earlier work Dworkin presented also a philosophical argument: "For if we insist that no particular religion be treated as special in politics, then we cannot treat religion itself as special in politics, as more central to dignity than sexual identification, for example. So we must not treat religious freedom as *sui generis*" – R. Dworkin, *Justice for Hedgehogs*, Cambridge, MA: Harvard University Press, 2011, p. 376.

[26] Dworkin refers to the case decided in 1990 by the US Supreme Court: *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), in which the Supreme Court – by a pen of judge Antonin Scaglia formulating the position of majority – held that there is no basis to assume that the use of small amounts of peyote has the same character as the use of alcohol during a mass, and thus to admit to freedom of religion the superiority over the rules on the use of drugs; see https://supreme.justia.com/cases/federal/us/494/872/case.html [access: 30.08.2015]. On the judgment – see: B.T. Murray, *Religious Liberty in America. The First Amendment in Historical and Contemporary Perspective*, Amherst: University of Massachusetts Press – Foundation of American Communications, 2008, pp. 154–155, 169. The author notes that judge Scaglia changed his mind fifteen years later in the judgment in: *Gonzales v. O Centro Espirit beneficent to Uniao Vegetal*, 546 U.S. 418. It must be added, however, that the latter case was settled already under the Religious Freedom Restoration Act of 16 November 1993. That legal act – adopted as a result of criticism of the decision *Employment Division v. Smith* – indicates: "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability": section 3, point (a).

Therefore, it is necessary to confine ourselves to the right to ethical independence, and the protection of freedom of worship may not go beyond what is necessary to guarantee the ethical independence. From the viewpoint of the latter, e.g., freedom of use of hallucinogens is not necessary, and thus, in this context, nothing justifies an exception from the prohibition of their use.[27] A similar position was presented by Brian Leiter who pointed out that exceptions to generally applicable laws for both the followers of a particular religion and for supporters of the quasi-religious worldviews are incompatible with the principle of fairness (using this term, Leiter obviously referred to Rawls' theory of justice).[28] It should be noted that Leiter, contrary to Dworkin, generally does not appreciate religions, considering them to be based on unreasonable and often unjust convictions.[29]

Dworkin distinguishes special rights and general rights, including among the former category freedom of speech, freedom of expression, as well as the right to due process of law and a fair trial. While special rights may be restricted only in cases of urgent and real threats, placing "much more powerful and general constraints on government" than general rights,[30] general rights cannot be restricted for any reason, but serious reasons allow the governments to interfere in them. Therefore, general rights may be a subject of certain restrictions if these restrictions are sufficiently justified.[31] Thus, if we see religious freedom as a special right, we must bear in mind the object which is protected by this right. In turn, as Dworkin argued, nowadays the object of religious freedom – i.e. religious beliefs – cannot be defined with an adequate precision. According to the legal philosopher, if we replace it with the general right to ethical independence, the focus will shift from the subject of the right to the reasons of the potential encroachment on it by the state: "The general right to ethical independence (…) fixes on the relation between government and citizens: it limits the reasons government may offer for any constraint on a citizen's freedom at all".[32] Such a solution – in Dworkin's

[27] R. Dworkin, *Religion without God…*, pp. 125–126, 134–135.

[28] Cf. B. Leiter, *Why Tolerate Religion?*, Princeton: Princeton University Press, 2013, pp. 130–131; F. Boucher, 'Exemptions to the Law…', pp. 186–188.

[29] Cf. B. Leiter, *Why Tolerate Religion…*, pp. 33–91, *passim.* He writes, among others: ""If what distinguishes religious beliefs from other important and meaningful beliefs held by individuals is that religious beliefs are both insulated from evidence and issue in categorical demands for action, then isn't there reason to worry that religious beliefs, as against other matters of conscience, are far more likely to cause harms and infringe on liberty?" – *ibid.*, p. 59.

[30] R. Dworkin, *Religion without God…*, p. 131.

[31] Dworkin in his famous book *Taking Rights Seriously* presented a different distinction, namely between universal and special rights, considering the latter as addressed to a certain part of society and assuming for purposes of this book that all political rights are universal. Moreover, he pointed out that such rights as freedom of speech are absolute, i.e. protected always, contrary to the less than absolute rights, which are principles (therefore, their application is based on the maxim "less or more"), giving way sometimes in front of other principles or even before the urgent political need. It should also be noted that in the cited work Dworkin rejected the idea of the "general right to freedom", recognizing that there is only "the right to specific freedoms". Cf. R. Dworkin, *Taking Rights Seriously*, London/New York: Bloomsbury Academics, 2013. In turn, Dworkin developed the distinction between general and special rights, utilized later in the book *Religion without God*, in the book published in 2011. Cf. R. Dworkin, *Justice for Hedgehogs*…, p. 327 ff. It is worth to mention that the continental constitutionalism has developed – following the German Federal Constitutional Court – the principle of proportionality as a tool of searching for the right measure of "weighting" and limiting the constitutional rights. Cf. e.g. D. Kijowski, 'Zasada proporcjonalności (adekwatności) jako miernik dopuszczalności ingerencji państwa w prawa i wolności obywateli. Ekspertyza sporządzona dla Rzecznika Praw Obywatelskich' (The principle of proportionality [adequacy] as a measure of the admissibility of state interference in the rights and freedoms of citizens. Report drawn up for the Ombudsman), *Biuletyn Rzecznika Praw Obywatelskich – Materiały*, 1990, No. 6, pp. 64–88.

[32] R. Dworkin, *Religion without God…*, p. 133.

opinion – is entirely sufficient, since it "protects the historical core of religious freedom", preventing the overt discrimination (consisting in the recognition of one religion as somehow better or worse than others), as well as the indirect one.[33] Furthermore – and probably that is, in the author's view, the main advantage of his concept – it prevents the kind of "hypertrophy" of religious freedom, i.e. situations – as in the case of the use of peyote in rituals of the Native American Church – in which it is the right always taking precedence over other arguments. The right to ethical independence would be the cure for this hypertrophy, whereby "religions may be forced to restrict their practices so as to obey rational, nondiscriminatory laws that do not display less than equal concern for them".[34] Simultaneously, according to Dworkin, sometimes an exception to the general provision for the sake of recognition of some religion's practices and views may be acceptable, but it can be done only when this exemption does not "put people at a serious risk that it is the purpose of the law to avoid"[35] (the philosopher says that in the peyote case such a risk exists).[36] Dworkin admits quite openly that the general interest – articulated by a democratic legislator which draws its legitimacy from the principle of sovereignty of a nation, i.e. all citizens, and expressed in a non-discriminatory and well-justified limitations of religious freedom – has priority over "private religious exercise", and such a priority "seems inevitable and right".[37] The philosopher believes that his proposal will help to prevent – as it is called – the "new religious wars", i.e. the ongoing disputes and the battles on the grounds of politics between nonbelievers and believers, rather than between representatives of different religions.[38]

Obviously, the defenders of special status and protection of religious freedom critically evaluated Dworkin's view and similar concepts. One of the more interesting are the opinions of Michael Sandel and Michael W. McConnell. The latter thinks that this freedom deserves its special status, because religion refers to particularly important obligations in relation to the Creator, and neither agnostic nor atheist can experience the conflict between these obligations and responsibilities of citizens in such a way as a believer can.[39] It should be noted that this argument fails to hit Dworkin's position, since religious freedom – in the most "traditional" approach – refers not only to the monotheistic religions, but also the polytheistic ones and the religious doctrines in which – as in the case of Confucianism – it is hard to indicate a "Supreme Being". Thus, McConnell and the authors of similar position defend the restricted

[33] *Ibid.*, p. 134.

[34] *Ibid.*, p. 136. Cf. F. Boucher, 'Exemptions to the Law…', pp. 192–193.

[35] R. Dworkin, *Religion without God…*, p. 136.

[36] Cf. also: F. Boucher, 'Exemptions to the Law…', pp. 189–192.

[37] R. Dworkin, *Religion without God…*, p. 137.

[38] Cf. *ibid.*, p. 137. A typical example of such a dispute in the United States is the ongoing battle between supporters of the theory of evolution on the one hand and the creationists and adherents of the idea of "intelligent design", who are in favor of limiting the teaching of Darwin's theory in the public schools, on the other. The polemic with the position that this kind of ideological disputes has a temperature of religious wars would require a separate work. It is worth noting only that Dworkin's perspective is a very American one, and it is not necessarily useful to describe the situation in Europe, where, however, conflicts of this type also occur. Moreover, it is doubtful if Dworkin's proposals reach the goal declared by him, namely, minimizing the "new wars of religion", because they may be considered one-sided, i.e. his concept is aimed at limiting the religions without giving boundaries on the militant atheism. As is noted by Cécile Laborde, Dworkin's work provides the rhetorical and theoretical weapon for liberals who can thus claim the same status for their views as it is awarded to religious doctrines. For example, the right of homosexuals to marry, as well as the right to abortion, thanks to Dworkin's concept, can be "defended in the name of freedom of religion itself": C. Laborde, 'Dworkin's Freedom of Religion without God…', p. 1256.

[39] Cf. F. Boucher, 'Exemptions to the Law…', pp. 173–184.