The Paradox of Religious Neutrality

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1. Introduction

Philosopher and theologian Donald Loose argues that western liberal democracy is a product of inherently Christian societies. Broadly speaking, his reasoning is that owing to the fact that modern secular democracy arose in societies marked by Enlightenment, and because Enlightenment arose in European societies marked by Christianity, modern secular democracy is inevitably and transitively influenced by Christianity. Since Christianity and democracy are historically intertwined in this way, it may be argued that the Christian faith is more compatible with the values of democracy than other religions, such as Islam or Judaism. In other words, according to Loose, modern secular democracy is biased toward Christianity.

This is a bold claim with ramifications that threaten the very conception of secularity in modern political thought. In my opinion, such a claim should not go unchallenged. For this reason, the purpose of this paper is to evaluate to what extent this argument may be countered by alternative theories on the relationships between religion and the secular state, within the boundaries of the specific case of free speech on religious issues, which includes expressions of faith and expression of opinions on religions and their believers.

Although I do not consider myself a proponent of Loose's account, I shall nevertheless grant it significant leeway and view it in the most favourable light possible, in order to make a fair assessment of its validity. To this end, I shall present two alternative accounts that explicitly support the (religious) neutrality of the modern secular state (by Robert Post and Ronald Dworkin, respectively), and juxtapose these with Loose's position. In this confrontation, Loose's account will receive the benefit of the doubt,

meaning that it will be treated as valid until proven wrong by the alternatives, and that the burden of proof for such a disproval lies with the opposing positions.

One of the implications of this benefit of the doubt is that if a confrontation between Loose's position and an alternative view amounts to nothing more than disagreement without any significant shared arguments or assumptions, this is not sufficient to reject Loose's position. What is necessary for an evaluation of the validity of Loose's position within these confines is a minimal degree of compatibility or shared assumptions between the two positions, which should then be used to build an argument leading to the conclusion that one position is more tenable than the other.

In the first section of this paper, I shall present Loose's argument for the historical connection between modern secular society and Christianity, as well as his argument that this entails a bias towards Christian values within modern democracies.

In the sections that follow, I shall challenge this position by presenting two alternative views on the secular state. The first of these is Robert Post's conception of the secular state, introducing the principle of democratic legitimacy. I shall first summarize his evaluation of arguments for and against limiting freedom of speech on religious issues, and subsequently compare Post's position to the picture painted by Loose, evaluating to what extent Post's arguments have been shaped by Christian (moral) standards, and to what extent expressions on both Christian and non-Christian religiosity may be evaluated differently using Post's standards.

Subsequently, I shall discuss Ronald Dworkin's distinction between the tolerant religious and the tolerant non-religious or secular state, attempting to evaluate to what extent western liberal democracy can be regarded as a tolerant secular state. Additionally, I shall investigate to what extent Dworkin's position is compatible with Loose's point of view, based on the various possible ways of connecting these two theories.

In the final section of this paper, I shall present my conclusion on the validity of Loose's argument. Based on this evaluation, I shall argue that free speech in Enlightened secular democracies is unconsciously biased towards the Christian faith at the expense of other religions, and that this is both unavoidable and undesirable given the current conceptions of state and democracy.

2. Donald Loose's Criticism of Religious Neutrality

Donald Loose argues that Christianity cannot be eliminated from modern liberal democracy (Loose, 2007a). In order to understand this somewhat paradoxical statement, we need to first consider the history of liberal democracy.

Loose reminds us of the great number of religious wars that took place in Europe, starting as early as the 11th century and culminating in both the French Revolution and the American War of Independence. These events gave rise to the founding of a secular state, which was capable of ending this religious strife by separating the public domain from citizens' private spheres, while simultaneously maintaining strict neutrality towards the various warring religious factions within this public sphere (Loose, 2007a: 20). By banning the dominance of any specific religious doctrine from the public sphere, this newly created nation state could effectively govern its people, despite irreversible religious heterogeneity within the private sphere.

The two most exemplary models of governing religion in the public domain within contemporary liberal democracies are the French policy of "*laïcité*" and the American "marketplace of ideas". The French policy consists in severely limiting all explicit expressions of religion in public life,

thus banishing religion in its entirety to the private sphere of the citizen. By contrast, the American policy is the exact opposite of this: by giving all religious expressions equal and unfettered opportunities for expression within the public forum, religious doctrines compete with one another like vendors in the marketplace, thus preventing any single religion from claiming the public sphere as its own. In practice, many states adopt a policy somewhere in between these two extremes.

One problem Loose identifies in these doctrines of the secular state is that it leans heavily on the (artificial) separation of public and private space. Religion, however, will not let itself be fully confined to the private sphere, as evidenced by citizens' increasing rebellion against this delineation: as Loose argues, citizens expect the social norms and moral convictions that apply in their private domain (which tend to be based on religious tenets) to be extended to public life (Loose, 2007a: 20). This may be especially true for second-generation immigrants, who are shaped both as citizens in a secular state and as members of a (minority) religious community (Loose, 2007a: 32-33). In practice, these two identities may not always be reconcilable, resulting in friction and conflict, both in the private and the public sphere. This shows that religion cannot be totally banished from public life as in the French policy model, since by limiting religious expression in public life, citizenship runs the risk of becoming so restrictive that many citizens may feel excluded from it (Loose, 2007a: 21-22).

The main fallacy in the reasoning of the secular state is thus the assumption that all people are first citizens, who may subsequently subscribe to a religious ideology within the confines of their private lives. People never choose their religious background, however, as they are always shaped in a certain religious environment (or absence thereof). For many, the requirement to discard or disregard their religious identity when they enter public life is simply not realistic, as it is their religious identity upon which their identity as citizens is founded. Loose (2007b: 141-142, 147-148) considers this especially true both for Islam, which focuses on individual piety without a unified vision of the state, and for Judaism, which has doctrinal reasons for distancing itself from politics and thus citizenship.

Although Loose (2007a: 20) explains that the separation between church and state originates in the modern conception of the state, the secular state's attitude towards religion may itself be argued to have originated from its interaction not with religion in general, but specifically with Christianity, including both the claim to universality of the Roman-Catholic Church, and the Reformation, which arguably played a significant part in bringing about Enlightenment in Europe. A similar argument can be made for such secular values as justice, charity, tolerance, and favouring the meek (Loose, 2007b: 169). These are moral values grounded in Christianity that have been incorporated into Enlightenment, and subsequently adopted as Enlightenment values. This illustrates that Enlightenment in Europe as a whole has been historically shaped against a background of Christian religious beliefs.

The secular state and its Enlightened values are thus a reminder of the Christian doctrine that is still implicitly present and prevalent in European culture, law and (political) thought. Loose strives for a greater awareness of the Christian roots of the secular state, for this may remind us that the neutrality of the secular liberal state is a more problematic position than it may be perceived to be at first glance.

This is the basis of the difficulty of the American policy model in adjudicating fair opportunities to all religious expressions in the public domain. For within this system, some religious expressions may be more disruptive and disturbing to prevalent and implicitly Christian secular values than others. In adjudicating these issues, the state is faced with the dilemma to either favour its own cultural history, thus compromising its neutrality, or to maintain its neutrality but to ignore its moral values, thus abandoning its claim to a secular morality (Loose, 2007b: 130-131).

One final complication of the liberal, secular society is that it has an ideological drive to incorporate the totality of social reality, and thus to subjugate all social dealings to the divide between the public and the private, including those elements that reject this liberalism itself. This is an ideological strategy that is similar to the one traditionally employed by the Roman-Catholic church within the domain of faith: via the rhetorical claim that one given doctrine has universal validity, all opposing positions are implicitly reduced to subordinate variants of the universal doctrine.

Loose argues that this claim of universal primacy of the divide between public and private is directly descended from the claim of universal primacy of Roman-Catholic faith, and that therefore secular liberalism can be seen as an extension of Roman-Catholicism, revealing the secular society as only one evolutionary step away from the Christian society. In the words of Loose:

> 'Whoever refrains from claiming efforts towards the common good as one's own exclusive patrimony out of a religious inspiration, proves at the same time that he or she acknowledges the autonomy of the secular and the religious, and is thus fundamentally marked by Christianity (Loose, 2007b: 130-131).'[1]

This implies a more than significant compatibility of the Christian faith with the secular state, and indeed raises the question whether non-Christian religions can be compatible with the secular state to a similar extent.

3. Robert Post's Theory of Legitimate Democracy

The next step in this investigation consists of reviewing a number of alternative theories on the relationship between religion and freedom of speech in modern secular societies, to test their compatibility with Loose's position, and to examine to what extent Loose's argument remains tenable. The first such position is presented by Robert Post (2007), who makes a clear delineation of the extent to which secular democratic governments should regulate or limit freedom of expression on religious issues.

Post posits one major assumption, specifically that the secular societies under review are democracies, by which is meant a state in which citizens govern themselves, or as defined by Bobbio (1989) and quoted by Post (2007: 73): 'Democratic forms of government are those in which the laws are made by the same people to whom they apply.'

Post also identifies a necessary condition for democracy, which is open public discussion. He argues that it is not enough for democratic self-government if citizens merely shape the actions and behaviour of the state through collective decision-making; they must also identify with the state.

This means that citizens must experience themselves not just as voters, but also as authors of the state and its laws. The primary way to attain such authorship according to Post (2007: 75-76) is through public discussion, in which citizens may actively and collectively influence the state's policies and decisions. Obviously, freedom of expression is a key condition for such public debate. Without sufficient liberty or opportunity to enter into public discussion, citizens become alienated from public policy and society may no longer be called democratic. For this reason, freedom of expression should be allowed as much space as possible in the public sphere.

Applying this to the discussion of issues of faith and religion, it is clear that citizens must not only have the freedom to express their own religious faith and opinions, but also to express their opinions on other religions than their own. The cost of this freedom, however, is that some of these opinions may be perceived as insults to those whose religion is the subject of public debate, creating the possibility of conflict and polarisation in the public domain.

Post acknowledges that these costs will sometimes outweigh the benefits of absolute freedom of expression. Consequently, he identifies and outlines three arguments that have been used to limit these liberties in liberal democracies, and he evaluates each of these arguments' practical value for actual public expressions of opinions on religions.

The first of these is the argument that religions should be protected from insult and blasphemy (Post 2007: 77-78). This is a protection afforded not to believers or religious groups, but to the religions and deities themselves. The reasoning behind this argument is that certain sacred tenets of faith should never be defiled by denouncement or ridicule, as they are values that outweigh those of freedom and the state. Post argues that this limitation may have value in certain states, specifically those who only aspire to govern a people who homogenously accept the religious tenets that are regarded as sacred. However, since most modern states do not have such a homogenous population, Post concludes that this limitation of free speech is mostly unacceptable.

Secondly, Post (2007: 78-82) states the argument that religious groups should be protected from insult and humiliation. This is different from the previous argument in that it refers to the believers and the integrity of their religious feelings, and not to the sacredness of religion itself. What this argument entails in its purest form is that all members of society have a fundamental right not to be subjected to public insult, criticism or denouncement of the religious beliefs and practices they uphold. Since such a restriction silences any critical remarks on any religion, it effectively stifles free public discourse on religious issues, thus endangering democratic legitimacy.

As a result, a number of limitations of this broad 'blanket ban' on expression of opinion on religious issues exist. Post mentions the claim of general tolerance within democracies, and the condition of only excluding those opinions on religious issues that are gratuitously insulting and do not further public debate, only to subsequently counter them both. He argues that the aforementioned 'spirit of general tolerance' within democracies should only apply to actions, not words, meaning that a democracy should only actively enforce citizens not to act contrary to social public order (e.g. '[w]e must not riot or murder in defence of our beliefs' (Post, 2007: 79-80)), while allowing them the right to insult their fellow citizens. And regarding the issue of gratuitous insults, he maintains that the criterion of 'gratuitousness' (and thus not furthering public debate) is too subjective to effectively apply to judging controversial expressions in a rational and objective way. He concludes that the argument of protecting religious groups from insult is only valid in societies not committed to democratic legitimacy, or in specific cases where 'keeping the religious peace' is considered more important for social stability than the values of democracy (Post, 2007: 79-80).

The third and final limitation on free speech on religious issues Post (2007: 82-84) lists is the argument of preventing discrimination. Contrary to the previous argument, this refers to the social standing of specific religious groups, preventing them from being marginalised within society and public debate through (intentional) incitement of public opinion against them as a group. Post readily admits that the prevention of discrimination is a prerequisite of democratic legitimacy, as this is enhanced by a broad spectrum of participants/authors in public discussion. Alienating any (religious) group from public life detracts from the legitimacy of democracy.

However, he also argues that this argument of silencing some in the name of equality should not be overused, in order to prevent the state from misusing it to protect the political interests of those in power, or to stifle public discussion out of political correctness. Post therefore supplies two criteria for the justified use of this restriction on freedom of speech: The first of these is the condition that there be no plausible alternative for limiting citizens' free speech in combating inequality and discrimination (such as education or affirmative action). The second criterion is the condition that the offensive expressions would qualify as 'hate speech', i.e. they should have both the intent to discriminate, and a damaging effect to the discriminated parties. Post concludes that these conditions would ensure responsible use of the argument of preventing discrimination on religious and other issues.

Post's argumentation shows that in his theory of democracy, free speech should be given as much space as possible, and that it may only be restrained in exceptional circumstances. When overlaying this view with the picture provided by Donald Loose, it becomes apparent that Post is a proponent of what Loose calls the American policy on religious expression; Post advocates virtually no limitations on public discussion of religious matters, turning the public debate of religion into a "marketplace of ideas". Despite the problems Loose has identified with this position (i.e. the assumption of the supremacy of citizenship over religious identity, and the greater compatibility Christian values have with those of the secular state over the values of non-Christian religions), Post's position can be complementary to his own: Post's description of democracy legitimized by public debate can be used as a further clarification of Loose's liberal secular state, while Loose's analysis can be used as a test of the neutrality of Post's model of democracy.

A number of observations can be made from this combination. The major issue that I shall discuss in the remainder of this section is that it appears plausible that Christian groups generally fit Post's model of society better than other religious groups. This can be seen by recalling that Post's Enlightenment value of democracy through self-governance relies on unfettered public discussion, while also minding Loose's point that this Enlightenment value arose in Christian societies and has therefore been shaped in part by Christian values. I shall make this clear by reviewing Post's three (countered) exceptions to freedom of expression on religious issues in light of this peculiar position of Christianity.

The argument of preventing blasphemy should not be applicable to modern secular democracies, since secular Enlightenment has replaced religion as the conceptual foundation of the state. Although Christian values still implicitly underlie Enlightened Reason, these are no longer embraced as the exclusive values of Christianity, but as belonging primarily to Reason. Since these values are already protected as allegedly neutral elements of the secular state itself, no special protection is required for them as religious tenets.[2]

However, because non-Christian religions maintain a set of sacred values that do not all coincide with those of Enlightened Reason, it may be the case that the sacredness of these religions is less widely acknowledged throughout society than that of Christianity, and that these religions are not treated with the same (unconscious and unrecognised) consideration as Christianity. In this way, non-Christian religions may be seen as disadvantaged in public debate as compared to Christianity.

Post's position on the second limiting argument, that of unconditionally protecting believers from insult, is similarly biased towards Christianity. With regard to this issue, Post presupposes that insulting citizens in their religious identity does not necessarily damage their standing as citizens (which would be a breach of democratic legitimacy). This assumption may hold for those citizens who are either non-religious or have a religious background – such as Christianity – that does not place the foundation of citizenship in religious values. However, for those citizens who adhere to a religious doctrine that does base the legitimacy of their citizenship on religious beliefs, Post's assumption does not hold, causing Post's position to deny them any protection from attacks against the foundation of their civic legitimacy. What this shows is, again, the hidden premise of the divide between religion and public life, as identified by Loose, once again unmasking the secular state as one built on Christian foundations.

Many non-Christian religious groups, such as Muslims or Jews, derive the virtues of citizenship from their religious virtues. Indeed, such groups might argue from this point of view that a state that allows its citizens to insult and ridicule the beliefs (and thus the absolute virtue) of others could hardly be considered legitimate at all. However, by criticizing the implicit Christian bias in the secular state – and thus making a stand for a different conception of citizenship – these groups risk being themselves accused of rejecting the principles of citizenship altogether.

The final argument Post reviews, the argument of preventing discrimination, is less criticised than the other two, as Post more readily acknowledges its use, even though he warns of its overuse. At first glance, this balancing act between the right to express one's opinion in public and the right to have one's place in public life protected by law appears to be a truly neutral tenet, which does not favour Christians over non-Christians in any way. The bias is still there, however, hidden in one of Post's restrictions on the use of this argument, specifically the condition that both discriminatory intent on the part of the speaker and the damaging effect of the insult should be established.

An argument for this statement can be found with Jill Gordon and Markus Johnson (Gordon & Johnson, 2003), who argue that defining discrimination[3] as an intentional act is an injustice. They emphasize that it is not conscious discrimination, but unconscious discriminatory speech that is both most common and most harmful in excluding minority groups from public life. In their view, a better definition of discrimination would not include the speaker's intent as a necessary condition, but would rather place more emphasis on the interlocutor's affect in experiencing speech as discriminatory. In this light, it can be seen that Post utilizes a hidden premise in his limiting of the restrictions on free speech, which is the premise of innocence until proven guilty. Although this is an admirable value to maintain in determining objectively perceivable intentional acts, it may not be in the case of determining subjective perceptions and experiences. The reason for this is that, in the case of possibly discriminatory or insulting speech, the interlocutor is assigned the burden of proof to establish the speaker's discriminatory or insulting intent, which typically requires access to the speaker's private thoughts. This makes it a nigh-impossible task for the interlocutor to meet the conditions for determining that he or she has been discriminated against.

The question remains whether or not this implicit assumption favours the Christian faith. In my opinion, this is often but not necessarily the case. Discrimination is a broad cultural phenomenon that is not merely limited to religious differences, but rather appears to be a near-universal (if unpleasant) characteristic of human culture and identity-shaping. It even appears to have a social function, in that it allows similar or like-minded individuals to define themselves as a group – or even a community – through opposition to others, while simultaneously defining the identity of these others in terms of the emerging newly-dominant community.[4] Because of this community-defining characteristic of discrimination, it can be argued that discriminatory speech tends to exclude minorities from a dominant majority.

Applied to freedom of expression on religious issues, it can be seen that in secular democracies the majority generally favours Enlightenment values, which have a significant overlap with the Christian values from which they evolved. What this means is that unintentionally discriminatory speech tends to favour Christians over non-Christians, but only because Christian religious values are already dominant as a result of their overlap with Enlightenment values. Therefore, Post's restrictions on silencing discriminatory speech does not in itself cause a secular society to favour Christianity over other religions, but does play a role in maintaining such inequality.

This discussion shows that an explicitly secular doctrine of democracy still harbours deep-seated Christian values and is therefore not truly neutral in religious matters. Clearly, Post's approach of using democracy and self-authorship as non-religious political values does not provide a defence against the implications of Loose's claims.

4. Ronald Dworkin's Two Models of the Tolerant State

A different approach to this discussion is Ronald Dworkin's (2006) view on the democratic state. Dworkin distinguishes between two conceptions of modern democracies: the tolerant religious state and the tolerant secular state. He defines the tolerant religious state as 'a religious nation, collectively committed to the values of faith and worship, but with tolerance for religious minorities including nonbelievers' (Dworkin, 2006: 56), while by contrast the tolerant secular state is conceived as 'a nation committed to thoroughly secular government but with tolerance and accommodation for people of religious faith' (ibidem). While the factor of tolerance is an important and fundamental similarity between these two conceptions of the state, Dworkin argues that the two models are still fundamentally different in their conception of citizenship, and additionally that the tolerant religious model is incoherent. In the following, I shall present Dworkin's argument.

The similarity between the model of the tolerant religious state and the tolerant secular state is not merely the subscription to the ideal of tolerance, but also to two basic principles of human dignity. These are the principle that each person's life is of equal intrinsic value, and the principle that every person has the same personal responsibility for their own life (Dworkin, 2006: 70). In applying these principles of the individual to society, Dworkin argues that society is only justified to constrain citizens' liberty 'on sound distributive or sound impersonally judgmental grounds' (Dworkin, 2006: 73). What is excluded from these is constraints on 'personally judgmental grounds', which Dworkin defines as 'laws that violate dignity by usurping an individual's responsibility for his own ethical values' (Dworkin, 2006: 72), in other words paternalistic policies that impose moral values on citizens. Such measures would violate the principle of citizens' responsibility for their own lives and should, in this account, be disallowed for that reason.

However, Dworkin indicates that such personally judgmental policies are actually held within the tenets of the tolerant religious state, since such a state explicitly subscribes to certain religious principles and seeks to actively promote these through policy. The tolerant religious state tolerates citizens' choices not to subscribe to these principles, but it states that

it would prefer them to. Dworkin concludes that this type of paternalism in the tolerant religious state is incompatible with the principles of human dignity that it claims to adhere to.

Although this paternalism is a recognisable feature of the tolerant religious state, it is not, according to Dworkin, the main reason why the tolerant religious state is incompatible with the principles of dignity. Rather, it is its cultural majoritarianism, which is the circumstance within tolerant religious states where a majority of the population that shares certain religious values wishes to impose these on public life, not for the sake of the minority (which would be paternalism), but for the sake of their own ideal of public life. In effect, the religious majority shapes the public sphere according to their own religiously inspired values, converting these to civic values (Dworkin, 2006: 74). This forces minority religious groups as well as nonbelievers to adopt these same values in order to function as citizens. These minorities are therefore still free to reject these values as their religious identity, as long as they acknowledge them as the prevalent doctrine in public life.

Dworkin's tolerant secular state, by contrast, does not impose any such values on its citizens. Instead, it takes pains to shape public life according to civic virtues that do not have a religious foundation. Applying his analysis to the case of the United States of America, Dworkin concludes that American society actually shows more properties of a tolerant religious state, than of the tolerant secular state that it claims to be.

When comparing Dworkin's position to that of Donald Loose, it is unclear at first whether these two analyses are compatible, as is required in order to perform a meaningful comparison. In my opinion, there are three possible approaches to connecting these two positions. The first two such approaches consist of applying Loose's point to Dworkin's tolerant secular state on the one hand, and applying it to Dworkin's tolerant religious state on the other. The third position is a more subtle one, requiring an alteration of Dworkin's model. I shall make a case for each of these approaches and subsequently compare the three scenarios.

The first approach – applying Loose's argument that the secular state is influenced by and biased towards Christian thought to Dworkin's conception of the tolerant secular state – implies that the tolerant secular state model is founded on Enlightenment values that implicitly grew from Christian values. If we then accept Loose's analysis, we are led to a two-fold conclusion. First, we can see that Dworkin's review of the tolerant religious state is not relevant to this discussion, because this account of the state does not claim secular values as its foundation. Secondly, on this view, Dworkin's distinction between a tolerant religious state and a tolerant secular state would be reduced to a distinction between an explicitly religious state and an implicitly religious one, making it next to meaningless. Effectively, Dworkin's position has been undermined by Loose's account through a claim to universality inherent in the chosen approach: by equating Loose's argument of a pro-Christian bias in the secular state to Dworkin's tolerant secular state, Dworkin's position has been neutered and presented as a dissenting voice in Loose's system. If I were to choose this approach to combine the two theories, this would amount to a decision on my part to reject the validity of Dworkin's distinction. This would go well beyond giving Loose's position the benefit of the doubt, and would amount to explicitly favouring it over Dworkin's views, especially in light of the fact that this is not the only possible approach to relate these two viewpoints.

An additional problem with this approach is that Loose's description of the American policy on religious expression as a "marketplace of ideas" would become inaccurate, since Dworkin's model reduces this American situation to either personally judgmental government policy to promote religiosity (in the United States as a tolerant religious state), or to one that tries to reduce religious expression in the public sphere more similar to the French policy of "*laïcité*" (within the picture of the United States as a tolerant secular state). Dworkin clearly prefers the latter.

The closest alternative to this scenario consists of applying Loose's statements to Dworkin's tolerant religious state. This would provide more justification for Loose's description of the "marketplace of ideas" policy in its appeal to tolerance, against Dworkin's denouncement of the religious core of American society. However, this view also offers a potential

challenge to Loose's claim that the secular state is predisposed towards Christian values, in that it leaves open the possibility that a secular state could be capable of maintaining a neutral position towards Christianity as compared to other religions. The problem of the cultural dominance of implicit Christian values in public life is thus relegated to Dworkin's tolerant religious state. However, this approach would not do Loose's point justice, as it fails to explain in what way Dworkin's tolerant secular state could overcome this challenge. Therefore, choosing this approach would enable Dworkin's position to evade Loose's points by stipulation, which would entail opposing Loose's arguments through begging the question.

As can be seen from these two separate attempts at comparing Loose's and Dworkin's respective positions on religion and public life, these positions remain incompatible to some extent, as Dworkin would argue that Loose's analysis is inaccurate in stating that the American "marketplace of ideas" policy would fit the policy of a secular state, while Loose would deny that Dworkin's distinction between a tolerant religious state and a tolerant secular state could be made in a meaningful way, because in his opinion secular societies are still subconsciously marked by (Christian) religious values. This last consideration, however, provides the starting point for a third attempt to connect these two analyses.

The third approach to combining Loose's and Dworkin's theories requires a further distinction within Dworkin's theory. Dworkin's tolerant religious state and tolerant secular state both refer to a state's conscious selection of its stance towards any or all religious doctrines. However, what I propose is to include not merely the conscious position of the state, but also the unconscious position of the public in a definition for Dworkin's distinction between religious and secular. This is an alteration inspired by the perception of discrimination raised by Jill Gordon & Markus Johnson (2003); if we exclude unconsciously discriminatory remarks from the definition of discrimination, this definition would be too narrow. Similarly, if we exclude unconsciously non-neutral opinions on religious issues from the state position of religious neutrality, this religious neutrality of the state cannot be considered complete.

The ramifications of this interpretation are quite far-reaching for Dworkin's model. It implies that Dworkin's arguments are limited in their

application to political reality, as unconscious social undercurrents that draw on historically Christian cultural influences have given rise to an overly narrow conception of the secular state. More charitably, it can be said that Dworkin's model is an idealization that leaves problems pertaining to the position of religion in public life unaddressed. The resulting image is similar to the one painted by the first approach, in that it leaves Dworkin's position with a significant burden of proof, but it does not invalidate his distinction between the tolerant religious state and the tolerant secular state and still leaves a coherent view on the American "marketplace of ideas" policy.

Based on the above investigation, the first two scenarios show a limited extent of compatibility between Loose and Dworkin, which would result in either subjugating one theory to the other for the sake of compatibility, or denying their compatibility altogether, rendering meaningful comparison impossible within this study's parameters. The third scenario, however, does not pose any serious limitations on the premises on either theory, although it does require some flexibility on the part of Dworkin's assumptions. As a result, the (non-stipulated) possibility of an unbiased tolerant secular state and Loose's claim of modern secular states' predisposition towards Christian values do not exclude one another. For this reason, this third approach allows for the greatest degree of compatibility between Loose's and Dworkin's respective positions, which in turn allows a meaningful evaluation of their validity, without resorting to judgements by stipulation. For this reason, I argue that this approach is the most fruitful in terms of both academic impartiality and meaningfulness within the confines of this study. Finally, based on this approach to connect Loose's and Dworkin's respective positions, it can be concluded that Dworkin's views do not meet the burden of proof required to disprove Loose's argument.

5. Conclusion

The investigations above have shown that Donald Loose's deconstruction of the religious neutrality of the modern secular state poses serious problems for the conception of the secular state. Loose argues that secular democratic governments' claim to religious neutrality is built on a foundation of Christian beliefs and values, showing this position of neutrality to be tenuous at best. I have challenged this position with two alternatives, each of which needs to possess sufficient compatibility with Loose's theory.

Applying Loose's analysis of the secular state to Robert Post's conception of democracy as a political value, I have shown that Post leans heavily on the assumption of absolute religious neutrality, revealing that his argument for a mostly unrestricted freedom of expression in public discussion of religious issues does indeed favour the religious values of Christianity within this public debate over those of other religions. It should be noted, however, that this is not merely caused by the cultural history of the concept of the secular state (as Loose argues), but it is also maintained through the systematic discounting of unconscious discrimination of minority opinions, a dynamic identified by Jill Gordon & Markus Johnson, who argue that such disregard for unconscious considerations is a failing of current theories of morality and justice.

Dworkin's distinction between the (tolerant) religious state and the (tolerant) secular state is a position that is partially incompatible with Loose's views and requires a reinterpretation of at least one of the theories in order to make a meaningful comparison. Applying Gordon & Johnson's distinction between conscious and unconscious discrimination to Dworkin's conception of the tolerant secular state results in an image that presents Dworkin's model as an idealized version of the conception of the state, which does not address the issue of unconsciously religious premises in the concept of the religiously neutral state. Dworkin thus models the ideals of the secular state rather than its real problems.

Both challenges to Loose's criticism of the secular state have therefore failed. For now, the claim that secular governments have a significant inherent predisposition towards Christian values and opinions in their conception of the state stands. However, it is made clear by both Post and

Dworkin that a breach of religious neutrality on the part of the state is not desirable. As Post would argue, a state predisposition towards a certain religion would impose a severe limitation on public debate, resulting in a reduction of democratic legitimacy. Conversely, Dworkin would claim that a state that systematically favours certain religious views over others is not only paternalistic, but also culturally majoritarian, and violates the principles of human dignity. Surprisingly, Loose refrains from commenting on the desirability of this situation, with the exception of his appeal for greater awareness within modern secular democracies of their own cultural and religious history. While this appeal may merely be meant to stimulate participants in public debate to become better informed on the nature of public life itself,[5] it may also be taken by some as an implicit approval or justification of the privileged position Christian values enjoy in modern western societies.

What I have shown in this paper is twofold. On the one hand, free speech in modern secular democracies is inevitably and unconsciously biased towards the Christian faith at the expense of other religions. This is in line with Loose's position, which was not disproven through confrontation with either Post's or Dworkin's respective alternative positions. On the other hand, however, I have shown that this bias is undesirable and unjust from the point of view of the modern secular state, as both Post and Dworkin argue. In addition, though, a further extrapolation of Gordon & Johnson's argument provides an even more fundamental support for this conclusion: an exclusive focus on conscious intent of the speaker entails not only a passive disregard for the perceptions and interpretations of the interlocutor, but also for the unconscious biases of the speaker; both these disregards are injustices. Perhaps they are even inherent weaknesses of the very Enlightenment that is the foundation of the secular state.

The final remaining question is whether any possible solutions may still be found for this compromised religious neutrality of the non-religious state. Two possible strategies are available: on the one hand, societies may seek to foster awareness of the inherent flaw in their neutrality and seek to minimize it, while on the other hand the concept of democracy and the secular state could be rethought. The former is a task for those political philosophers who subscribe to the ideals of Enlightenment, while the lat-

ter is best left to more unorthodox thinkers, as it requires a new conception of the state, of political thought, and of Enlightenment itself, preferably one that has no genealogical ties to Christianity. Perhaps the recent political upheaval and subsequent tentative rise of democracy in some Middle Eastern and North African countries may (eventually) provide fuel for a new account of Enlightenment.

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Notes

1. I have translated this quote from Dutch for the purposes of this paper.

2. It should be noted that various secular democracies still maintain laws banning blasphemy. However, these laws are increasingly seen as a relic of the past and have come under examination for elimination.

3. The authors' argument concerns racism, which is a specific form of discrimination. The point, I believe, can also apply to all other forms of discrimination without losing any of its merit. Additionally, as will be seen in the following section, I shall apply this argument to a different issue as well.

4. This is an adaptation of the argument that one's identity is defined through a naming act performed by another, developed by Butler (1997).

5. Donald Loose has embraced this interpretation in personal communication.

Literature

Bobbio, N. (1989) *Democracy and Dictatorship: The Nature and Limits of State Power*, Trans. P. Kennealy. Minneapolis: Minnesota University Press.

Butler, J. (1997) *Excitable Speech. A Politics of the Performative*. New York & London: Routledge.

Dworkin, R. (2006) 'Religion and Dignity'. In: R. Dworkin, *Is Democracy Possible Here? Principles for a new political debate*. Princeton/Oxford: Princeton University Press: 52-77.

Gordon, J. & Johnson, M. (2003) 'Race, Speech, and a Hostile Educational Environment: What Color Is Free Speech?'. *Journal of Social Philosophy* 34: 414-436.

Loose, D. (2007a) 'Politiek en de publieke rol van religie'. In: D.A.A. Loose & A.J.A. de Wit (eds.) *Religie in het publieke domein, fundament en fundamentalisme*. Vught: Radboudstichting: 19-45.

Loose, D. (2007b) 'Het belang van het christelijke paradigma voor de verhouding samenleving en religie'. In: D.A.A. Loose & A.J.A. de Wit (eds.) *Religie in het publieke domein, fundament en fundamentalisme*. Vught: Radboudstichting: 140-171.

Post, R. (2007) 'Religion and Freedom of Speech: Portraits of Muhammad'. *Constellations* 14: 72-90.

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