European Humanist Federation

Religion in Society

A memorandum to the Religare Project
on religions, belonging, beliefs and secularism in Europe
on the Project's four research themes:
Public space / The Workplace / The Family / State Support

The European Humanist Federation welcomes the Religare project on "religions, belonging, beliefs and secularism in Europe". The right to freedom of religion or belief is very dear to us, and we regard the question of how to reconcile that freedom with other potentially conflicting freedoms in a liberal democratic society as one of the most important facing Europe today.

This memorandum provides comments on each of the four initial Religare themes concerning religion in society (namely, the family, public space, state support, and the workplace) but prefaces these with some general remarks about religion and belief in Europe in the 21st century.

Religion in 21st Century Europe

Our starting point has to be the historical importance of Christianity and the churches and their continuing importance in the lives of many Europeans. A key thread running through the history of Europe for 1700 years has been the Christian religion and the Christian churches. Christian monasteries took over from the Arabs the preservation of classical learning, melding Greek philosophy with Christian theology. Christian stories no less than classical myths provide the subject matter of European art and poetry. Christian beliefs and moral philosophy have shaped our lives, culture and thinking. Christian causes have provided the justification for wars and differing interpretations of Christian teaching have provided the framework for social struggles.

For centuries there was simply no alternative to Christianity. When the Reformation broke the monolithic domination of Rome, thinking still did not stray far from the alternative versions of Christianity then developed. The Roman church remained powerful and the new churches grew in power, frequently allied with secular government and seen as the unquestionable source of moral authority. Only in the last few centuries have alternatives to Christianity become available, including not only non-Christian religions but also the possibility of living entirely without religion - something that until recently many found it difficult to imagine (a mid-nineteenth century encyclopaedia of religion[1] says of "explicit

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[1] Revd. James Gardner MA: *The Faiths of the World* etc, London & Edinburgh: A Fullarton & Co. 1860: it quotes, for example, the celebrated Dr Thomas Arnold as saying "I confess that I believe conscientious atheism not to exist." See http://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t6b284r2r#page/247/mode/1up - accessed 6 April 2013.

and openly avowed atheism" that its "existence has been doubted and even denied by many wise and good men, both in ancient and modern times"). It is only within our lifetimes that rejection of religion has become for the most part socially acceptable and that challenges to religious morality have been seen as other than inherently wicked.

Even more recent is the development of our multicultural Europe. We now entertain a plurality of religions and beliefs, not only in the sense that immigration has brought us small populations of (principally) Hindus and Sikhs, Buddhists and Muslims to add to our resident minority of Jews but also in at least two other senses: first, that these and other religions have found adherents from the native population of Europe, and second, that Christian belief has become much more varied and personal, much less doctrinally orthodox, than ever before.

These developments attracted little attention until 2001. Religion was seen as a personal choice and not on the whole as a social issue, and it was as ethnic, not religious, minorities that immigrant populations attracted the attention of politicians. Since 9/11 the focus for politicians and commentators has sadly but inevitably turned to Islamist extremism, and it has been through that distorting lens that they have approached the question of social adjustment to the small but significant Muslim minority now found in most European countries. This is understandable but worries over terrorism and immigration must not be allowed to distort the overall picture.

The consequences of these fairly recent changes are still being worked out, and the Religare project may contribute to their resolution.

The fundamental questions have to be: given changes in social thinking, the growth of non-Christian religions and the decline in Christian belief, to what extent can the churches retain the positions of formal or informal power that they have customarily held in almost all European countries for centuries? and if they are losing influence as touchstones for social and moral decision-making, what can take their place?

One unquestionable achievement of the recent past is the establishment of freedom of religion or belief. In some parts of the world having the wrong religion, still more apostasy from the dominant religion, entails a risk not just to liberty but to life itself. In Europe, freedom of belief is far from perfectly guaranteed but it is effectively unchallenged as a principle and those who still harry religious minorities, particularly in some parts of eastern and central Europe only recently free from Soviet domination, feel compelled to provide administrative or legal justifications, however paper thin.

So, in most of Europe and in all its international treaties the freedom of the individual to adopt whatever religion or belief he or she wishes is unquestioned, and the price to pay for an eccentric choice is generally not grave. Noone would have it otherwise. The *forum internum* is safe from assault, whether one's beliefs produce rejoicing in anticipation of salvation, despair at innate and ineradicable sinfulness - or wholesale rejection of religion. For it is vital to remember at every stage in this discussion that freedom of religion or belief

applies equally and unquestionably to those who reject religion, to those who adopt non-religious beliefs (such as Humanism[2]) - and to those the European Court of Human Rights has called "the unconcerned" who cannot be bothered with religion or belief at all but simply wish to get on with their lives. (See Annex I on the legal background.)

Now religion for some is inspirational and provides the foundation and purpose of their lives. It may prompt them to lives of unselfish service and provide them with a community beyond their families that supports them and can be an agent in society that multiplies the effect of their individual efforts. This is admirable and (with minor quibbles) to be wholeheartedly welcomed.

But religion can also provide negative experiences. The misery that beliefs sometimes bring on those who hold them is a matter for them alone, along with those who love them. But the effects of religion on those who do not believe or who have other beliefs are potentially a matter for society as a whole. It is in the *forum externum* that reside the problems over religion in society. They involve no challenge to the freedom to believe what one will: rather, they are focussed on the risk that one man's beliefs may induce behaviour that affects another man's freedoms.

And some undoubtedly experience what they feel as oppression by religious institutions, inhibiting their freedom in what can at worst be a totalitarian way. The Westphalian settlement was an advance in its day but it took time to transmute *cuius regio eius religio* from a freedom for the rulers of nations to choose which religion to impose on all their subjects into a personal freedom of belief for each of those subjects - and in some countries in Europe that transformation has not yet been completed.

The effects of religion or belief in the *forum externum* is what the European Convention on Human Rights calls the manifestation of belief - and freedom to manifest belief is also protected - though, unlike freedom of belief itself, it enjoys no absolute guarantee but is

> subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. *(Article 9(2))*

Attempts are still occasionally made to promote Christianity as a factor binding Europe together. Our shared inheritance and history, it is said, are those of a Christian continent, our culture and values are Christian. But these claims are matters of dispute, as was seen when attempts were made to insert them in the preamble of the putative European constitution. We share a history in which Christianity played a large part - but it may still divide rather than unite. Our culture, our values are in part Christian, but they also have other roots: in the classical world, in Enlightenment thinking, in our common humanity. And church power has produced alienation just as free thinking has produced rejection of

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[2] See http://humanistfederation.eu/humanism-secularism/humanism/ - accessed 6 April 2013.

Christian belief.

It is fundamental that the Religare project must take serious note of the extent to which religion - and in particular the Christian churches - are now rejected by the people of Europe. If the project starts from a lazy assumption that religion can still be a binding factor, that all that is needed is some tweaking of age-old inherited assumptions, it will be a failure and will only add to this alienation.

Polls and surveys provide the evidence. First there are those that demonstrate how many people in Europe have rejected religious belief. The EU's Eurobarometer survey found in 2005 that in its then 25 member states only 52% of people believed in God while 18% rejected outright even the idea of 'some sort of spirit or life force'.[3] Similar results are found by both popular and academic surveys[4]. Other surveys show how limited is the knowledge of self-proclaimed believers of their alleged religion - an ignorance that undermines the claims of churches to represent those who have actually created their own eclectic and often shallow beliefs.

More significant are those surveys that demonstrate people's attitude towards religion and the churches regardless of their personal beliefs. For example, in 2007 Eurobarometer found that 46% thought religion had too important a place in society[5], a result similar to that in a UK Ipsos MORI poll in 2006 which found that 42% of people in Britain thought that Government "paid too much attention to religious leaders"[6].

Not only that, but religion is not seen as important by Europeans. Half of them may in some sense believe in God and even more have a cultural affiliation to Christianity but Eurobarometer found that, when asked to pick up to three from a list of twelve 'values', people in Europe twice placed religion last: only 7% chose it as important to them personally and only 3% saw it as a value representative of the EU.[7]

It is plain therefore that Christianity cannot provide the binding factor for 21st century European society. However, in the present context it is insufficient merely to recognise this fact: it is necessary also to examine the consequences of such a fall from grace. Noone of course has any intention of challenging the religious freedom of believers or the freedom of the churches to manifest collectively the beliefs of their adherents and to preach their faith to the world. But the churches have inherited from the days of their past dominance, when

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3 Eurobarometer special survey: Social values, Science and Technology (European Commission, June 2005) available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf - accessed6 April 2013.

4 For a summary of academic surveys see Phil Zuckerman: 'Atheism: Contemporary Numbers and Patterns' in The Cambridge Companion to Atheism, ed. Michael Martin, Cambridge University Press, 2007; ISBN 978-0-521-60367-6.

5 Eurobarometer 66: Public Opinion in the European Union (European Commission, September 2007) available at http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf - accessed6 April 2013.

6 http://www.humanism.org.uk/news/view/156 - accessed 6 April 2013.

7 Eurobarometer *loc. cit.* [In 2010 when the same question was repeated only 6% chose religion.]

it was arguable that they did provide the glue to hold society together, numerous privileges that, now religion is no longer a binding factor but one that tends to divide, must be called in question. The most egregious such privilege is probably the 26 seats in the United Kingdom Parliament reserved for Church of England bishops, but there are many others that are probably more serious in their practical effects, many of which arise from the strong tendency of politicians, at least in public, to show unquestioning deference to religious institutions as authorities on morality and as arbiters of social policy.

This is not the only consequence of religion no longer being a social glue - or to be more accurate, of it binding only a part of society together and tending to alienate much of the rest. Both these tendencies - to bind and to alienate - need to be taken into account in considering its place in society. Together, indeed, by binding co-religionists together and alienating those of other beliefs, these effects of religion can become socially divisive to a serious extent, so that people live segregated lives with little knowledge and correspondingly much misunderstanding and suspicion of people of other beliefs. The dangers are vividly illustrated in Northern Ireland, where despite the end of violence the two communities remain almost as far apart as ever.

In approaching questions relating to the place of religion in society, therefore, the European Humanist Federation starts from the values to which the people of Europe give their highest levels of support as personal and as European values. These were, according to the Eurobarometer survey already cited, human rights, democracy, peace, and the rule of law. After these came respect for other cultures, solidarity, support for others, equality, respect for human life, and tolerance. Here without doubt is what now binds Europe together - our new social glue.

These are essentially humanist values. They are not unproblematic, since they sometimes conflict with each other, but they all bend towards freedom, tolerance and non-discrimination. Sadly, they are not accepted without qualification by the churches - or by the non-Christian religions. Some churchmen indeed express serious doubts about human rights: for example, the Pope recently criticised “countries which accord great importance to pluralism and tolerance” because the result of moves towards equality and non-discrimination was that religion was “increasingly being marginalized”[8].

The origin of such doubts lies in the problem that different human rights can conflict with each other - as, for example, with some religious doctrines and the equality and rights of women and of LGBT people - and that this raises legitimate questions about whether limits on the manifestation of religion or belief may be justified, entailing some modification of the privileges the churches have traditionally enjoyed.

It is against this background that we turn to the four subjects that are the current special themes of the Religare project.

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[8] Address to the diplomatic corps, 10 January 2011, available at http://press.catholica.va/news_services/bulletin/news/26680.php?index=26680 - accessed 6 April 2013.

Public space

> Religare introduction[9]: *Following a preliminary reflection on the scope of the public space, the research within this theme concentrates on religious and other symbols in the public space and on the fundamental questions of ownership of and access to the public space. It will consider places of worship and sacred sites, religious dress codes, and private (religious) schools. It aims at providing inputs about how to rethink and restructure the public space in order to cope with the increasing religious and cultural plurality of European societies.*

We wish to examine first the question of religion in the public space and to do so perhaps more widely than is suggested by the above formulation. In so doing we anticipate some of the other themes of your investigation.

Secularism

The European Humanist Federation is committed to freedom of religion or belief (including freedom of non-belief and non-religious beliefs) and to the principles of equality and non-discrimination. Our wish is that the constraints on freedom should be the minimum compatible with the survival of a liberal, open society - tolerant, democratic, with guarantees of human rights.

From this it appears to follow necessarily that the state, the law and the public institutions we all share must be neutral as between different religions and beliefs.[10] On questions of profound disagreement and deep sensitivity where there is no agreed way to establish the truth or falsehood of the claims made variously by Christians, Muslims, atheists and everyone else, it is quite wrong that the state should throw its weight behind any one particular religion or belief. This neutrality is what we mean by secularism.[11] Be it noted that we refer here to a secular state, not a secular society: a secular state may be supported by religious believers and be the home of widespread religious belief, whereas the phrase "a secular society" suggests one that has distanced itself from religion.

Now there is a common riposte to this: that neutrality is impossible, that a secular state in

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9 Taken from Religare newsletter no.1 at http://www.religareproject.eu/system/files/ReligareNewsletter_sept2010_0.pdf, accessed 6 April 2013.

10 This neutrality may not apply when - quite exceptionally - a religion or belief Is seen by the government as fundamentally inimical to public safety, public order, health or morals, or the rights and freedoms of others.

11 The implications of secularism in this sense (and we agree that others may use the word differently) are not the same as those of the words 'secular' or 'secularisation', which typically have to do with the extent to which society is or becomes 'less religious'. Support for secularism, by contrast, is entirely compatible with religious belief - indeed, it has its origins in the late mediaeval church's assertion of their independence from 'secular' government.

fact imposes liberal, secular values on everyone[12]. But this is playing with words. Laws, government and institutions that do not impose or assume any religion or belief on the part of any individual citizen leave the individual free to hold any religion or belief or none. Is it dictatorial to remove chains from contented prisoners? They need not leave their cells if they prefer to stay. By contrast, those who reject secularism seek to fit everyone with their own style of shackles. This is not an enhancement of the freedom of the dominant religious group but a curtailment of that of all the minorities. By contrast, secularism is the best possible guarantor of freedom of religion or belief for everyone.

Objectors often allege that secularists wish to drive the religious from the public square. Not so. How could we, when atheism or Humanism are no less 'religions or beliefs' than Islam or Christianity? If Christians were banned from the public square, so would be Humanists and atheists.

What, rather, secularists do say is that in debates on public policy purely religious arguments should carry no weight. In a Voltaire-like defence of freedom of expression, we absolutely do not wish to suppress or forbid such arguments being voiced - but we do say that it would be better if they were not, and that if voiced then by convention they should count for nothing in the minds of politicians and decision-makers. By all means let the religious argue (say) against assisted dying with warnings of a slippery slope - an argument we can all understand and assess - but if they argue that life is the gift of God and that it is not for us to take it away, then in the process of public decision-making their words should be ignored. Such arguments cannot be legitimately admitted in a society where there are so many competing beliefs that reject its very premises. Let the religious draw their motivation from their religion, let them encourage each other by citing its doctrines, but let them in the public square speak in a language everyone can understand. Similarly, no atheist should expect any attention to arguments premised on the non-existence of God.

The religious complain that this amounts to a privatisation of religion. In a sense it does - but not in a sense about which they can legitimately complain. It requires that religious injunctions about the governance of society[13] are addressed only to those who share their premises. But it does *not* demand that believers should cease manifesting their religion in public, nor that they should deny their motivation in their public-spirited work, still less that they should cease from engagement in public life.

Types of Public Space

We wish, however, at this point to take a step back so as to make some necessary

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12 As, for example, in the submission in the case of *Lautsi v Italy* to the European Court of Human Rights of a group of law professors organised by the Becket Fund: "An empty wall in an Italian classroom is no more neutral—indeed, it is far less so—than is a wall with a crucifix upon it." - see http://www.iclrs.org/content/blurb/files/writtencomments.pdf accessed 7 April 2013.

13 But not, of course, legitimate proselytisation - something outside the scope of this paper but plainly a manifestation of religion or belief guaranteed by human rights laws.

distinctions between different types of public space. Only then can we sensibly examine questions of religious clothes and symbols and how they may be affected by the principles of religious freedom in a secular state.

Spaces - public and otherwise - can be categorised in many ways, but the distinctions that we believe are relevant are those between:

(a) one's own private space - typically one's home;
(b) other people's private space visited at one's free will - e.g., other people's homes, premises of organisations (including religious bodies);
(c) other people's private space visited under some compulsion - such as places of employment or commercial premises;
(d) public space in the sense of the street, public parks and squares & other such spaces; and
(e) the public space of official institutions - courts, schools, Parliament, etc - and the figurative public space in which statutory public services are delivered.[14]

We believe that the considerations relating to each of these are different.

Religious Symbols

Wearing a religious symbol is akin to advocacy, and just as humanists and secularists are strong defenders of freedom of speech, so we are generally hostile to state laws and rules about what people wear. Our view is that this is a matter of personal freedom. So there should be no controls on what one wears or says in the street or similar public spaces (always excepting justified restrictions on hate speech etc). Even France's strongly secularist Fédération Nationale de la Libre Pensée was vigorously opposed to the ban on public wearing of the burka[15]. While "religious" clothing (rarely actually mandated by the religion rather than by custom in particular traditional communities) is sometimes imposed on (especially) women by patriarchal compulsion, at other times it is freely adopted. It is not for the state to dictate in such matters – any liberal advance should depend on education and campaigning leading people to change their own minds. Besides, laws are likely to be counterproductive.

On the other hand, there are circumstances in which rules are appropriate and justified. Broadly, these fall into three categories:

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[14] A special case of this figurative public space is public service broadcasting, where a policy either of neutrality or of balance should be adopted.

[15] "Dès que la mission parlementaire Gérin/Raoult a été annoncée, la Fédération nationale de la Libre Pensée a émis les plus extrêmes réserves sur la possibilité et la nécessité de légiférer pour interdire le port d'un vêtement particulier dans la rue et hors de la sphère publique. En effet, il n'appartient pas aux pouvoirs publics de s'ingérer dans une affaire qui relève du libre choix de chacun dans la vie privée." - statement, 27 January 2010: http://librepensee04.over-blog.com/article-interdiction-de-la-burqa-et-du-niqab-les-masques-tombent--43806748.html, accessed6 April 2013.

(i) where there are considerations of safety or efficiency,
(ii) where a uniform is reasonably required, and
(iii) where there is a risk of a role (especially an authoritative role as, for example, a public official or a representative of an employer) being appropriated to make a private statement, which might be about religion or belief or perhaps about politics.

As to the first, safety (with machines etc) speaks for itself: jewellery or clothing likely to prove a hazard to their wearer or to others can properly be forbidden. A case could be made out for not allowing women to wear veils that limited their vision when driving motor vehicles. If the safety of others is not in question and the possible cost to others (including the public purse) is not likely to be substantial, exceptions may be made - for example, permitting turban-wearing Sikhs not to wear crash helmets when riding motorcycles. Efficiency comes into cases like that of a teacher in Britain who was not allowed to wear a veil over her face in class because her young pupils needed to be able to see her mouth and face when learning how to speak new words.

As to the second, uniforms are rarely if ever required outside employment, and the requirement will almost always be apparent before someone applies for a relevant post. Nevertheless, some accommodation of religious duties may be possible and should be welcomed - Sikh turbans again being a case in point.

As to the third, it is reasonable that employees appearing in public and in some sense representing their employer should not be allowed to take advantage of their position to advance a religion or belief. Employers are not required to impose restrictions but it should be legitimate for them to do so if they wish: for example, banning wearing religious symbols or political badges, or forbidding religious speech while in one's representative role. That said, a tolerant attitude is to be encouraged so long as individuals do not abuse their positions, and any resulting ban must be equally applied to all.

However, with public officials representing public authorities or institutions the case for controls is stronger: as representatives of the secular state they should not be allowed to infringe its neutrality. There is the added risk that members of the public may experience the symbols or speech as religious harassment or discrimination. A statutory ban on the harassment or discrimination that results may indeed be justified (as in the UK).

Similar considerations apply to the display of religious symbols other than on one's person. Broadly, there should be no restrictions (other than ordinary planning controls etc) on what anyone does in their private space, including displays outside churches that are visible from public spaces such as the street. However, public space (public open spaces, buildings etc) should be expected to observe the conventions of a secular state and not display religious symbols or messages. (Exceptions are justified for historic buildings and symbols only religious in origin, such as crosses on flags, and of course for processions, exhibitions and the like.)

In particular, statutory and general public services to which everyone is (or is conditionally) entitled should not be delivered in a way identified with any religion or belief. For example, public schools, court buildings and the like should not display religious symbols, nor should (say) employment or health services be delivered in premises marked by religious symbolism - even if they are delivered by a religious institution under contract to a public authority.

The case of *Lautsi v Italy*, currently before the European Court of Human Rights, is in our view unambiguous even on the limited grounds on which it is being argued (principally under Article 2 of the First Protocol to the European Convention on Human Rights), and we attach at Annex II a memorandum we submitted to the Court on the case, which regrettably they did not entertain. In this paper, however, we argue that on principle symbols identified with any religion or belief should not appear on or in any public building, with the necessary stated exceptions.

For the avoidance of doubt, in relation to places of worship and sacred sites, we see no requirement for any special consideration to apply to these in their character as religious. We deplore restrictions on (for example) the building of minarets, as in the recent Swiss referendum, and we see no need for registration of religious premises - or indeed of religions and religious organisations as such. Such registration is intrusive and liable to be experienced as a threat to freedom of religion or belief.

Summary

These requirements can be summarised in a maybe over-simplified form as in the table overleaf. (A fuller treatment of employment is given in the section on the Workplace, below.)

	Personal behaviour - including wearing religious symbols and religious speech	**Displays of religious symbols on buildings or in open air***
One's own private space	No restrictions	No restrictions - and may of course include displays visible from the public space - e.g., wayside pulpits.
Other people's / organisations' private space visited at your free will.	The obligations to follow their requests or rules and/or to behave with courtesy.	
Other people's / organisations' private space visited under some compulsion - especially for employment or to obtain a service.	*Members of the public:* No restrictions. *Employees:* Symbols: an employer may make rules especially for employees who in some sense represent the employer. Speech: ditto, but in addition the employer may - and may be obliged to - curtail religious harassment - e.g., inappropriate preaching.	Up to the employer / service provider save that he must stop short of and/or prevent religious discrimination or harassment.
Public space in the sense of the street or literal public squares & other spaces	The only definite obligation is to obey the law.	The presumption should be against displays of religious symbols, subject to historical considerations (market crosses etc).
The public space of official institutions - courts, schools, Parliament, etc - and the figurative public space in which (statutory) public services are delivered.	No restrictions on members of the public. *(Employees of the institutions: as above]*	The presumption should be against displays of religious symbols, even when public services are delivered under contract by a religious organisation.

* leaving aside questions of planning permission etc.

Education

We turn now to what your note refers to as "private (religious) schools". However, it seems to us that the assumptions behind this terminology are too specific to particular national arrangements, suggesting as it does that there are public schools that are not religious and private schools that may be religious.

This is a quite inadequate taxonomy. Instead, we draw attention to the analysis at Annex III, which is extracted from our own website. The number of ways that these alternative

treatments of particular factors can be combined is legion and very many of them are to be found in real life in different countries.

Against this very complex background, the European Humanist Federation has adopted a clear policy on education and in particular on religion in schools, which we commend to you:

General principles

Education should fit the individual for life as a full participant in society, and teach self-respect and respect for the dignity of others.

Education should promote intellectual honesty. It should foster a love of learning and an appreciation of the supremacy of reason and the scientific method in the search for knowledge.

Education for citizenship should be based on a framework of human rights and responsibilities and should impart the knowledge, cultivate the understanding, and foster the critical skills essential for individual engagement with society and politics.

It should fit children and young people for life in a democratic society underpinned by empathy, human rights and the rule of law.

Lifestance education

Education should ensure that children are informed about a range of religious and nonreligious lifestances and have autonomy in their choice of their own lifestance.

The school should bring an academic discipline to bear in presenting the beliefs, practices and values of different lifestances as well as assisting pupils to develop their own responses to them.

Publicly funded schools should not promote one particular religious or non-religious lifestance as the only correct one but teach about the various lifestances (including Humanism) factually and in an objective way. Where parents or young people are offered an option of education into a particular lifestance, Humanism must be one option alongside the religions.

Education directed at fostering inter-cultural understanding that includes religious viewpoints should also include Humanism as a non-religious lifestance and include the perspectives and culture of non-religious people.

We recognise that in rejecting confessional schools we are questioning a pillar of educational systems in many countries. We wish to point out, therefore:

(a) that we do not question the right of parents to bring up their children in their own religion or belief, as guaranteed by Article 2 of the first protocol to the European Convention on Human Rights - only the role of the public education system in doing it on their behalf;

(b) that we base our policy on the desire to foster the autonomy of the individual child on the basis that the ability to think independently for oneself is an essential condition for adult life as a responsible citizen.

Parents should, in other words, be entitled, with the assistance if they wish of the churches or other religious institutions, to exercise their right to bring up their children within a particular religious or other tradition (the ECHR protocol is, if nothing else, a valuable defence against an overpowerful state) but they should *not* have the assistance of the public education system in doing it for them. The public education system should not promote any religion or belief but should adopt an educational approach so that children are not left in ignorance of the variety of beliefs they will encounter as adults in society and of the fact that their own beliefs are not shared by others. In our view, for the state to promote a particular religion or belief in schools is to infringe the autonomy of children and young people, making it difficult for them to come to their own conclusions on these "ultimate questions", which is almost certainly contrary to Article 14 of the Convention on the Rights of the Child[16].

We draw your particular attention to the fact that this sort of approach is emerging as a European consensus. We refer in particular to:

(a) the OSCE's "Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools" (OSCE, 2007: ISBN 83-60190-48-8)[17], which were prepared by a panel of experts on freedom of religion or belief;

(b) the Council of Europe publication, "Religious diversity and intercultural education: a reference book for schools" (Council of Europe, 2007: ISBN 978-92-871-6223-6)

(c) the Council of Europe recommendation CM/Rec(2008)12 to member states on the dimension of religions and non-religious convictions within intercultural education, adopted by the Committee of Ministers on 10 December 2008.

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16 Article 14 reads:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

17 The entire publication is available at http://www.osce.org/odihr/29154 - accessed 6 April 2013.

Although these documents do not venture into questions of ownership or management of schools, they are significant in calling for an educational rather than a confessional approach and in treating non-religious beliefs equally with religions. This is indeed necessary for the approach to be educational, since the full range of lifestances about which the subject has to deal must, if it is not to be partial and biassed, encompass non-religious as well as religious beliefs.

In our view, therefore, (to return to the narrower question that your project seems to address), while it may be permissible for states to finance and incorporate within the public education system schools owned by third parties including religious bodies, they should not do so if such schools provide confessional religious instruction rather than a broad religious education as part of their curriculum.[18]

[18] Religious instruction as an optional extra outside the main school day may be permitted, but the option should be jointly exercisable by parents and children, moving from the former to the latter as they reach maturity. Likewise, if the churches wish to run their own schools without public finance, that is of course their right, as it is the right of parents to send their children to such schools.

Workplace

> Religare introduction: *This research area covers access to the labour market, labour relations, and the accommodation afforded to practices and duties based on religions or beliefs. On the one hand, this research deals with the relation between labour law and collective religious organisations, in order to assess the level of autonomy – e.g. exemptions and derogations - provided to particular organisations with regard to state regulations. On the other hand, religious practices and beliefs of individual employees are taken into account, including conscientious objections, alternative dispute resolution and reasonable accommodations.*

Our comments follow your division of this theme into two, in effect, (corporate) employers and (individual) employees.

So far as concerns employers, we start from the position that in employment, occupation and training discrimination on the basis of religion or belief should no more be acceptable than discrimination based on race, sex or any other protected characteristic. This is of course already EU law in the form of the framework directive on equal treatment in employment and occupation 2000/78/EC, which uses a wide definition of discrimination, including harassment based on religion or belief and victimisation based on complaints of discrimination.

The Directive allows for exceptions in relation to all protected characteristics if these constitute a "genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate", a provision that allows the churches to require their priests to be men and of the required denomination and (say) the armed services to specify the religion or belief of chaplains.

It allows for further exceptions in organisations with an ethos based on religion or belief where "a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos". The directive specifies, however, that this exception "should not justify discrimination on another ground". This allows, for example, Christian charities to restrict key posts to Christians.

However, there is evidence that this exception is being abused. Some EU member states have incorrectly transposed the directive into national law (e.g., United Kingdom regulations purport to permit religious organisations to discriminate on grounds of sexuality despite the plain stipulation in the directive against "discrimination on another ground" - a breach on which the UK government has yet to respond to the EU Commission's reasoned opinion of November 2009[19]).

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[19] See http://ec.europa.eu/unitedkingdom/press/press_releases/2009/pr09146_en.htm, accessed 9 January 2011 but no longer available on 6 April 2013.

More widely, religious requirements for jobs are often imposed where they are far from justified as genuine, legitimate, justified and occupational - each of which words carries significant legal import. There is no occupational requirement for a telephonist, a clerk or a cleaner to share the religion or belief of an organisation - it has nothing to do with their occupation.

We see no grounds for any other 'exemptions and derogations' from 'state regulations' for 'collective religious organisations'. We are appalled at the situation that we understand prevails in Australia of collective exemption for churches and even businesses owned by churches from general rules of good conduct including regulations governing financial services etc.

In particular, we are adamant that human rights, including rights to conscientious objection (on which see below), apply only to individuals and not to institutions. It is not acceptable that in the Belgian town of Mechelen the Catholic church progressively acquired all the hospitals and ended the previous ready availability of abortion, forcing women to travel considerable distances or to continue with unwanted pregnancies.[20]

As we have indicated above in relation to schools, private institutions with a religious ethos are fully entitled to apply whatever rules they wish within the law, but once they accept core public funding they become public services and liable to the same rules as those run directly by the government or other public authorities. This means (for example) that publicly funded hospitals should have no power to apply religious rules in deciding what services they provide: any right of conscientious objection belongs to individuals, not to the hospital governing body, still less the church that sponsors it.

As to individuals in the workplace, there are two linked aspects on which we wish to comment: accommodation and conscientious objection.

To start with accommodation, once again our approach is based on human rights and on equality and non-discrimination. The human right to manifest one's religion or belief save in narrowly prescribed circumstances points to the desirability of workplaces offering "reasonable accommodation". Those who recognise a religious duty to wear particular forms of dress - principally Muslims and Sikhs - should be accommodated so far as possible: as indicated above, there are strictly limited circumstances in which this may not be appropriate. Muslims who wish to follow their religious duty to pray during the time they are at work should if possible be offered the opportunity.

The difficulties derive from the need to make decisions where there is potential conflict between the rights of different people. For example, ostentatious 'statement making' by ardent religious employees may well not be acceptable in an otherwise neutral work setting if it is an annoyance to other employees or to third parties such as clients. Again, if some

[20] Address by the Mayor of Mechelen to the European Parliament Platform for Secularism in Politics, 17 March 2010. In this case the town authorities were so incensed that they opened their own abortion clinic - a recourse that will rarely be possible.

staff are regularly given time off for prayers, they should make up the time (or not be paid for prayer time): other staff should not simply be expected to work longer hours. Accommodation of a wish by some employees to observe holy days or religious festivals may sometimes impose a burden on others who have to cover for them. It is not acceptable to expect non-Christian staff always to have to work over Christmas (which is also considered an important time for the family by most non-Christians). Normally, religious holidays should be accommodated by use of personal holiday entitlements.

Similarly, while it may be desirable that employers should provide facilities for prayers, they should take care that if staff recreation or rest rooms are used, they are not monopolised by members of a religious group, and should be aware that the display of religious objects may be offensive to people of other religions and to people with non-religious beliefs, even preventing them from using the room.

There is thus a need for flexibility and goodwill but it should not be one-way. There is scope for alternative methods of dispute resolution, but care is needed that these methods do not result in abuse of the rights of minorities in the face of the dominant position of one religion or belief.

As to conscientious objection, it is gradually being realised that this is a far from simple question. The European Convention on Human Rights protects "freedom of thought, conscience and religion" in Article 9(1) but manifestation of the dictates of conscience falls under Article 9(2) which (as noticed above) is subject to limitations "in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

Most commentators focus exclusively on the individual conscience without regard to the consequences. The assumption is that only a few individuals with unusual, normally religious, beliefs are affected, and that society can afford to accommodate them.

This was the case when a right to conscientious objection was first recognised - in wartime. It clearly marked an advance in civilised values that pacifists were allowed to apply to tribunals to prove their objections were based on genuine religious or moral principles. When after hard-fought campaigns abortion was legalised it was generally seen as a logical extension - and a politically useful concession - to allow doctors and nurses not to take part if they had conscientious objections. But in recent years claims for conscientious objection have extended to many new contexts, with claims being made implicitly or explicitly (as indicated above) that conscientious and religious objections should always supervene over other considerations.

Examples include magistrates refusing to handle adoptions by lesbian and gay couples; nurses refusing to take part in *in vitro* fertilisation; pharmacists refusing to dispense the 'morning after' contraceptive pill; doctors refusing to reveal their conscientious objection to patients wanting an abortion or to refer them elsewhere; Exclusive Brethren refusing to let their children to use computers or the Internet in school; Muslims refusing to allow their

children to take part in physical education unless in single-sex groups and unless the girls especially are swathed in modesty-protecting garments, and so on. These cases obviously involve other people - for example, as service users or as children with rights to education. Assertion of an absolute right to conscientious objection in all cases might easily risk public safety, public order, health or morals, and the rights and freedoms of others.

A further complication is that conscientious objection seems often today to be asserted not as a result of deep moral feelings but as a political act of drawing attention to claims of underprivilege or persecution. This highly political context is at odds with the implicit assumptions of most discussions about conscientious objection. The claims articulated by the European Centre for Law and Justice, a powerful conservative Christian lobby organisation, in the context of a recent debate in the Parliamentary Assembly of the Council of Europe that focussed on abortion, are that conscientious objection applies to both individuals and institutions, to both direct and indirect participation, and even when referral is impossible; it includes complete immunity from liability and from discrimination; and it cannot be balanced with any rights patients have to treatment.[21] The result they appear to hope for is that, whether or not such treatments are lawful, they will in practice be unavailable. There are two routes to this end: by one, hospitals are increasingly taken over by religious institutions and impose total bans on such treatments, even by staff willing to provide them - as in the case of Mechelen, cited above. By the other, enough individuals concerned, even remotely, will be pressurised into exercising their right to conscientious objection to make provision of treatments impossible. Thus, in 2007 in Italy nearly 70% of gynaecologists and over 50% of anaesthetists refused to perform or assist with abortions - proportions that had risen sharply in the previous four years[22] in a process that will if continued end with a few doctors finding their lives intolerably dominated by providing abortions and therefore themselves pretending conscientious objection and opting out. Thus a lawful service will cease to be available by means of essentially dishonest use of the right of conscientious objection.

We attach at Annex IV a paper on this question by our President which ventures into further detail and makes some tentative proposals for approaches to a problem that is as yet not sufficiently recognised.

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21 "Memorandum on the PACE Report, Doc. 12347, 20 July 2010, . . ." Grégor Puppinck and Kris J. Wenberg, (European Centre for Law and Justice, Strasbourg, September 2010) - see http://www.eclj.org/pdf/ECLJ_MEMO_COUNCIL_OF_EUROPE_CONSCIENTIOUS_OBJECTION_McCafferty_EN_Puppinck.pdf, accessed6 April 2013.

22 Republic of Italy, Ministry of Health, Report of the Ministry of Health on the Performance of the Law Containing Rules for the Social Care of Maternity and Voluntary Interruption of Pregnancy: 2007-2008, quoted in the original PACE report.

The Family

> Religare introduction: *This research area deals with personal status and family affairs. Given that secular systems still contain religiously-based institutions (e.g. the definition of «marriage»), it is no surprise that issues that call into question family models are under debate and give rise to lively polemics between religious and secular groups in several European countries. The issues investigated include religious marriages and divorces, as well as custody over children and the adoption of children when religious and formal legal prescriptions clash. The institution by some communities of parallel dispute settlement bodies to deal with family-related disputes is also investigated.*

The importance of the family as the context in which children are raised and introduced to society cannot be over-emphasised, but the nature of the family in which this is done should not be a matter of dogma or religious doctrine. it is undeniable that many unconventional families - with single parents or gay couples, for example - work well and that conventional families can be unhappy and damaging. The factors involved in their success or failure appear to have little or nothing to do with the formal nature of the family and everything to do with love, commitment and adequacy of resources.

We are disturbed by your apparent assumption that marriage is an institution based on religion. There are undoubtedly various religious models of marriage (some very different from the traditional Christian idea of a monogamous partnership between a man and a woman) but marriage is at base neither a Christian nor even a religious concept but an institution found in all societies and not by any means always seen as a sacramental relationship. In both Greece and Rome, marriages could be contracted in secular ceremonies. In modern times in Europe, marriages are normally contracted by civic registration, albeit often later blessed in a church ceremony. In the United Kingdom, one of a few states where no separate civic registration is required, religious ceremonies now make up a declining minority of the total.

The commonplace assumption is that the function of marriage is to provide a secure foundation for the nurture of children. This is undeniably socially its most important role, but religious rhetoric often ignores that it is not an exclusive or necessary role for the institution. Marriages of people well past the age of child-bearing are common and usually successful. Marriages of people unable to father or bear children are valid and valued.

Equally, single-sex marriages or partnerships are increasingly recognised, but have long been a feature of society. (They were lawful in ancient Rome until banned in 342 CE.) Nor is there any evidence that such marriages cannot provide a successful environment for bringing up children. Traditional religious prejudices against single-sex families are highly regrettable but we observe with pleasure their slow erosion and growing Christian acceptance of single-sex marriage.

The European Humanist Federation has a clear policy on the ways marriages are contracted as legal institutions:

> Some people choose to live together and to found a family without marrying. This policy applies where legally-recognised marriage is concerned:-
>
> 1. Marriage is a voluntary and legal union between two people and commits them to sharing obligations with each other.
>
> 2. The right to marriage and divorce must be guaranteed and regulated by civil law.
>
> 3. The authorities must treat all who seek marriage or divorce equally, regardless of lifestance (whether religious or non-religious), ethnic origin, sexual orientation and gender.
>
> 4. The authorities must provide a neutral option, not based on a lifestance (again, whether religious or non-religious) for contracting marriages.
>
> 5. If they give legal recognition to religious ceremonies, they must equally give legal recognition to ceremonies based on a non-religious lifestance.

It is our view that adult couples, regardless of sexual orientation and gender, have the right to enter into a marriage or legally defined partnership. We favour the term marriage in both cases but partnership laws are and have been in some states a necessary intermediate step on the way to implementation of a common marriage law.

Marriage is a voluntary commitment, i.e. it should not be forced upon anyone. We accept that arranged marriages should remain lawful but we recognise that there is a point at which they cease to be voluntary and become forced: where this is the case they should have no legal validity.

Both marriage and divorce should be regulated by civil law, which should prevail so far as secular considerations are concerned over ecclesiastical or other religious law, such as Islamic sharia law. So far as the civil law is concerned, marriage must be a partnership of equals: traditional, often religious, concepts that women are to be subordinated to their husbands must have no place or recognition.

The state is responsible for providing as a public service a secular and neutral service for those who want to marry or enter a partnership. If (as in a few states) organisations based on a religion or belief have the right to perform legally recognised marriage or partnership ceremonies, then all religious and life-stance organisations must be treated equally and given the same right (which of course they should be free to decline). It is unacceptable that (as in England and Wales but not in Scotland and Norway) churches should be allowed to conclude legally recognised marriages but humanist organisations should be debarred. Either all marriages and partnerships should be formalised in a civic registration that is

neutral as to religion or belief or else people of all religions and beliefs should be entitled on equal terms to have their unions formalised by an organisation representing their religion or belief.

Divorce should be available in cases where a marriage or partnership has irretrievably broken down and legal proceedings should focus on breakdown, not on symbolic acts such as adultery. In cases of divorce primacy should be given to the interests of any children involved. Similarly, where children are offered for adoption it should be their interests that predominate: birth parents who give up their children should have no power to lay down discriminatory vetos over adoptive parents based on religion or sexuality.

Particular problems arise when religious institutions seek to regulate matters that are otherwise in the province of the civil law. Plainly there is no question that religious tribunals may rule on religious aspects of marriage or of other family questions, although it should be noted that this is not in practice unproblematic: for example, the dual jurisdiction over divorce of civil and religious authorities has called for special legislation in the United Kingdom to frustrate the gratuitous refusal of religious divorce where civil divorce has been granted[23].

But when religious authorities intervene in areas governed by civil law[24] serious difficulties are liable to arise. In principle there can be no objection to two parties agreeing to settle disputes or arrange their affairs in accordance with any procedure agreeable to them both, and this can often be more expeditious and less expensive than use of the civil courts. This is on the face of it the situation when disputes are referred to religious tribunals under (usually) Jewish or Islamic law. The problems arise when

(a) general principles of civil law are breached
(b) third parties are involved, often but not always children, and
(c) one of the principals, usually the woman, is under some measure of compulsion to accept the jurisdiction of the religious tribunal or agrees to it in ignorance of the possible consequences.

The first circumstance arises (for example) with shari'a law which discounts the evidence of women[25], or when exercise of personal freedoms to diverge from religious orthodoxy or to resort to civil law (even, for example, by involving the police in a crime within the community) is in effect penalised as a breach of religious duty.

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23 The Divorce (Religious Marriages) Act 2002 permits the court to refuse to finalise a divorce unless the parties have taken "such steps as are required to dissolve the marriage in accordance with those [religious] usages".

24 The occasional involvement of religious tribunals in criminal matters is in our view wholly unacceptable.

25 "The text (Surah Al-Baqara 2:282) which requires two female witnesses in place of one male witness, gives a clear reason for it i.e. 'if one of them forgets, the other reminds her.' Is this derogatory to the status of the women or is it a revealed secret about the nature of the women?" - On the Testimony of Women, Islamic Sharia Council: see http://www.islamic-sharia.org/general/on-the-testimony-of-women-2.html, accessed 9 January 2011 but no longer available on 6 April 2013.

The second arises when questions of custody and of inheritance are involved: shari'a law often differs from civil law, for example in laying down child custody reverts to the father at a preset age, even if the father is abusive, that women who remarry lose custody of their children even if the child has not reached the preset age;[26] and that sons are entitled to inherit twice the share of daughters.[27]

The third problem is reportedly widespread and arises from intimidation related to the entrenched inequality of the sexes coupled with ignorance of the consequences of reliance on a religious tribunal. The problem is largely confined to certain communities that may be defined less by religion (though they in fact share a religion - usually Islam) than by the *mores* of the groups from which their (usually immigrant) members come (e.g., from rural villages in Bangla Desh). Men from such communities find it attractive to resort to sympathetic shari'a councils or tribunals that uphold patriarchal religious rules and attach little importance to violence against women. Women, in such situations tend to be dominated, even terrorised, and unable to exercise the free choice that would tend to legitimise such resort.

States that are committed to upholding human rights should therefore be very wary of positively supporting the use of such tribunals. Indeed, it is not only women and children whose rights are at stake but minorities of any kind - LGBT people, for example, or single parents, or religious dissidents. It is unacceptable therefore that religious communities should be given the (civil) legal right to impose religious law on "community members": this is a blatant transgression of the rights of individual citizens and relies on the pernicious fiction that the rights of individuals should depend on just one (religious) aspect of their identity. Granting rights to groups (that is, to the leaders of such communities, who are rarely accountable and even more rarely democratically chosen) means granting them the right to deny the individual human rights of minority or dissident members of the group.

Given, however, that religious tribunals can be the choice of the parties involved, the question arises whether the civil law should intervene to regulate or even prevent such resort in order to impose general legal standards and principles, in particular in the interests of women and children. This question needs to be set in the context of the State's obligations to ensure gender non-discrimination under Article 16 of the Convention for the Elimination of All Forms of Discrimination Against Women, and Resolution 1464 of the Council of Europe on women and religion, which stipulates that member States must guarantee the separation between the Church and the State which is necessary to ensure that women are not subjected to religiously inspired policies and laws (for example, in the area of family, divorce, and abortion law).

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[26] http://www.islamic-sharia.org/children/what-age-is-it-suitable-for-children-to-live-with-the-fa-2.html, accessed 9 January 2011 but no longer available on 6 April 2013. .

[27] " 'Allah commands you regarding your children. For the male a share equivalent to that of two females.' [Quran 4:11] . . . This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister, a son's son inherits twice as much as a son's daughter and so on. See http://www.islam101.com/sociology/inheritance.htm, accessed6 April 2013.

The European Humanist Federation does not have a detailed policy on the question but we are impressed by the abuse of the human rights of women and children involved in much of shari'a and (to a lesser extent) rabbinical law, and we are disposed therefore to favour regulation to limit the powers of such tribunals outside purely religious matters.[28] We are reinforced in this opinion by the uncertainty of much shari'a law, which lacks codification or uniformity but depends excessively on the personal judgements of individual imams or other presiding clerics.

[28] We realise that the whole question is fraught with difficulty and commend in general terms the report "When Legal Worlds Overlap: Human Rights, State and Non-State Law" (2009) from the International Council on Human Rights Policy - see http://www.ichrp.org/files/reports/50/135_report_en.pdf, accessed6 April 2013.

State Support

Religare introduction: *This theme encompasses State support to religious and secular groups. The research aims at assessing the reasons that justify – or not – the public funding that is in place today. The State position and the religious communities' point of view will be taken into account. The research will consider several issues: training and remuneration of the religious leaders, media, religious heritage and the current taxation typology.*

We look first at the extent of support for organisations based on religion or belief. It is our experience that very few people realise the extent of the financial and other support offered to religious bodies - overwhelmingly to the Christian churches - from public funds. We estimate that it totals many hundreds of millions of Euros every year even if only 'core' funding is counted.

For example[29]:

- in France churches built before 1905 are owned and maintained by the state at a cost of about €100 mn pa, and local authorities provide housing for priests at a cost of €54 mn pa.;
- Greece pays for the training, salaries and pensions of Greek Orthodox clergy and for their church buildings;
- the Evangelical-Lutheran Church of Finland receives 1.63% of the proceeds of corporation tax;
- in Italy 0.8% of income tax goes to registered religions or to the state as nominated by each individual taxpayer - but 60% of taxpayers indicate no preference and their tax is divided up in the proportions indicated by the 40% who do with the result that the Roman Catholic Church receives 87% of the 0.8% of income tax;
- the established church in Denmark receives Government grants worth about €100mn. pa.
- The Czech Republic subsidises all registered religious groups to a value of something under €100 mn.
- In Germany direct subsidies to churches from individual Lander total €460mn. pa.[30];
- Hungary subsidises clergy in villages with under 5,000 people at a cost that exceeds €100 mn. pa.

Meanwhile in Poland public land and buildings to a value estimated at €24 billion have been

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29 We rely for most of the data in this section on "Church and State - a mapping exercise" by Frank Cranmer, John Lucas and Bob Morris (April 2006 - ISBN: 1 903 903 47 6) from The Constitution Unit, University College London, available at http://www.ucl.ac.uk/spp/publications/unit-publications/133.pdf - accessed 6 April 2013. NB that a more up-to-date version of this paper is available at http://www.law.cf.ac.uk/clr/networks/Frank%20Cranmer_%20Church%20&%20State%20in%20W%20Europe.pdf - accessed 6 April 2013.

30 Der Spiegel 24/7/10.

handed over to the Roman Catholic Church under a law of (alleged) restitution, and in Romania more public money has been spent in recent years on Orthodox church buildings than on building of schools and hospitals combined.

In addition there is equal or greater support in the shape of public financing of schools, hospitals and other mainstream public services run by the churches - and our experience is again of public ignorance of the fact that the level of church financial support of such services is typically very low, so that while the cost is mainly met by the taxpayer the church or religious charity is given public credit for its work. While the majority of such subsidies is obviously spent on provision of the services in question, they provide a hidden support for the churches in the shape of employment, opportunities for delivering religious messages and collecting donations, and income from charges for administrative and other services.

Further government support for the churches comes in the form of statutory and administrative backing for the collection of church taxes, which are often legally compulsory for registered members of a church. For example:

- in Germany, recognised churches can levy a tax on their members which is collected with federal income tax; and individual Lander have similar arrangements - these taxes produce about 80% of church income;
- Iceland has a compulsory church tax that taxpayers can assign to any registered religion - but humanists cannot register as a 'religion or belief' and assign theirs to their humanist association;
- Denmark and Finland both have established churches and their members (in each case accounting for about 80% of population) have to pay a church tax;
- there is a similar arrangement in Austria.

While these taxes are in one sense voluntary, they can be avoided only by leaving the church, while without the legal backing given them by the state the amounts contributed would without doubt be much lower.

We have not referred here to financial support or exemptions from taxes or other charges given to churches or religious organisations not by virtue of their status as such but under a more general rubric, such as tax relief for charities or other voluntary organisations or payments for the preservation of historic buildings or other cultural purposes, since we have no objection to this as a general principle.

It is very rare for similar support to be offered to humanist or *laique* organisations. It happens in Norway, Belgium, to a limited extent in Finland and Germany, and in the Netherlands some public functions are delivered through organisations representing the constitutional 'pillar' beliefs, including Humanism.

We turn now to our assessment of the acceptability of such support. We believe that subsidies from the taxpayer to churches and other religion or belief organisations are highly objectionable and contrary to the principles of equality and non-discrimination and of the secular state.

- They provide support from common funds and resources to organisations promoting controversial beliefs that are not shared by (at best) more than half the population of Europe.
- They are inevitably selective: at the least there must be a delay before new beliefs or organisations are recognised and registered so as to become eligible for support, while in practice support is usually limited to one or a few traditional churches, adding to the inequality of the system.
- They involve the government - the state - in assessing the acceptability of religions, a function for which it is singularly unqualified and which it is objectionable for it to undertake. Like the courts, governments should stand aside from evaluation of religions and beliefs. Otherwise they will be faced either with subsidising all without distinction, including potentially anti-social religious cults, or with making distinctions between desirable and undesirable religious movements, a task for which they have no relevant qualifications.

Even if our own organisations were offered the same privileges on an equal basis we should still have serious objections, on grounds both of principle and of practice. The objections of principle quoted above would still apply, but the practical objections - which amount to the inevitability that the system would be indirectly discriminatory against non-religious beliefs - are worth some explanation.

Christians - and to a large extent followers of other religions - are required to come together in congregations, to support their institutions, and to conform to their mandates. This is untrue of humanists and secularists. It is a central part of our beliefs that we have the responsibility to act, to think as individuals, to work out for ourselves - albeit as members of a community - how best to behave. Moreover, Christians tend strongly to carry out their social and charitable work through their own organisations, flagged as Catholic or Christian (albeit often benefiting, as stated above, from public subsidies), whereas we support general, secular charities that carry no religion or belief label. This is because we believe in cooperation, in collaboration with others wherever it is possible, not in a divisive segregation that stresses an irrelevant religion or belief identity in the social and charitable work we undertake.

Nor is it any part of our beliefs that we need to join humanist or secularist organisations. Insofar as we succeed in achieving open, democratic, secular societies in which religious privilege and power are reduced or eliminated, the need for our organisations is diminished and fewer and fewer people will join them - only those, ultimately, who are interested in the philosophical and theoretical foundations of the beliefs. Therefore the small numbers formally linked to our organisations are paradoxically an index of our strength rather than our weakness: if we were under a more severe ecclesiastical or theocratic threats we should undoubtedly find many more members!

Official support for churches and religious organisations amounts, in our view, to a life support system for moribund churches. Without the huge financial support churches in Europe currently receive, they would be unable to operate on their present scale and to exercise the disproportionate influence they do now. On a personal level, the effect is to

make for an ossification of beliefs and attitudes: the outlets for thinking about ethical questions are dominated by the churches and religious institutions, making it difficult for fresh, and in particular secular, thinking to gain any ground.

Either there should be equality of support for humanist organisations as in Norway or there should be a phased withdrawal until there are no subsidies for any religion or belief as such. Our preference is for the latter policy.

Conclusion

We hope that these considerations will be of value to your study. While they appear wide-ranging, they are far from comprehensive, and there are contentious areas of public policy that have not been touched on as being too remote from the framework of your four topics.

Our views are firmly based on human rights, democracy, respect for other cultures, non-discrimination, equality and tolerance. We believe - and the Eurobarometer surveys quoted above lend strength to our belief - that these are among the values closest to the hearts of people in Europe and therefore best fitted to be the foundation for public policy. We recognise that some people, including devout religious people, set other values alongside these: values, perhaps, of obedience, respect, tradition and sanctity. However, these are neither so valued nor so widely shared and are therefore less fitted as the foundation for public policy. They are also liable in their implementation to restrict directly the personal freedom of people who do not share them, whereas the effect of founding policy on equality, non-discrimination and human rights is criticised and deplored by devout traditionalists much more for its supposed effects on society at large than on them personally: they remain free to live as they wish even if unable to require others to live similarly.

19 January 2011

References updated 6 April 2013.

REFERENCES ON HUMAN RIGHTS AND RELIGION OR BELIEF

(a) Universal Declaration of Human Rights

Article 18
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

(b) International Covenant on Civil and Political Rights

Article 18
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

(c) Charter of Fundamental Rights of the European Union

Article 10: Freedom of thought, conscience and religion
1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

(d) European Convention on Human Rights

Article 9 - Freedom of Thought, Conscience and Religion
1. Everyone has the right to freedom of thought, conscience and religion; this right includes

freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 14 - Prohibition of Discrimination
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 2 of Protocol 1 to ECHR

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

(e) Convention on the Rights of the Child

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or he right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

(f) Relevant Court Cases under Article 9 of the ECHR

<u>European Court of Human Rights</u>

(i) “As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of

believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it." - *Kokkinakis v Greece: (1994) 17 EHRR 397, para 31*

(ii) "The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." - *Manoussakis v Greece: (1996), EHRR 387, para 47*

(iii) Belief means "more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content." - *McFeeley v UK: (1981), 3 EHRR 161*

(iv) "In its ordinary meaning the word 'convictions', taken on its own, is not synonymous with the words 'opinions' and 'ideas', such as are utilised in Article 10 (art. 10) of the Convention, which guarantees freedom of expression; it is more akin to the term 'beliefs' (in the French text: 'convictions') appearing in Article 9 (art. 9) - which guarantees freedom of thought, conscience and religion - and denotes views that attain a certain level of cogency, seriousness, cohesion and importance." . . . [philosophical convictions] "denotes, in the Court's opinion, such convictions as are worthy of respect in a 'democratic society' and are not incompatible with human dignity." - *Campbell and Cosans v. UK: (1982), 4 EHRR 293 p304, para 36 and p305, para 36)*[31]

(v) In *Arrowsmith v United Kingdom (1981) 3 EHRR 218*, a case under Article 9 concerning manifestation of a pacifist belief, 'convictions' were defined as "those ideas based on human knowledge and reasoning concerning the world, life society etc, which a person adopts and professes according to the dictates of his or her conscience. These ideas can more briefly be characterised as a person's outlook on life including, in particular, a concept of human behaviour in society".

(vi) "[F]reedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it." *(Erbakan v. Turkey*, 6 July 2006, Application No. 59405/00. para. 17).

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[31] This case was concerned with the meaning of "philosophical convictions" in article 2 of the First Protocol, not with the meaning of 'religion' or 'belief' under Article 9, but:

> "The European Court in Campbell v Cosans v United Kingdom (1982) 4 EHRR 293, 303, para 36, equated the parental convictions which were worthy of respect under the first Protocol with the beliefs protected under Article 9: they must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not incompatible with human dignity. No distinction was drawn between religious and other beliefs." - *R v Secretary of State for Education ex parte Williamson [2005] UKHL 15 Per Baroness Hale of Richmond at paragraph 73.*

(vii) “Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.” (*Otto-Preminger v Austria*, para. 47)

United Kingdom House of Lords (Supreme Court)

[T]he difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious . . . will seldom, if ever, arise under the European Convention. . . it does not matter whether the . . . beliefs . . . are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. - *R v Secretary of State for Education ex parte Williamson [2005] UKHL 15 Per Lord Nicholls at paragraph 24*

Commentary

From the UN Human Rights Committee:
on Article 18 of the International Covenant on Civil and Political Rights (which is essentially similar to Article 9 of the European Convention):
“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” - Human Rights Committee, 1993 (General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)

From the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE):
The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. - Guidelines for Review to Legislation Pertaining to Religion or Belief (2004) Section A, Paragraph 3.

From an Academic Human Rights Expert:
“As far as international human rights are concerned, religious beliefs present competing universalist ideologies which, by posing alternative approaches, do indeed threaten the

universalist of the idea of human rights. Religious belief must therefore be made subordinate to the human rights framework." - Evans, M.D., 'Human Rights, Religious Liberty and the Universality Debate' in O'Dair, R., and Lewis, A., (eds) Law and Religion (2001, Oxford) 226

EUROPEAN COURT OF HUMAN RIGHTS
Lautsi v. Italy: Third party intervention by the European Humanist Federation

The European Humanist Federation (EHF) is an international non-profit organisation registered in Belgium in 1992. Its objects, as defined in its by-laws, are "to promote secularism and a humanist vision of cultural, social and ethical values in Europe and to work for social and cultural progress." It unites over 40 organisations in twenty countries across Europe, with contacts in many more.

The EHF warmly welcomed the decision of the Court last November in the case of *Lautsi v. Italy*. The judgement upheld the principle of the neutrality of the state in relation to religious and philosophical convictions - that is, the principle of secularism - which is fundamental to the objectives of all our member organisations and is progressively being recognised in national and international institutions and (may we suggest?) in the judgements of the Court as the best - perhaps even the only - way of guaranteeing freedom of religion or belief for everyone.

Contrary to the claims of our opponents, secularism in this sense of neutrality or impartiality is not hostile to religion (many religious people strongly support it), nor does it require that religious people be excluded from the public arena. It is totally compatible with the full exercise of the rights guaranteed by Article 9 of the European Convention. Opposition to it amounts - almost by definition - to a claim for superior rights for some over others.

We realise that for reasons of history some states recognise an official or established church, and that this is currently considered compatible with the European Convention on Human Rights - although we suggest that this contention is supportable most easily where the recognition has least effect on those of other beliefs or none. However, growing numbers of states are officially secular or neutral - and these include Italy. They recognise that in the area of religion or belief there can be no certainty, let alone proof, of contending beliefs and that in the interests of non-discrimination between citizens the state should treat all beliefs equally and maybe somewhat distantly.

If the principle of impartiality is important, it must be of particular importance where children are concerned. At school they are a captive audience. Their minds are suggestible and immature. They are susceptible to impressions from their surroundings and from the behaviour of others that would have little impact on a mature adult. Article 2 of the first Protocol to the Convention recognises that parents' wishes for their children's education in matters concerning religion or belief must not be overridden by the state. This Article must (as the Court found) protect parents' wishes that their children should not be exposed to such powerful impressions.

It follows that education concerning religion or belief in public schools (other than those

with a specific religious character that may nevertheless be offered by the state and freely chosen by parents) should be neutral or impartial as between different beliefs. This is an area where policy is developing rapidly and uniformly both nationally and internationally - see, for example, the OSCE's "Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools" (November 2007)[32] and the Council of Europe's Recommendation CM/Rec(2008)12 from the Committee of Ministers to member states on the Dimension of Religions and Non-religious Convictions within Intercultural Education (adopted by the Committee of Ministers on 10 December 2008 at the 1044th meeting of the Ministers' Deputies). An impartial approach to education about religions and beliefs, respecting the autonomy of the child and the wishes of the parents, is of course entirely compatible with making it clear to pupils that the whole disputed area is of considerable importance to the individual and to society.

Similarly, impartiality (secularism, neutrality) is the principle that underlies the European Union's coupling of "philosophical and non-confessional organisations" with "churches and religious associations or communities" and requiring an "open, transparent and regular dialogue" with both - see Article 17 of the Treaty on the Functioning of the European Union as amended by the Lisbon Treaty. It is an undeniable trend across Europe, the logical consequence of the decline in religious belief (academic surveys reported in the relevant chapter of the Cambridge Companion to Atheism[33] suggest that across Europe between one-third and one-half of the population has no religion) and the decline in the importance of religion even for those who do believe (similarly demonstrated in many surveys).

These are the principles, we suggest, that should underlie the Court's consideration of Italy's appeal. Are these principles compatible with the compulsory display in classrooms of public schools of the crucifix, or will such display inevitably suggest to pupils that the school and, behind it, the state supports and promotes a particular system of belief, namely, Roman Catholicism?
We suggest, parenthetically, that a ruling against the display of crucifixes is perfectly compatible with allowing pupils to wear religious symbols or dress. Pupils are not representatives of the state: they do not carry the authority of the school. Pupils have a *prima facie* right under Article 9 to wear religious symbols if they wish: any limitation has to be justified as required in the public interest in one of the ways allowed under the same Article. None of these exceptions to the general freedom to manifest a religion or belief under Article 9 could remotely be applied to justify retention of crucifixes in classrooms.

We have read Italy's submission of 28 January. We do not venture to judge its legal validity, but as laymen we find its arguments illogical and ill conceived. For example, vital distinctions between the state and non-state actors are not made (as in the suggestion that

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[32] The reference in Italy's submission of 28 January to the Toledo guidelines' silence on the crucifix is misleading: all that the guidelines (page 74) say is that the "complicated issues" of "religious symbols, religious attire and religious holidays . . . are beyond the scope of the present document".

[33] Phil Zuckerman: 'Atheism: Contemporary Numbers and Patterns' in The Cambridge Companion to Atheism, ed. Michael Martin, Cambridge University Press, 2007; ISBN 978-0-521-60367-6

it would follow from the removal of crucifixes from state school classrooms that cathedrals should be removed from city centres - para. 15C). Absence of religious symbols is seen as implicit endorsement of atheism (para. 3E), excluding the possibility of a neutral position. No weight is attached to the special susceptibility of children to implicit religious messages.

As we understand it, there are two key points argued against the Court's judgement in *Lautsi*:

(a) that the crucifix is not a religious symbol - or at least not to a sufficient extent to justify the Court's finding; and

(b) that the discretion ("margin of appreciation") enjoyed by states is anyway sufficient to allow the Italian government to require the display the crucifix in public schools.

We note that both arguments concede the basic logic of the Court's judgement. However, we wish to dispute both points.

The crucifix as a religious symbol

The crucifix is a portrayal of the execution of Jesus Christ, the founder of the Christian religion. This is the central and defining event in Christian history and doctrine. It is undeniable that it is a religious symbol. It is an image that stands firmly in the religious tradition of a suffering god.

Moreover, it is a very powerful image and potentially a highly disturbing one to put before children. It is the image of a man being tortured to death. And the explanation for this horrific event is scarcely less disturbing: it is that he is being tortured because they, the children, are wicked and sinful. This is itself, of course, a religious doctrine, not a fact.

It is impossible to minimise the power of such an image on an unformed mind, and so it was not capricious but entirely reasonable for Mrs Lautsi not to want her children exposed to it, day in, day out, as an idea endorsed by a supposedly secular school. It is patronising and unjustified for Italy to argue (paragraph 3C) that the Court's judgement overrated "emotional disturbance" and to contend therefore that Mrs Lautsi's rights under Article 2 of protocol 1 were not, or not seriously, infringed.

The alternative contention is that the crucifix is a symbol not of Christianity but of Italy. But the crucifix is found in Roman Catholic churches and other premises throughout the world, not just in Italy. It is not used on the Italian flag. It is not waved by Italian spectators at international football matches or Italian audiences in the Eurovision Song Contest. Rather, it is a relic of centuries past when Italy was not a secular state but in large part ruled by the Pope. It is displayed on public buildings - in schools and in courts - as an anachronistic sign of that religious authority.

Margin of appreciation

The justification of the so-called "margin of appreciation" lies in the wish of the Court to recognise that the cultural, historic and philosophical differences between states party to the Convention may justify marginally different interpretations of the Convention. That such differences exist is undeniable, but they do not justify breaches of the Convention, and that they should be used to justify *prima facie* breaches of individual human rights is regrettable. However, such differences are rapidly diminishing as Europe become more united and homogeneous, and the Court should therefore be increasingly wary of acceding to self-defensive arguments by states based on the margin of appreciation.

There was a huge public outcry in Italy when the Court's judgement was published - but it came in a well orchestrated manner from a highly vocal, intensely Catholic minority. Our Italian colleagues tell us that it was widely deplored there, as is illustrated by the letter dated 2 February 2010 that was sent to the Court by 121 Italian organisations wishing to dissociate themselves from the hysterical reaction of some populist politicians. We quote from their own English version of their letter in case it is not before the Court:

> The political debate that followed in Italy has been vicious and violent against nonbelievers, non-Catholics, heterodox Catholics and, last but not least, the judges of the European Court of Human Rights. Individually and on behalf of the thousands members of our groups and millions of other Italians we would like to thank the European Court and apologize for the insulting behaviour of Italian government members. We hereby dissociate ourselves from their speeches and comments.
>
> Our country suffers more and more the political influence of the hierarchy of the Catholic church. The fewer people follow their directives the more they demand, call for privilege and taxpayers' money, raise their voice in order to impose their will on non-Catholics' lives and behaviours. Moreover most political leaders are keen to accept their requests disrespectful of rights and liberties, lives and personal stories, beliefs and choices of millions of citizens. . .
>
> Some of us are believers and we all do respect believers, but we cannot accept one religion, not even the most powerful, to be imposed to everyone.

The pattern of demands by churches growing as their following diminishes is one that we have observed elsewhere in Europe. The Court should not be misled by the clamour or by defensive reactions by the Italian state into changing its verdict. The Court has at times in the past - as (we suggest) in *Wingrove v. The United Kingdom* (19/1995/525/611) - been too amenable to government arguments based on the cultural sensitivities of a small minority that provide a useful shield for long-standing legal abuses of human rights. Acceding to Italy in this case would represent a devastating blow to the steady progress of the past few years towards outlawing discrimination founded on religion or belief and towards recognition of the right not to be imposed upon by religion of that large but often invisible

minority: those, so frequently overlooked, who live without religion.

We draw the Court's attention, finally, to the proposition implicit in the argument for applying a margin of appreciation. This has been popularly expressed as the need to recognise that the case involves a "clash of rights" between the Italian majority and a trouble-making mother. But majorities (as the Court does not need to be reminded) have no right to remove the human rights of even one individual contrary to the law and the Convention. Otherwise we shall soon see majorities demanding that those accused of terrorism be subject to summary justice, from which it is a quick descent into mob rule.

Some even have ventured dangerously near to suggesting that in multicultural (meaning in practice multi-faith) communities *groups* have human rights. Italy's submission (at para. 24) is on these lines. But so-called group rights are an automatic denial of the human rights of individuals within those groups – especially individuals who think for themselves and question group norms - and those who customarily suffer oppression, such as women, gays, Roma and other ethnic minorities. Giving rights to religious groups is a most dangerous step – it is (for example) the demand of the Islamist states at the United Nations who wish to suppress free thought and criticism of religion. They would take great comfort from a finding by the Court in favour of Italy.

23 May 2010

ANALYSIS OF DIFFERENT ARRANGEMENTS FOR EDUCATION CONCERNING RELIGION AND BELIEF

Across Europe there is huge variation in the treatment of religion and belief, including non-religious beliefs, in schools. This derives from the differences from place to place in religious, cultural and historical backgrounds.

There are many ways in which these differences show themselves, including:-

(a) school legal or administrative structures

Schools may be run

- by the state or other public authorities (e.g., local councils), or
- by bodies such as charities or trusts, including churches or other religious organisations, or
- by private companies or individuals, sometimes as businesses.

Any of these may be wholly or partly paid for from public funds. Sometimes churches or other external bodies may be responsible for lifestance education within an otherwise secular institution (e.g., a church may provide a course about Christianity in a public school).

(b) scope of syllabus

Another key distinction relates to the scope of the teaching provided. A school may offer

- no relevant teaching at all
- a course about a single denomination of a single religion (e.g., Roman Catholicism)
- a course about a single religion (e.g., Christianity)
- a course about more than one religion (e.g., the “six great world religions”)
- a course about both religions and non-religious beliefs (e.g., world religions plus Humanism).

(c) pedagogical approach

An important distinction is between

- those courses that suggest that one particular lifestance (or category of lifestance, e.g. religious) is correct and
- those that adopt an open, objective, educational attitude.

(d) facts or morals

There is in addition a distinction between

- courses that concentrate on the 'facts' related to lifestances (e.g., Bible knowledge, the history of religion) and
- courses that focus on moral teaching derived from lifestances (e.g., Christian or humanist moral education).

(e) parental and pupil rights and options

- Sometimes parents can choose between a range of alternative courses (which may or may not be comprehensive).
- Elsewhere parents are given the option to withdraw their child from the relevant teaching offered in the school.
- Sometimes pupils at a certain age are themselves allowed to exercise these choices.

(e) worship

There is another question, separate from those regarding teaching:

- In some schools there are acts of religious worship in accordance with a single religion or religious denomination (and in this case they may be conducted by clergy or by teachers).
- In other schools there may be acts of religious worship that are syncretic or 'inter-faith' or that even try to accommodate the non-religious.
- Other schools may have no acts of worship (although they may have non-religious assemblies that may celebrate values).

Where there is religious worship, it may take place
- within the school day or
- outside the normal teaching hours; and

it may be
- compulsory or
- optional at the wish of either the pupil or the parents.

In real life, approaches will often be muddled and will usually not result from any consideration of the principles involved. However, an analysis on the basis of these paradigms will always be revealing.

[Adapted from the European Humanist Federation website at http://humanistfederation.eu/analysis-of-different-arrangements-for-education-concerning-religion-and-belief/ - accessed 6 April 2013]

THE LIMITS TO LEGAL ACCOMMODATION OF CONSCIENTIOUS OBJECTION

Paper by David Pollock, President of the European Humanist Federation, for a Humanist Philosophers' Group seminar on 3 June, 2010[34]

International human rights instruments endorse the right to freedom of thought, conscience and religion. Manifestation of religion or belief is to be restricted only when necessary "in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". The OSCE's Guidelines for Review of Legislation pertaining to Religion or Belief [35] state that:

> It is important . . . that specific statutory exemptions be drafted and applied in a way that is fair to those with conscientious objections but without unduly burdening those who do not have such objections.

I want to explore that borderline between being fair to those with conscientious objections and unduly burdening those who do not have such objections.

Now, our consciences are a concomitant of our existence as moral beings - they are of the essence of our being human. Conscientious behaviour is the foundation of society, and in a liberal society under rule of law consciences will generally prick us into cooperative and mutually beneficial behaviour. They will clash with the social norms and laws of the society only at the margins. But the fundamental importance of conscience to our humanity is such that society should as a rule seek to accommodate the minority whose consciences point in different directions from those of the majority.

Laws dealing with conscientious objection originated with war. Noone can be in doubt that recognising the legitimacy of conscientious objection in wartime was an advance in civilised values. How barbarous it was for the state to force people to kill other human beings against their innermost feelings of moral revulsion. So it must be welcome that we now allow conscientious objectors to appeal to official tribunals that are charged with assessing whether each objection is based on genuine religious or moral principles.

When laws to legalise abortion in defined circumstances were introduced it seemed a logical extension of this principle that a right was usually included for doctors and nurses not to take part if they had conscientious objections.

But in recent years there have been claims that the principle should be extended in many ways that are much less obviously justified. These claims have come almost entirely from

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[34] This is a revised version of a paper I gave at a side-meeting at the OSCE Human Dimension Implementation Meeting in September 2009.

[35] See http://www.osce.org/odihr/29154 - accessed 6 April 2013.

religious - mainly Christian - sources. Real or plausible examples - which go far beyond the fairly narrow range of cases cited in the OSCE Guidelines - include the following.

- In Britain recently a magistrate claimed the right not to preside over cases involving laws of which he disapproved: specifically, dealing with the legal adoption of children by lesbian and gay couples.
- Some nurses refuse to take part in IVF (in vitro fertilisation) on the grounds that it involves creating and discarding 'spare' embryos, which they regard as the murder of other human beings.
- Some pharmacists - Christian and Muslim - refuse to dispense the so-called 'morning after' contraceptive pill on the (disputed) grounds that it brings about an abortion (it prevents implantation, which is abortion only if you regard life as starting with fertilisation).
- Soon, maybe, some doctors will refuse to provide treatments developed with the use of foetal tissue or embryonic stem cells. (This and much more were proposed for legal recognition in a Bill in the US state of Wisconsin a few years ago - see BMJ 2006; 332;294-297).
- Exclusive Brethren parents refuse to allow their children to use computers or the Internet in school on the ground that they are diabolical inventions.
- Some Muslim parents on grounds of religious conscience refuse to allow their children to take part in art classes at school if they have to draw human figures - or indeed anything from nature, or (similarly) to take part in physical education unless in single-sex groups and unless the girls especially are swathed in modesty-protecting garments.
- Some people employed as cooks have claimed a right not to work with pork, or with non-halal or non-kosher meat or with alcohol.
- Some people refuse to work on Fridays, Saturdays or Sundays, depending on their religion.
- Back in the health field, medical students may refuse to undertake parts of their training - say about contraception or abortion or about embryonic research - on conscientious grounds.
- Again, people who let rooms in their own houses already have the right to refuse gays as lodgers: they say their consciences would be offended by having homosexual acts happening on their premises. Now there is a religious lobby to extend this right to hotels run as businesses - and then to allow all businesses - "Christian" garages, "Muslim" printers and so on - to pick and choose whom they will and will not do business with.
- And - in a further extension of the sensitive religious susceptibility - there are those doctors whose consciences cannot be satisfied merely by refusing to undertake (say) abortions but who claim the right not to reveal the reasons why they are refusing and not to refer their patients to another doctor. Similar provisions were written into the recent timid Bill from Lord Joffe to allow assisted dying for the terminally ill - a Bill nevertheless massively opposed by religious interests.

Are all these claims for conscientious objection acceptable? Many of us would think not. In past ages, far less respect was paid to people's conscientious feelings, and they had

unenviable tough decisions to make about the extent to which they took the risk of obeying their own principles. That might seem undesirable to our more tender age, but we need to examine the consequences of allowing unlimited appeal to conscience.

Let me leave aside the question whether it might lead to cynical manipulation of the privilege for personal advantage - although this is a serious risk and was of course the reason for tribunals being brought in to deal with wartime claims of conscientious objection.

The real issue is: what would it mean for other people and for society as a whole? Obviously it usually means that someone else has to do the work - perhaps bear a greater burden. But it is not just co-workers who are involved, for one person's right to opt out of a duty is too often another's loss of a right to access a service. Alternatively or in addition it may mean that other people are conspicuously singled out for discriminatory, unfair treatment.

As for society, it depends on people's behaviour being to a large extent predictable and reliable - the more so when public officials and public services and laws are involved. This could be threatened if conscientious objection became so widespread that the reliability of public services and the fairness of official behaviour became unpredictable. Ultimately, it would be impossible to run reliable public services. Some doctors would not be fully trained. It might be impossible to get some prescriptions dispensed. Courts would fail to administer the law decided by Parliament. Women seeking abortions would be advised against it by their doctors without being told that the advice was not medical but an expression of the doctor's religious beliefs. Religious organisations would compete to demonstrate their power by pressurising their followers to exercise their rights of conscientious objection. (The Roman Catholic church is organising concerted campaigns in Italy at this moment to persuade pharmacists to refuse to dispense the 'morning after' pill despite its being legal.) And when that happens the question becomes political - conscientious objections are generated artificially.

How to tell the difference between a conscientious objection and a prejudice? Is there in the last analysis a difference? Was it religious principle that led the Christians in the Dutch Reformed Church in apartheid South Africa to treat blacks as an inferior species - or sheer race prejudice? If people's baser instincts or culturally induced hatreds can be dressed up as matters of principle, religion or conscience, where shall we end up? - with a society that offers legitimacy under certain conditions to discrimination that would otherwise be illegal, against gays or divorcees or single mothers (and their children), other ethnic groups, other races (in a recent case a Jewish school pleaded religious exemption from the laws against race discrimination) or religions (remember how, for example, the Roman Catholics suffered in some countries including England over centuries). A society might result where conscientious objection is accepted as a legitimate reason for people to opt out of fulfilling the duties of their employment or position. Conscientious objection in that case, one might decide, is a luxury that society cannot always afford to indulge!

But the other end of this spectrum, opposite this *carte blanche* for prejudice and dereliction

of duty, is an enforced uniformity that does not accommodate deeply held principles of pacifism, or religious duty, or other deep conscientious beliefs.

Lines have to be drawn. But where? Criteria are needed by which we can decide which exercises of conscientious objection are acceptable and should be accommodated in our laws and procedures - and which not. What would those criteria be? Or at least, without defining them in detail, what would they be about? We need to examine the problems involved in each case and the way that plausible criteria would work out in practice, what the logic of each would be and how each could be justified and what objections to it might be raised.

So, what criteria should inform our laws?[36] One, of course, is that **the claimed conscientious objections should be genuine, not pretended.** But that does not get us far.

Is the right criterion, then, to do with **the strength of the conscientious feeling itself**? One might well imagine that the revulsion someone feels against being forced to kill might be greater and more compelling than someone else's objection to dispensing a medicine. But the criteria we adopt need to be capable of objective administration. The strength of internal feelings is not in that class. Besides, it would be odd if one person's objection was ruled legitimate and another person's identical objection was rejected because his feelings were judged less profound.

Or is it that **religious objections** should carry more weight since they are based on heavenly commands and immortal souls are at stake? But religious objections are not the only or even the most profound ones at stake: non-religious people have as strong consciences as the religious. Albeit they are more aligned in general to the patterns of liberal democratic societies, some non-religious people have very strong ethical objections to euthanasia, some to abortion in particular circumstances. Moreover - as mentioned - religious objections are to some extent learnt before being felt - formulated and generated outside the individual's conscience - whereas typically a non-religious conscientious objection is very strictly personal, arising from freestanding deep feelings or principles. Besides, new religions can be created all too easily and might well be created to provide 'cover' for prejudiced behaviour.

One might argue therefore that the acceptability of a conscientious objection is to do with comparatively objective criteria: for example -

- whether the person claiming the right of objection is in a public or private role
- the centrality of the principle at stake to a recognised religion or lifestance
- the proximity of the action the person refuses to perform to the matter to which conscientious objection is taken
- the social consequences of the objection being accepted

[36] Annexed to this paper is a list of distinctions that it may be useful to bear in mind in considering this complex topic of the individual wishing to behave in a non-conforming way on the basis of conscientious (mainly religious) beliefs. They take in claims to be allowed to wear religious symbols, which I have not dealt with in the body of the paper.

- the effects on other individuals involved.

Let me look at each of these in turn.

Should the criterion be whether the person claiming the right of conscientious objection is in **a public or private role**? Certainly there is something odd about someone taking on a public official role - as a magistrate, for example - and then objecting to performing the required duties. Should people with objections to carrying out the duties of a public position take it on in the first place - especially if dispensation of the law is involved? In fact, the magistrate in England who wanted to be able to stand down whenever he was asked to oversee an adoption by a gay couple had instead to resign. Otherwise he would have been seen as an agent of the state casting doubt on the laws of the state - an anomalous and basically unacceptable situation. Similarly, in the days of capital punishment, judges with personal objections to the death penalty had to decide either nevertheless to impose it as being part of the law of the land or to direct their careers into areas of the law where the question did not arise.

So we could certainly say that a pick-and-choose attitude to official duties is unacceptable. But does that mean that conscientious objection should be unfettered in the "private" realm? Is discriminatory behaviour based on religion or conscience to be acceptable in commerce and trade, in social relations? Should we allow hotel chains that proclaim "no gays" or "no unmarried couples" - or "no blacks" - to plead religious principles and get away with it? What of the British railway boss who is notoriously anti-gay - should he be allowed, if he wished to risk his commercial interests (which he does not), to ban gays from his trains? How different would that be from saying "No Jews"?

So there may be a difference between public and private roles - especially where "private" means domestic private life, not just "not involving public office" - but it does not provide a clear criterion of what is or is not acceptable conscientious objection.

Is it an adequate criterion then to require that the principle at stake should be **central to a recognised religion or lifestance**? This may seem logical at first sight but it raises unresolvable questions. It would require on the face of it that the conscientious objection related to a wider framework of belief. If you simply held as a matter of conscience that vivisection was wrong, without rationalising your feeling or fitting it into a wider explanatory framework of belief, you might find that your conscientious objection was overruled. Again, it would require official or judicial inquiry into what was or was not central to a religion or lifestance. Are judges to be required to become theologians? Anyway, most religions do not have the central authoritative direction of the Roman Catholic church - one of the subsidiary objections to any official endorsement of sharia law is its uncertainty; and Humanism allows wide personal discretion in the application of its basic principles and shades off on all sides into various non-Humanisms that may be equally moral in nature.

Beyond that, it would open the way for religious authorities to become legal authorities, being called in to adjudicate on the authenticity or centrality to their religion or belief of an

essentially personal conscientious objection. This would give powerful backing to religious authorities in any attempt they made to regulate the behaviour of their followers, imposing a group-think on moral and religious matters that would quickly become itself a denial of personal consciences.

My next suggestion was that the criterion might be **the proximity of the action the person refuses to perform to the matter to which conscientious objection is taken**. You might feel more sympathy with a doctor refusing to carry out an abortion than with one refusing to recognise that an abortion is a possibility - and more with the latter than with one who refuses to admit to his patient that his own conscientious objection is involved and to refer her to another doctor. One might be readier to accommodate a doctor who refused to take a post which involved in vitro fertilisation treatment than with a hospital administrator concerned with the efficiency of an IVF department. In such a case the agency involved is very remote and certainly not final or definitive. So this is a sensible distinction to make - but it still raises big difficulties for those with absolutist principles. After all, the contention that "if you will the means, you will the end" does have some logical force.

Besides, this will never be an adequate criterion in itself, since it would give *carte blanche* to all conscientious objections of any nature that were based on first-hand involvement. Even so, it may have a contributory role to play in our formulation of sensible criteria.

Next on my list was the **social consequences of the objection** being accepted. This would include the practicality of society coping with it - such as the possibility of someone else taking on the role - and the effects on social cohesion of any widespread incidence of such conscientious objections.

With this criterion we begin to find some solid ground. If the conscientious objection is exceptional and can be accommodated, little damage may be done to society's fabric and arrangements - services will generally be provided by others taking the place of the conscientious objector. If one nurse will not assist at an abortion or in IVF treatment and another is available to take on the work, then surely this is acceptable? It amounts to something like the "reasonable accommodation" which is found in some legal frameworks for employment.

But it too is problematic. The same person with the same conscientious objection may at one time find that he is accommodated, at another not but instead (perhaps) liable for disciplinary action, simply because of the extraneous circumstance that at one time a substitute is available, at another not. And this is not just a black and white question - if the substitute can be found only by complex juggling of duties or of work schedules in a large workforce, then there is a cost in making a substitution and it is borne by the employer or institution - and therefore ultimately by the public through prices or taxes - not by the conscientious objector. It also means that the more common a conscientious objection is,

the less likely it is that it can be accommodated so that the necessary work can be done[37]. A Christian commentator on an earlier version of my paper suggested that where the demand for exemption was more common - for example in Italy over abortion - a tougher line might be needed so as to ensure the availability of the service than in liberal countries where few doctors would seek exemption.[38]

More important even is the effect on the rule of law: if one person's conscientious objection to obeying a law or fulfilling a lawful duty prevents someone else from exercising a lawful right it is not acceptable: nobody should be above the law.

Moreover, there is likely to be an effect on the cohesion of the whole society - on the commitment of its members to maintaining its institutions - if a group within the society is seen to have arrogated to itself a privileged position, standing apart from the whole and not contributing on the same basis.

Lastly, I suggested the criterion might be **the effects on other individuals involved**. Maybe such people would have problems accessing services to which they were entitled or not receive them at all; maybe they would suffer demeaning treatment, being discriminated against despite legal guarantees against it. Or maybe - a special case - children are involved because of their parents' conscientious objections.

With this we confront the crux of the matter. We need to have regard not only to the feelings of those with conscientious objections to some duty or obligation but also to those others who will be personally affected if the conscientious objection is indulged. These will variously be:

- patients not receiving treatment they are entitled to - abortion, IVF - or medicines they have been prescribed - the morning-after pill - or having to go to special trouble to obtain such services
- citizens not being treated in the fair or non-discriminatory way to which they are entitled by law but receiving demeaning treatment from public institutions or from individuals in official positions - as with gays seeking to have a marriage or civil partnership registered or to have their adoption of a child formalised by the family court
- patients finding that the health professionals they rely on are not fully competent because they refused owing to a conscientious objection to undertake part of their training - a conscientious objection that they may no longer feel at a later stage in their lives
- fellow employees being expected to take on extra duties or to work more weekend

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[37] Of course, sometimes the objective of the conscientious objector may be to bring about that the work cannot be done - but that goes beyond conscientious objection, which is an individual matter, into political action, which may be a defiance of democratic decision-making about the availability of services or about guarantees of non-discrimination.

[38] Similarly one might argue that (for example) specialised adoption agencies serving the needs only of gays or of Christians might be acceptable if they were marginal to the mainstream service and did not purport to provide a mainstream service. But such exceptions can only be safely accepted in a context of general and undisputed equality and non-discrimination.

shifts or otherwise suffer some cost as a result of accommodating other people's conscientious objections

- people being subjected to demeaning discrimination that would otherwise be illegal but is permitted when in fulfilment of some religious conscientious objection - having some aspect of their identity held up to moral opprobrium as a demonstration of the conscientious feelings of someone whose views neither they nor society at large shares.

The price of accommodating the conscientious objections of the few is paid, in other words, not by the conscientious objector (who may instead receive a moral uplift from his conspicuous virtue) but by random members of society at large who are unhappy enough to encounter such strong upholders of what they consider virtue.

There is a special case where the third parties involved are children, notably the children of parents whose consciences will not allow them to receive the full education that their contemporaries receive (incidentally being made awkwardly "different" from their friends) or (worse) to receive the medical treatment they need. Children of the Amish in the USA are allowed to leave school to work on the land before completing statutory education: the authorities condone it or at least do nothing about it, and as a result these children go through life lacking the basic qualifications they need for employment - a substantial disincentive to leaving their isolated communities or a substantial disadvantage if they do decide to seek a new life in the city . Some fundamentalist Christians, as mentioned, seek to prevent their children being taught to use computers, which would leave them at a major disadvantage in the modern world. Children of Jehovah's Witnesses who need blood transfusions may even die unless society steps in and through the courts overrules their parents' conscientious objection.

Where does all this leave us? It leaves me feeling that there is a need for a lot more hard thinking about the problems and that there is no easy solution. Conscientious objection sounds virtuous but its effects are by no means wholly benign. A free-for-all unregulated endorsement of conscientious objection cannot be allowed, even on the unlikely assumption that all alleged conscientious objections are based on genuine beliefs and feelings. If a free-for-all is ruled out, then criteria are needed for deciding what is acceptable. The European Convention on Human Rights gives us some broad pointers when it talks of public safety, protection of public order, health or morals, and (especially) protection of the rights and freedoms of others - but that is too broad a formulation to be sufficient in itself.

Let me venture some tentative and interim suggestions. Conscientious action is the basis of social functioning and conscientious objections arise from the same consciences that produce altruistic and self-sacrificing behaviour based on principles and beliefs. The obligation on society to look indulgently on conscientious objection is strong, but it is not unconditional. Among the conditions placed on it might be the following:

- the conscientious objection should be deeply felt and preferably the conscientious objector should be able to give a coherent account of it;

- the conscientious objection should be to a proximate action and not to some remoter or associated matter;
- society should not in accommodating conscientious objections put at risk the rule of law or its social cohesion by seeming to favour one group over another;
- holders of public office, representing the state, the law or the community, should have less or no rights to conscientious objection, their acts being not their own but those of the public authorities or the state;
- the rights of others involved must have at least equal regard - the right not to suffer discrimination, to be able to access facilities and services (especially public services);
- children in particular must be protected from damage to their education to their health: there must be limits to their parents' power over them.

The price of accommodating conscientious objection should be paid or at least shared by the conscientious objector himself. It may mean restricted career options or choosing between overcoming moral objections and accepting penalties such as disciplinary measures or dismissal. In wartime, after all, conscientious objectors were not let off to continue their normal lives but were assigned to alternative war work - and if they were unwilling to do that, they went to jail.

Conscientious objection may be a luxury that society can sometimes afford - but it is also a luxury that must carry a price to the conscientious objector which he may choose sometimes not to pay.

David Pollock
President, European Humanist Federation
31 May 2010

APPENDIX

SOME POSSIBLY USEFUL DISTINCTIONS

Below is a list of distinctions that it may be useful for any consideration of individuals wishing to behave in a non-conforming way on the basis of conscientious (mainly religious) beliefs. Some may be fundamental and some mere distractions.

- **the basis of the claim:**
  Is the claim based on
  - religion or belief / conscience *(e.g., a religious duty)*
  - something else *(e.g., freedom - to dress as one wishes, wear 'message' badges)*

- **the context:**
  Is the person concerned in the circumstances
  - a private citizen *(e.g., a woman in the street or - a different matter for the French - in a public building)*
  - an employee of a private concern without a religion or belief character *(e.g., a check-in clerk for BA)*
  - an employee of a private concern with a religion or belief character *(e.g., of a church or religious charity)*
  - a public employee, in particular one who deals directly with the public *(e.g., a registrar)*
  - a public office holder, again in particular one who deals directly with the public *(e.g., a magistrate).*

- **the action:**
  Is the person concerned seeking the right
  - to do something *(e.g., to say prayers for a patient or wear a cross)*
  - not to do something *(e.g., not to conduct civil partnership registrations)*
  - to compel others to do something *(e.g., to be present at prayers - maybe in a hospice)*
  - to compel others not to do something *(e.g., not to 'defame' religion)*

- **the nature of the claim**
  Is the claim based on:
  - an established mandate or obligation of a religion or belief *(e.g., do not eat pork, do say prayers five times a day)*
  - a communal custom, albeit closely associated with a religion or belief *(e.g., wear the veil)*
  - a voluntary wish, albeit motivated by religion or belief *(e.g., evangelise at every opportunity)*

- **the penalty**
  Is the person concerned at risk of suffering a more-than-nugatory religious or social

penalty if denied the exemption?

- **the consequences for others**
  - Will allowing the claim have consequences for other individuals? *(e.g., needing to work disproportionately at weekends to allow for sabbath observance)*
  - Will there be foreseeable, maybe undesirable, consequences for society at large? Is the individual being 'used' as a stalking horse, as is arguably the present situation, with the Christian Legal Centre and other bodies seeking to make a political impact by way of individual grievances? *(e.g., non-availability of morning-after pills in areas where all the pharmacists are Muslim; halal-only school meals as an economy measure to avoid two-stream kitchens).*