



# European Humanist Federation

international non-profit association under Belgian law

## Fédération Humaniste Européenne

association internationale sans but lucratif de droit belge

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Mr Gvozden Srecko Flego  
Chairperson  
Committee on Culture, Science and Education  
Parliamentary Assembly  
Council of Europe  
F-67075  
Strasbourg  
France

9 February 2011

Dear Mr Flego

### **The Religious Dimension of Intercultural Dialogue**

The European Humanist Federation unites over 40 organisations in half as many countries, with contacts in many more. Our purpose is to represent the views of people who have no religion (maybe one-third of all Europeans) but hold non-religious beliefs such as Humanism, and to promote secularism, i.e., separation of politics from religion and belief, on a basis of equality and human rights. We are recognised by the European Union for dialogue under Article 17 of the Treaty on the Functioning of the European Union.

We cooperate closely with the International Humanist and Ethical Union, which is a recognised INGO with the Council of Europe. We have taken part in the conference on 'Religious Freedom in Democratic Societies' jointly sponsored by the EU Council Spanish Presidency and the UN Alliance of Civilisations at Cordoba on 2-4 May 2010 (our paper is [here](#)<sup>1</sup>) and the forum on 'Freedom of expression, conscience and religion' held in Lisbon on 4-5 November 2010 and sponsored by the North-South Centre of the Council of Europe and (again) the Alliance of Civilisations. We also took part in the Council of Europe exchanges on the religious dimension of intercultural education, under the title 'Teaching religious and convictional facts', held on 8 April 2008 and 29-30 June 2009.

From 1995 to 2005 the EHF chaired the co-ordinating committee of A Soul for Europe – Ethics and Spirituality, an EU initiative which involved the bishops' conferences and other

<sup>1</sup>

<http://www.humanistfederation.eu/download/502-Cordoba%20-%20May%202010.pdf>

religious leaders and was aimed at giving a spiritual and ethical dimension to the European Union. We are pleased to work with a number of religious organisations in several contexts, including the [European Parliament Platform for Secularism in Politics](#)<sup>2</sup> and the G3i, an 'international, intercultural, interconvictional' group that organised a [conference](#)<sup>3</sup> on 'Social Cohesion in a Multicultural Europe: the role and impact of trends of thought and of religion' (Strasbourg, October 3-4 2007). Our president was an invited speaker at a EU conference on "Intercultural Dialogue - A Challenge for Faiths and Convictions?", held in Brussels on 11 November 2008: his paper to the meeting is [here](#)<sup>4</sup>.

We understand that your Committee is considering the subject of the Religious Dimension of Intercultural Dialogue. We wish to submit the attached memorandum on the subject for your attention. In this we have drawn heavily (partly due to shortage of time) on a very recent [submission](#)<sup>5</sup> we have made to the EU-sponsored [Religare](#) project<sup>6</sup>, the whole of which may be of interest to your committee.

We further understand that you plan to hold a hearing with several religious leaders. We wish to ask you to invite us also to meet your Committee, as representing a large proportion of the population of Europe, as evidenced in our attached paper.

Yours sincerely



David Pollock  
President

cc Ms Anne Brasseur, rapporteur

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<sup>2</sup> <http://politicsreligion.eu/contact/>

<sup>3</sup> [http://www.humanistfederation.eu/index.php?option=com\\_content&view=article&id=152](http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=152)

<sup>4</sup> [http://www.humanistfederation.eu/index.php?option=com\\_content&view=article&id=223&Itemid=100](http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=223&Itemid=100)

<sup>5</sup> <http://www.humanistfederation.eu/download/160-EHF%20submission%20to%20Religare%20project.pdf>

<sup>6</sup> <http://www.religareproject.eu/>

## Religion and Belief in 21st century Europe

A memorandum from the European Humanist Federation to the Committee on Culture, Science and Education of the Parliamentary Assembly of the Council of Europe

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### ***The religious dimension of intercultural dialogue***

The title of your enquiry calls for some comment. The word 'intercultural' once used to refer to cultures in the sense of civilisations but has in the last decade been increasingly used as a sort of euphemism for religion or belief. Intercultural dialogue in this sense is a very broad term, signifying anything from discussion of theological concepts and doctrines to local social gatherings between people of different beliefs. It invokes a wide range of questions concerning the place of religion or belief in society, and we understand that your committee is concerned with intercultural dialogue in this wide sense.

We note also that the word 'religious' stands alone in the title of your enquiry whereas in human rights treaties and laws the usual term is 'religion or belief' (see Annex I for a collection of relevant legal references). This embraces non-religious beliefs such as Humanism and indeed simple atheism which are excluded and too often forgotten when the word 'religion' is used on its own. Yet these are all part of the spectrum of lifestyles, worldviews or beliefs that are open to any individual. Sadly, the non-religious are often forgotten, and papers on 'intercultural dialogue' refer repeatedly to religion without recognising that this is an exclusive and partial category. This was true, for example, of the lead paper at the 2010 Cordoba conference on 'Religious (*sic*) Freedom in Democratic Societies', as our President had to point out in his paper. This is not a quibble over words: it goes to the way that people think about the subject. Humanists and the non-religious at large should not be excluded from dialogue or from consideration.

### ***Christianity in the history of Europe***

In looking at the place of religion and belief in society 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<sup>1</sup> says of “explicit 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 and should 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?

### ***Freedom of religion or belief***

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

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<sup>1</sup> 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.”

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 (as already stated) 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<sup>2</sup>) - 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.

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 refers to as 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

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See [http://www.humanistfederation.eu/index.php?option=com\\_content&view=article&id=44](http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=44)

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 Christian belief.

### ***The decline of religion***

To a very large extent religion - and in particular the Christian churches - are now rejected by the people of Europe. Religion can no longer function as a binding factor, and no tweaking of age-old inherited assumptions will change this fact. 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'.<sup>3</sup> Similar results are found by both popular and academic surveys<sup>4, 5</sup>. 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<sup>6</sup>, 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"<sup>7</sup>.

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.<sup>8</sup>

Moreover, all the evidence suggests that this is a trend likely to continue, so that religion

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<sup>3</sup> 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](http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf) - accessed 18 October 2010.

<sup>4</sup> 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.

<sup>5</sup> High figures for Christian adherence are often quoted (and misused) from surveys that elicit answers relating only to cultural affiliation. For example, the British census of 2001 asked a leading question 'What is your religion?' in an immediate context of questions of ethnicity and produced an exaggerated figure of over 70% Christians. Yet the Office of National Statistics confirms that this is likely to include many whose connection with Christianity is limited to having once been baptised or having had a church wedding. Similarly we note that the Appendix I to your draft report of 17 January 2011 quotes figures for religious practice that appear suspect: given that well over half of all marriages in the UK were already in 1999 (the year in question) non-religious (in 2008 the proportion was 67%), the only way your figure of 64% religious marriages can be justified seems to be as a cumulative (quasi-historical) figure for the population questioned. Similarly the idea of 55% of people in the UK *now* having a religious ceremony at birth is plainly wrong: in 2007 total baptisms up to age 12 were equivalent in number to 20% of live births.

<sup>6</sup> 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](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf) - accessed 18 October 2010

<sup>7</sup> <http://www.humanism.org.uk/news/view/156> - accessed 23 November 2010

<sup>8</sup> Eurobarometer *loc. cit.*

will become yet more marginal in the lives of most Europeans. However, polls show that for Muslims and perhaps to a lesser extent for followers of other minority religions this marginalisation is much less evident. This may be the result of recent arrival from countries where religion still dominates and/or of the importance of affirming one's identity in a somewhat alien environment. It means that the number of *committed* Christians is much closer to the number of those committed to non-Christian religions than appears at first sight.

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. No one 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 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.

### ***The new binding factors***

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”<sup>9</sup>.

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.

### ***Human rights are individual rights***

In this context we remind the Committee that human rights are individual rights. When your draft report refers to the ‘freedom of faiths and religious organisations’ then (except insofar as any voluntary group has some legal rights) the freedom referred to is not owned by the religious organisation but by the individuals who make it up. It is their freedom to manifest their religion or belief that confers some transferred freedom on their organisation. Churches as such do not have ‘freedom of thought, conscience and religion’: their members do.

This is important in the present political context, since increasingly claims are heard for religious organisations to be free to exercise an institutional ‘conscience’. The resolution of the Parliamentary Assembly on freedom of conscience last October [link] was the most egregious but far from the only example of this abuse of human rights. There is in some parts of Europe a highly organised campaign by religious interests to persuade doctors, anaesthetists, pharmacists and others to withdraw from performance of certain healthcare procedures on purported grounds of conscience that can only call in question the whole right of conscientious objection if carried too far so as to frustrate democratically made laws that provide (for example) women with an entitlement to an abortion. In fact, misuse of conscientious objection is becoming widespread: a paper on the subject by our president is attached at Annex II.

### ***Secularism***

What are the implications for society and government of this decline of religion? When religion is no longer for the vast majority of people a central factor in their lives, it is difficult to justify making it the focus of official attention or an organising factor for governance. In some countries at least it was prior to 9/11 becoming marginal, but it has been forced to the fore by governments adopting various policies aimed at controlling Islamic extremism. The UK government has tried for some years in ways that were surely unnecessary, given the adherence of most Muslims to values of human rights, to ‘buy’ social cohesion by Muslims by generous funding of (sometimes ill-chosen) religious bodies of all faiths.

If, as seems likely, some rethinking of this approach is now in train, it is time for serious consideration of secularism as a political principle.

The European Humanist Federation is committed to freedom of religion or belief (including

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<sup>9</sup> Address to the diplomatic corps, 10 January 2011, available at [http://press.catholica.va/news\\_services/bulletin/news/26680.php?index=26680](http://press.catholica.va/news_services/bulletin/news/26680.php?index=26680) (accessed 10 January 2011).



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.<sup>10</sup> 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.<sup>11</sup> 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 fact imposes liberal, secular values on everyone<sup>12</sup>. 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.

### ***The Public Square***

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

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<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.becketfund.org/files/lautsivitalywrittencomments.pdf>, accessed 9 January 2011.

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<sup>13</sup> 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.

In our paper to the Religare project [link] we examine in considerable detail the implications of this approach for religious clothing, symbols and displays in different types of public space<sup>14</sup>, in the workplace and in education. Our approach is based on maximising individual freedom: for example, 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. However, in places to which people are under some compulsion to go (for example, customers to shops or employees to workplaces) their freedom also has to be considered, and sensible compromises and accommodations are to be welcomed. Likewise employers may have an interest in (say) not having employees who represent his enterprise use their position to promote their personal beliefs, whether religious or political, by wearing badges or symbols.

This last - the misuse of a representative or authority position - is all the more significant when public officials representing public authorities or institutions are concerned. 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.

It is our impression that with occasional exceptions the European Court of Human Rights makes sensible decisions on all these matters, albeit they are often misrepresented by interested parties.

### ***Religious Institutions and the State***

Appendix I to your draft report reports on the current arrangements in Europe for

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<sup>13</sup> 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.

<sup>14</sup> We suggest that considerations are different for:

- (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.

recognition or registration of churches and other religious organisations. Here again we wish to make the point that such arrangements should not be confined to religious bodies but in principle extended to non-religious organisations as well - if indeed they are necessary at all.

In fact, we see no need for any official recognition of religious organisations, any more than of (say) environmental campaigns or bird-watching clubs. Other means are available - and used in several states - to confer legal personality on religious organisations, and little if any special legislation is needed to regulate their affairs. This is a matter of freedom of religion or belief: the state should not interfere with the freely undertaken association of people for religious purposes any more than that for any other purpose. Establishment of one or more churches by a state is a special case of interference, often providing benefits, albeit mixed with burdens, which discriminate unfairly between religious denominations in a way that is objectionable not only as an infringement of secularism but also on grounds of equality and non-discrimination.

But it is not only by registration or establishment that states engage unfairly with churches and other religious bodies. Governments offer them financial and other support which we estimate is worth many hundreds of millions of Euros every year - quite likely over €1 billion - even if only 'core' funding is counted. It is our experience that very few people realise the extent of this public subsidy to religion.

For example<sup>15</sup>:

- 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.<sup>16</sup>;
- 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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<sup>15</sup> 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 10 January 2011)

<sup>16</sup> 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.

However, it is very rare for similar support to be offered to humanist or *laïque* 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 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.<sup>17</sup>

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

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<sup>17</sup> These objections apply also to the formal equality of Article 17 of the Treaty on the Functioning of the European Union, inserted by the Lisbon Treaty, which mandates "an open, transparent and regular dialogue" with the European Union. For an extended treatment of Article 17 and the causes it offers for concern, see the paper at <http://www.humanistfederation.eu/download/93-Article%2017%20paper%20-%20Aston%20Univ%20Nov10.pdf> (accessed 9 February 2011).

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***

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.

**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.

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**(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.

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**(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.

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**(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.

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### **(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 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.

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

#### European Court of Human Rights

(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*<sup>1</sup>

(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).

(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

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<sup>1</sup> 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*.

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

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## **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

## 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<sup>1</sup>*

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<sup>2</sup> 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. No one 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 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

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<sup>1</sup> This is a revised version of a paper I gave at a side-meeting at the OSCE Human Dimension Implementation Meeting in September 2009.

<sup>2</sup> See [http://www.osce.org/publications/odhr/2004/09/12361\\_142\\_en.pdf](http://www.osce.org/publications/odhr/2004/09/12361_142_en.pdf)

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).
- Plymouth and 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?<sup>3</sup> 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 lifstance
- 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
- 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

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<sup>3</sup> 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.

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<sup>4</sup>. 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.<sup>5</sup>

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.

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<sup>4</sup> 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.

<sup>5</sup> 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.



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 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

## 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*).