

THE STATE-SANCTIONED MARGINALIZATION OF CHRISTIANS IN WESTERN EUROPE



DECEMBER 10, 2012

**Briefing of the
Commission on Security and Cooperation in Europe**

Washington: 2012

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The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

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The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

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Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 2 p.m. in room B-318, Rayburn House Office Building, Washington, DC, Allison Hollabaugh, Counsel, Commission on Security and Cooperation in Europe, moderating.

Panelists present: Allison Hollabaugh, Counsel, Commission on Security and Cooperation in Europe; Roger Kiska, Legal Counsel, Alliance Defending Freedom (Vienna, Austria); Professor Tom Farr, Director of the Religious Freedom Project, Berkley Center for Religion, Peace, and World Affairs, Georgetown University; and Dr. Roger Trigg, Academic Director, Kellogg Centre for the Study of Religion in Public Life, Oxford University and Associate Scholar, Religious Freedom Project, Georgetown University.

Ms. HOLLABAUGH. Good afternoon and welcome to our Helsinki Commission briefing on “The State-Sanctioned Marginalization of Christians in Western Europe.”

I will deliver a statement on behalf of Congressman Smith, whom I hope will join us in about a half an hour or so. The transcript from today as well as the statements of our guests will be on the Helsinki Commission Web site and you can access them from there. We also have materials available on the desk to your left.

It seems an odd proposition to be discussing religious freedom in Western Europe other than issues of anti-Semitism. Hearings on religious freedom usually cover countries that are not democratic and where human rights are systematically oppressed or countries where the majority faith is protected by the government and minority faiths or unorthodox strands of the majority faith are persecuted.

However, reports out of Europe have reached a critical mass cumulating in a recent Pew Forum study, the “Rising Tide of Religious Restrictions,” that ranks the United Kingdom, Germany, and France alongside Burma in terms of social hostility toward religion. Even more, the trend line seems to be moving toward more social hostility rather than less with increased government restrictions not far behind.

Four British citizens recently took their cases to the European Court of Human Rights when British courts did not support their request for reasonable religious accommodations in their places of employment.

Two of the cases regard the wearing of religious symbols in the workplace were combined into *Eweida and Chaplin v. the United Kingdom*. Both women in these cases were told by their employers that they must either cover up or remove cross necklaces. In both cases, the applicants claim that accommodation was made for some employees of other faiths, but not for them.

The other two cases were combined into *Ladele and McFarlane vs. the United Kingdom*, and involved two Christians who were disciplined or lost their jobs for declining to engage in work assignments contrary to their faith. In both cases, other employees were available to carry out the assignments. Their public and private employers made no attempt to make reasonable accommodation for the religious beliefs of the two employees.

These refusals of even the simplest religious accommodations seem to fly in the face of Article 18 of the International Covenant on Civil and Political Rights, as well as the European Convention on Human Rights Article 9, both of which protect the right to manifest religion or belief in worship, teaching, practice, observance, subject only to restrictions that are absolutely necessary.

Why this social and governmental hostility toward individuals who practice Christianity? And are governments supporting efforts to marginalize Christians?

Here to answer the questions this afternoon are three eminently qualified individuals.

We'll begin with Dr. Roger Trigg. He is an emeritus professor of philosophy at the University of Warwick, and the academic director of the Center for the Study of Religion and Public Life, Kellogg College, Oxford. He's a senior research fellow at the Kellogg College as well.

From 2007 to 2011, he was the co-director of a project conducted jointly with the faculty of anthropology on the cognitive science of religion based in the Ian Ramsey Center. From 2006 to 2007, he was the interim director of the Center. He is the founding president of the British Society for the Philosophy of Religion, and more recently president of the European Society for Philosophy of Religion. He was the first president of the British Philosophical Association, and chaired its predecessor, the National Committee for Philosophy.

He's a joint editor with Wentzel van Huyssteen of Princeton of an international series of monographs on science and religion published by Ashgate. He authored many books on philosophy. One of his main targets over a long period has been philosophical relativism and its many forms. He is currently associate scholar of the Religious Freedom Project at the Berkeley Center at Georgetown University in Washington, DC.

And we are very honored that he happened to be here at the same time we were doing our briefing. Dr. Trigg?

Mr. TRIGG. Well, thank you very much indeed. And I'm very grateful to the commission for the invitation.

Now, the question is whether Christians are being marginalized in Europe. Actually, I took part in a television program on the BBC a year or so back, which was entitled "Are Christians Being Persecuted?" Now, the very fact that that question could be posed on a mainstream television program on Easter day is itself very interesting.

But I would be wary of the word "persecution," because when you look at what's happening in many parts of the world with people being killed and churches being burnt down, and so on, what's happening in Europe is still, I would have thought, not in that

category at all. If you're thinking of a category of persecution of 1 to 10, probably Britain's got to one on that. It's not very far, but used not to be even there. And so the tendency is worrying.

And this is I think because Europe as a whole is becoming more aggressively secular. The Council of Europe, which is important because it's responsible for the European Court of Human Rights in Strasburg, which is a key element in all of this—and the council is to be distinguished from the European Union and representing the parliaments of all across European, including Turkey and Russia.

But the Council in a recent document saw the separation of church and state as one of Europe's shared values. Perhaps that may not seem very shocking to Americans, but actually it goes against the constitutional background of at least half of European countries, and it suggests that they rather ride roughshod over facts.

And then the council said—and this is what I find particularly worrying—“Nor may states allow the dissemination of religious principles, which if put into practice would violate human rights. If doubts exist in this respect, states must require”—again that word, “require”—“religious leaders to take an unambiguous stand in favor of the precedence of human rights over any religious principle.”

Now, I find that very interesting, both the idea of almost compulsion entering in—I think the Council of Europe has begun to backtrack from that—but also the idea which comes in quite naturally that human rights are on the one hand and religious principles are on the other.

Now, to my mind, human rights are based on religious principles. That's a long philosophical argument. They also include very strongly freedom of religion and the freedom to manifest it. And to make the two seem to be at war with each other seems I think exceptionally worrying. And, as I say later, I think this is coming in very much from France.

But what's happening is that so-called “equality” and “non-discrimination” are in court decision after court decision trumping appeals to religious freedom so that you find that if there's a suggestion of racial discrimination, that will always trump everything else, you might say quite properly. But note that one recent case in the U.K. supreme court was about racial discrimination by Jews because they wanted to admit only orthodox Jews to their orthodox school and they were told that was racial discrimination and illegal. It caused a great deal of upset amongst the Jewish community. And so, again, the law isn't just bearing down on Christians. It's bearing down on other faiths too.

Also, you can see that human rights are pitted against religion, and freedom of religion is itself being marginalized as a right. I was at a meeting in the House of Lords in London only last week where people who were saying that, actually, Article One of Magna Carta, dating from 1215, protects the freedom of the church. Magna Carta was written by the Archbishop of Canterbury of the day so perhaps that isn't surprising. But still, that's one of the four articles still in force. So freedom of religion has got a long history and freedom of religious institutions has to be safeguarded.

That isn't the view of the atheism and anti-clericalism of traditional France, of the later French Enlightenment. And you can see France and Spain are very active nowadays in pursuing, I would have thought, an agenda to eradicate religion from the public square. And you see this again and again in arguments in religious institutions.

There was a wish to have a reference to Europe's Christian heritage written into the Lisbon Treaty of the European Union. France wouldn't have that at any price. The last pope weighed in and supported the idea, and I think that was death of the idea in many people's eyes. The anti-clericalism was all too clear.

But the British and the American way is rather different. It doesn't see religion on the one hand, human rights on the other. It sees rights as growing out of religion, and we're equal because we're equal in the sight of God. We are free because God has given us free will.

Now, that was very definitely the view of John Locke, the philosopher in the 17th century, who is in a sense almost the—dare I say patron saint on the 1688–89 Glorious Revolution, and nearly a century later, of American independence because he was much admired in the colonies and much admired by people like Thomas Jefferson, who thought he was one of the three greatest thinkers who'd ever lived.

So that religious-based view of equality and freedom is what's formed Britain and formed the United States. I'm afraid that if you actually take away the Christian foundations, it's not clear how human rights and our belief in equality and freedom will survive for very long. It isn't enough to just say, well, we believe in them because we believe in them.

Now, the Strasbourg Court is much more active in its rulings. It's got very unpopular in the United Kingdom for all kinds of reasons, and the English courts now, through the Human Rights Act of 1998, bringing the European Convention of Human Rights into British law, and Equality Act of 2010 emphasizing equality, means that equality is what's governing a lot of court decisions. Also, non-discrimination, but non-discrimination on grounds of race, sex, and sexual orientation but not religion, and that's rather curious.

One of the four cases that we have mentioned already that are currently before the European Court of Human Rights was about Lillian Ladele, who was a civil registrar who refused to register civil partnership ceremonies.

Now, as I always say, the issue here is not whether you agree with her stand or not. If you disagree with it, it's all the more important that you should think that she should have the right to abide by her conscience. It's easy to allow freedom to people who agree with us.

But, anyway, she lost her job and she was told by the courts that beliefs about marriage were not a core part of Christian belief. And I find it very worrying the courts are so willing to venture into that kind of theological statement, quite a controversial one in many ways.

In the same range of cases, there's one about—two about the wearing of crosses. Again, the court said wearing a cross is not a core part of Christianity. Well, I suppose the judges think they know what Christianity is and they haven't [inaudible] to wear crosses.

But it was very interesting that in the beginning of this year, an Anglo-Saxon princess was dug up near Cambridge in England, and people got very excited because it was obviously one of the very first Christian burials by Anglo-Saxons. Why? Because the girl was found to be wearing a cross. So the cross is the mark of being a Christian. Now, courts say nothing to do with Christianity. It's just jewelry.

And that is I think all part of the general idea that you narrow what religion is. It's just freedom of worship. Lillian Ladele was actually told, you have freedom of religion because you're free to worship as you please.

The tendency, though, built into the European Convention of Human Rights is the right to manifest religion. Built into that is the idea that we, of course, can live according to the way our religion tells us, not so according to the courts because a lot of so-called manifestation isn't manifestation of religion. It's ethical beliefs. It's something else, again, in narrowing what counts as manifestation.

I find it particularly worrying when you get to Sunday working, for instance, which does actually impinge on freedom of worship, just as Saturday or Friday working might. And people are told by the European courts that they have freedom of religion because they've got the freedom of contract so they can give up their job if they want to worship on Sundays. But the freedom to be unemployed is not much of a freedom.

Now, the courts easily sideline religion as subjective and irrational. In one of the cases, it actually went to the European Court. Lord Justice Laws really rather dismissed religion. He says that in the eyes of everyone save the religious believer, religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence, and to protect a position held on religious grounds is irrational. Religion is irrational.

Well, I've written books on faith and reason so I just find that that kind of flip remark about a controversial issue which has occupied philosophers for centuries goes beyond what judges should be doing.

It suggests that courts are unsympathetic to religion, that they're unwilling to make a reasonable accommodation for religion. And I think that phrase, "reasonable accommodation," is something that's really quite important.

Secularists actually know what they're doing. They use the courts to override public opinion. They can get things through the courts they can't get through parliament. And there was a controversial case earlier this year whether courts said that counselors couldn't have prayers, even though the counselors, as a democratic body, wanted prayers. Oh, no. They couldn't do that. And they've been doing it since the time of Elizabeth the First. So it was quite a change.

Another example of how things are going against religion is the change in British charity law recently. Religion and education are no longer seen as a good in themselves. They have to prove they have a public benefit.

At the time, I thought it was just the labor government getting at independent schools. But, actually, in retrospect, you can see that the thing was aimed at religion as well. And even the Church of England has been told by the Charity Commission as—that unless it can show public benefit, it can't automatically be regarded as charitable. Extraordinary view really. Obviously, religion in itself is not something that's worth pursuing in itself.

Well, I would argue there's no hierarchy of rights. So the right to religious freedom cannot be ignored. It should not be narrowed. We need not just freedom from religion, as France wants, but freedom for religion, which is an integral part of human nature.

As was mentioned, I've spent a few years in Oxford as part of a team looking at the comments of science and religion. And the conclusion to that is that whether religion is true or false, good or bad, it's there as a part of human nature. It builds on the very central part. If you want, I could talk for an hour on that, but I won't.

Well, I think we can probably exaggerate too much about all of this in one way. I'm very concerned about the trend. But I think it's still true to say that England in origins, heritage and indeed even in fact now can still probably be called a Christian nation. It still does provide recognition for the places of religion and public life. Although fast living on its spiritual capital, it's still recognizable as a country with a Christian heritage. Christmas is still Christmas, not just the holidays. And carols and hymns sound around the shopping streets.

So religion is present in the public sphere and establishment is actually defended most of all by people like the chief rabbi. I find bishops are embarrassed to defend it, but the chief rabbi speaks passionately about it because he knows that if the church was dis-established, it would be to get religion out of the public sphere, and that all faiths would lose influence.

There is an alarming growing ignorance within Britain amongst the young generation of Christianity. Christian understandings can no longer be assumed to be a normal part of the culture. I sometimes think that may be part of the trouble with judges. They think they know about Christianity and they don't anymore. So that's providing the dangerous and growing vacuum.

And I think also—and this is another story—multicultural policies, which have come into disrepute, haven't helped either. Thank you.

Ms. HOLLABAUGH. Thank you, Dr. Trigg. I'll followup on the multi-cultural policies and your study in the question and answer period.

Next we'll be hearing from Roger Kiska, who flew in from Vienna to join us today. He serves as legal counsel at the Alliance Defending Freedom based in Vienna, Austria, where he specializes in international litigation with a focus on European law.

He has developed the Alliance Defending Freedom Allied Attorney Network in Europe working with allies to litigate European cases that have a potential for impacting Alliance Defending Freedom effects in the United States.

Prior to joining the Alliance Defending Freedom, Kiska served as legal counsel at the European Center for Law and Justice. After earning his J.D. at Ave Maria School of Law in Ann Arbor, MI, Kiska began his legal career in the Slovak Republic as an attorney with the firm of former Slovak Prime Minister Ján Carnogursky. He is admitted to the State Bar of Michigan and also passed the Solicitors Bar's examination for the United Kingdom. Kiska is fluent in English and Slovak.

Mr. KISKA. Thank you. I'd like to thank the commission for this opportunity.

I believe there are four major legal trends where cultural and special interests have made a significant foothold in Western Europe and created a climate non-politically as intolerance and discrimination against Christians. These trends include non-discrimination legislation, which has been used in clash of rights conflicts to marginalize both Christian manifestation of beliefs and rights of Christian conscience.

There is a censorship of the cross and other religious symbols from the public square and there's a use of limitation on freedom of expression through various manifestations of hate speech laws.

And, finally, I'd like to talk about the attack on the parental rights, particularly in the sphere of education.

So let's begin with anti-discrimination. Dr. Trigg spent a great deal of his time speaking on the dangers of anti-discrimination legislation. It's enough to say that the

European Union is now in the process of concluding a directive on anti-discrimination in goods and services. It will need unanimity among the 27 member states of the European Union; there's a question of whether they'll receive that, but if they do, it will be transposed into the national legislation of all 27 member states, soon to be 28 with Croatia joining.

The United Kingdom has already enacted many of the provisions of this directive. However, in fact, the U.K. directives are even more conservative than that proposed by the E.U. Despite the fact that it's more conservative, we really do—we really can see into the future of what this directive might cause on the continent if adopted.

Recently, in the United Kingdom, bed and breakfast owners have been sued successfully for refusing to rent one of the rooms in their own home to same-sex couples. In another instance, a foster family was denied the right to take in foster children because they opposed homosexual behavior. Most Catholic adoption agencies, which have sincerely held on to their Christian ethos, have also shut down the business because of their refusal to place infants with same-sex couples.

Now, I believe that the issue here is that the commission, when they were adopting the sexual orientation provision in the Treaty of Amsterdam, failed to define the difference between protection based on sexual orientation and opposition to homosexual behavior. One should be protected, the other shouldn't be. Because of that failure, every time there's been a clash of rights in the U.K. and elsewhere between protection of sexual orientation and opposition to homosexual behavior, religious liberty is lost.

But the anti-discrimination phenomenon goes beyond just that issue. In another case, another bed and breakfast owner got into a friendly debate on religion with a Muslim guest. The Muslim guest complained and the lawsuit ensued. The Equalities Commission funded the lawsuit, and despite winning the case after quite a lengthy period of litigation, the bed and breakfast owners were forced to close down because they were bankrupted by the legal fees associated with the claim.

The anti-discrimination debate really has taken center stage at the European Court of Human Rights in the four companion cases that were mentioned here today. What we're seeing is that simply by seeking a reasonable accommodation for sincerely held religious belief, people are being punished, fired, or pushed out of their job. And really the accommodations in these four cases were de minimis and there was no undue business hardship.

One of the issues facing Europe and the European Court of Human Rights is that the Strasbourg Court has not yet adopted a doctrine of reasonable accommodation. So despite the fact that religious liberty is part of the European Convention of Human Rights, Article 9, and that the protection should be that any interference must be necessary to democratic society and proportionate to the legitimate aim, that's not been the case. The reality has been that religious liberty has become a second-class right.

The Alliance Defending Freedom has intervened in all of the cases. We've assisted in funding all of the cases. We sat at the lawyers' table so we're very familiar with these cases. We think that they're taking preeminence before the court.

And just looking at the statistics, there is backlog currently of 250,000 cases before the court. There's only 40 cases that are given oral hearings a year and these were among those hearings. So we know that there will be an epically large decision pending within

the coming months, and we're hoping that reasonable accommodation will now become part of the precedent of the European Court of Human Rights.

Let me briefly summarize the other areas of which to speak on—the issue of censorship of religious symbols has come to the fore recently when a lower chamber of the European Court of Human Rights in *Lautsi v. Italy* demanded based on church and state separation that Italy remove all the crosses from its public school classrooms despite constitutionally protected concordats with the Holy See to the contrary, and despite centuries of cultural tradition in Italy.

Now, the Grand Chamber of the same court 1 year later dramatically overturned that decision. It had been a seven to zero chamber decision. It ended off with the Grand Chamber going 15 to two declaring there wasn't a violation of Protocol One, Article Two, and 17 to zero that the issue of religious liberty need not be reviewed at all. Nonetheless, copycat claims have sprung out since the *Lautsi* case, for example, against Greece and against Romania.

With *Lautsi* being defined the way it was, radical secularist groups were no longer going after governments. They were going after individuals. And so now we see the case of *Eweida and Chaplin*, and the refusal to allow religious symbols in the workplace. And that is basically discrimination against the Christian worldview because in those cases, other religions were being accommodated under the diversity policy, in one case for British Airways and the other cases for the hospital in question.

The question of religious expression has also come to the prominence as of late. I'd like to submit to the Commission a book* published by our office which compiles all of the hate speech laws of the European Union and in English, and cites example after example of how Christian speech has been marginalized.

[* **Editor's Note:** The introduction from the book CENSORED can be found on page 27.]

The book, which you see here, even goes into the fact that the European Court of Human Rights, over decades of protecting freedom of expression, with a standard that you were allowed to shock and offend and disturb has now changed that standard and embraced hate speech saying that it will now criminalize allegations which are serious and prejudicial.

In essence, the European Court has allowed its judges to embrace hate speech laws and provided them unfettered discretion in determining what is and what is not criminal speech. And I believe that's important here in the United States because, as it's often said, when Europe coughs, the United States catches a cold.

And the final issue I wanted to speak about is parental rights. In *Salzkotten*, Germany, we represent 14 Christian parents who were imprisoned, some for more than 40 days and most on multiple occasions, simply for opting their nine and 10-year-old children out of 2 days of mandatory sexual education.

Another case we're defending is that a 15-year-old Melissa Busekros, who comes from an Evangelical family who wanted to home school, she was put in a mental institution simply for wishing to home school, being diagnosed with what one attending physician called school phobia, and she was kept there for several months.

In Sweden, a 7-year-old-boy was taken off an airplane bound for India by police and social services simply for being home educated. The family was onboard a plane from Stockholm to India where they were going to relocate to do missionary work. The Child

and Family Service came onto the plane without a warrant, with no accusations of abuse whatsoever and took young Domenic Johansson from his family, and for 3 years he's remained in foster care. And, unfortunately, today I just got word that the appeals court has now terminated their parental rights altogether and given full custody to the foster family.

And the last example I want to share is that of the former Zapatero government in Spain which initiated mandatory classes known as education for citizenship which basically indoctrinated young children with a bombardment of material promoting homosexual behavior, hypersexual behavior, communism, and which aggressively mocked the Catholic Church. What was perhaps even more shocking was that the government refused all requests for opt-outs for the classes. Over 50,000 parents filed complaints with the Ministry of Education. I believe 3,000 lawsuits domestically took place and one class action lawsuit at the European Court of Human Rights. Yet, that curriculum remains in place. The current government has promised that it would rid the country of the curriculum altogether, but it's taken no steps to that extent.

My hope is that by providing the short outline on the major issues facing Christians in Western Europe, you can have a better understanding of the legal and cultural conditions which have allowed for such a severe deterioration of religious liberties for Christians in Europe.

Perhaps ironically, it is the Christians in Eastern Europe who are the strongest in exercising their Christian rights and seeking to influence the West to return to the ideals that acted as a beacon of light to lead the East out of the shackle of communism. Thank you.

Ms. HOLLABAUGH. Thank you, Mr. Kiska.

Next, we will hear from Tom Farr, who's known to many of you. He's been working in religious freedom in the United States for well over 15 years, I believe at this point.

Currently, he's a visiting associate professor of religion and international affairs at the Edmund Walsh School of Foreign Service, Georgetown University. He directs the Religious Freedom Project at Georgetown's Berkeley Center for Religion, Peace and World Affairs, where he is a senior fellow. He served in the U.S. Army and American Foreign Service, and has taught at both of the U.S. Military Academy and the U.S. Air Force Academy.

Dr. Farr is the first director of the State Department's Office of International Religious Freedom, director of the Witherspoon Institute's Task Force on International Religious Freedom, and a member of the Chicago World Affairs Council Task Force on Religion and U.S. Foreign Policy.

He's currently a senior fellow at the Witherspoon Institute in Princeton, New Jersey, and serves on the Secretary of State's Working Group on Religious Freedom, the boards of advisors of the John Templeton Foundation and the Alexander Hamilton Society, and the boards of directors of the Institute of Religion and Democracy and Christian Solidarity Worldwide USA.

He has a number of publications, and he's a contributing editor for the Review of Faith and International Affairs. His work has appeared in many edited volumes, and in the Harvard Journal of Law and Public Policy, the Houston Journal of International Law, Drake Law Review, Weekly Standard, National Review, New York Times, Washington Post, First Things, and the list goes on to a book he's written, World of Faith and

Freedom: Why International Religious Liberty Is Vital to American National Security, which is published by Oxford University Press.

Professor Farr, we're honored to have you with us today.

Mr. FARR. Thank you, Allison. Thanks to you and Mark Milosch [Chief of Staff, Commission on Security and Cooperation in Europe] and especially to Chairman Smith of the Helsinki Commission for holding this briefing.

Before I give my views about the status of Christians in Europe, I want to acknowledge, as Roger Trigg has done, this terrible state of Christian minorities outside the West.

Three-quarters of the world's 2.2 billion Christians live outside the West. There are more Christians that go to church in China on a given Sunday than all the Christians in Western Europe put together. Millions of these people, along with other believers, are subject to violent persecution and even death, either because of their religious beliefs or those of their tormentors.

When we speak, as we must of the growing travail of religious liberty in Europe, and, by the way, in the United States, we must never forget those Christians and non-Christians whose very lives are under constant threat because of their faith.

Now, having said this, I want to make it clear that I believe we're witnessing a worldwide crisis of religious liberty, one that, as you've heard from both of our speakers, increasingly includes Europe, and I would add, again, the United States.

While Christians and other believers in the West are not subject to violent persecution, we have growing reason for concern, not only for the well-being of religious freedom, but for the health of democracy.

So let me begin by placing Europe's problems into a global context, very briefly. The Pew Research Center has in recent years conducted three massive studies that measure two things: government restrictions on religion and social hostilities toward religion in every country of the world.

What these studies have discovered is staggering: 75 percent of the population of the world lives in countries in which religious freedom is either highly restricted or very highly restricted. Those affected are Christians, Muslims, Jews, Buddhists, Hindus, and others, most of them minorities, but some are reformers within the majority communities, who cannot speak out without being attacked under anti-blasphemy and anti-defamation laws and practices.

These people live for the most part in about 73 countries of the world. Most of those countries are Muslim majority, and many of them are in the broader Middle East. Others are Communist countries, such as China and North Korea, Cuba, or large non-Muslim countries, such as India and Russia.

It's an unfortunate sign of the times that Europe has now entered this mix. The list of 73 countries includes France, Germany, and the United Kingdom. Of all the religious groups that are subject to harassment worldwide and persecution, Christians fare the worst. They are harassed in some 139 countries of the world. Muslims are a close second, suffering harassment in 121 countries.

Perhaps the most alarming result of the Pew studies, however, is that the twin problems of restrictions on religion and religious persecution are getting worse, not better. Virtually all the indicators have shown a deterioration in every region in the world. Both the data and the trends, I would submit, constitute a global crisis in religious liberty.

So let's turn now to the fate of religious freedom and of Christians in Europe. Recall that Europe is the continent where the intellectual origins of religious liberty lie. In our Religious Freedom Project at Georgetown's Berkeley Center, we're conducting a program on Christianity and freedom to take a fresh look at the contributions of Christians and Christian's ideas to the spread of freedom, both historically and in the contemporary world.

Among other things, our research is confirming that the wellsprings of religious freedom are to be found in the first centuries of Christianity, and that the concept grew to maturity in what later became European civilization, including the American colonies and, ultimately, the United States. It's all the more alarming then to discover how the roots of religious freedom have atrophied in the Europe of the 21st century.

One of the Pew studies reported that all of the regions of the world, social hostilities toward religion are rising most rapidly, not in the Middle East, or Asia, or in Africa but in Europe. Here are a few indicators of the trend.

As of 2010, the United Kingdom was ranked 17th in the world in social hostilities toward religion. That's out of approximately 200 countries. Germany was ranked 23rd and France 25th. Between 2007 and 2010, there were significant increases in social hostilities in all three countries. By 2010, each of these major Western European countries graded worse in the category of social hostilities than the likes of Burma, Iran, and Sudan.

The three also showed significant increases in the levels of government restrictions on religion. Between 2007 and 2010, government restrictions in the U.K. increased, according to these studies, by an astounding 67 percent; in France, by 20 percent; Germany by 23 percent.

Symptomatic for this problem is that there are, as we've heard, currently four cases of British citizens before the European Court of Human Rights, each alleging that the state has simply ignored their fundamental rights of conscience.

Both British courts and the current British government have taken the position that they will define what constitutes Orthodox Christianity, not the individuals concerned or the churches themselves. This I would submit is a position that endangers, not only religious freedom but democracy itself.

By way of comparison, as of 2010, the United States was ranked 49th in the world, worse than Syria, Laos, and the Congo in social hostilities toward religion. This phenomenon is or ought to be shocking to all of us. Like the three European countries, U.S. scores show significant worsening between 2007 and 2010 in both categories, that is social hostilities and government restrictions.

So how do we explain all this? Should we be alarmed? And if so, why? The Pew report suggests that we are witnessing a significant downgrading of religious liberty in the West, precisely at the time that religious persecution is spiking elsewhere in the world.

Allowing for the fundamental differences in the symptoms, namely violent persecution outside the West and growing discrimination inside the West, are there any similarities? I would argue that there are.

To put the matter succinctly, the belief that religious freedom is necessary for human flourishing and for the success of democracy is either being rejected or just simply being lost. Outside the West, the commitment to religious liberty has never taken root. This deficit helps account for the failures of Arab Spring in other countries struggling for democracy.

There's ample evidence in history and contemporary scholarship that democracy in highly religious societies cannot consolidate without religious freedom in full. That evidence also suggests, by the way, that religious freedom is important for the defeat of religion-based terrorism.

The critical role of religious freedom in the consolidation of democracy and in undermining religion-based terrorism are two reasons why the U.S. policy of advancing international religious freedom is so important to American national interests.

But the Pew reports also suggest that Western nations, including Europe, as I've said, and the United States, are themselves abandoning the belief that religious liberty is necessary to the flourishing of individuals and the success of democracy. This helps to explain why we have proven so ineffective in advancing international religious freedom.

Now, there are many reasons for this decline in Europe and the West. I'll cite four very briefly. First is the decline of religion itself and the emergence of what Pope Benedict the XVI has called the dictatorship of relativism, that is the belief that there are no objective truths and that all rights claims have equal validity. This helps explain why in Europe, and increasingly in the United States, religion is considered a personal preference with no more claim to state protection than any other preference.

The second reason is the triumph in Europe of the French model of religious liberty, in which the freedom to practice religion is confined to the private sphere.

Third is the related belief that religion—Roger mentioned this, Roger Trigg, religion is essentially emotive and irrational, and, therefore, inappropriate as a means of influencing public policy.

And fourth—and I don't want to underestimate the importance of this—is the contraction of faith-based organizations in civil society. Private religious hospitals, colleges, charitable organizations have either been historically weak, as in France, or are losing their religious motivations and identities, as in the United Kingdom. And I would note that each of these four trends, while less advanced than in Europe, is present in the United States as well.

So let me conclude. Why does all this matter? Because religion is more than a private and personal preference, more than a private matter unrelated to the health of democracy. Religion is the enterprise of discovering whether there is a more than human reality to which or to whom I owe my existence, whether there is a transcendent reality that accounts for my being to which or to whom I should attune my behavior and who determines my fate in an afterlife, if one exists.

These are powerful questions that every human being naturally seeks to answer. In the 21st century, the data show the vast majority of the world's peoples think they have found answers to at least some if not all of these questions.

Religious freedom is the right to pursue the answers to the religious questions. It's the right to join with others of like mind and spirit and worship in civil society associations and the right to influence the laws and policies of the Nation with religion-based arguments, on the same basis as non-religious persons and non-religious arguments. It's the right not to be coerced by the state to act against one's religious conscience. To deny religious freedom in any of these senses is to mount an attack on human dignity and to undermine civil and political society.

In short, to insist that a person or a religious community must live as the state mandates, without the right to live privately and publicly in accord with religious truth, as

one has apprehended that truth, constitutes a firm step in the direction of tyranny. Unfortunately, that is the trend we are witnessing in Europe today.

Again, thank you for the opportunity to appear today.

Ms. HOLLABAUGH. Thank you, Professor Farr. I have several questions I'd like to put to the panel and then I'll open it up to the audience members for questions.

Following up on your statement just a moment ago, that the U.K. courts are involved determining what constitutes Orthodox Christianity rather than individuals and the church determining what constitutes Orthodox Christianity, and that this endangers not only religious freedom but democracy itself, and that highly religious societies cannot consolidate without religious freedom in full.

Would you elaborate further on the connection between religious freedom and democracy? And also, clarify whether or not religious freedom is necessary for cohesion in the society if a society is not a highly religious society?

Mr. FARR. OK. Very good. There was a lot packed into those two questions. And I'll try not to give too extensive an answer but certainly willing to followup.

There's a lot of evidence in history, not least the history of the United States, but also the former history of the United Kingdom, if I could put it that way, Roger, that religious freedom is necessary for the consolidation of democracy. Our own founding fathers saw this as necessary for the health of democracy.

For George Washington, John Adams, Alexander Hamilton, even Thomas Jefferson, and Ben Franklin, the two least religious of our founders, it was quite clear that they were talking about the religious enterprise in general, not just Christianity, as necessary for the health of democracy. I suppose the best example of many is the famous speech of George Washington in the second farewell address as president in which he said—I'm paraphrasing here—don't fool yourselves, Americans, that we can have a moral citizenry without religion, because, in his view, religion was the source of morality. Now, we may have matured a bit beyond that narrow understanding of the sources of morality, but the American people are still highly religious.

And this goes to the second part of your question, Allison. The vast majority of the countries of the world are made up of highly religious individuals. It's both common sense, it's historical, but I would argue grounded in the work of empirical sociologists, such as Brian Grim at the Pew Research Center, that democracy for highly religious societies is not going to work—it's not going to last, not going to root, so that it doesn't just collapse into tyranny or theocracy or something else—without religious freedom.

Read the work of Brian Grim and Roger Finke. *The Price of Freedom Denied* is one very good place to start. And it shows huge correlations between the absence of religious liberty and the failure of democracy to consolidate. And, by the way, there are other huge correlations as well that are connected with this: economic growth, women's rights, and the absence, as I mentioned, of violent religious persecution and terrorism.

So the point is if you want democracy to work, especially in highly religious societies, you're not going to succeed without religious freedom.

So I think this is a terribly important point for our own country, for our own foreign policy, but also for Europe not to lose this, because if they do, it suggests that our own democracies are imperiled in a way that neither they nor we have begun to talk about. I hope that addresses the question.

Ms. HOLLABAUGH. Thank you, Professor Farr. Yes, it does. Something that would be helpful with putting the situation in the U.K. into context would be a bit of history on accommodations for religion in the U.K.

And, Mr. Kiska, maybe you'd like to speak to this. Does the U.K. have a religious history—a legal history that is, of religious accommodation that's being turned on its head and ignored? Or has it been the case in the past that such cases haven't made it to the courts, or haven't occurred in the society? Are we seeing a new phenomenon that's entering as a case of first instance in the courts?

Mr. KISKA. I'll briefly address this because I see that Dr. Trigg had some comments on it as well.

I think like much of Europe, religious liberty has been dearly won over the centuries. There's been a lot of bloodshed over it, and it should be praised much higher than it is. If you look at all the international treaties that have come out since World War II, the major treaties, religious liberty is always on that list.

In the United Kingdom, this phenomenon has really just taken off in the past decade or two where they do have a concept—it's not called reasonable accommodation—but it's only in the sphere of disability. It hasn't been extended to religious liberty or any other part of society.

So these cases coming before the courts, employment tribunals, and the Supreme Court are cases of first instance, and they began to develop once the so-called sexual orientation regulations of 2007 were legislated—now, they're the consolidated 2010 version.

So really this is the first time, cases of this type have gone to Strasburg from the U.K. So we're going to have these questions determined within the next year or two as these four cases at the ECHR are on their way to being decided, but there are other cases. The Bull case, which is the bed and breakfast owners I mentioned, will eventually make its way up to the ECHR, as will several other of these cases. So the way that the ECHR interprets those will undoubtedly shape the way the U.K. courts and the legislature will deal with these issues as well.

Ms. HOLLABAUGH. Thank you.

Mr. TRIGG. Could I just add to that?

Ms. HOLLABAUGH. Please.

Mr. TRIGG. I mean, there is actually a very good tradition of accommodation. They haven't called it reasonable accommodation, but, for instance, if I could just take two examples from what—the 1970s, '60s, one of Christians particularly with objections to abortions, and there's still an opt-out for that. They're not for nurses and so on. So that's clearly a case of accommodation. And that provides a model for the more recent cases that hasn't been taken up.

Another good example of a non-Christian cases is of course Sikhs, who are very reluctant not to wear their turban but to wear—and had to wear—a helmet.

Now, this was an issue about riding motorbikes, for instance, because there was a law brought in about having to wear a helmet, what about Sikhs? Well, there was a specific opt out written into the law so that Sikhs could continue to wear the turban and not a helmet. And that's a kind of classic example of trying to accommodate.

And that's been the tradition in English law until very recently. I think a lot of this trouble arises since 1998, since the European Convention was explicitly imported into British law. And also, now, with the Supreme Court being separated from parliament,

there's a built-in—as in the United States—a built-in tension between the legislature and the lawmaking, the judiciary.

And I think there that means that more and more people are going to court to get their way when they know they can't get it through parliament. And sometimes the courts are enforcing things that actually are deeply unpopular, but it is changing the way people behave in the country.

Ms. HOLLABAUGH. Is there a general sense in the populous that there might be impending problems for religious freedom in the U.K.?

Mr. TRIGG. Well, I mean, I think it's a big issue and sufficiently big for some of the popular press like the Daily Mail to run big headlines about it week after week. I mean, it's a campaigning issue. So people feel strongly about it certainly.

Ms. HOLLABAUGH. I saw one interview recently regarding the four cases before the ECHR. The interviewer was speaking to a bishop, and asked the bishop, are you advocating for special rights for religious people, Christians in particular? Why should they have rights that everyone else doesn't have?

And so this mentality that came across was that the idea of religious freedom is becoming a concept of special rights and unequal rights.

Dr. Trigg, you mentioned in your statement the—I believe it's the equality law. I may be misquoting it—

Mr. TRIGG. Yes. Yes.

Ms. HOLLABAUGH [continuing.] That protects race, sex, and sexual orientation but does not protect religion. Did I understand you correctly?

Mr. TRIGG. And I was particularly talking about the way in which Article 14 of the European Convention is administered, because there, it outlaws discrimination on any grounds, such as sex, race, color, language, religion. But sex—sexual orientation, race, yes, they're absolute trumps.

I mean, for instance, if Lillian Ladele, the registrar, happens to be of West Indian origin. If she had been able to prove racial discrimination, that would have been an open and shut case. Because she was a Christian, that isn't the problem. And yet, in law, and according to the European Convention of Human Rights, it seems to me that religion is as much a basis of discrimination as her race. And yet that's not being applied.

So that's why these cases are particularly important, because I know that some of the barristers and lawyers representing Lillian Ladele were trying to push that actually, saying it's discrimination on grounds of religion, and that is built into the convention.

Ms. HOLLABAUGH. Thank you. Do either Mr. Kiska or Professor Trigg want to comment on that? I have several more questions but don't want to miss having a question from the audience if there are any. Any questions?

Then I'd like to move to Dr. Trigg. You were participating in a long-term study on the connections between religion and human nature. I may be mischaracterizing this, a long-term study. But I'd appreciate going into detail for the audience.

Mr. TRIGG. Right. Well, this is in the cognitive science of religion. I was looking at the implications of this but we had a lot of scientists looking at it, biologists, anthropologists, psychologists.

And if I could just summarize, I mean, obviously, in anthropology, you can find religion has been universal. I mean, you can be pretty sure that in any society we investigate

there was religion, and I've heard even atheist anthropologists say, yes, we're sure of that. I mean, even if you might regret it, it's a fact.

More interestingly perhaps is research into child's development. And you'll find that there's a lot of research now showing that children find it very easy to think in religious terms. They find it very easy to think about God or the god and people surviving death.

They find it very easy to think in terms of purpose. If you say why a rock's pointed, they don't like scientific explanations. They'll say so, well, so that the birds can't sit on them or they think in terms of purpose, that will give a purpose of explanation, which is, incidentally, why this has nothing to do with truth and falsity. It's just about how people think, but it's why, actually, people find it very difficult to accept evolutionary accounts in the first place if they're meant to replace purposive accounts.

But certainly—deep into human nature is this idea that we're apart from our bodies, that we can think of us as being apart from our bodies, that we see purpose, that we can immediately jump to think of disembodied agency, for instance. I mean, this is all part of all human experience. If you hear something going bump in the night, you wouldn't just think what's falling of the roof. You'll think who's there. And if you're walking through a dark forest, there's a rustle, you think who's there.

And there's a very good reason why we've developed like that, because if you don't think that there's something or somebody there, you might get eaten. So, actually, it's very much part of human nature to think in terms of agents, and if you can't see somebody, well, it is a disembodied agent. There's a spirit in the tree moving it.

So all of this, I mean, it's a very complicated and long story really, but it shows I think deep down in children and in people across cultures and times religion is the default option, I mean, religion in all its forms; it's very much undetermined which religion. Atheism is very sophisticated.

Atheism is like very complicated theology or even like science. Science is very sophisticated and counterintuitive. Religion isn't counterintuitive. That's what they find.

So, I mean, this does have implications of what we're talking about here because it does mean that religion is here, part of us, whether we want it to be or not, whether we think we should grow out of it or not. It's still part of what it is to be human, and you can't just brush it aside or say it's a private matter.

Mr. FARR. I would just add those who are—if there are those who are interested in more of this topic, we have a standing seminar in our Religious Freedom Project on this subject in which Roger and others have participated. And we have a number of videos in which we brought together biological evolutionists and our evolutionary biologists, I guess that is, and philosophers of religion, and physicians, doctors, and others to talk about this very issue, the cognitive science of religion. So if you're interested, go to our Web site and you'll find more.

Ms. HOLLABAUGH. I'd like to ask just one more question. And that is regarding the Pew Forum study. We've mentioned social hostilities several times in this conversation. How does the Pew Forum study describe the social hostilities that they would deem to be very high in Germany, France, and the U.K.?

Mr. FARR. If you go to the Pew Research on our Web site, they have a full description of their methodology. But, basically, what they did was compile a list of questions having to do with violence against religious people or religious arguments, coercive policies, not

by government but by private agencies of society, by mobs, by other groups that are non-governmental.

And then they set out to measure these in each country of the world gathering together some 20 odd reports on religious freedom and religious restrictions that exist around the world, preeminently the annual report of the American—of the State Department on International Religious Freedom—but also cross-checking with a whole series of international reports. They coded all of this, and they came up with scores. It's quite transparent; it's quite sophisticated.

So if you're interested, I urge you to go and take a look at their methodology. They're going to be doing this annually now. They've done three of them and they will continue as far as I know into the future.

Mr. TRIGG. Could I just add that just as somebody who lives in the United Kingdom, I find it's slightly odd to find the U.K. ranked below places like Burma and Sudan, where people actually lose their lives because of their religious beliefs. And we're not in that kind of situation yet at all. So I don't quite know what they're getting at there.

Mr. FARR. It's quite shocking. There's no doubt about it. I mean, as I say, the United States is ranked worse than some countries you wouldn't think that would be the case.

My response to this is less—I mean, people should take of it what they want, but I'm alarmed by the trends. It may be that these percentages are off and the rankings are not quite properly calibrated, but the notion that the birthplace of religious freedom, mainly the West, is now turning against it is what is alarming to me.

Mr. TRIGG. And, certainly, I would say that compared with 30 years ago that there is a problem. And this wasn't a problem 30 years ago in Britain.

Mr. KISKA. Can I add that we began this discussion by saying it's a little unusual to talk about the concept of marginalization of Christians in the West. Well the European Parliament has had two such seminars, and already in the OSCE in Rome and Vienna had seminars on this as well. So it is a prevailing issue.

We like to say that it is the difference between east of Vienna and west of Vienna. East of Vienna, you certainly see real-life persecution, people losing their lives because of their religious belief. Well, those countries also have endemic—within them—issues of real rule of law problems so that it's not just targeting religion. It's a general base problem of rule of law issues, whereas in the West, you see intolerance and discrimination. That's different than persecution. It's intolerance. It's not persecution. But it is very targeted, and it is within the rule of law and enshrined unfortunately by courts and legislatures.

Ms. HOLLABAUGH. Thank you. And thank all of you for your time today and your insights.

The information, the statements and as much as else we can put on the Webv site, we'll have available for your use and for our friends in Europe. Also, we'll try to link to the conferences that were just mentioned by Mr. Kiska so you can see the work that's being done across the pond. Thank you so much for joining us today.

[Whereupon, at 3 p.m., the briefing ended.]

APPENDICES

PREPARED STATEMENT OF DR. ROGER TRIGG, ACADEMIC DIRECTOR, KELLOGG CENTRE FOR THE STUDY OF RELIGION IN PUBLIC LIFE, OXFORD UNIVERSITY AND ASSOCIATE SCHOLAR, RELIGIOUS FREEDOM PROJECT, GEORGETOWN UNIVERSITY

Europe as a whole is becoming more aggressively secular. The Council of Europe (which is responsible for the European Court of Human Rights in Strasbourg) is to be distinguished from the European Union, and represents the Parliaments of 47 European countries including Turkey and Russia. It sees the separation of church and state as one of Europe's shared values (in defiance of the facts), and even says: "Nor may states allow the dissemination of religious principles, which if put into practice, would violate human rights. If doubts exist in this respect, states must require religious leaders to take an unambiguous stand in favour of the precedence of human rights . . . over any religious principle.' This means that 'equality' and 'non-discrimination' trump appeals to religious freedom, and pits human rights against religion, rather than seeing freedom of religion as the most basic right (The freedom of the Church is Article 1 of Magna Carta, and is one of the four Articles still in force in England!).

This tends to reflect the atheism and the anti-clericalism of the later French Enlightenment, and France and Spain are very active in pursuing an agenda to eradicate religion from the public square. That has not been the British (or American) way. John Locke, (the philosopher who influenced the English glorious Revolution of 1688–9, and also American Independence through his admirers such as Thomas Jefferson) made equality and freedom important because of his Christian theology. God has given us free will, and we are all equal in God's sight. Indeed there is a continuing issue why these can be important, and why humans and human rights matter, if their Christian foundations are removed.

The Strasbourg Court is now more active in its rulings (and more unpopular in the United Kingdom). Further, the English courts now, through the Human Rights Act of 1998, and the Equality Act of 2010, place more importance on 'equality', and tend to enforce non-discrimination on grounds of race, sex, and sexual orientation, rather than because of religion. 'Ladele'—one of the four religious freedom cases currently before the European Court—illustrates this. A civil registrar refused to register civil partnerships and lost her job. She was told by the courts that beliefs about marriage were not a 'core' part of Christian belief, and anyway she had religious freedom because she was free to worship. Incidentally, even the latter is in jeopardy because of Sunday working—but people are told by the European Court that they have freedom of contract, so they have their religious freedom, as they are free to give up their job. A freedom to be unemployed is not much of a freedom.

The courts can easily side-line religion as subjective and irrational, and therefore only of private concern. Lord Justice Laws said in the Court of Appeal in London: 'In the eye of everyone, save the religious believer, religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence . . . To protect a position held on religious grounds is irrational.' Thus the courts are often unsympathetic to religion and seem unwilling to make a reasonable accommodation for religion. Secularists can use the Courts

to override public opinion, and democratically elected representatives (cf the forbidding by a Court of saying prayers before a Council meeting in Bideford, Devon, a practice held since the sixteenth century.)

A further straw in the wind is that religion is no longer seen as having intrinsically a charitable purpose. To obtain tax exemptions it has to demonstrate 'public benefit', a dangerous move as that could be interpreted according to the fashions of the moment to the detriment of religion.

There is no hierarchy of rights, so the right to religious freedom cannot be ignored or narrowed so as not to include most manifestations of belief. We need not just freedom from religion (as France wants) but also freedom for religion—which is an integral part of human nature. We ought to be able to express our most basic impulses and beliefs to flourish as humans.

The Established Church of England still provides public recognition for the place of religion in public life. England, though fast living off its spiritual capital, is still recognisable as a country with a Christian heritage, and its toleration and love of freedom is still rooted in that. Christmas is still Christmas (not 'the holidays') and carols and hymns sound through the shopping streets and malls in December. Establishment is defended most fiercely by representatives of other faiths (such as the Chief Rabbi) who see the Church as an umbrella protecting their place in public life, able to contribute to the public sphere. Secularists want to exploit European law to change all this, but the activism of the European Court of Human Rights in other areas as well (such as the issue of voting rights for prisoners) is no doubt a part of current British disenchantment with 'Europe'.

There is though an alarming and growing ignorance of Christianity within Britain amongst a younger generation, and Christian understandings can no longer be assumed to be a normal part of the culture. This provides a dangerous and growing vacuum, and 'multi-culturalist' policies, which have come into disrepute, have not helped.

PREPARED STATEMENT OF ROGER KISKA, LEGAL COUNSEL, ALLIANCE DEFENDING FREEDOM (VIENNA, AUSTRIA)

There are four major legal trends where cultural and special interest forces have made significant footholds in Western Europe and created a climate known politically as intolerance and discrimination against Christians.¹ These trends include: (a) non-discrimination legislation (which has been used in clash of rights conflicts to marginalize both Christian manifestation of belief and rights of Christian conscience); (b) the censorship of the Cross and other religious symbols from the public square; (c) the use of limitation on freedom of expression through various manifestations of “hate” speech laws; and (d) an attack on parental rights in the area of education.

Let us begin with anti-discrimination legislation which all too often is being used as a tool to limit freedom of thought, conscience and religion to merely freedom of worship in favor of prevailing privileges based on “sexual orientation.” Currently the European Union is in the process of concluding a Directive on Goods and Services which would then be transposed into the national legislation of all 27 E.U. Member States.²

The United Kingdom has already enacted many of the provisions of the proposed EU Directive in its Sexual Orientation Regulations of 2007. While the UK legislation is actually more conservative than that proposed by the European Commission, we can see that the early results of the legislation have been that anytime a conflict has arisen between people of faith defending a moral position against homosexual behavior, that religious liberty has lost out.

Recently in the United Kingdom, bed and breakfast owners have been successfully sued for refusing to rent one of the rooms in their home to a same-sex couple because of their religious convictions.³ In another instance, a foster family was denied the right to take in a foster child because they opposed homosexual behaviour.⁴ Most Catholic adoption agencies which have sincerely held onto their Christian ethos have also shut down to business because of their refusal to have to place infants with same-sex couples.⁵

The anti-discrimination phenomenon has not been limited only to the arena of protection of “sexual orientation.” In yet another case, another bed and breakfast was forced to close because a Muslim woman complained that the Christian owners engaged her in a theological debate and therefore she was discriminated against because of her religion.

¹This trend was first recognized inter-governmentally by the Organization for Security and Co-operation in Europe. See: OSCE/ODHIR, *Intolerance and Discrimination Against Christians: Focusing on Exclusion, Marginalization, and Denial of Rights*, 4 March 2009. <http://www.osce.org/odihr/40543>. The European Parliament has also actively promoted awareness of the trend. On 2 October 2012, the European People’s Party together with the European Conservatives and Reformists Group jointly adjourned a seminar at the European Parliament focusing exclusively on the issue of intolerance and discrimination against Christians. Last year, the European People’s Party held a similar seminar on 16 March 2011.

²See: *Council Directive 2004/113/EC*, Official Journal L 373, 21/12/2004 p. 0037–0043.

³*Hall and Preddy v Bull and Bull*, (Case No. 9BS02095), 18 January 2011. A similar conviction took place just this year in the case of *Black and Morgan v. Wilkinson* [2012].

⁴*Johns & Anor, R (on the application of) v Derby City Council & Anor* [2011] EWHC 375 (Admin) (28 February 2011).

⁵See e.g.: *Catholic Care v The Charity Commission* (CA/2010/0007), 26 April 2011. The following adoption agencies have been forced to cut ties with the church and change their name and ethos: Catholic Children’s Society, Nottingham; St Francis Children’s Society, Northampton; The Catholic Children’s Society; St David’s Children Society, Wales; Catholic Caring Services, Lancaster; St Andrew’s Children’s Society, Scotland. See: *Adoption Agencies Shut under “Equality” Laws*, The Christian Institute, April 2009.

Although the bed and breakfast owners eventually won the case, the legal fees bankrupted them and put them out business.⁶

The anti-discrimination debate has taken centre stage before the European Court of Human Rights in four companion cases against the United Kingdom.⁷ In all four cases, the applicants to the European Court of Human Rights were fired or pushed out of their jobs because they sought reasonable accommodations of their religious beliefs where such accommodations were fairly de minimus and absolutely no business hardship would have occurred. Interestingly, in none of the cases were actual clients directly discriminated against as the individuals were terminated from their positions for having sought out the accommodations.

Alliance Defending Freedom has intervened in the cases as well as provided direct assistance to the applicants seeking from the European Court recognition of a reasonable accommodations standard which has yet to be formally utilized at the European level.

Let me now briefly summarize the other three areas I wish to speak about. The issue of the censorship of religious symbols has come to the fore recently when a lower chamber of the European Court of Human Rights ruled that Italy would have to remove all of the crosses from its public school classrooms despite constitutionally protected concordats with the Holy See to the contrary and despite centuries of cultural tradition.⁸ The Grand Chamber of the same Court one year later dramatically overturned the decision by a vote of 15–2 on the issue of parental rights and 17–0 that the religious liberties claim be dismissed outright.⁹ Copy cat claims sprung up immediately following the lower chamber judgment. However, as the Lautsi case was reversed by the Grand Chamber the battle has now shifted towards the state banning of the wearing of religious symbols in the employment sphere. These cases too are pending before the European Court of Human Rights.

The question of religious expression has also come to prominence as of late. I would like to submit to the Commission a book published by our office which compiles all of the “hate speech” laws of the European Union in English and cites example after example of how religious expression has been punished in Europe. The European Court of Human Rights itself has recently seriously deviated away from its decades long standard of protecting speech which shocks, offends and disturbs.¹⁰ It has adopted in recent years a new standard which allows for the criminal punishment of allegations which are serious and prejudicial.¹¹ In essence, the European Court has allowed its judges to embrace “hate speech” laws and provided them unfettered discretion in determining what is and what is not criminal speech. As the book makes clear through its mass of examples, the result has been a strong chilling effect on Christian speech.

Finally there is the issue of parental rights. In Salzkotten, Germany, 14 Christian parents were imprisoned, some for more than 40 days and most on multiple occasions, simply for opting their 9–10 year old children from 2 days of mandatory “sexual edu-

⁶ For a detailed analysis of the case, see J. Davies, ‘A New Inquisition’, *Civitas*, 2010. Press release available at: <http://www.civitas.org.uk/press/prANewINquisitionJuly2010.htm>.

⁷ ECHR, *Lillian Ladele and Gary McFarlane against the United Kingdom*, Application nos. 51671/10 and 36516/10; ECHR, *Nadia Eweida and Shirley Chaplin against the United Kingdom*, application nos. 48420/10 and 59842/10.

⁸ ECHR, *Lautsi v. Italy* [Second Section], Application no. 30814/06, judgment of 03 November 2009.

⁹ ECHR, *Lautsi v. Italy* [GC], Application no. 30814/06, judgment of 18 March 2011.

¹⁰ ECHR, *Handyside v. The United Kingdom*, no. 5493/72, § 49, ECHR 1976.

¹¹ ECHR, *Vejdeland v. Sweden*, (Application no. 1813/07) judgment of 9 February 2012.

cation” classes.¹² Also in Germany, the 15 year old daughter of an Evangelical family was placed in a mental institution for wishing to be home educated. The reason for her police detention and subsequent committal to the Nuremberg mental facility was the false diagnosis by a single practitioner that the young girl in question had “schoolphobia.”¹³ In Sweden, a seven year old boy was taken off of an airplane bound for India by police and social services simply for being home educated. The family was relocating to India to do missionary work with orphanages. The police had no warrant and the family was accused of committing no crimes when young Dominc Johansson was taken from his parents nearly three years ago.¹⁴ In Spain, the Zapattero government initiated mandatory classes known as “education for citizenship” which indoctrinated young children with a bombardment of material promoting homosexual behavior, hypersexual behavior, communism and which aggressively mocked the Catholic Church. What was perhaps even more shocking was that the government refused all requests for parental opt-outs of the classes despite more than 50,000 complaints from parents, hundreds of law suits and ultimately a class action law suit at the European Court of Human Rights.¹⁵

My hope is that by providing this short outline of the major issues facing Christians in Western Europe, you can have a better understanding of the legal and cultural conditions which have allowed for such a severe deterioration of religious liberties for Christians in Europe. Perhaps ironically, it are Christians in Eastern Europe who are the strongest in exercising their Christian rights and seeking to influence the West to return to the ideals that acted as a beacon of light to lead the East out of the shackles of Communism.

¹² See: <http://www.adfmedia.org/News/PRDetail/4690?AspxAutoDetectCookieSupport=1>.

¹³ See: <http://www.wnd.com/2008/03/59947/>.

¹⁴ See: <http://www.adfmedia.org/News/PRDetail/3607>.

¹⁵ See: <http://adfmedia.org/News/PRDetail/5315>.

CENSORED

PAUL B. COLEMAN

INTRODUCTION

“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master—that’s all.”¹

Lewis Carroll, Through the Looking Glass, 1872

When should freedom of speech be limited in a free society? This is a question that has been repeatedly raised throughout the last century and the answer is far from settled in the present one. From Justice Oliver Wendell Holmes’ famous analogy of “falsely shouting fire in a theatre and causing a panic,”² to the debates after the Second World War over criminalizing “Holocaust denial,”³ to the abolition of the historic blasphemy laws in the United Kingdom and other Western nations,⁴ the question of where to draw the line between acceptable and unacceptable speech has been fiercely debated.

If it is true that freedom of speech is one of the measures of a democratic society, it is interesting to consider where the nations of Europe currently stand.

Broadly speaking, it is assumed that the countries where freedom of speech is most heavily restricted are oppressive authoritarian regimes, and the countries where freedom of speech is cherished and protected are the liberal democratic nations. However, if it is true that freedom of speech is one of the measures of a democratic society, it is interesting to consider where the nations of Europe currently stand.

FREE SPEECH SCHIZOPHRENIA

At the beginning of 2012 it was reported that a man in Indonesia faced a sentence of five years imprisonment for posting on Facebook that “God does not exist.” The Dharmasraya Police Chief told the Jakarta Globe that the posting met “the criteria of

¹ Carroll, Lewis, *Through the Looking-Glass*, Hayes Barton Press, 1872, p. 72.

² *Schenck v. United States*, 249 U.S. 47 (1919).

³ Nine countries in Europe explicitly ban Holocaust denial: Austria, Belgium, Czech Republic, France, Germany, Hungary, Luxembourg, Poland and Romania. See <http://beta.genocidepreventionnow.org/Portals/0/docs/Laws_Banning_Holocaust%20Denial_blog.pdf>

⁴ The blasphemy offence in England and Wales was abolished by section 79, Criminal Justice and Immigration Act 2008.

tainting religion, in this case Islam.”⁵ At the time of writing, Alex Aan remains in prison and, understandably, his case is being met with dismay as it is reported around the world.⁶

When the infamous blasphemy laws of Pakistan are mentioned in the supposedly tolerant West, there is united condemnation for criminal provisions that penalize such actions as “uttering words” with the “deliberate intent to wound religious feelings.”⁷ The European Parliament has passed several resolutions against the blasphemy laws, urging the Government of Pakistan to reconsider its stance on the laws and ultimately calling for their repeal.⁸

And as journalists are routinely fined and imprisoned around the world for writing on sensitive topics, the Organization for Security and Cooperation in Europe’s (OSCE) Representative on Freedom of the Media continues to issue regular press releases stating that “speech should not be criminalized”⁹ in countries such as Russia,¹⁰ Turkey¹¹ and Kyrgyzstan¹²—the latter recently convicting a journalist for “inciting interethnic hatred” in online newspaper articles. The UN Human Rights Committee similarly recommends that “States parties should consider the decriminalization of defamation”¹³ and in a recent hearing, the Human Rights Committee held that the Philippines had violated the right to freedom of expression after a member of the public was sentenced to prison for defamation.¹⁴

Yet how far are the above infringements on freedom of speech from the incidents currently taking place in “tolerant Europe”? While a man in Indonesia is imprisoned for posting that God does not exist, a Bishop in Ireland has been reported to the police for stating that Ireland has a “secular and godless culture.”¹⁵ Rather than simply refusing to investigate the complaint, the police passed the file on to the Director of Public Prosecutions for his consideration.

While section 298 of the Pakistani Criminal Code prohibits uttering words with the deliberate intent to “wound religious feelings,”¹⁶ it ought to be pointed out that section 141 of the Criminal Code of Cyprus—a member of the European Union—has the exact same provision.¹⁷ And while the OSCE maintains that “speech should not be criminalized”

⁵ ‘Dismay After Indonesian Atheist Charged with Blasphemy’, Jakarta Globe, 20 January 2012. Available at <<http://www.thejakartaglobe.com/news/dismay-after-indonesianatheist-charged-with-blasphemy/492622>>.

⁶ ‘Indonesia’s Atheists Face Battle for Religious Freedom’, Guardian, 3 May 2012. Available at <<http://www.guardian.co.uk/world/2012/may/03/indonesia-atheists-religious-freedom-aan>>.

⁷ Criminal Code, section 298. Available at <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html#109>>.

⁸ For example, see European Parliament resolutions of 10 March 2011, 20 January 2011 and 20 May 2010.

⁹ <<http://www.osce.org/fom/91880>>.

¹⁰ <<http://www.osce.org/fom/92106>>.

¹¹ <<http://www.osce.org/fom/91991>>.

¹² <<http://www.osce.org/fom/91937>>.

¹³ UN General comment No. 34, 12 September 2011 (CCPR/C/GC/34) § 47 (referencing Concluding observations on Italy (CCPR/C/ITA/CO/5) and concluding observations on the Former Yugoslav Republic of Macedonia (CCPR/C/MKD/CO/2)).

¹⁴ *Adonis v. The Philippines*, 26 October 2011, CCPR/C/103/D/1815/2008.

¹⁵ ‘Bishop accused of incitement to hatred in homily’, Irish Independent, 29 January 2012. Available at <<http://www.independent.ie/national-news/bishop-accused-of-incitement-to-hatred-in-homily-3003057.html>>.

¹⁶ Criminal Code, section 298. Available at <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html#109>>.

¹⁷ See Part Two, ‘Cyprus’.

and the European Parliament condemns the blasphemy laws of Pakistan, European supranational institutions continue to push for more and more limitations on speech.

For example, it is claimed by the European Commission against Racism and Intolerance (ECRI) that the criminal law should penalize “public insults and defamation” when committed intentionally;¹⁸ the European Union has recently passed a Framework Directive which states that countries may punish conduct which is “insulting”;¹⁹ and the Committee of Ministers of the Council of Europe has stated that countries should “bear in mind that specific instances of ‘hate speech’ may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights.”²⁰

Hence, criminal prohibitions on speech are condemned in some instances, yet at the same time prohibitions on certain forms of “insulting” speech are encouraged and even insisted upon. This schizophrenic attitude highlights the confusion that surrounds the debate on free speech and so-called “hate speech.” Indeed, it is not even clear what is meant by the term “hate speech.”

WHAT IS “HATE SPEECH”?

To paraphrase Humpty Dumpty, the phrase “hate speech” means just what people choose it to mean, neither more nor less. A recent factsheet produced by the European Court of Human Rights admits that there “is no universally accepted definition of the expression ‘hate speech’”²¹ and a previous fact sheet observed that, “The identification of expressions that could be qualified as ‘hate speech’ is sometimes difficult because this kind of speech does not necessarily manifest itself through the expression of hatred or of emotions. It can also be concealed in statements which at a first glance may seem to be rational or normal.”²²

According to the Council of Europe, hate speech can be “concealed in statements which at first glance may seem to be rational or normal.”

While the European Union Agency for Fundamental Rights has attempted to identify the particular speech which it considers ought to be banned, depending on which document one reads, a different definition can be found. For example, the Agency has stated that “‘Hate speech’ refers to the incitement and encouragement of hatred, discrimination or hostility towards an individual that is motivated by prejudice against that person because of a particular characteristic. . . .”²³ However, in another document, the Agency states that “The term ‘hate speech’, as used in this section, includes a broader spectrum

¹⁸The European Commission against Racism and Intolerance is a body of the *Council of Europe*. See General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, § 18.

¹⁹European Union Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, Article 1(2).

²⁰Recommendation No. R (97) 20 of the Committee of Ministers on “Hate Speech”, adopted by the Committee of Ministers on 30 October 1997, Principle 4, Appendix to Recommendation No. R (97) 20.

²¹Factsheet—‘Hate speech’, *Council of Europe*, February 2012, p. 1.

²²Factsheet—‘Hate Speech’, *Council of Europe*, November 2008, p. 2. (Emphasis added).

²³‘Hate Speech and Hate Crimes against LGBT Persons’, FRA, 2009, p. 1.

of verbal acts . . . [including] disrespectful public discourse.”²⁴ It also notes in another paper that “There is currently no adequate EU binding instrument aimed at effectively countering expression of negative opinions.”²⁵

With such loose terminology, it is easy to see how labelling some speech as “hate speech” can be an effective tool in silencing controversial views and shutting down debate. The current opinions that are often referred to as “hate speech” may not be particular popular points of view, indeed they may be particularly unpopular and offensive, but whether or not such viewpoints should be criminally punished is another question altogether.

WHAT ARE “HATE SPEECH” LAWS?

As there is no universally recognized understanding of what is considered “hate speech,” identifying “hate speech” laws is not an easy task. It is often argued that “hate speech” laws are just one of the many ways that speech is restricted, and that they are no more illiberal than laws banning other forms of expression, such as the distribution of child pornography, the disclosure of state secrets and the dissemination of malicious falsehoods. There is, however, a significant difference.

Restrictions on other forms of expression that have stood the test of time are narrow and well-defined, and the justification for restricting the speech must be utterly compelling, such is the presumption in favour of free speech. When assessed more closely, however, “hate speech” laws are very different. They are loosely worded and arbitrarily enforced. They only protect certain “groups” and rarely require an actual victim. They are focussed more on the listener’s response than the truth of the statement. In short, while “hate speech” laws are a restriction on speech, they are a very different concept to other “pervasive and durable”²⁶ restrictions which most societies have accepted as being desirable. This book is not intended to address all of the different ways that speech may be restricted, but will instead focus on the modern rise of legal provisions which can loosely be described as “hate speech” laws. Here are some of the defining features:

In Germany, a criminal insult is defined as “an illegal attack on the honour of another person by intentionally showing disrespect or no respect at all.”

(1) “Hate speech” laws are vaguely worded. As Part Two of this book will demonstrate, “hate speech” laws contain vague terminology and therefore have the potential to be incredibly far reaching. In Germany, committing “an insult” is a criminal offence, and an “insult” is defined as “an illegal attack on the honour of another person by intentionally showing disrespect or no respect at all.”²⁷ In Greece anyone who shows a “lack of respect towards God” may incur a prison sentence, while in Spain anyone who “publicly mocks . . . those who do not profess any religion or belief” may be committing a crime.²⁸

²⁴ ‘Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States Part II_ The Social Situation’, *Fundamental Rights Agency*, 2009, p. 46. Emphasis added.

²⁵ ‘Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity’, *Fundamental Rights Agency*, 2010, p. 36–37. (Emphasis added).

²⁶ Alexander, Gerard, ‘Illiberal Europe’, *American Enterprise Institute for Public Policy Research*, 2006, p.1. Available at <http://www.aei.org/files/2006/06/23/20060623_OTIAlexanderforPosting_g.pdf>.

²⁷ Reichsgericht, Entscheidung in Strafsachen (RGSt), Volume 40, 416, quoted in Brugger, Winfried, ‘The Treatment of Hate Speech in German Constitutional Law (Part I)’, 4 *German Law Journal* 1, 14 (2003).

²⁸ See Part Two, ‘Germany’, ‘Greece’, and ‘Spain’.

With regard to the plethora of “inciting hatred” offences, it is often very unclear what is meant by the term “hate.” As one writer has pointed out, “It is not so easy to know when you have been hated—or, indeed, when you have yourself been hating—and for how long and to what depth and to what effect.”²⁹

(2) “Hate speech” laws contain a large subjective element. Rather than merely assessing whether the speech was unlawful when comparing it to a well understood standard, “hate speech” laws turn the attention on to the perception of the listener. For example, in the UK, the Home Office has explained that, “A ‘Hate Incident’ is defined as: Any incident which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.”³⁰ With regard to “hate speech” and “hate crimes”, therefore, perception is reality.

(3) “Hate speech” laws do not necessarily require falsehood. While defences to the traditional understanding of defamation always include “fair” or “honest” comment, people can be convicted of a “hate speech” offence without the truthfulness of their statement even being in question. A common example relates to the debate surrounding the age of Aisha when she was married to Mohammed, the founder of Islam. Aisha is most commonly considered to have been aged six or seven when she was married and aged nine when the marriage was consummated. This has led some to publicly condemn Islam’s founder, which has in turn led to numerous “hate speech” cases being brought on behalf of insulted Muslims. Remarkably, however, the cases focussed on the “insult” and not on whether the speakers had spoken truthfully or not. As section 192 of the German Criminal Code makes clear, “if the existence of an insult arises” then “proof of the truth of the alleged or disseminated fact does not preclude punishment.”³¹

(4) “Hate speech” laws rarely require a victim. In many criminal offences, although not all, there is a clearly identifiable victim: someone has been robbed, or assaulted, or kidnapped. In traditional defamation or slander cases, a real person has to have been defamed or slandered. However, most “hate speech” laws allow prosecutions to be launched when there is not a victim—there is simply an unidentifiable group of alleged “victims.”

(5) “Hate speech” laws often only protect certain people. The vast majority of “hate speech” laws only protect people if they belong to a certain “group”—and the protected groups are often those with the most political influence. If someone is insulted because of his appearance—for example, because of his weight or because he is a certain age, or even because he has a disability—then very often there will be no grounds for a case. However, if that same person is insulted on the basis of his skin colour, or his religious beliefs or sexual orientation, it may very well give rise to criminal proceedings.

(6) “Hate speech” laws are arbitrarily enforced. The vague terminology of the laws combined with well motivated and well funded special interest groups enables the laws to be used to push a certain agenda—often closing down debate on controversial issues of public interest. In Europe this is no clearer than in England, where section 5 of the Public Order Act 1986 has criminalized “insulting words” for over 25 years. However, it is only in the past decade that the law has been used to repeatedly arrest and prosecute Chris-

²⁹ Davies, Jon, *A New Inquisition: Religious Persecution in Britain Today*, Civitas, 2010, p. 8.

³⁰ ACPO and Home Office Police Standards Unit, *Hate Crime: Delivering a Quality Service*, 2005. Ibid., p.9.

³¹ Brugger, Winfried, ‘The Treatment of Hate Speech in German Constitutional Law (Part I)’, 4 *German Law Journal* 1, 15 (2003).

tian street preachers speaking out against homosexual behaviour. The wording of the “hate speech” law has not changed, but the political environment has, and the law is now being used as a tool to shut down debate.

The vague terminology of the laws combined with well motivated and well funded special interest groups enables the laws to be used to push a certain agenda.

(7) “Hate speech” laws are often criminal in nature. While laws may restrict speech in a number of ways, from speech codes on university campuses to harassment in the workplace, there have been an increasing number of criminal provisions introduced in Europe in recent years. Given that the criminal law is the most severe way of regulating the conduct of citizens, this book will largely focus on criminal restrictions on speech.

These, therefore, are some of the defining features of legal provisions which prohibit “offensive” or “insulting” speech. Taken together they create a loose category which this book will refer to as “hate speech” laws. All European countries have such laws, and as will be seen, their continued use, abuse and expansion is having a profound effect on free speech throughout the continent.

“HATE SPEECH” LAWS AND FREEDOM OF SPEECH

In view of the threat posed by “hate speech” laws, this book is a call to reaffirm one of the most important freedoms in the constitutional system of any democratic country: freedom of speech. Without free speech there can be no discussion amongst citizens, and without discussion there is no democracy. As the recent UN General Comment 34 has reaffirmed, “Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.”³²

A recent UN report reaffirms that, “Freedom of opinion and freedom of expression . . . constitute the foundation stone for every free and democratic society.”

Moreover, not only is freedom of expression the hallmark of a free society, it is also “the first right to be circumscribed by illiberal states.”³³ Thus, it is no surprise that after seizing power in 1933, Adolf Hitler’s first “emergency decree” stated that, “restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association . . . are permissible beyond the legal limits otherwise prescribed.”³⁴

While such drastic attacks on civil liberties are not taking place in Europe today, the gradual expansion of “hate speech” laws—perhaps often done with the best of intentions—is nevertheless causing a gradual restriction of free speech and other closely related freedoms. The threat needs a broad and robust response which currently appears absent from the public debate.

As will be explained, the current understanding of “hate speech” and “hate speech” laws is wholly inadequate. This book will argue that instead of accepting the current position, where speech that is insulting or offensive is outlawed, restrictions on freedom of

³² See n. 13 above, § 2.

³³ Mchangama, Jacob, ‘The Sordid Origin of Hate-Speech Laws’, *Hoover Institution*, Policy Review No. 170, 1 December 2011, p.1.

³⁴ *Verordnung des Reichspräsidenten zum Schutz von Volk und Staat*, 28 February 1933, § 1.

speech should be extremely narrow and very well defined. Accordingly, the law should only prevent speech where there is an incitement to imminent violence.

The first part of this book outlines the threat posed by “hate speech” laws by looking to their recent past, their present use and their potential future. The second part of this book outlines the international provisions against “hate speech” and a translated compendium of the “hate speech” laws of the 27 members of the European Union. These laws will be referred to throughout Part One.

PREPARED STATEMENT OF PROFESSOR TOM FARR, DIRECTOR OF THE RELIGIOUS FREEDOM PROJECT, BERKLEY CENTER FOR RELIGION, PEACE, AND WORLD AFFAIRS, GEORGE- TOWN UNIVERSITY

Let me begin by expressing my thanks to the Helsinki Commission, and especially to Chairman Smith, for holding this briefing. My own involvement in the issue of religious freedom, which has extended over some 15 years, was triggered in no small part by the life and work of Chris Smith, whose commitment to the persecuted has extended over many decades. Mr. Smith, thank you for your life of service to our nation, and to all those—Christian and otherwise—who wish to live their lives in service to God.

Before I give my views on the status of Christians in Europe, I want to acknowledge the terrible state of Christian minorities outside the West. Three quarters of the world's 2.2 billion Christians live in non-Western countries. Millions of these people, along with other believers, are subject to violent persecution and death, either because of their religious beliefs or those of their tormentors. When we speak—as we must—of the growing travail of religious liberty in Europe and the United States, we must never forget those Christians and non-Christians whose very lives and well being are under constant threat because of their faith.

Having said this, I want to make it clear that I believe we are witnessing a world-wide crisis of religious liberty—one that increasingly includes Europe and even the United States. While Christians and other believers in the West are not subject to violent persecution, we have growing reason for concern—not only for the well being of religious freedom, but for the health of democracy. I will return to this theme shortly but let me first place Europe's problem into its global context.

EVIDENCE OF A GLOBAL CRISIS IN RELIGIOUS LIBERTY

The Pew Research Center has in recent years conducted three massive studies that measure government restrictions on religion and social hostilities toward religion in every country of the world. What these studies have discovered is staggering: 75 percent of the world's population lives in countries where religious freedom is either highly restricted or very highly restricted. Those affected are Christians, Muslims, Jews, Buddhists, Hindus, and others. Most are minorities, but some are reformers within majority communities who cannot speak out without being attacked under anti-blasphemy and anti-defamation laws and practices.

These people live in about 73 countries of the world. Most are Muslim-majority countries, and many of them are in the broader Middle East. Others are communist countries, such as China and North Korea, or large non-Muslim nations such as India and Russia. It is an unfortunate sign of the times that Europe has now entered this mix. The list of 73 countries includes France, Germany, and the United Kingdom.

Of all the religious groups that are subject to harassment and persecution, Christians fare the worst. They are harassed in some 139 nations of the world. Muslims are the second most vulnerable, suffering harassment in 121 countries.

Perhaps the most alarming result of the Pew studies, however, is that the twin problems of restrictions on religion and religious persecution are getting worse, not better. Vir-

tually all the indicators have shown a deterioration in every region of the world. Both the data and the trends constitute, in my view, a global crisis.

THE TRAVAIL OF RELIGIOUS LIBERTY IN EUROPE

Let's turn now to the question of the fate of Christians in Europe. Recall that Europe is the continent where the intellectual origins of religious liberty lie. In our Religious Freedom Project at Georgetown's Berkley Center, we are conducting a program on Christianity and Freedom to take a fresh look at the contributions of Christians and Christian ideas to the spread of freedom, both historically and in the contemporary world. Among other things, our research is confirming that the wellsprings of religious freedom are to be found in the first centuries of Christianity, and that the concept grew to maturity in what later became European civilization, including the American colonies and the United States.

It is all the more alarming, then, to discover how the roots of religious freedom have atrophied in the Europe of the 21st century. One of the Pew studies reported that of all the regions of the world, social hostilities toward religion are rising most rapidly, not in the Middle East, Africa, or Asia, but in Europe.

Here are a few indicators of that trend. As of 2010, the United Kingdom was ranked 17th in the world in social hostilities toward religion. That's out of approximately 200 countries worldwide. Germany was ranked 23rd and France 25th. Between 2007 and 2010 there were significant increases in social hostilities in all three countries. By 2010 each of these major Western European nations graded worse in the category of social hostilities than the likes of Burma, Iran, and Sudan.

The three also showed significant increases in the levels of government restrictions on religion. Between 2007 and 2010 government restrictions in the UK increased by 63%, in France by 20%, and in Germany by 23%. It is symptomatic of this problem that there are currently four cases of British citizens before the European Court of Human Rights, each alleging that the state has simply ignored their fundamental rights of conscience. Both the British courts and the current British government have taken the position that they will define what constitutes orthodox Christianity—not the individuals concerned or the churches themselves. This, I would submit, is a position that endangers not only religious freedom but democracy itself.

By way of comparison, as of 2010 the United States was ranked 49th in the world, ahead of Syria, Laos, and the Congo, in social hostilities toward religion. This phenomenon is, or ought to be, shocking to all of us. Like the three European countries, US scores show significant worsening between 2007 and 2010 in both social hostilities and government restrictions.

WHAT'S GOING ON, AND SO WHAT?

How do we explain these findings? Why should we be alarmed? The Pew reports suggest that we are witnessing a significant downgrading of religious liberty in the West at precisely the same moment that religious persecution is spiking elsewhere in the world. Allowing for the fundamental differences in the symptoms—violent persecution outside the West and growing discrimination inside the West—are there any similarities? I would argue that there are.

To put the matter succinctly, the belief that religious freedom is necessary for human flourishing and the success of democracy is either being rejected or it is being lost. Outside the West, a commitment to religious liberty has never taken hold. This deficit helps account for the failures of Arab and other struggling democracies to take root. There is ample evidence in history and contemporary scholarship that democracy in highly religious societies cannot consolidate without religious freedom in full. That evidence also suggests that religious freedom is important for the defeat of religion-based terrorism. The critical role of religious freedom in the consolidation of democracy and the defeat of terrorism are two reasons why the U.S. policy of advancing international religious freedom is so important to American national interests.

But the Pew reports also suggest that Western nations, including Europe and the United States, are themselves abandoning the belief that religious liberty is necessary to the flourishing of individuals and the success of democracy. This helps to explain why we have proven so ineffective in advancing international religious freedom.

There are many reasons for the decline of religious freedom in Europe and the West. I will cite four. First is the decline of religion itself and the emergence of what Pope Benedict XVI has called the “dictatorship of relativism,” i.e., the belief that there are no objective truths, and that all rights claims have equal validity. This helps explain why in Europe, and increasingly in the United States, religion is considered a personal preference with no more claim to state protection than any other preference.

The second reason is the triumph in Europe of the French model of religious liberty, in which the freedom to practice religion is confined to the private sphere. Third is the belief that religion is essentially emotive and irrational, and therefore inappropriate as a means of influencing public policy. Fourth is the contraction of faith-based organizations in civil society. Private religious hospitals, colleges, and charitable organizations have either been historically weak, as in France, or are losing their religious motivations and identities, as in the United Kingdom.

I would note that each of these four trends, while less advanced than in Europe, is present in the United States as well.

Why does all of this matter? Because religion is more than a mere personal preference, and more than a private matter unrelated to the health of democracy. Religion is the enterprise of discovering whether there is a more-than-human reality to which or to whom I owe my existence, whether there is a transcendent reality that accounts for my being, to which or to whom I should attune my behavior, and who determines my fate in an afterlife. These are powerful questions that every human being naturally seeks to answer. In the 21st century, the data show, the vast majority of the world’s peoples believes they have found at least some of the answers to those questions.

Religious freedom is the right to pursue the answers to the religious questions. It is the right to join with others of like mind and spirit in worship and in civil society associations. It is the right to influence the laws and policies of the nation with religion-based arguments on the same basis as non-religious persons and non-religious arguments. It is the right not to be coerced by the state to act against one’s religious conscience. To deny religious freedom in any of these senses is to mount an attack on human dignity, and to undermine civil and political society.

In short, to insist that a person or a religious community must live as the state mandates—without the right to live privately and publicly in accord with religious truth as

one has apprehended that truth—constitutes a firm step in the direction of tyranny. Unfortunately, that is the trend we are witnessing in Europe today.

Again, thank you for the opportunity to give you my views.



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