

**Commission on Security & Cooperation in Europe:
U.S. Helsinki Commission**

“Beyond Tolerance: Faith in the Public Square”

Committee Staff Present:

**Nathaniel Hurd, Senior Policy Advisor, Commission for Security and
Cooperation in Europe**

Participants:

**Eric Treene, Special Counsel for Religious Discrimination, Civil Rights
Division, U.S. Department of Justice;
Rev. Dr. Andrew Bennett, Director, Cardus Religious Freedom Institute, and
Canada’s Ambassador for Religious Freedom (2013-2016) (Via
Videoconference);
Dr. Sophie van Bijsterveld, Senator, Dutch Parliament, and Professor of
Religion, Law and Society, Radboud University (Via Videoconference)**

**The Briefing Was Held From 2:30 p.m. To 4:16 p.m. in Room 188, Russell
Senate Office Building, Washington, D.C., Nathaniel Hurd, Senior Policy
Advisor, Commission for Security and Cooperation in Europe, presiding**

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HURD: Good afternoon. On behalf of the chairman of the Helsinki Commission, Senator Roger Wicker, and our co-chairman, Congressman Chris Smith, welcome to this briefing on “Beyond Tolerance: Faith in the Public Square.” I’ll be your moderator for today. My name is Nathaniel Hurd, and I’m a senior policy advisor at the Helsinki Commission.

This is a briefing on faith in the public square as a good in and of itself, as a public good, and as the fruit of religious freedom. Jewish communities have been part of the square of what is now the United States at least since the 1650s. This past Saturday, a man targeted and killed 11 of our Jewish brothers and sisters in the Tree of Life Synagogue in Pittsburgh, Pennsylvania. Last night, on National Public Radio, the executive editor of the Pittsburgh Post-Gazette, David Shribman, remarked, “I sometimes say that this is the only community I’ve ever lived in in which the people who aren’t Jews actually pronounce the Yiddish words correctly.” Such fraternity reflects one of the most important exhortations in American history.

On August 18th, 1790, George Washington visited the Touro Synagogue of Newport, Rhode Island. Later that day, he wrote a letter to the congregants entitled: “To the Hebrew congregation in Newport, Rhode Island.” He ended his letter with these words: “May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants; while everyone shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid. May the father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here, and in his own due time and way everlastingly happy.” Words that I hope will guide us as a country, including the local community of Pittsburgh, in the coming weeks and months.

I will now introduce our panelists in the order in which they will speak. Eric Treene, to my left, is special counsel for religious discrimination at the U.S. Department of Justice’s Civil Rights Division. He oversees the Civil Rights Division’s religious discrimination enforcement, outreach, and policy efforts. Mr. Treene also coordinates outreach to religious communities and the department’s outreach efforts to the Muslim, Arab, Sikh, and South Asian communities regarding post-9/11 discrimination and hate crimes. Before joining the Department of Justice in 2002, he was director of litigation at the Becket Fund for Religious Liberty, where he represented Christians, Muslims, Jews, Sikhs, Buddhists, and Native Americans in a wide range of discrimination cases. Mr. Treene received his Bachelor of Arts in political science from Amherst College and his law degree from Harvard Law School. He was a law clerk to Judge John Walker, Jr. of the United States Court of Appeals for the Second Circuit. Mr. Treene is the author of a number of articles and a contributor to two books on constitutional law and civil rights.

Welcome.

TREENE: Thank you.

HURD: The Reverend Dr. Andrew Bennett is program director for Cardus Law. He is an ordained deacon in the Ukrainian Greek Catholic Church in the Eparchy, or diocese, of Toronto and eastern Canada. Father Deacon Andrew served as Canada’s first ambassador for religious

freedom and head of the Office of Religious Freedom from 2013-2016. He simultaneously served as Canada's head of delegation to the International Holocaust Remembrance Alliance, a 31-country body which leads international efforts in Holocaust education, research, and remembrance. Father Deacon Andrew holds degrees in history from McGill and Dalhousie Universities. He received his Ph.D. in politics from the University of Edinburgh. And on a personal note, he and I have actually known each other since 1997, when he was a precocious Ph.D. student and I was a study abroad student and actually had hair. (Laughter.) So this is in many respects a continuation of the conversation that we were having even back then.

Welcome Father Deacon.

Dr. Sophie van Bijsterveld joins us from the Netherlands to reflect on the subject in a Western European context. She graduated in law from the University of Utrecht and received a doctorate in law from Tilburg University. Since September 2014, she has been professor of religion, law, and society at Radboud University. Dr. van Bijsterveld has lectured and published extensively in the fields of international human rights protection, religious liberty, constitutional law, and hybrid governance. Her books include, "The Empty Throne: Democracy and the Rule of Law in Transition." Her latest book is "State and Religion: Reassessing a Mutual Relationship." Since 2007, she has been a senator in the Dutch upper house of parliament for the Christian Democratic Party. From 2008 to 2015, Dr. von Bijsterveld was a member of the board of the scientific institute for the Christian Democratic Party. She was also a founding editor of the Dutch journal of religion and law on policy. I should note that there's a six-hour time difference between us and the Netherlands. So she's joining us at 8:30 at night. We're especially grateful that she's with us.

Senior Counsel Treene.

TREENE: Well, thank you very much. Like Americans everywhere and people around the world, I am grieving today the horrific killing at the Tree of Life Synagogue. And my thoughts and prayers are with the victims and their families. And 11 killed, six injured. And the Department of Justice – the attorney general spoke about, quite forcefully, hatred and violence on the basis of religion could have no place in our society. And he said every American has the right to attend their house of worship in safety. We are saddened by this. We are also resolute to pursue this hate crime. And charges have been brought. We've been very active in religious hate crimes against all people.

Two weeks ago we had a man sentenced to 24 ½ years in prison for – a Texas man – for arson in a mosque in Victoria, Texas. We've been very aggressive. And the attorney general has been quite forthright about the importance of prosecuting hate crimes as part of religious liberty. Normally we think of religious liberty as the right of people as against the state. You're free from infringement by the state. But the attorney general, speaking to the Orthodox – the Union of Orthodox Jewish Congregations of America back in June said: Religious freedom means not only freedom from government intrusion, but also freedom from violence. The first civil right is the right to be safe.

The idea that we have religious freedom is one of our greatest treasures in America. We speak of it as our first freedom. It's the first right listed in the Bill of Rights. It's foundational to the right of conscience and our other freedoms. But I think the attorney general is acknowledging that this right will mean very little if we don't have the right to be safe in our places of worship, to worship as we see fit, to walk down the street without fear of attack because of what we believe and how we express that. So we stand with the people of the Tree of Life Synagogue and all Americans.

Religious freedom is the first freedom, as I mentioned. Nathaniel mentioned the letter to the Touro Synagogue, which was a community of Jews developed there in the late 1600s to bring their faith, to do what many Christian sects were doing, to see in a new land a place where they could worship freely. President Washington in his letter – I want to use it as a framework of what I want to talk about – he said, “It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens”

This letter was pivotal for two reasons. One, it was the nature of the right that it was inalienable, it was an inherent right. It wasn't a gift from the government to the people. It was something that the Jews of Newport, of the Baptists of Virginia, that they had as an inherent right. The second part is that it was a principle applied to everybody – to not only the Christian sects that were multiplying in the United States at the time, but people of all faiths. President Trump has followed other recent presidents in proclaiming January 16th as Religious Freedom Day. It's a day we celebrate at the national level and a kind of obscure event. It's the passage of the Virginia Statute of Religious Freedom.

Why is a state statute so important? One, it was penned by Thomas Jefferson, who wrote the Declaration of Independence. But it also is important because it lays out the framework in three ways for religious liberty in America, that President Washington also touched on in his letter to the Hebrew congregation in Newport. First, the preamble. He says, “God has created the mind free.” And therefore, any interference with freedom, and with conscience, is not only something that is, as he said, meanness and hypocrisy for the government to try to punish such things, but it is an affront to the natural order.

Second, Jefferson said in the Virginia statute that “no man shall be compelled to frequent or support any religious worship, place, or ministry,” nor “suffer on account of his religious opinions or belief.” So it has a duality to it. You can't be forced against your conscience to support a faith. That's what we are familiar with as the establishment clause of the Constitution. But also, you can't suffer on account of your opinion and belief under your conscience. And that's free exercise.

And Jefferson had a third section saying that we know we're just passing a statute, but if some future legislature were to take it away, they could. They have the right. But they would be wrong in doing so because this is an inherent right that no one should be taking away. And looking back on this, someone said, oh, wasn't this wonderful? Thomas Jefferson, you created

freedom for the Christians of Virginia. And he said, no, no, this wasn't about Christians. And he specifically mentions Hindus, Muslims, and Jews as all enjoying the protection. So there are two key takeaways. One is religious liberty is a fundamental right, not a gift from the state. Second, the protection of conscience is at the very core of this right. And, third, that it applies to everybody.

Now, when you look out in the world, there are three different approaches to religious – this is very, very rough – but the way I see it, it breaks into sort of three categories. There's theocracy. It can be sort of rigid where, you know, religion controls everything. It can be the milder theocracy of Britain in the 1700s, where you could be punished for working on the sabbath and you had to worship at certain times and so forth, sort of a milder theocracy. But that's a theocratic view. There's sort of a secularism that governments should ensure a secular public order. That's what you see in France, where *laïcité* is a high value.

And then there's a third vision, which I think Jefferson was laying out, which is a pluralistic vision, where religion is something the government will stay out. It will not become overbearing in the religious sphere and endorse one religion at the expense of others. But at the same time, the government will create room for religion, will make space for religion to flourish. So in schools, you don't have the teacher leading the class in prayer, but on the other hand you protect students' rights to gather. And we brought a case in the Department of Justice where kids were not allowed to gather for prayers at lunchtime in a small group.

So this is sort of the model. We're trying to keep introductions brief, but I'll get into as we go along with your questions how we're implementing this through the civil rights laws that we enforce – the hate crime laws, but also the law to allow places of worship to build students' rights of religious expression, people's ability in the workplace to have their religion accommodated so they don't have to choose between their livelihood and their faith. With that, I look forward to what our other panelists have to say.

HURD: Thank you.

Father Deacon Andrew.

BENNETT: Thank you very much. I'd like to focus my talk on the related rights of freedom of religion and conscience and view them from my perspective as Canada's first ambassador for religious freedom between 2013 and 2016, and now as Director of Cardus Religious Freedom Institute, which seeks to educate and advocate for religious freedom and conscience rights. And I also understand these rights as a Catholic, and so view it through the lens of the Catholic tradition, rooted in incarnational anthropology.

We find in section two of the Canadian Charter of Rights and Freedoms embedded in the Constitutional Act of 1982 enumeration of fundamental freedoms, the equivalent of the inalienable rights of the American Bill of Rights. It's neither whimsy nor accidental that the first fundamental freedom is freedom of conscience and religion. We bind them together in the Canadian Charter. If we're to share a common life in Canada, or anywhere else for that matter,

robust freedom of religion and conscience must be affirmed and upheld. It is the freedom that enables us to live fully as we are, and as we are called to do.

Freedom of religion bears witness to the truth that human beings desire to make sense of our world and to encounter the divine. Unlike the freedoms that relate to public action – such as freedom of expression, freedom of association, freedom of assembly – to which it is bound, freedom of conscience and religion addresses what Professor Rabbi David Novak of the University of Toronto has referred to as the “metaphysical need of the human person.” In this sense, religious freedom can perhaps be more fully defined beyond international human rights covenants, beyond simply the Bill of Rights or the Canadian Charter of Rights as having the initial freedom to contemplate the metaphysical and – (audio break) – just who am I? Who am I in relationship to you? Who am I in relationship to the world in which I live? And who am I in relationship to God to a particular philosophy to which I elect to subscribe and follow?

Thought necessarily proceeds action. In a religious way, freedom of conscience does not necessarily relate to theological or creedal statements, but rather to the inherent human freedom to believe and assert certain truths. For example, that medical-assisted suicide is wrong, a belief that is not necessarily dependent on confessing a particular religious faith. It can come from a humanistic view. The frequent and mistaken post-modern assumption gaining currency in certain quarters, including in Canada, is that freedom of religion or conscience can be relegated in favor of upholding a broader freedom of expression of association. To diminish the defense of religious freedom conscience rights this way I would argue is a symptom of an amnesia – an amnesia that is increasingly forgetful who we are as human beings, forgetful of our deepest longings, and of our true dignity.

The ability to freely, publicly and privately act upon this metaphysical need that I talked about is foundational to our democracy and foundational to our common life together. Without the guarantee of this freedom, we are no less free in our interior life, but when freedom of conscience or religious is threatened or ignored, our public – (inaudible) – living out of our lives of faith can be undermined, sometimes greatly. So in a truly pluralist democracy, acceptance of difference must include the right to hold different theological and different ethical and moral positions, even when they go against the prevailing spirit of our age. So long as these views are held and advanced peacefully and do not advocate physical violence that would violate human dignity, they must be allowed to inhabit the public space.

We must reject what I would label an “illiberal totalitarianism” in the public square that seeks to establish socially correct and acceptable beliefs, treating any peacefully contrary view as deviant and something to be silenced. There must be no totalitarianism of accepted belief or accepted opinion in a pluralistic democracy such as Canada or the United States. A true pluralism must embrace and enable difference, but not simply a subset of differences that may be permitted at a moment by a given set of beliefs at a given moment in our history. This, I would argue, is illiberal pluralism that embraces a cultish secularism where the state imposes values and dictates what religious beliefs are publicly permissible.

The freedom to practice one’s deeply held religious faith and hold positions of conscience in the public square is a freedom that implicitly advances and supports true pluralism.

To champion religious freedom, and also conscience rights, is to also implicitly accept that there are those in our common life who will hold beliefs theological and philosophical and moral that many of us will vehemently reject. And that's OK. If people in our society, whether they be Muslims, Christians, Sikhs, or Jews, or people of no religious faith, are constrained in their faith through practice and how that faith informs their conscience, and profoundly shapes their understanding of the human person, they will become increasingly marginalized and our society increasingly itemized.

In building our common belief and maintaining the public square, we must champion human flourishing as the common good so that our fellow human beings may flourish and be able to live their lives of faith fully – both privately and publicly. Increasingly in Canada, there are growing and persistent challenges to the inherent freedom of conscience and religion. These challenges come from our secular institutions – legislative, administrative, and judicial – from the overstepping and infringing on Canadians' freedom in this regard. Again, a freedom that, as our first presenter noted, is not the gift of the state, but rather a freedom that we bear in virtue of being beings.

So in conclusion, in recent years there have been encroachments by a self-proclaimed “neutral secular order” to advance a rival secular democracy, intolerant of genuine diversity. There have also been statutory and regulatory actions taken to constrain freedom of religion and conscience at both the federal and municipal levels. Some of the most notable cases include the 2018 Canada Summer Job – (inaudible) – 2018 Supreme Court of Canada decisions in the Trinity Western Law School case, and the Wall case, bubble zone legislation in Ontario, and the violation of conscience rights by the College of Physicians and Surgeons of Ontario. And I am happy to speak to some of these cases in greater detail in response to questions. Thank you.

HURD: Thank you, Father Deacon.

Dr. van Bijsterveld.

VAN BIJSTERVELD: Thank you very much. It is a great honor to participate in this meeting. And I thank the Helsinki Commission very much for inviting me. My presentation focuses on Western European developments, and certainly religious freedom and the place of religion in the public square. And I will approach this topic first by outlining some characteristics of the debates and, second, I will sketch some public responses towards the current challenges. I will start with some preliminary remarks and I will close with a few personal observations.

Three preliminary remarks: The first: 57 countries, including United States, Canada, and all the countries of Europe, are participating states of the Organization for Security and Cooperation in Europe. The relations between state, society, and religion differ from country to country. This is also true for the part of this region that is formed by Western Europe. Over the centuries, different political realities, differences in religious makeup of the society, differences in interrelation between secular and ecclesiastical authorities and historical facts all have had an impact on what we now call the place of religion in the public square.

My second remark in the OECD context, the notions of respect, tolerance, are often featured. However positive these notions appear, their meaning is not always clear or even defined. Where respect is concerned, the distinction must be made, in my view, between persons on the one hand and views and actions on the other. The person deserves respect as a person. But views and actions, not necessarily so. And as of tolerance, I prefer to speak in terms of liberty and restrictions to liberty when possible. Either persons enjoy liberty or they do not, in which case there must be valid reasons to legitimize restrictions. Alternatively, one could speak in terms of equal treatments or non-discrimination.

My third remark, the word “secularism” often features in debates on religion in the public square. And this word can have different meanings as various authors also realize. In the words of the former Archbishop of Canterbury Rowan Williams, it can refer to “programmatic secularism” or “procedural secularism.” In this realm, programmatic secularism stands fending off manifestations of religion in the public square and procedural secularism is fundamentally open to manifestations of religion – the state, itself, being secular. In a given context, it’s important the use of secularism is clear.

Now, for my preliminary remarks: I now come to the general characteristics of the debates. Three general characteristics mark the current debates. The first is the nature of the issues. In the roughly 200 years of modern debates on religion in the public square and freedom of religion in Western European countries, various periods can be discerned. In previous periods, the focus was of institutional competences between church and state, or accommodation of religious social activities in the framework of the emerging welfare state. And current issues of contention mostly concern values, which values are being expressed or promoted through religion, and how much liberty do they deserve.

Second, there is a transnational dimension of many issues concerning religion. During the 20th century, religious issues were by and large purely domestic issues. Currently, these issues are often connected to controversial societal contexts as immigration, integration, or influencing and radicalization. And as a result, the debates are often conducted in terms of limitations of liberty rather than liberty.

Third, over the last decades, religion has increasingly become experienced as a purely private matter, and religious liberty as an individual personal liberty. The current issues of controversy, however, have once again fostered an awareness of the societal and public dimensions of religion. This rediscovery also has positive sides. In many Western European countries, functional welfare states have felt overburdened and religion is retreating somewhat from the social domain, notably financially. And this goes hand-in-hand with the renewed positive federation of the social function of religious organizations. New forms of contact, and cooperation, and coordination between such organizations and, notably, global communities take place.

I now come to my next – (audio break) – public responses towards current challenges. And, again, I make three observations.

First, American scholars or academics observe a trend that legal issues concerning religion are seen through the lens of equal treatment rather than religious liberty. Insofar as individuals are concerned, this resonates with experiences in Western Europe for the same reasons as have been mentioned. And for institutional liberty basis, it is less self-evident.

Second, legal and political responses to religious diversification may rely on basic instincts of traditional church-states systems. Thus, France continues to bar visible signs of religion in the public sphere, whereas, for example, in Italy Catholicism may function as a symbolic focal point, the crucifix in the public classroom being an example. And our countries experience more of a dilemma.

Third, the European Court of Human Rights tends to leave national states some room for maneuver in finding a right balance with regard to these issues. Although the court is sometimes criticized for this, one must realize – especially in the United States – that this is a supranational court that deals with countries with a variety of different starting points where the place of religion in the public domain is concerned. And there are many issues that are controversial in the various states as well.

Finally, a few personal observations. First, it is unavoidable that religious issues tend to be assessed through the lens of equality rather than liberty. However, the one should not replace the other. Furthermore, equal treatment applies in equal circumstances. And equal treatment therefore is not necessarily identical treatment. Second, restrictions to religious liberty may be necessary. However, applying general solutions to a specific problem must be avoided. Legislation, therefore, is not always the most fruitful response to an issue.

And third, and last, the development of a relaxed attitude of public authorities towards religion begins with a basic familiarity with concrete religious traditions and denominations. For both public authorities and religious communities, it is important to get to know each other, if they do not already. Thank you for your attention.

HURD: Thank you. We'll now have a period of sort of a moderated Q&A. So I'll be asking the panelists some questions. Once that's done, we'll open it up to questions from you who are here in the room, as well as those of you that are watching online on Facebook. For those of you in the room, if you could use the standing microphone and identify yourself when it's time for that Q&A period.

Just a note about the context of my questions: A lot of the debates and discussions about this topic often are mostly restricted to questions about law and public policy. And unfortunately, there aren't enough discussions about people's first principles, about their basic assumptions, about distinctions between different kind of categories and words, et cetera. So a lot of my questions are intended to tease that out of our panelists.

My first line of questions is going to focus on philosophy. I think philosophy can be one of those subjects that's easy to have a go at. Seems to be somewhat impractical. But the fact is that all of us have existential questions, metaphysical questions that tug on the human heart. And Father Deacon Andrew highlighted some of them. Philosophy actually helps us to seek and

receive answers to some of those questions. I think it's also worth noting that how we view the world, our ideas— in this modern, contemporary setting – are often not entirely new. They have roots in earlier times and in earlier ages. And philosophy can help us trace back those roots.

A lot of the discussions and debates about faith in the public square intersect with broader debates about the very nature of truth. Does truth exist? Is it objective? Does it exist outside of us? Is it something that we can know and access, or is it something that we at the individual level just sort of generate and create, or is it something that we can actually receive? What we're discussing now reflects in many respects philosophical shifts. In particular, from the Medieval period to the period of the Renaissance, and then forgoing the period of the Enlightenment and its sort of philosophical successors. In particular, I'm thinking of Descartes.

And so my first set of questions are in particular for Father Deacon Andrew and Dr. van Bijsterveld. What is the philosophical lineage about some of the contemporary skepticism that we see about truth as something that's objective, as existing outside of us, as something that is accessible and knowable, evidenced in ordinary human experience, and received rather than self-created? And then for Mr. Treene, if you could say a word or two about the philosophical lineage of faith in the public square and the religious freedom that enables it, that we can see in the founding documents in the United States? And then I'll ask you to go into a more provocative area, which is as you look at faith in the public square now, basic discussions about religious freedom, and reflect on our founding documents, do you think that there were any philosophical presumptions that the founders made, perhaps unintentionally, that have sort of led to some of the challenges that we see today?

We'll start with Father Deacon Andrew and Dr. van Bijsterveld.

BENNETT: Well, thank you very much. That's certainly a very big question about, theological – (inaudible) –traditional understandings of truth as being objective and universal. Our understanding of fundamental freedoms – such as freedom of religion, freedom of conscience – certainly in Western democracies derives directly from the Judeo-Christian understanding of the human being, human person, and the human person's relationship to an existential reality, metaphysical reality, their relationship to God.

So this understanding of truth is definitely something that exists in and of itself. It is something that exists in and of itself, and it is beyond us in a certain sense, but also accessible by us because we believe that certainly as Christians, and as Jews, and some other faiths as well, that truth is revealed to us. So we have a particular understanding of revelation and that core understanding of revealed truth as objective and universal. Certainly from the Christian perspective, we understand that truth is not a particular philosophy or a particular abstraction but rather it's a person. It's the person of Jesus Christ. And so we have that understanding as Christians that truth is a person with whom you have a relationship. And you have a relationship with, and that grows as you enter more fully into that truth.

So that understanding of truth certainly is implicit within our understanding of fundamental freedoms, because there's this understanding that we have these freedoms by virtue of being human beings. And because we are human beings, created in the image and likeness of

God, there is a certain dignity that we have. Now, it's important, I think, in these days to sort of unpack what we mean by human dignity, because human dignity now often has a very different meaning or is construed in different ways – as are other terms such as compassion and even truth itself. But from my perspective, that would be how I would respond to your question, Nathaniel.

HURD: And Dr. van Bijsterveld?

BIJSTERVELD: Yes. Thank you. Well, I find your basic first question quite hard to answer. What I could say is this: At a time when Western European countries' freedom of religion was first incorporated in the constitutions, we see that in a context of societies that are thoroughly Christian, whatever sort of divisions or predominance of a particular religion there may be. What we see, of course, now is that freedom of religion functions in a much more secularized context, and a context where diversity has gained a different meaning. And it's clear that those differences over time may also influence the interpretation of religious freedom, or at least can understand that there will be debate about what religious freedom actually means.

HURD: Thank you.

TREENE: Yes. And to respond to something that Dr. van Bijsterveld said in her opening remarks, where she mentioned in U.S. law things have moved from religious liberty more towards equal treatment, I would say in some respects that I would agree with that. But both of these have roots with the founders. The founders, as I mentioned, looked at equal treatment of all persons regardless of religion, as well as this idea of conscience being precedent to the demands of the state. And if you look at the law, there have been a number of decisions that have moved the ball in religious liberty by using equal treatment paradigms. Most recently Trinity Lutheran, saying if you have a program giving playground equipment – here, it was actually the rubber surface so that the kids don't get injured on the playground – you had to treat churches equally. Same thing with the school choice decisions. If you give out a scholarship to parents you can't discriminate. Parents are able to use those at the school of their choice. Same thing in free speech cases. If there's a forum for speech, you can't exclude religious speech.

Now, the law has moved in that direction, but all of those have been five-four decisions, six-three decisions on our Supreme Court. I think it's worth nothing that if you look at the unanimous decisions in the religious liberty space, they've all been pure religious liberty cases. Most recently Hosanna-Tabor case, where a church wanted to hire ministers, even where that conflicted with non-discrimination laws, the state had to keep its hands off, that there was something precious and different about religious liberty, that a church must be allowed to decide who its leaders will be. That was a unanimous decision.

Then we have decisions interpreting some statutes, like the Religious Freedom and Restoration Act. Unanimously, the Supreme Court held you can't prosecute somebody who has a sincere belief in using a hallucinogenic tea, in the Gonzales case. And then you have the prisoner case involving a Muslim prisoner under a statute here we have that protects prisoner and religious rights, that a prisoner had a right to wear a beard, even though it wasn't an equality argument. It was a pure conscience versus the state argument. So I just think it's interesting that those three pure religious liberty cases were unanimous Supreme Court decisions, and the

equality cases – while there are more of them and they have been moving in that equality direction, were more split in the court.

HURD: There have been several references today to the subject of secularism. Father Deacon Andrew, you referred to, “A self-proclaimed neutral secular order that has limited conscience rights in the medical and legal profession in order to advance a prevailing secular orthodoxy, intolerant in genuine diversity.” So just two quick questions for you, and then after you’ve answered –

MS. HOPE : Nathaniel, we’ve lost them.

HURD: Ah.

MS. HOPE : They’ll be back, but you may want to –

HURD: Let me move then onto the intersection between faith in the public square and social change movements – something of great significance here in the United States. Just an observation first. Many champions of the abolition of slavery, suffrage for women, and civil rights for African-Americans were explicitly animated by their religious faith. It is rare to encounter contemporary criticisms of faith in the public square in these specific contexts. General organs as well as legal, policy, and cultural challenges against faith in the public square most often seem to arise when people of faith are advocating for something specific with which the critic disagrees. I’m wondering if you might be able to say a few words maybe elaborating a bit on the intersection between social change movements, the role that faith played in those, and then these discussions and debates that we have more broadly about faith in the public square, and whether or not you would concur that there may be a bit of inconsistency about the criticism.

TREENE: Well, I would say that coming from the civil rights division, where we just celebrated our anniversary – we were founded in 1958. So we had our 60th anniversary. We focused on our history. And we looked at Martin Luther King, who, A, was animated by faith. And I think that’s what you’re getting at. But also, he was imprisoned. His supporters had charges filed against them for disturbing the peace. He had a vision that conflicted with some of the mores and standards of the time and it was jarring. I’m always struck to look back when we ask this question of just how critical his faith was to his movement, and also how much resistance he got. In retrospect Bill Nye said, oh, yeah, Martin Luther King, that’s the paradigm of faith in the public square. But it was tumultuous at the time. And you can’t get around that.

HURD: Looking at some of the debates and discussions today about a whole range of questions, ranging from immigration, to abortion, and everything in between, again this impression that some of us have that when people of faith bring their faith to the public square in a way that, when it comes to questions of law or policy, you happen to agree with, that often seems to be welcome, whereas where there’s a point of disagreement, there’s a bit of a pushback. Would you say that’s a fair characterization?

TREENE: Yeah. And I think the Martin Luther King example exemplifies that. I’d be curious to see what Dr. van Bijsterveld sees as the Dutch – is she still on, or is just us?

HURD: It's just us.

TREENE: It's just us. (Laughter.)

MS. HOPE: We're trying to get them back.

HURD: About just over a year ago there was an article published in the online publication Public Discourse. And it was authored by a professor, Dr. Margaret McCarthy. She teaches at the John Paul II Institute for Studies on Marriage and Family here in Washington at The Catholic University of America. To sort of summarize her argument, she was certainly sympathetic to why advocates for faith in the public square, in particular advocates for the religious freedom that enables faith in the public square, were primarily emphasizing and appealing to their sincerely held beliefs. She made explicit reference to our founding documents, to law, et cetera, et cetera.

And you know, a lot of case law that relates to this very much centers on that particular phrase. But her caution was that to people that may hold a different point of view about faith more generally, or at least faith in the public square, this may be something that's hard for them to understand.

She said, "We ought to be aware of the cost we incur by appealing on such grounds. For reasons pertaining to the kind of religion that has dominated the American landscape and the narrow and reductive parameters of public reason in the liberal order, whatever we seek to defend in virtue of religious freedom (or the rights of conscience) will be invariably consigned to the realm of the private and 'personal,' which is to say, the utterly irrational. To see this, one need only consider what it would mean for science were scientists to insist on the 'freedom of their science' or to appeal to their 'sincerely held beliefs about gravity.'" "Without diminishing the importance of the fight to keep culture-forming institutions open, it would be a Pyrrhic victory if success in the legal arena came at the cost of vindicating the view that a person's religion is essentially 'nobody else's business.'" And then she goes on to conclude, "'Sincerely held beliefs' currently in question are not sincerely held beliefs at all, however much they have been privatized for their own safety. Rather, they are rational judgments about the nature of things, things that bear immediately on social and public life."

She's proposing that maybe there's a bit of a tension when one looks in sort of a legal sphere and when one looks more broadly to the public square, the debate, the discussion of ideas, culture, society, et cetera. As somebody who has been working on these things for a very long time, particularly in the legal space, would you say this is sort of a reasonable characterization of a tension? Does this tension exist? And what are the implications if there is a desire to ensure that there is, in the eyes of the law, a legal space for faith in the public square, but at the same time not sort of conceding the privatization of religion. How do you sort of square that tension, if it does exist?

TREENE: Well, I guess I would answer it in my role, which is someone at the Department of Justice. We're not concerned with what arguments are listened to, right? So it's

for the legislators to decide what to listen to. It's for people in the public arena, writers, and all this to hear thoughts and decide what's good and what's not. But our role is to protect the fundamental rights. And we do that. We brought a case on behalf of a student in Georgia Gwinnett University who was told he could not proselytize on campus. He was confined to a narrow free speech zone. That free speech zone actually was between the dormitories and the classrooms and the rest of the facilities. This was primarily a commuter college. Basically they were saying, you can talk to 20 percent of the students, but the rest of them you've got no chance of talking to.

So we're defending their right to put forth their arguments. That's what the Constitution provides, various federal laws provide. And that's really our role. As far as which arguments are going to be listened to and so forth, I'm going to leave that for other folks.

HURD: One other question before we turn to the audience. I have a whole line of questions for our other panelists, and hopefully they'll be able to rejoin us. You sort of touch briefly on these three models of governance, if you will – theocracy, secularism, and pluralism. I appreciate the fact that you're trying to sort of stay within time, but I'm wondering if you could sort of unpack those a little bit more. And in particular, I'm wondering if you could walk us through how you understand the distinction sort of between secularism and pluralism.

TREENE: Right. And I mentioned *laïcité*, which is the French model, which is the public square should be secular. So, for example, barring girls from wearing religious clothing, the head scarfs, hijab. We at Department of Justice went to court to protect a girl's right to wear a head scarf to school. The idea that the government shouldn't be in the business of making religious choices for people, but the government on the other hand should protect people's religious choices, should make space for them, so that when you go forth into a job, into a school, you don't have to leave that facet of your character behind. You can bring it with you, without offending the idea that we're going to be a country that doesn't establish one religion, that people can bring their religions with them, participate in public life, try to convince others share their faith with others.

Now, around a water cooler, if someone says, "I don't want to hear any more about gun control," or whatever, pick your hot issue, you respect it, OK. You can step back. The same thing with religion. You shouldn't be overbearing with it. But you certainly should be able to share it with other people. That's the idea in a pluralistic model.

HURD: While we wait for our other panelists to come back, I'm presuming there are some questions from the audience. As you can see, there's a standing mic right there. If you have a question, if you could please identify yourself by name and by organization as well.

Q: The monitor's dead.

HURD: Yes, I know. (Laughter.)

Q: Good afternoon. My name is Joe Ramallo. I'm an intern for Congressman Leonard Lance over on the House side.

And I had a question today for you, Mr. Treene. Well, thanks for being here. But Mr. Hurd had asked a question early on in regard to some assumptions that the founding fathers, the framers of the Constitution might have made when writing the Constitution. And you had touched on the idea of inalienable rights. From what my understanding of inalienable rights are, that there is an assumption that a belief in a higher power is essential for the understanding or the belief in inalienable rights. So, A, my question is, is that an assumption the founding fathers had made? Secondly, more broadly, with that assumption then does the First Amendment not protect freedom from religion?

TREENE: No, certainly not. The founders certainly based this right on natural law, the idea of a creator endowing people with inalienable rights. But then look at the Constitution. Even before we have the Bill of Rights we have the Constitution, which says there shall be no religious test for public office. Right from the get-go I think this comes down into this idea of the pluralistic model. The pluralistic model doesn't push out religion from public life. You can say, yes, the founders had a vision that religious liberty came from God. But at the same time, that religious liberty applies to everybody, believer and nonbeliever alike.

Q: Thank you.

HURD: Any other – any other questions? Well, I have one more.

TREENE: OK. (Laughter.)

HURD: I do wonder sometimes whether the friction between people of religious faith and people who may not have religious faith may sometimes partially be rooted in a real or perceived lack of advocacy on behalf of another, that is the perception on the one hand is that people of religious faith are not sort of robust enough in advocating for the freedom of belief and conscience of the people who don't have religious faith, and vice versa. I'm wondering, as you look back through American law and public policy, some of the sort of laws and statutes and sort of policies that we've seen, the public writings, et cetera, from some of our founding fathers, were they just confined and constrained to people of religious faith, or did they in fact cover people who might not have religious faith?

TREENE: Well, let me answer it this way, the Supreme Court's been pretty clear on conscientious objector decisions that our tradition of giving conscientious objection, which dates back to the Civil War and the Quakers, nonetheless applies broadly to anyone with a belief in the immorality of fighting a war that is general as opposed to specific and opposed to a particular war. But anything, as they say, that occupies the same space as traditional religious faith. So that was a broad statement. It wouldn't cover everything, right? So any sort of moral conclusion you came to that this was an unjust war. If somebody has a deep-seated belief that war was wrong, it's as comprehensive as to occupy the same space as religious faith, the Supreme Court said that will suffice.

And it's the same thing when we look at free exercise of religious. They look at what is sincerely held. Not does your belief kind of reflect one of the major religions or even one of the

minor religions. There is a famous case involving Jehovah's Witnesses, and one said she could not make tank turrets. And the employer said, wait a minute, this other Jehovah's Witness who works for me makes tank turrets. Point to me in the Jehovah's Witness documents where this violates your faith. And the Supreme Court said, no. You can be a religion of one to have that deep faith that we are going to protect. So I think that – mostly it's just a question – we'll leave it to the philosophers to answer the rest of it.

HURD: And maybe just to tease something out about it, is the understanding you just mentioned – is that large part because there has been a long-held deference to the rights of individuals and groups to understand their own faith as they see fit, as opposed to having to sort of demonstrate or prove something correct?

TREENE: Yeah. It goes back to Madison, right? Sort of conscience is king, right? It would be very strange indeed if we said we're going to define conscience according to how the government wants to define conscience. But, no, rather they give it a broad reading, looking from the standpoint of the person claiming the right of conscience.

HURD: Any other questions from the audience?

I've actually been told that we're trying to get a bit of a technical fix. So maybe if we could take maybe a five-minute break, and then we'll see if we can reconvene. Thank you.

(Break.)

HURD: Great. With our panelists in Canada and Europe rejoining us, we'll get back to some of the questions that I had intended to ask. And again, we'll open it up again.

TREENE: So I get a break now? I can, like, go get coffee and – (inaudible)? (Laughter.)

HURD: There were several references that you made to secularism.

And Father Deacon, Andrew, you referred to a quote, "Self-proclaimed neutral secular order that has limited conscience rights in the medical and legal professions in order to advance a prevailing secular orthodoxy, intolerant of genuine diversity." If this type of secularism is not neutral, what is it? A second question would be, is there such a thing as neutral secularism?

And I'm also wondering if you think that debates in the public square suffer to a certain extent from the lack of a self-awareness and openness about one's first principles? My impression from your comment about neutral secularism was that there is a perception of neutrality that doesn't actually reflect the reality.

So if you could answer those three and then, Dr. Van Bijsterveld, I'll have some questions for you.

BENNETT: Sure. Well, I have a certain knowledge, adding onto Professor Van Bijsterveld's arguments about there being a secularism, that there are various meanings of

secularism. Charles Taylor has really charted those quite nicely in “A Secular Age,” that the understanding of secularism has evolved. Now I would say, certainly in Canada and maybe also in other Western democracies, there is a premise that secularism is neutral, that it appears at a neutral space where people of different beliefs can exist. But in fact, certainly in the Canadian case what we’re seeing is not that type of what I would call open secularism, but rather a secular position that itself is a value proposition and it has a particular faith, it has particular practices.

I would say, in Canada certainly, the types of secularism we’re seeing in our institutions is a type of secularism that tolerates diversity, but it’s a prescribed diversity. As long as you’re the sort of diversity that we like and fits with our definition of a diverse society, then you’re fine. However, if you hold beliefs or views that contravene or are different from that identified diversity, then you are going to be on the outs within society. I think there’s the possibility for the state to be neutral.

I’m glad that in Canada we have a secular state. I wouldn’t want a particular religious community being bound together with the state. That secular model is very good, but it needs to be, in Charles Taylor’s way of expressing it, an open secularism where the state ensures that people of different religious beliefs, different belief systems generally, are able to flourish within the body politic. A closed secularism is where the state would dictate that there could be no public displays of religion.

I think in Canada right now, a lot of communities, but I would say in particularly in my own Christian community, certainly Catholics and also Protestants of different traditions, I would say in many ways have accepted implicitly the privatization of public faith, that there has been a willingness to back away from the public square in order to embrace this desire for tolerance, a desire to have a neutrality. In fact in backing away of the public square and into the comfortable pew, let’s say, where religious practice is simply something for the place of worship or for the home, that public square then is a vacuum, it’s vacated by people of religious belief and there’s a vacuum created, which will be filled. When you have that vacant space, it means that public debate is not being enriched by those particular religious traditions.

I think a genuine pluralism is a very deep pluralism where you have people of many different beliefs, many different philosophical perspectives who are able to meet in the public square and engage with one another. I think that’s what we should be striving for and that, I think, is at the heart of religious freedom in democracies.

HURD: Thank you.

Dr. Van Bijsterveld, you spoke of at least two terms, programmatic secularism and procedural secularism, defining programmatic secularism as one that stands for fending off manifestations of religion in the public square and procedural secularism that is, as you put it, fundamentally open to manifestations of religion in the public square, the state itself being the secular. Are programmatic and procedural secularisms limited to law, policy and regulation or they extend into other spheres, like culture?

VAN BIJSTERVELD: Well, yes. First of all, I think it's very helpful, and the distinction is not my own, I derived it from the former archbishop of Canterbury. He says this procedural secularism, in which he defines a state as a community of communities where various voices may ring, is where the state itself has an ideal where fills to public domains. What you would see is that in Western European countries, the French *laïcité*, the French system of church-state, in my view, comes very close to that programmatic secularism. Whereas other countries, for instance my own country, but also other European countries, are much more, in the sense, procedural secularism.

He also talked about the word "neutrality" of the state and finds the word "neutrality" very complicated and also very confusing and fuzzy because neutrality of the state does not mean you're value neutral, states are not value neutral, states in its policies is continuously involved with all sorts of values. It's not value neutral.

But what could it mean? In my view, it would mean that the state does not identify with one particular faith tradition. That seems to say it's neutral, it doesn't identify with one particular faith tradition. It can also mean that the state has a fundamental openness for all religions.

I'm not so much in favor of using the words because it can mean so many things, "neutrality." If you use it, you should be very clear in how you use it. In my sense, it certainly would mean that the state does not identify with one particular tradition. Don't let us think that the state is value neutral, because the state isn't.

HURD: Mr. Treene, it's very striking in looking at the establishment clause, that is that the state will not establish a religion or favor any particular religion, that it seems to stand somewhat in contrast with what we saw from some of the earliest European settlers to the United States. I'm wondering, as someone who's a bit of a historian when it comes to religious freedom and our founding documents, the Founders, of course, were bearing in mind the European experience where there was a very strong intermingling of sort of temporal power and faith and religion in a very sort of explicit and official way. Then, of course, they also were bearing in mind the early American experience as well. Can you to the extent that we sort of have a sense of reflections on our own history here and that sort of early pre-United States period, was that something that they very much were thinking about?

TREENE: Sure. The presumption in Europe was that this is the 1600s, 1700s and earlier was that, a godly king would make sure that people within their kingdom followed the faith. That was not seen as controversial. As I said, it was sort of a milder theocracy that you saw in England where people were tolerated, but be taxed for support of the Anglican Church, you could not work on the Sabbath and heresy was punishable.

When they passed the Virginia Statute on Religious Freedom, though, that swept all that away and it was sort of a two-part thing. It was the defeat of a bill that would have supported clergy in the state of Virginia, there would only be a few chosen sects that would have been supported, so it essentially established the Anglican Church as the main church and then a few others as well. And they struck down that law.

Then the statute banned any heresy laws, laws barring people who were atheists from serving as executors of wills and a whole range of laws that were swept away to preserve that fundamental – again, that duality of we’re not going to establish religion, but at the same time we’re going to let people exercise their religion as their conscience leads them and we will not tolerate any civil burdens or punishments.

HURD: The next basket of questions has to do with the subjects of friendship and civic engagement.

Dr. Van Bijsterveld had said that, “for both public authorities and religious communities, it is important to get to know each other, if they do not already.” One could argue that this could actually be extended to sort of the full range of persons and relationships in a society.

There’s a very interesting and compelling book written by a political scientist – he’s now at Brown, he was at Michigan when he wrote it – named Ashutosh Varshney. It’s called “Ethnic Conflict and Civic Life: Hindus and Muslims in India.” He and his team looked at this massive dataset, focusing on violence between Hindus and Muslims in the Indian context. A lot of the research that had been done to that point had focused on where violence had happened and why it had happened. He was more interested in why it didn’t happen in particular places. You might have the same rumor, the same spark that had sort of prompted violence in another place, and yet in this other location, we didn’t see it. So the question was, why?

His thesis basically is that in these areas where the violence didn’t happen, there was very strong civic life. And what he meant by that very specifically was you had Hindus and Muslims who came together for cricket clubs or for book clubs or they had gotten tired of the local sanitation not working and had decided it was time to come together and do something about it. So they got to know each other in a way where they weren’t just sitting around and sort of having what we might traditionally think of as interreligious dialogue. These were people who just kind of got to know each other and said as human persons they had a common interest, maybe a common objective. Because they got to know each other in an organizational context, when there was conflict they were able to organize each other, they were able to organize very, very quickly.

So, Father Deacon and Dr. Van Bijsterveld, with that in mind, what is the role of friendship and working together on common interests or working together on a common good specifically between people of religious faith and people of no religious faith to sort of engage in the enterprise, as Father Deacon put it, building our common life so that our fellow human beings may flourish?

VAN BIJSTERVELD: Are you asking me?

HURD: I’m asking both of you.

VAN BIJSTERVELD: OK. Well, thank you. Well, I think it is very important indeed. Of course, friendship is maybe a lot to ask, but at least it’s important that people need each other and that they engage in professional relationships or other civic relationships concerning civic

activities. Because if you don't know each other, it's very difficult to form a good understanding of the other. So, yes, I think it is very important.

I think it is also especially important also in the law. If you look at the history of church-state relationships in the Netherlands, for example, we often think that they have evolved because the lawyers got better understanding of the law and of religious freedom, and it was implemented in a better way. Of course, that is true to a large extent. In retrospect, we could also see these developments of more relaxation of church-state relationships in the function of a societal element where different new religious organizations got to know each other and got to know the state and the other way around. I think that is very important now where in Western Europe we have a large presence of Islam, but Islam is still very much unknown to us, and so are the different groups. So my answer is yes.

HURD: Father Deacon?

BENNETT: I would say I think there is, in the case of Canada, and certainly I would hazard to guess it would be the same for the United States, we are a country that has, for most of our history, been very diverse. You can walk down any street in this country and you just see that diversity is a demographic reality. This is a very diverse country. Friendship between people of different faiths and different beliefs is essential for that flourishing that I mentioned, for that flourishing to build a common life together.

Now, if the official narrative or the narrative that is coming out of our institutions is that somehow, implicitly, religion can be a source of potential conflict and so, therefore, we can't have public expressions of religion because that emphasizes maybe too much difference and, therefore, we're not going to be able to build some sort of perceived or false neutral society – if that's the case, then it's going to be very hard for us to encounter one another and to share our different faiths.

I think this is particularly true in the university, in the workplace, in the factory, wherever it might be. So often we are told or we are conditioned socially to leave our religious faith at home. We have a little box on our table as we exit the house and we open the box each morning, we drop our religious faith in there only to pick it up when we come back home in the evening. When we're in the public space, when we're at the university, when we're in our office, God forbid we talk about our religious beliefs because it might offend someone or it might lead to some sort of conflict. I think that is a very unfortunate and very misguided approach.

Rather, we should be allowed to be our entire selves. Certainly, this is a narrative that is dominant on a whole range of different identities, whether we're talking – (inaudible) – certainly of a strength about allowing people to be themselves. That's the same for the religious self. We have to be able to live our lives, our religious lives, publicly.

Historically throughout human history, our religious lives have been lived publicly and that needs to be encouraged. Because when we encounter one another and we encounter one another not in some sort of relativistic, mushy middle where there's some sort of false consensus, when we encounter one another and we can say "I profoundly disagree with your religious

beliefs or I profoundly disagree with your moral perspective, but I still recognize in you my neighbor and I still recognize in you that you have a dignity as a human being and I am called to be in a relationship with you so that we can build a society together.” That needs to be the narrative, rather than pushing religious belief into the dark places, because that is not healthy.

TREENE: Yeah, just to respond to that, I agree, there’s a temptation to think that the more we allow for religious expression and religious liberty, we’re going to end up with more religious conflict as people knock against each other in the public square. Actually, the data suggests otherwise.

Tim Shah at Georgetown University, a sociologist, has done a lot of work on this. If you plot out the levels of religious conflict in a country and you also looked at the level of religious liberty, what you actually find is, in general, there are a few outliers – but the more freedom you have, the less social conflict you have between religious groups. It’s those countries that try to tamp down on religious freedom that end up having the greatest interreligious conflict.

HURD: I know that one of the legal questions that has come up in the last decade, 15-plus years in particular, has been this question of federal grants going to faith-based entities, particularly faith-based organizations. And the charge has been that this is a violation of the establishment clause, that the government is essentially weighing in.

Is it that? Or is it ensuring that faith-based entities are able to compete for grants just as any other entity, whether secular or not?

TREENE: Well, to go back to something that Dr. Van Bijsterveld said at the beginning, we said tension between religious equality arguments and religious autonomy, this one involves both: the idea that a religious group shouldn’t have to compromise its beliefs and, say, set up a secular parallel organization to carry out social works, that it can integrate those. That’s the autonomy.

But also, the equality argument is, if they’re offering a secular service—a homeless shelter, a jobs program—shouldn’t the religious organization be equal in coming forward with a plan that they think is effective? And can’t the government, if it’s a secular program, fund it, even if it’s run by a religious group? That’s something that the Bush administration, the Obama administration, the Trump administration have all embraced. This initiative has continued through all three of those administrations.

And I’d be very curious to see how that’s handled in Canada and in the Netherlands. My take is that, generally, other countries aren’t as cautious about government funding in those situations.

HURD: Yeah. If the two of you would like to respond to that, that would be great.

BENNETT: Well, certainly in the Canadian case, separation of church and state is not a constitutional principle in Canada. We don’t have the non-establishment clause or the free-exercise clause. Certainly, freedom of religion or conscience in the Charter of Rights and

Freedoms would be sort of rough equivalency of the free-exercise clause. But in Canada you will have provincial governments, municipal governments, the federal government providing support to a variety of faith-based institutions. Certainly in the province of Ontario, taxpayer dollars are used to support a very wide and large network of publicly funded Catholic schools in the province. That's been there for a considerable period of time.

I would say that there's a fairly well-established series of programs for federal funding and provincial funding where faith-based groups can obtain funding to support, in many cases, explicitly faith-based activities. We certainly have, as in the United States, a wide array of public holidays that are oriented to the Christian calendar. People are being paid to not be at work those days. That's another example that I think often gets overlooked in the United States.

HURD: And Dr. Van Bijsterveld, any reflections on the European context?

VAN BIJSTERVELD: Yes. If I may take that situation as an example, it's a fairly highly developed social welfare state where the state, of course, plays a very strong role in the redistribution of finances for public goals. The basic rule is that if the state gives subsidies for carrying out the activities that it wants to promote, then faith-based organizations should not be excluded on the basis of their faith, only when it compounds very specific differences, functional differences, then a difference may be made. But not on the basis of faith.

Maybe for an American audience, it's also interesting to say that our whole organization of our educational system shows this basic understanding very much. We have a dual system where state education and public education exists next to private education and private education is practically 100 percent also conventional education. The states raise funds for public education, public schools, but also for those private conventional schools. Of course, those private conventional schools are subject to most regulations that the state schools are subject to as well, of course with the exception of respectful religious identity.

Now what we've seen with the retreat of the social welfare state somewhat in the financial domain, they have these cooperation arrangements also exist. We even see new forms of cooperation between states and the church exist also on a financial level.

BENNETT: I think just to add to that, in the immediate case, we have seen increasing tensions around the role that particularly provincial funding for Catholic education and especially there have been some fault lines that have been drawn over the last little while.

Also, with private schools that receive virtually no state funding, there was a very famous case that went up to the supreme court of Canada involving an independent Catholic high school, Jesuit high school, in Montreal, Loyal High School. The provincial government in Quebec brought in a new curriculum on teaching basically values and ethics that was very – again, to use the word – neutral in that you could not approach it from a particular faith perspective. This curriculum was imposed on all schools across the province. Loyola said “we will not teach this according to the model that you've put forward, we will teach it from a Catholic perspective, we're not going to teach that all faiths are equal, we believe that there is a preeminence for Catholicism because that's what we confess.” The province took them to court. In the end, the

supreme court of Canada found in favor of Loyola High School and said that as an independent Catholic school they had a right to teach their students about their particular Catholic faith, regardless of what the province had to say about it.

There are, even in a very strong social welfare state like Canada or the Netherlands, there are some fault lines emerging, and certainly here in Canada.

HURD: Just on the subject of federal funding, we have a bit of a different legal regime in the United States. There is, both for funding purposes, for development, and also for activities in the United States, there is an explicit prohibition on the use of those for religious purposes, correct?

TREENE: We don't want to get into all the legal niceties, but there's a difference we have between direct aid, which is the government giving money to an organization directly, choosing a provider, like saying you have a good homeless shelter, I'm going to fund you. If that's the case, it has to be a purely secular program.

If, however, it's an indirect aid, like we say we're going to give people job training scholarships or a piece of paper that lets them get job training and they want to take that to any job training that they choose. Salvation Army has a program that integrates ministry and drug treatment and job training and so forth, that's fine as long as it's the person's choice to take that and indirectly give it to a religious purpose. That's getting into the niceties of American law.

HURD: We have a question from the audience.

Q: I was just wondering, all three of you have spoken about the importance of, one way or the other of whether we like neutrality or not, the government not taking sides in religious controversies, you know, not writing prayers for schools and so on. I'm just looking in this pamphlet of the 68 countries listed among the OSCE participating states and their partners. I don't know about a lot of them, but I have in my head at least 26 of them don't at all fit that model. So I was just wondering – and even if you go back as recently as, say, when President Reagan was saying that *Engel v. Vitale* was wrongly decided and that there should be still prayers allowed in American public schools. Most of our own history in this country doesn't seem to reflect that, a lot of these other countries don't.

I was just wondering, for the three of you, from the point of view of international religious freedom as promoted by the Helsinki Accords, how important, even if you think that it's better to have a government that doesn't take sides in these discussions, how important do you think it is for the human right of religious freedom that the government not takes sides in religious questions? Or is it licit for a government to hold one particular religious tradition or set of traditions in a public place of honor and give it place over others?

HURD: And if you could – your name and affiliation?

Q: Sorry. Dan Burns, Catholic University of America.

BENNETT: Sure. That's a very good question. As was raised earlier on, there are various types of state systems in relation between religion and the state.

I think, certainly as a Canadian, we come out of the British tradition very strongly. In the United Kingdom right now, there are two established churches, there's the Church of England and the Church of Scotland. They're both established, and so there's a precedence for them, particularly the Church of England, with bishops sitting as spiritual peers and as lords. There's a particular preeminence for Church of England schools and so forth.

The United Kingdom over its history has been able to fairly successfully evolve into a state where you have an established church, yet there is a very strong pluralism and respect for religious difference. I think that model is acceptable as long as there is that respect for pluralism and the state is, while being tied to a particular church or a particular faith, it does respect the rights of all of its citizens to live out their faith freely, both privately in terms of worship and their practices at home, but also publicly, to act on that faith in the public square.

When you look at it sort of through history, very often, certainly in the case of the church, when the church and the state have been fused, it's usually in the end not been that good for the church, but the state certainly hasn't suffered. I would argue, from my own perspective, from the perspective of the Canadian experience, that it's good not to have a particular established religion, but rather that the state should be very broad in its understanding of religious freedom and should be very respectful to those citizens who do want to have religion playing a central role in their lives, again, publicly and privately.

There needs to be greater breadth than there is currently for a state such as Canada. There needs to be a much broader understanding of religious freedom rather than a narrowing as we're seeing.

TREENE: Yeah, I would say in the U.S. context, the Founders in this respect, like in so many other respects, were both idealistic and pragmatic. The idealistic vision is conscience, protection of conscience, and they decided, looking back at history, established churches tended to infringe conscience. I don't think it's the establishment clause itself is a fundamental principle the way that conscience is, but it's seen by the Founders as that which will lead to the protection of conscience the same way many of our liberties are, how they designed the United States, the government, and divided the powers. There's nothing in principle about division of three branches of government that leads to liberty, but the ultimate goal was the preservation of liberty and true democracy.

HURD: Dr. Van Bijsterveld?

VAN BIJSTERVELD: Yes. In Europe, of course, our situation is quite different from the United States. In many countries, there are stratified systems of a church-state relationship. And the ultimate example is, of course, a country where there is an established church. We have various countries like that in Europe. England has been mentioned as an example, but also Denmark or Greece. Among them, those countries are quite different. For instance, in England the state and church are really two different entities – the state and the Anglican Church – but

there are a number of connections between them, institutionalized connections. In Denmark, for instance, it's very difficult to distinguish the established church from the state as an organization. In Greece, it's different altogether.

Apart from those state churches, there are also stratified systems in which the states cooperate with particular churches or give some churches a more elevated status. Usually, that is a system that is open for all churches who fit the particular requirements.

I agree also with Andrew when it says that the issue is not so much if there is a stratified system or whether there is an established church. The basic issue is, given the system, is there real religious freedom and also equality regardless of religion?

HURD: Thank you. We'll have one last call for questions from the audience and then we'll wrap after that.

Q: Hi. I have a question for Mr. Bennett, although, as far as I understand, he's looking at my back. So that's really rude of me, I'm really sorry. (Laughs.)

My name is Ann Sineva. I am working on government affairs and public policy here in D.C. with the Church of Scientology National Affairs Office.

It's good to see you, Mr. Bennett, again in your new capacity.

BENNETT: Nice to see you.

Q: Yeah. I have a question about mostly civil society because there was a lot said tonight about church versus the government. I want to challenge you on something you said earlier today. Actually, I would be very honored if other panelists commented as well, but the reason why I'm singling out Mr. Bennett is because he said something earlier, which I'm paraphrasing slightly, but you said that in a truly diverse, pluralistic society, people would live with different theological and ethical views. I wanted to challenge you on the point about ethical and see if you had more to say on that and could elaborate. Because I believe that if we had a society built with people that had completely different ethical views and no agreed-upon moral code, then it would no longer be a community, a society.

So, obviously, the Supreme Court takes cases concerning ethical matters and Mr. Treene deals with that constantly in his work. I'm curious to see your perspective as a religious leader, what do you tell your congregation? Where is the common-sense ground there between our differences, but also ethical points that we could survive on together?

BENNETT: Yeah, very good question. Thank you for the point. Just by stating that, obviously, I'm a Catholic, I'm a deacon in the Ukrainian Greek Catholic Church, and so I believe that what I hold to be true, both in terms of my theology, in terms of my ethical view and my moral views that stem from that theology and from a Christian anthropology, I believe that to be true. I believe it to be true not just for me, but I believe it to be true for all of you. It's a universal and objective truth, ethics and so forth. I think that as a society, we should strive to

have a common ethic and a common set of moral beliefs that champion the whole dignity of the human person.

I'm also part of a society, there are going to be people who disagree with me. So then, how do we go on? I think we have, again, an open public square where I have the ability as a Catholic to try and convince others of the truth of my belief. If, however, the public square becomes tightened and if it's constrained to me and I can no longer do that, then I'm going to be frustrated in my citizenship and I'm going to probably begin to retreat.

It's not that I have a relativistic approach to ethics. I believe that the ethic that I profess and try to live as a Christian, as a Catholic, is true. I believe it's objectively and universally true, but I need the ability in the public square to express that. And when I come up against people that have different moral, ethical, theological, philosophical beliefs, I need to be able to dialogue with them. I need to be able to engage with them. And I need to see in them a common humanity with me.

We need common humanity and we need to be able to build a society based on that common humanity, but also recognizing that there are very different belief systems out there and a lot of us are going to claim that our belief systems are true. That's the nature of society, it's a very messy business, but there has to be that space in the public square to engage with one another and to have the ability to convince the other.

HURD: I want to thank our panelists.

I want to thank those of you who came here today, those of you that are watching online, and also a special thanks to my colleagues, to Jordan, our hearing coordinator, to Stacy, our communications director, to Cade and Thea, our fellows, and Alexa and Cecilia, our interns, for helping put this together.

This was certainly not intended to be comprehensive – impossible to be so in so short a period of time – but hopefully it has added something to the conversations that are happening off the Hill. Thank you. (Applause.)

Whereupon, at 4:16 p.m., the briefing ended.