

JUDGING FAITHS: RELIGIOUS FREEDOM AT THE BAR IN U.S. AND EUROPEAN COURTS

Organisers: **Olivier Roy** | RSCAS/EUI
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Conference Room, Villa La Fonte
via delle Fontanelle, 18 – San Domenico di Fiesole

23-24 October 2014

■ **CONTEXT**

In recent years many research projects, especially in the United States, Europe and Canada, have begun to investigate the interactions among law, religion and politics. Several research findings highlight the key role courts play in defining the concepts and tools that states use to manage religious freedom in our pluralistic societies. While the resulting tensions have been explored at length in the social sciences, their treatment in law has remained theoretically underdeveloped, due to the problematic categorization of the case-by-case judicial approach.

Building on the workshop organized in cooperation with the Berkeley Law School in September 2013, this Workshop aims again to bring together a group of distinguished judges, scholars and advocates to discuss the tensions between faith-based practices and secular ideals in court. While the discussants will be primarily new to this Workshop, we hope that it can build on some of the shared common discoveries of the Berkeley workshop. These insights include: how, despite very different institutional frameworks, the similar ways US and European Courts make room for local variation, through a jurisprudence of avoidance; the ways that American-style (and often American-backed) litigation activists are transforming what has been a European group-based conception of religious freedom into an individualistic conception; and common strategies through which litigants translate matters of faith into the interests protected at law.

The workshop will focus on the contribution by legal scholars, judges and lawyers, with the aim of assessing the practical outcome of theoretical legal developments as they result from the adjudication of faith-based claims. It will also outline the state of the art with contributions by principal investigators from finalized and ongoing research projects in law and other social sciences, analyzing trends in the area of religious freedom across both public and private law. Secondly, the workshop A final session will be devoted to the pending issues (e.g. antidiscrimination norms, neutrality, circulation of legal arguments, strategic litigation by religious groups) which courts confront when their decisions affect the management of religious pluralism and religious freedom, and will look as well to challenges ahead.

■ PROGRAMME

Thursday 23 October

- 08.30-09.15 Welcome and Introduction to the workshop
- 09.15-11.30 *Dealing with Religion in Courts*
- Chair: **Michael Rosenfeld** | Benjamin N. Cardozo School of Law
- Religion as a Global Legal Problem
Lorenzo Zucca | King's College University of London
- The Deteriorating Wall between Church and State
William A. Fletcher | United States Court of Appeals for the Ninth Circuit
- Freedom of Religion: Is It a 'Lesser' Right under the ECHR?
Anne Power-Forde | Former Judge European Court of Human Rights
- The Secular Court? Trends in the United States Supreme Court and the European Court of Human Rights Compared
Effie Fokas | ELIAMEP
- 11.30-12.00 COFFEE BREAK
- 12.00-13.45 *Law and Religion across the Atlantic: Open Issues*
- Chair: **Marsha Berzon** | United States Court of Appeals for the Ninth Circuit
- Speech, Hate Speech, Free Speech
Christopher Kutz | UC Berkeley
- Judging Religious Questions: The Bounds of Adjudicative Disability
Frederick Gedicks | BYU Law School
- The Conscience Wars: Rethinking the Balance between Religion, Identity and Equality
Susanna Mancini | The University of Bologna
- 13.45-15.00 LUNCH
- 15.00-17.00 *Law and Religion across the Atlantic: Open Issues* (cont.)
- Chair: **Joseph R. Grodin** | UC Hastings
- Equality and Discrimination Law: What's Religious Conscience Got to Do With It?
Malehia Malik | King's College University of London
- Comparing U.S. and French Secularism in the Public Sphere: An Outsider Perspective on *Town of Greece v. Galloway* (U.S. Supreme Court) and *S.A.S. v. France* (ECtHR)
David Oppenheimer | UC Berkeley
- Reasonable Accommodation: The Turning of the Tide on Judicial Pragmatism
Mark Hill, QC | Cardiff University
- 17.00-17.15 COFFEE BREAK
- 17.15-17.45 Introduction to next day sessions
- 20.00 **President's lecture: Freedom from Religion**
Joseph H. H. Weiler | EUI
- DINNER

Friday 24 October

- 09.00-11.00 **Roundtable and Comparative Discussion**
Session I – The Comparative Meaning of Freedom of Religion and Exercise
- Chairs: **Fred Gedicks** | BYU Law School
Pasquale Annicchino | EUI
Diletta Tega | University of Bologna/Italian Constitutional Court
John Francis Larkin, QC | Office of the Attorney General for Northern Ireland
Louise Melling | American Civil Liberties Union
Ronan McCrea | University College London
- 11.00-11.30 COFFEE BREAK
- 11.30-13.30 **Roundtable and Comparative Discussion**
Session II – The Demands of Neutrality and Public Reason
- Chairs: **Christopher Kutz** | UC Berkeley
Marco Ventura | KU Leuven
Javier Martinez Torron | Complutense University
Nehal Butha | EUI
Eric Rassback | Becket Fund for Religious Liberty
Vincent De Gaetano | European Court of Human Rights
- 13.30-15.00 LUNCH
- 15.00-17.00 **Courts and Judges: The Role of Jurisdiction in the Future of Law, Religion and Politics**
- Chair: **Marie Claire Foblets** | Max Planck Institute
- Opening Remarks
Olivier Roy | EUI
Giuliano Amato | Italian Constitutional Court
Marco Ventura | KU Leuven
- 17.00 17.30 COFFEE BREAK
- 17.30-18.30 Final discussion among the participants

■ PARTICIPANTS

Giuliano Amato	Judge, Italian Constitutional Court, Italy
Pasquale Annicchino	Research Fellow, EUI, Italy
Marsha Berzon	Judge, United States Court of Appeals for the Ninth Circuit, USA
Nehal Butha	Professor, EUI, Italy
Francesco Clementi	Professor, University of Perugia, Italy
Vincent De Gaetano	Judge, European Court of Human Rights, France
William Fletcher	Judge, United States Court of Appeals for the Ninth Circuit, USA
Marie Claire Foblets	Professor, Max Planck Institute Germany
Effie Fokas	Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP), Greece
Frederick Gedicks	Professor, BYU Law School, USA
Joseph R. Grodin	Judge, University of California Hastings College of the Law (Uc Hastings), USA
Mark Hill, QC	Professor, Cardiff University, UK
Christopher Kutz	Professor, UC Berkeley, USA
John Francis Larkin, QC	Attorney General, Office of the Attorney General for Northern Ireland, Northern Ireland
Malehia Malik	Professor, King's College University of London, UK
Nadia Marzouki	Collaborator, EUI, Italy; Research Fellow, CNRS, France
Louise Melling	Deputy Legal Director, American Civil Liberties Union, USA
Susanna Mancini	Professor, The University of Bologna, Italy
Ronan McCrea	Senior Lecturer, University College London, UK
David Oppenheimer	Professor, UC Berkeley, USA
Ann Power-Forde	Judge, European Court of Human Rights, France
Eric Rassbach	Deputy General Counsel, Becket Fund for Religious Liberty, USA
Heddy Riss	Program Director, UC Berkeley, USA
Olivier Roy	Professor, EUI, Italy
Michel Rosenfeld	Professor, Benjamin N. Cardozo School of Law, USA
Kristina Stoeckl	Collaborator, EUI, Italy; Research Associate, University of Vienna, Austria
Diletta Tega	Professor, University of Bologna/Italian Constitutional Court, Italy
Javier Martínez-Torrón	Professor, Complutense University, Spain
Marco Ventura	Professor, KU Leuven, Belgium
Lorenzo Zucca	Reader, King's College University of London, UK
Joseph H. H. Weiler	President, EUI, Italy