



Secular intolerance in Europe

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Introduction

There are four major legal trends where secular intolerance has made significant footholds culturally 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. This article will first highlight the history of secularism in Europe and how it has evolved into a culture shifting phenomenon which has had serious consequences for freedom of thought, conscience and religion. It will then be followed by an analysis of the four trends listed above.

I. History of Secular Intolerance in Europe

A brief history of “secularism”

While Europe has been undergoing a steady process of secularisation for centuries, the process has undoubtedly sped up in recent decades, with radical secularism or “secular intolerance”² arising in the last few years.

Many trace the roots of present day secularism³ to the period of “The Enlightenment” during the first half of the eighteenth century. During the Enlightenment there was a great increase in two major philosophies: rationalism and empiricism. Rationalism is the belief that all human knowledge and claims of truth should be judged solely by human reason without the aid of divine revelation.⁴ Empiricism is the view that all rationally acceptable beliefs or propositions are justifiable or knowable only through experience.⁵ It was also during this time that modern science was born. The successes of science, especially the work of Sir Isaac Newton, persuaded many people of the power of reason and of the necessity to test all things by reason.⁶ Heralding “reason” as the chief means by which decisions should be made and societies formed, leading Enlightenment thinkers often opposed the religious claims to “revelation” and

¹ This 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/odihhr/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.

² When the Pope visited the United Kingdom in 2010, secularism was the first thing he addressed in his opening speech. Criticizing what he called “an aggressive form of secularism”, he said: “As we reflect on the sobering lessons of atheist extremism of the 20th century, let us never forget how the exclusion of God, religion and virtue from public life leads ultimately to a truncated version of man and society.” http://www.vatican.va/holy_father/benedict_xvi/speeches/2010/september/documents/hf_ben-xvi_spe_20100916_incontro-autorita_en.html.

³ Secularism that was originally fought for the sake of freedom of religion, especially freedom for those who follow religions that were not state religion or endorsed by states, is now losing its original intent and has become a tool to violate freedom of religion.

⁴ Rationalism. (2012). In *Encyclopædia Britannica*. Retrieved from <http://school.eb.com/eb/article-68591>.

⁵ Empiricism. (2012). In *Encyclopædia Britannica*. Retrieved from <http://school.eb.com/eb/article-9108677>.

⁶ Protestantism. (2012). In *Encyclopædia Britannica*. Retrieved from <http://school.eb.com/eb/article-41588>.

“faith”, and therefore opposed the role and influence of religion and religious leaders in public life.

Although the Enlightenment culminated in 1789, when secularism violently erupted in the form of the French Revolution, the principles of secularism continued to flow out of the period and into the following centuries. In the middle of the nineteenth century, the term “secularism” was coined⁷ and in 1851 the world's first secular organization was formed.⁸ Many other people and organizations dedicated to removing the role of religion in public life later emerged, and their influence steadily spread throughout Europe and beyond, shaping attitudes in many different areas, such as the state, society, ethics and education.

In 1781, Emmanuel Kant published the *Critique of Pure Reason*⁹ which signaled a seismic shift away from classic Aristotelian philosophy and schools of theological thought such as Thomism which built upon those foundations. The philosophy of Kant held that we cannot know for absolute certainty truth due to subjectivism. Kant, the father of German Idealism, proved to be a major influence on the works of such culture shaping philosophers as Hegel and Marx. The philosophical schools of postmodernism and deconstructionism certainly are also fruits of the Kantian ideology.

A contemporary of Kant, Jeremy Bentham and the school of Utilitarian thought have also played a major role in shaping secular culture. Bentham was staunchly opposed to natural law and natural rights and pushed for an extension of individual rights (rather than community rights which serve the “common good”). Bentham wrote: “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think ...”¹⁰

Peter Singer, often viewed as one of the most influential figures in the animal rights movement, advanced the theories of Bentham into a secular, preference utilitarianism perspective. Singer is a proponent of infanticide, euthanasia, and bestiality. Despite his radical views, many of Singer’s ideas have seeped into popular culture such as the concept that animal rights should be placed on a par with human rights and that the value of life should be measured by utilitarian calculation (taking into account a pleasure vs. pain analysis) rather than any views of inherent human dignity.

In 1859 Charles Darwin published the *Origin of Species*. The theory of evolution by natural selection offered a foundation for worldviews without God. In the same period Karl Marx published (with Friedrich Engels) *The Communist Manifesto*, the most celebrated pamphlet in the history of the socialist movement. He also was the author of the movement's most important book, *Das Kapital*. These writings and others by Marx and Engels form the basis of the body of thought and belief known as Marxism. Marx considered religion to be a product of human consciousness and “an opium for the people.”¹¹ It was also in the second half of the 19th century that Friedrich Nietzsche thought through the consequences of the triumph of the Enlightenment's secularism, expressed in his observation that “God is dead,” in a way that

⁷ See Holyoake, G.J., *The Origin and Nature of Secularism*, (London: Watts and Co.) 1896, p. 51.

⁸ <http://www.leicestersecularsociety.org.uk/aboutus.htm>.

⁹ Kant, Immanuel; Kitcher, Patricia (intro.); Pluhar, W. (trans.) (1996). *Critique of Pure Reason*. Indianapolis: Hackett. xviii.

¹⁰ Bentham, Jeremy (1789). *The Principles of Morals and Legislation*. p. 1. (Chapter I).

¹¹ Marx, Karl. (2012). In Encyclopædia Britannica. Retrieved from <http://school.eb.com/eb/article-9108466>.

determined the agenda for many of Europe's most celebrated intellectuals after his death.¹² When combined with the contemporary psychoanalytic theory of Sigmund Freud, human experience could be explained solely through economic necessity, biological evolution, and sexual urges.

It wasn't long before the Scientific Humanitarian Committee was founded in Berlin in 1897 which gave voice to homosexuals. Before this time there were scarcely any homosexual agenda organizations. The committee published "emancipation" literature, sponsored rallies, and campaigned for "legal reform" throughout Germany, as well as The Netherlands and Austria. In many larger German cities, "homosexual nightlife" became tolerated, and the number of homosexual agenda publications increased. Outside Germany, other organizations were also created such as the British Society for the Study of Sex Psychology in 1914. Attitudes toward homosexual behavior are generally in flux, largely as a result of the increased political activism of the homosexual agenda.¹³

In 1933 the first *Humanist Manifesto* was published which affirmed that humanists "regard the universe as self-existing and not created".¹⁴ In 1973 Paul Kurtz, one of secular humanism's most prominent advocates, drafted the *Humanist Manifesto II*. Its first proclamation includes: "No deity will save us; we must save ourselves."¹⁵

Many influential thinkers and educators signed these manifestos as well as *Humanist Manifesto III* in 2003. Among them was John Dewey, one of the most influential men in reforming the public educational system in the late 1800s and early 1900s in America. During the first decade of the 20th century, Dewey's ideas became known abroad through his books. Under the influence of Dewey and others, science replaced religion as the foundation of education. Secular humanism has become the only worldview allowed in public schools.¹⁶

Another signatory was Richard Dawkins, the British popular science writer who generated significant controversy for asserting the supremacy of science over religion in explaining the world. In 2006 he published *The God Delusion* and founded the Richard Dawkins Foundation for Reason and Science, an organization that seeks to foster the acceptance of atheism. In addition to promoting his organization through its website and YouTube channel, along with fellow atheists, he embarked on a campaign of lectures and public debates proselytizing and defending a secular worldview.¹⁷

Famous educators, influential journalists and feminists such as Gloria Steinem and Ted Turner, the owner of news station CNN, were nominated as humanists of the year by the American Humanist Association, a promoter of secular governance and a "good without god" lifestyle.¹⁸

¹² Nietzsche, Friedrich. (2012). In Encyclopædia Britannica. Retrieved from <http://school.eb.com/eb/article-9108765>.

¹³ Gay rights movement. (2012). In Encyclopædia Britannica. Retrieved from <http://school.eb.com/eb/article-281889>.

¹⁴ http://www.americanhumanist.org/humanism/Humanist_Manifesto_I.

¹⁵ http://www.americanhumanist.org/Humanism/Humanist_Manifesto_II.

¹⁶ <http://www.summit.org/resources/essays/the-worldviews-of-destruction-in-the-20th-century/>.

¹⁷ Dawkins, Richard. (2012). In Encyclopædia Britannica. Retrieved from <http://school.eb.com/eb/article-9475671>.

¹⁸ http://www.americanhumanist.org/AHA/Humanists_of_the_Year.

What is secularism?

The foundational claims made by secularists, both historically and presently, are somewhat modest and are limited to church-state relations.

The legitimate concern over Europe’s religious wars of the sixteenth and seventeenth centuries led to ideas of religious toleration and a separation between the institutions of the church and the state. Therefore, in this sense, secularism appeared as a welcome solution to end religious feuding. Thus, it is often claimed that secularism at its core is not hostile to religion and is not anti-God, but is merely seeking a correct ordering of societal structures so that all may flourish – religious and non-religious alike. The National Secular Society in the United Kingdom, for example, introduces and explains “secularism” in these modest terms: “Secularism is a principle that involves two basic propositions. The first is the strict separation of the state from religious institutions. The second is that people of different religions and beliefs are equal before the law.”¹⁹

If this is all that was meant by secularism, then there would be little or no reason for religious believers to be particularly concerned: some would advocate for an established church, many others would not, but few would see this understanding of secularism as a great threat to religious liberty. Does secularism, however, mean more than a recognition that the state should keep out of church affairs and that all are equal before the law?

Undoubtedly there is more to secularism than merely church-state ordering. Indeed, the true heart of secularism is not a belief in the separation of church and state, but the belief that questions can only be answered, and considerations can only be made, by reference to the present life.²⁰ As George Jacob Holyoake, the man who first used the phrase “secularism”, explained in the nineteenth century, “Secular knowledge is manifestly that kind of knowledge which is found in *this life*, which relates to the conduct of *this life*, conduces to the welfare of *this life*, and is capable of being tested by the experience of *this life* [my emphases].”²¹

Thus, as the Catholic Encyclopaedia (1907-1912) states, “The fundamental principle of Secularism is that, in his whole conduct, man should be guided exclusively by considerations derived from the present life itself. Anything that is above or beyond the present life should be entirely overlooked.”²² Such a foundational assumption about the purpose and nature of man and this life could never be limited simply to church/state relations – and, unsurprisingly, it is not. Out of this foundational assumption flow several other “beliefs”; (and) it is these that cause the threat to religious freedom. The more aggressively these “beliefs” are pursued, the greater the threat to religious freedom. A few brief examples can be given.

The threat of secularism to religious liberty

Firstly, because it is claimed that religion deals only with “spiritual” matters, and because secularism specifically overlooks such considerations, a society premised on secularism will not provide any public space for spiritual matters and will confine religion to the private realm. The result is the active and sometimes aggressive removal of religion from public life. For example, in the secularist mindset, chaplains in hospitals have “no clinical benefit”²³ and are therefore a waste of money; local counsellors or politicians voluntarily beginning the day in

¹⁹ <http://www.secularism.org.uk/what-is-secularism.html>.

²⁰ See Holyoake, G. J., op cit.

²¹ Stated in a public debate with Charles Bradlaugh, held in 1870. See <http://www.catholic.org/encyclopedia/view.php?id=10646>. Emphasis added.

²² <http://www.catholic.org/encyclopedia/view.php?id=10646>.

²³ <http://www.secularism.org.uk/uploads/nss-hospital-chaplaincy-campaign-briefing.pdf>.

corporate prayer is “wholly inappropriate”²⁴ and collective worship in schools is “a clear breach of young people’s human rights.”²⁵ People may believe whatever they want, the secularist will state, but those beliefs must be private, and certainly the state should not actively support them through funding and tax exemptions. Thus rather than public expressions of religion being seen as beneficial for society, it is seen as a “privilege” which needs to be removed.

Secondly, secularism has no basis for comprehending an individual’s appeal to a higher authority. Thus, from the secular perspective, freedom of conscience must be very limited indeed: it is only permitted providing that it has no impact on others. Such a concession, however, is meaningless: a person’s freedom of conscience only needs to be exercised when it collides with the status quo. Given that secularism cannot provide a framework for appeals to a higher authority, it is unsurprising that in the increasingly secular countries such as Norway, conscience exemptions for doctors are being removed with regard to profound moral issues such as abortion. As Norwegian Health Minister Robin Kåss recently explained, “If you deny a patient contraception or a referral for an abortion, you can’t be a general physician. *Doctors have to be ready to do their duty* [my emphasis].”²⁶ Similarly, the National Secular Society in the United Kingdom intervened against two religious believers who were dismissed for attempting to exercise their freedom of conscience in the workplace. It stated: “We believe any further accommodation of religious conscience in UK equality law would create a damaging hierarchy of rights, with religion at the top.”²⁷ And in many other increasingly secular nations, freedom of conscience is “conceded” in certain limited circumstances, but not respected.²⁸

Thirdly, secularism does not provide a neutral framework for debating and deciding issues of morality and ethics. Despite an appeal to “neutrality” being one of the most repeated claims of secularists, in reality it is not so. A belief system that will not look beyond this life will clearly have ethical and moral implications for questions relating to this life. Indeed, rather than being “neutral”, proponents of secularism have simply established themselves against basic Christian teaching on present day moral issues. For example, the oldest secular society in the world, the Leicester Secular Society, explains that: “Secularists seek to eliminate the influence of religion on Government and Education and are committed to fighting religious prejudice, particularly in attitudes to *sexuality ... women’s rights, abortion, and assisted dying* [my emphasis].”²⁹ Similarly, the President of the National Secular Society recently gave a short speech to fellow European secularists, where he declared: “We in Europe are ready and prepared for *gay marriage*. Many nations already have it and the terminal consequences that the Vatican and the Church of England predict did not come to pass. A woman’s right to *abortion* is secure almost everywhere in Europe – except in those nations still dominated by the Catholic Church. In *stem cell research*, in the right to unfettered access to *contraception*, in the matter of *choosing our own moment to die* [my emphases]– in all these issues the churches seek to impose their doctrines by law on not just their congregations, but on everyone.”³⁰ These were the only issues that he mentioned.

²⁴ <http://www.secularism.org.uk/council-prayers.html>.

²⁵ <http://www.secularism.org.uk/uploads/collective-worship-briefing.pdf>.

²⁶ <http://www.thelocal.no/page/view/doctors-cant-opt-out-of-abortion-duties>. Emphasis added.

²⁷ See <http://www.secularism.org.uk/european-court-of-human-rights-i.html>.

²⁸ For an analysis of the health profession, see Bunn A., *The myth of secular neutrality*, Christian Medical Fellowship, ‘Nucleus Easter’, 2009, p.32. Available at

<http://www.cmf.org.uk/publications/content.asp?context=article&id=2223>.

²⁹ <http://www.leicestersecularsociety.org.uk/aboutus.htm>.

³⁰ <http://www.secularism.org.uk/blog/2012/09/nss-presidents-speech-to-secular-europe-rally>.

Apparently advocating human rights and equal treatment, they promote their convictions about religion and fight against what they call “religious privileges”. The European Humanist Federation (EHF) for example regards itself as an organization that promotes “the principles of humanism and of the secular state, supporting human rights, opposing discrimination against non-believers and fighting for equal treatment.” It claims to work in the European Union (where it is officially recognized as a partner for dialogue) and to cooperate with likeminded Members of the European Parliament. It affirms being active at the Council of Europe in activities run by NGOs, in ‘intercultural dialogue’ organized at ministerial level and in lobbying the Parliamentary Assembly. Furthermore, it alleges to be especially active in the human rights wing of the OSCE (Organization for Security and Cooperation in Europe), contributing to its conferences and making the case against “religious privilege.”³¹

Secularist organizations often have considerable financial supporters. For example, the EHF and the Polish Humanist Federation jointly organized, with financial support from the European Commission, a conference on “Humanism and democracy in Central Europe: co-existence of different life stances”. This was held in the Polish Parliament on October 2002.³² In 2008 the EHF held a “Colloquium on Secularism and Human Rights”. This one-day colloquium was supported by the European Union through the Bureau of European Policy Advisers.³³ In 2010 George Soros, a Hungarian-born American and a powerful and influential supporter of liberal social causes donated \$100 million to the non-governmental organization Human Rights Watch. Related causes taken up by this organization have included seeking to liberalize privileges for abortion and homosexual activity.³⁴

That secularists actively campaign for same-sex marriage, abortion on demand, embryonic stem cell research, euthanasia, unfettered access to contraception, and other such issues, while still claiming to be “neutral”, is thus hypocritical.

Therefore, insofar as secularism means more than “the separation of the state from religious institutions” and the principle that “people of different religions and beliefs are equal before the law”, secularism is in opposition to religious liberty: it seeks the privatisation of religion, it is not neutral with regard to morality and ethics, and the vision for society espoused by secularists stands in stark contrast to the Judeo-Christian moral framework that has existed in Europe for many centuries.

It is clear that this secular vision has been pursued increasingly aggressively in recent times, and there are numerous implications for religious freedom.

II. Legal Trends Manifesting Radical Secular Influences

“Non-Discrimination” Legislation

Despite the lofty protections afforded to religious liberty by the European Convention of Human Rights and other binding international instruments, the United Kingdom has shown over and over that it will disregard the right to freedom of thought, conscience and religion every time it comes into conflict with the protection of “sexual orientation” privileges.

³¹ <http://humanistfederation.eu/about-ehf/organisation/>

³² <http://humanistfederation.eu/2002-conference-on-co-existence-of-religious-communities-and-humanists-in-europe/>.

³³ <http://humanistfederation.eu/other-work/conferences/>.

³⁴ Soros, George. (2012). In Encyclopædia Britannica. Retrieved from <http://school.eb.com/eb/article-9470922>.

Recently, a husband and wife were successfully sued for not allowing a same-sex couple to share a single bed in their private guest house despite their clear notice to all guests (regardless of “sexual orientation”) that because of their Christian convictions they would only provide a single bed to married couples.³⁵

In a similar vein, Catholic adoption agencies who wish to maintain their Christian ethos have been forced to either secularize themselves or completely shut down business for their refusal to facilitate adoptions to same-sex couples based on scriptural proscriptions of homosexual activity.³⁶ Stunningly, of the 14 faith-based adoption agencies working throughout the United Kingdom, only two have been able to function while maintaining their religious ethos. More than half have been forced to abandon their Christian identity.³⁷ The others are either fighting to maintain their ethos judicially or have closed their business.

In *McClintock v. Department of Constitutional Affairs*³⁸, a Justice of the Peace and practicing Christian asked not to be forced to officiate over any cases in which he might have to place children with same-sex partners. Despite having an “unblemished record” and being well regarded by his fellow magistrates³⁹, his request was summarily denied and Mr. McClintock resigned as the only means of protecting his conscience and moral views. Despite the protections of the Employment Equality Regulations 2003⁴⁰, the petitioner’s claims to the Employment Tribunal for direct discrimination, indirect discrimination and harassment all failed. His appeals to the Employment Appeal Tribunal and Court of Appeals also did not succeed.

The two highest profile cases illustrating the clash between firmly held religious convictions and non-discrimination on the grounds of “sexual orientation” are *Ladele and McFarlane v. The United Kingdom*.⁴¹ Like the case of *McClintock*, these cases originated in an employment tribunal – as both Mr. McFarlane and Ms. Ladele were dismissed from their employment for refusing to condone same-sex relationships. McFarlane worked as a relationship counselor and shared with his manager his concerns over discussing homosexual behavior in his counseling sessions. Rather than having his concerns accommodated and utilizing a system of referral (commonly used in counseling when there is a conflict of interest), McFarlane was dismissed for gross misconduct. Ladele was a registrar over births, deaths and marriages. When same-sex civil partnerships were introduced by the government in 2005, Ladele immediately recognized there would be a clash with her new job requirements and her faith. Once again, rather than being accommodated with a simple timetabling solution, Ladele was dismissed. Tellingly, Ladele’s supervisor at the time stated in the Employment Tribunal, “I don’t believe that we should be accommodating people’s religious beliefs in the Registry Service.” The cases of McFarlane and Ladele are now before the European Court of Human Rights, with a judgment expected in 2013.

The cases clearly establish a pattern where Christian faith is marginalized and discriminated against when clashing with progressively enacted privileges for homosexuals and under the

³⁵ *Hall and Preddy v Bull and Bull*, (Case No. 9BS02095), 18 January 2011.

³⁶ See e.g.: *Catholic Care v The Charity Commission* (CA/2010/0007), 26 April 2011.

³⁷ 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’s 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.

³⁸ *McClintock v Department of Constitutional Affairs* (2007) ET 2800834/06.

³⁹ *Id.*, § 12.1.

⁴⁰ SI 2003 No. 1660 [Religion or Belief].

⁴¹ Application nos. 51671/10 and 36516/10, lodged on 27 August 2010 and 24 June 2010. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-111187>.

false guise of laws supporting “tolerance”. The cases further highlight the problem whereby fundamental rights are being trumped by newly formulated privileges.

For most of Europe the as it were attacks on conscience have been limited to the sphere of employment. However, there is a draft European Union directive being discussed, known as the “Equal Treatment Directive” that, if passed, would drastically expand the law into the sphere of the provision of goods and services. Currently member states of the EU can choose whether or not to expand their non-discrimination laws outside of employment law. However, the proposed directive would take away that choice, forcing all 27 member states to adopt laws that prohibit discrimination in the provision of goods and services. The UK has already adopted such laws, and therefore gives a prophetic glance to the future. If the proposed directive is passed, it is likely that the same stories of faith-based adoption agencies being closed and small guest houses being sued will be prevalent throughout Europe, in the name of “equality”.⁴²

Clearly, freedom of thought, conscience and religion emptied of a right of conscience is no longer the fundamental right that is guaranteed protection by the Convention. It becomes the far more limiting freedom of worship which protects only private manifestations of faith. Precisely stated, religious faith is allowed so long as its manifestation does not touch any other boundaries of civil society. This is not what the Convention envisioned; nor what it protects.

Censorship of Religious Symbols

The United Nations General Assembly, in its *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, held that “discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights...”⁴³ The Declaration also called on States to respect the rights of religious adherents to use and manifest objects related to their religious faith.⁴⁴ Restrictions on the adornment of religious clothing or symbols may not be imposed for discriminatory purposes or be applied in a discriminatory manner.

The recent judgment of the United States Supreme Court in *Salazar v. Buono*⁴⁵ is instructive as to the secular value of religious symbols in the public square. The case, involving the presence of a large cross in the Mojave National Preserve, held that the “separation of church and state” does not require the eradication of all public symbols in the public realm.⁴⁶ Justice Kennedy, writing for the majority, made it clear that the application of the doctrine of “separation of church and state” requires accommodation rather than a strict ban on religious symbols of faith.⁴⁷ Furthermore, as with the presence of the cross or religious symbols in countries such as Italy and other Member States with strong historical ties to the Christian faith, Justice Kennedy

⁴² See, The proposed EU “equal treatment” directive: How the UK gives other EU member states a glimpse of the future, Paul Coleman and Roger Kiska, IJRF Vol 5:1 2012 (113–128).

⁴³ Proclaimed by General Assembly resolution 36/55 of 25 November 1981, Article 3.

⁴⁴ *Id.*, Article 6(c).

⁴⁵ *Salazar v. Buono*, 559 U.S. ____ (2010).), No. 08-472, available at <http://www.law.cornell.edu/supct/html/08-472.ZS.html>.

⁴⁶ *Id.*, Section III, para. 12.

⁴⁷ See e.g.: *Id.*

wrote that although the cross is certainly a Christian symbol, its placement in the public square does not necessarily promote a Christian message.⁴⁸

Many Council of Europe members have rich cultural and historical ties to the Christian religion. These Member States use symbols of their Christian heritage, including the cross, in public schools, court rooms, government buildings and other state sponsored entities as signs of culture and unity. Fifteen Council of Europe Member States currently make legal allowance for the display of religious symbols in public schools or other forums within the public square.⁴⁹ Furthermore, many more Contracting Parties display the cross on their flags.⁵⁰ Any decision with general application which would require religious symbols to be removed from the public square would send a radical ideological message throughout Europe. This impact would be felt strongest in the former Soviet States, among which several display crucifixes in public buildings, where the forced removal of symbols of national religious identity could be a reminder of a painful past. Under the logic of such a reading of the Convention, religious symbols in public places would be subject to censorship whenever someone claimed offense. This would reduce freedom of expression to its lowest common denominator.⁵¹

However, despite the rich ties to the Christian religion in much of Europe, and despite the clear guidance on religious symbols provided by the United Nations, frequent attempts are made to remove the symbol of the cross from public life. Undoubtedly the most famous of such cases in Europe was the case of *Lautsi v Italy*,⁵² where the atheist applicant sought to have the cross removed from classrooms throughout all of Italy, on the basis that their presence in the public square equated to coercion or indoctrination. Having won her claim at the chamber level, the Grand Chamber of the European Court of Human Rights dramatically overturned the decision, holding that Italy was free to display the cross in the public square. In a powerful Concurring Opinion, Judge Bonello wrote:

The Convention has given this Court the remit to enforce freedom of religion and of conscience, but has not empowered it to bully States into secularism or to coerce countries into schemes of religious neutrality. It is for each individual State to choose whether to be secular or not, and whether, and to what extent, to separate Church and governance. What is not for the State to do is to deny freedom of religion and of conscience to anyone.⁵³

While the applicant in *Lautsi* was attempting to have the cross removed, the applicants in the cases of *Eweida and Chaplin v the United Kingdom*⁵⁴ are both seeking the right to wear their cross visibly in the workplace. Ms. Eweida is a practicing Coptic Christian who wore a small cross on a chain around her neck. However, her employer, British Airways, insisted that the cross remain hidden or be removed. In contrast, however, British Airways did allow members of other religions to wear clothing or symbols as an expression of their faith. Ms. Chaplin is also a practicing Christian and has worn a cross on a chain around her neck since her confirmation in 1971 and considers this to be a manifestation of her faith.

⁴⁸ *Id.*, Section III, para. 5.

⁴⁹ Austria, Croatia, Cyprus, Georgia, Germany, Greece, Ireland, Italy, Lithuania, Malta, Poland, Romania, San Marino, Slovakia and Spain.

⁵⁰ *See e.g.*: Denmark, Finland, Greece, Norway, Slovakia, Sweden, Switzerland and the United Kingdom.

⁵¹ As the famous American Jurist Justice Cardoza aptly wrote: "a legal principle has a "tendency . . . to expand itself to the limit of its logic"." Justice Benjamin Nathan Cardoza, *The Nature of the Judicial Process* (New Haven: Yale University Press: 1921).

⁵² Application no. 30814/06, 18 March 2011.

⁵³ *Id.*, § 2.1.

⁵⁴ Application no. 48420/10 59842/10, lodged on 10 August and 29 September 2010. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112944>.

Both women took their employers to an employment tribunal, claiming discrimination on the grounds of their Christian faith. However, the UK courts found against them, and stated that Article 9 of the Convention does little to protect religious employees within secular employment. The cases are now before the European Court of Human Rights, and during the oral arguments in September 2012, the lawyer for the British government revealed the government's secular understanding of religious faith, arguing simply that Christians should leave their faith at home or resign.⁵⁵

Limitations on Rights of Christian Expression

The European Court of Human Rights has repeatedly held that "Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual's self-fulfillment."⁵⁶ The Court has also held on numerous occasions that freedom of expression must be protected in order to safeguard tolerance, broadmindedness and pluralism.⁵⁷

It is paramount that any European government or inter-governmental authority not act to indoctrinate and cannot be allowed to operate distinctions between persons holding one opinion or another. Any such distinctions would be contrary to the principles of democracy which have been so bravely defended throughout the recent history of Europe.⁵⁸ Thus freedom of expression protects not only: "the information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broad-mindedness without which there is no democratic society."⁵⁹

Subject only to the limitations of paragraph 2 of Article 10, freedom of expression is "applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society.'"⁶⁰

However, in the last decade lobby groups with the acquiescence of inter-governmental bodies and national legislatures have begun penalizing certain forms of Christian speech because it may cause offense. In a very real sense, witch trials have been recreated to punish speech which is not part of the cultural orthodoxy. If you hold Christian views which oppose the secular worldview, you could lose your job, be fined, go to jail or otherwise have your life detrimentally impacted. Examples abound.

On 20 July 2003, Pastor Ake Green, from his small church in rural Borgholm, Sweden, delivered a strongly worded sermon on the topic of sexual immorality, redemption and grace. The Prosecutor's Office filed a criminal claim against Pastor Green under Sweden's 2002 "hate

⁵⁵ See <http://www.christian.org.uk/news/govt-lawyer-christians-should-leave-faith-at-home-or-resign/>.

⁵⁶ *Dichand and Others v. Austria*, no. 29271/95, § 37, ECHR 2002-III. See also *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p.26 § 41; *Şener v. Turkey*, no. 26680/95, § 39, ECHR 2000-III; *Thoma v. Luxembourg*, no. 38432/97, § 43, ECHR 2001-II; *Maronek v. Slovakia*, no. 32686/96, § 52, ECHR 2001-II;

⁵⁷ See e.g.: ECHR, *Handyside v. The United Kingdom*, 1976.

⁵⁸ Cf., Report of the Committee of Ministers, in *Theory and Practice of the European Convention on Human Rights*, Van Dijk and Van Hoof, Kluwer, 1990, p. 413.

⁵⁹ *Handyside v. the United Kingdom*, 1976; *Sunday Times v. the United Kingdom*, 1979; *Lingens v. Austria*, 1986; *Oberschlick v. Austria*, 1991; *Thorgeir Thorgeirson v. Iceland*, 1992; *Jersild v. Denmark*, 1994; *Goodwin v. the United Kingdom*, 1996; *De Haes and Gijssels v. Belgium*, 1997; *Dalban v. Romania*, 1999; *Arslan v. Turkey*, 1999; *Thoma v. Luxembourg*, 2001; *Jerusalem v. Austria*, 2001; *Maronek v. Slovakia*, 2001; *Dichand and Others v. Austria*, 2002.

⁶⁰ ECHR, *Handyside v. The United Kingdom*, no. 5493/72, § 49, ECHR 1976.

speech” law which referenced “sexual orientation” and he was eventually sentenced to six months in prison. It was not until the case reached the Supreme Court on 29 November 2005 that Pastor Green was finally acquitted of the accused crime.⁶¹ In another incident, this time in Croatia, an elderly Catholic school teacher was sued for “hate speech” by a Lesbian Association for teaching the Catholic position on homosexual activity from a state sanctioned textbook. While the court eventually found in Ms. Mudrovic’s favour, the stress of the case which lasted over a year led to the elderly school teacher having a stroke.⁶² In Spain efforts are currently underway to criminally prosecute a bishop for delivering a homily from the Bible during a Good Friday mass, in which he celebrated the virtues of the sinless life and warned against the particular sins of the age.⁶³

In the UK, numerous street preachers have been arrested by the police for so-called “hate speech”.⁶⁴ Their crime? Simply preaching *publicly* from the Bible. Were they preaching on a controversial topic? Yes, they were. But does that mean that only inoffensive preaching should be permitted?

Some of the cases have been extraordinary. For example, at Easter time a few years ago, policemen from the “the Race and Hate Crime Unit” investigated a church minister from handing out flyers advertising an Easter service following a complaint by a member of the public. The leaflet simply featured a picture of a flower and said, “New Life, Fresh Hope”⁶⁵ and then gave details of the service.

In another example from last year, a café owner was investigated by the police for displaying bible verses on the wall of his café.⁶⁶ And this year a church in Norwich (in England) was banned from distributing literature which argued the theological correctness of Christian doctrine when compared to Islamic theology. They had been peaceably handing out the same leaflet in the same area for four years without prior incident until the authorities held that such literature promoted “hatred”.⁶⁷

Last year in Ireland a bishop was accused of incitement to hatred for giving a homily which referred to Ireland’s increasingly “godless culture”. An atheist complained to the police that the sermon was hostile to those who do not share the church’s aims and the police launched an investigation and passed the file on to the prosecutor.⁶⁸

In Spain in the summer of 2010, a pro-family television network was fined 100,000 Euros for running a series of advertisements in support of the traditional family and showing *only* actual footage of a “gay pride” parade.⁶⁹ Is it controversial to publicly support the traditional family? Apparently it is. But does that mean that such support should be censored?

⁶¹ Case No. B 1050-05, 29 November 2005.

⁶² *Lesbian Assn. Kontra v. Jelena Coric Mudrovic* (2010).

⁶³ See *LifeSiteNews*, ‘Liberal outrage in Spain: Homosexual groups seek prosecution of bishop over sermon on homosexuality’, 18 April 2012.

⁶⁴ For example, Dale McAlpine (see the actual arrest at: <http://www.youtube.com/watch?v=12LtOKQ8U7c>), Anthony Rollins (see <http://www.christian.org.uk/news/birmingham-street-preacher-wins-wrongful-arrest-case/>), Miguel Hayworth (<http://www.telegraph.co.uk/news/religion/6034144/Preacher-threatened-with-arrest-for-reading-out-extracts-from-the-Bible-in-public.html>), Mike Overd, (see <http://www.bbc.co.uk/news/uk-england-somerset-16984133>).

⁶⁵ See ‘Marginalising Christians’, *The Christian Institute*, 2009, p. 38, available at: <http://www.christian.org.uk/wp-content/downloads/marginchristians.pdf>.

⁶⁶ See: <http://www.dailymail.co.uk/news/article-2041504/Police-tell-cafe-owner-Stop-showing-Bible-DVDs-arrest-you.html>.

⁶⁷ See: <http://www.bbc.co.uk/news/uk-england-norfolk-17733162>.

⁶⁸ See: <http://www.independent.ie/national-news/bishop-accused-of-incitement-to-hatred-in-homily-3003057.html>

⁶⁹ <http://eclj.org/Releases/Read.aspx?GUID=496702da-27da-40cc-b78b-44836d02a2c6&s=eur>.

Perhaps one of the most disturbing cases in recent times comes once again from the United Kingdom. Ben and Sharon Vogelenzang were arrested after a conversation with an Islamic guest who was staying at their hotel. Ben, Sharon and the female guest had a lively debate about religion – each arguing, of course, that their own religion was correct. Several days later, the guest complained to the police and Ben and Sharon were arrested and charged with “insulting” words or behaviour. After over a year of investigation, the case was eventually thrown out by the court, and Ben and Sharon were acquitted, but in the meantime, their business was destroyed. One conversation. One false complaint. And lives were devastated as a result.⁷⁰

The most significant event in recent years which will increase the chilling effect on Christian speech has come from Strasbourg. In the 2012 case of *Vejdeland v. Sweden*,⁷¹ the European Court held that while the particular speech in question [dealing with homosexual activity] “did not directly recommend individuals to commit hateful acts”; the comments were nevertheless “serious and prejudicial allegations”. The Court further stated that “[a]ttacks on persons” can be committed by “insulting, holding up to ridicule or slandering specific groups of the population” and that speech used in an “irresponsible manner” may not be worthy of protection.⁷²

The Court has for decades held that freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every person. It has time and time again held that freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that “offend, shock or disturb”.⁷³ *Vejdeland* represents a shocking departure from very well settled case law on freedom of expression.

Under this confusion of jurisprudence, how can anyone be confident of placing certain expressions in the “protected category”, on the basis that there is a fundamental right to use speech which “offends and shocks”, and place other expressions in the “criminal category”, on the basis that such speech is “serious and prejudicial”?

Parental Rights

In Salzkotten, Germany, 14 Christian parents were imprisoned, some for more than 40 days and most on multiple occasions, simply for opting out their 9-10 year old children from two days of mandatory “sexual education” classes.⁷⁴ Also in Germany, a 15-year-old Evangelical Christian girl 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.”⁷⁵ In Sweden, a seven-year-old boy was taken off an airplane bound for Sweden 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

⁷⁰ 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>.

⁷¹ (Application no. 1813/07) judgment of 9 February 2012.

⁷² See paragraphs 54-55 of the judgment.

⁷³ *Handyside v. the United Kingdom* (Application no. 5493/72), judgment of 7 December 1976, at § 49.

⁷⁴ See: <http://www.adfmedia.org/News/PRDetail/4690?AspxAutoDetectCookieSupport=1>.

⁷⁵ See: <http://www.wnd.com/2008/03/59947/>.

no crimes when young Dominic Johansson was taken from his parents nearly three years ago.⁷⁶ In Spain, the Zapatero government initiated mandatory classes known as “education for citizenship” which presented young children with a wealth of material demonstrably promoting homosexuality, secular sexual values, communism, and which aggressively mocks 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 lawsuits and ultimately a class action law suit at the European Court of Human Rights.⁷⁷

The forces behind this oppression of parental rights and the apparent ideological indoctrination of children have seemingly one goal in mind: to control the hearts and minds of this generation despite parents’ best attempts to the contrary. A quote from a prominent humanist in the 1930s set out this goal in a most straightforward manner: “Education is thus our most powerful ally of humanism, and every public school is a school of humanism. What can the theistic Sunday school, meeting for an hour once a week, and teaching only a fraction of the children, do to stem the tide of a five-day program of humanistic teachings?”⁷⁸

36 years ago, the European Court of Human Rights in *Kjeldsen* affirmed to parents the right under Protocol 1, Article 2 of the Convention to opt their children out of classes which to them were objectionably indoctrinating. While these opt-outs were denied to the applicants in the *Kjeldsen* case, the guarantee nonetheless became a seminal part of the Strasbourg Court’s case law. In 2007, the Grand Chamber upheld the opt-out for parents who wished to not have their children attend religious education classes. The progeny of *Folgero* has continued to promote the freedom of parents to take their children out of religious education. From *Kjeldsen* to *Folgero* and its progeny, this Court has continued to hold that the right to opt-outs holds equally to all subjects and not just religious education.⁷⁹

However, in 36 years the Court in respect to parental rights in education has only effectuated opt-outs guaranteeing freedom from religion and has rendered illusory opt-outs for parents with faith-based objections to offending curricula.

The right to education and respect for parental authority over their children assumes some level of freedom. One aspect of this right is that state schools cannot exercise a monopoly in education. As Article 13 of the International Covenant on Economic, Social and Cultural Rights dictates [ICESCR]: “The States’ Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”⁸⁰

Therefore, while European nations may set minimum standards in education they cannot create national curriculums by which all freedom of educational choice will be eliminated. Nor can they create curriculums which would stifle religious teaching or exercise within education. Such a deprivation would likely hinder the evolving capacities of the child and be to the detriment of the best interests of the child standard set in international law.⁸¹ Furthermore, as

⁷⁶ See: <http://www.adfmedia.org/News/PRDetail/3607>.

⁷⁷ See: <http://adfmedia.org/News/PRDetail/5315>.

⁷⁸ Charles F. Potter, *Humanism: A New Religion* (New York: Simon and Schuster, 1930).

⁷⁹ See e.g. *Id.*, § 84(e).

⁸⁰ United Nations, *International Covenant on Economic, Social and Cultural Rights*, New York, 16 December 1966.

⁸¹ See e.g.: United Nations, *Convention on the Rights of the Child*, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force 9.2.1990, Article 14.

the Council of Europe has recently stated: “History has proven that violations of academic freedom...have always resulted in intellectual relapse, and consequently in social and economic stagnation.”⁸²

Both the European Court of Human Rights and the ICESCR guarantee the right of establishment of private schools.⁸³ The right to establish private educational institutions also assumes the right of parents to choose between public and private education; or between different private or confessional schools. Again, the distinction would be illusory and therefore meaningless if some level of academic freedom were not allowed in the development of the school curriculum.

Nonetheless, countries like Sweden⁸⁴ and Bulgaria⁸⁵ have actively sought to remove the Christian ethos of private confessional schools by mandating a national curriculum and making any religious activity conducted in private schools subject to opt-out. Many more countries, such as Germany, Spain and others, have refused parental opt-outs of radical sexual education classes. And as discussed above, to date the European Court has been complicit in all of this by not once providing the guaranteed rights promised 36 years ago in *Kjeldsen*. In reality, the jurisprudence of the European Court of Human Rights with regard to parental rights has been disturbing with its creation of the concept of “parallel societies” first coined in the *Konrad* case.⁸⁶ The Court has serially denied rights to Christian parents on the basis that to allow for the exercise of Christian parental rights would create twin societies: one normal and the other “fundamentalist”.

Conclusion

This memorandum has sought to highlight the history of secularism in Europe, showing how it evolved into a radical form which has spawned several very dangerous trends affecting basic Christian beliefs in Europe today. The practice of the Christian faith is being marginalized and limited to a mere freedom of worship, where believers are not free to practice their faith in the public square or in the scope of their employment.

It therefore must be highlighted that freedom of thought, conscience and religion is a fundamental right protected by several seminal international human rights treaties.⁸⁷ The European Court of Human Rights has elevated the rights guaranteed by Article 9 to being one of the cornerstones of a democratic society.⁸⁸ Article 9 has taken the position of a substantive right under the European Convention.⁸⁹

The United Nations Human Rights Committee has stated that freedom of thought, conscience and religion is a “profound” and “far reaching” right of a “fundamental character”; one which

⁸² Parliamentary Assembly of the Council of Europe, Recommendation 1762, *Academic Freedom and University Autonomy*, 30 June 2006, § 4.3.

⁸³ See e.g.: ECmHR, 5 December 1990, *Graeme v. the United Kingdom*, 64 DR 158; ECHR, *X and Y v. the United Kingdom*, App. No. 9461/81, Eur. Comm’n H.R. Dec. & Rep. 210 (1982). See also: ICESCR, *supra* n. 21, Article 13(4).

⁸⁴ *Education Act U2009/7188/S*.

⁸⁵ *Draft Law Concerning Rights and Care of Children (2011)*.

⁸⁶ ECHR, *Konrad v. Germany*, App. No. 35505/03, Decision of 11/09/2006.

⁸⁷ See e.g.: *European Convention of Human Rights*, Article 9; *International Covenant on Civil and Political Rights*, Article 18; and *Universal Declaration of Human Rights*, Article 18;

⁸⁸ ECHR, 25 May 1993, *Kokkinakis v. Greece*, Series A No. 260-A, § 31: AFDI, 1994, p. 658.

⁸⁹ *Kokkinakis op.cit.*, ECHR, 23 June 1993, *Hoffmann v. Austria*, Series A, No. 255-C: JDI, 1994, p. 788; *Otto-Preminger-Institut, op. cit.*; ECHR, 26 September 1996, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 749.

state parties may not suspend or derogate from even in times of public emergency pursuant to Article 4.2 of the ICCPR.⁹⁰

Article 9 of the Convention stands alone in that it is the only fundamental right which recognizes the relationship between the individual and the transcendent. It therefore protects the most profound and deeply held conscience and faith-based beliefs. In *Metropolitan Church of Bessarabia and Others v. Moldova*, it was held that: “A State’s duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs, and requires that conflicting groups tolerate each other...”⁹¹

However, the trends outlined in this memorandum have shown that the lofty language used in praising the fundamental nature of freedom of religion have been largely ignored in practice. While the reasons for the diminishing respect for freedom of religion in Western Europe are both numerous and complex, one reason is undoubtedly the rise of secular intolerance. As this worldview continues to gain traction among the political elites, the consequences for the Church, and for Christians attempting to live out their daily life, are clear to see. Secular intolerance is in opposition to religious liberty and the vision for society espoused by secularists stands in stark contrast to the Judeo-Christian moral framework that has existed in Europe for many centuries. As religious faith is increasingly privatized by the dominant secular orthodoxy, Christians will continue to face legal limitations when attempting to, *inter alia*, act on their consciences, speak freely on controversial but often widely accepted moral issues, display their faith publicly, and raise their children in accordance with their own convictions. Unless the tide turns, such limitations will only increase, and therefore the threat of secular intolerance is very real.

⁹⁰ HRC, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion* (1993) [1], available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁹¹ ECHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Appl. no. 45701/99, § 123.