

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

Organisers: **Olivier Roy** | RSCAS/EUI  
**Pasquale Annicchino** | RSCAS/EUI

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: **Michel 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  
Schools, Religious Communities, and the Morality of Cross-Subsidies  
**Christopher Kutz** | UC Berkeley (via Skype)  
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 – *Debating Tolerance***
- Chair: **Marco Ventura** | KU Leuven
- Javier Martinez Torron** | Complutense University  
**Nehal Butha** | EUI  
**Eric Rassbach** | 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