

CONFERENCE

LAÏCITÉ IN COMPARATIVE PERSPECTIVE

FOREWORD

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On June 11, 2010, the Center for Law and Religion at St. John's University School of Law held its inaugural event, an academic conference at the University's Paris campus. "Laïcité in Comparative Perspective" brought together scholars from the United States and Europe to explore the French concept of laïcité and compare it with models of church-state relations in other countries, particularly the United States. Participants included Douglas Laycock (University of Virginia), who offered the Conference Introduction; Nathalie Caron (Université Paris-Est Créteil); Blandine Chelini-Pont (Université Paul Cézanne Aix-Marseille); Nina Crimm (St. John's University); Marc DeGirolami (St. John's University); Javier Martínez-Torrón (Universidad Complutense); Mark Movsesian (St. John's University); Rosemary Salomone (St. John's University); Brett Scharffs (Brigham Young University); Michael Simons (St. John's University); Emmanuel Tawil (Université Panthéon-Assas (Paris II)), and Elisabeth Zoller (Université Panthéon-Assas (Paris II)).

The Center chose laïcité as the subject of its inaugural event for two reasons. First, studying laïcité allows the Center to contribute to an emerging and fruitful dialogue between American and European scholars. No longer content to focus solely on the domestic context, law-and-religion scholars increasingly consider foreign legal systems as well. This is a very positive development. Comparative work can illuminate aspects of one's own legal system—its history, aspirations, failures, and

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unstated assumptions—that one might otherwise fail to perceive. Because it is both so close to and so remote from American ideas about church-and-state—so familiar and so unfamiliar—laïcité offers a particularly good vehicle for comparison. American scholars can learn much about our conceptions of religion and religious freedom by considering the different versions that exist in the other Enlightenment Republic. And, in turn, French and European scholars can learn much about their own traditions by considering them in light of their American analogues.

Second, a conference on laïcité addresses issues that greatly concern the public at large. At this writing, both France and the United States are embroiled in controversies over the place of religion in national life. In France, the National Assembly is considering a proposal to ban the burqa—*le voile intégral*—in public places.¹ Although the Conseil d'État, France's highest administrative court, has expressed serious doubts about the legality of such a ban, the Sarkozy government is pushing ahead with the proposal, with widespread public support.² In the United States, the plan to build a mosque near Ground Zero has caused a heated debate between those who see the mosque as an admirable symbol of religious tolerance and those who perceive it as a triumphalist gesture calculated to cause offense. Although these particular controversies concern Islam, the place of religion in public life transcends any one creed. Both French and American society must determine how best to address the fact that religious commitments remain vital for millions of their citizens—a fact that would have confounded the secularization theorists of the last century, to say nothing of *philosophes* like Diderot and Voltaire.³

¹ On the proposed burqa ban, see Bruce Crumley, *France Moves Closer to Banning the Burqa*, TIME, Apr. 23, 2010, available at <http://www.time.com/time/world/article/0,8599,1983871,00.html>.

² On the Conseil's position in the French judicial system, see T. Jeremy Gunn, *Religious Freedom and Laïcité: A Comparison of the United States and France*, 2004 BYU L. REV. 419, 455 n.151. For the English version of the Conseil's opinion on the proposed burqa ban, see CONSEIL D'ÉTAT, STUDY OF POSSIBLE LEGAL GROUNDS FOR BANNING THE FULL VEIL (Mar. 25, 2010) [hereinafter CONSEIL D'ÉTAT STUDY], available at http://www.conseil-etat.fr/cde/media/document/RAPPORT%20ETUDES/etude_voile_integral_anglais.pdf.

³ For a skeptical treatment of secularization theory, see, for example, GRACE DAVIE, THE SOCIOLOGY OF RELIGION 46–65 (2007).

The conference had three sessions: Laycock's Conference Introduction, titled "American Religious Liberty, French Laïcité, and the Veil,"⁴ and two consecutive panels, "Laïcité in France—Contemporary Issues"⁵ and "Laïcité in Comparative Perspective."⁶ We present here an edited transcript of the day's proceedings. We have maintained the informal, conversational tone of the transcript in order to give readers a proper sense of the event. Similarly, we have not required the usual number of footnotes from authors in an effort to capture the spontaneous nature of the interchange among the participants.

Three main themes emerge from the day's discussions. First, laïcité is a contestable concept that encompasses many discrete, and sometimes contradictory, notions. The word itself is not readily translated into English.⁷ Most authors settle for "secularism."⁸ But "secularism" does not capture laïcité's anti-clerical, even anti-religious, connotations. As Jeremy Gunn observes, the word emerged during periods of acute hostility between the French state and the Catholic Church.⁹ Laïcité historically was a militant concept, a polemic employed by actors who sought to suppress French Catholicism, particularly during the early decades of the Third Republic.¹⁰ Nowadays, this history is largely ignored or forgotten; many French apparently see laïcité as a neutral and irenic doctrine that unites their society.¹¹ But its origins as a fighting word occasionally resurface, as in the

⁴ Douglas Laycock, *Conference Introduction: American Religious Liberty, French Laïcité, and the Veil*, 49 J. CATH. LEGAL STUD. 21 (2010) [hereinafter *Conference Introduction*].

⁵ *Laïcité in France—Contemporary Issues Panel Discussion*, 49 J. CATH. LEGAL STUD. 53 (2010).

⁶ *Laïcité in Comparative Perspective Panel Discussion*, 49 J. CATH. LEGAL STUD. 101 (2010).

⁷ See Elisabeth Zoller, *Laïcité in the United States or The Separation of Church and State in a Pluralist Society*, 13 IND. J. GLOBAL LEGAL STUD. 561, 561 (2006).

⁸ See Douglas Laycock, *Church and State in the United States: Competing Conceptions and Historic Changes*, 13 IND. J. GLOBAL LEGAL STUD. 503, 504 (2006); see also JOHN R. BOWEN, *WHY THE FRENCH DON'T LIKE HEADSCARVES* 2 (2007) (noting that the word "can be translated as 'secularism'").

⁹ Gunn, *supra* note 2, at 432–42.

¹⁰ *Id.* at 439; see also BOWEN, *supra* note 8, at 12.

¹¹ See Gunn, *supra* note 2, at 428–29.

laïcité de combat that Nathalie Caron describes in her contribution.¹²

One must distinguish between different categories of *laïcité*. There is, for example, legal *laïcité*—the principles that flow from legal texts.¹³ The most important texts are article 2 of the French Constitution of 1958, which declares France to be a “laïque” republic,¹⁴ and the 1905 Law on the Separation of Churches and the State.¹⁵ These texts do not actually define the term “*laïcité*,” however, and to an outsider there appear to be some serious inconsistencies.¹⁶ For example, the 1905 law provides that “the Republic does not recognize, finance, or subsidize any religious group.”¹⁷ Yet, as Laycock points out in his Introduction, the French government is much more entangled with religion than any government in the United States.¹⁸ For example, the French Interior Ministry has an office, the Bureau des Cultes, whose responsibility it is to formulate guidelines for deciding which entities can be “recognized officially as ‘religious associations.’”¹⁹ The Ministry consults with the Vatican on the appointment of Catholic clergy; in Alsace-Moselle, which for historical reasons lies outside the coverage of the 1905 law, the Ministry actually appoints Catholic bishops.²⁰ Moreover, despite the wording of the 1905 law, the French government grants significant subsidies to religion—much more than the United

¹² See *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 94–95 (remarks of Nathalie Caron); see also BOWEN, *supra* note 8, at 25.

¹³ Cf. BOWEN, *supra* note 8, at 29 (discussing Olivier Roy’s assertion that *laïcité* should be understood as “the sum total of laws dealing with the relationship of the state to organized religions”).

¹⁴ T. Jeremy Gunn, *Religion and Law in France: Secularism, Separation, and State Intervention*, 57 DRAKE L. REV. 949, 954 n.31 (2009). In full, the English translation of article 2 reads: “France is an indivisible, secular [*laïc*], democratic, and social republic. It ensures the equality before the law of all of its citizens, without distinction as to origin, race, or religion. It respects all beliefs.” *Id.* at 953–54.

¹⁵ *Id.* at 954 & n.32. Many sources in English translate the phrase in the title of this act as “Separation of Church and State,” but a literal translation would use the plural. *Id.*

¹⁶ See BOWEN, *supra* note 8, at 29 (noting that legal texts nowhere define “*laïcité*”).

¹⁷ Gunn, *supra* note 14, at 955.

¹⁸ See *Conference Introduction*, *supra* note 4, at 29.

¹⁹ Gunn, *supra* note 14, at 960–61.

²⁰ *Id.* at 958, 960; see also *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 87–88 (remarks of Emmanuel Tawil).

States Constitution would allow.²¹ For example, under an exception in the 1905 law, the government owns and pays for the maintenance of all religious buildings in existence as of that date, including the great medieval cathedrals and countless smaller churches, mostly Catholic, throughout France.²² Religious bodies may use these buildings only with government permission.²³ The government subsidizes private religious schools and pays for chaplains who serve in public schools.²⁴ It even finances religious programming on public television.²⁵

As I shall explain in a moment, these inconsistencies should be understood as the product of France's particular history. Whatever the reasons, though, it is clear that legal *laïcité* is a complicated thing. And legal *laïcité* must be distinguished from philosophical or political *laïcité*, from *laïcité* as a theory of religion's proper place in French society. For example, the Conseil d'État has concluded that as a legal matter, *laïcité* requires neither a blanket ban on students' wearing of religious insignia in public schools nor a blanket ban on the burqa in public places.²⁶ Nonetheless, the National Assembly adopted a ban on religious insignia in 2004 and seems likely to adopt a ban on the burqa now.²⁷ Even if legal *laïcité* does not command a particular outcome, political *laïcité* might.

Outsiders often assume that political *laïcité* means a rigid secularism, as the examples of the ban on religious insignia and proposed ban on the burqa suggest. But political *laïcité* turns out to be just as complicated and contested a concept as legal *laïcité*. To be sure, many French conceive of *laïcité* as strict secularism.²⁸ But not everyone: the strict secularists are opposed by those, like President Sarkozy, who advocate *laïcité positive*, or "open

²¹ Cf. Nelson Tebbe, *Understanding Laïcité*, 23 J.L. & RELIGION 371, 372 (2008) (book review) (noting that "religious bodies receive far more government support in France than in the United States").

²² Gunn, *supra* note 14, at 956; see also BOWEN, *supra* note 8, at 27–28.

²³ Gunn, *supra* note 14, at 956.

²⁴ See BOWEN, *supra* note 8, at 27–28.

²⁵ *Id.* at 28.

²⁶ See Gunn, *supra* note 2, at 455–57 (discussing the Conseil's decisions regarding religious insignia in public schools).

²⁷ See *id.* at 462–63 (discussing adoption of the 2004 law).

²⁸ See *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 54 (remarks of Nathalie Caron) (discussing *laïcité de combat*).

secularism,”²⁹ a gentler version of the doctrine that does not perceive religion as inherently dangerous to republican values—though it must be acknowledged that the Sarkozy government has put its weight behind the proposed burqa ban. A third group, the advocates of *laïcité en mouvement*, stands somewhere in between.³⁰ The key point is that political *laïcité*, like its legal counterpart, is up for grabs. As John Bowen observes, there has “never been agreement on the role religion should play in public life” in France, “only a series of debates, laws, and multiple efforts to assert claims over public space.”³¹

Second, both in France and in other countries, much of the debate about religion in public life centers on the public schools. This should not come as a surprise. Both pro- and anti-religionists view public schools as a crucial battleground for shaping future citizens; the stakes are very high.³² In France, in particular, the public schools traditionally have been seen as the vehicle for forging a common national identity that transcends religious difference and embraces the rationalist values of the Enlightenment.³³ Following Rousseau, public schools traditionally are supposed to free children from religious influence and promote the primacy of the state over the church and other “communalist” attachments.³⁴ Thus, when politicians like President Sarkozy compare public school teachers unfavorably to clergy and assert that the school teachers can never “replace” priests and pastors, secular-minded French take

²⁹ See Fr. Evaldo Xavier Gomes, *Church-State Relations from a Catholic Perspective: General Considerations on Nicolas Sarkozy's New Concept of Laïcité Positive*, 48 J. CATH. LEGAL STUD. 201, 214–25 (2009).

³⁰ See *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 54 (remarks of Nathalie Caron).

³¹ BOWEN, *supra* note 8, at 33.

³² *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 68–83 (remarks of Rosemary Salomone).

³³ See BOWEN, *supra* note 8, at 24–25; see also *Laïcité in Comparative Perspective Panel Discussion*, *supra* note 6, at 130 (remarks of Elisabeth Zoller) (discussing Condorcet); *id.* at 134 (remarks of Nathalie Caron) (discussing Condorcet).

³⁴ See BOWEN, *supra* note 8, at 11–13, 24–25; John O. McGinnis, *The Enlightenment Case for Vouchers*, 57 N.Y.U. ANN. SURV. AM. L. 75, 85–86 (2000). The fact that France subsidizes private religious schools obviously stands in some tension with this ideal, a matter I discuss below.

offense.³⁵ On the other hand, religious parents resist attempts by public schools to indoctrinate children in secular or even anti-religious worldviews, an issue that Javier Martínez-Torrón addresses here in the Spanish context.³⁶ An obvious solution is for public schools to remain scrupulously neutral about religion. As Martínez-Torrón explains, however, neutrality is exceptionally difficult to achieve in practice.³⁷

Third, the discussions plainly reveal the importance of history. France and the United States share a commitment to religious liberty. Both have political regimes that date from the same period. Both are heirs of the Enlightenment. Both are secular states, in the sense that neither has an established religion. And yet, when one compares the ways in which religious liberty is instantiated in the two countries, one discovers significant differences. Practices that are entirely unremarkable in one would seem grossly out of place in the other. I have already mentioned some of these differences; the participants in this conference identify others as well. What explains this? If both countries share common founding principles, why do they apply them so differently?

The answer relates largely to different histories. Unlike France, the United States never had an *ancien régime*. There were religious establishments during the colonial period—and even afterwards, in some places—and a general Protestant ascendancy throughout much of American history.³⁸ But America never has had an entrenched clerical class to displace or a Gallican-style church to dismantle.³⁹ From the beginning, American society has been characterized by a religious pluralism

³⁵ See *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 59 (remarks of Nathalie Caron); *Laïcité in Comparative Perspective Panel Discussion*, *supra* note 6, at 130 n.37 (remarks of Elisabeth Zoller) (citing *Allocution de M. le Président de la République Française*, PRÉSIDENTE DE LA RÉPUBLIQUE, Dec. 20, 2007, <http://www.elysee.fr/president/les-actualites/discours/2007/allocution-de-m-le-president-de-la-republique.7012.html?search=Latran>).

³⁶ *Conférence Introduction*, *supra* note 4, at 46–47 (remarks of Javier Martínez-Torrón).

³⁷ *Id.*

³⁸ For an excellent history of religion in America, see generally GEORGE M. MARSDEN, *RELIGION AND AMERICAN CULTURE* (1990).

³⁹ See Russell Hittinger, *Introduction to Modern Catholicism*, in *THE TEACHINGS OF MODERN ROMAN CATHOLICISM: ON LAW, POLITICS, AND HUMAN NATURE* 1, 5–7 (John Witte Jr. & Frank Alexander eds., 2007) (discussing Gallicanism).

and voluntarism that made such a class and church impossible. As a consequence, Americans traditionally have not seen religion as the enemy of liberty, a fact that astonished Tocqueville in the 1830s.⁴⁰ On the contrary, throughout history, many Americans have seen religion as constitutive of political liberty. Americans in the evangelical tradition have long maintained that Christianity itself requires a neutral state so that believers can make meaningful, voluntary commitments to God.⁴¹ This is not the only strain in American religious thought, of course, but it has been an important one.⁴² In short, government in America has never seen the church as an adversary it needs to vanquish. The epic nineteenth-century struggle between the “two Frances”—one Catholic and one Republican—has no American counterpart.⁴³

These historical differences help explain some of the incongruities the participants in this conference identify. For example, the fact that the 1905 law gives the French government title to church buildings and that religious groups can use these buildings only at the government’s discretion obviously reflects a desire to control, or at least monitor, the church—a desire born of mutual suspicion and hostility between state and church at the time of the law’s enactment. Likewise, the continuing participation of the government in the appointment of Catholic clergy can be seen as a control mechanism, as well as a continuation of Gallican traditions. The subsidies provided for the maintenance of church buildings, private religious education, chaplains, and the like, can be seen as practical compromises

⁴⁰ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280–81 (Harvey C. Mansfield & Debra Winthrop eds., 2000). Indeed, Tocqueville wrote, “Americans so completely confuse Christianity and freedom in their minds that it is almost impossible to have them conceive of the one without the other.” *Id.*

⁴¹ See, e.g., Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1442–43 (1990); John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 NOTRE DAME L. REV. 371, 381–83 (1996).

⁴² For a helpful discussion of four perspectives that influenced the drafting of the Constitution’s religion clauses, see Witte, *supra* note 41, at 377–88. For an argument that contemporary American religion jurisprudence seeks to advance multiple, sometimes contradictory, values, see Steven H. Shiffrin, *The Pluralistic Foundations of the Religion Clauses*, 90 CORNELL L. REV. 9, 16 (2004).

⁴³ See BOWEN, *supra* note 8, at 22–25, on the struggle between the “two Frances.” See also RENÉ RÉMOND, *RELIGION AND SOCIETY IN MODERN EUROPE* 57–59 (Antonia Nevill trans., 1999).

that allowed the two Frances to attain a *modus vivendi*. And the heightened sensitivity to public religious expression, even today, can be understood as the legacy of the traditional Republican wariness about the resurgence of the state's traditional rival—what Nathalie Caron here calls *le retour offensif du religieux*.⁴⁴

Of course, not everyone agrees with this interpretation. In her analysis of the Conseil d'État's recent opinion on the burqa, for example, Elisabeth Zoller questions whether laïcité continues to play its formerly strong role in resolving legal controversies.⁴⁵ But this Foreword is not the place to settle the debate. The participants discuss it, and others, below. And I do not mean to suggest that incongruities are unique to France. Every legal system must live with its ironies; American church-and-state law has some of its own. The key point is that, in order to understand both French and American law with respect to religious liberty, one must consider not only formal legal texts and judicial decisions but the historical context in which these texts and decisions have effect. Especially in the area of law and religion, history and culture often explain much more than abstract legal doctrine.⁴⁶

It remains only to offer thanks: to the Law School for supporting this inaugural event, to the Paris campus for its hospitality, to the editors of the *Journal of Catholic Legal Studies* for their hard work, and to the participants for their very helpful contributions and the candid and congenial atmosphere that characterized the day's events.

BIOGRAPHICAL BACKGROUND ON PARTICIPANTS

⁴⁴ *Laïcité in France—Contemporary Issues Panel Discussion*, *supra* note 5, at 93 (remarks of Nathalie Caron); *see also* BOWEN, *supra* note 8, at 25.

⁴⁵ *See Laïcité in Comparative Perspective Panel Discussion*, *supra* note 6, at 135 (remarks of Elisabeth Zoller).

⁴⁶ *See* JAVIER MARTÍNEZ-TORRÓN & W. COLE DURHAM, JR., RELIGION AND THE SECULAR STATE: NATIONAL REPORTS 55–56 (Javier Martínez-Torrón & W. Cole Durham, Jr. eds., 2010).



Nathalie Caron

Nathalie Caron is the Co-Editor of the *Revue Française d'Etudes Américaines* and professor of American studies at the Université de Paris-Est Créteil. She is director of IMAGER, a research institute at UPEC on English-, German-, and Romance language-speaking cultures. She has published essays on Thomas Paine, the American Enlightenment, the new atheism movement in the U.S., as well as religion and its treatment in the media. She is the author of *Thomas Paine contre l'imposture des prêtres* (1999) and more recently, with Naomi Wulf, of "Les Lumières américaines: continuités et renouveau" ("The American Enlightenment: Continuity and Change"), *Transatlantica* [En ligne], 2 | 2009. Her essay, "Laïcité and Secular Attitudes in France," based on a paper she gave in 2006 at a ISSSC conference on "Who is Secular?," was published in Barry A. Kosmin and Ariela Keysar, eds., *Secularism and Secularity: Contemporary International Perspectives*, 113–24 (2007). She is the co-editor of a forthcoming volume on religion in the Americas (Presses de l'Institut des Amériques).



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Douglas Laycock

Douglas Laycock is the Armistead M. Dobie Professor of Law, the Horace W. Goldsmith Research Professor of Law, and Professor of Religious Studies at the University of Virginia. He has published many articles on religious liberty and other issues of constitutional law and articles and two books on the law of remedies. He is a co-editor of *Same-Sex Marriage and Religious Liberty* (2008). His many writings on religious liberty are forthcoming in a four-volume collection from Eerdmans Publishing, the first of which, *Volume I, Overviews and History* (2010), has just appeared.

He has been actively involved in religious liberty issues in the courts and legislatures, as well as in the law reviews. He is an experienced appellate litigator, including in the Supreme Court of the United States, and he has played a key role, in public and behind the scenes, in developing state and federal religious liberty legislation. He has represented clients across the religious and political spectrum: the Roman Catholic Archbishop of San Antonio, the National Association of Evangelicals, Hindus and Santerians, the American Civil Liberties Union, and parents objecting to school-sponsored prayers at football games. He received the 2009 National First Freedom Award from the Council on America's First Freedom.

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Mark L. Movsesian

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Rosemary Salomone, the Kenneth Wang Professor of Law at St. John's School of Law, teaches constitutional law, administrative law, and a seminar on children and the law and has served in past years as Associate Academic Dean and Director of the Center for Law and Public Policy.

She has lectured internationally and published extensively on education law and policy and children's rights. In addition to her most recent book, *True American: Language, Identity, and the Education of Immigrant Children* (Harvard Univ. Press, 2010), she also is the author of *Same, Different, Equal: Rethinking Single-Sex Schooling* (Yale Univ. Press) (selected as an "Outstanding Academic Title for 2005" by *Choice Magazine*), *Visions of Schooling: Conscience, Community, and Common Education* (Yale Univ. Press), and *Equal Education Under Law: Legal Rights and Federal Policy in the Post "Brown" Era* (St. Martin's Press). She has been a recipient of numerous research and academic awards, including St. John's University's highest honor, the St. Vincent de Paul Teacher-Scholar Award; the University Outstanding Faculty Achievement Award; and grants from the National Science Foundation, the U.S. Department of Education, the Spencer Foundation, and Harvard University. She has held fellowships at Columbia University School of Law and at the Soros Foundation's Open Society Institute. Her

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Prior to St. John's, she was an Associate Professor at the Harvard Graduate School of Education, where she taught education law, school finance, and language policy and was a lecturer in Harvard's Institute for Educational Management. From 1985 to 1995, she was a member of the Board of Trustees of the State University of New York. She is a former chair of the section on Education Law of the Association of American Law Schools and of the Education and the Law Committee of the Association of the Bar of the City of New York, where she served on the Council on Children. She was elected to membership in the American Law Institute in 2008. She currently serves on the Advisory Boards of the National Coalition of Single-Sex Public Schools and of the Education Law Abstracting Journal.

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Emmanuel Tawil is an Associate Professor of Public Law in the Law School at the University of Paris II (Panthéon-Assas), where he teaches International Relations, Administrative Law, Constitutional Law, and Introduction to European Law. He joined the Law School of Paris II in 2007. Since 2010, he has also lectured at the School of Canon Law of the Catholic University in Paris. In France, he has taught Religious Freedom and Introduction to Canon Law at Université Paul Cézanne from 2003–2006. Abroad, he has taught and researched at Universiteit Antwerpen, Université Catholique de Louvain, and the University of California-Berkeley.

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Elisabeth Zoller is Professor of Public Law in the Law School at the University of Paris II (Panthéon-Assas), where she is Director of the Center for American Law and Director of the Comparative Public Law Doctorate Program. She joined the Law School of Paris II in 1995, where she teaches Constitutional Law and Comparative Public Law. In France, she taught

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Zoller served as Counsel and Advocate for the Government of the United States of America before the International Court of Justice in the case concerning questions of interpretation and application of the 1971 Montreal Convention arising from the aerial incident at Lockerbie (1998) and in the case concerning Avena and other Mexican nationals (2004).