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Foreword

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Abstract

This Article briefly introduces the work of Natan Lerner, a leading Israeli scholar of religion, human rights, group rights, and self-determination as well as racism, genocide, and religious violence. It sets the volume in the context of modern global religion and human rights controversies and the scholarship that has emerged in the past generation. The Article points to Lerner as a wise leader who calls for the balance of religious freedom and other international human rights norms.

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“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair.” Charles Dickens opened his *Tale of Two Cities* with these famous words to describe the paradoxes of the eighteenth-century French Revolution fought for the sake of “the rights of man and citizen.” These same words aptly describe the paradoxes of the twentieth-century world revolution fought in the name of human rights and democratization for all.

The world has entered something of a “Dickensian era” in the past three decades. We have seen some of the best of human rights protections inscribed on the books, but some of the worst of human rights violations inflicted on the ground. We have celebrated the creation of more than thirty new constitutional democracies since 1980, but lamented the eruption of more than thirty new civil wars. We have witnessed the wisest of democratic statecraft and the most foolish of autocratic belligerence. For every South African spring of hope, there has been a Yugoslavian winter of despair, for every Ukrainian season of light, a Sudanese season of darkness.

These Dickensian paradoxes of the modern human rights revolution are particularly striking when viewed in their religious dimensions. On the one hand, the modern human rights revolution has helped to catalyze a great awakening of religion around the globe. In regions newly committed to democracy and human rights, ancient faiths once driven underground by autocratic oppressors, have sprung forth with new vigor. In the former Soviet bloc, for example, numerous Buddhist, Christian, Hindu,

Jewish, Muslim, and other faiths have been awakened, alongside a host of exotic goddess, naturalist, and personality cults. In post-colonial and post-revolutionary Africa, these same mainline religious groups have come to flourish in numerous conventional and inculturated forms, alongside a bewildering array of Traditional groups. In Latin America, the human rights revolution has not only transformed long-standing Catholic and mainline Protestant communities but also triggered the explosion of numerous new Evangelical, Pentecostal, and Traditional movements. Many parts of the world have seen the prodigious rise of a host of new or newly minted faiths -- Adventists, Bahi'as, Hare Krishnas, Jehovah's Witnesses, Mormons, Scientologists, Unification Church members, among many others -- some wielding ample material, political, and media power. Even in modern day Israel, Natan Lerner shows us, new religious movements have added to an already surprisingly wide religious pluralism.

One cause and consequence of this great awakening of religion around the globe is that the ambit of religious rights has been substantially expanded. In the past three decades, hundreds of major new statutes, cases, and constitutional provisions on religious rights have been promulgated in nation-states -- many replete with generous protections for liberty of conscience and freedom of religious exercise, guarantees of religious pluralism, equality, and nondiscrimination, and several other special protections and entitlements for religious individuals and religious groups. These national guarantees have been matched by a growing body of regional and international norms that have expanded the important religious rights provisions of the 1948 Universal Declaration of Human Rights and 1966 International Covenant on Civil and Political Rights -- most notably the 1981 UN Declaration on Religious Intolerance and Discrimination Based Upon Religion and Belief, the 1989 Vienna Concluding Document, and the 1992 UN Declaration on Minorities.

On the other hand, this very same world human rights revolution has helped to catalyze new forms of religious and ethnic conflict, oppression, and belligerence that have sometimes reached tragic proportions. In some communities, such as the former Yugoslavia and Chechnya, local religious and ethnic rivals, previously kept at bay by a common oppressor, have converted their new liberties into new licenses to renew their ancient hostilities, with catastrophic results. In Sudan and Rwanda, ethnic nationalism and religious extremism have conspired to bring violent dislocation or death to hundreds of rival religious believers each year, and persecution, false imprisonment, forced starvation, and savage abuses to thousands of others. In France, political secularism, laicization, and nationalism have combined to threaten a sort of civil denial and death to a number of believers, particularly "sects" and "cults" of high religious temperature or of low cultural conformity. In the United States, political messianism and Christian fundamentalism have intersected to inspire a growing "clash-of-civilizations" ethic that has encouraged bigotry against minorities at home and belligerence against the "axis of evil" abroad. In still other communities, from Asia to the Middle East, Christians, Jews, and Muslims, when in minority contexts, have faced sharply increased restrictions, repression, and martyrdom. And, in many parts of the world today, barbaric Islamicist terrorists have wrapped their cunning belligerence around a distorted and destructive theory of a jihad that is being waged against all manner of religious, cultural, and ethnic enemies, real and imagined.

In parts of Russia, Eastern Europe, Africa, and Latin America today, this human rights revolution has brought on something of a new war for souls between indigenous and foreign religious groups. This is the most ironic chapter in the modern Dickensian drama of religion and human rights. With the political transformations of these regions in the past two decades, foreign religious groups were granted rights to enter these regions for the first time in decades. Beginning in the early 1990s, they came in increasing numbers to preach their faiths, to offer their services, to convert new souls. Initially, local religious groups -- Orthodox, Catholic, Protestant, Sunni, Shi'ite, and Traditional alike -- welcomed these foreigners, particularly their foreign co-religionists with whom they had lost contact for many decades. Today, local religious groups have come to resent these foreign religions, particularly those from North America and Western Europe who assume a democratic human rights ethic. Local religious groups resent the participation in the marketplace of religious ideas that democracy assumes. They resent the toxic waves of materialism and individualism that democracy inflicts. They resent the massive expansion of religious pluralism that democracy encourages. They resent the extravagant forms of religious speech, press, and assembly that democracy protects.

A new war for souls has thus broken out in these regions, a war to reclaim the traditional cultural and moral souls of these new societies, and a war to retain adherence and adherents to the indigenous faiths. In part, this is a theological war, as rival religious communities have begun to demonize and defame each other and to gather themselves into ever more dogmatic and fundamentalist stands. The ecumenical spirit of the previous decades is giving way to sharp new forms of religious balkanization. In part, this is a legal war, as local religious groups have begun to conspire with their political leaders to adopt statutes and regulations restricting the constitutional rights of their foreign religious rivals. Beneath shiny constitutional veneers of religious freedom for all and unqualified ratification of international human rights instruments, several countries of late have passed firm new anti-proselytism laws, cult registration requirements, tightened visa controls, and various other blatantly discriminatory restrictions on new or newly arrived religions. Indeed, many parts of the world seem to be on a new dawn of Islamic or Christian religious establishment.

Such Dickensian paradoxes have exposed the limitations of a human rights paradigm standing alone. They have inspired the earnest search for additional resources to deter violence, resolve disputes, cultivate peace, and ensure security through dialogue, liturgical healing, reconciliation ceremonies, truth commissions and other means. Such Dickensian paradoxes have also underscored an elementary, but essential, point -- that human rights norms need a human rights culture to be effective. Human rights norms, including those protecting religion, have little salience in societies that lack constitutional processes that will give them meaning and measure. They have little value for parties who lack basic rights to security, succor, and sanctuary, or who are deprived of basic freedoms of speech, press, or association. They have little pertinence for victims who lack standing in courts and other basic procedural rights to pursue apt remedies. They have little cogency in communities that lack the ethos and ethic to render human rights violations a source of shame and regret, restraint and respect, confession and responsibility, reconciliation and restitution. As we have moved from the first generation of human rights declaration following World War II to the

current generation of human rights implementation, this need for a human rights culture has become all the more pressing.

Such is the state of religion and human rights today that Professor Natan Lerner so ably analyzes on the pages that follow. Professor Lerner has long been one of the masters of international human rights law. He has written several path-breaking studies on the rights of racial, ethnic, and linguistic groups, including two landmark volumes published by Brill's subsidiary Martinus Nijhoff: *Group Rights and Discrimination in International Law* (1991, 2d ed. 2003) and *The UN Convention on the Elimination of All Forms of Racial Discrimination* (1965, 2d ed. 1980). In this new volume, he focuses his expertise on religious rights, or more accurately: (1) the rights of individuals to thought, conscience, and belief and the corresponding rights to assemble, speak, worship, proselytize, educate, parent, travel, or to abstain from the same on the basis of their beliefs; and the (2) the rights of religious groups to attain legal status or legal personality in a community and their corresponding rights to corporate property, collective worship, organized charity, parochial education, freedom of press, autonomy of governance, and more.

This volume is vintage Lerner – a wise and accessible, lucid and learned, comprehensive and efficient treatment of many of the hardest legal questions on religion and belief that are now facing nation-states and human rights organizations around the world. The chapters analyze and contextualize every relevant provision on religious rights offered by the modern international human rights instruments since the 1948 Universal Declaration of Human Rights as well as selected regional instruments and bilateral treaties and concordats. This feature alone is worth the price of admission. No other book that I know of provides such a penetrating and pithy probing of all the relevant international legal instruments that protect religion and belief.

Particularly novel and powerful is Professor Lerner's treatment of religious group rights, and their many chronic abuses in recent campaigns of ethnic cleansing, national xenophobia, religious establishment, and anti-proselytism. Here, he uses his deep expertise on group rights, racial discrimination, genocide and other forms of international crime to lift up many provisions of the international human rights instruments that have not received sufficient attention from religious rights activists. Also highly valuable is his long chapter on the modern problems of proselytism and conversion in international and domestic law. Here, the legal questions are almost overwhelming: How does the state balance one community's right to exercise and expand its faith versus another person or community's right to be left alone to its own traditions? How does the state protect the juxtaposed rights claims of majority and minority religions, or of foreign and indigenous religions? How does the state craft a general rule to govern multiple theological understandings of conversion or change of religion – particularly the sharply juxtaposed understandings of Christians who have easy conversion into and out of the faith, and Muslims who have easy conversion into the faith but allow for no conversion out of it? These are not new questions, Professor Lerner shows us. They confronted the drafters of the international bill of rights from the very beginning. But some of the compromises of 1948 and 1966 have today begun to betray their limitations acutely. The chapter includes a number of smart and practical suggestions to tamp down the hottest flashpoints of difference and controversy on this

perennially contested issue.

The reader cannot help but be troubled by Professor Lerner's learned critique throughout the volume of the many limitations and compromises that are still betrayed by the international human rights instruments -- particularly in the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. While some of the limitations of the 1981 UN Declaration have been offset by subsequent instruments like the 1989 Vienna Concluding Document and the 1992 UN Declaration on Minorities, religious rights remain underdeveloped, and sometimes under attack, in many parts of the world. Even developed countries in Western Europe and North America, which historically played such a vital role in the development of religious rights protections, have shown surprising indifference to religious rights of late. Thus, on this silver anniversary year of the 1981 Declaration, Professor Lerner renews his call for the United Nations to move from a mere declaration on religious tolerance to a binding covenant or convention on religious rights that will help build a better human rights culture dedicated to the full protection of religion and belief.

Regional instruments, while valuable, are alone not sufficient, Professor Lerner shows us, to provide the kind of rigorous religious rights protection that is needed. The 1960 American Convention on Human Rights, for example, has had precious little influence on American laws of religious freedom, and has done far too little to blunt the growing clashes among Catholic, Protestant, Pentecostal, and Traditional groups in various Latin American nation-states. Some of the regional human rights instruments of Africa, notably the 1990 Cairo Declaration on Human Rights, give undue preferences to Islam, and these documents have been exploited both by Islamicist nation-states and transnational jihadist groups to visit their prejudices on religious minorities at home and abroad. The 1950 European Charter on Human Rights, in practice, accords such a wide "margin of appreciation" to its member nation-states that religious minorities have fared poorly when they have challenged the secular policies of Turkey, the laicization policies of France or Belgium, or the religious establishment policies of Ireland, Germany, or Greece. The recent Turkish headscarf case before the Strasbourg Court, which Professor Lerner analyzes in detail, is only the most recent and most sensational illustration of the limitations of the 1950 Charter in action.

This is not to say that regional instruments, bilateral charters, and national constitutions cannot serve effectively to protect religious rights and freedoms. The recent concordats between the Papal See and various nation-states, including Israel, Professor Lerner shows us, are signal examples of forceful and foresightful protections for religious rights and freedoms. Also exemplary are selected judgments of high courts in Australia, India, Israel, Europe, and the United States to which Professor Lerner adverts intermittently throughout the volume. But too many religious minorities remain exposed to local prejudice and to vicious treatment for the world to rest content with this patchwork normative quilt. The world needs a comprehensive binding international instrument to protect everyone's essential freedoms of religion and belief.

Lest any reader think that all this enthusiasm for religious rights is merely an elaborate form of parochial self-service, Professor Lerner makes clear throughout the volume, but especially in chapter nine, that he defends religious rights on non-religious or secular grounds. He respects those who argue for religious rights on and with

religious terms, and he recognizes that religious prophets and groups were among the early architects of religious freedom in the past. But he does not think religious rights to be “ineliminably religious” in nature, and does not rest his case on religious conviction and argument alone. To the contrary, he argues that secular rationales are a necessary feature of, and can be a sufficient ground for, the robust protection of a human rights regime dedicated to the protection of thought, conscience, and belief. This is a striking argument and no doubt will be highly controversial for some readers. But it makes the case even more powerful that the world needs a binding universal convention on religious rights and freedom for all, even those who freely eschew religion.

I have had the privilege of working with Professor Lerner over the past dozen years, and I have watched him develop a number of the keen insights that are reflected in this volume. This is a man of enormous integrity, humanity, and wisdom, who reveals in his person and in his scholarship the true meaning of excellence, tolerance, and respect for all. The world would be much a better place if we would follow his example and heed the instruction that he offers us in the pages that follow.

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