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Counting My Blessings: A Response

John Witte, Jr.

Abstract

This is my response to a lovely 700 plus page Festschrift that colleagues and former students in the law and religion field kindly presented to me in celebration of my 65th birthday and 40th year of scholarly work in the field. With opening and closing comments on my inspiration and aspiration in working in this interdisciplinary field, I describe my interaction with each chapter author before responding briefly to the contents of their chapter.

Keywords: law and religion; faith in law; law in faith; interdisciplinary legal scholarship.

What a joy to read this magnificent volume, *Faith in Law, Law in Faith*. I am honored and humbled by this gift and admire and appreciate the deep erudition and generosity of the contributors. These thirty-one elegant chapters are lovely blessings of friendship to cherish. They hold learned insights to ponder. And they attest powerfully to the robust solidarity and fellowship that the international guild of law-and-religion scholars has built across multiple confessions and professions over the past half century.

This guild now embraces some fifteen hundred scholars around the globe—jurists, theologians, historians, ethicists, philosophers, anthropologists, sociologists, and other specialists—many of them gathered in some fifty institutes of law and religion on five continents. These diverse scholars are studying the religious dimensions of law, the legal dimensions of religion, and the interaction of legal and religious ideas and institutions, methods and practices—historically and today, in the West and well beyond. These scholars believe that, at a fundamental level, religion gives law its spirit and inspires its adherence to ritual, tradition, and justice. Law gives religion its structure and encourages its devotion to order, organization, and orthodoxy. Law and religion share such ideas as fault, obligation, and covenant and such methods as ethics, rhetoric, and hermeneutics. Law and religion also balance each other by counterpoising justice and mercy, rule and equity, discipline and love. It is this dialectical interaction that gives these two disciplines and two dimensions of life their vitality and their strength. Without law at its backbone, religion slowly crumbles into shallow spiritualism.

Without religion at its heart, law gradually crumbles into empty, and sometimes brutal, formalism.

This is the field of interdisciplinary study that I have had the privilege of working in for the past forty plus years. In college, my charismatic philosophy professor H. Evan Runner taught me to look for the religious sources and commitments implicit or explicit in historical and modern ideas and institutions, including those of law, politics, and society. My great law school mentor and later longstanding colleague, Harold J. Berman, taught me to map the shifting belief systems at the heart of the evolution and revolutions of the Western legal tradition. Early collaborators in our Center projects, particularly the wonderful trio of University of Chicago professors Don Browning, Jean Elshtain, and Martin Marty, showed me how to navigate the “sea of metaphors” on which fundamental ideas and institutions inevitably float.

By trial and error, I have gradually translated all this early instruction into a three-dimensional method of studying law and religion. First, I try to keep three “r’s” in mind—*retrieval* of the religious sources and dimensions of law in the Western tradition, *reconstruction* of the most enduring teachings of the tradition for our day, and *reengagement* of a historically informed viewpoint with the hard legal and religious issues that now confront church, state, and society. Second, I try to bear in mind three “i’s.” Much of my work is *interdisciplinary*, bringing the wisdom of religious traditions into conversation with law, the humanities, and the social and hard sciences. It is *international* in situating American and broader Western debates over legal issues within a comparative historical and emerging global conversation. And my work is *interreligious* in comparing the legal teachings of Catholicism, Protestantism, and Orthodoxy, sometimes those of Judaism, Christianity, and Islam, and occasionally those of Abrahamic, Asian, and Indigenous faith communities.

Finally, three “f’s” feature in this work—the three things that people will die for: their *faith*, their *freedom*, and their *family*. I have written at length on cardinal issues of religion, human rights, and religious freedom from biblical times to today. I have used the same wide canvas to sketch pictures of the evolving law and theology of sex, marriage, family, and children in the Western tradition, including troubling issues like polygamy and illegitimacy, and newly charged issues like same-sex marriage and children’s rights. I have focused on the *drei Stände*, as Martin Luther called them—the three “estates” of church, state, and family that have been cornerstones of Western civilization. I have written at length on the influences of the sixteenth-century Protestant Reformations on law, politics, and society in Western Europe and the Americas. And I have been working of late on broader global patterns of Christianity and law, theology and jurisprudence, as part of a collegial effort to build a new library of books on the interaction of law with each of the axial world religions. It has been a glorious run, though more remains to be done.

It is greatly rewarding to see how this work has been embraced and extended in the hands of the thirty-three scholars who have shared their talents so generously in these pages. It warms this old law professor’s heart to see chapters from three of my

former students who are now distinguished scholars. And it is a joy to see chapters from so many friends with whom I have had the privilege to work on various projects and publications of our Center for the Study of Law and Religion at Emory.

By way of response, permit me to focus briefly on each contributor to this volume and say a word about my interactions with them and about their work and its place in the field of law and religion. This will allow me to express my gratitude not only for each contributor but also for the solidarity and fellowship that have long inspired our international guild. The work of these contributors helps to map a good bit of the modern field of law and religion.

My first and most profound thanks go to the trio of **editors**—Rafael Domingo, Gary Hauk, and Timothy Jackson—for their initiative in assembling this volume while contributing their own lovely chapters.

Rafael Domingo, a distinguished Catholic Spanish jurist and legal historian, came to Emory in 2012 after serving as a Strauss Fellow at New York University working with the Jewish law-and-religion sage Joseph Weiler. Rafael joined our Center as the Francisco de Vitoria Senior Fellow, later adding the title of Spruill Family Professor of Law and Religion. We soon became close collaborators in a long series of books and research projects on law and Christianity. Rafael brilliantly integrated his scholarly expertise on classical Roman law, Catholic theology, and the Christian *ius commune* into a robust new theory of global law and religion and an impressive call for a respiritualization of law and the legal profession. He has published signature monographs on *The New Global Law* (Cambridge, 2010), *God and the Secular Legal System* (Cambridge, 2016), *Roman Law* (Routledge, 2018), *Derecho y Trascendencia* (Aranzadi, 2023), and *Law and Religion in a Secular Age* (Catholic, 2023). He coedited five volumes in our Center's series on "Great Christian Jurists in World History,"¹ and the two of us coedited two anthologies: *Christianity and Global Law* (Routledge, 2020)

¹ Rafael Domingo and Javier Martínez Torrón, *Great Christian Jurists in Spanish*

History (Cambridge: Cambridge University Press, 2016); Olivier Descampes and Rafael

Domingo, eds., *Great Christian Jurists in French History* (Cambridge: Cambridge University

Press, 2019); Orazio Condorelli and Rafael Domingo, eds., *Law and the Christian Tradition in*

Italy: The Legacy of the Great Jurists (London: Routledge, 2020); M. C. Mirow and Rafael

Domingo, eds., *Law and Christianity in Latin America* (London: Routledge, 2021); and

Franciszek Longchamps de Bérier and Rafael Domingo, eds., *Law and Christianity in Poland:*

The Legacy of the Great Jurists (London: Routledge, 2023).

and *The Oxford Handbook on Christianity and Law* (Oxford, 2023). Rafael also translated several of my writings into Spanish, including *Raíces protestantes del Derecho* (Aranzadi, 2023), which he has published in a new Spanish book series that we are coediting. In 2023, Rafael returned to his beloved homeland and alma mater at the University of Navarra to take up the next phase of his work and to care for his aging parents. For this volume, he has written a deeply insightful chapter that explores my life and work as a Christian jurist and analyzes my use of relational, biographical, and jurisprudential perspectives to engage themes of law and religion. With typical ingenuity and imagination, Rafael also challenges me to expand and improve my work on law and Christianity, offering several arresting tripartite themes to take up.

Gary S. Hauk has been a stalwart friend for nearly four decades. I first met him when he served as a reference librarian at Emory while he was finishing his doctorate in ethics, and he introduced me to the fabulous collection of Protestant Reformation incunabula at Pitts Theology Library. Since then, Gary has provided great leadership as secretary of Emory University, chief of staff to four Emory presidents, and university historian. He produced several beautifully crafted and illustrated histories of Emory University, Candler School of Theology, and our Center for the Study of Law and Religion, edited collections of presidential papers and faculty essays, and produced interviews and videos for the archives.² We worked together over the years to bring a number of luminaries to our Center's lecterns, including President Jimmy Carter, Archbishop Desmond Tutu, Chief Rabbi Lord Jonathan Sacks, and His Holiness the 14th Dalai Lama. I was privileged to coedit a book with Gary on *Christianity and Family Law* (Cambridge, 2017) and to have him coedit my volume on *Faith, Freedom, and Family* (Mohr Siebeck, 2021). Gary's chapter in this volume captures the forty-year story of our Law and Religion Center, fueled by the interdisciplinary energy and ambitions of the Emory administration and faculty. Institutional histories of law-and-religion faculties and centers around the world today are an increasingly important part of the field of law-and-religion study.

² See esp. Gary S. Hauk, *A Legacy of Heart and Mind: Emory Since 1836* (Atlanta: Bookhouse, 1999); id., *Reason and Revelation Joined: Candler at One Hundred* (Atlanta: Candler School of Theology, 2014); id., *Emory as Place: Meaning in a University Landscape* (Athens: University of Georgia Press, 2019); id., *Forty Years of Law and Religion at Emory* (Atlanta: Center for the Study of Law and Religion, 2023). See also Gary S. Hauk and Sally Wolff King, eds., *Where Courageous Inquiry Leads: The Emerging Life of Emory University* (Atlanta: Emory University, 2010).

Timothy P. Jackson has been a fine partner in our Center’s work, and a master interlocutor at our project roundtables on “Christian Jurisprudence,” “The Pursuit of Happiness,” “Sex, Marriage, and Family,” and “The Child in Law, Religion, and Society.” Tim came to Emory in 1995, fresh from teaching religion and philosophy at Stanford. He has explored the meanings and measures of love and charity, sanctity and dignity, justice and mercy in the Western tradition and beyond. Jesus, Lincoln, and King have been perennial touchstones in his work, but his scholarly ken ranges from the pre-Socratics to the postmoderns, from the depths of philosophy and theology to the heights of literature and art. As a senior fellow in our Center, he produced a trio of pathbreaking monographs on agape—*Love Disconsoled* (Cambridge, 1999), *The Priority of Love* (Princeton, 2003), and *Political Agape* (Eerdmans, 2015)—as well as two anthologies: *The Morality of Adoption* (Eerdmans, 2005) and *The Best Love of the Child* (Eerdmans, 2011).³ His most recent work includes searching meditations on anti-Semitism and the Holocaust,⁴ as well as trenchant explorations of religion, science, and bioethics for a forthcoming title, *Faith in Science?* Tim’s learned chapter in this volume takes up the great dialectic of law and love, *nomos* and *agape*, from the ancient Greeks to modern times, ending with provocative suggestions about the role of the Christian sacraments in mediating and elevating this dialectic.

I am deeply grateful for the five additional chapters in **Part I**, alongside those of Rafael Domingo and Gary Hauk, that assess my scholarship on different themes. In the opening chapter, Welsh jurist and Anglican theologian **Norman Doe** offers a sweeping analysis of my scholarly contributions. He uses his trademark gifts of biography and intellectual history to trace the roots and routes of my scholarship and to situate it within the global field of law and religion. Norman is the world’s leading scholar of comparative church law, with a series of pathbreaking titles on Anglican law, comparative Anglican-Catholic canon law, and Christian laws altogether, as well as other Abrahamic laws and their interactions with secular legal systems.⁵ Church laws, he has shown, have long

³ See also Timothy P. Jackson, “Martin Luther King, Jr. (1929–1968),” in John Witte, Jr. and Frank S. Alexander, eds., *The Teachings of Modern Protestantism on Law, Politics, and Human Nature* (New York: Columbia University Press, 2007), 331–73.

⁴ See esp. Timothy P. Jackson, *Mordecai Would Not Bow Down: Anti-Semitism, the Holocaust, and Christian Supersessionism* (Oxford: Oxford University Press, 2021).

⁵ See esp. Norman Doe, *The Legal Framework of the Church of England* (Oxford: Oxford University Press, 1996); id., *Canon Law in the Anglican Communion* (Oxford: Oxford University Press, 1998); id., *The Law of the Church in Wales* (Cardiff: University of Cardiff Press,

been essential parts of the Western legal tradition, providing balance to secular state laws and alternative forums for implementing law, religion, and morality. Today, Norman argues, church laws form the backbone of Christian ecclesiology and ecumenism; they are the sturdy instruments of both denominational identity and Christian unity on many matters of public and private spiritual life. Christian and other faith-based legal systems that Norman has so ably analyzed remain part of the core curriculum of the modern study of law and religion.⁶

Twenty plus years ago, I joined Norman and his collaborators Mark Hill and Dick Helmholz on the editorial board of the flagship *Ecclesiastical Law Journal*. The four of us, together with Rafael Domingo and Gary Hauk, also built up the Cambridge Studies in Christianity and Law book series commissioned by our Center, and we collaborated on ambitious books on Magna Carta, great Christian jurists in English history, Christianity and natural law, and Christianity and criminal law.⁷ Norman further edits the

2002); id., *An Anglican Covenant: Theological and Legal Considerations for a Global*

Debate (Canterbury: Canterbury Press, 2008); id., *Law and Religion in Europe* (Oxford: Oxford

University Press, 2011); id., *Christian Law: Contemporary Principles* (Cambridge: Cambridge

University Press, 2013); id., *Comparative Religious Law: Judaism, Christianity,*

Islam (Cambridge, 2018).

⁶ See Norman Doe, ed., *Church Laws and Ecumenism: A New Path for Christian Unity* (London: Routledge, 2021); and John Witte, Jr., “Law at the Backbone: The Christian Legal Ecumenism of Norman Doe,” *Ecclesiastical Law Journal* 24 (May 2022): 194-208. See also the chapters herein by Mark Hill on Anglican ecclesiastical law and Michael Broyde on Jewish law and faith-based arbitration.

⁷ See Norman Doe, “The Still Small Voice of Magna Carta in Christian Law Today,” in Robin Griffith-Jones and Mark Hill, eds., *Magna Carta: Religion and the Rule of Law* (Cambridge: Cambridge University Press, 2015), 248–66; Norman Doe, “Richard Hooker: Priest and Jurist,” in Mark Hill and R. H. Helmholz, eds., *Great Christian Jurists in English History* (Cambridge: Cambridge University Press, 2017), 115-38; Norman Doe, ed., *Christianity and Natural Law: An*

Routledge Law and Religion Series that has published several more of our Center's volumes, and he graciously invited me recently to join him as coeditor of *Brill Research Perspectives on Law and Religion*.

Dick Helmholz is the world's leading historian of medieval law, particularly medieval Catholic canon law and its influence on civil law and common law before and after the Protestant Reformation. He has written seminal texts on medieval family law that have inspired and instructed me and two generations of other legal historians.⁸ He has published definitive histories of English ecclesiastical law and its jurists, a poignant study of "the spirit of classical canon law," and several major volumes on religious and canonical sources of Magna Carta, constitutional law, judicial review, criminal law and procedure, and more.⁹ It was Dick who invited me to my first international academic conference—a 1989 roundtable at Trinity College Dublin on canon law in Protestant lands.¹⁰ Since then, we have shared many roundtables and lecterns at the University of Chicago, Emory, the Inns of Court, and elsewhere, including a memorable event

Introduction (Cambridge: Cambridge University Press, 2017); and Mark Hill, R. H. Helmholz, Norman Doe, and John Witte, Jr. eds., *Christianity and Criminal Law: An Introduction* (London: Routledge, 2020).

⁸ See esp. R. H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974); and id., *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990).

⁹ See, for example, R.H. Helmholz, *The Oxford History of the Laws of England Volume I: The Canon Law and the Ecclesiastical Jurisdiction 597 to the 1640s* (Oxford: Oxford University Press, 2004); id., *Canon Law and the Law of England* (London: Hambledon Press, 1987); id., *The Profession of the Ecclesiastical Lawyers: An Introduction* (Cambridge: Cambridge University Press, 2019); id., *The Spirit of Classical Canon Law* (Athens: University of Georgia Press, 2010); and id., "Magna Carta and the *Ius Commune*," *University of Chicago Law Review* 66 (1999): 297–371.

¹⁰ R. H. Helmholz, ed., *Canon Law in Protestant Lands* (Berlin: Duncker & Humblot, 1992).

celebrating a Festschrift for him.¹¹ Dick has contributed a dozen elegant chapters to our Center's commissioned books on law and religion, legal history, and Christian jurisprudence. He always submits his chapters early, exactly fit to purpose, and without a speck of work to do for the editor. I am immensely grateful for his chapter herein. He commends my use of biographical narratives to recount the history of ideas and institutions and my willingness to be "surprised" by what a careful reading of primary sources can reveal, sometimes contrary to fashions in studying the history of faith, freedom, and family. Among other things, Dick taught me to look for both surprising continuity and discontinuity in the development of legal ideas and institutions, including, notably, the ongoing influence of medieval scholasticism and canon law in the Western legal tradition well after the Protestant Reformation and the Enlightenment. This latter theme recurs in the later chapters herein by Samuel Bray and Mathias Schmoeckel.

Nicholas Wolterstorff is a giant in the world of philosophy. As a young Calvin College student, I learned a great deal from him and his writings. Since then, it has been a great privilege to work with him intermittently on Christian jurisprudence themes and to welcome him to our Center lecterns and roundtables. Nick has written voluminously on the philosophy of religion, political theology, Christianity and education, aesthetics and liturgy, and more.¹² His brilliant and original work on justice and human rights has proved especially influential in the field of law and religion—from his early title *Until Justice and Peace Embrace* (Eerdmans, 1987) through to his later trio of masterworks, *Justice: Rights and Wrongs* (Princeton, 2008), *Justice in Love* (Eerdmans, 2011), and *Journey Toward Justice* (Baker, 2013). Nick has parried both Christian skeptics who view human rights as betrayals of Christianity, and secular skeptics who view religious theories and claims of rights as betrayals of liberalism. He demonstrates cogently that human rights and religious freedom in the Western tradition have deep biblical and classical roots, and they remain sublime divine gifts for humans to express their love for God, neighbor, and self and to honor the image of God that all of us bear. Nick's chapter herein distills some of his theory of rights and shows the compatibility between his philosophical approach and my historical approach to the topic. He generously comments on the distinctive form—the "inscape"—of my historical, constitutional, and comparative work on these themes. In a day when so many scholars have derided human rights as a species of Western imperialism, Christian chauvinism, and corrosive individualism, Nick's robust defense of rights is a welcome voice in the world of law and religion.

Helen Alvaré, chaired law professor at George Mason University, is a courageous Catholic scholar who has ably and amply defended religious freedom, sexual responsibility, family integrity, and the rights of children, both born and unborn.

¹¹ Troy L. Harris, ed., *Studies in Canon Law and Common Law in Honor of R. H. Helmholz* (Berkeley, CA: The Robbins Collection, 2015).

¹² See the link online to his main writings at "Nicholas Wolterstorff Books."

Helen's wide-ranging expertise on these vital topics has earned her regular audiences with officials in the Vatican, the United Nations, and the United States Conference of Catholic Bishops. But her work has also put her in sharp competition with many leading scholars of religious freedom, feminist jurisprudence, and sexual liberty who take contrary stands on these central topics. Defying liberal feminist caricatures, Helen lifted up the diverse voices of spiritual women in a beautiful 2012 collection, *Breaking Through: Catholic Women Speak for Themselves*, to illustrate the various ways that women of faith have met their multiple callings and challenges in church, state, economy, and society.¹³ She followed up with two powerful monographs: *Putting Children's Interests First in Family Law and Policy* (Cambridge, 2017) and *Religious Freedom After the Sexual Revolution* (Catholic, 2022). I first met Helen in 2004, when she responded to a lecture on family law history I delivered at Catholic University of America. She has been a generous reviewer of my scholarship in this field ever since, and a powerful contributor to our Center's projects, publications, and public events.¹⁴ Helen's chapter in this volume takes the full measure of my writing about sex, marriage, family, and children, and she kindly commends several features of this effort. The topics of faith, freedom, and family that have occupied both of us over the years remain central but fiercely contested in the modern study of law and religion.

Distinguished Cambridge political theorist **Jonathan Chaplin** has been a keen and trenchant reviewer of my work for nearly three decades.¹⁵ Jonathan and I were

¹³ See, for example, Helen M. Alvaré, "Christianity and Family Law," in John Witte, Jr. and Rafael Domingo, eds., *Oxford Handbook of Christianity and Law* (Oxford: Oxford University Press, 2023), 434–66; and id., "The Enduring Institution: The Law of Marriage in the West," *Law and Liberty* (October 7, 2012) (review of John Witte, Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2nd ed. (Louisville, KY: Westminster John Knox Press, 2012), <https://lawliberty.org/book-review/the-enduring-institution-the-law-of-marriage-in-the-west/>.

¹⁴ See, for example, Helen M. Alvaré, "Religious Freedom versus Sexual Expression: A Guide," *Journal of Law and Religion* 30 (2015): 475–95.

¹⁵ See, for example, Jonathan Chaplin, "Book Review of John Witte, Jr. and Johan D. Van der Vyver, eds., *Religious Human Rights in Global Perspective*, 2 vols.," *Studies in Christian Ethics* 10 (1997): 138–42; and id., "The Role of the State in Regulating the Marital Family," *Journal of*

schooled in the same broad Calvinist tradition with its focus on ordered liberty, structural pluralism, covenant fidelity, constitutional democracy, human rights, rule of law, and the need for public and private religious reasoning about fundamentals. He has written definitive works on political theory and on religion and politics in reflection of this heritage, especially his monograph, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, 2016), which is the best single-volume analysis of this complex Dutch Calvinist thinker.¹⁶ In a recent lengthy review of my 2019 volume, *Church, State, and Family*, Jonathan did me the great kindness of sifting out and systematizing the basic political theory and Calvinist world view he saw at work in that book and in my earlier works on family law. He pointed out my basic (Calvinist) assumptions about the limited ambit and remit of political power, the “sovereignty” of the spheres of the church and the family vis-à-vis each other and the state, and the necessary constitutional and cultural conditions to ensure proper institutional checks and balances on family, church, and state authorities alike. In his welcome chapter herein, Jonathan goes further, both in documenting my historical retrieval of “Protestant political thought” and in showing how these earlier teachings, particularly (neo-) Calvinist formulations, continue to inform my analysis of modern legal issues of human rights, religious freedom, and church-state relations. Jonathan’s chapter and earlier reviews will guide me as I try my hand at more systematic and normative work in the years ahead.

On reading the seven chapters in Part I, I could not help but remember Hal Berman’s words, thirty years ago, in response to a Festschrift conference we had organized for his seventy-fifth birthday: “I now understand much better what I have been

Law and Religion 34 (2019): 509–19 (review of John Witte, Jr., *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties*). See also his recent fine essay in response to a symposium that our Center commissioned: Jonathan Chaplin, “Whose Liberalism, Which Christianity?” *Notre Dame Law Review* 98 (2023): 1697–720.

¹⁶ See also Jonathan Chaplin, *Faith in Democracy: Framing a Politics of Deep Diversity* (London: SCM Press, 2021); id., *Talking God: The Legitimacy of Religious Public Reasoning* (London: Theos, 2008); Jonathan Chaplin and Gary Wilton, eds., *God and the EU: Faith in the European Project* (London: Routledge, 2015); and Jonathan Chaplin and Robert Joustra, eds., *God and Global Order: The Power of Religion in American Foreign Policy* (Waco, TX: Baylor University Press, 2010).

trying to do these past several decades.”¹⁷ At the time, that rang false to my youthful ears; how could this great scholar not know what he was doing? Thirty years on, I understand Hal’s sentiment better. For many of us, scholarship is a process of discovery and experimentation, not mechanical execution of a predetermined writing plan or rigid proof of an immutable thesis. Legal and historical scholarship in particular “entails a lot of artistry, and . . . practicing,” in Rafael Domingo’s apt phrase—letting the sources and archives guide your pen, even if much of what you write ends up in the junk folder by the time a book goes to press. My junk folder is pretty full!

The nine chapters in **Part II**, including Timothy Jackson’s chapter on law and love already referenced, take up different topics of faith and law viewed in biblical and theological perspectives.

I am honored by the opening chapter by my great Heidelberg friend and Protestant übertheologian **Michael Welker**. I first met Michael at a conference in 1998 and was struck by his clarion call for a theology that was “serious,” “truth-seeking,” “existentially grounded,” and “comprehensible,” with studied “competence in social and cultural criticism,” and a sturdy willingness to engage “the burning questions that our contemporary cultures and societies pose.”¹⁸ In the quarter century since then, the two of us have collaborated on several major projects that included theological and legal themes. We have lectured and moderated roundtables together at Heidelberg and Emory, and have edited, reviewed, translated, and published each other’s work. I have learned so much from Michael’s brilliant sixty plus volumes on law, justice, and mercy in the Bible; on the power of trinitarian theology for modern life and law; on the wisdom of multidimensional theories of legal, political, and social life; and much more.¹⁹ These themes feature in his pithy chapter in this volume, and more expansively in his recent lengthy review of my *Faith, Freedom, and Family*. Michael mercifully found much to commend in that volume and earlier work, while properly criticizing my continued uncritical engagement with historical theories of natural law and natural rights; one of

¹⁷ The Festschrift was published as Howard O. Hunter, ed., *The Integrative Jurisprudence of Harold J. Berman* (Boulder, CO: Westview Press, 1996).

¹⁸ Michael Welker, “Is Theology in Public Discourse Possible Outside Communities of Faith,” in Luis Lugo, ed., *Religion, Pluralism, and Public Life: Abraham Kuyper’s Legacy for the Twenty-First Century* (Grand Rapids: Eerdmans, 2000), 110–22.

¹⁹ See the immense collection: <https://michael-welker.com/en/>.

these days I will need to think through my position on natural law.²⁰ But Michael forgave my failures enough to recommend me for an honorary doctorate in theology as well as for the James Pennington Prize and Lectureship from the University of Heidelberg. I once had occasion to be with Cardinal Joseph Ratzinger shortly before he became Pope Benedict XVI. Not quite knowing what to say to this giant hierarch on a chance meeting, I asked him whom he judged to be the three greatest German theologians at work in his day. Michael Welker was one of the three.

David VanDrunen is a powerful and prolific Protestant systematic theologian and ethicist at Westminster Seminary California. Trained in law as well, he has written a dozen superb books on political theology in which he explores the place of creation order, natural law, covenant teachings, moral realism, two-kingdoms ontologies, and other themes in biblical, medieval, and early modern Protestant texts. He also expounds on the enduring power of these teachings for modern churches, states, and societies alike.²¹ David has inevitably faced criticism from both Calvinist insiders who resist discussions of (unredeemed) nature and secular outsiders who eschew theological arguments for public life and law. But he has deeply mined the relevant biblical texts to show the biblical provenance and promise of at least some natural law teachings. And he has developed a highly original argument about the place of the Noahide covenant in law, politics, and society—complementing and amplifying the creative work on the Noahide covenant by seventeenth-century English jurist John Selden and contemporary Jewish philosopher David Novak.²² I have had the privilege of watching David VanDrunen develop this complex political theology over the past twenty-five years and

²⁰ See Michael Welker, “A Magnum Opus Discussed: *Faith, Freedom and Family: New Studies in Law and Religion* by John Witte, Jr.,” *Journal of Law and Religion* 38 (2023): 108–17.

²¹ See esp. David Van Drunen, *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought* (Grand Rapids: Eerdmans, 2010); id., *Divine Covenants and Moral Order: A Biblical Theology of Natural Law* (Grand Rapids: Eerdmans, 2014); and id., *Politics after Christendom: Political Theology in a Fractured World* (Grand Rapids: Zondervan Academic, 2020).

²² David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 2008); on Selden, see John Witte, Jr., *Faith, Freedom, and Family: New Essays on Law and Religion*, ed. Norman Doe and Gary S. Hauk (Tübingen: Mohr Siebeck, 2021), 177-98 (chapter on “The Integrative Christian Jurisprudence of John Selden”).

discussing it with him as a guest in his seminary and as his host in our Center. In his chapter herein, he takes up the themes of covenantal politics and marital covenants that have long occupied me. He shows both the promise of covenant thinking for the modern state and family, but also the increasing limits of that logic in this secular age “after Christendom.” The role of covenant as a rhetorical and conceptual bridge between law and religion nonetheless holds ample promise. It’s not accidental, for example, that many of the major international human rights documents today are called “covenants.”

M. Christian Green was one of our Center’s top early law-and-religion graduates and went on to do a doctorate in ethics at the University of Chicago. As my research assistant at Emory, Christy did remarkable excavations—before the internet—of massive lodes of primary sources that have long fed my work on religious freedom and human rights and enabled us to publish several works together.²³ I was privileged to join

²³ See, for example, John Witte, Jr. and M. Christian Green, “The American Constitutional Experiment in Religious Human Rights: The Perennial Search for Principles,” in Johan D. van der Vyver and John Witte, Jr., eds., *Religious Human Rights in Global Perspective: Legal Perspectives* (Dordrecht: Martinus Nijhoff, 1996), 499–559; id., “Religious Freedom, Democracy, and International Human Rights,” *Emory International Law Review* 23 (2009): 583–608; id., “Religion,” in Dinah Shelton, ed., *The Oxford Handbook of International Human Rights Law* (New York: Oxford University Press, 2013), 10–31; id. “Freedom, Persecution, and the Status of Christian Minorities,” in Lamin Sanneh and Michael J. McClymond, eds., *The Wiley-Blackwell Companion to World Christianity* (Malden, MA: Wiley Blackwell, 2016), 330–49; and id. “Religious Freedom, Democracy, and International Law,” in Timothy S. Shah, Alfred Stepan, and Monica Duffy Toft, eds., *Rethinking Religion and World Affairs* (New York: Oxford University Press, 2012), 104–24. See also John Witte, Jr. and M. Christian Green, eds., *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2012); John Witte, Jr., M. Christian Green, and Amy Wheeler, eds., *The Equal Regard Family and its Friendly Critics: Don S. Browning and the Practical Theological Ethics of the Family* (Grand Rapids: Eerdmans,

Don Browning and Jean Elshtain on her dissertation committee, and watched her also research with equal industry various issues of marriage and family life, producing a marvelous study of fatherhood from biblical times to today. While teaching at Chicago, Harvard, and Emory, she has also done formidable service in the international law-and-religion guild, including notably as a leader of the African Consortium of Law and Religion Studies. Christy has remained a vital player in our Center for nearly three decades and now serves as senior editor for the *Journal of Law and Religion*.²⁴ She has been keenly interested in questions of what she calls “bystander indifference” to crimes, tragedies, and natural disasters, as well as generational complacency in facing ongoing existential dangers like global warming, world poverty, environmental degradation, and massive health-care disparities. In her incisive chapter herein, she uses the New Testament parable of the Good Samaritan to ground her call for individual and collective empathy and energetic engagement with the needs of others. She practices what she preaches: I remember her assembling a whole vanload of her Harvard Divinity School students to give aid to the many victims of Hurricane Katrina that had devastated her home state of Louisiana, and then commissioning these students to write reflective essays on this experience which she wove into a lovely anthology.

Patrick Brennan and **William Brewbaker** have contributed a highly innovative and learned chapter to this volume. Patrick has been a longstanding friend; his Berkeley law professors John Noonan and Jack Coons introduced us in 1998. Since then, Patrick has hosted several lectureships for me at Arizona State, Catholic University, and Villanova University, and he played starring roles in our Center’s projects on “Christian Jurisprudence” and “The Vocation of the Child.”²⁵ He has written brilliantly on issues of

2007); and Don S. Browning, M. Christian Green, and John Witte, Jr., eds., *Sex, Marriage, and Family in World Religions* (New York: Columbia University Press, 2006).

²⁴ <https://mchristiangreen.com/vitae-2/>.

²⁵ See, for example, Patrick M. Brennan, “Jacques Maritain (1882–1973),” in John Witte, Jr. and Frank S. Alexander, eds., *The Teachings of Modern Catholicism on Law, Politics, and Human Nature* (New York: Columbia University Press, 2007), 106–80; and Patrick M. Brennan, ed., *The Vocation of the Child* (Grand Rapids: Eerdmans, 2008). See also his review of my *From Sacrament to Contract*: Patrick M. Brennan, “Of Marriage and Monks: Community and Dialogue,” *Emory Law Journal* 48 (1999): 689–732. I was privileged to include a foreword to

liberty, equality, sovereignty, authority, conscience, criminal law, and religious freedom—all central topics in the study of law and religion.²⁶ Patrick brought a good deal of this learning to bear on his signature title *Christian Legal Thought: Materials and Cases* (Foundation, 2017), coauthored with Bill Brewbaker. Bill is a more recent friend of mine who has contributed ably to our Center’s projects. He has made creative use of biblical and theological concepts of creation and vocation, law and love, justice and mercy to adumbrate a Christian jurisprudence.²⁷ In their chapter herein, Patrick and Bill take up the familiar Protestant doctrine of “the uses of the law.” The sixteenth-century reformers used this doctrine to respond to various radicals in their day who saw in new Protestant teachings of free grace a license to be a law unto themselves. Even though law was not a pathway to salvation, the reformers responded, the laws of nature, church, and state alike have ongoing civil, theological, and pedagogical uses in this life, and need to be obeyed. Having documented the echoes of this doctrine in the Protestant tradition, I have flirted with its possible applications in modern criminal law, family law, and human rights law. Bill’s Protestant leanings incline him to think I am “mostly right” to develop this idea; Patrick’s Catholic philosophy finds this idea “mostly wrong.” The two of them offer learned critiques of what I have written, and suggest alternative concepts like friendship and fellowship, if not charity and love, to drive humans to be law-abiding. These insights have left me with a great deal to ponder, and they have given law-and-religion scholars a novel contribution to ongoing questions about the nature, purpose, and end of law.

Samuel Bray, chaired professor at Notre Dame Law School, tells a wonderfully counterintuitive story about the influence of the Roman Catholic intellectual tradition on the common law. “Counterintuitive” because Anglo-American common lawyers and

his early masterpiece: John E. Coons and Patrick M. Brennan, *By Nature Equal* (Princeton: Princeton University Press, 1999), xvii–xxiv.

²⁶ See esp. Patrick M. Brennan, *Civilizing Authority: Society, State, and Church* (Lexington, KY: Lexington Books, 2007); and Patrick M. Brennan, H. Jefferson Powell, and Jack L. Sammo, *Legal Affinities: Explorations in the Legal Form of Thought* (Durham, NC: Carolina Academic Press, 2014).

²⁷ See, for example, William Brewbaker, “Found Law, Made Law and Creation: Reconsidering Blackstone’s Declaratory Theory,” *Journal of Law and Religion* 22 (2006): 255–88; and id., “Theory, Identity, Vocation: Three Models of Christian Legal Scholarship,” *Seton Hall Law Review* 39 (2009): 17–61.

philosophers were notorious for their anti-Catholicism until well into the twentieth century, purportedly leaving Roman Catholicism to influence only the civil law and canon law traditions on the Continent. Indeed, when the seventeenth-century English judge Sir Matthew Hale wrote famously that “Christianity is part of the common law,” he had Anglican Christianity in mind, not the teachings of Rome.²⁸ And while John Locke in 1689 presciently advocated religious toleration, he specifically excluded Roman Catholics from the ambit of religious liberty; so did Parliament until finally granting limited toleration to Catholics in 1829.²⁹ Even so, Sam shows that English common lawyers—before and after the Reformation—drew deeply on their Catholic intellectual and legal inheritance. They conversed with historical and contemporaneous Catholic sources, and they generated several legal ideas that self-consciously added to that Catholic inheritance. Sam has the outlines of a marvelous book in this chapter, which I hope he will write. This is the kind of scholarship that his readers have come to expect from him. He is a brilliant textualist, having prepared, among many other projects, a new translation of the first part of Genesis,³⁰ an exquisite new annotated edition of the 1662 Book of Common Prayer,³¹ and a source-rich history of equity on both sides of the Atlantic.³² A dozen years ago, the great Stanford Law School professor and federal judge Michael McConnell introduced me to Sam, his former judicial clerk, and I have admired and appreciated Sam’s lavish learning and steady leadership in our Center’s projects and fellowships since then. Particularly his work in Anglo-American legal history

²⁸ See sources in Stuart L. Banner, “When Christianity Was Part of the Common Law,” *Law and History Review* 16 (1998): 27-62.

²⁹ John Locke, *Letter Concerning Toleration* (1689), in *The Works of John Locke*, 12th ed., 9 vols. (London: Rivington, 1824), 5:1-58, at 47.

³⁰ Samuel L. Bray and John F. Hobbins, *Genesis 1–11: A New Old Translation for Readers, Scholars, and Translators* (Wilmore, KY: Glossahouse, 2017).

³¹ Samuel L. Bray and Drew N. Keane, eds., *The 1662 Book of Common Prayer International Edition* (Westmont, CA: IVP Press, 2021).

³² See, for example, Samuel L. Bray and Paul B. Miller, “Christianity and Equity,” in Witte and Domingo, *Oxford Handbook to Christianity and Law*, 389–405; id., “Getting Into Equity,” *Notre Dame Law Review* 97 (2022): 1763–99; Samuel L. Bray, “The System of Equitable Remedies,” *UCLA Law Review* 63 (2016): 530–94.

and on the historical and contemporary applications of equity jurisprudence are vital contributions to the field of law and religion.

Mathias Schmoeckel, a leading legal historian at the University of Bonn, tells a comparable story about the place of the medieval *ius commune* in Protestant lands on the European continent. That story, too, is counterintuitive. After all, Martin Luther is (in)famous for burning the medieval canon law books at the city gates of Wittenberg and rejecting Roman law as “pagan learning” that had no place in the Bible-based communities born of the Reformation.³³ But Mathias documents clearly that the Protestant jurists and moralists who structured the new legal systems of Protestant churches and states drew heavily on the medieval Catholic canon law and civil law jurisprudence that they knew. Yes, they reformed some of this legal inheritance to reflect the new Protestant teachings, but Reformation jurists treated the sophisticated law and jurisprudence of Christianized Rome and medieval Christendom as a rich repository of natural law and Christian wisdom—a position that Luther and other early Protestant theologians ultimately accepted. Mathias is the world’s ranking expert on the Protestant Reformation and law, and he has written brilliant volumes on the German, Swiss, and French reformations that he samples in his chapter with case studies of Wittenberg, Basel, and Bourges.³⁴ He has also published learned titles on canon law, criminal law, family law, procedural law, legal codification, and the law of notaries, and recently coedited an outstanding six-volume series documenting the influence of medieval canon law on European legal culture.³⁵ I was privileged to get to know Mathias

³³ See John Witte, Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002), 53–70.

³⁴ See esp. Mathias Schmoeckel, *Evangelischen Kirchenrecht: Grundlagen und Grundfragen* (Tübingen: Mohr Siebeck, 2023); and id., *Das Recht der Reformation* (Tübingen: Mohr Siebeck, 2014).

³⁵ See, for example, Mathias Schmoeckel et al., eds. *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, 6 vols. (Cologne: Böhlau Verlag, 2009–20); Mathias Schmoeckel and Werner Schubert, *Handbuch zur Geschichte des deutschen Notariats seit der Reichsnotariatsordnung von 1512* (Baden-Baden: Nomos, 2012); Mathias Schmoeckel, *Erbrecht*, 6th ed. (Baden-Baden: Nomos, 2020); id., *Kanonisches Recht: Geschichte und Inhalt*

twenty plus years ago, when we met annually for a project on “concepts of law,” directed by our mutual friend, Michael Welker. Since then, Matthias and I have lectured and written together,³⁶ contributed to each other’s books and conferences, served together on the editorial board of the *Zeitschrift der Savigny-Stiftung*, and enjoyed wonderful fraternity and friendship. My wife, Eliza, and I remember with special delight an evening we spent with Mathias and his father at Mathias’s home outside of Bonn, touring his glorious multi-acre garden that is as elegantly manicured as his scholarship.

Mark Hill, KC, too, has been a dear friend and invaluable collaborator for the past quarter century. Together with Norman Doe,³⁷ Mark has led the global study of Anglican ecclesiastical law and its place within other Christian legal systems. His impressive *Ecclesiastical Law*, 4th ed. (Oxford, 2018) is the standard text used by church law scholars and practitioners throughout the British Commonwealth and worldwide Anglican Communion. For many years, Mark presided over the Ecclesiastical Law Society in the United Kingdom and in that capacity edited the *Ecclesiastical Law Journal*, a Cambridge University Press imprint, and produced several other volumes on church law and theological jurisprudence.³⁸ Mark and Dick Helmholz edited the first of our Center’s series on “Great Christian Jurists in World History,” an excellent anthology on *Great Christian Jurists in English History* (Cambridge, 2017). In recent years, Mark

des Corpus Iuris Canonici (Munich: C. H. Beck, 2020); and id., *Die Jugend der Justitia:*

Archäologie der Gerechtigkeit im Prozessrecht der Patristik (Tübingen: Mohr Siebeck, 2013).

³⁶ See, for example, Mathias Schmoeckel and John Witte, Jr., eds., *Great Christian Jurists in German History* (Tübingen: Mohr Siebeck, 2020); and id., “Christianity and Procedural Law,” in Witte and Domingo, *Oxford Handbook of Christianity and Law*, 376–88.

³⁷ See Frank Cranmer, Mark Hill, Celia Kenney, and Russell Sandberg, eds., *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge: Cambridge University Press, 2016).

³⁸ See, for example, Mark Hill and A. K. Thompson, eds., *Religious Confession and Evidential Privilege in the 21st Century* (Sydney: Shepherd Street Press, 2023); Mark Hill, Russell Sandberg, and Norman Doe, eds., *Religion and Law in the United Kingdom* (Alphen aan de Rijn: Kluwer, 2021); Hill et al., *Christianity and Criminal Law*; and Hill and Helmholz, *Great Christian Jurists in English History*.

has taken leadership roles in the International Consortium of Law and Religion Studies and has traveled around the world, especially in the Global South, to speak and spearhead projects on law and religion, religious freedom, constitutional reforms, and human rights. For all this globe-trotting, however, Mark has remained a dedicated and much sought-after barrister in secular courts in the United Kingdom and a formidable ecclesiastical judge and advocate in church courts. And he has always made time for my colleagues and me—collaborating with our Center on various projects and events, contributing learned articles to our publications, reviewing and blurbing my books, and graciously opening lectureships to me throughout the United Kingdom.³⁹ A particularly memorable occasion he made possible was the privilege to preach from Richard Hooker’s pulpit in the Temple Church, a rare treat for this mere lawyer and a Calvinist at that.

Brandon Paradise offers the world of law and religion a rare combination of deep training in Orthodox Christian theology, modern American constitutional law, and critical race theory. The Orthodox sage John McGuckin introduced us some fifteen years ago, when Brandon first began teaching law at Rutgers Law School, and I have learned from his work ever since, particularly during his early visits to our Center and more recently during his tenure as a McDonald Senior Fellow. Brandon has courageously pushed back against the anti-Black animus of some Christian theologies as well as the antireligious animus of some critical race theories. He has called us all to remember the powerful example of civil and human rights advocated by the *Reverend* Dr. Martin Luther King Jr. and fostered by the Black churches, which remained committed to the truth of scripture, the essential role of faith in law and politics, and the critical values of discursive community.⁴⁰ Brandon has also held out the powerful witness of Orthodox theology and church life for engaging and, where needed, reforming liberalism’s cardinal commitments to democracy, constitutional order, rule of

³⁹ See, for example, Mark Hill, “Christianity and Human Rights Law,” in Witte and Domingo, *Oxford Handbook of Christianity and Law*, 593–604.

⁴⁰ See, for example, Brandon Paradise, “How Critical Race Theory Marginalizes the African-American Christian Tradition,” *Michigan Journal of Race and Law* 20 (2014): 117–211; id., “Racially Transcendent Diversity,” *University of Louisville Law Review* 50 (2012): 415-89; and id., “Confronting the Truth: The Necessity of Love for Justice,” *Journal of Law and Religion* 37 (2022): 230–43.

law, and protection of human rights.⁴¹ He and Center Senior Fellow Terri Montague recently organized a marvelous forum on all these themes, featuring Brandon's old professor Cornel West as well as Bernice King, MLK's daughter and an early graduate of our Center. In his chapter herein, Brandon ably interweaves his innovative account of Christianity, race, law, and liberalism with some of the main themes of law and religion that he finds in my writings. His distinctive voice and perspective are refreshing contributions to the study of law and religion.

Part III of this volume features nine learned chapters on the history, theory, and law of human rights and religious freedom. These topics have attracted by far the largest body of scholarship in the field of law and religion. All nine chapters add keen and original insights to the literature. As we saw in discussing Nicholas Wolterstorff's chapter, the historical roots and routes of human rights and religious freedom, and their constitutional and cultural legitimacy in late modern societies, are all highly contested among scholars today, and these topics have attracted a small library of interdisciplinary literature. An even larger library has grown to address the historical origins and modern interpretations of the First Amendment religious freedom guarantees and accompanying statutes in the United States. The rapidly expanding religious freedom jurisprudence of individual European national courts and the pan-European courts in Strasbourg and Luxembourg has attracted a growing body of new scholarship, too, on both sides of the Atlantic, as has the work of high national courts in the Middle East (especially in Israel) and the Global South (especially in India, South Africa, and Chile). Since the 1980s, UN special rapporteurs, national state departments, and NGOs have issued detailed surveys of the state of human rights and religious freedom around the world and have documented the alarming rise in religious persecution in the new millennium. These reports, too, have attracted a great deal of commentary by law-and-religion scholars from various disciplines.

Distinguished Catholic jurist **Andrea Pin**, newly chaired professor at the University of Padua, has written with depth and vigor on the ultimate foundation of human rights in the idea that all humans are created in the image of God, and by virtue of that status enjoy an inherent human dignity. In a series of articles and forthcoming books, Andrea has compared various Christian, Jewish, and Muslim concepts of human dignity and their impact on local law and human rights protections in Europe, the Middle East, and the Americas.⁴² He is expanding this work to take up

⁴¹ See, for example, Brandon Paradise and Fr. Sergey Trostyanskiy, "Liberalism and Orthodoxy: A Search for Mutual Apprehension," *Notre Dame Law Review* 98 (2023): 1657–98.

⁴² See, for example, Andrea Pin, "Arab Constitutionalism and Human Dignity," *George Washington University International Law Review* 50 (2017): 1–67; id., "Balancing Dignity, Equality, and Religious Freedom: A Transnational Topic," *Ecclesiastical Law Journal* 19

new questions about human dignity, identity, and responsibility born of the AI revolution. His writings also include exquisite studies of comparative constitutional law, competing theories of rule of law, and contested questions about the place of Muslims and sharia in Europe.⁴³ All these are core topics of the law-and-religion field, and they all feature in his learned chapter in this volume. Andrea has been a wonderful friend to me and my family since we met some fifteen years ago, and he has been a highly productive senior fellow in our Center. He has contributed generously to our courses, conferences, and publications, and expertly translated several of my writings into Italian. He has hosted Eliza and me in the glorious cultural capitals of Padua, Venice, Milan, Rome, and Florence, opening wonderful forums to me, and introducing valuable conversation partners throughout Italy. In recent years, we have written together on the religious freedom jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union, and I have learned much from his insider views as a European lawyer and a devout Catholic. We are now embarked on a book-length study comparing European and American religious freedom jurisprudence.⁴⁴

David Little has pioneered the study of religion, human rights, and religious freedom during sixty-five years of distinguished scholarly work at Yale, Harvard, and Georgetown Universities, the University of Virginia, and the United States Institute of Peace. He has traced cardinal human rights principles from antiquity to today—with a special focus on the prescient contributions of Protestants like his heroes John Calvin and Roger Williams to modern ideas of human rights. He has written astutely on the many vexed questions arising under the First Amendment religion clauses. And he has

(2017): 292–316; id., “Religions, National Identities, and the Universality of Human Rights,”

Oxford Journal of Law and Religion 3 (2014): 419–39; id., “Catholicism, Liberalism, and

Populism,” *Brigham Young University Law Review* 46 (2021): 1301–28; and id., “AI, the Public

Square, and the Right to be Ignored,” in Jeroen Temperman and Alberto Quintavalla eds.,

Artificial Intelligence and Human Rights (Oxford: Oxford University Press, 2023), 177–94.

⁴³ Andrea Pin, *The Legal Treatment of Muslim Minorities in Italy: Islam and the Neutral State*

(London: Routledge, 2016); id., *Il diritto e il dovere dell'uguaglianza : problematiche attuali di*

un principio risalente (Naples: Editoriale scientifica, 2015); and id., “The Inevitability of

Precedent,” *The Italian Review of International and Comparative Law* 2 (2022): 246–62.

⁴⁴ Andrea Pin and John Witte, Jr., *Le origini e il futuro della libertà religiosa in Europa e negli*

Stati Uniti (Milan: Il Mulino, 2023).

charted the religious sources and dimensions of modern human rights, particularly the international instruments protecting freedom of thought, conscience, and belief, freedom from religious hatred, incitement, and discrimination, and the rights to religious and cultural self-determination.⁴⁵ His most recent work makes a compelling argument that the ultimate *Grundnorm* of human rights lies in the natural right of self-defense, which historical writers and international human rights documents alike take as axiomatic. David has been a wonderful friend and collaborator in our Center's projects since the early 1990s.⁴⁶ We have lectured for each other, appeared together in several public conferences and panels, and reviewed each other's work.⁴⁷ It was a special privilege to keynote the Festschrift conference for him on his retirement from Harvard Divinity

⁴⁵ See the lengthy bibliography and assessment of his work in Sumner B. Twiss et al., eds., *Religion and Public Policy: Human Rights, Conflict and Ethics* (Cambridge: Cambridge University Press, 2015). See also David Little, *Essays on Religion and Human Rights: Ground to Stand On* (Cambridge: Cambridge University Press, 2015).

⁴⁶ See, for example, David Little, "Studying 'Religious Human Rights': Methodological Foundations," in John Witte, Jr. and Johan D. Van der Vyver, eds., *Religious Human Rights in Global Perspective: Religious Perspectives* (The Hague: Martinus Nijhoff, 1996), 45–78; and id., "Religion, Human Rights, and Public Reason," in Witte and Green, *Religion and Human Rights*, 135–54.

⁴⁷ See, for example, David Little, "Review Essay: Religion and Justification of Rights Discussed," *Journal of Law and Religion* 38 (2023): 141–57 (Review of Witte, *Faith, Freedom and Family* and John Witte, Jr. *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition* (Cambridge: Cambridge University Press, 2021); John Witte, Jr., "Review Essay: Law, Religion, and Human Rights in David Little's Thought," *Journal of Law and Religion* 32 (2017): 197–201.

School.⁴⁸ David is an erudite reader and trenchant critic; to send a manuscript to him for commentary is to know the true meaning of “fear and trembling.” I have learned so much from our lengthy exchanges over the years. In his chapter herein, he returns with fresh insights and sources to tell more of the story of the history of rights in the later medieval era and in the Calvinist Reformation, showing the continuity with, if not dependence of, Calvin and the early Calvinists on late medieval nominalist and conciliarist views of rights and religious freedom.

Leading German church historian **Jan Stievermann** is, perhaps ironically, one of the world’s best historians of early American religion. While he has also written on European church history, he has made two pathbreaking contributions to the study of law and religion in American history. The first was in preparing, together with Reiner Smolinski and a team of other scholars, a critical edition of the ten-volume *Biblia Americana* by Puritan leader Cotton Mather. This is the most important publication on American colonial religious history since *The Works of Jonathan Edwards*, and it was little known let alone read before the arduous efforts of the *Biblia* team to bring it to light. Mather’s massive learning, including notably on themes of law and religion, pulses throughout this encyclopedic biblical commentary. Jan follows Mather every step of the way, offering keen annotations on the text, and separate commentaries, articles, and books on Mather’s contributions.⁴⁹ His excellent chapter herein on Mather’s teachings on religious freedom and other liberties is one of many examples of the riches available to scholars of law and religion who take up the *Biblia*. And the chapter adds further nuance to and appreciation for the Puritan sources of American constitutionalism. Jan’s second major contribution involves James W. C. Pennington, who escaped from slavery and became a powerful Presbyterian preacher and the leader of the world abolitionist movement before the American Civil War. Jan is leading the way in the reappraisal of Pennington as a major antebellum abolitionist and reformer, who even received an

⁴⁸ John Witte, Jr., “David Little: A Modern Calvinist Architect of Human Rights,” in Twiss et al., *Religion and Public Policy*, 3–23.

⁴⁹ See, for example, Jan Stievermann, *Prophecy, Piety, and the Problem of Historicity: Interpreting the Hebrew Scriptures in Cotton Mather’s Biblia Americana* (Tübingen: Mohr Siebeck, 2016); id., “Admired Adversary: Wrestling with Grotius the Exegete in Cotton Mather’s *Biblia Americana* (1693–1728),” *Grotiana* 41 (2020): 198–235; and id., “The Debate over Prophetic Evidence for the Authority of the Bible in Cotton Mather’s *Biblia Americana*,” in *The Bible in American Life*, ed. Philip Goff et al. (New York: Oxford University Press, 2017), 48–62.

honorary doctorate from the University of Heidelberg and, it turns out, had been the first Black person ever to study at Yale. With his Heidelberg colleagues, Jan established the Pennington Prize and Lectureship at Heidelberg, yielding a series of volumes on Pennington.⁵⁰ Jan and Michael Welker kindly nominated me for that prize and lectureship, and I have made Pennington's remarkable odyssey a central chapter in my ongoing history of Calvinism and rights.⁵¹ The two of them also commended me for an honorary doctorate in theology from Heidelberg; Jan's beautiful *laudatio* will long serve me as a talisman against self-doubt.

Joel A. Nichols, chaired professor and long-serving dean at the University of St. Thomas Law School, in Minneapolis, was a brilliant student and graduate of our Center. Already as a student, his research and scholarly gifts were on full display as he published a prize-winning article on covenant marriage and a lengthy study of international religious freedom norms governing proselytizing.⁵² He has continued to write about domestic and international religious freedom, and has joined me as a coauthor of the last three editions of *Religion and the American Constitutional Experiment* (5th ed. Oxford, 2022) and a few related articles.⁵³ He also directed a

⁵⁰ Jan Stievermann, ed., *The Pennington Lectures, 2011–2015* (Heidelberg: Universitätsverlag Winter, 2015); Jan Stievermann et al., eds., *James W. C. Pennington: Essays Toward Rediscovering a Great African American Intellectual and Reformer* (Oxford: Oxford University Press, forthcoming).

⁵¹ See, for example, John Witte, Jr. and Justin L. Latterell, "Between Martin Luther and Martin Luther King: James Pennington and the Struggle for 'Sacred Human Rights' Against Slavery," *Yale Journal of Law and Humanities* 31 (2020): 205–71.

⁵² Joel A. Nichols, "Louisiana's Covenant Marriage Law: A First Step Toward a More Robust Pluralism in Marriage and Divorce Law?" *Emory Law Journal* 47 (1998): 929–1001; and id., "Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as Reflected in Church Documents," *Emory International Law Review* 12 (1998): 563–650.

⁵³ John Witte, Jr. and Joel A. Nichols, introduction to John Witte, Jr. and Eliza Ellison, eds., *Covenant Marriage in Comparative Perspective* (Grand Rapids: Eerdmans, 2005), 1–25; id.,

superb comparative project for our Center on plural forms and forums of family law, yielding a signature work, *Marriage and Divorce in a Multi-Cultural Context* (Cambridge, 2011). Joel has been uncommonly generous to me and my family: every Christmas since his first year at Emory, he has sent us a delicious box or two of pears as a token of ongoing friendship and fraternity; “the Nichols pears” are now a staple of our family’s Yuletide cheer. In his chapter herein, Joel has returned to his southern roots, taking up anew his pathbreaking research on the colonial history of religious liberty in Georgia. He shows the surprisingly robust religious pluralism and religious liberty in this young colony, and punctures deftly the stereotype of colonial Georgia as a mere dumping ground for transported debtors and felons.

In a long series of volumes beginning in 1987, **Daniel L. Dreisbach**, of American University, has brilliantly illuminated the religious sources of American law and politics and the religious character of many of America’s founders. Not only famous founders like George Washington, Thomas Jefferson, and John Adams but also forgotten founders like Jaspar Adams, Benjamin Rush, and Oliver Ellsworth come to light and life in Daniel’s volumes. He documents in detail the founders’ dependence on the Bible and on basic Christian moral teachings in creating the new constitutions, statutes, and cases of the young American republic.⁵⁴ A careful textualist, Daniel has also assembled a

“The Frontiers of Marital Pluralism,” in Joel A. Nichols, ed., *Marriage and Divorce in a Multi-Cultural Context: Multi-Tiered Marriage and the Boundaries of Civil Law and Religion* (Cambridge: Cambridge University Press, 2011), 357–78; id., “Who Governs the Family? Marriage as a New Test Case of Overlapping Jurisdictions,” *Faulkner Law Review* 4 (2013): 321–49; and id., “‘Come Now Let Us Reason Together’: Restoring Religious Freedom in America and Abroad,” *Notre Dame Law Review* 92 (2016): 427–50.

⁵⁴ See, for example, Daniel L. Dreisbach, *Reading the Bible with the Founding Fathers* (Oxford: Oxford University Press, 2016); id., *Religion and Politics in the Early Republic* (Lexington: The University Press of Kentucky, 2015); Daniel L. Dreisbach and Mark D. Hall, eds., *Faith and the Founders of the American Republic* (Oxford: Oxford University Press, 2014); Daniel L. Dreisbach and Mark D. Hall, eds., *The Forgotten Founders on Religion and Public Life* (Notre Dame, IN: University of Notre Press, 2009); and Daniel L. Dreisbach, Mark D. Hall, and Jeffrey

wonderful collection of primary sources showing the founders' diverse teachings on liberty of conscience and religious freedom; he also published a definitive study of the origins and meanings of the famous metaphor of "a wall of separation between church and state" and the varying applications of that phrase first by Thomas Jefferson and then by Supreme Court opinions citing Jefferson.⁵⁵ Daniel has been a go-to resource and critic for me for the past thirty years, offering valuable commentary on my early efforts to map First Amendment history and Supreme Court case law. He also coedited our Center's commissioned volume on *Great Christian Jurists in American History* (Cambridge, 2019). His learned chapter herein revisits the history, judicial interpretation, and political manipulations of the "wall of separation" metaphor, and very kindly weaves together and commends my efforts to map the various meaning and uses of this metaphor in Western history and American constitutional thought.

Mark A. Noll has long been America's leading Evangelical church historian and commentator, producing thirty books and hundreds of articles while teaching two generations of students at Wheaton College and the University of Notre Dame. He has documented beautifully the anchoring role of the Bible in American law, politics, and culture from early colonial days into the twentieth century.⁵⁶ But he has also lamented the decline of America's "Bible civilization" after World War I, and the growing "scandal of the Evangelical mind" as twentieth-century American Protestants gradually lost their distinct epistemological grounding in scripture, tradition, reason, and experience, and their traditional aspiration to educate themselves to find their Christian vocation in all walks of life, including in the legal profession.⁵⁷ Mark's *America's God* (Oxford, 2002), *In the Beginning Was the Word* (Oxford, 2015), and *America's Book* (Oxford, 2022) are must-reads for anyone serious about American religious history. In recent writings, he has also taken up the history of Protestantism in the Americas, Europe, and Africa, and has been in the vanguard of scholars now working on world Christianity. Mark has been

H. Morrison, eds., *The Founders on God and Government* (Lanham, MD: Rowman and Littlefield, 2004).

⁵⁵ Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York: NYU Press, 2002); and Daniel L. Dreisbach and Mark D. Hall, eds., *The Sacred Rights of Conscience* (Indianapolis: Liberty Fund, 2009).

⁵⁶ See a full listing of his writings here: <https://history.nd.edu/assets/47887/>.

⁵⁷ See Mark A. Noll, *The Scandal of the Evangelical Mind* (Grand Rapids: Eerdmans, 1994); and id., *America's Book: The Rise and Decline of a Bible Civilization, 1794–1911* (Oxford: Oxford University Press, 2022).

a wonderful friend to me over many years, always sending encouraging notes and materials, commenting on my manuscripts, reviewing my books, and opening doors to me. He provided a magisterial introduction to our Center volume on *Modern Protestant Teachings on Law, Politics, and Human Nature* (Columbia, 2007), and contributed other valuable writings to our projects.⁵⁸ In his chapter herein, Mark shows how the United States Supreme Court’s separatist interpretation of the First Amendment in the mid-twentieth century hastened the decline of the value and use of the Bible in public schools and public life altogether. The Supreme Court’s recent First Amendment cases have been more accommodating of public expressions of religion, to the delight of some and the dismay of others.

First Amendment religious freedom is also at the heart of the expertise of my distinguished friend and Georgia neighbor, **Nathan Chapman**. Trained in both law and theology at Duke University, and then in religious liberty at Stanford, Nathan has emerged as a great leader of the next generation of law and religion scholars and teachers. He has published several definitive articles on First Amendment history and jurisprudence, as well as on broader American constitutional questions, such as due process and sovereign immunity.⁵⁹ He and his mentor, Michael McConnell, have published a brilliant book, *Agreeing to Disagree: How the Establishment Clause Promotes Religious Pluralism and Protects Freedom of Conscience* (Oxford, 2022). Nathan has also embarked on several studies engaging deep questions of political and legal theology, and the place of Christian ideas and institutions in post-Christian liberal societies—topics that we have pondered together during several long and enjoyable

⁵⁸ See, for example, Mark A. Noll, “Introduction to Modern Protestantism,” in Witte and Alexander, eds., *The Teachings of Modern Protestantism*, 1–28; and id., “The Gift of *Sola Scriptura* to the World,” in John Witte, Jr. and Amy S. Wheeler, eds., *The Protestant Reformation of the Church and the World* (Louisville, KY: Westminster John Knox, 2018), 23–46.

⁵⁹ See, for example, Nathan S. Chapman and Michael W. McConnell, “Due Process as Separation of Powers,” *Yale Law Journal* 121 (2012): 1672–807; Nathan S. Chapman, “Due Process Abroad,” *Northwestern University Law Review* 112 (2017): 377–452; id., “Disentangling Conscience and Religion,” *University of Illinois Law Review* (2013): 1457–501; and id., “Forgotten Federal-Missionary Partnerships: New Light on the Establishment Clause,” *Notre Dame Law Review* 96 (2020): 677–747.

hikes.⁶⁰ I have admired Nathan’s refined organizational and mentorship skills, as he has worked to foster fellowship and mutual encouragement for law-and-religion scholars and Christian jurists around the nation. His chapter herein, like his recent lengthy review essay of my coauthored *Religion and the American Constitutional Experiment*,⁶¹ is typically astute and generous in assessing my efforts to build an integrative principled approach to the First Amendment. Nathan goes well beyond me in applying that approach to assess the constitutional limits on government religious speech. He argues for a novel “threat-of-discrimination” approach, in place of the less satisfying separatist, coercion, history, or endorsement approaches of the United Supreme Court.

University of Bristol jurist and legal philosopher **Julian Rivers** is, alongside Norman Doe and Mark Hill, one of the pioneers of the modern study of law and religion in the United Kingdom. The three of them, along with Dick Helmholz, built up the *Ecclesiastical Law Journal*. Julian also founded and now edits the *Oxford Journal of Law and Religion*. These are the two leading law-and-religion journals in the British Isles. I have long admired Julian’s elegant and crystal-clear contributions to law-and-religion scholarship, including wonderful chapters on the biblical, historical, and jurisprudential dimensions of equality that he contributed to our Center’s recent publications.⁶² He has also written insightfully on several core topics in law and religion—natural law, human rights, religious establishments, church-state relations, freedom of expression, and constitutional theory, drawing on Anglo-American,

⁶⁰ See, for example, Nathan S. Chapman, “‘The Arc of the Moral Universe’: Christian Eschatology and U.S. Constitutionalism,” *Notre Dame Law Review* 98 (2023): 1439–68; id., “Christianity and Crimes Against the State,” in Hill et al., *Christianity and Criminal Law*, 153–69; and id., “The Weight of Judgment,” in Hill et al., *Christianity and Criminal Law*, 332–48.

⁶¹ Nathan S. Chapman, “American Religious Liberty Without (Much) Theory,” *Journal of Law and Religion* 38 (2023): 126–40 (review of John Witte, Jr., Joel A. Nichols, and Richard W. Garnett, *Religion and the American Constitutional Experiment*, 5th ed. (Oxford: Oxford University Press, 2022)).

⁶² See, for example, Julian Rivers, “Christianity and the Principle of Equality in International Law,” in Rafael Domingo and John Witte, Jr., eds., *Christianity and Global Law* (London: Routledge, 2020), 231–50; and id., “Christianity and Equality,” in Witte and Domingo, *Oxford Handbook of Christianity and Law*, 777–88.

European, and international jurisprudence alike. I have admired his courage in standing up for the place of (the Christian) faith in the secular academy, and his defense of religious freedom as a necessary foundation and feature of constitutional order. His weighty monograph *The Law of Religious Organizations: Between Establishment and Secularism* (Oxford, 2010) is a sterling defense of religious freedom and a call for better balancing of competing rights claims. Julian extends and updates that book's main argument in his chapter herein; he defends the corporate religious freedom of the church on historical, philosophical, and constitutional grounds, but also illustrates how British, German, and American courts alike have wavered in their definition and defense of this principle, not least during the COVID-19 public health crisis.

Faulkner University law professor **Jeffrey B. Hammond** was also one of our Center's early prize students, who has gone on to a fine teaching career focused on legal and theological dimensions of health law, bioethics, religious liberty, and legal philosophy.⁶³ During his time at Emory, Jeff did wonderful research on the first edition of my *Religion and the American Constitutional Experiment*. He also collaborated with my Center colleague Abdullahi An-Na'im on a substantial study on religion, culture, and human rights in Africa⁶⁴ and worked on Harold J. Berman's epic series on *Law and Revolution*. Jeff has been a notably faithful alumnus and senior fellow in our Center over the past two decades, participating actively in our conferences and projects. He was kind enough to invite me to an excellent symposium that he organized on "Overlapping Jurisdictions: What Role for Conscience and Religion," to which he made a learned contribution on contract, covenant, and conscience.⁶⁵ He coedited a superb study commissioned by our Center on *Christianity and the Laws of Conscience* (Cambridge, 2021). In his chapter herein, Jeff explores the biblical foundations and theological calculus in making claims of conscience. He then uses recent religious freedom cases to illustrate how a religiously informed conscience sometimes compels parties to seek exemptions from compliance with state prescriptions or proscriptions, sometimes at significant cost to their livelihoods and social standing. The questions of religious

⁶³ See, for example, Jeffrey B. Hammond, "The Minimally Conscious Person: A Case Study in Dignity and Personhood and the Standard of Review for Withdrawal of Treatment," *Wayne Law Review* 55 (2009): 821–900; and id., "Protestant Legal Theory: Apology and Objections," *Journal of Law and Religion* 32 (2017): 86–92.

⁶⁴ Abdullahi Ahmed An-Na'im and Jeffrey B. Hammond, introduction to Abdullahi A. An-Na'im, ed., *Cultural Transformation and Human Rights in Africa* (London: Zed Books, 2002).

⁶⁵ See in this symposium: Jeffrey B. Hammond, "Conscience as Contract, Conscience as Covenant," *Faulkner Law Review* 4 (2013): 433–44.

exemptions and accommodations from general state laws are heated topics of dispute these days in law-and-religion and broader constitutional scholarship.

Part IV of this volume gathers six excellent chapters, by old friends and new, that illustrate a few of the challenging issues of sex, marriage, and family that have long occupied law-and-religion scholarship. The marital family is humanity's oldest and most essential social institution, whose various different forms and norms reflect both spiritual and secular dimensions. Marriage is not only a sacrament and covenant celebrated in special liturgies and ceremonies; it is also a contract and civil status that imposes rights and duties of spousal support and protection, and of parental nurture and education. Spouses, churches, and states have all set basic rules, procedures, and expectations for the proper formation, maintenance, and dissolution of the marital family, and for the proper care, nurture, and education of children. These overlapping dispensations often come into sharp tension in cases of spousal or child neglect or abuse, household conflict or divorce, or with death and inheritance disputes. Today, parents, state officials, and children with growing moral agency often need to sort out whose authority or interests take precedence in disputes. All these topics and more are at the center of the field of law and religion not only in Western lands but throughout the world.⁶⁶

My distinguished Emory colleague and friend **Philip L. Reynolds** has been a wonderful senior fellow in our Center for more than two decades. He was a leading participant in two major Center projects on "Sex, Marriage, and Family" and "The Child in Law, Religion, and Society." He directed the Center's major project on "The Pursuit of Happiness." He edited a superb title on first millennium sources for our book series on "Great Christian Jurists in World History."⁶⁷ Throughout his time at Emory, he was a master interlocutor and presenter at numerous Center roundtables, classes, and public conferences. But it is especially his books, coming out of these projects, that will long edify the law-and-religion field. His early work, *Marriage in the Western Church* (Brill, 1994), offered a brilliant account of first-millennium theological and legal teachings on marriage before and after the Christianization of the Roman Empire. The two of us coedited *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400–1600* (Cambridge, 2007). But most important is Philip's definitive history, *How Marriage Became One of the Sacraments* (Cambridge, 2018), a thousand-plus-page account that traces the idea of the marital sacrament from Saint Paul's *mysterion* of marriage (Ephesians 5:32) to the 1563 Decree Tametsi of the Council of Trent that finally settled the theology and law of marriage as a sacrament. Philip's chapter herein gives us a small taste of this latter masterwork in showing the

⁶⁶ See Browning et al., eds., *Sex, Marriage and Family in the World Religions*.

⁶⁷ Philip L. Reynolds, ed., *Great Christian Jurists and Legal Collections in the First Millennium* (Cambridge: Cambridge University Press, 2019).

interweaving of theological and legal arguments about the marital sacrament in the High Middle Ages.

Kathleen A. Brady has been a pivotal Catholic jurist working skillfully at the clogged intersections of church, state, family, and school. The great judge John T. Noonan Jr. strongly recommended Kathleen to serve as a senior fellow in our Center, and with her dual training in law and religion at Yale she has long proved to be a wonderful conversation partner. Even while teaching for a time at Villanova Law School and enjoying a fellowship at Princeton University, she continued her fellowship at our Center. She has played a crucial role in back-to-back Center projects on Christian jurisprudence, offering keen insights from the Catholic tradition to a deep conversation with a score of Catholic, Protestant, and Orthodox scholars. For one of those projects, she wrote a brilliant prize-winning book, *The Distinctiveness of Religion in American Law* (Cambridge, 2015) to counter the growing efforts in the academy to abolish religious freedom as a special category. She has since published several more articles defending the historical and constitutional place of religious freedom in the American constitutional order, the values of accommodating sincere religious claims, and the need for church autonomy in fundamental questions of polity, property, and social services.⁶⁸ In her fine chapter herein, Kathleen tackles several vexed questions of parental and children’s rights in education, finding traction in Catholic subsidiarity doctrine as well as my multidimensional view of the family to argue strongly for the priority of parental rights in the education of their minor children.

Marcia J. Bunge, a leading Christian ethicist, has published definitive works on the unique place of the child in the Bible, in the Christian tradition, and in various world

⁶⁸ See, for example, Kathleen A. Brady, “The Distinctiveness of Religion: An Introduction and Response to Readers,” *Journal of Law and Religion* 32 (2017): 518–22; id., “Catholic Liberalism and the Liberal Tradition,” *Notre Dame Law Review* 98 (2023): 1469–96; id., “Religious Freedom and the Common Good,” *Loyola University Chicago Law Journal* (2018): 137–64; id., “Religious Accommodations and Third-Party Harms: Constitutional Values and Limits,” *Kentucky Law Journal* 106 (2018): 717–50; id., “Independent and Overlapping: Institutional Religious Freedom and Religious Providers of Social Services,” *Loyola University Chicago Law Review* 54 (2022): 683–757; and id., “COVID-19 and Restrictions on Religious Worship: From Nondiscrimination to Church Autonomy,” *Fides et Libertas* (2021): 23–41.

religions.⁶⁹ Marcia and I share a deep appreciation for Martin Luther's signature emphasis on the need for education of both boys and girls to equip them for their distinct Christian vocation. We also shared a great mentor in the late Don Browning, the dean of interdisciplinary family studies at the University of Chicago, who brought us together for projects both at Chicago and in our Center at Emory.⁷⁰ Marcia has been a champion of children's rights and has defended an ethic of "childism" that takes better account of each child's evolving moral agency and growing independence from parents, teachers, and other authority figures. In her chapter herein, Marcia offers a robust critique of corporal punishment of children on biblical, moral, and utilitarian grounds. As a jurist and amateur theologian, I find her argument altogether convincing. If the law prohibits an adult person from striking a fellow adult with impunity, even though that victim is capable of self-defense and private redress, why should an adult be able to strike a child with impunity, especially when many children cannot defend themselves or turn to others for help? Why pick out one Old Testament Proverb as an enduring command for modern parents—"He who spares the rod hates his son" (Proverbs 13:24)—while ignoring many other actual Mosaic commands about parenting, including violent ones like: "Whoever strikes his father or his mother shall be put to death" (Exodus 21:15)? Like Marcia, I find more authoritative Jesus's statement: "'Suffer the little children to come unto me.' . . . And he took them up in his arms, put his hands

⁶⁹ See esp. Marcia J. Bunge, ed., *The Child in Christian Thought* (Grand Rapids: Eerdmans, 2001); Marcia J. Bunge, Terence Fretheim, and Beverley Roberta Gaventa, eds., *The Child in the Bible* (Grand Rapids: Eerdmans, 2008); Marcia J. Bunge, ed., *Children, Adults, and Shared Responsibilities* (Cambridge: Cambridge University Press, 2012); and Don S. Browning and Marcia J. Bunge, eds., *Children and Childhood in World Religions* (New Brunswick, NJ: Rutgers University Press, 2009).

⁷⁰ See, for example, Marcia J. Bunge, "The Vocation of the Child: Theological Perspectives on the Particular and Paradoxical Roles and Responsibilities of Children," in Brennan, ed., *The Vocation of the Child*, 31-52; and id., "Communicating Values by Honoring Families and the Full Humanity of Children: Lessons from Robust Theologies and Detrimental Developments Among Protestants," in John Witte, Jr., Michael Welker, and Stephen Pickard, eds., *The Impact of the Family on Character Formation, Ethical Education, and the Communication of Values in Late Modern Pluralistic Societies* (Leipzig: Evangelische Verlagsanstalt, 2022), 105–26.

upon them, and blessed them” (Matthew 19:13–15). That strikes me as the better way of offering firm and loving nurture and discipline of children.

Robin Fretwell Wilson, chaired professor of law at the University of Illinois, has done remarkable work over the past three decades trying to mediate claims of religious freedom and sexual liberty at a time of growing family fragility. She has warned about the dangers of abolishing traditional state marriage and family laws too quickly without providing sturdy legal protections for women, children, the elderly, and the impoverished.⁷¹ She has also warned about the vulnerabilities of these same parties, especially children, in various faith-based family law systems that have gained attractiveness and independence as state family laws have thinned.⁷² Both before and after the 2015 *Obergefell* case established the right to same-sex marriage in the United States, Robin has charted creative constitutional and political pathways to accommodate if not reconcile competing views of traditional marriage and the rapidly escalating claims of LGBTQ+ liberty. Her trio of books on point bring a variety of authors and perspectives together in creative dialogue.⁷³ Robin has always found time to contribute to our Center’s projects and public forums and was kind enough to present me with an award for my work on family law. In the chapter herein, Robin teams up with Mariela Neagu of Oxford University to revisit the question of whether the United States gains or loses by becoming the last country in the world to ratify the 1989 UN Convention on the Rights of the Child. After rehearsing the history of the Convention, its impact in illustrative countries that have adopted it, and the main arguments against ratification by the United States, the two authors recommend ratification by the United

⁷¹ See, for example, Robin Fretwell Wilson, ed., *Reconceiving the Family: Critical Reflections on the American Law Institute’s Principles of the Law of Family Dissolution* (Cambridge: Cambridge University Press, 2006).

⁷² Robin Fretwell Wilson, “The Perils of Privatized Marriage,” in Nichols, *Marriage and Divorce*, 253–83.

⁷³ William N. Eskridge Jr. and Robin Fretwell Wilson, eds., *Religious Freedom, LGBT Rights, and the Prospects for Common Ground* (Cambridge: Cambridge University Press, 2019); Robin Fretwell Wilson, ed., *The Contested Place of Religion in Family Law* (Cambridge: Cambridge University Press, 2018); and Douglas Laycock, Anthony Picarello, and Robin Fretwell Wilson, eds., *Same-Sex Marriage and Religious Liberty* (Lanham, MD: Rowman & Littlefield, 2008).

States and concomitant legal reforms that provide much better protections and provisions for children.

Michael J. Broyde, a distinguished rabbi and scholar of Jewish law, has been my dear friend and collaborator for more than thirty years. We have worked intensely together to build up our Center’s Abrahamic conversation on law and religion, and we have run several major projects on the fundamentals of faith, freedom, and family.⁷⁴ Michael has been like a brother to me, offering wise counsel, loving pastoral care, and valuable critique of my scholarship and administrative efforts. He has also been a wonderful bridge builder between his Jewish world and my Christian world. Michael admired my parents for resisting the Nazi occupation of the Netherlands and rescuing European Jews through the underground in World War II. He also appreciated my interest in the Hebrew Bible and Talmud and has fed me valuable sources and introduced me to wonderful scholars like David Blumenthal, David Novak, and Elliot Dorff, who have contributed vitally to our Center projects. Michael has long been involved as a judge on the Beth Din in New York, arbitrating family, commercial, and other disputes for voluntary Jewish participants. In recent years, he has defended this form of alternative dispute resolution, most notably in his pathbreaking *Sharia Tribunals, Rabbinical Courts, and Christian Panels: Religious Arbitration in America and the West* (Oxford, 2017). Since then, however, Michael shows in his chapter herein, the place of faith-based legal systems and procedures in liberal democracies has become ever more

⁷⁴ See, for example, Michael J. Broyde, “Religious Edicts, Secular Law, and the Family,” *Journal of Law and Religion* 34 (2019): 496–503 (review of Witte, *Church, State, and Family*); id., “Law, Economy, and Charity,” in Jürgen von Hagen et al. eds., *The Impact of the Market on Character Formation, Ethical Education, and the Communication of Values in Late Modern Pluralistic Societies* (Leipzig: Evangelische Verlagsanstalt, 2020), 115–32; id., “The Covenant-Contract Dialectic in Jewish Marriage and Divorce Law,” in Witte and Ellison, *Covenant Marriage*, 53–69; and id., “Proselytism and Jewish Law: Inreach, Outreach, and Jewish Tradition,” in John Witte, Jr. and Richard C. Martin, eds., *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, NY: Orbis Books, 1999), 45–60. See also Michael J. Broyde, ed., *Marriage, Sex, and Family in Judaism* (Lanham, MD: Rowman & Littlefield, 2005); Michael Broyde and John Witte, Jr., eds., *Human Rights in Judaism: Cultural, Religious, and Political Perspectives* (New York: Jason Aronson, 1998).

tenuous, even though corporate religious freedom and autonomy have been strengthened in recent cases both in the United States and Europe. Michael makes a strong case for both continuing and self-regulating this religious arbitration, particularly for minority religious communities whose norms and habits depart from the cultural mainstream. This is a shrewd warning for majority Christians in America today, who might soon find themselves in a comparable minority status and with a need to protect themselves in a growing secular age.

Charles J. Reid, an erudite legal historian at St. Thomas Law School, is also a longstanding friend and coworker. We shared a mentor in Harold J. Berman and friendship with Judge John T. Noonan Jr., about whom Charles has written insightfully.⁷⁵ Charles has made major contributions to the history of family law and human rights, particularly in unearthing influences of medieval Catholic theological and canon law on the Western legal tradition.⁷⁶ He has been a wonderful collaborator on several of our Center's projects and contributed a number of incisive chapters to our volumes.⁷⁷ He has also been a valuable adviser to me in negotiating and translating arcane texts and topics in medieval canon law and civil law that he knows so well. Those exquisite textual skills are on full display in Charles's remarkable chapter herein. Same-sex desire, intimacy, and relationships in the Bible and the ancient world have become highly

⁷⁵ See, for example, Charles J. Reid Jr., "John T. Noonan, Jr.: Catholic Jurist and Judge," in Dreisbach and Hall, *Great Christian Jurists in American History*, 208–29; and id., "Judge John T. Noonan, Jr. v. Joe Arpaio," *University of St. Thomas Law Journal* 17 (2022): 993–1008.

⁷⁶ See, for example, Charles J. Reid Jr., *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids: Eerdmans, 2004); id., "Thirteenth-Century Canon Law and Rights: The Word *Ius* and Its Range of Subjective Meanings," *Studia Canonica* 30 (1996): 295–342; and id., "The Canonistic Contribution to the Western Rights Tradition: An Historical Inquiry," *Boston College Law Review* 33 (1991): 37–92.

⁷⁷ See, for example, Charles J. Reid Jr., "Thomas Aquinas (1225–1274)," in Condorelli and Domingo, *Law and the Christian Tradition in Italy*, 98–127; id., "The Rights of Children in Medieval Canon Law," in Brennan, *The Vocation of the Child*, 243–265; and Charles J. Reid Jr. and John Witte, Jr., "In the Steps of Gratian: Writing the History of Canon Law in the 1990s," *Emory Law Journal* 48 (1999): 647–88.

contested topics in the past two generations, as theologians and jurists have faced the growing pressure to recognize same-sex liberties and marriages in churches and states alike. Various proof texts in the Bible and Apocrypha have been subject to intense new exegetical battles. Charles joins this heated discussion with a learned new reading of the Letter of Jude, eruditely parsing every word in this letter and comparing them to other biblical and apocryphal texts. This is a novel and innovative contribution that jurists and theologians will need to take into account.

Here, then, in these thirty-one chapters, readers are treated to exquisite illustrative treatments of many of the most pressing topics in the ever-expanding field of law-and-religion study.

- Mapping the modern field of law and religion, the various methods and disciplines employed in its cultivation and expansion, and the various institutions, fellowships, and publications that have developed for this study over the past half century;
- Individual and corporate religious freedom: viewed in domestic, regional, and international legal systems; analyzed in historical, jurisprudential, and theological perspectives; and reflected in principles like liberty of conscience, free exercise of religion, religious pluralism and equality, separation of religion and state, and the establishment or disestablishment of religion by state law;
 - Law, religion, and human rights more generally, including historical and philosophical contributions of Christian and other faiths to the cultivation and abridgement of various rights and liberties; the interactions of religious rights and other claims of liberty and the means of brokering conflicts; and the protection of specific rights of spouses, parents, and children sometimes by, and sometimes against, religious and state authorities;
 - The law and theology of “mixed institutions,” particularly marital families but also schools and charities, each with spiritual and temporal dimensions and each subject to the contesting jurisdictional claims of churches, states, and the parties within each of these primal institutions;
 - Church law and other faith-based legal systems, and their foundational roles in the development of the Western legal tradition; their structural role in building religious communities and bolstering their claims to religious autonomy; their bridging role in building interdenominational, if not interfaith dialogue, cooperation, and common causes for the common good; and their adjudicative role in brokering disputes among the voluntary faithful;
 - The influences of theology and religious ideas on law and legal thought: their shaping influence on canon law, civil law, and common law systems historically and today; and their vital contributions to many fundamental questions concerning the nature, purpose, and uses of law and authority, the mandates and limits of rule and obedience, the rights and duties of officials and subjects, the care and nurture of the needy and innocent, the justice and limits of war and violence, the nature of fault and the means of punishing it, the sources of obligations and the procedures for vindicating them, the origins of property and the means of protecting it, the dignity and equality of all human beings, and the balance of justice and equity, law and love.

Many other sectors of the field of law and religion have also commanded scholarly attention of late: natural law theory; comparative legal and religious professionalism; comparative hermeneutics and semiotics in parsing authoritative legal and religious texts; the roles of religious and moral arguments in secular law; and the place of ritual and ceremony in the enactment of law and politics. Christian and Jewish scholars have been among the leaders in this study in the past half century, but happily there are growing scholarly guilds studying law and religion in Islam, Buddhism, Hinduism, Confucianism, and various Indigenous traditions, too. Scholars from these various religious and legal traditions have already learned a great deal from each other and have cooperated in developing richer understandings of sundry legal, religious, and political subjects. This comparative and cooperative interreligious inquiry into fundamental issues of law, politics, and society needs to continue—especially in our day of increasing interreligious conflict and misunderstanding, and especially as the world struggles to discover proper, responsible, and effective legal constraints on religious fundamentalism and extremism.

What a blessing it has been to be part of this global enterprise. I have been privileged to work with tens of thousands of scholars, fellows, students, readers, and audience members around the world, and to publish with wonderful editors at Cambridge, Oxford, Columbia, Eerdmans, Routledge, Westminster John Knox, Mohr Siebeck, Evangelische Verlagsanstalt, Chr. Kaiser, China Legal Publishing House, and other presses. My colleagues and I have been tremendously blessed by several foundations that have entrusted us with their generous benefaction—most notably the McDonald Agape Foundation, The Pew Charitable Trusts, the Lilly Endowment, the Ford Foundation, the Henry Luce Foundation, and the John Templeton Foundation, and several generous individual benefactors, notably Dorothy Beasley, Jean Bergmark, Charlotte McDaniel, Cary Maguire, Gonzalo Rodriguez-Fraile, and Brent Savage.

Little of this work in law and religion would have been possible without the rock-solid support and encouragement of the Emory University leadership, particularly in the early years. I am especially grateful to our Center founders President James T. Laney and Professor Frank S. Alexander, both still beloved friends today. Way back in 1982, the two of them established a prototype program in law and religion, and then persuaded Hal Berman to move from Harvard to Emory in 1985. I came as Berman's research fellow and was appointed two years later as program director and then as law professor. Early on, Frank, Hal, and I collaborated closely to build up the work in law and religion with Jim Laney's blessing and support, and with several early foundation grants. In those early years, we also had vital support from successor Emory presidents William M. Chace and James W. Wagner, provosts Billy E. Frye and Rebecca S. Chopp, as well as stalwart deans Howard O. Hunter, Thomas C. Arthur, and Robert A. Schapiro in the Law School, and deans James L. Waits, Kevin R. LaGree, Russell E. Richey, and Jan Love in the Theology School. Several core Emory faculty have also been essential allies over the years, especially Emory colleagues and friends Robert Ahdieh, Abdullahi An-Na'im, Thomas C. Arthur, David Bederman, David Blumenthal, Robert Franklin, Rich Freer, Jon Gunnemann, Peter Hay, Mark D. Jordan, Michael Perry, Brent Strawn, Steven M. Tipton, and Johan van der Vyver, plus the Emory

contributors to this volume: Michael Broyde, Rafael Domingo, Christy Green, Gary Hauk, Timothy Jackson, and Philip Reynolds.⁷⁸

What makes organizations like our Center for the Study of Law and Religion thrive are the professionals who work behind the scenes, often harried and unheralded, but vital to the effort. My wife, Eliza Ellison, remarkably, carried much of the Center's administrative load on her own for more than a decade before the powerful trio of April Bogle, Anita Mann, and Amy Wheeler joined us in 2000. Amy has been with the Center since then and has become my indispensable chief of staff. We had wonderful new colleagues join us in key administrative leadership over the years, including Silas Allard, John Bernau, Christy Green, Justin Latterell, Shlomo Pill, Audra Savage, and Sara Toering. Our Center's new executive director, Whittney Barth, appointed in 2022, has already taken superb command of the daily administration, much to my relief and admiration.

What makes life worth living, however, is above all a loving, faithful family. I was much blessed to have wonderful parents, John and Gertie Witte, who met in the underground during the Nazi occupation of the Netherlands and later emigrated to Canada, with shirts on their backs, two suitcases in hand, and their first baby in their arms. By dint of hard work and deep faith, they built a beautiful life in our simple home, marked by piety, discipline, industry, sacrifice, loyalty, love, hospitality, gratitude, humor, and joy—virtues and values that they instilled in all their children. I was also much blessed to have three wonderful older sisters Ria, Gertie, and Jane, and their eventual spouses, Obie, John, and Norm, and all their children and grandchildren. Our family adopted a lovely but severely handicapped brother, Robert, who died in 1980 at the age of sixteen. My adult life has been overwhelmingly blessed by the love of my life, Eliza, our two wonderful daughters, Hope and Alison, their loving husbands, Justin and Samuel, and our five wonderful grandchildren, Baylor, Alina, Jubilee, Elet, and Gemma. Family and faith have always come first in my life. I would not be who or what I am today without the love of my family and the love of a gracious God who has blessed us all so richly. May it long continue!

⁷⁸For this early history, see Hauk, *Forty Years of Law and Religion at Emory*; and John Witte,

Jr., "A Tribute to Frank S. Alexander," *Journal of Law and Religion* 35 (2020): 193–97.