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## Introduction

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At the close of the second millennium, the world is torn by crisis and tumult--by a moral Armageddon, if not a military one. With the memories of world wars, gulags, and the Holocaust still fresh in our minds, we see the bloody slaughter of Rwanda and the Sudan, the tragic genocide of the Balkans, the massive unrest of the Middle East, Western Africa, Latin America, and the former Soviet bloc. On every continent, we see clashes between movements of incremental political unification and radical balkanization, gentle religious ecumenism and radical fundamentalism, sensitive cultural integration and rabid diversification, sensible moral pluralization and shocking moral relativism. Even in the ostensibly peaceful societies of the West, bitter culture wars have aligned defenders of various old orders against an array of social, legal, and cultural deconstructionists. "Cultural conflicts are increasing and are more dangerous today than at any other time in history," Czech President Vaclav Havel declared in 1994. "The end of the era of rationalism has been catastrophic, [for now] the members of various tribal cults are at war with one another. . . . The abyss between the rational and the internal, the objective and the subjective, the technical and the moral, the universal and the unique constantly grows deeper."

Religious beliefs and believers have suffered miserably in these "culture wars." 1995, the United Nations Year of Tolerance, is becoming just another dark year in a dark decade of religious intolerance. Religious nationalism and fundamentalism have conspired to bring violent death and dislocation to hundreds of religious believers around the world each year. Political secularism and cynicism have combined to bring civil denial and deprivation to religious believers of all faiths. Temples and mosques are denied entrance to neighborhoods. Churches and charities are denied autonomy of governance. Clerics and charities are denied licenses to minister. Pilgrims and missionaries are denied visas and charters. Natives and refugees are denied totems and homelands. Parents and children are denied liberties of education. Employers and employees are denied opportunities to exercise their faiths. To be sure, the collapse of many authoritarian regimes in the past decade has begun to open new venues and avenues for religion to flourish. International and local laws have begun to embrace more generous religious rights provisions. Religious communities have begun to apply their theological learning and moral suasion to the cause of religious

rights. But today, by common estimates, more than two billion people still enjoy only partial freedom of thought, conscience, and belief.

It is time for us to take religious rights seriously--to shake off our political indifference and parochial self-interest and to address the plight and protection of people of all faiths. It is time to "exorcise the demons of religious intolerance" that have beset both religious and non-religious peoples around the world and to exercise the "golden rules" of religious rights--doing unto other religious believers and beliefs what we would have done to us and ours.

Human rights norms provide no panacea to the world crisis, but they are a critical part of any solution. Religions are not easy allies to engage, but the struggle for human rights cannot be won without them. For human rights norms are inherently abstract ideals--universal statements of the good life and the good society. They depend upon the visions of human communities and institutions to give them content and coherence, to provide "the scale of values governing the[ir] exercise and concrete manifestation." Religion is an ineradicable condition of human lives and communities; religions invariably provide universal sources and "scales of values" by which many persons and communities govern themselves. Religions must thus be seen as indispensable allies in the modern struggle for human rights. To exclude them from the struggle is impossible, and indeed catastrophic. To include them--to enlist their unique resources and to protect their unique rights--is vital to enhancing and advancing the regime of human rights.

"[T]he only real hope of people today is probably a renewal of our certainty that we are rooted in the Earth and, at the same time, the cosmos," Havel declared last year after receiving the Liberty Medal. "This awareness endows us with the capacity for self-transcendence. Politicians at international forums may reiterate a thousand times that the basis of the new world order must be universal respect for human rights, but it will mean nothing as long as this imperative does not derive from the respect of the miracle of being, the miracle of the universe, the miracle of nature, the miracle of our own existence. Only someone who submits in the authority of the universal order and of creation, who values the right to be a part of it, and a participant in it, can genuinely value himself and his neighbors, and thus honor their rights as well." These primordial religious ideas, together with religious doctrines and institutions in all their denominational variety and vigor, provide a vital resource for the realization of religious and other rights.

This volume and its companion take the measure and test the meaning of religious human rights, using the methods and insights of religion and law, theology and jurisprudence. This volume takes up the religious sources and dimensions of religious rights; the companion volume takes up their legal sources and dimensions. Comprehensive analysis of this topic, of course, properly requires a score of volumes thicker than this one. Selection, truncation, and distillation are necessary evils. We have restricted our analysis to the three religions of the Book and the four corners of the Atlantic. In this volume, we focus our religious discussions of rights on Judaism,

Christianity, and Islam, making only comparative asides about other religious and cultural traditions. In the companion volume, we focus our legal discussion on Europe, the Middle East, Africa, Latin America, and North America, with opening and closing discussions of religious rights developments by the United Nations and regional organizations. The discussion throughout both volumes is deliberately intercultural, interreligious, and interdisciplinary in character. The writings of high churchmen and statesmen stand alongside those of liberationists and freedom fighters. The perspectives of Jews, Christians, and Muslims, jurists, theologians, and ethicists, Africans, Europeans, and Americans all find a place.

The "rights talk" of Christianity, Judaism, and Islam, which is the focus of this volume, lends itself readily to comparative analysis. Each of these religious traditions is a religion of revelation, founded on the eternal command to love one God, oneself, and all neighbors. Each tradition recognizes a canonical text as its highest authority--the Bible, the Torah, and the Qur'an. Each tradition designates a class of officials to preserve and propagate its faith, and embraces an expanding body of authoritative interpretations and applications of its canon. Each tradition has a refined legal structure--the canon law, Halakha, and Shari'a--that has translated its enduring principles of faith into evolving precepts of works. Each tradition has sought to imbue its religious, ethical, and legal norms into the daily lives of individuals and communities. These texts and traditions, ideas and institutions, norms and narratives of Christianity, Judaism, and Islam have much to offer to current discussions of human rights in general. They are the best source and resource for a discussion of religious human rights. For, as Martin Marty stresses, any solution to the problem of religious human rights "requires a religious address."

To be sure, none of these religious traditions speaks unequivocally about human rights, and none has amassed an exemplary human rights record over the centuries. Their sacred texts and canons say much more about commandments and obligations than about liberties and rights. Their theologians and jurists have resisted the importation of human rights as much as they have helped in their cultivation. Their internal policies and external advocacy have helped to perpetuate bigotry, chauvinism, and violence as much they have served to propagate equality, liberty, and fraternity. "The blood of thousands" is at the doors of churches, synagogues, and mosques, John Noonan reminds us--that of dissidents, women, children, and sojourners, most prominently. The bludgeons of religious pogroms, crusades, jihads, inquisitions, and ostracisms have been used to devastating effect, both within and among these three great faiths. No religion of the Book can begin to address the problem of religious human rights without what Luke Johnson calls "metanoia"--frank confrontation with and confession of its dark side. No "religious address" can begin without what Abdullahi An-Na'im calls a "hermeneutic of human rights"--a method of interpreting sacred texts and traditions that is designed to recover and transplant those religious teachings and activities conducive to human rights.

The ancient teachings and practices of Christianity, Judaism, and Islam have much to commend themselves, as the following chapters amply demonstrate. Each

tradition has produced a number of the basic building blocks of a comprehensive theory and law of religious human rights--conscience, dignity, reason, liberty, equality, tolerance, love, openness, responsibility, justice, mercy, righteousness, accountability, covenant, community, among other cardinal concepts. Each tradition has developed its own internal system of legal procedures and structures for the protection of rights, which historically have and still can serve as both prototypes and complements to secular legal systems. Each tradition has, for centuries, defined and adjudicated the rights of women, children, minorities, and dissidents in a manner deserving of consideration--if not always emulation. Each tradition has its own advocates and prophets, ancient and modern, who have worked to achieve a closer approximation of religious rights ideals for themselves and others.

### **The Province of Religious Human Rights**

The phrase "religious human rights" does not admit of easy definition, or even delimitation. Each component term--"religious," "human," and "rights"--is inherently ambiguous. The combination of these terms only compounds the ambiguity. It is part of the burden of these volumes to explore their meaning in various religious, cultural, and legal contexts. No consensus of opinion or common definition emerges from these efforts, but a broad outline of essential terms and concerns can be discerned.

First, it is well understood among the authors of these volumes that the term "religious" must be assigned some boundaries to be useful for a theory and law of religious rights. If religion is to be assigned a special place in the human rights pantheon--if religion is in need of special protections and privileges not afforded by other rights provisions--some means of distinguishing religious rights and claims from all others must be offered. Fairness commands as broad a definition as possible, so that no legitimate religious claim is excluded. Prudence counsels a narrower definition, so that not every claim becomes religious (and thus no claim becomes deserving of special religious rights protection). To define "religion" too closely is to place too much trust in the capacity of the lexicon or the legislature. To leave the term undefined is to place too much faith in the self-declarations of the claimant or the discernment of local judges and administrators.

It is equally well understood that "defining 'religion' is probably the most difficult exercise" in crafting a theory and drafting a law on religious rights. No universal definition can readily embrace today's religiously heterogeneous world. No bright line tests can readily resolve all penumbral cases. It is not always easy to distinguish between legal and non-legal norms, genuine and spurious religious claims. "Charlatanism is a necessary price of religious freedom." Grand generalizations and hair-splitting distinctions, a sense of proportion, moderation, and equity on the part of

believers and officials alike, are essential features of any successful religious rights regime.

International legal instruments provide very broad definitions of "religion," which several authors herein endorse. Article 18 of the 1948 Universal Declaration of Human Rights makes a sweeping guarantee: "Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance." The Declaration's conflation of the terms "religion," "thought," "conscience," and "belief" continues in subsequent international instruments--most notably the compulsory 1966 Covenant on Civil and Political Rights, and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the fullest international statement on religious rights. The Declaration's recognition of religion as individual and communal, internal and external, private and public, permanent and transient likewise persists. An important 1993 General Comment by the UN Human Rights Committee emphasizes that "[t]he terms belief and religion are to be broadly construed" and "not limited . . . to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions." By general consensus today, international human rights law recognizes as religious numerous theistic, non-theistic, and atheistic faiths.

This capacious definition of religion in international law has left it largely to individual states and individual claimants to define the boundaries of the regime of religious rights. As the following chapters reveal, no common definition or uniform method has been forthcoming. Indeed, the statutes, cases, and regulations of many countries embrace a bewildering array of definitions of "religion," which neither local officials nor commentators have been able to integrate. Some courts and legislatures make a simple "common sense" inquiry as to the existence of religion. Others defer to the good faith self-declarations of religion by the claimant. Others seek to find sufficient analogies between existing religions and new religious claimants. Others insist on evidence of a god or something transcendent that stands in the same position as a god. Others analyze the motives for formation of the religious organization or adoption of a religious belief, the presence and sophistication of a set of doctrines explicating the beliefs, the practice and celebration of religious rites and liturgies, the degree of formal training required for the religious leaders, the strictures on the ability of members to practice other religions, the presence and internal enforcement of a set of ethical rules of conduct, and other factors.

In my view, the functional and institutional dimensions of religion deserve the strongest emphasis in defining the province of religious human rights. Of course, religion viewed in its broadest terms embraces all beliefs and actions that concern the ultimate origin, meaning, and purpose of life, of existence. It involves the responses of the human heart, soul, mind, conscience, intuition, and reason to revelation, to transcendent values, to, what Rudolf Otto once called, the "idea of the holy." But such a definition applied at law would render everything (and thus nothing) deserving of

religious rights protection. Viewed in a narrower institutional sense, religion embraces, what Leonard Swidler calls, a creed, a cult, a code of conduct, and a confessional community. A creed defines the accepted cadre of beliefs and values concerning the ultimate origin, meaning, and purpose of life. A cult defines the appropriate rituals, liturgies, and patterns of worship and devotion that give expression to those beliefs. A code of conduct defines the appropriate individual and social habits of those who profess the creed and practice the cult. A confessional community defines the group of individuals who embrace and live out this creed, cult, and code of conduct, both on their own and with fellow believers. By this definition, a religion can be traditional or very new, closely confining or loosely structured, world-averse or world-affirmative, atheistic, nontheistic, polytheistic, or monotheistic. Religious claims and claimants that meet this definition, in my view, deserve the closest religious rights consideration.

Second, it is well understood among the authors of these volumes that religious human rights are both individual and associational in character. The individualist orientation of human rights norms grounded in Enlightenment and post-Enlightenment reasoning must be balanced by the communal definitions of human rights recognized by all three religions of the Book. Individuals certainly have the right to formulate, deny, or change their religious beliefs, and to act, speak, write, and associate with others in accordance with them. But religious associations, too, have rights to function in expression of their founding religious beliefs and values. Thus churches, temples, and mosques have rights to organize, assemble, worship, and enforce certain religious laws. Parents and families have rights to rear, educate, and discipline children in expression of their religious convictions. Religious publishers and suppliers have rights to produce the particular products needed for their religious cultus. Religious schools have rights to educate and discipline children in accordance with the basic norms and habits of their religious traditions. Again, no easy lines can be drawn between religious and non-religious associations. No easy calculus is at hand to resolve disputes between individual and corporate religious rights. Each tradition has offered a considerable--and controversial--body of theological and legal learning to parse these issues.

Third, it is understood that religious human rights can be asserted against both state officials and other individuals or associations. Under most contemporary legal systems, rights assertions against state officials are governed by public law, which includes national and provincial constitutions as well as international conventions and treaties that have been ratified. Rights assertions against other individuals or voluntary associations are governed by private law, which includes laws of contract, tort, property, inheritance, and other subjects. When such rights are asserted against other individuals within the same religious community, both the private law of the state and the internal law of the religious community may govern. Distinguishing the respective jurisdictions of secular law and religious law in these disputes has been the subject of perennial legal and theological controversy, yielding a variety of constitutional models.

Fourth, it is well understood that religious human rights are both protective and affirmative in character--as immunities and entitlements, protections and

empowerments. Religious rights provide religious individuals and institutions with both (1) freedom from improper intrusions and prohibitions by government officials or other citizens and groups on their religious beliefs and actions; and (2) freedom to engage in religious conduct, and to procure the means for such engagement. These might be called the "liberty dimensions" and "entitlement dimensions" of religious human rights.

At its core, the liberty dimension of religious rights entails freedom of conscience for the individual and freedom of association for religious groups--or, more simply, religious toleration. Even if one form of religion is established or favored by civil law or social custom, religious rights require that all individual subjects be able to adopt religious beliefs, and that all peaceable religious institutions be able to organize and perpetuate themselves without coercion or undue burdens by the state or other individuals. Even in the proverbial "age of Constantine," where one form of Christianity was established in the West, this minimal form of religious toleration was afforded to certain religious outsiders. Likewise, in established Islamic regimes today, some religious outsiders are granted this minimal modicum of religious liberty.

More fully conceived, the liberty dimension of religious rights requires that the state accommodate the religious beliefs and practices of individuals and associations and exempt them from generally applicable laws and policies which compel them to act, or to forgo action, in violation of their religious convictions. This fuller understanding of religious liberty embraces a variety of state policies that have become widely recognized in state constitutions. Religious believers are granted conscientious objection from participation in war and the military or immunities from oath-swearing, from work on holy days, from payment of religious taxes, or from participation in civic ceremonies and activities that they find religiously odious. Religious organizations are exempted from property and income taxation, from zoning and landmark regulations, or from religious-compelled forms of religious, gender, cultural, or other discrimination. These special forms of "religious accommodation" for individuals and groups are among the most generous expressions of religious liberty.

At its core, the entitlement dimension of religious rights requires that individuals be allowed to exercise their religious beliefs privately and groups be allowed to engage in private collective worship. More fully conceived, religious entitlements embrace an individual's ability and means to engage in religious assembly, speech, and worship, to observe religious laws and rituals, to pay religious taxes, to participate in religious pilgrimages, to gain access to religious totems, and the like. They also embrace a religious group's power to promulgate and enforce internal religious laws of order, organization, and orthodoxy, to train, select, and discipline religious officials, to establish and maintain institutions of worship, charity, and education, to acquire, use, and dispose of property and literature used in worship and rituals, to communicate with co-believers and proselytes, and many other affirmative acts in manifestation of the beliefs of the institution.

Though these "liberty" and "entitlement" dimensions of religious rights are complementary and often overlapping, they do not always yield identical prescriptions.

These differences are nowhere more evident than in conflicts over the so-called relations of church and state. American writers, armed with the disestablishment clause of the First Amendment, often emphasize that religious liberty requires the separation of church and state, and the cessation of state support for religion. Only the secular or neutral state can guarantee religious liberty, it is argued, and only separation can guarantee neutrality. Europeans, Africans, and Latin Americans, for whom a disestablishment clause is largely foreign, often emphasize that religious entitlements require the material and moral cooperation of church and state. Indeed, a number of religious groups in the former Soviet bloc and sub-Saharan Africa today regard restitution and affirmative state action towards religion as a necessary feature of any religious rights regime--if nothing else, to undo and overcome past confiscation and repression. Similarly, some Catholic groups in Latin America urge cooperation of religious and political bodies to preserve the "Catholicization" of public life and culture. Islamic revivalists in various countries urge similar arrangements to enhance the "Islamicization" of the community, and Jewish groups argue similarly to protect the Jewish character of the State of Israel. To cooperate or to separate, to aid or to avoid one another, is a fundamental question confronting religions and states around the world. Answers to this question have yielded a wide spectrum of theoretical perspectives and constitutional solutions.

These cultural differences on so basic a question as the relation of church and state, illustrates a fifth point, emphasized by Harold Berman: Religious human rights, like all human rights, must find their source and sanction simultaneously in morality, history, and politics. Religious human rights cannot be reduced simply to moral preferences or to customary privileges or to political provisions alone. (For all their value, even international standards should not, in my view, be idealized or idolized.) Religious human rights must be understood in more holistic terms, always open to emendation and amendment, and constantly weighed from different perspectives. From a moral perspective, religious human rights are rooted in the natural qualities of the person and community, in external sources of morality like the creation order, the natural law, and the divine covenant, or in sacred statements of morality, like the Bible, the Talmud, or the Qur'an. Such rights derive their ultimate sanction from the moral condemnation of violators. From an historical perspective, religious human rights are rooted in the customs and traditions of a people and invariably shaped by the historical experiences that they have witnessed. They derive their sanction from communal condemnation and social stigmatizing of violators. From a political perspective, religious human rights are rooted in the constitutional and statutory laws of the national and transnational state, and derive their sanction from the legal punishment inflicted on violators. Any claim to religious human rights, and any formulation of a doctrine of religious human rights, has to be assessed from at least these three perspectives. Different combinations of these perspectives invariably yield different formulations of religious human rights.

Finally, it is wise to remember that religious prejudice works openly and in secret, and must be met with both blunt and delicate instruments. In this "Dickensian era of human rights," as Irwin Cotler calls it--with the best of international religious

rights provisions but the worst of local religious rights abuses--this counsel is all the more pressing. We need to parse the false dialectics of universalist versus relativist, Western versus non-Western theories of human rights to address the pressing problem of religious rights abuses. This problem needs to be addressed both locally and globally, legally and theologically. On the one hand, the many local forms of religious conflict and abuse must be assayed through local study and assuaged through locally-tailored human rights norms. No global norms on religious rights can be sufficiently precise to do justice to the needs of local religious rivals. Legal solutions to the problem of religious abuse will require detailed local understanding and intense cultivation of a local rights culture. On the other hand, any such local initiatives must be consistent with general principles of both law and theology. Prevailing international and constitutional norms on religious rights must be respected and extended to address the specific problems of religious rights abuse in various parts of the world. Prevailing Christian, Judaic, and Muslim perspectives must be extended to balance their divine commandments to preserve and perpetuate their faiths with the human counsels to tolerate religious pluralism and to respect the rule of law and rights.

### **The State of Religious Human Rights**

The theories and laws of religious human rights in vogue today were not formed out of whole cloth. They were "slowly learned, through centuries of cruel experience" and growing enlightenment, Brian Tierney tells us. This religious rights tradition, though largely lost in current discussions of human rights, remains an important source of instruction and inspiration today--and a number of chapters herein provide windows on that history.

In this century, the subject of religious human rights and their violation first came to popular prominence in the aftermath of World War II. Several factors contributed to the sudden new interest in the subject--the horrors suffered by Jews and Christians in Nazi Germany, Stalinist Russia, and Maoist China, the repression of religious missionaries and emigrants to Africa and Asia, the sudden proliferation of new (or newly prominent) religions demanding protection and treatment equal with that of older religions, among other factors. In response, jurists and theologians produced elaborate theories of religious and other human rights. Religious communities issued bold confessional statements and manifestoes on the subject. The United Nations, regional international organizations, and individual states began to outlaw religious discrimination. Non-governmental and inter-governmental organizations were established to monitor the plight of religious minorities, to litigate and lobby on their behalf, and to educate their constituents.

This sudden new interest in religious rights was part of the broader "rights revolution" that erupted in America, Europe, and elsewhere in the 1950s and

thereafter. In America, this rights revolution yielded a powerful new grassroots civil rights movement, a welter of landmark civil rights cases, an array of new rights legislation punctuated by the Civil Rights Act in 1964, and an unprecedented outpouring of literature on human rights. In Europe this rights revolution produced a welter of post-war constitutional reforms and an array of landmark constitutional cases. At the international level, the Universal Declaration of Rights of 1948 offered a grand statement of human rights, which brought forth numerous declarations, covenants, and conventions on more discrete rights. The United Nations established a Human Rights Committee and a number of subcommissions and special rapporteurs on topics such as racial and religious discrimination. Academies and institutes throughout the world produced a prodigious new literature on human rights.

After expressing some initial interest, however, intellectual and political leaders of this rights revolution consigned religious rights to the bottom of what Henry Abraham once called "The Honor Roll of Superior Rights." Freedom of speech and press, parity of race and gender, provision of work and welfare, and similar causes captured much of the energy and emoluments of the rights revolution. After the 1950s, academic inquiries and activist interventions into religious rights and their abuses became increasingly intermittent and isolated, inspired as much by parochial self-interest as by universal golden rules. The rights revolution seemed to be passing religion by.

This deprecation of religious rights was not simply the product of calculated agnosticism or callous apathy--though there was ample evidence of both. Rights leaders were often forced, by reason of political pressure or limited resources, to address the most glaring rights violations and abuses. Physical abuses--torture, rape, war crimes, false imprisonment, forced poverty--are easier to track and treat than spiritual abuses, and often demand more immediate attention. In desperate circumstances, it is sometimes better to be a Good Samaritan than a good preacher, to give food and comfort before gospels and doctrines. The relative silence of religious communities until recently seemed to lend credence to this prioritization of effort. With the exception of the Roman Catholic Church after the Second Vatican Council (1962-1965) and certain Jewish and ecumenical organizations, most religious groups made only modest contributions to the theory, law, and activism on religious rights. The general theological principles set out in their post-War manifestoes on rights were not converted to specific precepts or programs. Their general endorsement of religious rights provisions in early international and constitutional texts were not followed by specific lobbying and litigation efforts. Whether mainline religious communities were content with their own condition, or intent to turn the other cheek or look the other way in the face of religious rights abuses, their relative silence did considerable harm to the cause of religious rights and liberties.

The deprecation of religious rights over the past three decades has had several deleterious effects on the rights revolution, and on religious rights themselves.

First, this deprecation has "impoverished" the general theory of human rights embraced by the rights revolution. On the one hand, it has cut many rights from their

roots. The right to religion, Georg Jellinek wrote exactly one century ago, is "the mother of many other rights." For the religious individual, the right to believe leads ineluctably to the rights to assemble, speak, worship, proselytize, educate, parent, travel, or to abstain from the same on the basis of one's beliefs. For the religious association, the right to exist invariably involves rights to corporate property, collective worship, organized charity, parochial education, freedom of press, and autonomy of governance. To ignore religious rights is to overlook the conceptual, if not historical, source of many other individual and associational rights. On the other hand, this deprecation of religious rights has abstracted rights from duties. The classic faiths of the Book adopt and advocate religious rights in order to protect religious duties. A religious individual or association has rights to exist and act not in the abstract but in order to discharge discrete religious duties. Religious rights provide the best example of the organic linkage between rights and responsibilities. Without the example of religious rights readily at hand, leaders of the rights revolution have tended to lose sight of these organic connections and to treat rights in the abstract.

Second, this deprecation of religious rights has sharpened the divide between Western and non-Western theories of rights. Many non-Western traditions, particularly those of Islamic, Hindu, Buddhist, Taoist, and indigenous stock, cannot conceive of, nor accept, a system of rights that excludes religion. Religion is for these traditions inextricably integrated into every facet of life. Religious rights are thus an inherent part of rights of speech, press, assembly, and other individual rights as well as ethnic, cultural, linguistic, and similar associational rights. No system of rights that ignores or deprecates this cardinal place of religion can be respected or adopted. Since Western notions of rights dominate international law, many non-Western societies have neither accepted nor adopted the basic international declarations and covenants on human rights.

Third, this deprecation of religion has exaggerated the role of the state as the guarantor of human rights. The simple state vs. individual dialectic of modern human rights theories leaves it to the state to protect rights of all sorts--"first generation" civil and political rights, "second generation" social, cultural, and economic rights, and "third generation" environmental and developmental rights. In reality, the state is not, and cannot be, so omniscient--as the recently failed experiments in socialism have vividly shown. A vast plurality of "voluntary associations" or "mediating structures" stands between the state and the individual, religious institutions prominently among them. Religious institutions, among others, play a vital role in the cultivation and realization of all rights, including religious rights. They create the conditions (if not the prototypes) for the realization of first generation civil and political rights. They provide a critical (and sometimes the principal) means to meet second generation rights of education, health care, child care, labor organizations, employment, artistic opportunities, among others. They offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of third generation rights.

Religion and religious human rights must be reintegrated into the contemporary field of human rights. Human rights leaders need to close the gaps between academic

and activist, legal and theological, religious and secular, governmental and voluntary groups. Arcane academic inquiries into religious rights of themselves do little to help victims of religious oppression; continued ad hoc intervention on behalf of religious dissidents only perpetuates the listless activism that has plagued this field. Legal scholars cannot continue to discuss religious rights statutes and cases in isolation from the profound theological implications of their inquiries; theologians cannot continue to propound abstract theological statements and confessions on rights without attention to their practical implementation and effect. Religiously-based theorists and activists on religious rights cannot isolate themselves from other believing and nonbelieving theorists and activists.

This volume and its companion are offered in the spirit of reconciliation and integration that the field of human rights so desperately needs. "Of the writing of books, there is no end," the ancient Prophet reminds us, "and much study is a weariness of the flesh." (Ecclesiasties 12:12). But until the Final Word is written--until we all put on what the Prophet calls "the whole duty of man: to fear God and keep his commandments"--the writing of books cannot end.

. Vaclav Havel, "Speech on July 4, 1994 in Philadelphia, on Receipt of the Liberty Medal," reported and excerpted in Philadelphia Inquirer (July 5, 1994): A08; Buffalo News (July 10, 1994): F8; Newsweek (July 18, 1994): 66. See also chapters by Martin Marty, Max L. Stackhouse and Stephen B. Healey, and Charles Villa-Vicencio herein. For a sampling of the vast literature on this theme, see Donald Horowitz, "The Challenge of Ethnic Conflict: Democracy in Divided Societies," *Journal of Democracy* 4(4) (1993): 18; Samuel P. Huntington, "The Clash of Civilizations?" *Foreign Affairs* (Summer, 1993): 22; Mark Juergensmeyer, *The New Cold War: Religious Nationalism Confronts the Secular State* (Berkeley, CA, 1993); Martin E. Marty and R. Scott Appelby, eds., *Fundamentalisms and the State* (Chicago, 1993); id., *Fundamentalisms Comprehended* (Chicago, 1995).

. James Davidson Hunter, *Culture Wars* (New York, 1991).

. Cf. Ronald Dworkin, *Taking Rights Seriously* (New York, 1977).

. The phrase is from Luke Timothy Johnson's chapter herein.

. For Christian formulations, see Matthew 7:12 ("Do unto others as you would have them do unto you."). For Judaic formulations, see Hillel, B. Shabbat, 31a ("what is hateful to you do not do to your fellow"), quoted in the chapter by David Novak herein at note 66. For Muslim formulations, see the chapter by Riffat Hassan herein and the sources and discussion in Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, NY, 1990), 162-163.

. Jacques Maritain, "Introduction," to UNESCO, *Human Rights: Comments and Interpretations* (New York, 1949), 15-16, quoted and discussed in David Hollenbach, "Human Rights and Religious Faith in the Middle East: Reflections of a Christian Theologian," *Human Rights Quarterly* 4 (1982): 94, 96. See also the chapters by Villa-Vicencio herein and by John S. Pobee in the companion volume, Johan D. van der Vyver and John Witte, Jr., eds., *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague, 1995), and John S. Pobee, "An African Christian in Search of Democracy," in John Witte, Jr., ed., *Christianity and Democracy in Global Context* (Boulder/San Francisco, 1993), 267, 277ff.

. See chapters by Marty, Huber, Novak, Hassan, Stackhouse & Healey, Michael Broyde, and Abdullahi Ahmed An-Na'im herein.

. Havel, "Speech on July 4."

. See chapters by Marty, An-Na'im, and Stackhouse & Healey herein.

. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York, 1991).

- . See chapter by Marty herein.
- . See chapters by Johnson, Novak, and An-Na'im herein.
- . See chapter by John T. Noonan, Jr. in the companion volume.
- . See chapters by Johnson, Broyde, Hassan, Jean Bethke Elshtain, Michael S. Berger & Deborah Lipstadt, and Donna Arzt herein.
- . See chapters by Johnson and Villa-Vicencio herein and by Pobee and Makua wa Mutua in the companion volume.
- . See Abdullahi Ahmed An-Na'im, "Toward an Islamic Hermeneutics for Human Rights," in id., et al., eds., *Human Rights and Religious Values: An Uneasy Relationship* (Grand Rapids, 1995), 229; Max L. Stackhouse, *Creeds, Societies, and Human Rights* (Grand Rapids, 1986). See also chapters by Marty, Johnson, Novak, Berger & Lipstadt, An-Na'im, Hassan, and Stackhouse & Healey herein. In the vast new literature calling for such a "human rights hermeneutic" see, e.g., David Sidorsky, ed., *Essays on Human Rights: Contemporary Issues and Jewish Perspectives* (New York, 1979); Aaron Kirschenbaum, "Human Rights Revisited," *Israel Yearbook on Human Rights* 6 (1975): 228; Eckehart Lorenz, ed., *How Christian are Human Rights?* (Geneva, 1981); International Commission of Jurists, et al., *Human Rights in Islam: Report of a Seminar Held in Kuwait, December, 1990* (Geneva, 1982); Wolfgang Huber & Heinz Eduard T"dt, *Menschenrechte: Perspektiven einer menschlichen Welt* (Stuttgart, 1977); Charles Villa-Vicencio, *A Theology of Reconstruction: Nation-Building and Human Rights*: (Cambridge, 1992). For a popular introduction, see the special issue of *Breakthrough* (Winter/Spring, 1989).
- . See chapters herein by Huber, Novak, Hassan, Stackhouse & Healey, Wood, Desmond M. Tutu and J. Bryan Hehir. For other recent surveys, see, e.g., Walter Kasper, "The Theological Foundations of Human Rights," *The Jurist* 50 (1990): 148; Ann Elizabeth Mayer, "Current Muslim Thinking on Human Rights," in Abdullahi Ahmed An-Na'im and Francis Deng, eds., *Human Rights in Africa* (Philadelphia, 1992), 113; id., *Islam and Human Rights: Tradition and Politics* (Boulder/San Francisco, 1991); David Novak, "Is There a Concept of Individual Rights in Jewish Law?" *Jewish Law Association Studies* (1994): 129; Michael J. Perry, "Is the Idea of Human Rights Ineliminably Religious?" *University of Richmond Law Review* 27 (1993): 1023; Martin Shupak, "The Churches and Human Rights: Catholic and Protestant Human Rights Views as Reflected in Church Statements," *Harvard Human Rights Journal* 6 (1993): 127; Robert Traer, *Faith in Human Rights: Support in Religious Traditions for a Global Struggle* (Washington, 1991).
- . See chapters by Tierney, Broyde, and William Johnson Everett herein. The most important prototype for Western style (religious) human rights was the medieval canon law of the Catholic Church. This law defined the rights of the clergy to their liturgical offices, their exemptions from civil taxes and duties, and their immunities from

prosecution and compulsory testimony. It defined the rights of ecclesiastical organizations like benefices, monasteries, and charities to form and dissolve, to accept and reject members, to establish order and organization, to acquire, use, and alienate property. It defined the rights of religious conformists to worship, proselytize, maintain religious symbols, travel on religious pilgrimages, and educate their children. This elaborate system of religious rights--though devised for the governance of the established church alone--was, after the Protestant Reformation, incorporated into the heart of Western laws governing religion and the church. The gradual expansion of religious toleration after the sixteenth century did not destroy the Roman law and canon law systems of religious rights. Rather, it extended its protections and privileges to an ever greater variety of religious groups and individuals--and today forms many of the basic guarantees of a religious rights regime. See Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, 1993); Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge, 1982); R.H. Helmholz, ed., *Canon Law in Protestant Lands* (Berlin, 1993); id., *Roman Canon Law in Reformation England* (Cambridge, 1990); Udo Wolter, *Ius canonicum in iure civile* (Köln, 1975).

There are modern analogues to this early example of "legal transplantation" of religious law into secular law. Today a good deal of Jewish halakhic law has been transplanted into the civil and constitutional law of Israel, and Muslim Shar'ia law is being transplanted into the laws of several nations in South Asia, the Middle East, and Africa. (See chapters by Broyde, Berger & Lipstadt, and Arzt herein and by Asher Maoz and Said Arjomand in the companion volume.) Champions of the universality of Western-style human rights might be discomfited to learn of the distinct canon law and Christian theological lineage of these rights. Critics of the contemporary experiments of legal transplantation in Judaic and Islamic regimes might be comforted to learn of the past success of such an experiment.

. See chapters by Marty, Tierney, Everett, Broyde, Berger & Lipstadt, Hassan, Arzt, and John E. Coons herein.

. See chapters by Tutu, Hehir, Cotler, and Wood herein.

. See chapter by Dinah Shelton & Alexandre Kiss in the companion volume at note 19 and accompanying text.

. See chapter by Peter Cumper in the companion volume, quoting an Australian case, *Church of the New Faith v. Pay Roll Tax Commissioners* (1983), 57 AJLR 785, at 791.

. See chapter by Noonan in the companion volume.

. See chapters by Cotler, Arzt, and Wood herein and by David Little and Michael Roan in the companion volume. The most ambitious attempt at definition, beyond prevailing international laws, is in the chapter by Shelton & Kiss.

. The full text is provided in Ian Brownlie, ed., *Basic Documents on Human Rights*, 3d ed. (Oxford, 1992), 21.

. *Ibid.*, 125.

. *Ibid.*, 109.

. See chapters by Wood and Cotler herein, and by Little, Roan, Natan Lerner, and W. Cole Durham, Jr. in the companion volume.

. Human Rights Committee, General Comment No. 22(48) concerning Article 18 (CCPR/C/21/Rev.1/Add. 4, 27 September 1993).

. See chapters by Lerner, Roan, and Shelton & Kiss in the companion volume. See also Natan Lerner, *Group Rights and Discrimination in International Law* (Dordrecht/Boston/London, 1991), 75ff.

. See the chapters by Marty, Everett, Broyde, and Wood herein, and by Pobee, Shelton & Kiss, Noonan, Tamas F. Idesi, T. Jeremy Gunn, and Asher Maoz in the companion volume. See also sources and discussion in European Consortium for Church-State Research, *The Legal Status of Religious Minorities in the Countries of the European Union* (Thessalonica/Milan, 1994); Kent Greenawalt, "Religion as a Concept in Constitutional Law," *California Law Review* 72 (1984): 753; Ninan Koshy, *Religious Freedom in a Changing World* (Geneva, 1992); Donna J. Sullivan, "Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination," *American Journal of International Law* 82 (1988): 487; John Witte, Jr., "Whether Piety or Charity: Classification Issues in the Exemption of Churches and Charities From Property Taxation," in Conrad Cherry and Rowland A. Sherill, eds., *Religion, The Independent Sector and American Culture* (Atlanta, 1992), 135.

. Rudolf Otto, *The Idea of the Holy: An Inquiry into the Non-Rational Factor of the Idea of the Divine and Its Relation to the Rational*, 2d ed. (New York, 1950).

. See Leonard Swidler, ed., *Religious Liberty and Human Rights in Nations and Religions* (Philadelphia, PA, 1986), vii. The Special Rapporteur on religious liberty, Elizabeth Odio-Benito, has written similarly that religion is "an explanation of the meaning of life and how to live accordingly. Every religion has at least a creed, a code of action, and a cult." U.N. Doc. E/CN.4/Sub.2/1987/26, at 4 (quoted and discussed in the chapter by Shelton & Kiss in the companion volume, note 20 and accompanying text).

. See chapters by Marty, Novak, Berger & Lipstadt, Arzt, and Stackhouse & Healey herein.

. See chapters by An-Na'im, Hassan, and Villa-Vicencio herein, together with those of Durham, Lerner, Pobee, Mutua, and Martin Heckel in the companion volume.

. See chapters by Everett and Broyde herein.

. See chapters by Broyde and Coons herein.

. See chapters by Elshtain, Broyde, and Arzt herein.

. See chapters by Everett, Broyde, and Arzt herein. See also Johan van der Vyver, *The Juridical Functions of State and Church* (Durban, 1972); Stephen D. Smith, *Foreordained Failure: The Quest for a Constitutional Principles of Religious Freedom* (Oxford, 1994).

. See chapters by Hehir, Elshtain, Everett, Coons, and Novak, Cotler, and Wood herein and by F"Idesi and Harold J. Berman in the companion volume.

. See chapter by Tierney herein. For the phrase "age of Constantine, see the chapter by Heckel in the companion volume and Martin E. Marty, "The Virginia Statute Two Hundred Years Later," in Merrill D. Peterson and Robert C. Vaughn, eds., *The Virginia for Religious Freedom* (Cambridge, 1988), 1-3.

. See chapters by An-Na'im and Arzt herein and by Said Arjomand in the companion volume.

. For American developments of the "accommodation" doctrine, see chapter by John Witte, Jr. and M. Christian Green in the companion volume.

. A rather thorough list is provided in the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, reprinted in Brownlie, ed., *Basic Documents on Human Rights*, 109 and in Principles 16 and 17 of the 1989 Vienna Concluding Document, in 28 I.L.M. 527, discussed in the chapters by Lerner and Durham in the companion volume.

. See discussion in chapters by Hehir, Cotler, and Wood herein and by Cumper, F"Idesi, and Witte & Green in the companion volume.

. See discussion in chapters by An-Na'im, Arzt, and Villa-Vicencio herein and by Heckel, F"Idesi, Pobee, Arjomand, Paul Sigmund, Stanley Muschett Ibarra, and Paul Mojzes in the companion volume.

. See chapters by Cotler herein and by Heckel, F"Idesi, Mojzes, and Mutua in the companion volume.

. See chapters by Sigmund and Muschett in the companion volume.

. See chapters by An-Na'im and Arzt herein and by Arjomand in the companion volume on Islamic formulations, and by Cotler herein and by Maoz in the companion volume.

. See typologies in the chapters by Hehir and Cotler herein, and by Johan van der Vyver, Durham, Mojzes, and Shelton & Kiss in the companion volume.

. See chapter by Harold J. Berman in the companion volume. See also id., *Faith and Order: The Reconciliation of Law and Religion* (Atlanta, 1993), 289-312 and Howard O. Hunter, ed., *The Integrative Jurisprudence of Harold J. Berman* (Boulder/San Francisco, 1995).

. See chapters by Tierney, Huber, An-Na'im, and Stackhouse & Healey herein. Berger & Lipstadt, in fact, argue that "reifying" or "codifying" one or two interpretations of rights (in their case of women) can be very harmful.

. See chapters by Cotler, An-Na'im, and Arzt herein and by Lerner in the companion volume. See also Abdullahi Ahmed An-Na'im, Ann Elizabeth Mayer, Sumner B. Twiss, and William Wipfler, "Universality vs. Relativism in Human Rights," in John Kelsay and Sumner B. Twiss, eds., *Religion and Human Rights* (New York, 1994), 31-60.

. See the chapter by Tierney herein.

. See chapters by Tierney, Huber, Novak, Arzt, and Wood herein, and by Durham, Lerner, Heckel, Cumper, Berman, Arjomand, and Noonan in the companion volume. For other overviews, see Sidney Z. Ehler and John B. Morrall, eds., *Church and State Through the Centuries* (Newman, MD, 1954); Joseph LeCler & Marius-Francois Valkhoff, *Les premiers d,fenseurs de la libert, religieuse* (Paris, 1969), 2 vols.; Heinrich Lutz (hrsg.), *Zur Geschichte der Toleranz und Religionsfreiheit* (Darmstadt, 1977); Henry Kamen, *The Rise of Toleration* (New York, 1967); A.J. Carlyle, *The Christian Church and Liberty*, repr. ed. (New York, 1968); Noel B. Reynolds and W. Cole Durham, Jr., eds., *Religious Liberty in Western Thought* (Atlanta, 1995); David Daube, "The Rabbis and Philo on Human Rights," in Sidorsky, ed., *Essays on Human Rights: Contemporary Issues and Jewish Perspectives*, 234; S.D. Gotein, "Human Rights in Jewish Thought and Life in the Middle Ages," in *ibid.*, 247; James Parkes, *The Jew in the Medieval Community: A Study of His Political and Economic Situation*, 2d ed. (New York, 1976); Solomon Grayzel, *The Church and the Jews in the XIIIth Century* (Philadelphia, 1933).

. See chapters by Hehir, Novak, and Cotler herein. See summaries in J"rg Bauer, et al., *Zum Thema Menschenrechte* (Stuttgart, 1977); Huber & T"dt, *Menschenrechte; Reformed Ecumenical Synod, RES Testimony on Human Rights* (Grand Rapids, 1983); Traer, *Faith in Human Rights*.

. See chapters by Hehir and Cotler herein, and by Lerner and Roan in the companion volume.

. See chapters by Heckel, Cumper, and T. Jeremy Gunn in the companion volume.

. See chapter by James Finn in the companion volume.

. See chapters by Huber, Hehir, Cotler, and Wood herein.

. Using Glendon's term in *Rights Talk: The Impoverishment of Political Discourse*.

. Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte: Ein Beitrag zur modernen Verfassungsgeschichte* (Leipzig, 1895), 42.

. Several authors herein argue that, historically, religious rights were among the first rights to be recognized, and are among the "first freedoms" of any constitutional order. See chapters by Cotler, Hassan, Wood, and Stackhouse & Healey herein and by Durham and Lerner in the companion volume. Other authors, while not denying the centrality of religious rights today, argue that religious rights were among the last rights to be widely accepted at law. See chapters by Tierney and Huber herein and by Noonan in the companion volume. The differences between these views might turn in part on how full and systematic a form of religious rights prevails; certainly, several basic guarantees for religion were already on the books of ancient Roman and Judaic law, if not always honored in practice. This difference notwithstanding, no one denies that recognition of religious rights is indispensable today, or that it was only when religious rights were fully recognized that other human rights could be adequately recognized and protected.

. See chapters by Novak, Berger & Lipstadt, An-Na'im, and Arzt herein.

. See chapters by Huber, Novak, An-Na'im, Arzt, Villa-Vicencio, and Stackhouse & Healey herein, and by Arjomand and Pabee in the companion volume.

. See chapters by Finn and Fidesi in the companion volume.

. See chapters by Marty and Coons herein and by Witte & Green in the companion volume. See also, in the burgeoning literature on social pluralism, Peter Berger and Richard John Neuhaus, *To Empower People: The Role of Mediating Structures in Public Policy* (Washington, 1977); Jacques Maritain, *Man and the State* (Chicago, 1954); James W. Skillen and Rockne M. McCarthy, eds., *Political Order and the Plural Structure of Society* (Atlanta, 1991); Michael Walzer, *Spheres of Justice: An Argument for Pluralism and Equality* (New York, 1983).

. See chapter by Wolfgang Huber herein and id., "Rights of Nature or Dignity of Nature?" *The Annual of the Society of Christian Ethics* (1991): 43.