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## ESSAYS ON RELIGION AND HUMAN RIGHTS

This collection of seminal essays by David Little addresses the subject of human rights in relation to the historical settings in which its language was drafted and adopted. In this book, which features five original essays, Little articulates his long-standing view that fascist practices before and during World War II vivified the wrongfulness of deliberately inflicting severe pain, injury, and destruction for self-serving purposes and that the human rights corpus, developed in response, was designed to outlaw all practices of arbitrary force.

Drawing on the natural rights tradition, the book contends that, although there must be an accountable human rights standard, it should nevertheless guarantee wide latitude for the expression and practice of religious and other conscientious beliefs, consistent with outlawing arbitrary force. This book further details the theoretical grounds of the relationship between religion and human rights, and it concludes with essays on U.S. policy and the restraint of force in regard to terrorism and to cases such as Vietnam, Afghanistan, and Pakistan. With a foreword by John Kelsay, this book stands as a capstone of the work of this influential writer on religion, philosophy, and law.

David Little is a Research Fellow at the Berkley Center of Religion, Peace, and International Affairs, Georgetown University. He retired in 2009 as Professor of the Practice in Religion, Ethnicity, and International Conflict at Harvard Divinity School and as an associate at the Weatherhead Center for International Affairs at Harvard University. He was a member of the U.S. State Department Advisory Committee on Religious Freedom Abroad from 1996 to 1998.

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[More information](#)

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# Essays on Religion and Human Rights

GROUND TO STAND ON

DAVID LITTLE

Berkley Center of Religion, Peace, and  
International Affairs, Georgetown University



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Contents

<i>Acknowledgments</i>	<i>page</i> vii
<i>Foreword by John Kelsay</i>	xiii
Introduction	1
<b>PART I. IN DEFENSE OF RIGHTS</b>	
1 Ground to Stand On: A Philosophical Reappraisal of Human Rights Language	25
2 Critical Reflections on <i>The Last Utopia: Human Rights in History</i> by Samuel Moyn	57
<b>PART II. RELIGION AND RIGHTS</b>	
3 Religion, Human Rights, and the Secular State: Clarifications and Some Islamic, Jewish, and Christian Responses	83
4 Religion, Human Rights, and Public Reason: Protecting the Freedom of Religion or Belief	112
5 Rethinking Religious Tolerance: A Human Rights Approach	143
6 A Bang or a Whimper? Assessing Some Recent Challenges to Special Protection for Religion in the United States	170
7 Religion and Human Rights: A Personal Testament	177

vi	<i>Contents</i>	
 <b>PART III. RELIGION AND THE HISTORY OF RIGHTS</b>		
8	Religion, Peace, and the Origins of Nationalism	201
9	Roger Williams and the Puritan Background of the Establishment Clause	243
 <b>PART IV. PUBLIC POLICY AND THE RESTRAINT OF FORCE</b>		
10	Terrorism, Public Emergency, and International Order: The U.S. Example, 2001–2014	275
11	The Role of the Academic in Times of War	332
12	Obama and Niebuhr: Religion and American Foreign Policy	346
	<i>Afterword: Ethics, Religion, and Human Consciousness</i>	363
	<i>Appendix: Ethics and Scholarship</i>	389
	<i>Index</i>	399

Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)

## Acknowledgments

Because the ideas expressed in these essays have been germinating over a fairly long career and because they cover several areas of scholarship, there is an unusually large number of people to thank. In mentioning the host of people who have aided in producing this volume, I, of course, bear exclusive responsibility for whatever deficiencies and shortcomings there are.

I must begin by paying tribute to my “doktorvater,” Jim Adams, who, along with other luminaries at Harvard University in the early sixties, such as Hal Berman, Talcott Parsons, Bob Bellah, and Perry Miller, introduced me to the social significance of religion and, in particular, to the critical connections between religion and law. It was thanks to Adams that I began to take seriously the ideas of natural law and natural rights, including the right to freedom of conscience, as manifested especially in sixteenth- and seventeenth-century Anglo-Saxon Puritanism.

The interest in Puritanism developed further after assuming my first teaching post at Yale Divinity School in 1963, as the result of lively encounters with David D. Hall, then a burgeoning Puritan scholar at Yale, as well as exposure to the work of Edmund S. Morgan, also at Yale at the time. David Hall and I renewed our relationship when I joined him at Harvard Divinity School in 1999, and he continues to shape my thinking about Puritanism, particularly through his important recent book, *A Reforming People*, mentioned several times in these pages.

My years at Yale Divinity School, 1963–1971, were the setting for my reflections in Chapter 11 on the Vietnam War, and I wish to commend several colleagues for their respect and thoughtful counsel during that tumultuous time even while, in most cases, they disagreed with my position on Indochina policy. They are Jim Gustafson, Sydney Ahlstrom, Julian Hartt, Bob Johnston, Chuck Forman, Bill Muehl, and Bill Coffin. It was during that period that I also began to refine my thinking about the just-war tradition, presented

Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)

in Chapters 11 and 12, usually as the result of conversations and sometimes debates with one or more of them. Their arguments had a good deal to do with me eventually changing my mind on the position I had taken.

Some of the graduate students present at Yale during the 1960s would become important academics and continue to influence the thinking that lies behind the essays in this volume, namely, Gene Outka, Jock Reeder, Jim Childress, Jim Laney, and Barney Twiss. In particular, Reeder and Twiss took the trouble to read and comment insightfully on different drafts of Chapter 1 (and other of my writings), as well as to provide ongoing friendship and stimulation in countless conversations and interactions ever since. In Twiss's case, we collaborated in writing a book on comparative religious ethics. Reeder and I co-taught a seminar on rights and virtues at Harvard Divinity School in the early 2000s in which we discussed early versions of Chapter 1, and I am deeply grateful to him and the students in those classes for their challenging reactions. I owe a special debt of gratitude to one of the students, David Golumbowski, who first raised the question of why a case of necessity – causing the death of another to save one's own life – did not undermine my central argument concerning the wrongfulness of hurting others to one's advantage. We shall have to see if he and others are satisfied with my answer.

During the seventies and eighties I taught at the University of Virginia with cherished colleagues Jim Childress and Julian Hartt, and there had the pleasure of working with several graduate students who would also have a continuing influence on my thinking: Ed Santurri, James Calvin Davis, John Feldman, and John Kelsay. Santurri and I have for a long time discussed, and sometimes debated, the ethics of politics and war in a way that has been highly instructive for me. What became Chapter 12 was first delivered as a lecture at St. Olaf College where Santurri teaches. Davis explored Roger Williams very insightfully and went on to become a leading Williams scholar. Feldman wrote an important dissertation on the Puritans, Locke, and economic policy, interests he continues to develop in a most impressive way. He read and commented on several of the chapters in this book. Beginning at Virginia, Kelsay and I have worked closely together over the years. He and I, along with our colleague at the time, Abdulaziz Sachedina, collaborated on a project close to the central concerns of this volume: the idea of human rights and, especially, freedom of conscience, which we looked at comparatively between Western Christianity and Islam. That project culminated in a book on the subject, co-authored by the three of us. I wish to thank Sachedina and Kelsay for that collaboration, on the basis of which I rethought my approach to the comparative study of ethics by connecting it to the human rights movement. I am also indebted to Kelsay for his sustained counsel and friendship and



Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)*Acknowledgments*

ix

for the repeated exchanges of ideas we have shared over the years. I am, of course, especially grateful for his assistance in compiling, editing, and producing this volume. Without him and his good offices, this book would not have come about. In that connection, I want to express my profoundest gratitude to James Broucek and Kirk Essary, graduate students in religion at Florida State University, for editing and readying the manuscript for publication. They have done invaluable service. During the years I taught at the University of Virginia, I spent time visiting several times at Amherst College, co-teaching with David Wills and Susan Niditch in the areas of human rights and war and peace. These were memorable occasions, and I owe a debt of gratitude to both of them for thoughtful and instructive conversations about some of the ideas in this book.

Chapter 10, on terrorism, public emergency, and the protection of rights, is the fruit of work begun when I was senior scholar at the U.S. Institute of Peace (USIP) during the 1990s. I have produced a manuscript, as yet unfinished and unpublished, on public emergencies and human rights, which provides the framework of analysis for Chapter 10 and thus can be considered (I hope) partial fulfillment of my obligation to USIP for supporting my work. I wish to thank four extremely able assistants who worked with me on various stages of the project (and on much more): Barry Seltser, Tim Sisk, Darrin McMahon, and Scott Hibbard. They have all gone on, in their various ways, to distinguished careers in academia or public service. Recently, Seltser read parts of the manuscript and made some very helpful suggestions. In particular, I am grateful to Ambassador Samuel W. Lewis, president of the USIP in my early years there and a strong supporter of the project. It was an honor and a delight to work for Sam, who died recently, and I dedicate Chapter 10 to him. I would also like to thank Sabine von Schorlemer, then of the Technical University of Dresden, Germany, for the invitation to deliver a lecture in 2006 updating my study of terrorism and public emergencies. She provided a very thoughtful response to the lecture. In addition, I wish to thank Geoffrey Stone for kindly reading part of Chapter 10 and giving me invaluable advice and counsel on it.

While I was at USIP, I also conducted an extensive study on the problem of nationalism and religion, with a focus on the role of human rights, including freedom of conscience, religion, and belief. The research and publications associated with that project lie behind Chapter 8, on religion, peace, and the origins of nationalism. The four assistants mentioned earlier were again of great assistance in organizing conferences and conducting research in regard to the project. Scott Hibbard was especially involved in that work, and therefore I owe him a special debt of gratitude. Scott and I collaborated on several publications

Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)

at USIP, and I have continued to profit greatly from his own subsequent work on religious nationalism. I also want to thank the then-president of USIP, Dick Solomon, for his continuing encouragement and support.

Because the field of law and religion is so central to the concerns of this volume, a number of the chapters touch on that subject, and thus there are several experts in the field to whom I owe special thanks. Cole Durham has been a longtime friend and associate from whom I have learned much about the relation of religion to human rights. I thank him in particular for inviting me to deliver a lecture in the fall of 2013 at a conference on international law and religion at the Brigham Young University Law School, where he teaches. The event was extremely stimulating and inspired me to turn the lecture, duly revised, into Section I of the Introduction to this volume. Versions of one or another of Chapters 3–5, all on aspects of religion and human rights, have been commented on by Durham and by Jeremy Gunn, John Witte, Jr., and Abdullahi An-Na'im to all of whom I am deeply grateful. I am also keenly thankful to Gunn for his careful editorial advice regarding Chapter 9, on Roger Williams and the Puritan background of American ideas of church and state. Witte has been a close friend and colleague for a long time, and I owe much to his writings and continuing conversations.

I especially appreciate the help of Doug Laycock regarding Chapter 6, which criticizes the positions of three authors on the role of freedom of conscience in American law. I also wish to acknowledge Tim Shah and Tom Farr of the Religious Freedom Project at the Berkley Center for Religion, Peace, and International Affairs at Georgetown University for commissioning the original essay and for the continuing stimulation and support for the study of freedom of conscience that their program provides. As to Chapter 7, which contains personal reflections on the subject of religion and human rights, I thank Azizah al-Hibri for inviting me to give the lecture in 1998 at the T. C. Williams School of Law, University of Richmond, which formed the basis for the chapter. In addition, I wish to thank her colleague, Scott Davis, for a stimulating response to the lecture (and to other writings of mine). John Norton Moore is one other legal colleague from whom I have benefited greatly over the years. Our association covers the periods at Yale, Virginia, and USIP, and for eight years, more recently, we co-taught a week-long seminar on ethics, law, and American foreign policy at the Virginia Law School, which helped me much better understand international humanitarian law and the laws of armed combat.

I need to express my gratitude to several esteemed faculty members and graduate students who were at Harvard University during the first decade of the new century when I taught there. I benefited greatly from recurring

Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)*Acknowledgments*

xi

conversations on topics directly pertinent to the themes of this volume with several members of the Divinity School faculty: Fr. Bryan Hehir, Bill Hutchinson, Francis Fiorenza, Don Swearer, Arthur Dyck, and Ron Thiemann. Sam Huntington and I joined together, in different combinations, with Michael Ignatieff and Jessica Stern to teach a graduate lecture course on global politics and religion, which was enormously important for my thinking in regard to the themes of this book. We instructors by no means always saw eye to eye, but the exchanges, particularly on the subjects of religion and human rights and of religion and nationalism, were memorable.

The group of graduate students whom I had the good fortune to encounter in my ten years at Harvard were all eagerly engaged in one or another of the central topics of this book. Christian Rice, Melanie Adrian, Peter Chang, and Bronwyn Roantree all touched in their doctoral projects on the subjects of natural rights, religion and human rights, or freedom of conscience, whereas David Kim focused on the Reformation background, and Atalia Omer and Tatta Yukie on religion and nationalism. Jonas Clark was of great help in drafting an early version of Chapter 10. All of them contributed greatly to sharpening my understanding of the central themes of this volume. I owe a special debt of gratitude to Atalia Omer for her thoughtful editorial suggestions in regard to Chapter 8 on religion and nationalism. I also wish to acknowledge two of her colleagues at the Kroc Institute where she now teaches: Scott Appleby and Jason Springs. They are all three a continuing source of stimulation and insight. Karen Tse, a graduate of Harvard Divinity School and my advisee, has gone on to make an inspiring contribution to the practice of human rights by founding and directing International Bridges to Justice, an organization committed to the training of public defenders and to reducing torture as an investigative technique. Buddy Karelis and Kevin Jung have both very kindly looked at several of the chapters in this book and commented on them most insightfully. They have been good friends and instructive conversation partners. David Hollinger has been a faithful and stimulating correspondent, prompting me to take up the work of Samuel Moyn and responding to earlier versions of Chapter 2 where I examine Moyn's book on the history of human rights.

Finally, I sing the praises of my long-suffering wife, Priscilla, who has endured the ardors of completing this manuscript with limitless patience and goodwill. It is a source of great encouragement to know that, although she does not wish to accompany me in every twist and turn of argument that appears in this book, she shares with me the same underlying passion and conviction that the subjects dealt with in the book are of urgent importance.

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David Little

Frontmatter

[More information](#)

---

Cambridge University Press

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David Little

Frontmatter

[More information](#)

## Foreword

It is a pleasure to offer these brief remarks on this collection of David Little's essays on human rights. Although the scope of Little's work over his long career makes him a contributor to a number of disparate conversations, the current volume points to interests he has been developing since the 1980s. In some ways, one might even see this work as the point on which all his earlier publications converge.

Commenting on an earlier version of this manuscript, an anonymous reviewer wrote of Little's distinctive voice. He or she suggested this distinctiveness in particular with respect to studies in Christian ethics. And it is true: David Little's way of relating the sources of Christian practical reason to contemporary issues in public life is very different from that of Stanley Hauerwas, James Gustafson, the late John Howard Yoder, or any number of other scholars one might identify with Christian ethics as a field. But then, Little's voice is also distinctive when it comes to discussions of religion and law, domestic and international politics, and the comparative study of ethics. Readers of the current volume will quickly see this. I am confident they will also appreciate the alternative that Little presents.

As an example, consider the discussion of the place of religion in the development of notions of human rights. For some, the idea that this history is a matter of marginalizing religion is regarded as a commonplace, hardly in need of examination. This is so for people at both ends of a spectrum – that is, those who judge that a gradual removal of notions of deity, invocations of scripture, or of the voices of ecclesiastical authorities from public life constitutes a positive phenomenon provide such an account. So do those who judge such removal as a matter worthy of regret. In the essays collected here, Little provides evidence that calls into question the common assumption of both groups. Referring readers to Brian Tierney's important work on the place of rights in late medieval Europe, Little then proceeds to develop a detailed and persuasive account of

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David Little

Frontmatter

[More information](#)

the role of left-leaning Protestants in the elaboration and institutionalization of the language of rights in England, the United States, and elsewhere.<sup>1</sup> Certainly the contributions of those to whom Little draws attention do not stand alone. The religious voice of Roger Williams, for example, must be joined to the voices of others who, if they were not entirely secular, were certainly more critics than developers of Christian or other forms of faith. Little's point is well taken, however. In the development of modern notions of human rights, religious and secular voices alike played a role. At times competitors, at other points in complementary relation, the creative interaction between religious and secular views remains important to the present-day progress of human rights, particularly in the international arena.

In one sense, the development of human rights as an aspect of international politics constitutes the greatest chapter in the history of this vocabulary. It also points to a number of very great challenges. And as it turns out, many of these are related to the question of religion. Little has always emphasized the importance of religion in matters related to legitimation. In this he follows Max Weber, who taught us that, of all the varied sorts of work for which human beings invoke religion, the most characteristic have to do with distinguishing forms of order. Whether and how a given set of social-political realities reflects "the way things ought to be" is, as a matter of historical fact, typically worked out with reference to notions we would classify as religious. In this regard, the important contributions of Little regarding the methods and purposes of comparative studies of ethics are worth noting; they set the table for his discussions of Islam and human rights in this volume and elsewhere.<sup>2</sup> In some sense, the proposal here is relatively simple and straightforward. In the historic development of the human rights idea, those left-leaning Protestants mentioned earlier focused on (1) a distinctive notion of faith as a work of God, and thus not susceptible of compulsion by human beings; (2) an account of conscience as both the arena of God's work of enabling individuals in the matter of faith and also as a personal or "private monitor" by which one evaluates courses of action one has or contemplates undertaking; and

<sup>1</sup> For Tierney's work on the medieval background, see *The Idea of Natural Rights* (Grand Rapids, MI: Wm. B. Eerdmans, 2001), as well as *Religion, Law, and the Growth of Constitutional Thought 1150–1650* (Cambridge: Cambridge University Press, 1982).

<sup>2</sup> Among others, see David Little, "Max Weber and the Comparative Study of Religious Ethics," *Journal of Religious Ethics* 2/2 (1974): 5–40; David Little and Sumner B. Twiss, *Comparative Religious Ethics* (San Francisco: Harper & Row, 1978); and David Little, John Kelsay, and Abdulaziz Sachedina, *Human Rights and the Conflict of Cultures* (Columbia, SC: University of South Carolina, 1988). The last most closely approximates the approach Little takes in this volume.

Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)

## Foreword

xv

(3) a concept of natural law, by which all human beings know of and are accountable to a few, very basic moral notions – do not murder, do not steal, and the other directives identified with the “second table” of the Decalogue. Taken together, these notions suggested the rightness or legitimacy of a form of order in which the power of governments to enforce religious or other forms of belief should be restricted; as well, those articulating these ideas pointed to the possibility of what we would now describe as a religiously pluralistic society.

With respect to the global possibilities of human rights norms, Little begins by investigating whether or not the set of notions developed by the left-leaning Protestants might be present in other traditions – at least, by way of analogy. In the case of Islam, for example, one should consider a number of Qur’anic verses in which God instructs the Prophet regarding matters of faith. “Had your Lord willed, all the people on earth would have believed.” Faith is a work of God, not of human beings. As such, “there is no compulsion in religion.” Unwilling faith is an impossibility.<sup>3</sup>

Then, too, the Qur’an speaks frequently of the “heart” or the “self” in ways that remind one of the discourse on conscience. God is the one who “created the self [*al-nafs*] and inspired it with knowledge of right and wrong.”<sup>4</sup> Such knowledge, while confirmed through revelation, is available on “reflection,” that is, through the use of ordinary capacities. In particular, when the text mentions adherence to the “well known,” the reference is to a set of proprieties tied to the coordination of social life. As with the notion of natural law, these properties involve prohibitions of murder, theft, and wrongful sexual activity. They also prescribe truthful speech and care for parents.<sup>5</sup>

On Little’s count, these aspects of Islam suggest the possibility of a pro-human rights position. In this he is joined by a number of contemporary Muslim scholars, and his discussions of work by Abulaziz Sachedina and Abdullahi an-Na’im have an important place in this collection of essays. Nor is Islam the only case discussed. Here, as elsewhere, Little takes up material from Judaism, Buddhism, and other traditions. In this he is able to draw usefully on material developed in slightly different ways in the various publications associated with his direction of the Project on Religion, Nationalism, and Intolerance at the United States Institute of Peace.<sup>6</sup>

<sup>3</sup> Qur’an 10: 99; 2: 256.

<sup>4</sup> Qur’an 91: 7–8.

<sup>5</sup> Cf., among others, Qur’an 2: 83, 110, 195, 197, 215.

<sup>6</sup> Cf., for example, David Little, *Sri Lanka: The Invention of Enmity* (Washington, DC: United States Institute of Peace, 1994); idem, *Ukraine: The Legacy of Intolerance* (Washington, DC: United States Institute of Peace, 1991).

Cambridge University Press

978-1-107-07262-6 - Essays on Religion and Human Rights: Ground to stand on

David Little

Frontmatter

[More information](#)

Throughout these essays, Little explores the prospects for the international regime of human rights outlined in the various UN declarations and conventions produced in the aftermath of World War II. As an historical matter, these texts represent an attempt to name the wrongs done during that conflict and to promote a kind of social order by which these wrongs might be avoided. Little makes much of this. He believes one can say more, however. As he has it, agreement on the wrongs of National Socialism on the part of those drafting the Universal Declaration of Human Rights invites us to consider the possibility that the vocabulary of human rights is not only a matter of historical construction but also points to something about the nature of human beings. This leads to the argument developed in “Ground to Stand On,” the essay that opens this collection. As well, various criticisms of this argument, which in some sense counts as Little’s development of the historic notion of natural law, are addressed in an epilogue.

Some will be convinced by this argument regarding the foundations of human rights claims. Other readers will prefer to stay with history, and thus to focus on the many ways by which Little’s essays clarify and extend the project of international human rights. I think that all will find here that distinctive voice already mentioned. Speaking as one of the many people who count David Little as teacher, colleague, and friend, I am very pleased by the publication of this book and commend the clear and passionate vision of its author.

John Kelsay  
Florida State University  
May 19, 2014