Introduction

A half century ago, the world welcomed some of the most remarkable human rights documents it had ever seen. The US Congress passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965. These were America's strongest statutory rebukes to its long and tragic history of racism, chauvinism, nativism, and religious and cultural bigotry. Born of the civil rights movement and inspired especially by Black churches, these two acts declared anathema on all manner of discrimination in the voting booth, public accommodations, schools, and the workplace. They called American courts and citizens to give full and faithful protection to the rights of everyone regardless of race, color, religion, sex, or national origin. And they called America back not only to the high promise of the Thirteenth to Fifteenth Amendments, ratified in the aftermath of the Civil War, but also to the founding ideals set out in the nation's ur text, the 1776 Declaration of Independence: "that all men [now persons] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[1] The 1789 US Constitution and several state constitutions repeated and elaborated these "unalienable rights," repeatedly calling them "the blessings of liberty."[2]

[1] US Declaration of Independence (1776), para. 2.

[2] US Const. (1789), Preamble. Six original state constitutions also spoke of "the blessings of liberty": Virginia (1776), art. XV; North Carolina (1776), sec. XXI (under "A Declaration of Rights"); Pennsylvania (1776), art. XIV; Vermont (1786), art. XX; Alabama (1861), Preamble; Illinois (1870), Preamble and art. II. Twelve current constitutions repeat the phrase: North Carolina Const., art. I, § 35; New Hampshire Const., pt. first, art. 38; West Virginia Const., art. III, § 20; Vermont Const., ch. I, art. 18; Colorado Const., Preamble; Alabama Const., Preamble; Virginia Const., art. I, § 15; Ohio Const., art. VIII, § 18 and Ohio Const., Preamble; Illinois Const., art. I, § 23; Maine Const., Preamble; New Mexico Const., Preamble; South Dakota Const., Preamble. It also appears in six foreign constitutions influenced by the United States: Argentina, Bhutan, Colombia, Ghana, Japan, and Panama. "Blessings of liberty" also appears in Federalist Papers Nos. 45 (Madison) and 84 (Hamilton), and was a commonplace in presidential proclamations (Law Day, National Day of Prayer, Independence Day, Flag Day, and Thanksgiving Day), and in numerous presidential speeches across the political spectrum. See, for example, John Adams, Inaugural Address, Mar. 4, 1797; James Madison, Seventh Annual Message, Dec. 5, 1815; John Quincy Adams, Inaugural Address, Mar. 4, 1825; Andrew Jackson, Second Annual Message, Dec. 6, 1830; Andrew Jackson, Farewell Address, Mar. 4, 1837; James K. Polk, Inaugural

A half century ago, the Second Vatican Council, speaking to and for a half billion Catholics at the time, opened up a new chapter in the church's mission and ministry with a series of sweeping new papal and conciliar declarations – *Pacem in Terris*, *Dignitatis Humanae*, *Gaudium et Spes*, and *Lumen Gentium*.[3] The Council firmly rejected the church's antidemocratic and antirights posture of the 1864 *Syllabus of Errors*,[4] and instead returned to Pope Leo XIII's clarion call in 1880 for *Libertas*[5] and for a new "social teachings" movement to transform the church.[6] The church now taught that every human being is created by God with "dignity, intelligence and free will . . . and has rights flowing directly and simultaneously from their very nature."[7] Such rights include the right to life and adequate standards of living, to moral and cultural values, to religious activities, to assembly and association, to marriage and family life, and to various social, political, and economic benefits and opportunities. The church emphasized the religious rights of conscience, worship, assembly, and education, calling them the "first rights" of any civic order.[8] It also stressed the need to balance individual and associational rights, particularly those involving the church, family, and school, which stood as important bulwarks between the individual and the state. The church urged the abolition of discrimination on grounds of

Address, Mar. 4, 1845; Andrew Johnson, Third Annual Message, Dec. 3, 1867 and Andrew Johnson, Fourth Annual Message, Dec. 9, 1868; Franklin D. Roosevelt, Inaugural Address, Jan. 20, 1937; John F. Kennedy, Annual Message to the Congress on the State of the Union, Jan. 30, 1961; Lyndon B. Johnson, Annual Message to the Congress on the State of the Union, Jan. 14, 1969; George H. W. Bush, Address Before a Joint Session of the Congress on the State of the Union, Jan. 29, 1991; William J. Clinton, Inaugural address, Jan. 20, 1997.

3 Collected in W. Abbott and J. Gallagher, eds., *The Documents of Vatican II* (New York: Guild Press, 1967).

4 In Philip Schaff, ed., *Creeds of Christendom with a History and Critical Notes*, 3rd enlarged ed. (New York: Harper, 1881), 218–33 (paras. 20, 24–35, 41–44, 53–54, 75–80). See also *Mirari Vos* (On Liberalism and Religious Indifferentism) (1832), in www.papalencyclicals.net/greg16/g16mirar.htm (paras. 14–23), with discussion in John Witte, Jr., "That Serpentine Wall of Separation," *Michigan Law Review* 101 (2003), 1869–905.

5 See Pope Leo XIII, *Libertas: On the Nature of Human Liberty*, repr. ed. (West Monroe, LA: St. Athanasius Press, 2016), 3–4: "Liberty, the highest of natural endowments, being the portion only of intellectual or rational natures, confers on man this dignity – that he is 'in the hand of his counsel' and has power over his actions. But the manner in which such dignity is exercised is of the greatest moment, inasmuch as on the use that is made of liberty the highest good and the greatest evil alike depend. Man, indeed, is free to obey his reason, to seek moral good, and to strive unswervingly after his last end. Yet he is free also to turn aside to all other things; and, in pursuing the empty semblance of good, to disturb rightful order and to fall headlong into the destruction which he has voluntarily chosen." See, further, Russell Hittinger, "Pope Leo XIII (1810–1903)," in John Witte, Jr. and Frank S. Alexander, eds., *The Teachings of Modern Roman Catholicism on Law, Politics, and Human Nature* (New York: Columbia University Press, 2007), 39–105. See further the prototypes in Mary Elsbernd, "Papal Statements on Rights: A Historical Contextual Study of Encyclical Teaching from Pius VI–Pius XI (1791–1939)" (PhD Dissertation, Catholic University of Louvain, 1985).

6 See, e.g., Gerard V. Bradley and E. Christian Brugger, eds., *Catholic Social Teaching* (Cambridge: Cambridge University Press, 2019).

7 "Pacem in Terris," para. 9 (1963), reprinted in Joseph Germillion, ed., *The Gospel of Peace and Justice: Catholic Social Teaching Since Pope John* (Maryknoll, NY: Orbis, 1976), 203.

8 Ibid., 203–18.

sex, race, color, social distinction, language, and religion. And it called on clergy and laity alike to be ambassadors and advocates for the rights and liberties of all persons, especially the "least" of God's children, as the Bible called them – the poor, needy, sick, and handicapped; widows, orphans, sojourners, and refugees; the incarcerated and incapacitated; and children, born and unborn.[9] The robust advocacy of Vatican II for the rights and liberties of all helped to drive a new "third wave of democracy" around the world thereafter.[10]

Finally, a half century ago, the United Nations, embracing almost all 186 nation-states around the world at the time, passed the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966).[11] Only two decades before passage of these twin covenants, the world had stared in horror into Hitler's death camps and Stalin's gulags, where all sense of humanity and dignity had been viciously sacrificed. It had witnessed the slaughter of sixty million people around the world in six years of unprecedented brutality during World War II. In response, the world had seized anew on the ancient concept of human dignity, claiming this as the ur-principle of a new world order.[12] The Universal Declaration of Human Rights (1948) opened its preamble with classic words: "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."[13] The two 1966 international covenants sought to translate the general principles of the Universal Declaration into more specific precepts. The International Covenant on Economic, Social, and Cultural Rights posited as essential to human dignity the rights to self-determination, subsistence; work, welfare, security, education, and cultural participation. The International Covenant on Civil and Political Rights set out a long catalogue of rights to life and to security of person and property; freedom from slavery and cruelty; basic civil and criminal procedural protections; rights to travel and pilgrimage; freedoms of religion, expression, and assembly; rights to marriage and family life; and freedom from discrimination on grounds of race, color, sex, language, and national origin. These documents are binding on the nations that have ratified them.

9 Ibid.

10 Samuel P. Huntington, *The Third Wave of Democracy: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991); Larry J. Diamond, *Consolidating the Third Wave Democracies* (Baltimore, MD: Johns Hopkins University Press, 1997); John Witte, Jr., ed., *Christianity and Democracy in Global Context*, repr. ed. (London: Routledge, 2020).

11 See Ian Brownlie and Guy S. Goodwin-Gill, eds., *Basic Documents on Human Rights*, 6th ed. (Oxford: Oxford University Press, 2010), 370–79; 388–404. See also International Covenant on Civil and Political Rights, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; and International Covenant on Economic, Social, and Cultural Rights, www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

12 The term "ur-principle" is from Louis Henkin et al., *Human Rights* (New York: Foundation Press, 1999), 80.

13 In Brownlie and Goodwin-Gill, eds., *Basic Documents* 39–44; and www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng.

Several regional instruments also proved critical to this rights development, including the European Convention on Human Rights (1950)[14] and the [Inter-]American Convention on Human Rights (1969).

These landmark human rights documents of the mid-twentieth century echoed and elaborated two millennia of rights developments in the Western legal tradition[15] – among other traditions around the world.[16] Western jurists have long talked about rights and liberties and applied them in their legal systems. Classical Roman jurists called them *iura* and *libertates*.[17] Anglo-Saxon laws first translated these Roman law terms into the early English language of *ryhtes* and *rita(e)*, *freoles* and *freo-dom*.[18] Early modern jurists translated medieval canon law and civil law discussions of *iura humana* into the now familiar vernacular terms of human rights, *droits de l'homme*, *Menschenrechte*, *derechos humanos*, *diritti umani*, and others.[19]

All these terms had wide and shifting definitions, interpretations, and applications over time and across cultures.[20] At its core, however, this Western language of rights and liberties enabled jurists to map in ever greater detail the proper interactions between private parties in society and between private parties and the reigning authorities, whether political, religious, feudal, or economic. Rights defined the claims that one legal subject could legitimately make against another to protect their person, property, business, reputation, and interest, or to compel another to live up to their contracts, promises, and other obligations. Rights and liberties also defined limits to the actions, duties, or charges that authorities could legitimately impose upon their individual and corporate subjects. And rights and liberties language set out the procedures and principles that were to be followed in all of these legal interactions, sometimes casting them in terms of justice, equity, liberty, equality, due process, and other ideals.[21]

[14] See Chapter 8.

[15] While the terms "West" and "Western" now have strong ideological connotations in some circles, I am using the phrase "Western legal tradition" as a conventional historical description of the law that emerged out of ancient Jewish, Greek, and Roman sources and spread throughout Latin Christendom and its extension overseas to the Americas. See Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).

[16] For contributions of other world religions and philosophical traditions, see John Witte, Jr. and M. Christian Green, eds., *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2012).

[17] See Chapter 1, p. 23–25.

[18] See Chapter 1, p. 26 and Chapter 2, p. 45–46.

[19] See Chapters 3–5.

[20] For a quick summary of various definitions of rights and liberties historically and today, see, e.g., M. N. S. Sellers, *The Sacred Fire of Liberty: Republicanism, Liberalism, and the Law* (New York: NYU Press, 1998). The taxonomy and classification of rights and liberties are highly contested questions these days. Some interesting recent efforts include Winston P. Nagan, John A. C. Cartner, and Robert J. Munro, *Human Rights and Dynamic Humanism* (Leiden: Brill, 2017); James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Roger Crisp, ed., *Griffin on Human Rights* (Oxford: Oxford University Press, 2014).

[21] See, further, "Concluding Reflections," pp. 290–300.

While Western jurists sometimes treated vaunted documents like Magna Carta (1215)[22] or the US Bill of Rights (1791)[23] with reverence, they usually thought of rights in simpler instrumental and utilitarian terms. After all, as Justice Oliver Wendell Holmes, Jr. once quipped, a right is "only the hypostasis of a prophecy," a mere prediction of what might happen to "those who do things said to contravene it."[24] That prediction depends very much on the ability of a legal subject to press a rights claim, the willingness of the authorities to vindicate those rights, and the capacity of the society to develop a human rights culture. Human rights "declarations are not deeds," John T. Noonan Jr. reminds us; "a form of words by itself secures nothing." Human rights language "pregnant with meaning in one cultural context may be entirely barren in another."[25] That was true throughout Western history and can be seen today in many Western lands marked by new forms of nativism, populism, tribalism, and authoritarianism.

The human rights instruments of the mid-twentieth century did add measurably to this long tradition of rights. The 1964 Civil Rights Act echoed the norms of due process and equal protection found in the Fifth and Fourteenth Amendments and their common law antecedents going back to Magna Carta and other medieval and Anglo-Saxon charters. But the act also added more specific and expansive protections of rights and helped trigger a massive wave of rights litigation in the American federal courts that is still going on today. The Second Vatican Council's decrees confirmed the rich teachings about rights by the medieval canonists and early modern Spanish neoscholastics and their retrieval by Pope Leo XIII's social teachings movement. These conciliar documents, however, also offered a more universal defense of the rights and freedoms of all humanity, not just Christians or Catholics, and they helped to render the pope and clergy effective agents and allies in the global struggle for human rights. The 1948 Universal Declaration and the 1966 UN covenants drew on and distilled many earlier national and international rights statements, going back as early as the Religious Peace of Westphalia (1648).[26] Yet these new human rights instruments now called further for every state party worldwide to enforce these rights at the risk of international shame and rebuke, if not censure and reprisal. These international documents also grounded human rights and liberties on a more universal theory of human dignity, equality, and fraternity, in place of earlier Christian rights theories based on the Golden Rule, the Decalogue, biblical love commands, or Christian anthropologies of the image of God or the imitation of Christ. Later international human rights instruments added further specificity to rights concerning religion, race, laborers, migrants, refugees, prisoners

[22] See Chapter 2.
[23] See Chapter 5.
[24] Oliver Wendell Holmes, Jr., "Natural Law," *Harvard Law Review* 32 (1918), 42.
[25] John T. Noonan, Jr., "The Tensions and the Ideals," in Johan D. van der Vyver and John Witte, Jr., eds., *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague: Martinus Nijhoff, 1996), 594.
[26] See Chapter 4, p. 86.

of war, indigenous peoples, women, and children, and new protections against genocide and torture. Even so, the vast majority of human rights of today are the natural, constitutional, conciliar, customary, and treaty rights of earlier centuries now writ larger and rooted more widely.

THE CORNERSTONE – RELIGIOUS FREEDOM

The right to religious freedom has long been a foundational part of this gradual development of human rights in the Western tradition, and today it is regarded as a cornerstone in the edifice of human rights. In its most basic sense today, the right to religious freedom is the freedom of individuals and groups to make their own determinations about religious beliefs and to act upon those beliefs peaceably without incurring civil or criminal liabilities. More fully conceived, freedom of religion embraces a number of fundamental principles of individual religious liberty – freedom of conscience, exercise, speech, association, worship, diet, dress, and evangelism; freedom from religious discrimination, coercion, and unequal treatment; freedom of religious and moral education; and freedom of religious travel, pilgrimage, and association with coreligionists abroad. It also involves a number of fundamental principles of corporate religious liberty – freedom of religious groups to organize their own polity and leadership; to hold and use corporate property; to define their own creed, cult, confessional community, and code of conduct; to establish institutions of worship, education, charity, and outreach; and to set standards of admission, participation, and discipline for their members and leaders.[27] These are now standard principles of religious freedom in modern instruments of international and regional human rights, and in many national constitutions, not least the First Amendment to the US Constitution.[28]

The Western legal tradition came to this robust understanding of religious freedom only after many centuries of hard and cruel experience to the contrary, and only as the tradition gradually developed many other human rights and liberties to make these religious rights and freedoms ever more real. The phrase "freedom of religion" (*libertas religionis*) first emerged at the turn of the third century in Tertullian's plea against Roman persecution. The classic Roman law phrase "right to freedom" (*ius libertatis*) first emerged prominently in the twelfth century in reference to religious freedom, including Pope Gregory VII's clarion call for "freedom of the church" (*libertas ecclesiae*). This language was part of the church's attempt to establish individual and corporate religious freedom against overreaching political and feudal authorities. It took until the seventeenth century, however, for

[27] See, e.g., W. Cole Durham, Jr. and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives* (New York: Wolters Kluwer, 2019); Tad Stahnke and J. Paul Martin, *Religion and Human Rights: Basic Documents* (New York: Columbia University Center for the Study of Human Rights, 1998). See further Chapter 1, p. 38–44.

[28] See Chapters 5–7.

"the right to religious freedom" (*ius libertatis religionis*) to become a common phrase in religious and legal circles, and for the abridgment of this right to trigger a cause of action in court, rather than a reason to flee or revolt.[29] While guarantees of religious freedom became more common in treaties and constitutions after the seventeenth century, they were still often honored in the breach by leaders of religious establishments and secular states alike. And while the nineteenth and twentieth centuries brought powerful new guarantees of religious freedom in both national and international human rights instruments and court cases, vicious religious persecution remains a commonplace of modern life around the globe, including in many Western lands.[30] Even the US Supreme Court and the pan-European courts sitting in Strasbourg and Luxembourg have decidedly mixed records on individual and corporate religious freedom in recent decades.[31]

Historically and today, however, the protection of religion and religious freedom has proved critical for the protection of many other individual and associational rights. Religion is a dynamic and diverse, but ultimately ineradicable, condition and form of human community. Religions help to define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. Religions help to lay out the fundamentals of human dignity and human community, and the essentials of human nature and human needs upon which rights are built. Moreover, religious institutions often stand alongside the state and other institutions in helping to implement and protect the rights of a community – especially in transitional societies, or at times when a once-stable state becomes weak, distracted, divided, or cash-strapped. Religions can create the conditions (sometimes the prototypes) for the realization of first-generation civil and political rights of speech, press, assembly, and more. They can provide a critical (sometimes the principal) means to meet second-generation rights of education, health care, child care, labor organizations, employment, and artistic opportunities. And they can offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of third-generation rights.

Many social scientists and human rights scholars today have thus come to see that providing strong protections of rights and liberties for religious individuals and religious institutions enhances, rather than diminishes, human rights for all, even if there are inevitable conflicts at the margins. Already in 1895, German jurist Georg Jellinek called religious freedom "the mother of many other rights."[32] Many other scholars now repeat the American founders' declaration that religious freedom is "the first freedom," from which other rights and freedoms evolve. Several recent comprehensive studies of the state of religious freedom in the world today have

[29] See Chapter 1, p. 33–36 and Chapter 3, p. 87–104.
[30] See Chapter 1, p. 36–44 and Chapters 8–9.
[31] See Chapters 5, 8, and 9.
[32] Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte: ein Beitrag zur modernen Verfassungsgeschichte* (Liepzig: Duncker and Humblot, 1895), 42.

shown that proper protection of religious freedom in a country is strongly associated with other freedoms, including civil and political liberty, press freedom, and economic freedom, as well as with multiple measures of well-being. . . . [W]herever religious freedom is high, there tend to be fewer incidents of armed conflict, better health outcomes, higher levels of earned income, prolonged democracy, and better educational opportunities "for Women."[33] Religious freedom, writes leading Catholic scholar Richard Garnett, "is a crucial aspect of the common good, one in which – like clean air and safe roads – everyone has a stake."[34]

THE STORY AND ARGUMENT TOLD HERE

This volume offers nine interlinked studies of these intertwined developments and guarantees of human rights and religious freedom. The chapters range from analysis of rights and liberties in the earliest ur texts of the Western tradition to the latest machinations of the high courts of Europe and the United States. Chapter 1 retrieves and reconstructs the gradual emergence of rights and liberties in the teachings of the Bible, classical Roman law, medieval canon law and civil law, the Protestant Reformation, the Anglo-American common law tradition, and modern national constitutions and international human rights documents. It focuses especially on the contributions of Christian ideas and institutions to rights and liberties throughout much of this historical development, as well as the contributions of Enlightenment liberal and republican thought in more recent times.

Chapter 2 zeroes in more closely to offer a lengthy study of the development of rights and liberties in the Anglo-American legal tradition from Magna Carta, in 1215, to seventeenth-century England and its colonies leading up to the American Revolution. Since the fourteenth century, Parliament and the English courts treated Magna Carta as a source of due-process rights as well as sundry other religious and civil freedoms. In the sixteenth and seventeenth centuries, English Puritans and American colonists gradually developed expansive new Magna Cartas in the forms of written bills and bodies of rights that were eventually echoed in American state and federal constitutions.

Chapter 3 retrieves the long-deprecated teachings of the Protestant Reformation regarding natural law and natural rights, and reconstructs the reformers' role in the development of human rights, religious freedom, and democratic revolution in early modern Protestant lands. Lutherans, Anabaptists, and Calvinists alike made notable contributions to the expansion of public, private, penal, and procedural rights and liberties, which they eventually enumerated in written declarations, charters, and

[33] Brian J. Grim, "Restrictions on Religion in the World: Measures and Implications," in Allen D. Hertzke, ed., *The Future of Religious Freedom: Global Challenges* (Oxford: Oxford University Press, 2013), 101. See further Chapter 5, p. 167–69, 295–96.

[34] Richard W. Garnett, "Religious Freedom and the Churches: Contemporary Challenges in the United States Today," *Studies in Christian Ethics* 33 (2020), 200.

constitutions. The pervasive and persistent breach of these fundamental rights and liberties by a political tyrant, some Protestants further insisted, triggered the fundamental rights of resistance, revolt, and, if necessary, wholesale democratic revolution, as took place in the Netherlands, England, Scotland, France, and America.

Chapter 4 offers a close study of the 1780 Massachusetts Constitution and its amendments to illustrate the tension between inherited European political traditions of establishing one form of Christianity by law, and the emerging American experiment of granting religious freedom for all faiths. The chapter further shows that in early America, the disestablishment of religion did not necessarily mean the secularization of society or the erection of a high and impregnable wall of separation between church and state, religion and politics. Even after outlawing religious tithes and oaths and ending bald discrimination against religious minorities, the Massachusetts Constitution retained strong established forms of virtue, morality, religious education, and public ceremony, all of which the state's founders considered essential to the protection of constitutional rights and liberties for all.

Chapter 5 places this Massachusetts story within the fuller context of the American founding era of 1760 to 1820. In this period, the American founders developed six essential principles of religious freedom – liberty of conscience, free exercise of religion, religious pluralism, religious equality, separation of church and state, and no establishment of religion. They wove these principles into the new state constitutions as well as into the First Amendment to the US Constitution. The founders treated religious freedom as the "first freedom," which helped ground correlative constitutional freedoms of speech, press, and assembly as well as other enumerated rights to property and household, civil and criminal procedural rights, due process of law, and more. They also set forth a constitutional and cultural ideal, albeit often breached, that all persons of any faith and of no faith must enjoy religious freedom and other constitutional rights as fully as possible, with courts and legislatures alike tasked to resolve conflicts between rights.

Chapters 6 and 7 offer two studies of this American experiment of religious freedom in action, illustrating some of the trends in the US Supreme Court's 240 plus cases on religious freedom, most of them since 1940. Chapter 6 studies the complex and shifting run of seventy-five US Supreme Court cases dealing with the role of religion in public schools, the role of government in religious schools, and the rights of parents and children to religion, speech, press, assembly, and tax benefits in education. Questions about religion and education have provided the most active laboratory for Supreme Court religious freedom jurisprudence and have produced many of the Court's strongest opinions on separation of church and state, religious neutrality, free exercise of religion, and equal access and treatment of religion and nonreligion. This topic will remain a perennial frontier of litigation about religious freedom and human rights.

Chapter 7 takes up the nitty-gritty issue of tax exemption of religious property, an ancient privilege in the Western tradition going to biblical and Roman times, but

now under growing attack in America. The current fight over the constitutionality of religious property-tax exemptions illustrates the tension between federal and state laws, free exercise and no establishment of religion, and treatment of traditional and new religions. It also tests concretely the costs and benefits to the individual and society of granting religious exemptions from general laws, and tests the ancient teaching of the common law and equity law that religious property exemptions relieve the state of burdens it would otherwise have to discharge at taxpayers' expense.

The final two chapters study the parallel religious freedom and broader human rights jurisprudence of the two pan-European courts: the European Court of Human Rights, in Strasbourg, which has poured out more than 170 cases on religious freedom in the past three decades, and the Court of Justice of the European Union, in Luxembourg, which is rapidly emerging as the new boss of religious freedom. The religious landscape of Europe has changed dramatically in the past two generations. Traditional Christian establishments have been challenged by the growth of religious pluralism and strong new movements of *laïcité* and secularism. Massive new migrations have created tense local intermixtures of old and new religions. Old constitutions, concordats, and customs that privileged local forms and forums of Christian identity and morality have come under increasing attack. These changes have radically reshaped the law of religious freedom not only in individual European states but also as determined by these two pan-European Courts. Interpreting the norms of religious freedom laid out in the European Convention of Human Rights (1950) and the Charter on Fundamental Rights of the European Union (2010), these two courts have been notably churlish of late in their treatment of Muslim, Jewish, and conservative Christian claimants, while often privileging self-professed atheists and secularists. The two courts have repeatedly held against Eastern European Orthodox state policies on religion, even while granting wide margins of appreciation to Western European states that blatantly target religious minorities in the name of secularization and *laïcité*. In particular, the Luxembourg Court has begun to second-guess norms of religious autonomy and longstanding constitutional forms of church–state relations, even though EU laws formally protect them. While many other cases in these two courts do offer ample protection, their most recent cases pose troubling signs for religious freedom and other fundamental human rights.

Throughout these chapters, I have addressed some of the sharp criticisms of religion, human rights, and religious freedom that are now widely in vogue in the Western academy and media. Chapters 1 and 3 take up the rights skepticism of several modern Christian theologians. Chapters 5 through 7 analyze several recent attacks on the historical pedigree and current protections of religious freedom. Chapters 8 and 9 address the escalating attacks on the rights of religious and cultural minorities and the judicial erosion of religious autonomy claims.