ROUND TABLE DISCUSSION ON INTERNATIONAL
HUMAN RIGHTS STANDARDS IN THE UNITED
STATES: THE CASE OF RELIGION OR BELIEF

Edited by
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INTRODUCTION

This report covers the round table which convened as part of a one-day conference organized by the Law and Religion Program of the Emory University School of Law in connection with the visit to the United States by Professor Abdel-fattah Amor, the United Nations’ Special Rapporteur on Religious Discrimination. While focusing on issues of religious rights, in accordance with the purpose of the day’s activities as a whole, the specific objective of this round table was to use this occasion for an examination of broader issues of the domestic application of international human rights standards in the United States. To this end, participants were asked to lead the discussion with a round of brief opening remarks, followed by responses to questions and comments among themselves and from a larger group of observers. In those initial remarks and in the general discussion, participants were requested to address any of the suggested questions sent to them in advance of the meeting, as well as adding their own.

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This one-day conference was convened by the Law and Religion Program of Emory University and sponsored by the Pew Public Religion Project, directed by Dr. Martin E. Marty. The day’s activities began with plenary addresses and a panel discussion in the morning. The main presentations from that morning are published elsewhere in this issue of the Emory International Law Review.

The participants in the afternoon round table discussion, which is reported here, were: Azizah al-Hibri, University of Richmond School of Law; Abdullahi An-Na‘im, Emory University School of Law; David J. Bederman, Emory University School of Law; Thomas Berg, Cumberland School of Law, Samford University; A. Morgan Cloud, Emory University School of Law; Derek Davis, Editor, Journal of Church and State; T. Jeremy Gunn, the National Committee for Public Education and Religious Liberty; Douglas Laycock, University of Texas School of Law; Michael Roan, Tandem Project, Minneapolis, Minnesota; Johan van der Vyver, Emory University School of Law; and John Witte, Jr., Emory University School of Law.
An examination of the relationship between international human rights standards, on the one hand, and the situation in the United States, on the other, would include the influence of American domestic law and practice on the international standards, and the impact of American foreign policy on the application of the international standards elsewhere in the world, as well as the domestic application of those standards in the United States. At this general level, participants were invited to reflect on the following questions:

1. Are the international standards generally seen as relevant or applicable at all to what happens in the United States? Do policy makers, judges, lawyers, and influential public opinion know, or even wish to know, about international standards in general, or how those standards relate to specific issues in particular?

2. Are considerations of what international human rights standards have to say on an issue at all taken into account in public discourse about matters such as, for example, the death penalty, race relations, housing or health care?

3. Beyond this small circle of leaders and professionals, who else is interested (or likely to be interested) in the relationship between international standards and domestic America law and practice at all? In other words, is there a constituency that is already concerned, or at least can and should be cultivated through educational efforts and public awareness campaigns?

4. Conversely, who is opposed to the relationship between international standards and American law and practice, and why? What are the political, cultural, institutional and other impediments to a positive and mutually influential relationship?

In taking the case of religion or belief to illustrate the nature of the relationship between the international stan-
standards and domestic American law and practice, one should take into account the specific features and issues of religion or belief as such at both levels in attempting to generalize about this relationship. That is to say, one should neither overlook the particularity of issues of religion or faith in the international system in general, and in the United States in particular, nor allow that particularity to completely condition one’s understanding of what the relationship might be with regard to other human rights. In this light, participants were requested to reflect on the following questions in relation to religion or belief:

1. What are the key features of the American concept and principles of freedom of religion? Are there regional, state or local variations in these matters? What are the implications of such variations for the relevance or application of international human rights standards?

2. How do the American concept and principles of freedom of religion compare to that envisaged by the international standards?

3. What are the benefits and costs of applying the international standards in the United States?

4. How can the United States seek to influence the theory and practice of freedom of religion or belief globally without applying the international standards in its own territory?

In addressing any of the above-mentioned sets of questions, or whatever other issues they deemed relevant, participants were encouraged to apply an interdisciplinary and comparative approach, and to attempt to draw some research agenda from the relationship between religion and public policy. In other words, participants were advised not to feel obliged to provide definitive answers to any of these or other questions that may be raised during discussion. Indeed, it might be more appropriate to attempt to refor-
mulate questions and comments for subsequent discussion and research.

OPENING REMARKS

In inviting the participants to make their opening remarks, Abdullahi An-Na‘im, the chair of the round table, emphasized the tentative and exploratory nature of the conversation which was to include comments and questions from the audience. While reminding the participants of the set of questions distributed earlier, he also recalled additional issues raised in that morning’s sessions of the conference. For example, An-Na‘im reminded the participants of an earlier discussion about the nature and implications of the neutrality of the state regarding matters of religion or belief: Can the state be truly neutral on these issues? If neutrality in this field is taken to mean complete abstinence from action, would that not simply enhance the hegemony of the religious status quo? Does that risk justify taking a more affirmative or proactive approach to the role of the state in religious matters, at least in some situations?

An-Na‘im also mentioned common perceptions in other countries of the reluctance of the United States to ratify international human rights treaties, and its tendency to enter substantial qualifications to its obligations under the few human rights treaties which it has ratified (technically known as “reservations, declarations and understandings”). Assuming that the reason for the American position is a strong concern with protecting its own sovereignty and desire to comply only with its own constitutional standards and political considerations, instead of being judged by internationally agreed standards, An-Na‘im questioned how that is different from the cultural or ideological “relativism” of countries like China and Iran? Whatever justification the United States may claim for its position, he asked, wouldn’t the failure of the United States to participate in the shared framework of the international human rights
system weaken its credibility in challenging other countries on their human rights record?

Following the order of seating around the table, Abdullahi An-Na’im called on Jeremy Gunn to start the round of opening remarks.

Jeremy Gunn: I would like to offer some comments about the United States and international religious rights standards and the Establishment Clause of the U.S. Constitution. The approach of the United States to international human rights standards is often inconsistent. The United States tends to drag its heels before ratifying a convention, and when it finally does ratify, it does so subject to reservations, declarations, and understandings that essentially exempt the United States from being bound to comply with the provisions of the convention. At the same time, the United States criticizes other countries for failing to comply with international human rights law. Such inconsistent positions should be embarrassing for Americans.

On the other hand, I think it is important to understand that although the United States does not apply the international standards to itself, it nevertheless—with important exceptions—generally acts in accordance with international standards and often exceeds them. Although the United States often goes about ensuring rights in a manner different from other countries, it nevertheless accepts the goal of protecting individual rights. For example, the extent to which freedom of speech is accorded in the United States is much more extensive in the United States than in other places in the world. There are costs to the American approach—including permitting of discriminatory and hostile speech—that are not incurred elsewhere in the world. Although the United States often goes about the protection of rights without reference to international standards, the importance of rights of expression, association, and religion are taken very seriously in this country.
In this light, it is not appropriate simply to condemn the United States for failing to adopt and adhere to international standards. For the most part, rights of expression are protected in the United States in a way that is consistent with international norms. While some criticisms of the United States are appropriate, including its failure to pay its dues in the United Nations and its apparent inconsistency in urging others to comply with standards that it does not enforce internally, this does not mean that one should dismiss the American approach when discussing matters of church and state.

With regard to the Establishment Clause of the U.S. Constitution, the United States follows an approach to church and state that is different from that of most countries in the world. Persons in other countries who have attitudes towards church and state that are similar to the American approach typically are minorities in their own countries. I acknowledge that there is some evidence in international law that states should be permitted to maintain establishments of religion. Statements acknowledging the permissibility of religious establishments are found in the United Nations Human Rights Commission and elsewhere. I would nevertheless argue that state establishments of religion are in fact inconsistent with the standards of governmental noninterference with religious conscience. In my opinion, the argument that state establishments of religion are in accordance with international standards because several states maintain establishments is like saying that capital punishment is consistent with international standards because some states continue to execute prisoners. When a state maintains an establishment of religion it necessarily discriminates against minority religions either by ostracizing minorities or by giving material advantages to preferred religions. Thus, the only way that one could have a religious establishment consistent with international standards is when the benefits to the established religion are so minuscule as to have no practical effect whatsoever.
Michael Roan: Since I am not a lawyer, I come to this discussion from quite a different perspective. I got involved in this field in 1984, when I was the delegate to the United Nations Commission in Geneva on the Declaration to Eliminate All Forms of Religious Intolerance of 1981. At that time, I participated in a two-week seminar on how governments, nongovernmental organizations, and various academic institutions could contribute to developing universal standards on freedom of religion or belief, and adapting those standards to country-specific situations. So, this process has been going on for something like eighteen years. When I returned to my home in Minneapolis, Minnesota, I formed a nongovernmental organization to promote the 1981 Declaration. Our initiative is called the Tandem Project—which stands for “holding our beliefs in tandem with the right of others to believe as they so choose”—with the objective of promoting the Declaration as a universal instrument in various countries around the world. We have put on a number of conferences around the world on this subject, the first one in Minneapolis, Minnesota, in 1986; the second in Warsaw, Poland, in 1989; the third in New Delhi, India, in 1991; and the fourth conference in London, England, in 1995.

My experience has been that, until recently, there has been no constituency for religious freedom other than those who specialize in the topic of First Amendment rights (in the United States context), or law and religion programs like the one here at the Emory Law School, Hamline University in St. Paul, where I am from, and the Center for Study of Human Rights of Columbia University in New York City. Beyond that, religious people themselves have not been active in promoting this universal instrument except primarily those who are being persecuted. The Seventh Day Adventist, the Mormon, the Baha’i, and certain Jewish communities have been interested in promoting religious liberty because they are obvious targets of discrimination. But I am very hopeful about what is happening re-
cently, such as the visit of the United Nations Special Rapporteur to the United States, which gives us the opportunity for this day-long conference at the Emory Law School. I am hopeful that the Rapporteur's forthcoming report, discussing how the 1981 Declaration can be applied within the United States, will contribute to building an international constituency for this subject.

In my view, nongovernmental organizations can cut straight to the chase, and very easily work with this short Declaration—fill it out, write reports on it—regardless of its formal standing under international law as a nonbinding declaration of intent. Nongovernmental organizations can submit their reports on a number of countries to the United Nations’ Special Rapporteur, thereby providing effective means for monitoring compliance with the provisions of the Declaration. Such reports can also be submitted to human rights organs and the religious leaders, as well as to the legislative leadership in each country.

My point for a long time has been that this issue represents the cutting edge, really, in understanding and evaluating the human condition, the human race, everywhere. This Declaration provides for the right to believe in agnosticism and atheism, as well as in religion in the traditional sense. As emphasized by the present Special Rapporteur and his predecessors, the Declaration expose the costs of intolerance and discrimination on grounds of religion or belief. I also strongly believe that building upon that research base has to come both from theology and anthropology, taking into account the enlightenment sciences. In this regard, I note that there are not many philosophers and anthropologist around this table, to join the lawyers and religious people who are concerned with these issues.

It is an incredibly complicated task to get some 185 countries around the world, with their own religious and cultural traditions, to come together and collaborate in applying this universal concept in their respective situations. The
problem is that there is not enough time, staff, or resources available to the Rapporteur to work effectively, as during this two week visit to seven cities in the United States. What he is going to get is just the tip of the iceberg. For example, he has to consider the numerous pieces of relevant local, state and national legislation and their impact on issues. I am therefore particularly concerned with ways of supporting this effort by establishing a voluntary fund to get enough money, time, research and other resources in Geneva, New York, and wherever else the Special Rapporteur may need to visit to do his work.

I will conclude by mentioning an initiative I am trying to assist with at present, which is organizing an international conference that will convene in Oslo, Norway, from the 11th to the 15th of August 1998. This forthcoming conference on Freedom of Religion or Belief, sponsored by the state church of Norway, and all of the beliefs of Norway, along with some of the other Nordic countries, is to consider ways of building an international coalition to provide a voluntary fund to support the work that must be done in promoting the Declaration throughout the world.

David Bederman: Although I do substantial work in the area of classic international law and constitutional law, religious human rights was an area that I had not given much thought to. So, it is perhaps as an intellectual outsider that I am making the following set of observations which, I hope, are linked together at some level. These are very much lawyerly kinds of observations and conclusions, and I concur with Michael Roan's remarks about the need to take a much wider view of these very sensitive and difficult issues. We should seek to bring more people from different disciplines, and different approaches to the discussion.

The first thought: echoing what Jeremy Gunn said earlier, it seems to me that there is an unfortunate emphasis in some of the materials and discussion today on the lack of United States ratification and adherence to international
treaties and instruments. As a great champion of the United States signing onto treaties, I realize that the mere act of negotiating and ratifying a human rights instrument is not what matters ultimately in international law. It certainly is not what matters in American political culture. What does matter, it seems to me, is to have a culture of compliance. Accordingly, one should not overlook, in this forum, some very positive aspects of religious freedom in the United States. To embrace and accept those positive features is neither to gloss over the points of difficulty or the areas of concern, nor to be self-congratulatory or complacent. Rather, it is a matter of accepting and starting at a baseline level which is the American constitutional and civic culture, and a civil society, that does respect religious human rights.

That being said, we have to acknowledge the key societal and legal factors in this debate about religious human rights in the United States. The first factor is that certainly today, but always throughout American history, there is a strong streak of isolationism, and a strong streak of rejecting international or foreign attitudes about what we take for granted within the corpus of our rights. That is clear today in many aspects of international affairs and public debate on a wide variety of issues. This streak of isolationism is very worrisome because it colors many aspects of our discussions and, in some senses, can actually poison them. Combined with this, there is also what I would call constitutional exceptionalism in the United States. As stated most brazenly, this is the notion that we have more than two hundred years of constitutional culture in this country and, by God, we are not going to allow some foreigner or some arid international document to tell us what we know best. This combination of isolationism and constitutional exceptionalism can produce a form of legal absolutism, which is very difficult to counteract in many respects. In any case, we have to accept this reality, in its positive as well as negative aspects.
What does constitutional exceptionalism mean for a discussion of religious liberty in the United States? It means in essence that our constitutional culture is premised on the notion of the neutrality of the state, specifically that government does not support any religion. This is contained in an explicit constitutional provision known as “the establishment clause,” but all of this is all part and parcel, I think, of the fact that American constitutionalism is founded on the notion of negative liberty. According to this understanding, as Americans we expect our government not to interfere in our lives. In relation to religious liberty, this is reflected in the dynamic tension between the establishment clause, on the one hand, and the “free exercise clause,” on the other. To understand American attitudes about the establishment clause and the notion of negative liberty (from state intervention), one needs to realize that these matters are rooted in a constitutional culture which was created intellectually, in large part, 220 years ago. In essence we have not broken away from that, and we do not need to, in my view. Unlike many polities in the world which are wracked by dissension, often at the level of religious or ethnic conflict, we have been fortunate to have largely, but not completely, escaped that in the United States. As a consequence, we never have to re-examine that issue.

Professor Gerald Neuman of Columbia University raises the possibility of forging an explicit link between international human rights instruments and legislation in this country, first through the proposed Religious Freedom Restoration Act (RFRA), and now through the Religious Liberty Protection Act (RLPA). Are there international bases for such a proposition? It seems to me that this would be politically lethal, largely because of the factors I mentioned earlier: strong opposition in Congress and the Administration to the incorporation of international standards which are seen as ultimately dangerous and counter-productive.
I am also concerned, from a general constitutional law doctrine perspective and in view of recent case developments, that to attempt a direct incorporation along these lines would impose a substantial cost on the entire human rights agenda in the United States. Consequently, I suggest that we should not attempt such a linkage, even if it were politically feasible, which it is not, because so much would hang in the balance regarding the overall integration of international law and domestic law. To put so much emphasis on international human rights standards regarding religious freedom would be very problematic in my view.

Finally, regarding Professor Laycock’s discussion this morning (during an earlier panel) that we are not fighting so much about outright religious persecution, or even the most difficult manifestation of cultural wars. What we are really talking about is how to balance a combination of religious beliefs with what is otherwise a secular political culture in the United States. I perhaps have a different view from others around this table in that I approach this from a fairly secular perspective. I do worry that establishing or providing for substantial religious accommodation from laws of general application would be problematic for the overall fabric of civil society in this country. There is a popular notion that one should not wish for things that one may not really welcome in case they should happen. In my view, to wish for the basic undertaking in RFRA or RLPA may bring some serious unintended consequences. For instance, judicial intervention in many cases will have to address, as Professor Laycock indicated in the earlier panel, very difficult and sensitive issues: What are religions? What belief structures warrant invoking the protection of RFRA or RLPA? What constitutes substantial infringement of religious interests? This last question alone is amazingly difficult and complex. In a sense, by opening the door to combinations of law and religion, we may actually be shutting some doors that we do need to keep open.
Johan van der Vyver: I would like to make three points. First of all I have the feeling that, as far as international human rights are concerned, things are going terribly wrong in the sense that there is a marked decline in the significance that is afforded to international human rights law. The United Nations was established on the premise that international cooperation between states is only possible on the basis of certain principles, one of which is respect for fundamental human rights. In the first twenty years of its existence, the United Nations was largely engaged in establishing human rights norms as they should be observed by all states. During that period, the United Nations succeeded in establishing a fair degree of consensus on the treaties and conventions that were anticipated by the Universal Declaration of Human Rights of 1948. When the United Nations began its implementation and protection phase after about twenty years, some countries began raising objections based on their respective cultures and traditions. So, who is to blame for what has gone wrong?

In the first place, I will put some blame on the human rights community as such, because the purpose of the United Nation’s human right agenda was to identify those rights and freedoms which are not only fundamental, but also accepted as such by a cross section of the nations of the world. Consequently, one should not insist on including too much in human rights treaties. For example, in my view, the right to change one’s religion or belief should not be incorporated into a binding convention. This is one of the most controversial issues in the arena of religious human rights and one as to which there is insufficient international consensus. Human rights advocates were too eager to include a wide spectrum of human rights norms in enforceable conventions, and since states did not wish to be seen to oppose principles which are being marketed as particularly fundamental, they agree to some human rights decrees without a genuine commitment to abide by them.
This brings me to the actors in the process of norm creating and implementation, namely, the states themselves. When these conventions and declarations are being negotiated, states who participate ask themselves: which principles can I live with within my own community? The Rights of the Child Convention, for example, was adopted without vote, that is to say, unanimously, and received the minimum number of ratifications required for it to come into force within eleven months of its adoption, which was a record. By now this Convention has been ratified by all the members of the United Nations except Somalia and the United States. Why does the United States refuse to ratify that document to which its own representatives have agreed? The criticism leveled against the United States is that its delegates agree within the United Nations setting to principles which they are unable to persuade their own national authorities to ratify, as can be seen in open disagreements between the State Department and the Foreign Relations Committee of the Senate of the United States. In this way, attempts at creating universal acceptance of the norms provided for in these documents are frustrated, first by refusal to ratify, and second by extensive reservations, declarations and understanding attending human rights instruments of ratification.

The second point I wish to touch on is the question of state neutrality or state involvement in matters of religion. I think it is safe to say that there is not a single state in the world today that consists of a religiously homogenous community. Even if 99.99% of the population are Catholics, Muslims, or Lutherans, there would still be that .01% of the population which is not. I have often heard the majoritarian argument being made in support of imposing through state action a particular religion upon a community by saying that it is the will of the majority. But we must always remember that the human rights paradigm is concerned with protecting the minority against the majority. So, in countries where the state is committed to a particular
religion or church, the human rights perspective is concerned with minorities in that community which may feel threatened by the state commitment to the particular religion. States upholding a particular religious commitment often claim to be tolerant toward other religions, but the notion of toleration in itself reflects a condescending attitude.

I want to conclude by telling a story from my own country, South Africa. The new South African state has decided to be religiously neutral. The Constitution of 1996 upholds that principle, except that toward the end of the preamble of the Constitution, it cites the first line of the South African national anthem, Nkosi Sikelel i’Afrika ("God bless Africa.") This phrase can be seen as offensive to nontheistic religious communities, including the Buddhists of South Africa. When the Constitutional Court recently had occasion to give a judgment on the issue, it decided that a similar reference to God (in the Constitution of the Western Cape in this case) does not constitute a violation of freedom of religion, because it is only symbolic or a ceremonial term. This phrase, it was held, does not mean God in a Christian sense. One can imagine how offensive this may seem to the Christian community, telling them that the God they wish to testify to is not really God; it is just a secular symbol. This judgment illustrates the impropriety of references to God in a political instrument. Those who, for religious reasons, insisted on proclaiming the Constitution in the name of "Almighty God" saw the fruit of their efforts becoming an insult to their God.

Azizah al-Hibri: I wish to begin by returning to a point that was raised this morning. The real tension in the United States these days, is not among the different religions, but between secularists and religious people. And what does that tension imply? One thing it implies in my case, for example, is that I am not too concerned about raising the wall of separation between Church and State. Some people might think that because I am from a minority religion, the higher that wall, the better for me, but that is
not true at all, as far as I am concerned. I would rather live in a religious society which practices tolerance, than in a secular society (with materialist secular ethics) that allows me to go on trying to live in my own little enclave as a person of faith.

I would also like to say that sometimes there is oversimplification in the way we talk about the United States as a secular society. Many of us speak at times about the Judeo-Christian ethics or tradition of our legal system. It seems that we are trying to have it both ways, secular and religious, and yet we can not have it both ways. In fact, despite all claims of secularism, those who speak about our Judeo-Christian heritage are quite correct; but not completely. Their way of speaking is a bit exclusive. I would argue that the heritage of the American legal system includes Islam, and there are on-going studies which hopefully will support this claim with respect to the thinking of some founding fathers. You may be surprised to know, for example, that Jefferson had a copy of the Qur'an in his library, and that some slaves were literate Muslims.

What does that have to do with us today, regarding, for example, RFRA? Some of us may think that it is a good thing to throw wide open the field of religious identification so as to make it available to any group that desires it. But such an approach could seriously dilute the meaning of "religion" and "spirituality" in our society, and ultimately result in a secular-like one. It will also lead to a totally fragmented society. For this reason, as I said earlier, some of us would rather live in a Christian society where basic ethics consistent with those of our religion exist, than live in a totally fragmented society resulting from an extreme separation of Church and State. I just wanted to express these thoughts which are highly controversial, but we can talk about this issue another time.

The other thing I wanted to talk about very quickly is the international human rights instruments with which we are
all concerned. Frankly, there is a part of me which believes that I don’t care if they are ever ratified. And why is that? Because part of me actually is not really talking about what is happening in the United States, but rather about the experiences I went through abroad. I witnessed undemocratic processes being used by women from or working with American nongovernmental organizations. These women claimed to be defending human rights and women’s rights, but they were in fact violating these rights with abandon by trying to achieve their platform through manipulation and, at times, coercion. In fact, it is no secret that many women at the Fourth World Conference in Beijing complained about the Platform and the methods used to get it approved. At the grass roots meetings I attended in one region of the world, to prepare recommendations for the Beijing platform, similar problems arose. In those meetings, there were serious violations of democratic process. For these reasons, I find it hypocritical to talk about human rights when the very process that was supposed to define and assert them involved violations of human rights. I only hope that we can all learn from these experiences and follow more democratic processes in the future to build a truly international consensus on the issue of human rights.

Abdullahi An-Na‘im: I will just make three points. One relates to what Jeremy Gunn and David Bederman said to the effect that what really matters is that there is a culture of compliance in the United States. But the question is whether this is all that the human rights movement is about? Isn’t this movement primarily concerned with constructing a common standard of achievement for evaluating national compliance? Without an international process for negotiating binding treaties to be used in monitoring compliance, what would be the benchmark, or the standard of achievement by which national standards are governed?

My second point draws on what Johan van der Vyver said. If the United States is saying we will comply with human rights norms, and we will comply even better than
you will, but we are not going to ratify international treaties on the subject, why participate in the drafting process of those treaties in the first place? As van der Vyver indicated earlier this morning, American delegates are accused by their counter-parts from other parts of the world of weakening proposed drafts on the grounds that the U.S. Senate will not approve ratification of the stronger version, and yet the American government refuses to ratify even the agreed weaker text. In this regard, I wish to emphasize that the rationale for refusal to ratify that is articulated by the U.S. Congress and American public opinion is protection of American sovereignty, rather that claims of better compliance as such.

Finally, van der Vyver placed part of the blame on the human rights community itself for rushing into formulating standards which lack sufficient consensus around the world. In making the same point earlier this morning, he said that the Convention for the Elimination of All Forms of Discrimination Against Women is problematic because it has created standards on which there was no consensus. My question is whether the international human rights movement should attempt to create and promote consensus or always accept the status quo? Is an existing consensus a prerequisite for making international standards, or can developing those standards be part of the consensus-building process?

*Thomas Berg:* Some of what I have in mind has already been said. On the question of why the United States is not cooperating with the international human rights movement, many factors can be mentioned, factors that I do not accept as sufficient excuse for us. However, I do want to draw on what Professor van der Vyver was saying, and wonder to what extent some of the American position is attributable to the fact that the human rights documents reach into areas where there is no consensus, or in areas where there are conflicting human rights without clear or
obvious reason why one should take precedence over another.

To illustrate the point, let me refer to the Convention for the Elimination of All Forms of Discrimination Against Women, which the United States has not ratified. It defines discrimination against women in Article 1 as “any distinct, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women on the basis of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” And the undertaking of all States Parties to the Convention, under Article 2, is to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women” in all the ways and means specified therein. Article 5 of the Convention requires State Parties “to take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotype roles for men and women.” Other similarly extensive provisions of this Convention can also be quoted here, but I think my point is clear enough.

That is not only an extremely ambitious agenda, but—to the extent it requires the elimination of private prejudices—it also runs into areas where rights of freedom of religion and other kinds of rights are in conflict with it. So my question is whether part of the problem is that the human rights movement is over-extending itself in that regard. It seems to me as if human rights are presented as a kind of secular worldwide religion in itself—a total world view—instead of having the less ambitious goal of being a framework in which some basic rights can be respected, but beyond that, different cultural communities can continue to
pursue their own different ways of understanding and behavior.

Douglas Laycock: If I can capitalize on what a couple of people have said about the record of the United States, the U.S. record is generally very good on political and religious matters. It is the international law record of the United States that is terrible. The United States often refuses to ratify, and when it does ratify, it qualifies its ratification with so many reservations, declarations, and understandings, as if to say it is not going to comply with the ratified treaty, and it sometimes refuses to submit to the jurisdiction of international tribunals. All of that has very little to do with the religious and political human rights record of the United States.

There are other areas of the international human rights agenda where the record of the United States is much worse. Besides the question of the capital punishment, we obviously do not subscribe to the economic, social, and cultural rights specified by some human rights documents. There are also issues in the area of criminal procedure where the American record is very bad, although my guess is that the United States is not worse than most other places in the world. But the essential point here is that religious and political human rights are relatively well protected in the United States even though we do not submit to international mechanisms for their protection.

There is one additional reason no one has mentioned why the Senate of the United States is afraid to ratify human rights treaties. If we ratify a treaty in this country, it might actually be enforced. We are the only country in the world with an independent judiciary that has the power to strike down acts of Congress and acts of state legislatures and a long tradition of actively doing so. The American position is that, if these fuzzy ideals are written into law, they will be actually enforced. It is true that the courts do not always enforce; we have constitutional clauses that are ig-
nored and never enforced whereas other clauses are enforced and other clauses are enforced quite vigorously. But separation of powers and judicial review in the United States mean that we do not have the option that a lot of countries have of ratifying treaties on paper and ignoring them in practice. I assume that Iraq has ratified a lot of international treaties, but there are no independent enforcement mechanisms in that country that would make ratification meaningful.

If are not willing to turn the vague language of human rights treaties over to be enforced by 700 life-appointed federal judges, why not withdraw and let the rest of the world protect human rights in its own way? That is a fair question, but part of the answer is that the premise of the question is not entirely true. There are multiple political factions within the United States on these issues. The international human rights community within the United States is strong enough to get the government to send delegations to these conventions that faction attempts to take these treaties seriously enough, and sometimes eventually succeeds in badgering the Senate into ratifying some treaties, though subject to numerous reservations, understandings, and declarations. But the human rights community in the United States is not strong enough to defeat the reservations, understandings, and declarations, or to make the treaties self-executing, or to submit the United States to international enforcement. There are people, particularly on the right but some on the left as well, who really do want to have it both ways, who want to tell the rest of the world how to run their human rights affairs while being totally independent on our side. But much of this apparent hypocrisy is a product of different political factions who can succeed in controlling different organs of governments because of the doctrine of separation of powers.

A couple of the things to add, very quickly. Adding an establishment clause to international human rights docu-
ments would not help with the attitudes of the United States regarding ratification. A few people, are strong supporters of the establishment clause. But the fact is, this clause is very controversial in the United States, too.

Earlier this morning I said that the real conflict in the United States is between high intensity and low intensity attitudes toward religion, and I related that characterization to matters of assimilation in the mainstream culture. Conflicts between Protestants and Catholics diminished with the lowering of the intensity of attitudes on both sides, especially after Vatican II. Obviously, negative attitudes persist toward Muslims, as colored by international politics, events in the Middle East, and so forth. But a lot of these issues have to do with lack of assimilation and with intensity of belief. Many Americans can deal with the idea of a Muslim in the abstract, but can not deal with Muslims when they show up for work in robes and scarf, but they have to. These are cases which religious individuals ought to win in court and be litigated, because failure to assimilate provokes reaction.

Finally, we are not going to solve the problem of exemption from regulatory laws here today. I would just say that in a pervasively regulated society such as this one, one can always draft an ordinance in neutral terms, without mentioning religion, and yet be able to use it against any religious body one wishes to attack. Neutrality of language is not sufficient protection in a society that is so heavily pluralistic and pervasively regulated.

**Derek Davis:** I am fascinated by this wonderful discussion. I question whether international human rights standards can ever be realized in any significant way, but I basically support the movement. In my view, the international human rights documents that have been executed since 1948 are some of the most significant developments of this entire century.
But, if I may go in a slightly different direction here, I see some obstacles or possible impediments to the realization of some of the international human rights standards. As I look at the human rights documents, I think I can safely say that they are basically embedded in the world view of liberalism. They seem to espouse liberal notions of the rights and human dignity of every individual person as pitted against political entities, because every person has certain inalienable individual rights that stand beyond the reach of human government. All of these documents seem to adopt that basic enlightenment liberal framework, which I personally celebrate. But there are some movements in our midst today that seek to displace that kind of basic liberal framework. For example, there is a large communitarian movement, as we might call it today, that would suggest that liberalism is essentially self-destructive and leads to social chaos and atomizes the individual against the community as well as governments. This view maintains that human happiness can only be realized through participation in community. As I think about it, the communitarian movement is not just a move toward joining community, but rather toward consolidating community. For example, I see many in the United States promoting the idea of a religious base or foundation, Christianity specifically, as the basis for communitarian movement here. So, I see that as one obstacle because the basic framework of the human rights documents clashes with the communitarian movement.

We should also be concerned about postmodernism. I see a clash there as well because contrary to the modern enlightenment world view, which is built on the idea that there is “truth” that can be ascertained—whether through science, revelation or a combination of these and others sources—the post modernist movement for the most part tells us that there is no truth. We can never really get truth. So, the present human rights documents, which are founded on the liberal enlightenment notion that there is
truth, are in conflict with post modernism which holds: if there is no truth, why should we be concerned about protecting people's rights to engage in the pursuit of truth. Why should we protect religious liberty?

Finally, on the establishment clause, I am not sure it is possible to protect religious liberty without something like a nonestablishment provision, as a corollary to free exercise protection. In the United States we can say that we are neutral about religion because we have an establishment clause that puts the brakes on any religion attaining legal supremacy, including Christianity. I am a Christian myself, but I am also really concerned that the Christian community would steamroll every other Christian tradition in America, given the opportunity to do so in the absence of the establishment clause. Without the protection of this clause, I am confident that Christian majoritarianism would be a real threat to religious minorities throughout this country.

Morgan Cloud: Other panelists already have spoken about many of the topics I had planned to address, so I will limit my comments to one issue, which I think is relevant to the task of the Special Rapporteur, and will be interesting for a group like this one. I propose that right now, in 1998, United States lawmakers, law enforcers, and federal judges are less likely to turn to international law norms, and even to international treaties that our country has ratified, for guidance in their work than at any time since the Second World War. I think that the reason for this current lack of interest in international standards is not simply an historical tradition of isolationism. In part, it is also the product of post-Cold War realities.

Compare 1998 with 1948. In 1948, contemporary events forced the United States to look outward. The adoption of the Universal Declaration of Human Rights in 1948, on the heels of the Second World War, not only reflects a recognition of the need for international action, but also reveals a
recognition of the value of international wisdom of a set of very important issues. And the cold war was an external force that made the United States think about what we needed to do to make other countries agree with us—we needed allies in that bipolar world. The Vietnam War reenforced thinking about external sources of influence on American policy. Moreover, the Vietnam War, and before it the civil rights movement, shook the faith of many people in the moral superiority of this country. Those events certainly dispelled any notion of moral perfection. Those are just examples of the variety of factors that encouraged an lead to enhanced interest in internationalism in the United States over the twenty years or so after the Second World War.

Today, the dynamic is different. The cold war is over, and since 1989 a lot of American citizens have traveled to eastern and central Europe and have come back feeling they have seen first hand evidence that we were right to wage the Cold War. Socialism is seen to be defeated, and the American model prevails. This feeling of superiority is augmented by economic and military realities in which the United States seems to be standing atop the heap at this time. I think in the context of all of those social and political factors, it is not surprising, given the tradition and history of isolationism mentioned earlier, that the United States is not vigorously embracing international norms. In fact, I would say that acceptance of international norms by the United States is less likely right now than at any time in the recent past. Moreover, I do not expect that to change until we have the next war, the next economic crisis, or something like that.

John Witte: Martin Marty suggests that the common phrase, “It takes a thief to catch a thief,” has great pertainence to the religious world; it takes a person of true religious belief and devotion to appreciate the religious belief and devotion in others. That basic notion is also very suggestive for what has to occur in the human rights movement for the protection of religious liberty and belief around
the world. As Michael Roan has urged, the field of religious liberty needs the engagement of religious groups, theologians, philosophers, and others who have wrestled deeply with some of these questions. Part of the “softness” of international and domestic religious liberty law is the lack of articulate, systematic, and not entirely neutral voices of religious communities. When their own religions are at stake, their own faith is at risk, when they are facing their own particular zoning problems or challenge to their tax exemption, people of faith will come out clearly in support of religious liberty, and strive for more rigorous principles and precepts.

Second, I want to make sure that we do not lose in this discussion a few of the dialectics that Douglas Laycock lifted up for us. One of them is this universalism/relativism debate and its analog in the American context between federalism and anti-federalism. We have played the universalism/relativism game in the United States for over 200 odd years, trying to define national norms (that is to say, universal for the United States domestic context) of religious liberty, among others, and margins of appreciation for other groups at the state and municipal level. I think the kind of negotiation back and forth between the national, state and municipal governments about religious liberty questions, using due process analysis, of aggressive application of separation of powers principles, more stringent application of standing requirements, has enormous relevance for the later national law of religious liberty.

There are some universal trumps, that is, matters on which we insist that the international community should comply. But the margin of appreciation also has to be given a great deal of recognition and respect, and in that sense, American isolationism is in part an invitation to think creatively about what that margin of appreciation might be.

Thirdly, a gloss on Laycock’s dialectic of high and low intensity of religious sentiments. A related issue concerns
whether a claim or burden lies at the core of a faith or at the margin. There are instances, (as in Yoder) where the Supreme Court is almost saying: this kind of activity that you want to engage in, or this kind of claim that you are making, is core to your faith, and therefore you can be excused from general regulations. In another instance (as in Amish) the Supreme Court is saying: we are not quite sure that what you are claiming is a religious claim, because though it is sincere and made in good faith, but it is not really so central to your faith that if it were abridged by this general regulation, you could not continue with your religious life.

Fourth, the definition of religion is the unavoidable question, that Professor Amor and Professor Laycock both brought up in their plenary speeches this morning, and should also be part of our discussion. Fairness compels the broadest possible definition of religion so that every religious claim, and claimant, has a place in court of public opinion, if not a court of law. But prudence compels a narrower definition of religion so that not everything becomes religious, and therefore nothing gets special religious protection.

**GENERAL DISCUSSION**

Some of the following remarks were made from the floor, and others by the participants in the round table. But since it has not been possible to identify the speakers from the floor when transcribing the tape recording of the session, some of remarks are reported below are not attributed to named persons.

*Rev. Susan Henry-Crowe* (Emory University Chaplain): I have three comments more than questions, but some of them may prompt some conversation. The first thing I want to say relates to the importance of ratification of international human rights treaties and their domestic appli-
cation. For children, women and religious minorities, it is better to have some standards than not to have them. Even if the international standards are overly ambitious, as van der Vyver claims, it is better for me as a woman to have them than have nothing. Regarding religious minorities in particular, though the United States is not a Christian country in constitutional terms, culturally we are. So international standards are important for the protection of religious minorities.

My second point relate to what Laycock said about assimilation. That may have made sense between Protestants and Catholics in the Christian community at large, but I do not see it as a possibility in a more pluralistic community, where you have Muslims, Christians, Jews, Hindus, and so forth. In my view, assimilation can be, in some ways, very offensive in the context of a conversation about religious liberty.

The third point I want to make is that, during my seven years of service as a Methodist minister at Emory, which is a Methodist school, we have learned a lot. But one of the most important things that we have learned is that respect is probably more important than tolerance for inter-religious relations. That is a good Methodist principle, actually. Wesley talked about latitude and moronism, which really is the principle of respect. In my view, respect is one step beyond tolerance. We have twenty-four religious groups on the Emory campus, including four Jewish groups, one very diverse Muslim group, with members coming from different countries, with all of the conflicts and tension that one can expect. It is true that most of my work at Emory deals with high intensity, if not conflict, all the time. I find this situation to be enormously interesting and satisfying and workable, but we really have to learn to be respectful of the other in everything we do. Respect is important, whether in relation to a Thanksgiving service and all the issues the come up in that context, or a faculty person being
asked to allow somebody to get out of the class for religious a holiday.

*Jason Waite* (Emory University law graduate): My question is directed to Professor Laycock and relates to the issue of the possible need for an establishment clause in international law. I would disagree with those who argue for an establishment clause in international law for two reasons, both the pragmatic reason of the type of uncertainty we find in U.S. establishment clause jurisprudence, and also because I believe that the establishment clause is designed as a means to an end—the end being religious liberty which is already protected under international law. I am asking you for some wisdom on this subject, and maybe your answer could combine reference to where U.S. establishment clause jurisprudence is and where it should be, as well as addressing whether there is a unified principle of religious liberty embodied in the U.S. religious clauses which is protected by international law.

*Douglas Laycock*: I agree that both clauses are a means to the end of religious liberty. But that statement is often used as a code phrase for something else which you may not have intended; so I had better give you the long answer instead of the short one. The establishment clause and the free exercise clause appear in the same sentence in the Constitution of the United States. The founders were not confused or contradicting themselves, and it was not a case of two contending factions getting its own clause included. Rather, the same political faction demanded both clauses, and most of the political support came from evangelical churches.

So, yes, these two clauses combine to protect religious liberty. But, I think the establishment clause adds important things that the free exercise clause does not capture by itself. I agree with Jeremy Gunn’s point that religious lib-

\[\text{See Douglas Laycock, *The Benefits of the Establishment Clause*, 42 DePaul}\]
erty would be better protected in other countries with different traditions if they had an establishment clause. But that is obviously far too controversial a claim to pose as an international norm. If we are unable to get consensus on an international norm protecting a person's freedom to change his or her religion, which is most fundamental for an individual person to have, then it seems to me that we are light years away from consensus on an international establishment clause to be realized at under international law.

When I say the way the speaker has formulated the question is a code phrase for some people, I mean this: some folks in the United States say that because the establishment clause and the free exercise clause were designed with the joint purpose of protecting religious liberty, we can therefore ignore the establishment clause, since all the work is done by the free exercise clause. I think that is a mistake. There are genuine disagreements about what the establishment clause means, but that is not the primary focus of today's conference. My thoughts on the big picture level can be found in a recent issue of the Emory Law Journal\(^2\) just last year, if you are curious. But internationally, I think consensus on an establishment clause is a nonstarter. Just consider telling the Israelis to get rid of their established religion.

**Jason Waite:** Couldn't (or might not) the real meaning of the establishment clause be implicit in international instruments protecting religious liberty?

**Douglas Laycock:** No, absolutely not. People are paying taxes to support churches in a lot of countries.

**Thomas Berg:** Tax payments are also something that can be challenged under the religious liberty analysis. I guess

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the problem is that what the establishment clause adds to the free exercise clause, while I think it is important, is also the most controversial aspect of it. Part of it has to do with how broadly one interprets the free exercise clause. But when the establishment clause already adds the more problematic aspects of church-state rules, to try to elevate that up to the international level is really difficult.

Johan van der Vyver: When John Witte was talking about federalism, I was reminded how this institution could also become an embarrassment in international human rights, as it was for the United States. The United States is perhaps unique in the sense that some very fundamental rights are within the jurisdiction of the states, rather than the federal government and legislature. Most countries of the world which have a federal system also have an encompassing bill of rights and a division of jurisdiction that makes it possible to ensure implementation of the bill of rights without serious challenge on federalism grounds. But in the United States, important human rights issues are left to the states. A complaint was brought before the Inter-American Commission of Human Rights against the United States some years ago on the question of juvenile execution. The Commission was constrained to find that juvenile executions per se are unacceptable, but there was a difference of opinion as to the age upon which a person will no longer be a juvenile. The Commission, therefore, avoided a finding on that issue. However, the United States was condemned on the basis of equal protection. The Commission found that since there are different criteria for juvenility and for juvenile executions in the different states, the citizens of the United States did not enjoy equal protection of the law in this respect.

Second, I understand the position of Speaker No. 1, that it is better to have a document and some standards, rather than to have none, and that such a document in itself may help in building consensus in respect of the principles enunciated in it. But, the way in which the international
human rights system operates is to begin with a declaration, which is a nonbinding document whose purpose it is to perform the function of advocacy: to bring the matter onto the agenda, to open up the debate, to establish agreements and disagreements, and explore possibilities of consensus building. When there is a sufficient degree of consensus among a representative cross-section of the countries of the world—not only by counting numbers, but also looking at the different regions and traditions—then it would be meaningful to convert the declaration into a binding treaty or convention. My criticism of the Women’s Convention is that the period between declaration and convention was too short for a sufficient consensus to emerge in order to create a viable treaty. It seems to me, there was not sufficient time between declaration and convention for the matter to have sufficiently matured, for issues to have been sufficiently debated, for advocacy to play its role in building consensus and make the Convention viable.

Concerning the Declaration on the Elimination of All Forms of Discrimination and Intolerance based on Religion or Belief, if one were to ask international lawyers, theologians and persons concerned with religious human rights, I believe that few will say that the time is ripe to transform this declaration into a convention. Why not? Because there still are much differences of opinion regarding its particular provisions. If you push for a convention now, you will get a meaningless convention, one that avoids the real burning issues and with lukewarm enforcement mechanisms. It would be better to wait until the matter has matured and let the debate continue for the time being.

That is why the work of the Special Rapporteur is so immensely important, because he is pursuing the matter in concrete terms. His purpose is to see where are the differences, where are the conflicts, and how can we find the best time to move to the implementation stage so that the declaration can become a binding convention in a revised format. At present, I think the time is not yet ripe, and I believe it
is not going to happen very soon. Let us remember that the Universal Declaration of Human Rights took twenty-eight years before it was ready to be translated into the two Covenants; and a further ten years elapsed before those Covenants entered into force. The international process of law creation and consensus building is slow; and if you try to push it and go too fast, then you end up with a mediocre document with little prospects of effective enforcement.

Michael Roan: Regarding Johan van der Vyver’s remarks, I was going to agree with An-Na’im and now I agree with both of them. I think there are certain issues that are tougher to build consensus on than others. I think that building consensus on women’s rights is much tougher than, for instance, on rights of children. It seems that very few people are against somehow protecting children. So, the convention went through with relatively rapid ease, and there are now more than seventy nongovernmental organizations working in Geneva on the rights of the child, in collaboration with the Committee on Rights of the Child and United Nations staff. The convention on racism went through fairly quickly.

There used to be a lot of discussion on whether or not there should be a convention on freedom of religion or belief. People around this table would remember that for about a dozen years after the declaration was passed, the big question at all of these conferences was whether we should have a convention. One does not hear much of that debate now because we are at that stage of building consensus around the declaration, moving toward a binding treaty. It took us eighteen years to get this declaration through—the work started in 1960, with a seminal study by Krishnaswami of India, and then it started to build up. It wasn’t until 1981 that finally the General Assembly of the United Nations passed the Declaration on Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief. Now, how do you use that instrument to build consensus? My frustration has been that we have not
adequately used this declaration to build consensus. So it is very important that the Special Rapporteur is visiting the United States to give some exposure to the declaration, and really take a look at the issues and the views around the table.

Abdullahi An-Na‘im: If I may interject on this point, to ask us to consider the broader issue of the relevance of international human rights standards in the United States. Is the United States (or should it be) a participant in the consensus building process? Or is it simply saying to the rest of the world, here is our own model of religious liberty, take it or leave it? Another aspect of the same issue is whether one should accept the reluctance of the United States to ratify international human rights treaties as a matter of fact, or should one try to actively promote and encourage ratification and domestic application of international human rights treaties by the United States?

Jeremy Gunn: In my view, it is absolutely true that the United States is part of the international discussion on human rights related to religion, despite the differences between the United States and other countries on this issue. It is true that the United States frequently does not ratify human rights treaties and that it does not incorporate them into domestic law that is enforceable in American courts. That is not the way I wish things to be, but I know the United States is not going to implement international human rights law in the near future. That does not mean, however, that the United States does not have something useful to say or to contribute. I wish the United States would be a more cooperative member of the international community, but it is unfortunately too insular in these matters.

Abdullahi An-Na‘im: My question was in terms of what does the consensus building process require? What does it take for the United States to be a participant in a consensus building process?
Jeremy Gunn: One of the problems with the "consensus-building process" is that it frequently goes nowhere at all. Often the object of consensus building among human rights advocates is merely to draft a document to which all can adhere. But while the drafting is ongoing, the internal situation in the Sudan, China, or the United States remains unchanged. Convention-drafting often becomes a goal in and of itself. It can, however, be modestly useful to engage in discussions about norms and documents as long as one does not confuse the written and spoken word in an international forum with the actual state of liberty in a particular country.

The United States makes an important contribution to human rights by providing internal mechanisms for the protection of rights. The United States, for the most part, is a country that accepts the rule of law and provides citizens with the ability to seek redress in the courts. Those are very positive things, and the United States can contribute to the international human rights discussion by highlighting its accomplishments in these areas.

Thomas Berg: As a teacher of intellectual property, I am familiar with the fact that for decades the United States refused to join international treaties on intellectual property, partly out of the same reasons of chauvinism, assuming that our system for the protection of intellectual property was the best and the right way to go. But in recent years, we have joined some of those international conferences and conventions out of the feeling that it is in our self-interest to do so. In order to have our own intellectual property protected in other nations, we had to join international agreements. In this light, I am wondering whether there are arguments that can be made to convince the United States that it is in our interest to join international human rights treaties that have binding force? Is that a potential line of argument, and what sort of outcome can one expect from that sort of discussion?
Johan van der Vyver: The Law of the Sea Convention is an example of how perceptions of United States interests can influence decisions to accede to international treaties. The United States signed the Convention so that it could become part of its implementation structures.

Douglas Laycock: There are self-interested reasons to ratify economic treaties. U.S. businesses have money at stake in other countries, and so in order to be able to enforce our rights there, we have to ratify a treaty and make it enforceable here. It is hard to see the parallel in the human rights movement where we don’t have self-interest stake, but only a moral stake in how other countries are treating their citizens.

Jeremy Gunn: One area in which there may be interest in the United States in joining with the international community is on the question of persecution of Christians abroad. There has been a growing interest in this issue in the U.S. during the past year. Although this is only one issue, it is something in which even isolationists within the United States are interested. It is an issue that Americans who generally are opponents of overseas involvements may adopt. It offers an avenue for making the international realm more important to Middle America.

Azizah al-Hibri: We have been too concerned about developing adequate legal instruments to protect human rights. It is not enough, however, to simply have lawyers in various countries negotiate these instruments. Effective guarantees can be achieved by creating a global culture of human rights. This is especially important because in many countries there is no democratic process, nor is there a strong civil society. There is a separation/alienation between the people and their governments. In those countries, international dialogue relating to human rights usually take place at the governmental level. The people are neither involved nor heard. One result of this situation is that neither the interest nor the consciousness of the people
is advanced by this dialogue. Worse yet, when the government changes, the dialogue starts anew.

I think there should be a global dialogue at the grassroots level to help build the kind of infrastructure we are talking about here. The dialogue can now be significantly facilitated by the internet and the resultant ease of communication and exchange of information. Instead of preaching at each other what we are not willing to practice (as I indicated earlier in my critique of women’s nongovernmental organizations) or engage in double standards (as the United States is often accused abroad of doing) we may try to build a really solid long-term consensus by opening up a truly global dialogue.

Derek Davis: You [Azizah al-Hibri] are presupposing that enough people care to engage in that kind of dialogue to build this infrastructure that we are calling for. I am not sure that we have that kind of environment right now. I am not sure enough people really care. I think the first step is to convince people that there really is something in there for them. Maybe we ought to be talking about “what is in it for us”—how things can improve in the United States through the integration of international norms with domestic norms. I think we have to convince people that this is part of a larger movement, and that it would be a good thing, though that will not be easy.

In that kind of discussion, however, it is also important to remember that we are not the only “stick in the mud”. There are other countries around the world who have more serious problems, like China for example. So, I am not sure that we in this room should develop a guilt complex on behalf of the United States.

Rosalind Hackett (University of Tennessee, Knoxville): Speaking as an anthropologist and historian of religion, I would like to respond to some of the discussion about how we can generate consensus. It seems to me that the education sector is so vital here. I think that one of the problems
in this country is that young people are not exposed to basic knowledge of other people’s religious traditions. Very few of the students who come into my classes have any of that basic knowledge. So, I think that education is a very important way for building consensus and interest—it can be used to develop a sense of internationalism. The new South African constitution realizes the importance of the education sector, not least for teaching about different religious traditions, as being a way of healing past wounds and creating new nationalism. Having grown up in Britain, I have seen religious education there turned around from being mono-confessional to being very multicultural, and that is indeed making a difference in terms of tolerance of diversity in society. So if education has the power to do that, to develop a strong sense of nationalism, which is often done in this country, then why couldn’t it also be used to develop a strong sense of internationalism. But I don’t see that happening for many of the students who come into my classes from various high schools—if I ask them how many keep up with the world news and following international events, it is continually a minority. I do my level best to change that, but it should start much earlier than at college level.

If I may make a quick second point about the media, and endorse what was said about the internet. I think that these are very exciting possibilities, perhaps, for opening people’s minds to not just why we might like to be connected to the rest of the world, but also why we jolly well should be because it is our moral responsibility—to see how our actions, and their economic implication, can affect other people throughout the world. So, I think it is unconscionable to keep that awareness away from today’s youth. The media has an extremely important role in all of this, especially in a country like the United States, and can be a better tool for developing this international perspective. But because it is market driven, the media now are accessible only to the larger and more powerful religious organizations, which dominate to the exclusion of the smaller
groups. In contrast, in South Africa the new broadcasting policy mandates that every religious tradition has its space, its air time, in order to promote a multi-cultural society. I am not sure how one can go about changing the present negative role of the media in a country like the United States.

Johan van der Vyver: Let me add to what the last speaker [Rosalind Hackett] said, something relating to the experience of South Africa in allocating radio and television time to religious groups. Following the demise of apartheid, radio and television time was allocated to different religious groups on a proportional basis (according to their percentage support). The REMA group wanted to buy extra radio and television time, but its request was refused because it would have violated the egalitarian basis of the South Africa constitutional dispensation.

Morgan Cloud: If we had members of this panel from a different part of society, we might hear the following comment. Someone from a business background might speak of creating an international culture through the internationalization of business and economic life. CNN and Sky-TV and the internet, and so forth, will be the sources of an international culture. But such a culture will be driven by a more powerful set of social forces, economic and business forces, rather than by those of us who are concerned about human rights issues. I wonder how human rights groups are responding to this other global reality?

Azizah Al-Hibri: During my travels, I attended lectures at universities in various countries and talked to some grass root leaders. I discovered that many individuals had a real problem trying to grapple with the issue Morgan Cloud has just posed. On the one hand, people in many countries desire what the United States has to offer in terms of economics, business, and the financial markets. But at the same time, when taking into consideration our system as a whole, these people do not like our business
ethics. Nor do they like what is happening to our children and family structure. I have heard some say “if we cannot take part of American culture and leave another part, then we do not want economic prosperity at the cost of adversely impacting the morality of our society.”

Morgan Cloud: I think the advocates of the position I was probably crudely describing wouldn’t necessarily even be proposing the hegemony of the United States. They might say that market forces in Europe, Asia, the United States, and elsewhere are setting the kind of norms and values and institutions that are essential for the market to work, that the market is going to be the most powerful force against oppression and human rights violations. They may claim that certain kinds of oppression will not survive in this international economy, not necessarily just because it currently is dominated by the United States. I do not know that this correct, but it is an argument that I think is worth thinking about.

Azizah al-Hibri: But the question is how to interpret all of this. What are the political, democratic and human rights implications of economic globalization. One interpretation may draw on recent developments in Southeast Asia to argue that economic liberalization will not necessarily lead to political liberalization and greater protection of human rights. Another interpretation of what is happening in Southeast Asia may draw just the opposite conclusion from the same facts. A couple of years later, as the situation changes, a different set of conclusions and implications may again be drawn. It is not yet quite clear what the market’s invisible hand can do for human rights.

Douglas Laycock: I want to comment briefly on the question of the role of education in public schools. There is some constituency in the United States for international multicultural education, although it tends to be overwhelmed by all of the other demands on the public school. If schools are finding it difficult to teach kids to read and write, how
can they teach them about Malaysia and the other 197 countries in the world today? Which countries should schools cover, and what and how should they teach about them? Though it is clear that this is difficult to do well, there is some constituency for multicultural education. But I think there is no constituency whatever for teaching comparative religion in the public schools. There ought to be one, in my view. But in view of the two-generation-long fight over school prayer, and confusion about whether any mention of religion should be allowed, coupled with the fact that each side is paranoid that its views will be unfairly portrayed, public school administrators will probably be strongly opposed to teaching any comparative religion. Although the courts have always said throughout the school prayer debate that it is possible to teach comparative religion, it has never happened. Nobody actually wants it.

Rosalind Hackett: I am more familiar with issues of religious education in Britain and parts of Africa, than the United States in general, but I do know that California is perhaps leading the way in developing a multicultural religious education curriculum. I think that they are doing this in an intelligent way, instead of teaching about Malaysia or about Iran, it is rather about Iranians in the United States. So the curriculum at a place like the University of California Santa Barbara as well as in the local schools reflects that concern, namely, to study the religious geography of the local communities of the university or school. I think that these efforts are going to be propelled forward by recent developments, such as the CD-Rom by Professor Diana Eck from the Harvard Divinity School, a well funded project to document world religions in the United States. It is called On Common Ground. This CD-Rom has it problems, of course. For example, she privileges Eastern religions because those are the ones she knows best, while African religions, unfortunately, feature very low down the list. She also did not include anything on what is for most people a major characteristic of the American religious land-
scape, namely, the whole scene of new religious movements—sects and cults. This whole field is, of course, one of the biggest challenges to the issues we are discussing here. Perhaps the reason Professor Eck decided not to include these new religious movements even though she talks about religious diversity in the United States is that because they are too problematic.

_Douglas Laycock:_ It is certainly is a step forward that someone has produced good material. There is another good project at Vanderbilt, actually, a joint effort with Vanderbilt and North Carolina, called _Living With Our Deepest Differences_. This project worked with some of the California schools; they found it be an enormously labor intensive process to try to negotiate a curriculum people were willing to live with, but it has had some important successes.

_Michael Roan:_ Part of the problem, too, is who is teaching the religion themselves. We are talking about the lack of constituencies, and I think that this true. But when I was a young kid, I went to Lutheran Sunday School, and they taught me: “Jesus Loves Me, Yes I know, Because the Bible Tells Me So.” Every religion worth its salt started with that, with studies in the Qur’an, or the Talmud, throughout school age instructing children in the own religion. That is the natural urge; it is only human nature for the religious leadership to protect and promote their own religion by educating new leadership within the framework of the same religion. Tolerance may be a low priority, and the highest level of priority will be given to teaching youth about their own tradition. When will the National Council of Churches, the Conference of the Archbishops of the United States, and so forth, say to all the local religious leadership to teach in Sunday School, along side, with equal emphasis and in tandem with “Jesus Loves Me,” that “Human Rights are Good for All,” or something like that.
Douglas Laycock: Many denominations are not even doing their own texts any more. Sunday schools are reduced to making collages; they seem to fear that they will lose kids if they make any demand for serious study. The amount of watering down of religious education in the last generation is truly extraordinary in some denominations.

Azizah al-Hibri: Let me speak on the question of teaching comparative religion in schools. It seems that a lot is actually being taught in schools today about the various religions, though may be not in formal ways. This is a fact that a group of Muslims discovered when they visited various state school systems. They discovered a great deal of negative stereotyping of Islam. The group began a campaign to correct this situation. It started in California by helping develop better, fairer school books. They are now using that experience as a model in the other states. My point is this: while we may be reluctant to deal with the issue of teaching religion in schools, the fact of the matter is that religion is being taught in schools any way. In fact, it is being taught in ways that may not be quite consistent with our objectives. As to Diana Eck's CD-ROM, I think it is excellent, and I am also sure that she would like very much to hear the criticism voiced by the speaker from the floor earlier.

Rosalind Hackett: Regarding negative stereotyping and related problems, this is happening not only in religion courses alone, but also world history courses.

EDITOR'S CONCLUDING REMARKS

Since the following remarks were not made orally during the round table discussion, the other participants did not have a chance to respond to them as such. Exchanges among the speakers could have continued indefinitely because they were all specialists in the field who are also deeply involved with these questions beyond the confines of
their academic disciplines or scholarly interests. But the purpose here is to begin a process of dialogue and deliberation about these issues, rather than to come to any final conclusions. As indicated in the introduction to this report, part of the objective of the round table was to initiate a process of reflection and formulation of some agenda for research and public discourse about the relevance of international human rights standards in the United States in general. It was also stated in the introduction that the focus on questions of religious freedom in this round table should be used to illustrate broader issues of the relevance of international standards in the United States, rather than to exclusively limit consideration to this field in particular. The following comments and questions should be seen in this light.

There is first the question of whether the case of religious freedom is a good or bad illustration of the relevance or irrelevance of international human rights standards to law and practice in the United States. On the one hand, it can be argued that because American jurisprudence and practice are so advanced in this regard, religious freedom is the field in which policy makers and opinion leaders in the United States should feel most confident about a serious engagement with the international standards. As was indicated several times during the round table, this is a field where the United States has a lot to contribute to international discourse about human rights norms and implementation mechanisms. Conversely, on the other hand, it may be argued that the field of religious freedom is a bad choice for an examination of the relevance of international human rights standards in the United States precisely because the American experience is so strong in these matters. As can also be seen from many of the comments reported above, the relevance of international standards will probably be most resisted in this field because American policy makers and opinion leaders feel that they have the least to learn from other parts of the world. A related rationale of resis-
tance to international standards in this field may also be the belief that since the American model is working so well, tampering with any of its elements or processes may actually be counter-productive. The notion here is something like the popular wisdom: if it is not broke, why fix it.

But, it seems to me that both views can benefit from a clarification of the nature and role of international standards of human rights. If these standards are seen as a genuinely global effort to set and implement, in the words of the Preamble of the Universal Declaration of Human Rights of 1948, "a common standard of achievement for all peoples and all nations," then the participation of a country like the United States would be not a matter of narrow calculations of what it standards to gain or lose. Rather, the matter should be seen in terms of the responsibilities of the moral and political leadership of the richest and most powerful country in the world. It is also in the nature of the human rights paradigm itself that those responsibilities of leadership cannot be discharged by either dictating to others, nor safeguarding one's culture and society from the influence of other cultures and societies. Indeed, if either of these chauvinistic considerations were to govern, then it would be other countries who should be worried about the participation of the United States because they are all less able to dictate or influence American culture and society, while being more vulnerable to American will and influence. Yet, there are calls everywhere for more ratification and domestic implementation of international human rights treaties by the United States because human rights advocates believe that to be in the best interest of promoting and protecting human rights throughout the world, including the United States.

Another issue that arose in the discussions of this round table, that can benefit from a clarification of the nature and dynamic of the international human rights movement, is the question of consensus regarding human rights standards. The need for the widest possible consensus is not
inherent in the nature of the human rights paradigm as a collaborative global effort, it is a prerequisite for the effective implementation of these standards. Granted, consensus is not sufficient by itself to ensure the protection of human rights. However, unless one is envisaging the implementation of human rights in other countries through so-called "humanitarian intervention" and military occupation, there is no alternative to building consensus through discourse within, and dialogue between, the various cultural traditions of the world. Without ruling out the possibility of even military intervention in extreme cases to stop genocide, for example, or minimizing the role of a variety of less drastic ways of pressuring offending governments into respecting the human rights of their citizens, one can see that consensus is the most sustainable way of fulfilling the vision of the Universal Declaration.

But to appreciate that consensus is a necessary, though insufficient, condition for the promotion and protection of human rights does not resolve questions about the nature, quality or degree and timing of such consensus. For example, one set of questions may relate to consensus between or among whom: governments, scholars or specialists in academic disciplines, public opinion leaders, or the public at large? Another set of questions can be raised regarding the quality or scope of the consensus that is necessary for a binding treaty to be adopted: Does it have to cover every aspect of the proposed treaty? For example, to what extent can the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women be seen as necessary elaboration on the norms of equality and nondiscrimination already provided for under the Universal Declaration and earlier treaties? What role is this Convention supposed to play in consolidating and enhancing existing consensus, as opposed to promoting and developing new elements and future directions in the protection of the human rights of women? Further questions can be raised
about how consensus on any issue is to be evaluated and by whom?

This round table discussion was so rich and stimulating that one can indefinitely continue to comment on its various aspects and implications. However, since it consisted of a small group of primarily legal scholars who cannot in any way claim to represent the full range of views and perspectives on the issues raised herein, it would be inappropriate to draw any final conclusions from the deliberations of this round table. The object is for this report to initiate, rather than conclude, debate and research on the subject.