My interest in the topic of religious toleration arose when teaching at the University of Texas–Austin and witnessing in the years 2001 to 2008 the pernicious influence of reactionary Christians on both politics and public education in the state. Although some of their conduct might well fall beyond the protection of the principle of toleration defended in this book, reflection on religion and toleration led me to conclusions friendlier to religious belief than I would have imagined before undertaking systematic work on the topic.

Because I am centrally interested in the question of whether there is a moral reason to single out matters of religious conscience for special legal consideration and solicitude, I made the decision to consider moral
arguments deriving from the two major, modern traditions of moral thought—the Kantian or deontological, and the utilitarian—without taking a side with either. This will, I hope, give the conclusion of the argument a broader resonance than would a partisan account of the moral foundations of religious liberty. As a representative of the deontological tradition, I have focused on John Rawls’s account in his 1971 book *A Theory of Justice*, eschewing the later, and to my mind unfortunate, development of Rawls’s views in *Political Liberalism*. The account in *A Theory of Justice* has the virtue of grounding liberty of conscience in considerations with immediate intuitive resonance and it also avoids the later Rawls’s conflation of questions of political psychology and sociology (e.g., how can a liberal political and social order be made legitimate in the eyes of its subjects?) with questions about the correct or most plausible justification of fundamental political institutions. For the utilitarian tradition, I draw on John Stuart Mill, and some more recent utilitarian-derived treatments of liberty of conscience. I also assume, as will become clear, that religious belief always involves some degree of *false* or at least *unwarranted* belief, but unlike some recent writers, it seems to me this fact about religious belief does nothing to settle the question of the scope of toleration. So, too, we can acknowledge that
religion has often been the source of war, civil strife, and persecution, and yet recognize that it has also been the source of courageous resistance to injustice and movements for social and moral progress. Neither the putatively “bad” effects of religion nor the putatively “good” effects of religion will easily settle the question of the moral justification for distinctively religious liberty. Nor will they settle the question, taken up in chapter 5, of when and whether the establishment or disestablishment of religion is incompatible with principled toleration.

Because I am interested in making the argument accessible to scholars outside philosophy, I have largely avoided going into the minutiae of internecine debates among academic philosophers in the various camps. (I have also tried to keep the text free of technical debates among legal scholars.) I have occasionally noted some complications presented by such debates in the notes, but the aim has been to make the text readable by scholars in other disciplines interested in these issues, and perhaps also by educated laypeople.

The text incorporates—though with significant revisions to the account of religion—material from two earlier articles I have written on this subject: “Why Tolerate Religion?” Constitutional Commentary 25 (2008): 1–27, and “Foundations of Religious Liberty: Toleration or

The material in these essays and in other parts of the book has benefitted from presentations on many occasions, including: the ’Or ’Emet Lecture at Osgoode Hall School of Law, York University, Toronto; the Leon Green ’15 Lecture in Jurisprudence at the University of Texas School of Law; a keynote address at the Graduate Conference sponsored by the Department of Philosophy at Virginia Polytechnic Institute and State University; a public lecture sponsored by the Department of Philosophy at Colgate University; the Kline Colloquium sponsored by the Department of Philosophy at the University of Missouri–Columbia; the conference “Respect, Global Justice, and Human Rights” at the University of Pavia, Italy; the Law and Philosophy Workshop at the University of Michigan, Ann Arbor; the MacMillan Center Initiative on Religion, Politics, and Society at Yale University; a session of the Society for Applied Philosophy at the Eastern Division meeting of the American Philosophical Association in New York; the Analytic Legal Philosophy conference at New York University; the conference “Freedom of Conscience” sponsored by the Institute for Law and Philosophy at
the University of San Diego; the Second Annual Law and Religion Roundtable at Northwestern University School of Law; the Legal Theory Workshop at Columbia Law School; and faculty workshops at the University of Chicago Law School (on three occasions), Cornell Law School, Chicago-Kent College of Law, University of Minnesota Law School, Fordham Law School, the Dickinson School of Law at Pennsylvania State University, and Queen’s University Faculty of Law in Kingston, Ontario.

For their helpful comments on some or all of this material, I am grateful to Larry Alexander, Robert Audi, Mitch Berman, Akeel Bilgrami, Anu Bradford, Curtis Bridgeman, David Brink, Emanuela Ceva, Jane Cohen, Stanley Corbett, John Deigh, Rosalind Dixon, Michael Dorf, Christopher Eisgruber, David Enoch, Stefan Fauble, Victor Ferreres, Chad Flanders, Ranier Forst, William Fox, John Gardner, Tom Ginsburg, Naomi Gouldner, Leslie Green, Kent Greenawalt, Abner Greene, Ross Harrison, Scott Hershovitz, Kenneth Himma, Robert Hockett, Tony Honoré, Mark Hopwood, Paul Horowitz, William Hubbard, Shelly Kagan, Avery Katz, David Kaye, Brian Kierland, Andrew Koppelman, Ben Laurence, Ethan Lieb, Adrienne Martin, Richard McAdams, Adam Muchmore, Martha Nussbaum, Michael
Preface and Acknowledgments


The penultimate version of the manuscript benefitted from very helpful written comments from an anonymous referee for Princeton University Press; from Richard Kraut, who kindly taught the material in his seminar at Northwestern University; and from the participants in the conference on the manuscript organized by Damiano Canale and Giovanni Tuzet at Bocconi University in Milan in October 2011: Giorgio Pino, Mario De Caro, Dimitrious Kryitsis, Emanuela Ceva, José Louis Martí, and Lorenzo Zucca.

I am grateful to John Wasserman, University of Chicago Law School class of 2012, for high-quality research assistance over the last two years. Alex Langlinais, a PhD student in philosophy here at the University of Chicago, provided invaluable assistance in readying the manuscript for publication. Rob Tempio at Princeton University Press has my gratitude for his long-standing interest in the project and his support throughout.
Thanks, as always, to Sheila, Samuel, William, and Celia for love, friendship, charm, smarts, good cheer, and inspiration. Grandpa Maurice is probably less friendly to religion than I am, but he still deserves credit (or blame!) for some aspects of the general outlook. The book is dedicated to Samuel, who survived the intolerant and then wrote about it with style and insight.