RELIGION, LAW, AND HUMAN RIGHTS

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INTRODUCTION


There is nothing natural, let alone inevitable, about ordering social and political life around the idea of human rights... Contemporary conceptions of human rights reflect a long process of social and political struggle that might easily have turned out differently.

This essay will briefly examine from a social constructionist perspective the development of the concept of human rights, focusing specifically on the evolution of the relatively new right of religious freedom. The social construction of religious freedom will be delineated, building on my own recent related work (Richardson, 2003; 2004; 2006c), and other writings on the topic of the religious freedom of minority and new religions such as that by Phillip Lucas (2004). This analysis will be used to make an assessment of the overall context of religious freedom in today’s world, especially for minority religious groups and participants.

HISTORY OF HUMAN RIGHTS

Human rights for individual citizens is a new concept that has evolved over the past 100 years into an international norm with enforcement mechanisms that can, in some circumstances, override national norms and laws. This new conception has overcome a rigid focus on state power that had held sway for several hundred years. That focus incorporated a realist notion of national interest with a rigid legal positivist conception of sovereignty (Donnelly, 1999). Nations were expected to retain total power over their citizens, even to the extent of being able to kill them with impunity. Other nations were expected to refrain from interference no matter the egregious nature of the offences being committed against individuals and groups within a given society. Only
if a nation’s national interest was threatened would it even comment on another nation’s actions toward its own citizens, much less consider interfering with those actions. To do anything else would be considered a serious intrusion into the affairs of another nation, something that was *verboten* in the historical context of the times.

Efforts to end slavery in the 1800s and campaigns to protect workers’ rights and ethnic minorities in the early 1900s might be considered precursors of the contemporary interest in human rights, but Donnelly (1999: 71) considers those actions more anomalous than the beginning of a major international movement. He notes (1999: 73) that the charter for the League of Nations that developed in the aftermath of WWI does not mention human rights at all! It was only the horrors of WWII that finally made human rights a matter of concern for the international community. As the systematic genocide of many peoples by the Nazi war machine came to be known, concern grew, even if fitfully, about human rights. That concern managed, once the full extent of Nazi atrocities became known to the general public after the war, to partially overcome the idea of state sovereignty that had allowed the massive genocidal excesses of the Nazis to be carried out.

President Franklin Roosevelt spoke as early as 1942 about the “Four Freedoms” that the war was supposedly being fought to protest. Those freedoms included freedom from want and fear, but significantly for our purposes, Roosevelt also named freedom of speech and worship. In June, 1943 the U.S. State Department had already drafted a document that would serve as the basis for the United Nations, with the writers including an International Bill of Human Rights in the draft. When the United Nations was formed after the war, it moved quickly to codify some of the major concerns that had grown out of the war experience, adopting The Universal Declaration of Human Rights on December 10, 1948. However, the eruption of the Cold War as well as nationalistic concerns by member states deterred serious efforts to enforce the idealized normative human rights statements promulgated by the UN.

The UN, because of pressures by newly independent states in Africa and Asia, did attempt in the 1960s to establish a number of other human rights through such official documents as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Donnelly (1999: 74) lists 38 human rights that are contained in one or more of these three key early documents which spelled out the position of the UN on the issue