

## Human Rights Movement

**Civil and Political Liberties:** The basic liberties we have come to expect in the United States are defined and protected primarily in the Bill of Rights, the first ten amendments to the Constitution, and certain subsequent amendments. These rights as we now know them did not exist until the 20th century, when the Supreme Court extended most of the restrictions on the Federal government to the states through its interpretation of the equal protection clause of the 14th Amendment. The expansion of the freedoms of speech, assembly, and association was led by the labor movement in the course of its efforts to organize unions, and by such notable allies as the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People (NAACP). The Jehovah's Witnesses established the legal foundations of the separation of church and state during the 1930s and 1940s, and the ACLU has carried many such cases since. The ACLU has also pushed out the boundaries for the freedom of expression, fighting literary and artistic censorship.

American advocates of democracy have read the Constitution and the Bill of Rights in the context of the Declaration of Independence, with its ringing assertion "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these, are life, liberty, and the pursuit of happiness." Viewed in this light, the Constitution is an imperfect document, with its acceptance of slavery and failure to enfranchise women. If the Declaration of Independence is part of the American compact, however, then we can understand the development of rights through amendment and interpretation of the Constitution as an unfolding process of attaining the democratic vision inherent in the Declaration. From a beginning in which only white men with property could vote, rights were extended to all white men in the Jacksonian era; to black men with the 13th, 14th and 15th Amendments from 1865 to 1870; to women with the 19th Amendment in 1920; to American Indians with the citizenship act of 1924; to poor people with the abolition of the poll tax with the 24th amendment in 1964; and to people between 18 and 21 years of age with the 26th amendment in 1971.

All these rights were won through struggle. The very existence of the Bill of Rights was the result of the Anti-Federalist pressure from traders, artisans and backcountry farmers. The Civil War was necessary to abolish slavery, establish due process and equal protection of the laws, and win the right to vote for former slaves through the 13th, 14th and 15th Amendments. A long woman suffrage campaign from the end of the Civil War to 1920 was necessary to win women's right to vote. And securing the freedoms of speech, assembly, and religion as we now know them took a less visible but vital series of campaigns in the streets and in the courts during the first half of the 20th Century.

The First Amendment reads "Congress shall make no law . . ." -- in other words, it does not restrict state or local governments. Until this century, the Supreme Court consistently upheld the absolute authority of local officials to regulate or restrict speech and assembly as they saw fit. A key case was presented by the Rev. William Davis, who was arrested for preaching in Boston Common in 1894. In *Davis v. Massachusetts* (1897) the Supreme Court affirmed the ruling of the Massachusetts Supreme Court, which had ruled

that a city can forbid speech in its park with the same authority a homeowner can forbid it in his house. The Industrial Workers of the World carried out a series of free speech campaigns between 1909 and 1915, usually ending in mass arrests and repression. Socialists, labor organizers, and other dissenters continued to assert their right to free speech. In a critical test, the Congress of Industrial Organizations (CIO) attempted to explain the new National Labor Relations Act in 1935 by passing out literature and holding outdoor meetings in Jersey City. Mayor Frank Hague announced he was the law, and ran the organizers out of town. The Supreme Court ruled in *Hague v. CIO* (1939) that streets, parks, and public places were open and protected for public discussion -- without explicitly overruling the *Davis* decision.

Several controversial cases with unpopular defendants brought about the crucial constitutional interpretation which "incorporated" most of the protections of the Bill of Rights into the 14th Amendment's prohibitions against a state denying any person "due process of law" or "the equal protection of the laws." In *Gitlow v. United States* (1925), ACLU attorney Walter Pollak defended Communist Party member Benjamin Gitlow, arrested during the 1919 "Red scare" under New York's Criminal Anarchy Act. Although his conviction was affirmed and the Act held constitutional, in his opinion for the Court conservative Justice Edward Sanford held that the freedom of speech and of the press are among the personal rights and liberties protected by the "due process" clause of the 14th Amendment against impairment by the states. In two cases emerging from the Scottsboro trials -- also argued by Pollak -- the Supreme Court ruled in *Powell v. Alabama* (1932) that the Sixth Amendment required a person charged with a capital crime be provided legal counsel at his trial, and in *Patterson v. Alabama* (1935) that excluding blacks from Alabama juries had deprived Patterson of the equal protection of the law guaranteed by the 14th Amendment.

Jehovah's Witnesses provided a series of important cases on the freedom of speech and religion by their confrontational public proselytizing and their refusal to salute the flag, recite the pledge of allegiance, or serve in the armed forces. In *Cantwell v. Connecticut* (1940) the Supreme Court ruled that the "free exercise" of religion clause in the First Amendment was incorporated by the 14th Amendment, thus protecting a Jehovah's Witness's right to proselytize. And in 1943 in *West Virginia v. Barnette*, the Supreme Court upheld the right of Jehovah's Witness children to refuse to salute the flag, reversing in the middle of World War II its earlier decision in the *Gobitis* case.

The controversy over First Amendment protections and the place of religion in American public life has continued for the past several decades. In *Everson v. Board of Education* (1947) Justice Hugo Black wrote "The First Amendment has erected a wall between church and state." During the 1940s and 1950s this "wall" was primarily a concern of Catholics, who wanted public support for parochial schools. Then with two cases the Supreme Court effectively "disestablished Protestantism as the nation's unofficial religion," in the words of ACLU historian Samuel Walker: *Engle v. Vitale* (1962) in which the Court declared public school prayer unconstitutional, and *School District v. Schempp* (1963), brought by atheist Madalyn Murray O'Hair, in which it declared public school Bible reading unconstitutional. Consequently in the 1960s and 1970s the focus of

controversy shifted to Protestant fundamentalists, who wished to preserve prayer and Bible reading in the public schools and objected to the teaching of material (such as scientific evolution) which contradicted their religious beliefs. People for the American Way was formed in 1980 to oppose efforts of fundamentalists to keep religion in the public schools, require teaching of "scientific creationism" as an alternative approach to evolution, and ban certain books from classrooms and libraries. Fundamentalists charged the civil libertarians had enshrined a new religion -- secular humanism -- in public education.

**Human Rights: An International Perspective:** The idea of human rights has an ancient pedigree, dating from the Stoics of ancient Greece and running through St. Thomas Aquinas to such English political philosophers as Richard Hooker, Thomas Hobbes, and John Locke. Milestone charters include the English Magna Charta (1215) forced by the barons from King John; the English Bill of Rights (1689) developed by Parliament to establish a limited monarchy; the American Declaration of Independence (1776), the French Declaration of the Rights of Man and Citizen (1789), and the U.S. Bill of Rights (1791). Our contemporary framework of international law on human rights is of more recent vintage, dating from the ratification in 1945 of United Nations Charter, Articles 1 and 55 of which establish the purpose of protecting human rights and fundamental freedoms.

The United Nations established a Commission on Human Rights to draft the Universal Declaration of Human Rights, which was passed unanimously by the General Assembly in December 1948. The Declaration contains the basic civil and political rights: the right to life, liberty and security of person; freedom from slavery and torture; freedom from discrimination and equal protection of the law; the presumption of innocence until proven guilty; freedom of thought, conscience and religion; and freedom of opinion and expression. The Declaration also contains economic, social and cultural rights: social security, education, work, equal pay for equal work, and an adequate standard of living.

In order to establish these rights more clearly in international law as binding treaty obligations and to provide enforcement mechanisms, the General Assembly approved two covenants in 1966 that may be ratified by individual countries -- the International Covenant on Civil and Political Rights (with an Optional Protocol), and the International Covenant on Economic, Social and Cultural Rights. The covenants provide for periodic reporting and interstate complaint procedures, based on the techniques developed by the International Labor Organization (an organization established in 1919 by the Versailles Peace Treaty ending World War I, and which now operates as a specialized agency of the U.N.). The periodic reports are reviewed by a committee of experts who assess whether a government is fulfilling its obligations under the covenants. Similar processes are followed by the numerous regional covenants, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953), the American Convention on Human Rights (1969) adopted by the Organization of American States; and the African Charter on Human and People's Rights (1981) adopted by the Organization of African Unity.

A number of additional treaties have developed significant mechanisms of cooperation and monitoring, and several recent declarations have expanded the vision of human rights. The Helsinki Agreement (1975) among European states surprised its critics by having a strongly positive impact on human rights in Eastern Europe, as has the Conference on Security and Cooperation in Europe's statement on Cooperation in Humanitarian and Other Fields (1989). Other important agreements include United Nations Conventions on Genocide (1951), the Elimination of All Forms of Racial Discrimination (1969), Discrimination Against Women (1979); the Declaration on the Elimination of Intolerance and of Discrimination Based on Religion or Belief (1981); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the United Nations Declarations on the Right of Peoples to Peace (1984), and on the Right of Development (1986).

International treaty mechanisms are usually cumbersome and can be subject to political obstruction. Private, non-governmental organizations are playing a vital role in publicizing violations of human rights. Amnesty International mobilizes its members on behalf of prisoners of conscience around the world. The Human Rights Watch takes a wider scope of monitoring violations of civil and political rights through its Helsinki Watch, Americas Watch, Asia Watch, Africa Watch, and Middle East Watch committees. Freedom House publishes an annual survey on freedom in countries throughout the world. Cultural Survival has staked out the special niche of safeguarding the rights of the scattered indigenous peoples -- also termed tribal peoples or national minorities.

### **Annotated Bibliography**

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