

Working Paper

The Clash of Rights: The Case of (non-heterosexual) Sexual versus Religious Rights

Abstract

The subject of human rights has drawn fresh concerns internationally, not least of all from several scholarly disciplines which hitherto expressed relatively little interest in the field. The new sociological focus is partly attributable to the fact that human rights constitute an increasingly contentious issue on several grounds. Firstly, that such rights are primarily underpinned by Western philosophical and ethical notions and, therefore, can be said to be culturally-bounded. Secondly, that the ever-extending rubric of what constitutes a 'right' has led to a 'hierarchy' of rights of varying weight and significance. Thirdly, that the expansion of rights may mean that some come into conflict - a discord that has and could potentially be played out in civil and political arenas. This working paper examines these issues with reference to the clash between non-heterosexual rights and the right of religion conscience to contend them.

Introduction

The subject of human rights has increasingly solicited scholarly interest, as well as pertinent international political concern, by way of the state's adoption/or non-adoption of an ever-expanding range of such rights. The focus of academic interest, particularly for political scientists, political philosophers and legal scholars, is two-fold. Firstly, the philosophical interest in human rights resides at the more abstract and theoretical level in what may or not constitute a 'right'. Secondly, and relatedly, an examination of the basis and implications of rights as enshrined in national constitutions and international proclamation frameworks. In regard to the latter, the Universal Declaration of Human Rights (United Nations Charter, 1948) is perhaps the most noteworthy, alongside more regional initiatives such as the European Convention of Human Rights (1950) and its subsequent protocols which are central to rights issues for the European Union. Importantly, such proclamations of human rights have, across the world, engendered more specific civil rights adopted in various national constitutional and legal frameworks. This development has generated further academic interest in what appears to be a reversal of earlier historical developments where civil rights engendered the emergence of more broadly defined human rights.

Some aspect of rights has always been evident in sociological thought and was certainly apparent among the classical sociological theorists. However, it has tended to be a rather marginalised preserve. The hitherto relative neglect is plausibly partly because the area has largely been the fields of political science and political philosophy focusing upon not only the specialised outlined above, but such contingent themes as ethics, international affairs and constitutional studies. More recently Sociology has increasingly turned its attention towards the subject of human rights and brought the matter more stringently within its academic parameters. To a great extent this results from the expansion of rights into new areas of social and civic life, the controversies subsequently generated by their expansion, and the socio-political basis of the claim to rights.

While Sociology has increasingly directed its attention to the broad area of rights over the last decade, it has offered relatively little in terms of theoretical frameworks

and critiques. This problematic deficiency was cogently articulated by Bryan Turner in the mid-1990s when he stated that the discipline had 'failed to contribute to an adequate and comprehensive theory of rights'. This was, according to Turner, despite the fact that 'rights constitute an important discourse of modern social movements and a major institutionalisation of political claims within a democracy' (Turner 1995, 1).

Turner's paper, alongside other contributions that constituted the 'Symposium: Human Rights & the Sociological Project' (1995), proved timely in setting an agenda for further sociological advancement in the field, both at the theoretical and empirical level. In his paper, to put matters succinctly, Turner interpreted the inception and extension of human rights across the Western world since the nineteenth century as predominantly a result of observable processes of social evolution and accompanying power relationships. In particular, those rights generated by the growth of the nation state and bourgeois civil society upon which it was derived, both proved to be concomitant with the ethos of individualism which provided the bedrock of early conceptions of rights in their 'civil' form. Matters of 'rights', originally delimited to civil rights, have historically been linked to those of citizenship in the Western nation state and integral to fundamental frameworks of 'negative' rights protecting personal liberties in a narrow political sense. Later, while such nations readily endorsed (selected) aspects of the broader remit of human rights, such rights may similarly be deconstructed as largely the product of Western cultural sensitivities. More recently it is evident that what constitutes a 'right' has expanded throughout Western democracies and this development is seemingly connected to further aspects of social evolution in late-modernity, not least of all their increasingly pluralistic nature.

Early civil rights in the Western context reflected a patriarchal order where such rights, and accompanying notions of citizenship, were restricted to males of a specified age and sometimes other qualifications, typically property ownership. Throughout the twentieth century the rights of women were embraced, albeit in different nations and at differing rates, while towards the end of that century a variety of rights were advanced including those of non-heterosexuals, primarily those of homosexual (gay) men and lesbians (Tetreault 2001). The end of the twentieth century also witnesses the endorsement of the rights of children which included the right to enjoy their own culture, practice their own religion, to use their own language, alongside the more contentious right to participation and freedom of expression. Such advancements vindicate Turner's assertion that the scope and extension of civil rights, then human rights, is related to matters of socio-political development as Western nations continue to reach higher levels of economic and socio-political progress, extending pluralism and arguably indicative of a deeper cultural sophistication.

Turner's socio-historical analysis also carries the observation that the evolution of rights point to their relativistic nature, rather than an explicit universalism - both theoretically and by way of application. In one sense, therefore, the entire notion of 'rights' becomes problematic as an abstract theory in and of itself. In essence, the tendencies observed by Turner generate questions regarding the universalism of rights beyond its Western cultural context and their applicability to alternative socio-cultural settings, by which is usually meant the cultural milieu of numerous Majority World countries. Nevertheless, in a globalised world Western countries assume the applicability of universal rights whatever a nation's level of development. In short, universal rights are understood, particularly by hegemonic Western states, to be also

pertinent to those nations that have not 'progressed' by way of developing a 'free' market and liberal democratic political structures. Another implication is that, in an era of global interdependencies, the consolidation of a human rights discourse is being transformed so that the supremacy of state sovereignty and the absoluteness of human rights are mutually exclusive categories.¹

There is more to consider: matters once more related to the evolution of the state and civil society. Turner also explored how issues of rights are increasingly embraced by modern social movements in the struggle for political power and public recognition where political claims, within the liberal democratic environment at least, become a legitimate resource and where a primary channel of appeal, underpinned by a paralleled rhetoric of rights, is the recourse to state and international law (Turner 1995, 2-3, 7-8). Nonetheless, in the contemporary world the discourse of rights relate not only to the matter of rights in terms individual liberty, of which freedom of conscience and freedom of religious conviction and expression are prime examples, but an ever expanding wide range of social and economic rights (rights to employment, housing, health and reproduction, as well as the rights of consumers, being prime examples) that are mostly part of the broader rubric of 'human rights' (Skogly 2001) and are also associated with broadening notions of 'citizenship' - a concept originally related to civil rights and duties. This expansion of rights, in their human rights form, is evident in 'universal declarations' of which, again, the most obvious is that of the United Nations.

The advancement of such rights in Western societies has nonetheless been slow and uneven which hints at factors that may mitigate against or legitimate their advancement: the political hue of governments, the activities of social movements that advocate or oppose their advancement, and wider cultural attitudes. Since many of the expanding rights can be put under the rubric of economic and social rights, they have frequently been deemed to have political and ideological underpinnings. Previously a range or social and economic rights had often been dismissed, and continue to be dismissed, as the domain of left-wing agendas rather than 'natural', 'neutral' and in contrast to earlier rights emerging out of natural and moral law.

It is clear that such growing economic and social rights engender social movements or 'cause' groups, constituted by individuals with the same interests, and who mobilise for their advancement in the national and even global political arena. Such constituencies may limit their claims to more individualistic civil rights but nevertheless press their cause as a collective enterprise. Whatever the claims, the rhetoric of rights frequently becomes their dominant ideology or is at least woven into ideological constructs for political potency and gain. Subsequently this range of rights become increasingly difficult to disentangle and arduous to theorise and critique and separate from their social base and concomitant interests. In addition, given the ever-extending remit of what constitutes a right, there has arisen conflicting claims advanced by opposing social movements. For instance, the clash of reproductive rights of women claimed by pro-abortion lobbies on the one hand, and 'the rights of the unborn' advanced by opposing groups often on the basis of religious conviction.

¹ This assumption has however been rigorously questioned, see Levy & Sznajder, 2006.

The above developments, including apparent contradictory rights, raises sociological questions which further challenge claims to objective and universal notions of 'human rights' (Daum 2001). Sociology is also legitimately permitted to examine subsidiary areas of concern. Firstly, to analyse the ideological basis of conflicting rights and the way they are mobilised by contending social movements broadly defined. Secondly, to raise questions of a possible 'hierarchy' of rights where some rights are subjectively held as superior to others, enquiring why this should be so and what are the implications.

The Religious Foundation of Western Rights

This working paper will consider the contradiction between two sets of rights, one well-established - the right to religious conscience and expression and, secondly, a further field connected with recently expanding rights, namely, those of individuals of a non-heterosexual orientation. That of religious conscience is seemingly located within older and established concepts of civil rights but which nevertheless have evolved into a freshly formulated discourse of human rights, typified by the anti-abortion lobby, in the hands of mobilised conservative religious groups who oppose non-heterosexual rights. The recent development of non-heterosexual rights of gay men and lesbians has expanded to also represent the rights of bi-sexual and transgender individuals (producing the acronym of LGBT) and entails the recourse to broader definitions of human rights and citizenship. The social movements representing matters of religious conscience and others advancing LGBT rights, often in the form of 'cause' groups, have mobilised in their advocacy of contrasting rights and are discernibly willing to subscribe to earlier established bourgeois notions of civil rights and this is identified by accompanying connotations of citizenship.

A perusal of the historical development of rights indicates a reciprocal relationship between religion and rights as initially conceived in terms of individual liberties and the connected notion of citizenship as expressed in 'civil rights'. Several commentators have explored the founding of early liberal conceptions of civil rights theory in Western societies in terms of moral absolutes to which religious systems made an erstwhile contribution. In essence, this means Christianity and Christian theology and ethics. This religious foundation has led to the critique that human rights, so conceptualised in the West, display a built-in theocentricism (Fiala 2008). At the same time, religious rights have long been a central plank in the development of civil rights especially as a bulwark against state-imposed secularism (Hasson 2003). This is perhaps most exemplified in the First Amendment of the constitution of the USA and its espousal of the right to religious conscience and expression.

Barzilai has traced the complex relationship between human rights which have evolved out of the connectiveness of religion and law in Western societies, suggesting that the embedded affinities between both are 'not singularly historically ontological but metaphysical as well' (Barzilai 2007, xv). He analyses, through reference to several other commentators, specific historical developments of religious law from antiquity to modernity in a number of civilisations. Firstly, as Friedmann (2002) shows, Jewish law allowed the evolution of judicial discretion within the meta-narrative of the Torah as a divine moral constitution. Accordingly, biblical stories constructed a belief in God and its dicta constitutionally engineered social mechanisms of communal disciplinary powers. Second, Amrosetti (1971) conceives natural religious law as a junction of reason, theology and history. Natural law is not a

dogmatic construct; rather, it is constantly and dynamically unveiled through a faith in Christian revelation. The practice of revealed natural law was shaped through obedience as well as rights of legality that have practical meaning in the light of social contexts in which obedience to religious law is cultivated and constitutes an important dialectical relationship between rights and duties entailed in traditional constructs of citizenship.

Barzilai continues his analysis by exploring the link between religion and law, their integrated production of rights and duties of citizenship, which were radically separated from the sixteenth century, beginning with the Protestant Reformation and later by the English, French, American and Russian revolutions that broke the connection between the Church and state, resulting in their separation in most liberal democracies. Liberalism, Barzilai suggests, was the first secular religion to disengage itself from many truly religious fundamentals, although it has nevertheless relied on quite a few religious elements albeit now veiled and transformed by a secular ethic.

By slow diffusion, some of these original tenets of religious natural law have become basic elements that constitute international law of human rights including the right to life, property, the due course of law and such like. In turn, rather ironically, there is a sense, as Kukathus (2006) argues, that the absolute faith and moral conviction that forms the foundation of human rights, born of liberal rational, has become its own particular type of secular 'religion', although this speculation has been hotly debated and disputed (Ruston 2004). However they are perceived, the secular rights that have developed in the West now claim a universalism which, in turn, has been contended as cultural bound for many of the reasons discussed above. More broadly there is the repeated question that stalks the human rights agenda: that of the Western application of rights, with its Christian legacy, when applied universally (Anleu 1999).

Given the historical centrality of the Christian contribution to rights, despite the onslaught of secularity, the legal obligations of the state and non-state actors to protect the freedom of thought and conscience, as well as religious and non-religious belief systems, remains a central plank in the rights agenda of Western democracies. They are enshrined in the United Nations Declaration of Human Rights (article 18), and strongly advanced by international human rights organisations such as Amnesty International. A recent development which has complicated such religious rights, however, is that they are increasingly clustered, at times in legal enactments, with rights related to 'belief' and conscience broadly defined (de Jong 2008). In turn, this may indicate the further secularisation of rights given that 'beliefs' may constitute secular ideologies and atheistic convictions. In fact, the broad remit of 'beliefs' and 'conscience' is so broad as to legitimate and claim to a 'right' and furnish the claim of any mobilised agency.

Religious and Sexual Rights

In Western democracies the right to religious expression and conscience has, come to be problematic in several further respects. Firstly, such societies are also pluralistic culturally, ethnically and religiously speaking. In North America and Europe, in the context of increasing secularity, Christianity has lost much of its cultural and political influence. The state and many religious rights platforms must now defend a vast variety of faiths which are often associated with a range of ethnic and cultural

minorities. This, in turn, has raised profound questions of equality, cultural difference and social inclusion (Bloom et al. 1996). Secondly, there is the matter of protecting the rights, including that of expression, of those religious minorities that do not subscribe to the notion of human rights either on the grounds that secular notions of rights and liberal views of human nature must be subservient to the demands and moral commandments of God or may be contended on the grounds of religious conviction. To some extent this religious qualification is part of the rubric of the discussion identifying a wider disparity between cultural rights and human rights (Tharoor 1999). In this respect Islam would seem to be the most significant faith in challenging Western views of human rights (Chiba 2000). Thirdly, there is the matter of the right of religious faiths to contend the rights of expression of others if they are viewed as intrinsically offensive to the moral foundations of that faith (Tibi 1994).

Among the extending rights which appear to be offensive to a number of religious communities are the extending sphere of non-heterosexual rights, a remit of rights which are typically perceived to be the collective domain of lesbians and gays, but increasingly extended to bi-sexual and transgendered people. While such right might appear to be implicitly 'social' and wedded to expanding definitions of citizenship, in reality such rights can also be seen as related to a cluster of rights related to sexuality, reproduction and the body.

Non-heterosexual human rights have been rapidly translated into a number of specific rights. Included here are rights to civil unions or same sex marriage, a developments itself hedged around by legislative enactments (Franke 2006), alongside laws related to property rights and parental rights (Clarke and Finlay 2004) of non-heterosexual people. Non-sexual rights are also increasingly protected by the illegality of discrimination against those of non-heterosexual orientation (Dawson 2005). Many such developments have been related to a new conceptualisation of citizenship as the original concept itself has widened, so there now exist the dimensions of 'sexual citizenship' and 'intimate citizenship' that follow earlier notions of gender and ethnic citizenship (Plummer 2003).

The Politicalisation of Human Rights

The discussion above clearly points to the politicalisation of rights issues, both religious and sexual rights, in several major inter-related respects. Firstly, the extension of rights into socio-economic fields (that is, social and economic rights) has widened the debate as to what should or should not constitute a right. This has become a political issue itself, as noted previously, in the sense that such rights are often part of a left-wing and liberal agendas/ideology. Secondly, that the expansion of such rights has opened up wider debates regarding citizenship. In particular, that the definition of citizenship has now broadened from the protection of 'negative' individual rights, to the right of social grouping who share the same economic and political interests often based on a specific criteria such as 'sexual citizenship'. Thirdly, that the extension of rights into socio-economic fields can constitute a 'clash' of rights based upon discrete conflicting interests. Fourthly, and relatedly, the matter of rights becomes problematic, and thus politicised, in that the conflict between 'interests' of mobilised constituencies raises issues regarding the right of the individual in the face of more collectivists rights and, similarly, conflict between majority and minority groupings. All of these issues and the apparent contradiction of

rights are evident in the contestations between religious rights on the one hand, and sexual rights on the other.

The extension of non-sexual rights are, to some extent at least, a result of highly active and vociferous LGBT pressure groups that have emerged internationally albeit with varying degrees of success (Weeks 2008). They have mobilised themselves through various strategies and advanced their cause primarily through the discourse of human rights, that is, the rights of non-heterosexual people and their demand for sexual citizenship. Such mobilisation has tended to gain support among left-wing political parties (Cooper 1993), which has added another dimension to the controversies surrounding LGBT issues. In the United States, often at the state-by-state level, such rights have been matters of court cases advancing or contending LGBT right or some aspect of them such as civil unions (Williams 2005). Questions have subsequently been raised related to such rights with reference to the American constitution and its interpretation (Wilkinson 2006). There are extraordinary complex issues to be observed here. For example, in 2003 the United States Supreme Court ruled in the *Lawrence v. Texas* case that laws against sodomy or anal sex cannot be directed at homosexuals alone, and furthermore, that intimate consensual sexual conduct is part of the liberty protected by substantive due process under the Fourteenth Amendment.

As controversial LGBT rights have advanced, religious rights have become an increasingly contested area with a variation of views beginning to appear in Western societies (Berger 2009). At the same time that some Christian groupings have expressed the sentiment that their traditional rights are being eroded, they have also been energised by their opposition to LGBT rights on moral grounds and matters of conscience. Evidence suggests that the extension of non-heterosexual rights are most likely to come from right-wing orientated people and this includes those of a religious faith (Hancock 2008). Other evidence suggests that those living in countries where more people say religion is important in their daily lives are much more likely than those living in countries where fewer people say religion is important to report an opposition to non-heterosexual rights (Pelham 2009).

There is however, no straightforward correlation between religious conviction and opposition to the rights of non-heterosexuals. The debate over LGBT issues has strongly divided many religious groups in the West (Crockett 2003). A good number of mainstream Christian denominations have come to accept such rights including civil unions (Parmet et al. 2005). In both liberal and conservative denomination Christian LGBT caucuses have also arisen and subsequently mobilised to advance their cause of rights in both the churches and secular society. Moreover, even when religion is often seen as an important predictor of attitudes regarding homosexuality, these attitudes are sometimes mixed and unclear (Hodge 2005). Cross-national differences in cultural orientations suggest that the role religion has in explaining anti-homosexual views may depend on several other factors including wider cultural attitudes that forge general outlooks on the subject (Admczyk 2009).

The attitudes of Christian groups towards LGBT rights has thus to be put in a wider context. An identified development across the world is the increasing involvement of religion in the political sphere generally as a broad range of rights have been challenged and, more broadly where their social influence and political power

base has been contended (Sahliyah 1990). In the West certain issues have dragged conservative Christian groups into the political arena. This is perhaps most obvious in the USA where the subject of non-heterosexual rights have become part of the evangelical/fundamentalist component of the Republican Party against such rights as civil partnerships which have become issues for political mobilisation (Campbell 2008), constituting part of the evangelical/fundamentalist rediscovery of politics as they become more involved in the political arena especially on moral issues (Buzzard 1983). Those conservative Christian organizations that have opposed LGBT rights in the USA include the American Family Association, the Christian Coalition, Family Research Council, Focus on the Family, and the now disbanded Moral Majority. Their political agenda is by no means limited to LGBT rights, but a cluster of topics including abortion and the rights of the unborn (Erwin 1993) and pro-family agendas. Many such issues constitute what Lyon calls 'body politics' (Lyon 2000). Opposed on such issues by powerful liberal groups, these issues have enhanced a polarisation of political views in the USA (Evans 2002) and constitute part of the nation's 'culture wars'.

Both conservative Christian and LGBT groups have found themselves opposing each other on issues of their respective rights in political arenas and adapt various strategies (Dugan 2005). Conservative Christians have organised themselves into 'cause' groups opposed to non-heterosexual rights based on their religious conviction that gay, lesbian and bi-sexual behaviour, if not orientation, is immoral, a 'sin' of some magnitude and where a 'higher' moral law is viewed as surpassing man-made systems of human and civil rights (Hunt 2003). Perhaps the main issue disputed is that of civil unions given the legitimacy it brings to non-heterosexual behaviour and the undermining of conventional family structures (Nicol & Smithriam 2008). These developments have generated broader issues in respect of rights. Questions have been raised whether preventing heterosexual people speaking out against or otherwise opposing the rights of those with LGBT orientation is an impingement on their free speech rights (Siegel 1991). Moreover, Wendel has raised the issue of 'hate-speeches' and whether this extends to religious groups who oppose certain forms of behaviour on moral grounds, pointing out that rights are never neutral (Wendel 2002).

Another issue raised is whether non-sexuality is a 'natural' or chosen disposition compared to gender and race (Mourad 2003), an issue which has been raised in courts of law (Michaelson 2000). The whole matter relates to controversies over 'malfunctioning' bodies, that is whether non-heterosexuality is 'normal' or 'natural' and whether it has a genetic or pathological origin on the one hand, or constitutes a chosen disposition and lifestyle on the other. Conservative Christian groups interpret it in terms of the latter and thus deny the foundation claims of LGBT to rights. For instance, the Christian Institute (a conservative Christian think tank in the United Kingdom) has argued that gay and lesbian orientation and behaviour is a lifestyle preference and thus immoral. It follows that lesbian and gay rights have no legitimacy. This is evident in a statement from one of its publications:

(Lesbian and gay groups) talk of “rights” and “equality for homosexuals”. They refer to homosexuals as “down-trodden” and compare their opponents to the bigoted hate mongers of the American deep south during the black civil rights campaigns....However, Christians....feel bound to the Bible's clear injunction against homosexual practice....[I]f we accept a homosexual “Christian” movement, there is no reason why we should not also have an adulterer's Christian fellowship and a sex-before marriage fellowship.’²

By contrast, LGBT groups tend to emphasize the ‘naturalness’ of non-heterosexuality and thus its legitimacy of expression and consequently the legality of universal rights that protect it. The call for LGBT ‘natural’ human and civil rights becomes a matter of citizenship and social inclusion. In the words of the lesbian and gay organisation Stonewall in the USA: ‘We need to establish a positive directional approach to addressing Human Rights with Equality for all Humanity!’.³ In the UK, the Lesbian and Gay Christian movement which, as the organisation’s title suggests, advances the interests of Christians of a non-heterosexual orientation, has attacked the conservative opposition to their rights on the grounds of rights. This is evident in the organisation’s *Statement of Faith, Homophobia and Human Rights* (2008):

‘...We reject the activities of certain religious leaders, seeking exemptions from equality legislation, and attempts to base this on the right to freedom of thought, conscience and religion, such a right being for all, not just for some....’
...We call for further progressive public policy that will deliver comprehensive and effective anti-discrimination legislation, including positive duties, on the basis of race, gender, disability, age, sexual orientation, and belief. We call on the newly formed Commission for Equality and Human Rights to listen to the experience of LGBT faith networks and those who have suffered homophobia from and within religious organisations.’⁴

Summary and Discussion

As evidenced by the statements above, the adoption of the rhetoric of rights, by social movements and other contingencies in the support of LGBT rights on the one hand, and religious rights of conscience and conviction on the other, raises profound questions concerning the power and legitimacy of specific groups as they seek to challenge and negate each other’s rights. It is also clear that matters of religious conscience and conviction are rooted in well-established but increasingly challenged foundations of civil rights that included freedom of speech. By contrast, LGBT rights are part of a cluster of recent human rights, although its advocates will call upon such older notions of civil rights while advancing fresh conceptualisation of citizenship. Both embattled parties are thus reconfiguring what does or not constitute a ‘right’.

While in the political and legal arenas rights have become the sites of conflict for contending groups, such conflict is not limited to these contexts. Places of employment have become contested sites given that growing bodies of legislation impacts this field as non-heterosexual rights are advanced by the state in relation to

² (Christian Institute)

³ <http://www.stonewallsociety.com/> (assessed 3/2/10)

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citizenship and social inclusion. Across the Western world there have been numerous cases where Christians working in the capacity of marriage registrars or employed by adoption agencies have, as a matter of conviction, refused to carry out civil unions or be involved in allowing lesbian and gay couples to adopt children. These cases are often initiated by individuals claiming the civil right of religious conviction. Nonetheless, they have often been supported by organised conservative Christian groupings. In turn, LGBT groups have mobilised against them on the grounds of human rights, the stance also adapted by their opponents.

It is clear that with such developments the state has inevitably become involved in the role of mediator and thus enmeshed in the relationship between conflicting rights and the matter of the hierarchy of rights (Raworth 2001). In short, some rights groups are informally designated a preference in this hierarchy (Mitchell & Wilson 2003). Religious rights and those of belief generally are clearly located in this hierarchy (Meron 1986). The feelings of those expressed by Christian groups opposed to LGBT rights is that their own rights of religious conviction are being placed towards the bottom of the hierarchy as legislation regarding matters of non-heterosexual equality, discrimination and citizenship continue to be advanced. For example, the Christian Institute in the UK has stated that 'Christians are being marginalised by equality and diversity laws which leave them the first to be punished and the last to be protected'.⁵

Such developments are invariably of acute interest to the academic community including the discipline of Sociology and for several reasons. Firstly, they point to the enduring foundationalism of human and civil rights by Western philosophical and ethical notions and, therefore, can be said to be culturally-bounded. There is much here to confirm Turner's view that the extension of rights is related to the social evolution of civil society at different levels of politico-economic development. This is evident in the evolution of 'negative' protectionist civil rights to a more 'positive' and affirmative human rights agenda. To some degree at least, this reflects the development of a civil society that is more pluralist in nature and which consequently throws up the matter of conflicting rights. The newly advanced agenda of non-heterosexual rights is not however an entirely 'neutral' development. A historical overview of the development of such rights in the USA indicates that, from the late 1960s, the more socialistic liberation philosophy had started to create different factions within the civil rights movement. The same movement that spurred the Black Power, anti-Vietnam war, and feminist movements, also generated gay and lesbian rights. Yet, a new generation of young gay and lesbian saw their struggle within a broader movement to dismantle racism, sexism, Western imperialism, and traditional mores regarding sexuality. Invariably this raises the question as to whether the notion of 'social evolution' is an entirely satisfactory framework in which to approach the matter of an extending range of rights.

Secondly, there is the matter of majority versus minority rights. In socialist societies such as China the issue of rights a matter of collective versus individual rights has long been settled with ideology dictating a clear preference for the former (Feng Chen 2007). This contestation and even contradiction of human rights theory

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<http://www.christiantoday.com/article/christian.institute.fears.equality.bill.will.erode.religious.liberty/24894.htm> (accessed 5/2/10)

has increasingly become evident in Western societies that historically tended to balance such rights (Dipankar 2007; van der Ven 2008). Recently, several developments have suggested that the rights of religious minorities are being trampled underfoot. This exemplified by the banning of the minarets of Islamic mosques in Switzerland (Stüssi 2008). If this is an increasing tendency in secular Western societies, then there are implications for our discussion of the conflict of religious and LGBT rights. For instance, there is a very real sense in which such enactments as civil unions opposes religious liberties in the right to object to them on moral grounds.

Thirdly, it is clear that LGBT rights are yet to be fully advanced in notions of 'citizenship' or theorised by scholars (Johnson 2002; Richardson 1998). One direction for Sociology will invariably be to further examine the expanding notion of citizenships and its implications; the philosophical and ideological underpinnings of expanding rights and those groups who adopt and adapt them: how social movements use the rhetoric of rights and citizenship in political and legal arenas to advance their interests.

Finally, it must be a matter of contention whether the advance of secularity and decline of religion marks part of some evolutionary process of social 'development'. In Sociology this may itself be a matter of subjective ideological conviction rather than an objective observation. Nonetheless, it would appear that the Western world is increasingly secular. Religion becomes less significant and its basis in the formation of rights undermined. Also indicating secularity is that religious conviction is the preserve of a beleaguered minority whose rights appear to be increasingly marginalised. Paradoxically it may be argued that traditional Christian values have now become diffused and its diluted moral convictions of a common humanity have led to the extension of social and economic rights.

Those such as Giddens, in his discussion of late-modernity, view questions of morality becoming problematic as a result of the dynamic pace and scope of change. Certainly, it is possible to view the invocation of rights in the governance of human affairs as the subjective sequestration of morality in late-modernity (Smith 2002). Moreover, morality has become a resource in itself. Ben Yahuda has explored how competing 'cause' groups have advanced their rights as 'moral communities - projecting themselves as acting in the 'public interest' and to convince their own supporters of the legitimacy of their claims. While the recourse to rights is now a powerful resource in mobilising for both those constituencies advancing and opposing LGBT rights, each configures its own moral grounding proving, as Sociology has long recognised, that morality is as culturally-bounded as rights, dictated by time and place, never neutral.

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