

ECONOMIC  
AND  
SOCIAL COUNCIL

CONSEIL  
ECONOMIQUE  
ET SOCIAL

E/CN.4/30  
12 November 1947  
ENGLISH  
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

Study on the Evolution of Human Rights

(Resolution of the *Economic and Social Council*,  
dated 21 June 1946)

By a resolution adopted by the Economic and Social Council on 21 June 1946, during its Second Session, the Secretary-General was requested to make arrangements for, among other matters, ".....the preparation and publication of a survey of the development of human rights....."

Before undertaking this important survey, the Secretariat feels it should ask the Commission on Human Rights to give it some general instructions.

Section I - Definition of the Objects of the Survey

The outline of the proposed survey should be defined first from three points of view, those of its subject-matter, its geographical scope and its historical scope.

A. Subject-matter of the survey

Broadly speaking, the evolution of human rights comprises three basic factors: 1. conceptions; 2. written law embodied in legislation or sanctioned by custom; 3. practice.

1. History of Conceptions

The evolution of the rule of human rights in positive law is obviously closely connected with the evolution of conceptions concerning such rights. Nevertheless, it seems impossible for the Secretariat to trace back the trend of the doctrines and conceptions relating to human rights. Such a study would not only call for unusual erudition, embracing the world history of all civilizations, but would also expose the Secretariat to criticism by representatives of States who might feel that some doctrines regarded as supremely important in their countries had been denied adequate consideration or explanation.

A philosophical study on such a scale might perhaps be *undertaken by a scientific institute*. *The Secretariat of an international political organization which lacks both the necessary means and freedom of judgment is not competent to do so.*

It is obvious, however, that we cannot completely disregard the conceptual trends which have been the immediate source of great events of history, nor outline the evolution of human rights while systematically overlooking the principles set forth in the Declarations and Constitutions.

2. Written law embodied in Constitutions and legislation, or sanctioned by custom.

This is, in our view, the only factor which should be taken into account in the proposed study. (The limitation of the survey in time and space is dealt with below).

3. Practice

There are often remarkable discrepancies, and sometimes complete disagreement between law and practice.

Principles proclaimed in Constitutions and legislation sometimes remain more or less a dead letter, either because the government itself fails to observe them, or fails to make its officials observe them, or lacks the material means of doing so. For instance, the law may make primary education compulsory, but neither the premises nor the teachers necessary to provide instruction for all children may be available.

However interesting this question of practice may be, a study of it would be out of place in an official Secretariat publication. For one thing, the Secretariat has no means of investigating the matter such as would make it fully acquainted with the facts; for another, its findings, even if correct, might antagonize the governments concerned.

B. The world aspect of the survey

Any general studies undertaken by the United Nations should, unless the contrary is decided, be world-wide in scope. The proposed study should therefore in principle cover every country in the world, whether it is a Member of the United Nations or not. This, of course, does not mean that all countries should be given equal prominence in the survey.

Limitation of the survey in time

The survey must obviously embrace the whole period from the end of the XVIII Century, when declarations of the Rights of Man first appeared, down to the present day. But should it go farther back, and, if so, to what period?

1. Should it go back to the dawn of history, that is to say, to antiquity?

Such an undertaking, to be successful, would necessitate very lengthy research work by experts and scholars, especially as the scope of the survey must be world-wide. Further, the data collected would most often be incomplete. In any case, such research work would be beyond the resources of the Secretariat.

2. Should it go back to the Middle Ages?

The modern conception of freedom dates from the end of the Middle Ages (the XIIth and XIIIth Centuries). The Magna Carta of 1215 may be regarded as a starting-point. It marks the beginning of the evolution of British law, which, long before the French Revolution, was distinguished by notable achievements of which the best known are the Habeas Corpus Act of 1679 and the Bill of Rights of 1688.

It is for the Commission to decide whether we should go back so far in history, and if so what should be brought down from this relatively distant past. It seems that two possibilities might be contemplated:

- (a) For the period from the XIIth to the XVIIIth Century, the survey might be limited to English law alone.

This is particularly interesting and its characteristics are well known. We should be on solid ground, and should not need to undertake any lengthy and doubtful research work.

(b) We might at least examine the problem in relation to the European countries as a whole. The close of the Middle Ages was marked by the liberation of the masses from the feudal system, the growth of a certain freedom in the Italian Republics, and, later on, the institution of religious tolerance in the Netherlands. The Swiss cantons, although they were ruled by aristocrats, were genuine law-governed States. Other countries, especially Poland, might provide interesting data on the history of freedom.

There will be a certain value in including these matters in a survey of the evolution of Human Rights. Without creating extraordinary difficulties such work would require detailed research and could only be done well by historians and lawyers very conversant with the history of public law.

It is interesting to note that the expression "Human Rights" only dates back to the end of the XVIII Century. It can therefore be inferred that the authors of the resolution of 21 June 1946 had in mind a historical study starting from this time.

It is for the Commission to decide, after consideration, the financial and other resources which should be made available to the Secretariat to enable it to cover (in its survey) the period prior to the XVIIIth Century.

## Section II - The Elements of Positive Law which should be Included in the Study

As has already been pointed out, it seems that only positive law should be taken into consideration. This law is derived from: 1. Constitutions; 2. ordinary legislation (laws, decrees and ordinances); and 3. the jurisprudence of the courts.

### 1. Constitutions

Those in force are given in the Human Rights Yearbook. In tracing the evolution of Human Rights, earlier Constitutions must obviously be taken into account. Their number is fairly considerable but it would be possible to make a collection of them in the original languages.

### 2. Ordinary legislation

The documentary material is much more extensive and difficult to collect. In practice it would be necessary to refer to general works on the public law of each country. For this specialists familiar with the different languages in which these works are written would be required.

3. Jurisprudence

This is particularly important for the common-law countries. Jurisprudence is complex and difficult to comprehend for persons unfamiliar with the public law of the countries concerned. The practical means of studying it is, again, to turn to general works of the law of the various countries. It should be noted that in the case of certain countries there may be no general works or what there are may be very sketchy.

A survey of the evolution of Human Rights can be considered as an historical study which should be limited to describing the development of law on general lines without being overwhelmed by details.

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