

PREFACE

THE MAKINGS OF HUMAN RIGHTS. AND WHAT PRECEDED THEM

Since the adoption of the Universal Declaration of Human Rights (UDHR) of 1948, there has been a considerable expansion in the realm of human rights.

The post-Second World War II period represented a milestone in the development of the rights of human beings, significantly broadening their scope and provisions. According to the commonly accepted classification, in addition to civil and political rights (first-generation rights)¹ and social, economic, and cultural rights (second-generation rights)², new categories known as “rights of solidarity” (third-generation rights) have proliferated in recent decades. These more contemporary rights include, among others, the right to self-determination and to freedom from discrimination, the right to economic and social sustainable development, the right to a healthy environment

¹ Civil rights include right to life, the right to liberty (covering personal freedom, freedom of religion, freedom of speech, freedom of movement, and press freedom), security of the person, property rights, and the right to a fair and public trial conducted by an independent and impartial tribunal. Political rights include the rights to vote in election, universal suffrage, and to run in office (i.e., voting rights).

² Economic and social rights encompass the right to just and fair work conditions and to trade union representation, access to healthcare, housing rights, and essential social services. They also include the right to family life, access to quality education, and the right to recreation and to participate in cultural life (cf. K. VASAK, *A 30-years Struggle. The Sustained Efforts to give Force of Law to the Universal Declaration of Human Rights*, in “Unesco Courier”, November 1977, and S. DOMARADZK, M. KHVOSTOVA, D. PUPOVAC, *Karel Vasak’s Generations of Rights and the Contemporary Human Rights Discourse*, in “Human Rights Review” 20 (2019), pp. 423-443).

and access to natural resources, as well as the rights of future generations³.

In summary, we now have several universal rights that continuously evolve to meet the growing and ever-changing needs of individuals⁴. This proliferation of human rights⁵ is quite remarkable, especially considering that the UDHR provided us with a comprehensive set of 30 articles aimed at safeguarding the fundamental and universal rights of human beings⁶.

The lack of a formal definition of human rights⁷, combined with the evolving nature of a copious list of rights, has given rise to a paradox: although human rights hold a central position in contemporary legal discourse, they are frequently invoked without a comprehensive understanding, particularly concerning their historical roots and development. This complexity can be confusing and may lead to misunderstandings.

Prior to the 20th century, one must avoid seeking in the past – es-

³To cite further significant examples, consider the rights of indigenous peoples, refugees' rights, minority rights, LGBTQ+ rights, the so-called *technology rights*, (embryo rights and the right to genetic identity), and the right to digital self-determination and digital security (referred to *habeas data*).

⁴K. SELLARS, *The rise and rise of human rights*, Sutton Publishing, Thrupp, 2002, and J. THEILLEN, *The inflation of human rights: A deconstruction*, in "Leiden Journal of International Law", 34.4 (2021), pp. 831-854.

⁵See N. BOBBIO, *The Age of Rights*, Columbia University Press, New York, 1990, and F. POCAR, *Some Thoughts on the Universal Declaration of Human Rights and the "Generations" of Human Rights*, in "Intercultural Human Rights review", 10 (2015), pp. 43-53.

⁶See Chapter 10, § 3.

⁷See Chapter 10, § 3. Scholars and international agencies have formulated numerous definitions of human rights. Among the many definitions, it is worth mentioning the one proposed in 1994 by the High Commissioner of Human rights, José Ayala Lasso: «Human rights are inherent to all human beings, regardless of our nationality, place of residence, sex, ethnic or national origin, color, religion, language, or any other condition. These rights are all interconnected, interdependent, and indivisible. Human rights are often expressed and guaranteed by law, in the form of treaties, international customary law, general principles, or other sources of international law. International human rights law imposes obligations on governments to act or refrain from acting in certain ways, in order to promote and protect human rights and fundamental freedoms of individuals or groups».

pecially the distant past – for words, forms, or categories that can precisely align with the current framework of human rights⁸. Before the aftermath of World War II, the framework for individual rights was entirely different. Individual liberties were not conceived as a set of universal, inalienable rights that all human beings must enjoy. Moreover, dedicated international organizations, specifically tasked with their continual enforcing, were lacking.

As observed, «human rights did not just happen, they had to be invented»⁹. Before this invention, the current idea of rights gave way to other values and words regarding the prerogatives of the human person: justice, during the Antiquity; freedom, throughout the Middle Ages and much of the Modern Era. Significant changes led to the transformation of these values and words, closely tied to the effort to establish a legal framework for human dignity and equality.

In ancient societies, even amidst widespread disparities, these ethical values were regarded as matters of superior, natural justice, capable of guiding human conduct and regulating complex issues such as war and slavery. Yet, the recognition of human dignity and equality was not complemented by rights that bestowed substance upon dignity and equality.

Centuries later, during the Middle Ages, these enduring values took on the contours of deeply felt liberties, leading European communities to seek legal recognition of their inherent freedom. These freedoms were primarily intended for collective recognition, encompassing the entitlement to self-governance, the exercise of jurisdiction, and the formulation of legislation. Additionally, freedom could also be recognized for individuals, entailing the right to access a judge, a fair procedure, and a judgment, along with the right to physical integrity and property rights.

During the Modern Era, a persistent struggle for security, political representation, and religious independence gradually transformed in-

⁸ Cf. S. MOYN, *The Last Utopia. Human Rights in History*, Harvard University Press, Cambridge-Massachusetts, and London-England, 2010, and P. ALSTON, *Does the Past Matter? On the Origins of Human Rights*, in "Harvard Law Review", 126 (2012-2013), pp. 2043-2081.

⁹ R.J. VINCENT, *Human Rights and International Relations*, Cambridge University Press, Cambridge-New York-Port Chester-Melbourne-Sydney, 1990, III ed., p. 19.

herent freedoms into rights. This transformation began with the categorization of natural rights in the 16th and 17th century, representing a set of principles that are universally intrinsic to all human beings, transcending any specific community affiliation or concession by the sovereign. By the end of the 18th century, natural rights were officially codified as rights of man through the issuance of Declarations and Constitutions. This marked the definitive end of the *ancien régime* and its particularism, as a set of rights inherent to all citizens was legally enshrined in these legal documents.

Finally, during the Contemporary Era, the rights of man have been legally extended to all human beings, regardless of their personal status or characteristics. This entailed not only a struggle within national states for the acknowledgment of emerging rights (such as the right to work and education) but also a complex endeavor at the supranational level, manifested in the establishment of international bodies aimed at safeguarding the rights of the human person in times of both war and peace, notably through the UN.

Human rights, therefore, are somewhat the legacy of historical development, but at the same time, they closely reflect the order established by the UN General Assembly following the atrocities of the Second World War, when approving the UDHR of 1948¹⁰.

To shed light on the antecedents and on the origins of the UN system, this book provides students with a diachronic overview of the route to the modern landscape of human rights through their key historical stages: *justice*, *freedom*, and *rights*.

The initial chapters begin with a survey of ethical values of justice in antiquity (*justice*, Chapter 1), as these values underpin the theoretical reasoning and social demands that led to the first legal documents recognizing collective freedoms throughout the Middle Ages and the Modern Age (*freedom*, Chapters 2 and 3).

The following chapters explore the latter historical stage (*rights*, Chapters 4-10), starting with the emergence of universal natural rights (Chapter 4), as articulated by the great Revolutions of the late 17-

¹⁰ See P. COSTA, *Dai diritti naturali ai diritti umani: episodi di retorica universalistica*, in M. MECCARELLI, P. PALCHETTI, C. SOTIS (eds.), *Il lato oscuro dei diritti umani. Esigenze emancipatorie e logiche di dominio nella tutela giuridica dell'individuo*, Carlos III University of Madrid, Madrid, 2014, pp. 27-80 (pp. 30-31).

18th century, which find expression in the consecration of the rights of man (Chapter 5).

Further chapters delve into the Contemporary Era, highlighting pivotal moments in the development of human rights: the early attempts to enhance socio-economic rights and humanitarian protections (Chapter 6); the challenges posed by colonialism and nationalism to fundamental rights (Chapter 7); strategies employed in prosecuting and penalizing human rights violations at a supranational level (Chapters 8-9); and the establishment of international human rights law (Chapter 10).

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