

How Human Rights Were Divided:
The “Separate but Equal” Promise of Split Covenants

By

Nicole Baffa

Submitted to

Central European University

Department of International Relations

*In partial fulfillment of the requirements for the degree of Masters, International
Relations*

Supervisor: Erin Jenne

Vienna, Austria

Abstract

The Universal Declaration of Human Rights offered protections for both civil, political, social, economic, and cultural rights upon its passage in 1948, followed by two covenants of implementation. However, the original intention was to have a singular means of legal implementation. Despite progress in justiciability, much of the reality of unequal application for social, economic, and cultural rights is attributed to its separation from civil and political rights, a motion which differentiated their nature and enforceability. In my research, I will seek to explore the moment in which rights were divided, exploring the commonly held narratives about the events, influential actors, and the negotiation process. I will assess the events with multiple theoretical frameworks to contribute an updated examination of history and challenge existing literature, assessing the processes for questionable narratives, critical junctures, political opportunity structures, and path dependent outcomes.

My research will be conducted using plenary meeting notes and reports from the drafting committee of the Commission on Human Rights, the Economic and Social Council, and the General Assembly of the United Nations. However, I will also engage with government communications and publications by relevant actors to further analyze the context of the events and enhance the findings of the research. Overall, I will assert that the division of rights was a critical juncture, brought on by the recognition of a political opportunity structure. However, I will also assert that a seemingly genuine intent to negotiate existed preceding this moment, refuting commonly held narratives and illuminating contingent factors of influence.

Acknowledgements

I would like to thank Professor Boldizsár Nagy and Oswaldo Ruiz-Chiriboga for their assistance and time in helping direct me towards the legal perspectives for their argument. I would also like to extend a very immense amount of gratitude to Erin Jenne for her assistance with not only the theoretical approaches to the subject but also her extended assistance in developing and enhancing the arguments.

Table of contents

Abstract	ii
Acknowledgements	iii
Table of contents	iv
Introduction	1
Chapter 1	6
Background	6
Theory & Framework	11
Methodology	14
Caveats & Limitations	15
Conclusion & Outline of Research Chapter	15
Chapter 2	17
Three Versions of History	17
The Beginning of a Critical Juncture	19
The Opening of a Political Opportunity Structure	22
Ideological Infusion and Relevant Political Actors	29
Assessing Dominant Historical Narratives	35
Path Dependent Outcomes	39
Conclusion	43

Introduction

In 1948, the United Nations formally recognized the guarantee of fundamental human rights for all people and nations through the proclamation of the Universal Declaration of Human Rights (UDHR). An additional request was made by the General Assembly to the Economic and Social Council (ECOSOC), asking them to instruct the Commission on Human Rights to create a covenant for these rights. The covenant would be a means of legal implementation for these rights, establishing the legitimacy and enforceability of the proclamation.¹

The initial drafting committee for the proclamation included delegates from Australia, Chile, China, France, Lebanon, the United Kingdom, the United States, and the Soviet Union, along with drafting assistance from Canada's John Humphrey, the Director of the UN Secretariat's Division for Human Rights.² Their work was overseen by the Commission on Human Rights and assigned to the commission by ECOSOC, which functioned under the authority of the General Assembly of the United Nations.³

While the declaration drafted by the committee was a general proclamation of universal rights, including social, economic, cultural, civil, and political rights as one, the covenant following it was intended to be the legally binding component, with which the declaration would become enforceable.⁴ After what is often characterized as the infusion of Cold War

¹ United Nations Audiovisual Library of International Law, International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights: Introductory Note, (New York: United Nations, 1996) available from https://legal.un.org/avl/pdf/ha/iccpr/iccpr_ph_e.pdf.

² "Research Guides: Drafting Of The Universal Declaration Of Human Rights: Drafting Committee". 2021. *Research.Un.Org*. <https://research.un.org/en/undhr/draftingcommittee>.

³ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

⁴ https://legal.un.org/avl/pdf/ha/iccpr/iccpr_ph_e.pdf

divides⁵ and significant pushback from Western nations,⁶ the varied perceptions of social rights implementation led to two separate covenants for political and civil rights and social, economic, and cultural rights. Much attention and scholarly work has made note of the shifting nature of social rights protections throughout the process of forming the UDHR, with the resulting generality of the language attributed to Western influence and ideology.⁷ A large body of legal research has examined the resulting outcomes for the two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and their differing language and levels of enforcement. Most research and current documents from the United Nations Commission for Human Rights mention the influence of Cold War divisions on the decision to create separate covenants, resulting in their differing characterizations.⁸

However, much less attention has been given to the exact context and the procedural motions leading to the decision to separate the covenants into two, initially intended and frequently reaffirmed as one covenant. Many references and narratives surrounding the event are present in scholarly work, but a thorough examination of events and actors remains limited or outdated. A narrative infused into nearly every conversation about the state of social rights seems to have escaped a thorough examination of the events surrounding it.

The division of the singular covenant was instigated by ECOSOC with Resolution 384 (XIII) on August 29, 1951, which requested that the General Assembly reconsider the idea of a single covenant for all rights. This request would eventually lead to Resolution 543 (VI) by

⁵ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". *Nordsisk Tidsskrift for Menneskerettigheter* 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolml/1Langford1-28.pdf>.

⁶ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". *Nordsisk Tidsskrift for Menneskerettigheter* 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolml/1Langford1-28.pdf>.

⁷ Way, Sally-Anne. "The "Myth" and Mystery of US History on Economic, Social, and Cultural Rights: The 1947 "United States Suggestions for Articles to Be Incorporated in an International Bill of Rights"." *Human Rights Quarterly* 36, no. 4 (2014): 869-97. Accessed June 4, 2021. <http://www.jstor.org/stable/24518302>.

⁸ "Fact Sheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights," (Geneva: 2008), <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

the General Assembly of the United Nations on February 5, 1952, which reversed the assembly's initial decision and asked the commission to draft two separate covenants for social, economic, and cultural and civil and political rights.⁹

The separation was a crucial moment in history; it resulted in a significant gap between the prioritization and implementation instruments of social, economic, and cultural rights, with the “majority of States [avoiding] the recognition, institutionalization and accountability”¹⁰ for those rights from that point on. The ICESCR received only four less ratifications than the ICCPR in 1966. However, the optional protocol for the ICCPR—the legal instrument of the treaty allowing for complaint mechanisms—entered into force in 1976, while the same would not occur for the ICESCR until 2013.¹¹ The inequality of international enforcement mechanisms resulted in what human rights scholars have labeled a “secondary class of universal rights,”¹² although all rights were “equally binding, interconnected, and interdependent and guaranteed by both common discourse and the Universal Declaration of Human Rights.”¹³

Arguably more so than the degradation of social rights language within the Universal Declaration of Human Rights, the reversal of the initial decision to create a singular covenant had immense impacts on the legal implementation of social rights, allowing for a divergence in the characterizations of civil and political rights and social and cultural rights.¹⁴ The splitting

⁹ United Nations Audiovisual Library of International Law, International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights: Introductory Note, (New York: United Nations, 1996) available from https://legal.un.org/avl/pdf/ha/iccpr/iccpr_ph_e.pdf.

¹⁰ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". Nordsisk Tidsskrift for Menneskerettigheter 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolm/1Langford1-28.pdf>.

¹¹ “OHCHR Dashboard.” n.d. Ohchr.Org. Accessed June 4, 2021. <https://indicators.ohchr.org/>.

¹² Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". Nordsisk Tidsskrift for Menneskerettigheter 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolm/1Langford1-28.pdf>.

¹³ Ssenyonjo, Manisuli. 2016. Economic, Social and Cultural Rights in International Law. 2nd ed. Oxford, England: Hart Publishing.

¹⁴ Ssenyonjo, Manisuli. 2016. Economic, Social and Cultural Rights in International Law. 2nd ed. Oxford, England: Hart Publishing.

of covenants and their institutionalization was not only meaningful in shaping disparate outcomes for rights protections; it is also often characterized as a reflection of the larger context of the Cold War's ideological struggle related to socioeconomic protections.¹⁵

By conducting an analysis of the meeting notes of different UN bodies, private and public communications from the United States related to social rights, and the context of certain procedural motions and statements by certain actors, my research will assess dominant narratives, influential actors, and the possibility of a critical juncture for social rights. My research will seek to understand whether a political opportunity structure occurred within the process, and if the United States was able to maneuver within it and influence outcomes. I will focus particularly on the actions of the United States, as a highly influential actor of that time, with strong ideological leanings expressed internally.¹⁶

However, I will also argue that evidence leading to up to this moment suggests that a genuine intent may have existed to negotiate, cooperate, and incorporate social, economic, and cultural rights into the process initially, despite internally held political ideology. I will demonstrate that a shift occurred, marking a reversal of both the publicly stated and privately discussed intentions related to social rights. While I will consider whether ideology played a role in shaping the entire process, I will ultimately argue that the decision to split covenants was not only a critical juncture for social rights but was the emergence of a political opportunity structure, wherein relevant actors recognized an opportunity to exert ideological influence in a subverted manner and coopted the process. I will also assess the long-term impacts of this shift, asserting that a path dependency emerged from this critical juncture and shaped the outcomes for social right forever after.

¹⁵ "Fact Sheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights," (Geneva: 2008), <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

¹⁶ "Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian." ———. n.d. State.Gov. Accessed June 4, 2021b. <https://history.state.gov/historicaldocuments/frus1951v02/d500>.

I will start by conducting a review of the current literature, providing a background on perspectives related to social rights and the realms of unattended significance, and then introduce my theoretical foundations and methodology. My second chapter of research findings will take a narrative and chronological form, weaving in both my theoretical framework and research questions related to critical juncture, political opportunity structure, and path dependency. I will also assess counter-narratives and opposing views of history, utilizing sources outside the legal documentation to make more critical assessments of intentions. The final contribution will be to unveil how the discourse and process of splitting rights influenced long-term characterizations and limitations for social rights, revealing path dependent outcomes emerging from both a critical juncture and a political opportunity structure.

Chapter 1

Background

In the realm of literature related to social, economic, and cultural rights, many researchers have observed the outcomes of splitting covenants. Manisuli Ssenyonjo's work, *Economic, Social and Cultural Rights in International Law*, explores the differing perceptions of economic, cultural, and social rights, stating that they are "perceived as being about social policy, benefits and welfare rather than accepted as legal entitlements for immediate realisation."¹⁷ The resulting outcome is inadequate application, which "tends to be viewed as social injustice not as rights violations."¹⁸

Ellen Wiles writes of the perception of differing rights, with socio-economic rights considered "positive" and receiving criticism from conservatives who are "suspicious of perceived steps towards increased state intervention that would interfere with the operation of the free market by authorizing redistribution of wealth."¹⁹ Within this positive characterization, the "poverty that an individual may experience as the result of the operation of a free market is not to be construed as a limitation of individual liberty." However, this differing characterization also allows for the deprivation of a right stated as a human right within the UNDR.

UN officials have remarked on the wide-ranging implications of the perception of difference between the rights, from lesser enforcement mechanisms to prolonged and avoidable issues with global social deprivation.²⁰ It is generally agreed upon by social rights proponents

¹⁷ Ssenyonjo, Manisuli. 2016. *Economic, Social and Cultural Rights in International Law*. 2nd ed. Oxford, England: Hart Publishing.

¹⁸ Ibid.

¹⁹ Wiles, Ellen. "Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law." *American University International Law Review* 22, no. 1 (2006): 45.

²⁰ UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, 22 March 2017, A/HRC/35/26, available at: <https://www.refworld.org/docid/593a8e784.html> [accessed 4 June 2021]

that the splitting of covenants undermined social rights implementation, creating a secondary class for social rights.²¹ State parties had to immediately “respect and ensure” the civil and political rights but were only instructed to ‘take steps’ with a view to achieving progressively, and “to the maximum of their available resources” for social, economic, and cultural rights.²²

Much of the research regarding social, economic, and cultural rights references a “Western push”²³ for the splitting of the covenants and the diminishing of social rights based on ideology, asserting that the division originated from an East-West divide over social rights implementation.²⁴ The UN High Commission for Human Rights lists the ideological divide as one of the reasons for the false perception that social, economic, and cultural rights are fundamentally different than civil and political rights.²⁵ When characterizing the division of influences, Robert Howse and Ruti Teitel exclaim, “Since the end of the Cold War, two main visions have guided the evolution of international law and institutions – the vision of human rights and humanity and that of economic globalization.”²⁶ Likewise, Malcolm Langford asserts that it is “customary to attribute the bifurcatory character of the two principal human rights treaties to Cold War divisions.”²⁷

However, these references to historical divides rarely fully explore the ways in which social rights were displaced or interpreted within the formation process, specifically how it

²¹ Ssenyonjo, Manisuli. 2016. *Economic, Social and Cultural Rights in International Law*. 2nd ed. Oxford, England: Hart Publishing.

²² Schrijver, Nico. 2016. "Fifty Years International Human Rights Covenants: Improving the Global Protection of Human Rights by Bridging the Gap Between the Two Covenants". *NJCM-Bulletin : Nederlands Tijdschrift Voor De Mensenrechten*. 41 (4): 457-464.

²³ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". *Nordsisk Tidsskrift for Menneskerettigheter* 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolml/1Langford1-28.pdf>.

²⁴ Ibid.

²⁵ “Fact Sheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights,” (Geneva: 2008), <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

²⁶ Howse, Robert and Teitel, Ruti G., "Beyond the Divide: The International Covenant on Economic, Social and Political Rights and the World Trade Organization" (2009). *Articles & Chapters*. 1275. https://digitalcommons.nyls.edu/fac_articles_chapters/1275

²⁷ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". *Nordsisk Tidsskrift for Menneskerettigheter* 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolml/1Langford1-28.pdf>.

became possible for political ideology to permeate the procedures and solidify a contentious interpretation of social, economic, and cultural rights. This narrative is now taken and offered at face value, without an extensive exploration or reference to a recent examination of the events, suggesting the need to examine the events once again with new theoretical lenses.

It is difficult to ascertain the extent to which ideology covertly influenced the initial drafting of covenants within the legal process, with many influences and conversations unaccounted for by the historical documentation. By the account of some scholars, the outcome was an acquiescence to Soviet and socialist ideology²⁸ and, by others, it was a severe lessening of the social rights the United States initially sought to protect.²⁹

Sally-Anne Way produced the most supporting evidence for the U.S.'s initial intent to support social rights at the start of the drafting process by attempting to create a new narrative about the U.S. perspective on social rights. Way ultimately rests her assertion on the written submission of the U.S. to the UN Drafting Committee from 1947 to 1948, revealing support for social rights within texts such as "United States Suggestions for Articles to be Incorporated in an International Bill of Rights" and an additional June 1947 submission of equal support.³⁰ These documents detailed specific guidance for civil and political rights but also for economic, social, and cultural rights, including a detailed text on the correlative duties of the state, "going significantly beyond the UN Secretariat draft in specifying the duties of states in relation to these rights."³¹

However, despite demonstrating pre-1948 support for social rights in at least the aspirational document of a Declaration, Way ultimately points to a significant shift, the point

²⁸ Jankowski, Haley, *The International Covenant on Economic, Social and Cultural Rights: A New Conception* (January 1, 2015). Available at SSRN: <https://ssrn.com/abstract=3029136> or <http://dx.doi.org/10.2139/ssrn.3029136>

²⁹ Way, Sally-Anne. "The "Myth" and Mystery of US History on Economic, Social, and Cultural Rights: The 1947 "United States Suggestions for Articles to Be Incorporated in an International Bill of Rights"." *Human Rights Quarterly* 36, no. 4 (2014): 869-97. Accessed June 4, 2021. <http://www.jstor.org/stable/24518302>.

³⁰ *Ibid*, 872.

³¹ *Ibid*, 873.

at which the U.S. begins to lessen the language of support surrounding social rights. Way theorizes the declining support was related to the political pressure of an upcoming election, growing power of a conservative American Bar Association, McCarthyism, a second Red Scare, and the Federal Employee Loyalty program, which made it increasingly controversial to support any policies resembling communist values.³²

Haley Jankowski's scholarship holds an opposing belief that the passage of a social right covenant was actually the outcome of socialist influences at the time, rather than believing social rights were lessened in the process. However, her work does point out the weakness of the rights language in its ultimate form, finding various aspects in which the rights do not actual bind the state to act in protection of those rights, appear less aggressive than civil and political rights, and emerge as "secondary concerns" for most states.³³ She writes:

Generally, even the language that contains stronger implementation language, only casts itself as a mere 'recommendation.' If the Committee only issues loose recommendations, then it gives the states a lot of discretion for complying with the terms of the ICESCR. Recommendations are the norm for ICESCR typical enforcement; the Committee rarely, if ever, actually issues specific requirements.³⁴

Ultimately, the vagueness with which these rights were drafted and the characterization of them as separate from civil and political rights is viewed to have created a lesser status for their implementation. Various social rights proponents and the United Nations speak of the need to reassert the importance of social rights, suggesting that their marginal presence "undermines the indivisibility of rights."³⁵

³² Ibid, 895

³³ Jankowski, Haley, *The International Covenant on Economic, Social and Cultural Rights: A New Conception* (January 1, 2015): 9. Available at SSRN: <https://ssrn.com/abstract=3029136> or <http://dx.doi.org/10.2139/ssrn.3029136>

³⁴ Ibid, 25.

³⁵ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, 22 March 2017, A/HRC/35/26, available at: <https://www.refworld.org/docid/593a8e784.html> [accessed 4 June 2021]

While great attention has been given to issue of separate covenants and the need to realign social and cultural and civil and political rights once more,³⁶ a focus on how exactly ideology may have been influential or not at the moment of division is lacking. Further research on the decision to separate the rights, including the actors, ideologies, and events involved must be explored. Most importantly, the origins of the suggestion to split the covenants, and the discussions to do so, receive little attention when the discussion of a lesser notion of social rights is brought forth.

This research will look closely at this particular moment, rather than focusing entirely on the negotiations surrounding the language of the initial declaration. I will not seek primarily to determine the true intent of the drafters, as scholars such as Way have speculated on this previously, but instead to understand how ideology or intent may have been funneled into or revealed within minute levels of process. I will explore which moments may have truly been a critical juncture, how the outcomes of the process may have ultimately altered social rights thereafter, and how they could have occurred differently.

The analysis will focus specifically on the processes and negotiations undertaken during covenant formation and division. It will assess how key, opportune movements and strategic characterizations in a lawmaking process resulted in immensely impactful path dependent outcomes. Furthermore, it will explore how those decisions may not always take place in the expected format or the space in which one might expect them to arise.

I will seek to ascertain how the ideological divisions may have influenced processes or dominated the formation of social rights concepts and in what ways this may have occurred. The research will contribute a *longue durée* analysis, tracing the origins of modern discourse and outcomes for the scope and limitations of social rights to the critical juncture point of

³⁶ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". *Nordsisk Tidsskrift for Menneskerettigheter* 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolml/1Langford1-28.pdf>.

covenant division. Analyzing this moment of division, the narratives related to it, and its implications can perhaps assist human rights professionals in reorienting perspectives of social rights, re-establishing the espoused equality of these rights, and reaffirming the duty to implement these rights under international law.

Theory & Framework

This research accepts that the moment of division of these rights was ultimately informed by ideological battles of a Cold War crisis moment, wherein central actors identified a political opportunity to exert ideological influence and deviate from the original intentions of the Universal Declaration of Human Rights and the initial mandates of the General Assembly. However, I also argue that leading up to the moment in which the covenants were split, a moment infused with ideological influences, there was a genuine and demonstrated intent, both in negotiations and private communications, to collaborate and fulfill the requests of the General Assembly to create a single covenant on human rights.

By utilizing the framework of political opportunity structure, I will identify that a shift occurred; the United States recognized an opportunity to achieve an ideological and political goal and asserted influence to do so, although previously intending to remain passive. Political opportunity structures are often used to explain social movements; however, in this case, I will be looking at the way a state faced the limitation of a political opportunity structure, as well as the conditions which allowed for a temporary opening of that structure. I will draw inspiration from Jack Bloom's analysis of the Polish Worker's Party, in which he examines how a state can be both limited by a social movement from advancing on a political opportunity and simultaneously limit the social movement, exploring a reciprocal relationship.³⁷

³⁷ Bloom, Jack M. "Political Opportunity Structure, Contentious Social Movements, and State-Based Organizations: The Fight against Solidarity inside the Polish United Workers Party." *Social Science History* 38, no. 3-4 (2014): 359-88. Accessed June 3, 2021. <http://www.jstor.org/stable/90017040>.

What is true of political opportunity structures for social movements may also be true for states. Doug McAdam, in his work, *Political Process and the Development of the Black Insurgency, 1930–1970*, suggested that “any event or broad social process that serves to undermine the calculations on which the political establishment is structured occasions a shift in political opportunities.”³⁸ I will argue, on the basis of a the reciprocal relationship inspired by Bloom, that the possibility to split covenants offered the United States a means to control the infusion of social rights into domestic politics, and the ability to split covenants only originated from the opening of a political opportunity structure within a legal and political climate.

I will also contend that certain actors exercised enhanced agency to influence outcomes within the opening of the political opportunity structure, but inserted ideology through the technique of “camouflaging,” defined by Bob Clifford’s *Rights as Weapons*.³⁹ Clifford asserts that camouflaging “occurs when a political actor seeking one goal adopts and promotes a new and distinct rights issue, one that has no direct bearing on the actor’s original or dominant aim.”⁴⁰ In the case of the separation of social, economic, and civil rights, I will demonstrate that the actors involved conducted the separation under the guise of better supporting those rights, although that expressed intention did not match their original aim. As Clifford asserts, demonstrating the presence of camouflaging is extremely difficult. However, I will demonstrate a dissonance between stated intent, previously expressed beliefs, and resulting actions to assess the possibility of camouflaging within the splitting of covenants, focusing specifically on the United States.

³⁸ McAdam, Doug. 1982. *Political process and the development of Black insurgency, 1930-1970*. (Chicago: University of Chicago Press), 41.

³⁹ Bob, Clifford. "Rights as Camouflage: MASKING MOTIVES." In *Rights as Weapons: Instruments of Conflict, Tools of Power*, 65-92. PRINCETON; OXFORD: Princeton University Press, 2019. Accessed June 3, 2021. <http://www.jstor.org/stable/j.ctvc77487.6>.

⁴⁰ Ibid, 67.

I will ultimately reveal the events as a critical juncture for human rights, inducing path-dependent outcomes for social, economic, and cultural rights from the moment in which the covenants were split. In order to assess whether the event was a critical juncture, I will base my understanding of critical juncture from Sidney Tarrow's extended definition, compiling both the perspectives of David Collier and Ruth Berins Collier's work and Wolfgang Streeck and Kathleen Thelen's definitions to assess the presence of a critical juncture. My research will also furthermore assess the true timing of and influences for a critical juncture, analyzing both the drafting of the declaration and the splitting of the covenants as potential realms of significance.

The analysis will seek to understand the splitting of social rights as emerging from a critical juncture, brought on by a political opportunity structure and subject to long-term impacts reinforced through path dependency. I will understand path dependency as defined by David Wilsford's examination of the difficulties in reforming health care systems.⁴¹ Wilsford, informed by the work of Paul David's application of path dependency to economics, defines a path-dependent sequence of political changes as one that is "tied to previous decisions and existing institutions."⁴² Furthermore, he asserts, "Strong conjunctural forces will likely be required to move policy further away from the existing path onto a new trajectory."⁴³ Most importantly, Wilsford's definition supports the central tenant of this paper's argument — "each decision-making moment constitutes a powerful focusing device for subsequent decision-making" and the "probability of continuing along the same path increases" as time unfolds.⁴⁴

Examining and *longue durée* forces — I show that the original discourse surrounding social rights, based on ideological tensions of the moment, remains a consistent and current

⁴¹ Wilsford, David. "Path Dependency, or Why History Makes It Difficult but Not Impossible to Reform Health Care Systems in a Big Way." *Journal of Public Policy* 14, no. 3 (1994): 252. Accessed June 3, 2021. <http://www.jstor.org/stable/4007528>.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

barrier for social rights. Long-term, real-world implications for this critical juncture will also be examined through a path dependency model, assessing how this split changed not only the discursive nature of social and cultural rights but also their domestic implementation and institutional enforcement mechanisms.

Methodology

The method used in this research will be a historical process tracing and discursive analysis of the moment in which the legal covenants for human rights were divided. The source of analysis will be the travaux préparatoires from 1948, in which a singular document of universal human rights was proposed with a singular legally binding covenant, to 1952, when a decision was made to split the rights into two separate covenants. These historical meeting records provide a record of the processes of the formation of both the Declaration of Human Rights and the legally enforceable covenants. The plenary and meeting notes for the drafting committee of the Commission of Human Rights will provide a detailed record of the negotiations and viewpoints of the eight countries specifically responsible for drafting the declaration and the covenants and their discussions regarding social rights. The meetings and resolutions of the Economic and Social Council and the UN General Assembly will also be analyzed to piece together a process tracing of the decision to split covenants.

In addition, the research will utilize the daily column by Eleanor Roosevelt, the first Chairperson of the Commission on Human Rights, which provided a detailed record of events and perspectives of the United States representatives at the time of negotiations. To accompany Roosevelt's personal perspective, the research will also provide historical records of meetings between State Department officials and Roosevelt in which social rights were discussed. A particular focus on the United States and its representatives, as well as their intent as relevant actors, will be utilized through public speeches and commentary by historians in order to assess

the dominant narratives about the Western push against social rights and an East-West division at the time.

These records will be brought into a larger view of historical and political context, situating them within the ideological tensions of the Cold-War. I will analyze the relevancy, ideology, and agency of certain influential actors throughout the process and how they shaped the resulting understanding and discourse surrounding social rights at a critical juncture point through these records and their resulting actions. This historical analysis of discursive characterizations, processes, and actors will then be juxtaposed with modern discussions of social rights and case outcomes to assess *longue durée* forces.

Caveats & Limitations

While the work will not seek to derive the true intents of negotiating countries, considering it to be an unknowable facet of the process, the research will attempt to assess the extent of genuine intent through actions undertaken in the legal process, paired with personal recollection, and draw special attention to representations of potential shifts in intent demonstrated within the legal process. To remedy the inability to derive true intent, a general skepticism will be applied to statements and actions and a larger focus will be put on outcomes of such actions and how outcomes alignment with internally expressed ideologies of that particular state. For the purpose of assessing U.S. intentions, personal accounts of Eleanor Roosevelt and declassified state department instructions for the U.S. position at the UN meetings will help juxtapose actions and ideology.

Conclusion & Outline of Research Chapter

As demonstrated by this chapter, a multitude of considerations about the events that unfolded will be applied with a number of theoretical lenses. The purpose of an extensive

analysis of the split is to investigate a widely referenced and underexplored narrative surrounding the division but also to offer a more in-depth examination of the political maneuvering and ideological infusions that might have taken place. Most importantly, this research seeks to contribute to social rights scholarship by tracing the origins of the perceived separation between rights, with the hope of contributing to their eventual advancement.

In the following research chapter, I will introduce the reader to three possible explanations for the events that occurred when the covenants were split, ultimately asserting the hypothesis of the research. I will then conduct a historical process tracing of the events that unfolded, identifying potential critical junctures, political opportunity structures, and possible path dependent outcomes throughout the narrative account of events.

Ultimately, the research will reveal the exact context and influences surrounding the decision to split covenants, the critical juncture at which long-term effects on the implementation of social rights occurred. I will also demonstrate that the characterization and limitations of social rights were subject to *longue durée* effects, defined and solidified for decades after by particular political maneuvers within a political opportunity context.

Chapter 2

Three Versions of History

In the years following World War II, there was a certain urgency to provide the broader public with a universal standard of human rights. In one of the first sessions of the drafting committee for the Commission of Human Rights, the representative from Lebanon, Dr. Charles Malik, stated, “The world was awaiting more than mere resolutions. It wanted maximum assurance against the infringement of human rights and actual conventions.”⁴⁵

However, the drafters quickly found themselves in debate about the exact wording and modes of implementation. In a June 18, 1947 publication of her column, Eleanor Roosevelt recounted, “What will happen when eight of us begin to find fault with the wording, I dread to contemplate. And if we on the drafting committee do succeed in agreeing, what will happen when the full Human Rights Commission of eighteen goes to work?”⁴⁶ It was only a few days later when she recounted the issues she was having in obtaining compromise from the Soviet Union within the drafting committee; however, she also wrote, “I think it is not only possible but essential that the United States and the USSR learn to get on together, but I think there must be concessions on both sides.”⁴⁷ There was a momentum and an urgency in the process to provide the world with a bill of human rights, and the drafting committee responsible for it began their process with the stated intent to collaborate and compromise in search of providing a declaration.⁴⁸

⁴⁵ U.N. CHR, 1st Sess., 7th plen. mtg., U.N. Doc E/CN.4/AC.1/SR.7 (June 19, 1947) available from <https://undocs.org/en/E/CN.4/AC.1/SR.7>.

⁴⁶ “My Day by Eleanor Roosevelt, June 18, 1947.” n.d. Gwu.Edu. Accessed June 4, 2021. https://www2.gwu.edu/~erpapers/myday/displaydoc.cfm?_y=1947&_f=md000682.

⁴⁷ Ibid.

⁴⁸ U.N. CHR, 1st Sess., 7th plen. mtg., U.N. Doc E/CN.4/AC.1/SR.7 (June 19, 1947) available from <https://undocs.org/en/E/CN.4/AC.1/SR.7>.

However, at a certain point in history, tensions flared within negotiations to a point at which the perception of an East-West division was cemented into history.⁴⁹ Outward facing public declarations demonstrated deep ideological divisions, such as Eleanor Roosevelt's 1948 speech at the Sorbonne in which she differentiated Soviet views on human rights from those of United States.⁵⁰ This division of ideology is often cited as the reason for the separation of covenants.⁵¹

As we proceed through this research, I will seek to identify three possible versions of how the events unfolded and the role the United States played in instigating the separation of covenants. In the first consideration, bipolar ideological conflict drove the majority of outcomes throughout the process, from start to finish, but did so through realpolitik choices. The U.S. elevated civil and political rights and devalued social rights whenever possible, with a sustained and careful attention to public opinion. In this first scenario, stated intents of a U.S. commitment to social rights were marked by conflicting actions and internal communications that reflected a contrasting ideological goal within the process. There was a general presence of "camouflaging" as defined by Bob Clifford, in which true intents are subverted through seemingly positive additions as a means of control.⁵²

In the second scenario, the decision to split covenants was merely a product of contingent choices resulting from prior structures and apolitical realities, rather than realpolitik or ideology, and emerges as the most practical option available with unintended long-term impacts.

⁴⁹ Source 9, page 2

⁵⁰ "Social and Economic Rights: Eleanor's Speech at the Sorbonne." n.d. Facinghistory.Org. Accessed June 4, 2021. <https://www.facinghistory.org/universal-declaration-human-rights/social-and-economic-rights-eleanors-speech-sorbonne>.

⁵¹ "Fact Sheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights," (Geneva: 2008), <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

⁵² Bob, Clifford. "Rights as Camouflage: MASKING MOTIVES." In *Rights as Weapons: Instruments of Conflict, Tools of Power*, 65-92. PRINCETON; OXFORD: Princeton University Press, 2019. Accessed June 3, 2021. <http://www.jstor.org/stable/j.ctvc77487.6>.

However, I will argue that the outcome derives from a third scenario—while members of the U.S. government held ideologies about social, economic, and cultural rights and desired its division from civil and political or exclusion from the covenants entirely, the application of this ideological influence was largely absent from the process until the emergence of a political opportunity structure. The opportunity to split covenants was not foreordained by political maneuvering, but instead emerged from the recognition of a political opportunity structure, a point at which the United States and other interested parties decided to insert ideology and camouflage intentions in the process. Up until that point, there had been a barrier to inserting influence based on concerns with public perception and a genuine intent of certain representatives, which kept the United States in a passive state of minimal ideological exertion. This opportunity came due to contingent factors, largely related to time constraints, but the moment was harnessed and manipulated by certain actors to advance political outcomes.

The Beginning of a Critical Juncture

While the UDHR did become less and less specific in regards to social rights from 1947 to 1948, there are relevant details surrounding the shift that paint a more nuanced picture of the events. On June 16, 1947, it was decided that the committee would draft two documents, a more general declaration followed by a convention, the latter of which would be created as a more specific working for legal implementation.⁵³

Up until that point, the U.S. had made rather specific submissions in June and July of 1947 for the declaration, with particularly strong and specific language surrounding economic and social rights as compared to later drafts of the declaration. The shift from 1947 to 1948 in the specificity of the language mostly related to the notion that a more specific annunciation of the rights would be expanded upon in the convention. This concept of separate mechanisms, a

declaration and a covenant, had the support of not only the United States, but a general support among the drafting commission, including Australia,⁵⁴ China,⁵⁵ France,⁵⁶ and Lebanon.⁵⁷ While the U.S. may have shifted its position on the strength of the language related to the rights, the generality of the declaration was a component that had been agreed upon from the early stages of drafting a subsequent convention.⁵⁸

In terms of the ideological infusion into the negotiations, 1947 was of minimal significance for social rights if comparing it to the years of subsequent negotiations, despite the UDHR leading into the U.S. presidential election of 1948. The potentiality of a presidential change in the United States did infuse the process of drafting a declaration with more urgency because of the concern that Truman, who was more partial to the endeavor of international human rights, might not get reelected, but the declaration itself was intended to be general.⁵⁹

The critical juncture was more likely to have occurred in 1951, leading into the 1952 presidential election, containing a critical shift in which social rights were divided from civil and political rights. From the moment in which two separate covenants were decided upon, rather than being presented as a single legally binding covenant of the human rights that were espoused in the general declaration of human rights, the fate of social rights would be forever altered and forever secondary.

This moment of the split eventually occurred within the General Assembly on February 5th, 1952 through Resolution 543 (VI), which urged the General Assembly to reconsider a single covenant. The resolution was introduced within the Economic and Social Council,

⁵⁴ U.N. CHR, 1st Sess., 7th plen. mtg., U.N. Doc E/CN.4/AC.1/SR.7 (June 19, 1947) available from <https://undocs.org/en/E/CN.4/AC.1/SR.7>.

⁵⁵ U.N. CHR, 1st Sess., 4th plen. mtg., U.N. Doc E/CN.4/AC.1/SR.4 (June 12, 1947) available from <https://undocs.org/en/E/CN.4/AC.1/SR.4>.

⁵⁶ U.N. CHR, 1st Sess., 5th plen. mtg., U.N. Doc E/CN.4/AC.1/SR.5 (June 17, 1947) available from <https://undocs.org/en/E/CN.4/AC.1/SR.5>.

⁵⁷ Ibid.

⁵⁸ U.N. CHR, 1st Sess., 4th plen. mtg., U.N. Doc E/CN.4/AC.1/SR.4 (June 12, 1947) available from <https://undocs.org/en/E/CN.4/AC.1/SR.4>.

⁵⁹ Allida

outside the Commission on Human Rights or the General Assembly, and many members remarked on the impropriety of bringing forth the resolution outside the General Assembly after it had already been reaffirmed by the General Assembly.⁶⁰

The General Assembly had already rejected two proposals for a series of complementary pacts, rather than a single covenant. Likewise, the General Assembly's Resolution 421 (V) on December 4th, 1950 asserted that the Commission on Human Rights should include a "clear expression of social, economic, and cultural rights in a manner which related them to the civic and political freedoms proclaimed by the previous draft of the covenant" when asked by the Commission on Human Rights for instructions.⁶¹

The decision to pass a resolution to ask the General Assembly to reconsider a single covenant, and the discussions and narratives surrounding it represented, demonstrated critical juncture for social rights forever after. There were particular markers, as defined by Tarrow; primarily, there the presence of "uncertainty as to the future of an institutional arrangement," which "allowed for political agency and choice to play a decisive causal role in setting the institution on a certain path of development," persisting over a long period of time.⁶² However, there was also evidence of gradual transformation of the language of social rights, wherein "far-reaching change can be accomplished through the accumulation of small, seemingly insignificant adjustments." At the time of the split, the eventual outcomes in which social rights would become secondary were not observable; it was simply a decision to split covenants.

Using the extended view of critical junctures by Streeck, Thelen, and Hacker employed by Tarrow, there was a presence of five markers of transformative effects — *displacement*, when a new model emerged and called into question the old model for the rights, *layering*,

⁶⁰ Meeting 525 U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

⁶¹ General Assembly resolution 384 (XIII), Report of the Commission on Human Rights (7th session), E/RES/384(XIII)(14 December 1950), available from [https://undocs.org/en/E/RES/384\(XIII\)](https://undocs.org/en/E/RES/384(XIII))

⁶² Tarrow, Sidney. 2017. "“the World Changed Today!” Can We Recognize Critical Junctures When We See Them?" Qualitative and Multi-Method Research 15 (1): 10.

when the request was made outside the drafting committee and General Assembly, *policy drift* as the domestic situations shifted for the United States, *conversion*, wherein the drafting committee was directed to new goals, and *exhaustion*, an institutional breakdown and the splitting of covenants and drafting bodies for those covenants.⁶³

It was a moment in which a political opportunity structure was recognized, and relevant actors made motions to divide civil and political rights from social, economic, and cultural rights and diminish their subsequent legal implementation. Those institutional changes had long-term impacts for social rights outcomes, but they were conducted seemingly out of process adjustments and in the stated interest of advancing those rights. In the following sections, I will demonstrate evidence for this notion of a critical juncture.

The Opening of a Political Opportunity Structure

Over a period of less than a year, a broad commitment to a single convention of human rights, the drafting of a single covenant that had been widely agreed upon and requested by the General Assembly, was shifted to a decision to split covenants into two conventions of implementation.

The May 18th draft of the convention was submitted to the Economic and Social Council for consideration but was considered unfinished by the drafting commission on account of time restraints.⁶⁴ It focused largely on economic and social rights and measures of implementation, but acknowledged a debate surrounding the modes of implementation for each right.⁶⁵ However, despite limited time and unfinished discussions, the draft was requested by the

⁶³ Ibid.

⁶⁴ Commission on Human Rights, *Report to the Economic and Social Council on the 7th session of the Commission*, E/CN.4/640 (6 April to 19 May 1951), available from undocs.org/en/E/CN.4/640.

⁶⁵ Commission on Human Rights, *Report to the Economic and Social Council on the 7th session of the Commission*, E/CN.4/640 (6 April to 19 May 1951), available from undocs.org/en/E/CN.4/640.

Economic and Social Council for review and would be discussed at the August 1951 council meetings.

A May 29th, 1951 discussion in advance of the Economic and Social Council meetings between Eleanor Roosevelt and the State Department revealed that Roosevelt had reaffirmed the impossibility of splitting the covenants, despite the U.S. perception of civil and political and social, economic, and cultural rights being of a differing nature.⁶⁶ She did not believe it had the ability to gain support with the drafting commission, and stated that any attempt to make a diplomatic push to separate the articles of civil and political from social, economic, and cultural rights “would generate a great deal of ill will, lose our position of leadership and end by failing to attain our objective.”⁶⁷ She had also privately expressed her dismay surrounding this idea.⁶⁸ Furthermore, she expressed the wish of her fellow drafters to see economic, social and cultural international guarantees as a standard with which to challenge and prod their own governments and leaders in their country to greater effort in the direction of attaining social improvement” and their confusion regarding the “unwillingness of the United States to state them as rights” and treat them as legal obligations.⁶⁹

In the May meetings, Roosevelt and the other attendees from the State Department had agreed to a strategy for the upcoming Economic and Social Council Meetings wherein the draft of the covenants would be discussed: the U.S. would support a motion to send the draft to the General Assembly for discussion but also one to have the draft returned for completion, along with including merely a reservation that economic, cultural, and social rights should be attained by “progressive action” rather than “legal obligation.”⁷⁰

⁶⁶ “Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian.” n.d. State.Gov. Accessed June 4, 2021. <https://history.state.gov/historicaldocuments/frus1951v02/d499>.

⁶⁷ Ibid.

⁶⁸ Way, Sally-Anne. "The "Myth" and Mystery of US History on Economic, Social, and Cultural Rights: The 1947 "United States Suggestions for Articles to Be Incorporated in an International Bill of Rights"." *Human Rights Quarterly* 36, no. 4 (2014): 869-97. Accessed June 4, 2021. <http://www.jstor.org/stable/24518302>.

⁶⁹ Ibid.

⁷⁰ Ibid.

Furthermore, a June 29th, 1951 position paper by the State Department prepared for the Thirteenth Session of the Economic and Social Council of the United Nations stated, "The United States would prefer to have these provisions separated from the Covenant and provided for in a separate instrument, but it does not intend to attempt to oppose majority sentiment in ECOSOC on this question for reasons stated below in the discussion section of this paper."⁷¹ The State Department expected that there would be a majority sentiment favoring provisions for economic, social, and cultural rights, and was concerned that any effort to press for separation in the ECOSOC or the General Assembly would be politically unwise, particularly for relations with under-developed countries.⁷²

However, from June 29th to August 27th a shift occurred, which I will assert was the moment at which the United States recognized the opening of a political opportunity structure both politically, on a domestic level, and legally, within the international institution of the UN. While Bloom debates the nature of political opportunity structures as fleeting or long-lasting, he ultimately asserts that "what is crucial is that the collective actor must respond to conditions it does not control; each player affects the other."⁷³ In other words, the social movement, a player, can both affect the state, and the state can also affect the social movement. However, I will also extend this definition of "players" and the state to the UN bodies and their overarching entities; one body responds to the movements of another and their actions are inextricably linked. A weakness or the undermining of one realm can be a political opportunity in another realm, similarly to the way in which McAdam characterized relations between social movements and their overarching body of governance, the state.⁷⁴

⁷¹ "Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian." ———. n.d. State.Gov. Accessed June 4, 2021b. <https://history.state.gov/historicaldocuments/frus1951v02/d500>.

⁷² "Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian." n.d. State.Gov. Accessed June 4, 2021a. <https://history.state.gov/historicaldocuments/frus1951v02/d499>.

⁷³ Bloom, 360.

⁷⁴ McAdam, Doug. 1982. Political process and the development of Black insurgency, 1930-1970. (Chicago: University of Chicago Press), 41.

An important element of this framing is that the Economic and Social Council was bound to carry out the instructions of the General Assembly and transmit them to the Commission on Human Rights as instructions, serving as a conduit between the General Assembly and the drafting arm of the Commission on Human Rights. At the August 27th Economic and Social Council meeting, the Commission's draft convention on human rights was discussed with several possible outcomes for the fate of the draft. The representatives from the United States, Belgium, India, Uruguay, and the United Kingdom introduced joint resolution 233 (E/L.233) to the Economic and Social Council, which would send the draft back to the drafting commission for further work (Section A) and to the General Assembly for review and government commentary (Section B). However, the most contentious component of the resolution was Section C, a request that the General Assembly reconsider their previous Resolution 421 (V), which had asked the Commission on Human Rights to draft a single covenant that included social, economic, and cultural rights.

At the very start of the ECOSOC meetings, it was announced that the Commission had succeeded in drafting only the provisions related to economic, social, and cultural rights and the measures of implementation of the International Covenant on Human Rights, and it had failed to complete all tasks requested due to a lack of time.⁷⁵ However, there was a recognition of disagreement regarding implementation that had occurred within the drafting meetings by the President of the Council. The United States and the joint sponsors of their bill strategically used the presence of disagreement to insist on the impossibility of carrying out the General Assembly's instructions for a single covenant, while other sponsors insisted it was simply a matter that needed more time.⁷⁶

⁷⁵ U.N. ECOSOC, 13th Sess., 522nd plen. mtg., U.N. Doc E/SR.522 (August 27, 1951) available from <https://undocs.org/en/E/SR.522>.

⁷⁶ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

Czechoslovakia presented their own resolution requesting that the draft be sent back to the commission for completion, rather than being sent to the General Assembly, owing to a lack of time.⁷⁷ Likewise, the Chilean, French, and Swedish delegations pointed to a lack of sufficient time to meet the General Assembly's request for a single covenant draft and its modes of implementation. The Egyptian representative also requested that the Council allow a fresh session with a "length not unduly restricted."⁷⁸ The Czechoslovakian delegation again echoed similar sentiments, suggesting a delay of six months to bring the draft to full completion.⁷⁹

The proponents of maintaining a single covenant were under the impression that the articles and modes of implementation could be complete if given the appropriate time, adding evidence to the counterfactual considerations that the covenants had the possibility of remaining together. During the ECOSOC meetings, both the Soviets and Pakistanis expressed extreme concern with splitting the covenants, as it had the possibility to create long-term, negative impacts for social rights.⁸⁰

However, the delegates sponsoring the joint resolution containing Section C, refused to recognize the possibility of more time as a solution to the problem, insisting upon the difficulty or impossibility of carrying out the task of a singular covenant as a reason for the need to split covenants. The United States representative exclaimed the "difficulty of incorporating two such different types of rights in a single draft" given that the "Commission in the end had not been able to reach any clear-cut decision as to whether both sets of implementation articles should apply to both sets of 'rights.'"⁸¹ Privately, the State Department had initially agreed that it would request the draft be sent back to the Commission on account of the limited time it had

⁷⁷ U.N. ECOSOC, 13th Sess., 523rd plen. mtg., U.N. Doc E/SR.523 (August 28, 1951) available from <https://undocs.org/en/E/SR.523>.

⁷⁸ U.N. ECOSOC, 13th Sess., 524th plen. mtg., U.N. Doc E/SR.524 (August 28, 1951) available from <https://undocs.org/en/E/SR.524>.

⁷⁹ Ibid.

⁸⁰ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

⁸¹ U.N. ECOSOC, 13th Sess., 524th plen. mtg., U.N. Doc E/SR.524 (August 28, 1951) available from <https://undocs.org/en/E/SR.524>.

had to finish it.⁸² Likewise, the Canadian representative stated, “The very fact that the Commission on Human Right had been unable to find a uniform implementation procedure for the two categories of rights showed the impossibility of including provisions on political and civil right and on economic, social, and cultural right in the same instrument.”⁸³ However, the Canadian representative also initially recognized that the Commission had not yet had time to deal with the extent of the General Assembly’s instructions.⁸⁴

Additional sponsors such as India added to the dialogue by expressing that the reconsideration request, Section C, was being submitted based on the fact that the covenant did not include “adequate machinery to ensure its implementation” when it included social, economic, and cultural rights but could do so when limited to political and civil rights.⁸⁵ The Chilean representative went as far as to say that “even if the Commission on Human Rights had had sufficient time to finish the task set by the General Assembly, the fact would remain...that the members of the Council were divided on a certain number of important points.”⁸⁶ This was his justifying reason that there would be “no useful purpose” for referring the draft back to the Commission.⁸⁷

And yet, representatives from Mexico,⁸⁸ France,⁸⁹ the Czech Republic, Pakistan, and various others continually insisted that a means of implementation was achievable for all rights if the draft was sent back to the commission with more time. Despite eventually voting to pass the resolution by the U.S., France argued that the task assigned by the General Assembly had

⁸² “Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian.” n.d. State.Gov. Accessed June 4, 2021a. <https://history.state.gov/historicaldocuments/frus1951v02/d499>.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

⁸⁶ U.N. ECOSOC, 13th Sess., 524th plen. mtg., U.N. Doc E/SR.524 (August 28, 1951) available from <https://undocs.org/en/E/SR.524>.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ U.N. ECOSOC, 13th Sess., 523rd plen. mtg., U.N. Doc E/SR.523 (August 28, 1951) available from <https://undocs.org/en/E/SR.523>.

been “too big for the time at its disposal,” but his delegation was “convinced that the [difficulties and opposition] did not justify jettisoning the idea of a covenant on human rights.”⁹⁰ It was their view that progress would be slow and the “problem must be left to mature,” but that a resolution would occur, just as it had on many occasions of the Commission’s seventh session of drafting.⁹¹ Pakistan’s representative, Hadi Husain, explained that the difficulties of devising machinery to ensure implementation of both political and civil and social, economic, and cultural were “more imagined than real.”⁹²

Despite the debate and the multiple requests for additional time to come to a draft, the Economic Council passed Resolution 384 (XIII) asking the General Assembly to reconsider their decision to have a single covenant. It is quite possible, based on the contradictions, internal viewpoints of certain actors, unprecedented ideological characterizations of separation, and future actions, that the U.S. and other delegates took advantage of the opening of a political opportunity structure. They were able to create a narrative about the covenants, to insist on the impossibility of a single legal implementation mechanism. It is also possible that this “impossibility” was a falsely employed narrative about a situation emerging from contingent factors, namely a limitation of time.

Time and the weaponization of the scarcity of time became a factor moving forward to request two separate covenants, but additional time was also never recognized by the sponsors as a solution to the issue of covenant implementation. However, all sponsors of the joint treaty that had requested reconsideration of a single covenant also recognized the time constraints put upon the Commission, choosing to include it as their explanation for an unfinished draft in their joint resolution.⁹³

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

⁹³ General Assembly resolution 384 (XIII), Report of the Commission on Human Rights (7th session), E/RES/384(XIII)(14 December 1950), available from [https://undocs.org/en/E/RES/384\(XIII\)](https://undocs.org/en/E/RES/384(XIII))

The reconsideration of a single covenant was granted by the General Assembly after forty meetings and two plenary sessions devoted to the subject, but it was the characterizations of separations which occurred in the Economic and Social Council's discussions that persisted into the General Assembly and ignited the prolonged impasse.⁹⁴

Ideological Infusion and Relevant Political Actors

Getting the question of a single covenant back on the debate floor of the General Assembly was a political opportunity to separate the covenants after failures to do so in the General Assembly and the impossibility of doing so within the drafting commission. Suggesting that the drafting commission had not been able to create a singular covenant, rather than offering them more time or recognizing that the challenge to do so was based on limited time, was a narrative struggle over what the drafters needed, was won in the Economic and Social Council. The winning narrative of the ECOSOC meetings had transferred and pervaded the General Assembly upon the first session,⁹⁵ a path dependent outcome emerging from a decision, part of instigating a critical juncture and brought on by the recognition of a political opportunity to induce separation.

In the language of counterfactual analysis, it is quite possible that, given more time to come to an agreement, the Commission could have drafted a singular convention for implementation and would have not had to ask the General Assembly to reconsider a single covenant, which, in turn, would not have led to the General Assembly to request two separate drafts.

An important question is why the United States decided to insert Section C in their joint resolution to request reconsideration of a single covenant and if this move was part of

⁹⁴ U.N. GAOR, 6th Sess., 375th plen. mtg., U.N. Doc A/PV.375 (Feb. 5, 1952), available from undocs.org/en/A/PV.375.

⁹⁵ Ibid.

recognizing a political opportunity structure. Submitting a resolution that requested a reconsideration of a single covenant once more had not been discussed by Roosevelt and the State department in May or planned in June as a strategy for the August ECOSOC Meetings. In fact, any motion that appeared to show a lack of support for social rights was expressly warned against on account of public opinion concerns.⁹⁶

This is perhaps where Sally-Anne Way's political and historical context is worth returning to, in order to understand the nature of this transition as the actual location of a critical juncture and the opening of a political opportunity structure. The ECOSOC meetings of August 1952 were leading to another U.S. presidential election; this time there was public support for a Republican candidate who was largely disinterested in human rights and the internationalist momentum following World War II had begun to fade. New fears of communism were rising with the emergence of the Red Scare, and the climate for McCarthyism's communist paranoia was growing.⁹⁷ The influences that Way identified as having an effect on the draft declaration were more likely influential on the decision to split covenants, particularly the "rising conservative fears of an overextension of federal and executive power...and growing isolationist opposition to US involvement in international treaty making"⁹⁸ that preceded the Bricker Amendment, Congressional attempts to limit the U.S. engagement with international treaties.

Eleanor Roosevelt had been steadfast in her desire to maintain a singular covenant. She had even expressed her hesitation about splitting the covenants in her My Day journals on May 21, 1952, after the resolution of the resolution to split the covenants in the General Assembly

⁹⁶ "Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian." n.d. State.Gov. Accessed June 4, 2021a. <https://history.state.gov/historicaldocuments/frus1951v02/d499>.

⁹⁷ "McCarthyism and the Red Scare." 2017. Millercenter.Org. December 20, 2017. <https://millercenter.org/the-presidency/educational-resources/age-of-eisenhower/mccarthyism-red-scare>.

⁹⁸ Way, Sally-Anne. "The "Myth" and Mystery of US History on Economic, Social, and Cultural Rights: The 1947 "United States Suggestions for Articles to Be Incorporated in an International Bill of Rights"." *Human Rights Quarterly* 36, no. 4 (2014): 895. Accessed June 4, 2021. <http://www.jstor.org/stable/24518302>.

had already passed.⁹⁹ However, the members of the State Department she spoke to at the meeting in May had a different understanding. The State Department had explicitly stated its desire to see social rights removed from the covenant, as well as its desire to avoid any action to do so on account of public opinion.¹⁰⁰ Roosevelt had a history of clashing with the State Department when it came to the activities of the drafting committee for human rights. Allida Black, Director and Editor of *The Eleanor Roosevelt Papers*, stated that Roosevelt had “gone to diplomatic war with [the] State Department,” particularly with the new Undersecretary of State for the United States, John Lovett, who saw “no use to the declaration” and insisted that, if it had to be done, it should focus exclusively on political and civil rights.¹⁰¹ Roosevelt wrote to him “incensed,” calling human rights the “fundamental issue of our time.”¹⁰² She went above him, copying President Harry Truman, and threatened to resign if the United States did not engage fully with the process and release their private correspondence as explanation.

The State Department and other members of the administration, from the very beginning, had reservations regarding social rights, but Roosevelt ultimately persuaded the State Department to “accept the inclusion of economic and social rights in the Declaration and to join the majority of the Commission on Human Rights in supporting the drafting of both a declaration and a covenant.”¹⁰³

The initial Drafting Committee meetings reflect the narrative that she had actually won the mandate to create a draft declaration and convention which included social rights. In the 206th meeting of the 7th session of the drafting committee, one of the meetings leading up to

⁹⁹ “My Day by Eleanor Roosevelt, May 21, 1952.” n.d. Gwu.Edu. Accessed June 4, 2021. https://www2.gwu.edu/~erpapers/myday/displaydoc.cfm?_y=1952&_f=md002227.

¹⁰⁰ “Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian.” ———. n.d. State.Gov. Accessed June 4, 2021b. <https://history.state.gov/historicaldocuments/frus1951v02/d500>.

¹⁰¹ Oxford Law Faculty. 2018. Eleanor Roosevelt And The Battle To Define Human Rights. Video. <https://www.youtube.com/watch?v=XgvaOzkqj1o&t=1471s>.

¹⁰² Ibid.

¹⁰³ Luscombe, Anya. 2018. “Eleanor Roosevelt: A Crusading Spirit to Move Human Rights Forward.” *Netherlands Quarterly of Human Rights* 36 (4): 245.

the committee's submission of a draft to the Economic and Social Council, she stated, "In light of the decision taken by the general assembly at its last session [requesting one covenant], the United States government had, however, reconsidered the matter, and had decided that a statement designed to promote certain economic and social objectives could be included in the covenants, provided that the definitions were sufficiently wide."¹⁰⁴ The draft submission offered by the United States to the committee did contain mentions of social, economic, and cultural rights, although the Soviet representative accurately pointed out the vagueness and lack of implementation mechanisms.¹⁰⁵

However, the emergence of both a political opportunity structure, the opportunity to submit a resolution within the Economic and Social Council and the political climate to do so, allowed other relevant actors to assert influence and ideology into the process, which subsequently became the critical juncture for social rights outcomes.

In the May meeting with Roosevelt, Deputy Legal Adviser at the State Department, Jack Tate, had suggested a reservation that would differentiate the type of implementation forms for social, economic, and cultural rights versus civil and political. However, this resolution would eventually become a major talking point at the ECOSOC meeting and an official request within the joint resolution being proposed by the United States at ECOSOC.

The biggest problem with attempting to introduce this concept into the drafting Commission through Roosevelt was not only Roosevelt's trepidation about introducing it and potentially weak ideological backing of it, but also the minimal support it had been gaining in commission discussions thus far. As she had stated in her meetings with the State Department, "Most of the other members of the Commission therefore insist tenaciously on stating these

¹⁰⁴ U.N. CHR., 7th Sess., 206th plen. mtg., U.N. Doc E/CN.4/SR.206 (April 30, 1951) available from <https://undocs.org/en/E/CN.4/SR.206>.

¹⁰⁵ U.N. CHR., 7th Sess., 204th plen. mtg., U.N. Doc E/CN.4/SR.204 (April 25, 1951) available from <https://undocs.org/en/E/CN.4/SR.204>.

propositions [of social, economic, and cultural rights] in terms of rights and including them in the Covenant with Civil and Political Rights.”¹⁰⁶

Furthermore, discussions in the Commission on Human Rights in advance of the Economic and Social Council Meetings had yielded various viewpoints on social rights implementation but had ultimately reaffirmed a commitment to a single covenant of rights and efforts to create one proceeded after an initial discussion.¹⁰⁷ The General Assembly had also already reaffirmed their commitment to a single covenant and their explicit wish for the inclusion of social, economic, and cultural rights in Resolution 421 (V) of 1950.

While Roosevelt may not have been the right vessel to deliver the desired outcome, the splitting of covenants, and the Commission on Human Rights and the General Assembly had not been conducive to the goal thus far, the Economic and Social Council offered a new realm to influence outcomes. U.S. Representative Walter Kotschnig became that vessel inside the Economic and Social Council who helped carry the resolution asking the General Assembly to reconsider the request for a single covenant. Kotschnig had his own ideological bias regarding social rights which he fervently and overtly debated the Soviets on, even being quoted in a 1952 foreign affairs article for his heated exchange with the Soviet representative in the Economic and Social Council meetings.¹⁰⁸ In the exchange, he revealed his views on the Soviet economy and the superiority of capitalism, which meant that his actions within ECOSOC were not only guided by realpolitik choices. Even if Kotschnig had put aside his personal views, the internal views of the State Department on social rights were of an ideological foundation,

¹⁰⁶ “Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian.” n.d. State.Gov. Accessed June 4, 2021a. <https://history.state.gov/historicaldocuments/frus1951v02/d499>.

¹⁰⁷ U.N. CHR., 7th Sess., 206th plen. mtg., U.N. Doc E/CN.4/SR.206 (April 30, 1951) available from <https://undocs.org/en/E/CN.4/SR.206>.

¹⁰⁸ Green, James Frederick. "ECOSOC: Its Role and Its Achievements." *World Affairs* 115, no. 3 (1952): 74-76. Accessed June 4, 2021. <http://www.jstor.org/stable/20668646>.

explicitly stated by their internal memos.¹⁰⁹ It was also detailed by the many confrontations Roosevelt had with the State Department in the effort to include social, economic, and cultural rights.¹¹⁰

During the Economic Council sessions, Kotschnig became the perfect vessel to deliver the previously subverted State Department opinion on social rights, stating that “economic, social and cultural rights different from civil and political rights in that the former were objectives to be attained rather than rights which could be upheld in a court of law.”¹¹¹ He then asserted a distinct difference between the “rights” and their difference of implementation as the position of the United States Government, a declaration not yet made explicitly or formally by Roosevelt in the drafting committee leading to the Economic Council meetings. This moment represented a poignant and impactful shift, along with the resolution to reconsider the singular covenant, in which the deeper ideology of the State Department was infused into the negotiation process.

Ultimately, despite the heated discussions surrounding social rights within the meetings, the justification presented in Resolution 384 (XII) stated the following:

Conscious of the difficulties which may flow from embodying in one covenant two different kinds of rights and obligations

Aware of the importance of formulating in the spirit of the charter the universal declaration of human rights and General Assembly Resolution 421 (V) economic social and cultural rights **in the manner most likely to assure their effective implementation**, invites the general assembly to reconsider its decisions in Resolution 421 (V) to include in one covenant articles on economic, social, and cultural rights, together with articles on civil and political rights.¹¹²

¹⁰⁹ “Foreign Relations of the United States, 1951, the United Nations; The Western Hemisphere, Volume II - Office of the Historian.” ———. n.d. State.Gov. Accessed June 4, 2021b. <https://history.state.gov/historicaldocuments/frus1951v02/d500>.

¹¹⁰ Oxford Law Faculty. 2018. Eleanor Roosevelt And The Battle To Define Human Rights. Video. <https://www.youtube.com/watch?v=XgvaOzkj1o&t=1471s>.

¹¹¹ U.N. ECOSOC, 13th Sess., 524th plen. mtg., U.N. Doc E/SR.524 (August 28, 1951) available from <https://undocs.org/en/E/SR.524>.

¹¹² General Assembly resolution 384 (XIII), Report of the Commission on Human Rights (7th session), E/RES/384(XIII)(14 December 1950), available from [https://undocs.org/en/E/RES/384\(XIII\)](https://undocs.org/en/E/RES/384(XIII))

Assessing Dominant Historical Narratives

In this final section, the research returns to the original question, assessing three versions of history and the accuracy of narratives. The suspicion surrounding the intent of the resolution was palpable within the Economic and Social Council meetings and had been building since the drafting committee meetings.

However, contrary to dominant narratives of an East-West division and the story of a divide between the United States and the Soviet Union, the most heated exchanges and arguments against social rights inclusion actually occurred between a variety of countries and the Soviet Union. Likewise, there is evidence that some outcomes, including the socialist opposition to an expert committee, which resulted in only the ICCPR having a committee for enforcement, while the ICESCR remained only under the supervision of ECOSOC until 1987.¹¹³

For this particular question, the analysis will focus solely on the content of the meetings in which the decision to split covenants took place. The report on the committee meetings¹¹⁴ and the committee meeting notes¹¹⁵ suggest that India and the United Kingdom spent a portion of time questioning whether the committee was bound to meet the demands of the General Assembly; they were reluctant to follow the mandate to create a single covenant. The representative from the United Kingdom continually expressed his country's wish that the economic, social, and cultural rights be omitted entirely from the covenant.¹¹⁶ The Soviet representative, Platon Morozov, stated that he preferred the frankness of the UK rather than the

¹¹³ Langford, Malcolm. 2021. "Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights". *Nordsisk Tidsskrift for Menneskerettigheter* 27 (1): 4. <https://www.jus.uio.no/ior/english/people/aca/malcolml/1Langford1-28.pdf>.

¹¹⁴ Commission on Human Rights, *Report to the Economic and Social Council on the 7th session of the Commission*, E/CN.4/640 (6 April to 19 May 1951), available from undocs.org/en/E/CN.4/640.

¹¹⁵ U.N. CHR, 7th Sess., 204th plen. mtg., U.N. Doc E/CN.4/SR.204 (April 25, 1951) available from <https://undocs.org/en/E/CN.4/SR.204>.

¹¹⁶ U.N. CHR, 7th Sess., 204th plen. mtg., U.N. Doc E/CN.4/SR.204 (April 25, 1951) available from <https://undocs.org/en/E/CN.4/SR.204>.

camouflaged attempts of the United States representative to achieve the same purpose by sabotaging the General Assembly resolution.”¹¹⁷

However, Roosevelt had indeed asserted that the U.S., unlike other drafting members, did support the inclusion of social rights into the draft covenant. Morosov also suggested suspicion upon receiving the draft covenant from the Danish representative, believing it to be another veiled attempt to exclude social, economic, and cultural rights.¹¹⁸ It was more accurately the Soviet representative versus the majority of drafting council than it was East against West, with even Yugoslavia stating that the Soviet proposal “ignored reality.”¹¹⁹ While the Soviets were accurately pointing out a vagueness in the articles for social, economic, and cultural rights and there may have been a shared desire to enhance the proposals among delegates, the adversarial exchanges most frequently involved the soviets and various other nations, rather than just the West.

During the ECOSOC meetings, a similar sentiment of suspicion was exchanged when the representative of the Soviet Union, Vasilii Zonov, stated, “It was clear that the main purpose of the joint draft resolution was to bring about a reversal of the General Assembly’s decision that the Covenant should include articles related to economic, social, and cultural rights. The rest of the draft resolution was a mere façade.”¹²⁰ The intensity of the exchanges suggested a perception of duplicity in the actions of those sponsoring the joint resolution. Every sponsor went through great pains to acknowledge the continued importance of social rights, and the

¹¹⁷ U.N. CHR, 7th Sess., 204th plen. mtg., U.N. Doc E/CN.4/SR.204 (April 25, 1951) available from <https://undocs.org/en/E/CN.4/SR.204>.

¹¹⁸ U.N. CHR., 7th Sess., 206th plen. mtg., U.N. Doc E/CN.4/SR.206 (April 30, 1951) available from <https://undocs.org/en/E/CN.4/SR.206>.

¹¹⁹ U.N. CHR., 7th Sess., 205th plen. mtg., U.N. Doc E/CN.4/SR.205 (April 27, 1951) available from <https://undocs.org/en/E/CN.4/SR.205>.

¹²⁰ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

U.S. had to clarify that the sponsoring delegations were not trying to “wreck the General Assembly Resolution 421 E (V).”¹²¹

It is difficult to ascertain the state of mind of the drafters and the unrecorded influences of their process decisions, but we can employ a particular framework with which to try to assess intent. Given what we know about the larger stated beliefs surrounding social rights of certain advocates for separate covenants, such as the opinions of the U.S. State Department concerning social rights, the entire concept of a separate means of “ensuring protections” may have been what Bob Clifford refers to as “camouflaging” in his work, *Rights as Weapons*.¹²²

Clifford writes, “The key question in deciding whether to don a camouflage of rights is to ask if the tactic helps achieve the movement’s deeper concerns.” The sponsors of the joint resolution continually focused on the impossibility of creating a single covenant of implementation and the need to create two modes in order to effectively meet the request of the General Assembly and provide a means of implementation for all rights. During their entire process of requesting separation in ECOSOC, they frequently mentioned the value of social rights while characterizing them as different types of rights, with the necessity of creating different means for implementation.¹²³ The representative from Uruguay stated the importance of the rights but wanted to stress his government’s desire to “simply the problem,” pointing out that the Uruguayan Constitution devoted a special chapter to economic, social, and cultural rights.¹²⁴

The stated intent of advancing all rights through separation resulted in a lesser and weaker application of social rights, the origins of the separate but equal reality. However, it

¹²¹ Ibid.

¹²² Bob, Clifford. "Rights as Camouflage: MASKING MOTIVES." In *Rights as Weapons: Instruments of Conflict, Tools of Power*, 65-92. PRINCETON; OXFORD: Princeton University Press, 2019. Accessed June 3, 2021. <http://www.jstor.org/stable/j.ctvc77487.6>.

¹²³ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

¹²⁴ U.N. ECOSOC, 13th Sess., 524th plen. mtg., U.N. Doc E/SR.524 (August 28, 1951) available from <https://undocs.org/en/E/SR.524>.

was advertised as a desire formulate economic and social rights in the “manner most likely to assure their effective implementation.”¹²⁵ This outcome, in which the rights are minimized despite the increased attention and legislation for them, does seem to suggest the evidence of camouflaging, particularly because those countries which espoused the value of social rights were extremely slow to validate those statements with action. The United States has still not ratified the optional protocol for the ICESCR,¹²⁶ the enforcement mechanism for the covenant that allows complaints to be brought forward, as it has for the ICCPR. Likewise, the United Kingdom and India have not ratified either optional protocol. It was twenty years after the ratification of the optional protocol for the ICCPR when Belgium ratified the ICESCR and over forty years later for Uruguay. These realities of weak implementation by the sponsors of the joint resolution do seem to undermine the legitimacy of their stated commitment to social rights during the ECOSOC meetings.

This type of maneuvering had been avoided in committee negotiations, where stated intent and actions had aligned and genuine attempts at negotiation seemed to take place. However, during the ECOSOC meetings, this position changed when they presented the joint resolution to request reconsideration of a single covenant. The recognition of a political opportunity structure by the United States and its decision to influence outcomes resulted in a critical juncture for social rights outcomes.

It was not just Western nations involved in this joint resolution — both India and Uruguay sponsored the resolution and Egypt and Chile expressed support for two separate covenants. However, the Western shift in position, from expressing support for the inclusion of economic, social, and cultural rights in one covenant to introducing a joint resolution for their separation, marked a point at which the narrative about the U.S. as one of the most relevant

¹²⁵ General Assembly resolution 384 (XIII), Report of the Commission on Human Rights (7th session), E/RES/384(XIII)(14 December 1950), available from [https://undocs.org/en/E/RES/384\(XIII\)](https://undocs.org/en/E/RES/384(XIII))

¹²⁶ “OHCHR Dashboard.” n.d. Ohchr.Org. Accessed June 4, 2021. <https://indicators.ohchr.org/>.

actors of influence on social rights outcomes became exceedingly true. The U.S. had acted on a privately held political ideology when they recognized the opening of a political opportunity structure, brought on by the contingent factors which hindered the drafting of a single covenant. However, they still acted in the realm of what Clifford would characterize as camouflaging. Inside of this promise to deliver laws within the private goal of excluding them is where a “separate but equal concept emerges,” which we later learn, through the observation of actions related to social rights, was potentially a rouse.

In other words, the dominant narratives gain their validity at a particular critical juncture point, arguably the moment a political opportunity structure was recognized and acted upon. Until that point, the legal and historical documentation suggests a genuine intent to negotiate and collaborate within contingent factors and clearly stated objectives and interests, defying the dominantly held belief that the entire process was entirely an ideologically infused battle.

Path Dependent Outcomes

The moment in which rights were characterized as impossible to implement together, labeled as separate types of rights, and the confirmation of that argument by a resolution request for two covenants was a critical juncture for social rights. Sending a resolution to the General Assembly to request two covenants suggested that the drafting committee had not been able to accomplish the task, rather suggesting the task could be accomplished with more time. From that point, a path dependent outcome emerged for social rights protections.

Social rights were characterized by the United States in the ECOSOC meetings as “objectives to be attained rather than rights which could be upheld in a court of law,”¹²⁷ the

¹²⁷ U.N. ECOSOC, 13th Sess., 524th plen. mtg., U.N. Doc E/SR.524 (August 28, 1951) available from <https://undocs.org/en/E/SR.524>.

Chinese delegation noted the differences in application of the rights,¹²⁸ Uruguay asserted that the provisions called for legislative measures “entirely different from those required for civil and political rights,” and Canada’s delegate stated the fundamental philosophical difference between the rights, one of which was “inherent in the human person” that the state had a duty to “ensure” and social, economic, and cultural rights that the state should “provide.”¹²⁹

However, the delegate from Pakistan, Hadi Husain, had stated that it would be “a great mistake to try to put into force two international covenants,” further stating that “if there were two such covenants, there would be two bases, and two edifices, and consequently, there would be no unity in regard to human rights.”¹³⁰ The Report of the Special Rapporteur on extreme poverty and human rights characterized the differentiation of rights as a deviation from the intentions of the UDHR’s assertion that the “two sets of rights are indispensable elements in enabling individuals to live dignified and fulfilling lives.”¹³¹ Husain had made an accurate prediction about separation; social rights lost their elevated status within the UDHR as human rights and became goals to be progressively achieved, with lesser implementation mechanisms than civil and political rights.

Despite implementation being a component of ratification under the Vienna Convention,¹³² very few of the social rights enumerated in the declaration are recognized by the United States Constitution.¹³³ Likewise, a 2016 report submitted to the Human Rights Council by the Special Rapporteur on extreme poverty and human rights asserted that “economic and social rights remain largely invisible in the law and institutions of the great

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ U.N. ECOSOC, 13th Sess., 523rd plen. mtg., U.N. Doc E/SR.523 (August 28, 1951) available from <https://undocs.org/en/E/SR.523>.

¹³¹ UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, 22 March 2017, A/HRC/35/26, available at: <https://www.refworld.org/docid/593a8e784.html> [accessed 4 June 2021]

¹³² “Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights,” (VIENNA: 1993), <https://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>

¹³³ Putting ESC Rights Back on the Agenda, *supra* note 5, at 120 (most economic and social rights have no counterpart in the U.S. Constitution).

majority of States” and states that do recognize the rights “have not translated that recognition into a human rights-based legislative framework.”¹³⁴

Significant evidence of path dependency can be observed in the continuation of the original discourse used to separate civil and political rights within the ECOSOC meetings. The language of the ICESCR instructs states to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures.”¹³⁵ The phrase “progressive realization” was the same one used by the United States in the Economic and Social Council Meetings,¹³⁶ hardly the language of the ICCPR’s mandate to “respect and ensure” civil and political rights and not nearly fulfilling the promise that separating covenants could ensure effective implementation.

The characterization of the rights at the moment of separation has led to a marginal acceptance that economic and social rights are human rights with clear legal consequences, “rather than a set of concerns synonymous with development or social progress.”¹³⁷ This less binding language of implementation for social rights, enabled through a separation from civil and political rights, has ensured that the cases for social rights remain largely underserved because it has reduced the clear enforcement mechanisms for social rights issues. The United Nations High Commission for Human Rights explains that the justiciability of economic, social, and cultural rights has traditionally been questioned for several reasons, the first of which being the fact that “economic, social and cultural rights have been seen by some as being

¹³⁴ UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights , 22 March 2017, A/HRC/35/26, available at: <https://www.refworld.org/docid/593a8e784.html> [accessed 4 June 2021]

¹³⁵ Saul, Ben, David Kinley, and Jacqueline Mowbray. 2016. *The International Covenant on Economic, Social and Cultural Rights*. London, England: Oxford University Press.

¹³⁶ U.N. ECOSOC, 13th Sess., 525th plen. mtg., U.N. Doc E/SR.525 (August 29, 1951) available from <https://undocs.org/en/E/SR.525>.

¹³⁷ Ibid, 7.

too ‘vaguely worded’ to allow judges to justify decisions on whether violations have occurred.”¹³⁸

Furthermore, the Commissions states that “some have questioned whether it is possible for a court to assess the progressive realization of economic, social and cultural rights.”¹³⁹ The characterization of the rights by the United States and others within those ECOSOC meetings remains a challenge for the Commission in regards to justiciability, and the division between types of rights as an outcropping of cold war tensions between market economies and Eastern bloc economies.¹⁴⁰

The Human Rights Committee, a treaty body monitoring complaints for the ICCPR has registered 3,673 cases by the end of 2019,¹⁴¹ compared to the 208 pending cases overseen by the newly mechanism for the ICESCR.¹⁴² There are still only twenty-six states that are a party to the optional protocol of the ICESCR, as compared to the 116 for the ICCPR, which means that only 26 states can have complaints brought against them.¹⁴³ Utilizing a *longue durée* view of the separation, there is clear evidence that the language of separation and the ultimate decision to divide covenants, instigated by the resolution within the Economic and Social Council, had long lasting impacts on the outcomes for social rights implementation.

¹³⁸ “Fact Sheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights,” (Geneva: 2008), <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

¹³⁹ Ibid, 31.

¹⁴⁰ Ibid, 9.

¹⁴¹ “OHCHR Table of Registered Cases.” n.d. Ohchr.Org. Accessed June 4, 2021. <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/TableRegisteredCases.aspx>.

¹⁴² “OHCHR Table of Pending Cases.” n.d. Ohchr.Org. Accessed June 4, 2021. <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/PendingCases.aspx>.

¹⁴³ “OHCHR Dashboard.” n.d. Ohchr.Org. Accessed June 4, 2021. <https://indicators.ohchr.org/>.

Conclusion

The continued characterization of social rights as separate from civil and political rights represents a path dependent outcome emerging from an initial critical juncture, a turning point that would continually cause social rights to be implemented and characterized differently than civil and political rights thereafter. This research has demonstrated that the critical juncture emerged from, firstly, a set of contingent factors and then, a recognition of a political opportunity structure by influential agents. These agents inserted their ideological leanings in a subverted manner to influence outcomes.

Previous research has revealed the degradation of social rights within the universal declaration of human rights as a critical point in political history, but the splitting of covenants emerges as a more prominent critical juncture within this research. However, it did not occur as explicitly or in the spaces one might expect it to occur, and the narrative is more complex than commonly expressed. In other words, the narratives of division are true to an extent, but a closer analysis of the events reveals a much more nuanced and complex set of relations. The closer analysis of this research has also offered a closer analysis of how influential actors maneuvered within a legal process at opportune times in order to influence outcomes typically beyond their control.

This research is not a compliment to the existing historical understanding of unequal rights application, it also intends to provide an additional examination of the events for the advancement of social rights, contributing to the understanding of how unequal characterizations originated and solidified in history.

By analyzing the origins of this event, it is possible to ascertain where influence and ideology was exerted but also to understand how social rights may have been separated to better understand how to rejoin and heighten its prominence with civil and political rights in the post-Cold War era.