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The Swedish constitutional document the ‘Instrument of Government’ (regeringsformen, RF) of 1809 provided for security of the citizens in addition to some freedoms and rights. Paragraph 16 required the Monarch to ensure, most prominently, justice and truth and to prevent and prohibit damage to life, honour, personal freedom and well-being. The provision also deals with property, privacy, prohibition of expulsion or forced displacement, freedom of conscience, religion, and legal process. For 165 years this provided the explicitly constitutionally guaranteed rights in Sweden. The underlying reasons for the inclusion of these freedoms and rights are not given in the Instrument but followed a tradition of guarantees of powers given to the nobility by the King.

In 1974 the Swedish Parliament (riksdagen) passed a new Instrument of Government. The process had been commenced already in 1938 with a parliamentary inquiry, a process that was reinvigorated in 1954 with a constitutional commission of inquiry. Disagreement in the Parliament in 1973 led to an inclusion of minimal guarantees only, and as a consequence the process of inquiry continued. In 1976 the Parliament added a second chapter to the Instrument, which detailed fundamental freedoms and rights along with the customs of many other European countries. Further legal protection of these rights was extended in 1979. The adoption of the European Convention on Human Rights as Swedish law in 1994 was a more recent step in the same direction of expanding the rights catalogue. Chapter two, as introduced in 1976, offers no rationale for the inclusion of these freedoms and rights. In the second paragraph of Chapter one, however, it is stated that the basis for inclusion is respect for the equal value all humans and for the freedom and dignity of the individual. The political unrest in Europe was also definitely a determining factor.

The series of inquiries, spanning almost 40 years, provide greater insight into the rationale. In the early stage of this process, professors of law were consulted, natural-law-thinking of 18th Century Europe was cited and foreign foundational documents were referred to (the French Declaration of 1789, the US Constitution of 1787, and constitutional documents from Belgium, the Netherlands, Norway, Denmark, and Finland. One Member of Parliament, also a professor of law in Uppsala, criticized what he called the ‘ideological’ theories upon which rights were

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1 This is a summary in English of pertinent extracts of the article by Andrén, offered by the editors. The original version in Swedish follows.

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based, underpinned as they were, he claimed, by natural law. When the rights were eventually included it was stressed that it was the Parliament which granted these rights, they were not a result of any natural law obligations.

In the 1940s it was stressed by one commission of inquiry that it was not the ultimate purpose of these rights to protect individuals but to ensure the strength of the state through a stable and reliable legal system. The early parts of the process of inquiry in particular tried to separate the rights from natural law; legal positivism seemed to prevail. This positivistic perspective was also used to ensure that it was not impossible for the Parliament to alter the rights at a later stage, yet this power was to be balanced with a desire to make the rights fundamental. This position remained throughout the process.

International law appears to have had little influence on the process, even though as the UDHR was being drafted in the late 1940s an inquiry was under way. The discussion in the UN was often very much based on natural law principles, still, the Swedish delegates made no objections to that in the debates. In the 1950s as the European Convention on Human Rights and Fundamental Freedoms was being adopted and Sweden soon thereafter ratified the Convention, renewed efforts were made in the Parliament to also have constitutionally enshrined rights in Sweden. A Constitutional Commission of inquiry announced in the early 1960s that there would be a catalogue of rights introduced into the Constitution.\(^2\)

This Commission emphasized that although Sweden had a long tradition of guaranteeing in law the protection of the individual from the state; the Swedish model had thus far not been a rights catalogue, as was common in many other constitutions. A number of objections were made. One Supreme Court justice argued that to include what likely would be merely symbolic rights would undermine the credibility of the Constitution. This scepticism was shared by other consulted institutions. In particular, the courts and other organs involved in the administration of justice argued for a relative position towards rights. The international obligations were also seen as making constitutionally prescribed rights redundant.

Another commission further into the process in the early 1970s connected indirectly to natural law and extended the earlier more conservative catalogue of rights. Again the concern of limiting the powers of the Parliament was underlined and it was furthermore stressed that the rights were more Swedish than international in origin. The emphasis on this domestic origin was also clear from an early stage of the process.

The most recent development in expanding rights in the Swedish legal system was a commission mandated in 1991 to inquire into how the European Convention could be integrated given the formal dualistic nature preventing direct application. No apparent contradiction between Swedish law and the Convention was found and the rights were incorporated into Swedish law, without, however, giving these rights constitutional status; yet providing some protection by a Constitutional prohibition

\(^2\) A proposal to establish a Constitutional court was however discarded.