Human Rights in the Twentieth Century

Edited by
Stefan-Ludwig Hoffmann

CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi, Dubai, Tokyo, Mexico City
Cambridge University Press
32 Avenue of the Americas, New York, ny 10013-2473, usa
www.cambridge.org
Information on this title: www.cambridge.org/9780521142571
© Cambridge University Press 2011
This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.
First published 2011
Printed in the United States of America
A catalog record for this publication is available from the British Library.
Library of Congress Cataloging in Publication data
Human rights in the twentieth century / [edited by] Stefan-Ludwig Hoffmann.
p. cm.
isbn 978-0-521-19426-6 (hardback) – isbn 978-0-521-14257-1 (pbk.)
1. Human rights. 2. Human rights – Cross-cultural studies. I. Hoffmann,
Stefan-Ludwig.
JC571.H76962 2010
323.09′04–dc22 2010031355
ISBN 978-0-521-19426-6 Hardback
ISBN 978-0-521-14257-1 Paperback
Cambridge University Press has no responsibility for the persistence or accuracy of urls for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

4 Personalism, Community, and the Origins of Human Rights

Samuel Moyn

In the summer of 1947, the Institute for International Law reconvened after a ten-year hiatus. For decades the self-appointed tribune of European "civilization" and the legal conscience of humanity, the Institute now hoped to retake its former role. Given its prominence in the rhetoric of the Allied new order during World War II, the new concept of human rights – though international lawyers had not even flirted with it before – stood as the first item on their agenda.[1] The atmosphere was one of bitter disappointment: Whatever the idealism of wartime dreams, the sad but obvious fact was that when it came time to enact a peaceful order – most flagrantly in the Dumbarton Oaks documents, in which human rights did not even figure – a theory of sovereign power politics ruled. As for the United Nations Charter, the great powers had it adorned with the phrase human rights without providing either any definition of its values or any institutional means for their defense.[2] The international lawyers of Europe were, they believed, perhaps the last best hope for making good on what now seemed like broken promises.

"Neither the Charter nor diplomatic wrangling is reassuring," noted Charles de Visscher, Belgian international lawyer and judge (1946–1952) on the International Court of Justice who prepared the Institute's report and proposal on human rights, in his opening remarks. "International organization," he complained indignantly, "looks like a mere bureaucracy with neither direction nor soul, unable to open to humanity the horizons of a true international

community." A new international law, based on human rights and theorized and implemented by the caste of jurists, might, however, provide the "morally-inspired salvation" that the world clearly needed. Now comes a very curious statement: "Since the end of the second world war, a powerful current of ideas has arisen against the nameless abuses that we have witnessed: it is the personalist conception of society and power. The intellectual elites of all of the countries with liberal and democratic traditions are rallying to this conception." According to de Visscher, this "personalist conception" alone could provide the basis of an authentic turn to human rights and guide the response of law to Machiavellian power.[3]

In spite of the recent wave of studies of the origins of human rights after World War II, one would be hard pressed to understand what this leading international lawyer of the time was talking about. In fact, however, personalism was a principal feature of human rights consciouness of the 1940s, especially, though not exclusively, on the European Continent. What was personalism, how was it possible to view it as the key to the turn to human rights, and how thoroughgoing a resonance did it really have in the postwar moment? Forgotten now, the spiritual and often explicitly religious approach to the human person was, this essay suggests, the conceptual means through which Continental Europe initially incorporated human rights – and, indeed, became the homeland of the notion for several decades. Recovering the centrality of personalism, however, should deeply unsettle prevailing opinion about what the concept of human rights implied in its founding era.

This essay surveys a few of its sources, looks at the breadth of its percolation (not least in legal thought), and evaluates the significance of the personalist vehicle for rights in the 1940s. If this episode is missing from the emerging understanding of human rights, it should also drive home a larger lesson about the teleology, tunnel vision, and triumphalism that has so deeply affected current

historiography. Universalistic and formalistic languages always have a historically specific and ideologically particular meaning, which it is the mission of historians to seek out. In early postwar Europe, human rights were – contrary to current expectations and desires – most associated with neither a revolutionary nor a republican heritage. For almost nobody were they the essence of post-Holocaust wisdom, not least since the crimes of Nazi evildoers were not yet understood to be primarily ones against the Jewish people. Finally, they were not the inspiration for a new sort of private activism, which had other and later sources.

Instead, human rights need to be closely linked, in their beginnings, to an epoch-making reinvention of conservatism. This defining event of postwar West European history is familiar from the more general historiography of the period in the form of Christian Democratic hegemony, but is absent so far from human rights history – even though this same Western Europe became the earliest homeland of the concept. In sum, human rights came to the world not just as part of a wartime internationalization of the American New Deal, but also, and just as crucially, as one element of a European reinvention of its humanism as it tried to put self-imposed disaster behind it.[4] The first surprise, perhaps, is that concept of the person not only preexisted the mid-1940s, but had originally served different forces.

"We are neither individualists nor collectivists, we are personalists!" So proclaimed perhaps the earliest personalist political manifesto, put out by the rightist club Ordre Nouveau (New Order) in 1931.[5] In its 1930s popularization, the person was an anti-liberal conception, and the chief task of tracing its eligibility for its postwar role is to follow the reversal that led it to imply rather than forbid a formalistic conception such as rights – or even a reinvention of international law based on it.

The sources of "the person" – besides the Thomistic rendition of Jacques Maritain, who would become the premier postwar philosopher of human rights – were various. One important reference was the émigré Russian Orthodox philosopher Nicholas Berdyaev, who brought to the West an old Russian tradition of religious personalism.[6] Most decisive, according to the historian John Hellman, may have been the influence of the originally Russian-Jewish convert Alexandre Marc, who founded Ordre Nouveau together with the shadowy guru Arnaud Dandieu, an atheist follower of Friedrich Nietzsche considered the secret genius of personalism (though a mere librarian by day). In Germany, the most prominent personalist was Max Scheler, who also exerted influence elsewhere. Not just the cacophony of voices starting in the early 1930s but the essential indeterminacy of the concept made personalism highly ambiguous: the common but deeply contentious cause of Christian and para-Christian intellectuals from the far right to the communitarian "left." The thinker who was to forge the most durable version of personalism, Maritain, could generously acknowledge as much: "There are at least a dozen personalist doctrines, which, at times, have nothing more in common than the term 'person'."[7]

Yet the ambiguity of personalism was, in a sense, its genius; it signaled the identity of the opposition clearly, while leaving flexibility about what the alternative program was. (Its ambiguity was also a minimum condition for its eventual extrication from its typically reactionary and always illiberal origins.) Personalism – linked quickly to spiritualism and humanism, and not infrequently to European identity – meant a repudiation of the rival materialisms of liberalism and communism. In the first place, then, personalism was different than individualism, for it championed a figure who was supposed to overcome the destitute atomism of the politics and economics of the nineteenth century. If, however, the person

provided a connection to community that individualism ruled out, it also provided the key source of value omitted in, and the political bulwark against, communism. Most boldly, personalists claimed that capitalism and communism, apparently foes, deserved each other, and canceled each other out, in their common materialism.

The spectrum of opinion championing personalism in the inaugural years of the early 1930s ranged from the far right to the farrago of publicists now known as experimental "non-conformists." The so-called Young Right (Jeune Droite), an up-and-coming cohort of young reactionaries, self-proclaimed "defenders of the West," were those originally part of Maritain's reactionary circle when he affiliated with the royalist and anti-Semitic Action Française. But, unlike him, they remained within the fold of the French conservative revolution as Maritain cut his ties with it. "Before the tragic failure of materialist prosperity," one of these figures, Thierry Maulnier, wrote in 1932, "political humanism – the just reckoning of the person, and its possibilities and rights – would seem the sole formula… to furnish the acceptable elements of a reconstruction."[8] A group such as Ordre Nouveau was representative of non-conformism, a set of movements "neither right nor left" or rather both, since many of its members thought what was true in Marxism and communism – their opposition to bourgeois decadence and their hankering for the death of individualism – had to be saved, so as to redirect revolution against the bourgeoisie in a spiritualist and often explicitly Christian direction.[9] These were the early themes of personalism, then. But if the essential meaninglessness of the person was a minimum condition for the fact that it could eventually be extricated from its reactionary and non-conformist origins, one must at least also note that, for a time after 1934, communism tried to claim the slogan too. In that year, Nicolai Bukharin helped transform the appeal of communism in the West when he announced that the Soviet Union would make the realization of "the personality" for "the first time… a

mass phenomenon and not just… part of the slave-owning upper class in its various historical variants." Such a promise profoundly affected the way ordinary people imagined and constructed themselves; but its ramifications were also legal, as the Stalin Constitution of 1936 – in whose drafting Bukharin played an instrumental role – makes clear.[10]

Without question, however, the man who made the intellectual fortune of personalism was Emmanuel Mounier, due to the terrific impact of his non-conformist journal *Esprit* beginning in the early 1930s. Drastically expanding the purchase of the theme of the person in his early essays, Mounier proposed going back to where modernity started out in the Renaissance and trying again with a genuine humanism that freed Europe of the secular and liberal mistake of individualism. For Mounier, the challenge was to use the person to insist on respect for self-realization that "collectivism" ruled out, while pressing it to imply a community that brought atomized individuals back together. This common idea was one that Mounier developed at length, including in his famous *Manifesto in the Service of Personalism*. Far from implying rights, this central personalism of the 1930s instead sought new forms of post-liberal politics as well as a personalist economy to go with them. "On the altar of this sad world," Mounier wrote in an illustrative passage, "there is but one god, smiling and hideous: the Bourgeois":

> He has lost the true sense of being, he moves only among things, and things that are practical and that have been denuded of their mystery. He is a man without love, a Christian without conscience, an unbeliever without passion. He has deflected the universe of virtues from its supposedly senseless course towards the infinite and made it center about a petty system of social and psychological tranquility. For him there is only prosperity, health, common sense, balance, sweetness of

> life, comfort.... Next in line among bourgeois values are human respect and protection of rights.... Law is for him not an institution for justice, but the defence of the injustices he inflicts. Thence comes his harsh legalism.[11]

Repudiating France's then minuscule Christian Democratic party – in a notorious fracas with Paul Archambault, who considered him dangerous in the extreme – Mounier declared that "the ideology that we are combatting, and which still poisons all democrats, even Christian democrats, is the ideology of 89," whose principles such as individual rights had to be "evaluated in the light of our conception of man [and] of the Community that completes him."[12]

The puzzle is how the person, in spite of all these associations, would be readied for its intellectual – and harsh legalistic! – role later; and much of the solution to that puzzle depends on Jacques Maritain, who would, not coincidentally, become the most prominent thinker of any kind across the world to champion rights in the postwar moment. Personalism survived its original connotations, as the communitarian third way that it promised between individualism and communism transcended its reactionary (and occasional leftist) connotations to be linked tightly to Cold War conservatism. Maritain's career provides the best guide, as a proxy for other trajectories in various places.

Ironically, the Young Right's clearest source for claims about the relevance of the person was that very mentor who, many years later, would make it the foundation for human rights: Besides a few stray references, Maritain toyed with the sociopolitical relevance of "the person" first in his popular Action Française era book *Three Reformers* (1925). There he argued that the catastrophe of modernity, due to the sensualist heresiarch Martin Luther, the solipsist metaphysician René Descartes, and the bourgeois reformer Jean-Jacques Rousseau, left behind Saint Thomas's person for the

new individual. Thus, not just generally, but in Maritain's own case, the basic claim of the political importance of "the person" antedated any break with the far right of his day, rather than driving it. "Are you well-informed about the ideological adventure that two pages of *Three Reformers* [those that originally introduced the person/individual distinction] have allowed?" Maritain's disciple Yves Simon could ask him in a letter as late as 1941, when the person still remained chiefly a reactionary conception, in spite of Maritain's extraordinary labors by then to make it mean something different.[13]

Yet Maritain had left the personalist revolution to others for a decade, while he continued his original and enduring interests in metaphysics and aesthetics. In the mid-1930s, this changed. As much as the negative example of the far right, it was Mounier's para-Catholic and this-worldly combat for a personalist rupture – whatever that meant – that pushed Maritain to elaborate his own politics. (Intellectually and organizationally, Maritain had been instrumental in Mounier's path to *Esprit*, but the obverse of the relationship has not been sufficiently stressed. Maritain opposed Mounier's drifts into apparent proximity to fascism, but would never have become a political thinker without Mounier's example.)[14] It is also clear that, though by then an anti-communist of quite long standing, Maritain was angered by the huge propaganda successes of communism in the West in the mid-1930s in the cultural preparation of Popular Front anti-fascism, as figures such as André Gide and André Malraux responded to Bukharin's new propaganda by insisting that the Soviets might have the true recipe for the achievement of dignified humanity.[15] Yet even in his *Integral Humanism* (1936), in which he spelled out his politics of personalism in most classic form, Maritain endorsed the person without endorsing rights, which was a sign of his proximity to non-conformist and illiberal currents in European thought.

There is no way to fathom Maritain's conversion to rights – and

that of the whole Continent – without looking to the larger Catholic Church's conversion to personalism. How this happened was unexpected and dramatic, and due above all to events in the mid-1930s that decided Pius XI to commit the Church to anti-totalitarianism.[16] The move toward the later twentieth-century embrace of rights-talk as the essence of Christian social thought occurred neither at a slow and steady pace nor all at once in a single transformative moment. Famously, the Church had treated the notion of rights with vituperation for the entire modern period. It is not impossible to find allusions to the person and even to rights (though always those of family or labor) before the period of reversal. Yet these usages were "neither comprehensive nor tightly systematic."[17] The same was true of the rhetoric of new Catholic social movements that were of such signal importance to interwar history. The crucial leap, which has not been effectively studied, occurred when Pius XI toward the end of his papacy began to use the terms in a more serious and organizing way.

This remarkable turn against "statolatry" by no means compelled any embrace of rights as an organizing doctrine, but it did involve the assertion of religious sovereignty over personal conscience; very often, this sovereignty attached to the previously peripheral figure of the person. Interestingly, it was most frequently anti-liberal premises that led to what may seem a liberalizing outcome in this denunciation of the era's dictators (Benito Mussolini sometimes exempted), with the modern and "secularist" separation of state from church often presented as having allowed the menacing totalitarian hypertrophy of the state to occur.[18] In any event, it was at this moment that Pius – who knew Maritain well and esteemed his work – turned emphatically to personalism as the foundation of Church's spiritual alternative to totalitarianism, in 1937–1938. "Man, as a person," Pius declared, "possesses rights that he holds from God and which must remain, with regard to the collectivity, beyond the reach

of anything that would tend to deny them, to abolish them, or to neglect them."[19] This phraseology, from the anti-Nazi encyclical of March 1937, *Mit brennender Sorge*, was matched by the anti-communist encyclical of the same month, *Divini redemptoris*, the latter with greater emphasis on the right of property in the context of a more general scheme of the rights of the person against the totalitarian collective.[20]

It was thus in a moment of discovering two extreme political ideologies that, in its view, left no room for Christianity that some insisted on sovereignty over the "human," over which in turn no merely temporal politics can claim full authority. Soon to become Pius XII, Eugenio Pacelli, in the summer of 1937, made clear the centrality of this new figure, decrying "a vast and dangerous conspiracy" threatening unlike any prior occasion "the inviolability of the human person that, in his sovereign wisdom and infinite goodness, the Creator has honored with an incomparable dignity." Further, Pacelli cited the critical line from *Mit brennender Sorge* to make clear that this inviolable dignity gave rise to some set of rights. Of course, personalist rights implied moral community, not the selfish entitlements of the bankrupt nineteenth century. All the same, "if a society adopted the pretense that it could diminish the dignity of the human person in refusing it all or some of the rights that come to it from God, it would miss its goal."[21]

What such changes in papal political theory meant on the ground, in the context of much other doctrine and the inherited weight of tradition, varied widely – especially after Pius XII's election a year later to face the final crisis of the 1930s and the difficult choices of the war.[22] With respect to the language of rights as well as in other ways, Pius XII, like any good strategist, left his options open, encouraging some possible lines of future development and tolerating others.[23] In different national contexts, rights-talk had different fates: The new language of the rights of the human person

was not just passively received, but was creatively interpreted from place to place and moment to moment. As Paul Hanebrink has shown in the case of Hungarian debates, for example, what was at stake for some churchmen and Christian politicians was only "the rights of (Christian) man," chiefly the defense of the right of conversion against racist essentialism, still in the name of a exclusionary vision of a Christianized nation.[24]

But in America – before Maritain ever turned to rights – a small band of liberal Catholics chose a different direction. In tune with his final thought, Pius XI had written barely two months before his death that "Christian teaching alone gives full meaning to the demands of human rights and liberty because it alone gives worth and dignity to human personality." In a pastoral letter in response to this statement in honor of the golden jubilee of Catholic University, American bishops took the argument a (textually unwarranted) step further: "His Holiness calls us to the defense of our democratic government in a constitution that safeguards the inalienable rights of man."[25] American Catholic liberals opposing Father Charles Coughlin's Jew baiting founded the publication *The Voice for Human Rights* in 1939. Historians who have examined the crucial early war years to trace the remarkable afflatus of the hitherto largely unused (in English) phrase "human rights" have discovered minor percolations but little else until something happened to catapult the term into its immediate postwar career. Completely neglected among these percolations so far highlighted, however, is the comparatively early Catholic articulation of the human rights idea.[26]

Soon European Catholics were repeating the slogan, and Maritain, on an American sojourn when France fell but transmitting his ideas back to the Continent throughout the war, made himself the premier interpreter of human rights among Catholics, and indeed almost singlehandedly reinvented them as a Christian tradition. By itself,

personalism could have led Maritain, like so many other others, into the arms of the Vichy government, whose leader, indeed, himself proclaimed that "individualism has nothing in common with respect for the human person" (a respect he promised his regime would restore, along with religious civilization as a whole). Maritain's formulae of the "primacy of the spiritual" and "integral humanism" were even used as sloganeering buzzwords by Vichyite intellectuals and youth.[27] But Maritain, in exile, opposed Vichy uncompromisingly and soon became an inspiration for the Resistance, even if he was ambivalent about Charles de Gaulle as the Free French leader, on the grounds that de Gaulle would not concur with his vision of personalistic democracy. It was most clearly in early 1942 that Maritain transformed into the philosopher of human rights that he had never been before. In *Natural Law and Human Rights*, Maritain took what would be a fateful step for postwar intellectual history as a whole, making the claim that a revival of natural law implies a broad set of pre-political human rights.[28]

What would have been – and still is – curious about this claim, of course, is that whatever their opinions of the origins of modern rights-talk, nearly all histories of the political language concur that the rise of rights in political theory occurred after and because of the destruction of the Thomistic natural law tradition.[29] In either a stroke of a master, or a sleight of hand, or both, Maritain – as if the Thomistic movement had not long and unanimously rejected modern rights – claimed that the one implied the other and, indeed, that only the one plausibly and palatably justified the other. Thanks to Maritain above all, the older view that Christianity's political and social doctrine could not be reformulated in terms of rights was dropped in exchange for the claim that only the Christian vision placing them in the framework of the common good afforded a persuasive theory of rights. By his Christmas message of 1942, the one frequently discussed solely for its insufficient reference to Jewish

suffering, Pius too was laying out his postwar vision in terms of the dignity of the person and human rights.[30]

This trajectory cemented the resonance of the dignity of the human person as the communitarian framework for the new rights-talk. By 1942, British Catholic Christopher Dawson (who had imported Maritain in his reactionary phase to Great Britain along with Carl Schmitt in his Catholic phase) was sounding similar themes. "We are standing against an order in which all human rights and the human person itself are immolated on the altar of power to the glory of the New Leviathan," he wrote. Alluding to Franklin D. Roosevelt's "four freedoms," he now explained, in spite of his formerly reactionary politics,

> The liberties which we demand and which humanity demands are not the right of the strong to oppress the weak or the right of the ambitious to enrich themselves at other men's expense: but the elementary right which are to the human spirit what air and light are to the body: freedom to worship God, freedom of speech, freedom from want and freedom from fear.

All the same, he clarified that if Christianity now implied some sort of democracy, it could not be a liberal kind:

> It must be a social order directed to spiritual ends.... From this point of view the use of the term "Democracy" as the definition of our cause is not completely satisfactory. For Democracy has a restricted political significance which by no means covers the whole field of values that has to be defended, and the confusion of Democracy as a general term for our tradition of social freedom, and its more limited but more accurate political meaning, is apt to produce misunderstanding and disagreement. For the cause that we are defending is far more fundamental than any form of government or any political

> creed. It is bound up with the whole tradition of Western and Christian culture.... No doubt Democracy as an ideal does stand for these things and is the outcome of this tradition. But in practice modern democratic culture often represents only a debased and secularized version of this ideal and in many respects, as de Tocqueville saw more than a century ago, it prepares the way for the coming of the new mass order which achieves political form in the totalitarian State. What we are defending, in short, is not democracy but humanity.[31]

Dawson's argument made sense in light of prewar conceptions of democracy, which prioritized its formalistic associations as a "bourgeois" electoral and economic phenomenon that both far left and Christian politics were agreed in rejecting in the name of substantive moral community. As the war continued, however, one of Maritain's main purposes was to lay out a new, Christian conception of democracy that transcended these narrow limits, and soon the Pope would agree. Democracy and humanity could coincide.

In the flow of Christian political theory in these years, in fact, the original commitment of the non-individualist person in the non-totalitarian community remained stable, as the overall governing framework into which rights were introduced. In other words, the superimposition of rights on personalism meant as much continuity as change. In an atmosphere in which many Catholics understood the defense of the West to mean all-out war against Bolshevism even at the price of alliance with unholy forces, Maritain's message was primarily directed against the European preference for fascism as the lesser evil. "An obscure process of leniency toward totalitarian forms that lying propaganda tries to picture as the upholders of order," Maritain regretted at the University of Pennsylvania bicentennial in 1940, "has thus invaded parts of the believing groups in many countries."[32] "The error of

those Catholics who follow Pétain in France or Franco in Spain," Maritain wrote Charles de Gaulle in 1941, "is to convert Catholic thought, through lack of social and political education, in the direction of old paternalistic conceptions of history rejected in the meantime by the popes and condemned by history."[33]

In the process, Maritain's attitude toward the catastrophe of modernity softened slightly but discernibly (though it never reversed). The ambivalence is well captured in his *Fortune* magazine story of 1942 in which he still castigated modern man for "claim[ing] human rights and dignity – without God, for his ideology grounded human rights and human dignity in a godlike, infinite autonomy of human will," while also now referring to the apparently alternative "concept of, and devotion to, the rights of the human person" as "the most significant political improvement of modern times."[34] His relative move toward an affirmation of a specific kind of state framework within which alone a "new Christian order" could come about forced Maritain to quietly but decisively drop old associations of formal liberties and formal democracy with liberal individualism on its deathbed. He broke largely with visions, such as either Marxism or Mounier's personalism, that treated formal rights and democracy as elements of a hypocritical capitalist sham. Formal or "bourgeois" liberties formerly condemned now had to be resurrected as providing the legal carapace of the Christian state and even the spiritual interstate order. Arguably, however, these innovations were in the service of keeping personalist communitarianism the same in new circumstances.

It is true, though, that this substantive vision now prompted a less critical attitude toward formal guarantees and political structures or might indeed invest them with considerable significance. One could say something similar of Pius XII who, having adopted the rhetoric of the rights of the person, was by the time of his 1944 Christmas message following Maritain by endorsing democracy on condition of

differentiating between its Christian communitarian and reprobate secularist version.[35] "Defend These Human Rights!" British Catholic John Eppstein wrote in a 1948 pamphlet, explaining that this meant *la défense de la personne humaine* first discovered by Catholics in the later 1930s. ("This was somewhat different from the familiar enumeration of 'the Rights of Man and the Citizen'," he explained, "since by 'the human person' the Christian opponents of State absolutism meant particularly man as a *spiritual* being.")[36] The work of saving the person from its anti-democratic votaries arguably depended on the deeper commitment to a moral and communitarian ethos, which allowed leaving those old versions behind almost as if they had never been. "To avoid all misunderstanding, I must add," de Visscher, the international lawyer, put it rather charmingly in 1947, "that the personalist conception must be defended against some of those who claim it and who have sometimes compromised it in the very process of advocating for it."[37]

Even Mounier, who remained in France, embraced rights after a fashion – albeit very briefly. After having flirted with identifying the National Revolution as a personalist one – he criticized Maritain for his treasonous defense of American democracy before being shut down by the Vichy regime – Mounier penned a declaration of "the rights of persons and communities."[38] This made an important difference to his followers, many of whom essentially made Maritain's move to reconcile personalism with formal democracy while Mounier notoriously moved from non-conformism to the far left in the postwar era. Mounier had, it is clear, a far more serious impact on Belgium and France, whereas Maritain's message found its most significant hearing in Italy and Latin America.[39] Most important, followers of Mounier in the briefly if meteorically successful postwar Mouvement républicain populaire were able to be more faithful than Mounier was to his brief rights-based revision of

personalism.

A good example of a Mounier disciple who played a major role in the postwar European human rights moment – besides Charles de Visscher – was François de Menthon, who headed the French prosecution team at Nuremberg. In his spectacular opening address, now understandably attacked for developing the juristic novelty of "crimes against humanity" while failing to mention which part of humanity actually suffered the crimes, Menthon identified the German acts as "crimes against the spirit," a clear reference to interwar and wartime anti-materialism that contemporaries, unlike Nuremberg's many historians since, would have readily identified as such. "National Socialism," he thundered, "ends in the absorption of the personality of the citizen into that of the state and in the denial of any intrinsic value to the human person." Even his glancing reference at the end of his address to "citizens of the occupied countries categorized as Jews" singled out the damage done to "their personal rights and to their human dignity."[40] No one else, including Robert H. Jackson, used similar language at the time: The originally personalist framing of crimes against humanity, and their deep affront to the rights of the dignified human person, has quite simply been missed.

As for Maritain, he continued to defend a personalistic conception of human rights wherever he went during the years after the war: in his work for UNESCO on the philosophical grounding of human rights, as French Ambassador to the Holy See for a few years (where he decisively influenced later popes who would finally overcome institutional resistance within the Church to a full move to human rights language two decades later), or Princeton University.[41] But though Maritain was certainly the most prominent thinker on the postwar scene to defend the new concept, it was political shifts that made its fortune in the Western European polities that would become its early homeland. Still, because Catholicism aspired to be

and to some extent was even then a global phenomenon, there should be no surprise in discovering that the personalistic framing of the global human rights "moment" of the era affected the language not simply inside Continental Europe but far beyond it. This included, most obviously, the move to human rights at the level of international organization, essentially rhetorical though it was (as European international lawyers were not wrong to note).

Indeed, the human person became a key figure of thought at the United Nations, thanks to Christians impressed by papal language who injected it into founding documents. In a multiculturalist age, it is tempting to look back at storied figures in the origins of human rights at the United Nations and claim them for the third world and alternative values, when in fact they themselves insisted – before the right audiences at least – that they were making a Christian contribution.[42] Charles Malik, the Lebanese Christian who is responsible for the personalistic language of the Universal Declaration of Human Rights proper, is a case in point. "In Christianity, the individual human person possesses an absolute value," Malik explained in 1951, for instance. "The ultimate ground of all our freedom is the Christian doctrine of the absolute inviolability of the human person."[43] Carlos Romulo, Philippines delegate to the United Nations and a crucial figure in the General Assembly debates over the Universal Declaration, provides another illuminating example, as his lectures on the implicit foundation of new impulses in public international law make plain. "Of all the acts of the United Nations," he argued in the period, "the Universal Declaration of Human Rights has demonstrated most clearly the tendency… to work out a system of international law conforming as closely as possible to natural law.… We may yet find ourselves confronted by the seeming paradox of Christianity emerging as the only practical program for lasting peace and equitable order in our troubled world."[44]

There was, however, very little true international human rights law for decades, and the real story of human rights in the early postwar period, with due allowance for the importance of symbolism, is of its nationalization and regionalization. I do not claim that the resumption of the interwar vogue of declarations of rights in the postwar domestic constitutionalism (at least outside the British sphere until the early 1960s policy change) reflected any personalistic consensus.[45] Early steps in European unification and the – also initially quite unimpressive – European human rights regime, however, very much did. As Wolfram Kaiser has now shown, Christian Democracy, hegemonic starting in this era as the Continent restabilized, made personalist communitarianism the fundamental ideology of its work nationally and construction of Europe regionally.[46] "In the inter-war period catholicism had been closely linked to nationalism and the League of Nations had been presented as being a dangerous centre of masonic power," Richard Vinen observes, in a similar vein. "After 1945, this changed. Catholic organizations were enthusiastic proponents of international harmony, within the western bloc at least, and Christian Democrat parties in all European countries were so intimately linked to European integration that some began to feel that Europe was being built under the aegis of the 'catholic international.'"[47]

It is true that personalism, in both Maritain's and Mounier's renditions, could have had left-wing implications, and to some extent did, prompting an evanescent "left Catholicism" that quickly sputtered.[48] This was not, however, because of any dispute about the role of the state in the economy: Though Continental Europeans needed Americans in the 1940s, it was not to learn commitment to an economic New Deal. As de Visscher argued, no one believed that personalism implied a return to "the economic liberalism of the eighteenth or nineteenth centuries."[49] Rather, Christians on the left and right agreed that some management of the economy was

necessary, and diverged from there. Very quickly, as it turned out, left versions of personalism were extinguished, and the ideology underwrote a reinvention of conservatism in power. This "re-recasting of bourgeois Europe," as one may call it, occurred under the political hegemony of Christian Democracy, even if one wants to see it as redounding to the benefit of liberal capitalism in the long run.[50] It should not be surprising, therefore, that many of the chief founders of the European project, both in politics generally and in the tradition of European human rights specifically, were avowed personalists (for instance, Robert Schuman, Paul-Henri Spaak, and Pierre-Henri Teitgen).

In its regionalized domain, human rights law gained only slightly more traction than on the global scene: The case of the European Convention of Human Rights (1950) involved – in the early decades when there was no right of petition and little serious activity, not least because of its derogability during colonial emergencies – much more ideological signaling about the values on which Western European identity depended than it did legally enforceable guarantees. The common Christian basis for unity mattered a lot here, only now what that meant was the centrality of the human person. The Convention itself, given signal British participation in its origins, is not an exception to this statement but illustrates how powerfully the revolt against materialism as the essence of Europe resonated in these years. As the Convention's historian Brian Simpson has emphasized, it emerged thanks to Britain's commitment to "spiritual union" of Western Europeans against communism, in Ernest Bevin's own phrase. "In the event Bevin's idea of a spiritual union came to be secularized," Simpson comments with distinct understatement, "but this was not perhaps how it began."[51]

That the incipient Cold War would soon come to be widely understood in terms of the defense of religion and "the West" that

the Church's struggle against communism had already been for three decades was no doubt crucial in the larger postwar spiritualist consensus among Western European liberal-conservatives.[52] In this sense, not just British commitment to "spiritual" values in international affairs, which had also antedated the war, could allow new collaborations with Continental religious ideology in the postwar years, of which the Convention is only one example.[53] More generally, there had been important Protestant defenders of third-way personalism all along (perhaps most importantly, Swiss writer Denis de Rougemont, who had been a non-conformist close to both Marc and Mounier before becoming a Europeanist).[54] The larger phenomenon, without which the picture would remain incomplete, is the cross-denominational ratification of human dignityas part of an ecumenical reinvention of Christianity of both Catholic and Protestant varieties. A few notes on the German case – a crucial link in the Catholic international but with decisive Protestant participation – are useful in this regard.

There is no reason to hypothesize the direct impact of the various thinkers in the Francophone orbit on German developments, though the full ramifications of dissident networks across the Rhine in the interwar period are only beginning to be reconstructed.[55] Certainly, the spiritualistic consensus and emphasis on dignitarian personalism – including sometimes human rights – prevalent in the early years after World War II suggest German Christians developed their own versions of the doctrines canvassed so far, based on easily available papal pronouncements. Even if it is true that they had no home-grown Maritain, a cognate spiritualist credo came close to providing the central ideological fulcrum of Christian Democracy in Germany, as Maria Mitchell has shown.[56] And just as in the case of the Universal Declaration on which it drew, the Federal Republic Basic Law's opening affirmation of human dignity has to be read not just retrospectively as a response to the Nazi past but prospectively

as an allusion to the kind of moral future that would alone overcome that past. It is a mistake, in other words, to think about the "recivilization" of West Germany in the absence of the religious ideology that provided its justification and explained the specific, nonsecular, moralized form it was supposed to take.[57] Premier historian and Protestant conservative Gerhard Ritter thus spoke for many when, in 1948, he rallied to human rights, declaring that on the concept "depends nothing less than the survival of Western culture.... Despite all that has divided us for centuries, [there still exists] among the great nations of the one-time Christian West a community of moral-religious convictions which is broad and firm enough to serve as the foundation for a new solid structure of a Christian oriented social ethics." Everything depended on human rights – but only so long (Ritter insisted) as they were treated as a reformulation of those ethics, and were clearly distinguished from "the mechanical principle of equality" of secular culture, which had given rise to atomistic capitalism and totalitarian collectivism alike.[58]

The transformation of the political meaning of Christianity works far better than the continuation of fascism proper to explain the centrality of dignitarian rights not just in postwar politics, but also in postwar law – most famously, of course, postwar German constitutional law.[59] Catholic jurists such as Willi Geiger and Josef Wintrich, although at times quite compromised during the Nazi regime, could come to draw directly on new papal traditions in the postwar years, to give a strongly communitarian view of the Basic Law. As a judge on the Bundesverfassungsgericht, Geiger, for instance, championed the centrality of dignitarian rights in public and private law in the early Federal Republic, which he saw as totally different in basis now that they had been reassigned from being Weimar-era products of the sovereign will to being rooted in the pre-constitutional nature of persons.[60] But others found relatively

independent routes to similar conceptions. Protestant Gerhard Leibholz, an émigré in Britain during the war (and Dietrich Bonhoeffer's brother-in-law), early established contact with the crucial intermediary figure between British and resisting German Protestants George Bell, bishop of Chichester.[61] Developing Protestant versions of anti-totalitarianism emphasizing spiritual freedom, both worked together with Anglican Alec Vidler and Continental Catholic refugees to argue for a return of natural law based on the person. "Must not theonomic thinking demand that the State ought to abandon the idea of being a self-contained sovereign entity with only rights of its own, and acknowledge that it is a member of a community of nations each and all of which are bound to serve the rights of the human person?" Leibholz asked in 1946. In the postwar era, he returned to Germany, and as a judge on the nation's highest constitutional court, he tirelessly promoted the centrality of the human personality (*Persönlichkeit*) as the foundation stone of democratic order.[62]

The intellectual and cultural sources for such a conservative rapprochement with the rights of man were not individualist in general or Kantian in particular, certainly not in the early going. In a first moment, in fact, the dominant view was to connect the human dignity affirmed at the outset of the Basic Law with naturalistic premises, and indeed "the dominant Catholic natural law teaching possessed in the first postwar years such a powerful radiance amongst constitutional experts that Protestants themselves could not withdraw from it."[63] In a second moment, Catholic personalist and author of the leading commentary on the Basic Law Günter Dürig moved away from natural law to a theory of human dignity, and rights generally, as "objective values" (here Scheler's old critique of Kant's putatively subjectivist proceduralism in the name of material values provided the main inspiration).[64] In both moments, personalist conceptions of dignity purporting to leave behind the

choice between individual and collective provided the dominant framework and affected many aspects of what human rights meant within the postwar constitutional framework.[65]

It may be true, then, that (as Mark Mazower has argued) there was a conceptual shift from group to individual in diplomatic and legal circles that set the stage for the post–World War II human rights moment. But there was also a shift afoot from the individual to the person, and in terms of its *cultural meaning* at the time; and the embedding of its ideas in postwar European politics, the Universal Declaration is a profoundly communitarian document – precisely a moral repudiation of dangerous individualism, albeit one equally intended to steer equally clear of communism.[66] Indeed, in my view this is the key to placing the document – along with the human rights idea in general – more securely in the ambiance of the war's aftermath, as part of the moral reconstruction of Europe perceived to be necessary to stave off future world crises and conflicts.

One significant irony of this history is that the availability of a now far more familiar paradigm of the moral value of the person – one with roots in Roman law, and embedded in Immanuel Kant's political thought – may easily promote oblivion of the primacy of a very different human person in the years when the Universal Declaration was framed and the concept was embedded in early postwar European law and common sense. Kantians were few and far between in the 1940s. In a later era, communitarianism could come to seem a major challenge to rights-talk, but few in that debate are even aware that rights-talk in immediate postwar Europe did not exclude communitarianism but instead presupposed it.[67]

In short, the original context of the European embrace of human rights – in which they were linked to the conservative defense of human dignity and attached to the figure of the human person – was in Christianity's last golden age on the Continent, which lasted for

two decades before the shocking reversal for the fortunes of religion after the mid-1960s. The "death of Christian Europe," as one might call it, forced – along with many other developments – a complete reinvention of the meaning of the human rights embedded in European identity both formally and really since the war.[68] The only serious thread of persistence was, ironically, in Eastern Europe, and especially in Poland, not coincidentally the main exception to Christian collapse. There Maritain, Mounier, and Scheler enjoyed huge discipleships, not least in the personalism of Karol Wojtyla, eventually Pope John Paul II.[69] But by the time of the explosion of human rights in the later 1970s, when the concept gained a currency out of all proportion to any other moment in history, Christian personalism, while not absent, was decidedly peripheral. Human rights had become a secular doctrine of the left; how that happened is another story.

1 On the Institute from its nineteenth-century origins through this period, see most notably **Martti Koskenniemi**, *The Gentle Civilizer of Nations: The Rise and Fall of International Law* (Cambridge, 2002). One émigré Russian international lawyer had proposed an international bill of human rights in 1929, but was essentially ignored at the time. See **André Mandelstam**, "La Déclaration des droits internationaux de l'homme, adoptée par l'Institut de droit international, " *Revue de droit international*, **5** (1930), 59–78, and **Mandelstam**, *Les Droits internationaux de l'homme* (Paris, 1931); for comment, **Dzovinar Kévonian**, "Exilés politiques et avènement du 'droit humain': la pensée juridique d'André Mandelstam (1869–1949), " *Revue d'histoire de la Shoah*, 177–178 (January–August 2001), 245–273.

2 **Cf. Elizabeth Borgwardt**, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, Mass., 2005).

3 “Les droits fondamentaux de l’homme, base d’une restauration du droit international,” *Annuaire de l’Institut de Droit International*, 41 (1947), 1–13 (travaux préparatoires by Charles de Visscher), 142–190 (discussion), 258–260 (declaration), at 153–154. For the text of the declaration in English, see “Fundamental Rights of Man, as the Basis of a Restoration of International Law,” *International Law Quarterly*, 2:2 (Summer 1948), 231–232. On de Visscher, see **François Rigaux**, “An Exemplary Lawyer’s Life (1884–1973), ” *European Journal of International Law*, **11**:4 (2000), 877–886.

4 In his classic 1950 indictment of European “pseudo-humanism,” Aimé Césaire could complain that “not one established writer, not one academic, not one crusader for law and religion, not one ‘defender of the human person,’” yet opposed colonialism in principle. **Césaire**, *Discourse on Colonialism*, trans. Joan Pinkham (New York, 1972), 17.

5 See **John Hellman**, *The Communitarian Third Way: Alexandre Marc’s Ordre Nouveau, 1930–2000* (Montreal, 2002).

6 On the larger tradition of Russian personalism, see **George L. Kline**, “Changing Attitudes toward the Individual,” in **Cyril Black** (ed.), *The Transformation of Russian Society* (Cambridge, 1960), 606–625.

7 **Maritain**, *The Person and the Common Good*, trans. **John J. Fitzgerald** (New York, 1947), 13.

8 Cited in **Nicolas Kessler**, *Histoire politique de la Jeune Droite (1929–1942): une révolution conservatrice à la française* (Paris, 2001), 208; cf. 230–233, 242–249 for more reactionary personalism.

9 On the general scene, the classic is **Jean Louis Loubet del Bayle**, *Les Non-conformistes des années trente: une tentative de*

renouvellement de la pensée politique française (Paris, 1969). The allegation that these circles were basically fascistic is most familiar from the controversial works of Zeev Sternhell: **Zeev Sternhell**, *Neither Right nor Left: Fascist Ideology in France*, trans. David Maisel (Berkeley, 1986). For the best overview, see **Robert O. Paxton**, "The Church, the Republic, and the Fascist Temptation," in **Richard J. Wolff** and **Jörg K. Hoensch** (eds.), *Catholics, the State, and the European Radical Right, 1919–1945* (Boulder, 1986), 67–91.

10 Bukharin cited in **Jochen Hellbeck**, *Revolution on My Mind: Writing a Diary under Stalin* (Cambridge, Mass., 2006), 31. See also Kline, "Changing Attitudes toward the Individual," 624, on the revival of nineteenth-century Russian personalism in this 1930s moment.

11 **Emmanuel Mounier**, *A Personalist Manifesto*, trans. Monks of St. John's Abbey (New York, 1938), 17–18.

12 The texts are most conveniently available in René Rémond, *Les crises du catholicisme en France dans les années trente* (Paris, 1996), appendix.

13 **Maritain**, *Trois réformateurs: Luther – Descartes – Rousseau* (Paris, 1925); in English, *Three Reformers: Luther – Descartes – Rousseau* (New York, 1955). Simon to Maritain, September 3, 1941, Yves R. Simon Institute, Mishawaka, Indiana. He continued: "Last winter, our seniors had a debate on the question of whether Thomistic personalism is the true internationalism. As a joke it was proclaimed that all that is idiotic is due to individualism, while all that is beautiful stems from personalism."

14 These claims are contentious in the literature, but there is no space to defend them here.

15 See **Sandra Teroni** and **Wolfgang Klein** (eds.), *Pour la*

défense de la culture: les textes du Congrès international des écrivains, Paris 1935 (Dijon, 2005). Thanks to Anson Rabinbach for sharing his illuminating ongoing work on anti-fascism.

16 This section summarizes the more detailed analysis in **Samuel Moyn**, "Jacques Maritain: le origini dei Diritti umani e il pensiero politico cristiano," in **Luigi Bonanate** and **Roberto Papini** (eds.), *Dialogo interculturale e diritti umani: la Dichiarazione Universale dei Diritti Umani, Genesi, evoluzione, e problemi odierni (1948–2008)* (Bologna, 2008), 97–124. Existing doctrinal histories of the Church and human rights have sectarian versions of the general flaws of teleology, tunnel vision, and triumphalism in human rights history. For examples, see **Philippe de la Chappelle**, *La Déclaration universelle des droits de l'homme et le catholicisme*, pref. René Cassin (Paris, 1967); **Jozef Punt**, *Die Idee der Menschenrechte: Ihre geschichtliche Entwicklung und ihre Rezeption durch die moderne katholische Sozialverkündigung* (Paderborn, 1987); **Alexander Saberschinsky**, *Die Begründung universeller Menschenrechte* (Paderborn, 2002); and **Thomas D. Williams**, *Who Is My Neighbor? Personalism and the Foundations of Human Rights*, preface by Mary Ann Glendon (Washington, D.C., 2005).

17 **J. Bryan Hehir**, "Religious Activism for Human Rights: A Christian Case Study," in **John Witte**, Jr., and **Johan D. van der Vyver** (eds.), *Religious Human Rights in Global Perspective: Religious Perspectives* (The Hague, 1996), 101.

18 **Cf. Emilio Gentile**, *Politics as Religion*, trans. George Staunton (Princeton, 2006), 92–93, and ch. 4.

19 Pius XI, Encyclical Letter "Mit brennender Sorge," March 14, 1937, as translated in **Georges Passelecq** and **Bernard Suchecky**, *The Hidden Encyclical of Pius XI*, trans. Steven Rendall (New York, 1997), 105.

20 See **Xavier de Montclos**, "Le discours de Pie XI sur la défense des droits de la personne humaine," in *Achille Ratti, pape Pie XI* (Rome, 1996).

21 "Lettre de S. Em. le Cardinal Pacelli," in *La Personne humaine en péril* (Lyon, 1937), 5–8.

22 For a variety of contemporary commentaries on the novel surge of the human person after 1936 in statements by Pius XI and XII, see *The Foundations of International Order* (proceedings of the Catholic Congress on International Peace, The Hague, 1938) (Oxford, 1938); **André Saint-Denis**, *Pie XI contre les idoles: bolchévisme, racisme-étatisme* (Paris, 1939); or **Lewis Watt, S.J.**, *Pope Pius XII on World Order* (Oxford, 1940), ch. 5, "The Dignity of the Human Person."

23 For a general picture of Pius's wartime positions, see **Peter C. Kent**, "Toward the Reconstitution of Christian Europe: The War Aims of the Papacy, 1938–1945," in **David B. Woolner** and **Richard B. Kurial** (eds.), *FDR, the Vatican, and the Roman Catholic Church in America, 1933–1945* (New York, 2003).

24 **Paul A. Hanebrink**, *In Defense of Christian Hungary: Religion, Nationalism, and Antisemitism, 1890–1944* (Ithaca, 2006), 170–180.

25 "Pope Bids Church to Guard Man's Rights," *New York Times*, October 13, 1938; "Pastoral Letter [of the American Catholic Hierarchy] on the Teaching of Democracy," *New York Times*, November 25, 1938. The pope made the anti-totalitarian (and anti-capitalist) context of "human rights" clear once again: "The Catholic is necessarily the champion of true human rights and the defender of true human liberties; it is in the name of God Himself that he cries out against any civic philosophy which would degrade man to the position of a soulless pawn in a sordid game of power and prestige, or would seek to banish him from

membership in the human family; it is in the same holy name that he opposes any social philosophy which would regard man as a mere chattel in commercial competition for profit, or would set him at the throat of his fellow in a blind brutish class struggle for existence."

26 See esp. **A. W. Brian Simpson**, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, 2001), ch. 4; also **Paul Gordon Lauren**, *The Evolution of International Human Rights: Visions Seen*, 2nd ed. (Philadelphia, 2003), ch. 5.

27 Cited in **Hellman**, *Emmanuel Mounier and the New Catholic Left, 1930–1950* (Toronto, 1981), 168. For personalism – including fulsome invocation of Maritain's formulae – at Vichy, see Hellman's writings: "Maritain, Simon, and Vichy's Elite Schools," in **Michael D. Torre** (ed.), *Freedom in the Modern World* (Notre Dame, 1989), 165–180; "Communitarians, Non-conformists, and the Search for a 'New Man' in Vichy France," in **Sarah Fishman** et al. (eds.), *France at War: Vichy and the Historians* (Oxford, 2000), 91–106; and *The Knight-Monks of Vichy France: Uriage, 1940–1945* (Montreal, 1994).

28 The earliest publications are "The Natural Law and Human Rights" (Windsor, Ontario, 1942), an award acceptance speech dated January 18, 1942, published as a pamphlet, and "Natural Law and Human Rights," *Dublin Review*, 210 (April 1942), 116–124. The book is *Les droits de l'homme et la loi naturelle* (New York, 1942), translated into many languages.

29 For radically contrasting stories of the origins of rights that nevertheless concur on this point, see **Leo Strauss**, *Natural Right and History* (Chicago, 1953); **Richard Tuck**, *Natural Rights Theories: Their Origin and Development* (Cambridge,

1979); and **Michel Villey**, *Le droit et les droits de l'homme* (Paris, 1983). In Catholicism, see the dissident view of **Alasdair MacIntyre**, *After Virtue: A Study in Moral Theory* (Notre Dame, 1981).

30 Pius XII, "The Internal Order of States and People," in **Vincent A. Yzermans** (ed.), *The Major Addresses of Pope Pius XII*, 2 vols. (St. Paul, 1961). See, e.g., **John A. O'Brien**, "The Pope's Way to Peace, " *International Conciliation*, **44** (October 1944), 647–663 (rights of the human person throughout). In the same papal collection, one may wish to compare the 1958 Christmas message, "The Rights of Man."

31 **Christopher Dawson**, *The Judgment of the Nations* (New York, 1942), 185–186.

32 William L. Laurence, "Political Theory of Religion Is Hit," *New York Times*, September 17, 1940. Though well informed, Maritain consistently presented France as captured, thus drastically understating the extent and zeal of the collaborationism of some of his countrymen.

33 Maritain to Charles de Gaulle, November 21, 1941, in *Cahiers Jacques Maritain*, 16–17 (April 1988), 61. By the next year he urged de Gaulle to champion a "renewed democratic ideal" rooted in personalism. Ibid., 68.

34 Maritain, "Christian Humanism," *Fortune*, April 1942.

35 See Pius XII, "True and False Democracy," in *Major Addresses*. Even in America, the major postwar Catholic thinker, Jesuit and Maritain follower John Courtney Murray, could argue in a 1950 essay that the human rights turn showed that the modern world had finally imbibed Catholicism's message rather than vice versa: "The growing conviction of the old attempts to solve the problem of human liberty and social order in purely secularistic, positivist terms had created a new openness to the

world of metaphysical and religious values. [The Christian human rights idea provides] such a basis because it is metaphysical in its foundations, because it is asserted within a religious framework, and because it is realist (not nominalist), societal (not individualist), and integrally human (not rationalist) in its outlook on man and society." Murray, "The Natural Law," in **Robert M. MacIver** (ed.), *Great Expressions of Human Rights* (New York, 1950), as reprinted in **Murray**, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York, 1960), 320.

36 **John Eppstein**, *Defend these Human Rights! Each Man's Stake in the United Nations – A Catholic View* (New York, 1948), 5.

37 De Visscher, "Les droits fondamentaux de l'homme," 158.

38 On Maritain, see **Mounier**, *Oeuvres*, 4 vols. (Paris, 1961–1963), 4:694; for the declaration, see Mounier, "Faut-il refaire la Déclaration des droits?" ibid., 4:96–104. This document was widely read in the framing process of the abortive and then the passed Fourth Republic Declaration of Rights.

39 See esp. **Paolo Pombeni**, *Il gruppo dossettiano e la fondazione della democrazia italiana (1938–1948)* (Bologna, 1979), and **Olivier Compagnon**, *Jacques Maritain et l'Amérique du Sud* (Villeneuve, 2003).

40 **François de Menthon**, "Opening Address (January 17, 1946)," in Michael R. Marrus (ed.), *The Nuremberg War Crimes Trial 1945–46: A Documentary History* (Boston, 1997), 89–94; **cf. Laurent Ducerf**, *François de Menthon: un Catholique au service de la République* (Paris, 2006), ch. 10.

41 His UNESCO address is *La Voie de la Paix: Discours prononcé à la séance inaugurale de la IIe Conférence internationale de l'Unesco* (Mexico City, 1947), in English in many places such as "Possibilities for Co-operation in a Divided World," in **Maritain**,

The Range of Reason (New York, 1952); for his UNESCO rights inquiry, see **Maritain** (ed.), *Human Rights: Comments and Interpretation* (New York, 1949); see also **Maritain**, *The Meaning of Human Rights* (Waltham, 1949), and, for his own fullest views, **Maritain**, *Man and the State* (Chicago, 1951).

42 **Cf. Roland Burke**, "'The Compelling Dialogue of Freedom': Human Rights at the Bandung Conference, " *Human Rights Quarterly*, **28**:4 (November 2006), 947–965.

43 Charles Malik, "The Prospect for Freedom" (address at honorary rectorial convocation, University of Dubuque, February 19, 1951), unpaginated.

44 **Carlos Romulo**, "Natural Law and International Law, " *University of Notre Dame Natural Law Institute Proceedings*, **3** (1949), 121, 126.

45 See **Boris Mirkine-Guetzévitch**, *Les constitutions européennes* (Paris, 1951), ch. 8, and, for British developments, **Charles O. H. Parkinson**, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories* (Oxford, 2007).

46 **Wolfram Kaiser**, *Christian Democracy and the Origins of the European Union* (Cambridge, 2007). See also the more affirmative and invested views in **Roberto Papini** (ed.), *L'apporto del personalismo alla costruzione dell'Europa* (Milan, 1981), and **Philippe Chenaux**, *De la chrétienté à l'Europe: les Catholiques et l'idée européenne au XXe siècle* (Paris, 2007), esp. ch. 3, "L'influence du personnalisme dans la construction de l'Europe."

47 **Richard Vinen**, *Bourgeois Politics in France, 1945–1951* (Cambridge, 1995), 152, footnote omitted.

48 See **Gerd-Rainer Horn** and **Emmanuel Gerard** (eds.), *Left*

Catholicism: Catholics and Society in Western Europe at the Point of Liberation (Louvain, 2001), esp. Martin Conway's synthesis, "Left Catholicism in Europe in the 1940s: Elements of an Interpretation," 270–271 and 277–278: "In comparison with the rapid growth of Christian Democracy, the Left Catholic groups must inevitably appear as something of a historical footnote."

49 De Visscher, "Les droits fondamentaux de l'homme," 158.

50 The allusion is to Charles Maier's work on Europe after World War I, which has not been comparably repeated for the post–World War II period. As Conway puts it, "perhaps the most durable change in European political life brought about by the war was in fact conservative in nature.... Catholicism in the later 1940s and 1950s ... while presiding politically over the postwar reconstruction of Western Europe, retained within it the intellectual components of a profound critique of liberalist and individualist values which underpinned that same process of reconstruction." Conway, "Left Catholicism in Europe in the 1940s," 277, 281.

51 See Simpson, *Human Rights and the End of Empire*, esp. 568–570 ("Saving Western Civilization") and 577–579 ("What Was the Spiritual Union?") at 579.

52 **Dianne Kirby**, "Divinely Sanctioned: The Anglo-American Cold War Alliance and the Defence of Western Civilization and Christianity, 1945–1948, " *Journal of Contemporary History*, **35**:3 (2000), 385–412, and **Kirby (ed.)**, *Religion and the Cold War* (New York, 2003).

53 **Jeanne Morefield**, *Covenants without Swords: Idealist Liberalism and the Spirit of Empire* (Princeton, 2005).

54 **Bruno Ackermann**, *Denis de Rougemont: De la personne à l'Europe* (Lausanne, 2000).

55 See **Hans-Manfred Bock** (ed.), *Entre Locarno et Vichy: les relations culturelles franco-allemandes dans les années 30* (Paris, 1993), and **Thomas Keller**, *Deutsch-französische Dritte-Weg-Diskurse: personalistische Intellektuellendebatte der Zwischenkriegszeit* (Munich, 2001). See also **Heinz Hürten**, "Der Einfluß Jacques Maritains auf das politische Denken in Deutschland, " *Jahrbuch für christliche Sozialwissenschaften*, **26** (1985), 25–39.

56 Many German Catholics in the emigration, such as Waldemar Gurian or Heinrich Rommen, did not return. A parallel German story to Maritain's creation of a nonreactionary personalism can be told about Dietrich von Hildebrand, a Scheler disciple who fled Germany to Austria (where he favored "Austro-fascist" corporatism) before fleeing to France, then the United States and taking up Maritain's cause. See, e.g., Hildebrand, "Der Kampf um die Person," *Die christliche Ständestaat*, 6 (January 14, 1934), reprinted in **Ernst Wenisch** (ed.), *Memoiren und Aufsätze gegen den Nationalsozialismus 1933–1938* (Mainz, 1994), 191–197, and "The World Crisis and the Human Personality," *Thought*, 16:62 (September 1941), 457–472. However, I do not currently have evidence of parallel impact of German personalist political theory on the postwar German scene to match the legal evidence introduced below.

57 **Maria Mitchell**, "Materialism and Secularism: CDU Politicians and National Socialism, 1945–49, " *Journal of Modern History*, **67**:2 (June 1995), 278–308, and **Mitchell**, "'Antimaterialism' in Early German Christian Democracy," in **Thomas Kselman** and **Joseph A. Buttigieg** (eds.), *European Christian Democracy: Historical Legacies and Comparative Perspectives* (Notre Dame, 2003), 199–227; **cf. Konrad Jarausch**, *After Hitler: Recivilizing Germans, 1945–1995* (New

York, 2006).

58 **Gerhard Ritter**, "Ursprung und Wesen der Menschenrechte, " *Historische Zeitschrift*, **169**:2 (August 1949), 233, 263, and **Andreas Dorpalen**, "Historiography as History: The Work of Gerhard Ritter, " *Journal of Modern History*, **34**:1 (March 1962), 10. See also **Ritter**, "Die Menschenrechte und das Christentum, " *Zeitwende*, **21**:1 (July 1949), 1–12, and my "The First Historian of Human Rights," *American Historical Review* 116:1 (February 2011).

59 **Cf. James Q. Whitman**, "On Nazi 'Honour' and the New European 'Dignity'," in **Christian Joerges** and **Navraj Singh Ghaleigh** (eds.), *The Darker Legacy of European Law: Perceptions of Europe and Perspectives on a European Order in Legal Scholarship during the Era of Fascism and National Socialism* (Cambridge, 2003), 243–266.

60 See **Willi Geiger**, *Grundrechte und Rechtsprechung* (Munich, 1959), and "Die Wandlung der Grundrechte," in **Max Imboden** (ed.), *Gedanke und Gestalt des demokratischen Rechtsstaats* (Vienna, 1965), 9–36. See **Gerhard Leibholz** et al. (eds.), *Menschenwürde und freiheitliche Rechtsordnung: Festschrift für Willi Geiger zum 65. Geburtstag* (Tübingen, 1974). Also of importance was the Bavarian judge Josef Wintrich, whose personalist formulae the Bundesverfassungsgericht took over; see, for example, *Zur Problematik der Grundrechte* (Cologne, 1957), and **Ulrich Becker**, *Das "Menschenbild des Grundgesetzes" in der Rechtsprechung des Bundesverfassungsgerichts* (Berlin, 1996). On Geiger under Nazism, see **Ingo Müller**, *Hitler's Justice: The Courts of the Third Reich*, trans. Deborah Schneider (Cambridge, Mass., 1992), 218.

61 Bell's postwar writing shows that Anglicans signed, if slightly less frontally, onto anti-totalitarian Christian personalism too.

Bell, "The Church in Relation to International Affairs" (address at Chatham House), *International Affairs*, 25:4 (October 1949), 405–414. As he put it, "Chief among [the idolatries of the day] are the worship of power, the totalitarian State, nationalism, racialism, the craving for riches.... Put against them the great Christian ideas of the sovereignty and fatherhood of God, the solidarity of the human race with all its varieties, the sacredness of the human personality.... [T]he rights of men derive directly from their condition as children of God and not of the State" (407, 409).

62 **Gerhard Leibholz**, *Christianity, Politics, and Power* (London, 1943), and "Politics and Natural Law," paper delivered at the conference that led to **A. R. Vidler** and **W. H. Whitehouse** (eds.), *Natural Law: A Christian Re-consideration* (London, 1946), 31–36. Both of Leibholz's texts and many others from his émigré years are in Leibholz, *Politics and Law* (Leyden, 1965), citation at 23. On the postwar career, see **Manfred Wiegandt**, *Norm und Wirklichkeit: Gerhard Leibholz, 1901–1982: Leben, Werk und Richteramt* (Baden-Baden, 1995).

63 **Frieder Günther**, *Denken vom Staat her: Die bundesdeutsche Staatsrechtslehre zwischen Dezision und Integration 1949–1970* (Munich, 2004), 192, and, for the larger context of rights, 192–196, 202–204. For the view of a contemporary, see **Hans Maier**, "Katholische Sozial- und Staatslehre und neuere deutsche Staatslehre, " *Archiv des öffentlichen Rechts*, **93**:1 (1968), 1–36.

64 **Günter Dürig**, "Die Menschenauffassung des Grundgesetzes, " *Juristische Rundschau* 7 (1952), 259–263 reprinted in **Walter Schmitt Glaeser** and **Peter Häberle** (eds.), *Gesammelte Schriften* (Berlin, 1984). For his classic commentary on the *Grundgesetz*, Art. 1, see **Dürig** and **Theodor**

Maunz, *Grundgesetz: Kommentar* (Munich, 1958); cf. Ernst-Wolfgang Böckenförde, "Die Menschenwürde *war* unantastbar," *Frankfurter Allgemeine Zeitung*, September 9, 2003.

65 "A strong personalist and communitarian philosophy pervades this conception of the human person," the leading Anglophone authority on German constitutional jurisprudence confirms. **Donald P. Kommers**, *The Constitutional Jurisprudence of the Federal Republic of Germany*, new ed. (Raleigh, 1997), 304.

66 **Cf. Mark Mazower**, "The Strange Triumph of Human Rights, 1930–1950, " *Historical Journal*, **47**:2 (June 2004), 379–398.

67 For graphic evidence of the sheer difficulty of defending individualism in law in the 1940s, see **Marcel Waline**, *L'individualisme et le droit* (Paris, 1945). But, for an attempt to inject personalism into the hitherto powerful – and still anti-individualist – "institutionalist" movement in legal thought by one of its leaders, **cf. J. T. Delos** and **Bruno de Solages**, *Essai sur l'ordre politique national et international* (Paris, 1947), esp. 86–88.

68 This collapse, which ought to be shocking, remains essentially unexplained, but see **Callum Brown**, *The Death of Christian Britain: Understanding Secularization, 1800–2000* (New York, 2001), and **Mark Edward Ruff**, *Wayward Flock: Catholic Youth in Postwar West Germany* (Chapel Hill, 2005).

69 The literature here is large, but see **Karol Wojtyla**, "Thomistic Personalism" (1961), "On the Dignity of the Human Person" (1964), and other essays in *Person and Community: Selected Essays (Catholic Thought from Lublin)*, trans. Theresa Sandok (New York, 1993); cf. Avery Cardinal Dulles, "John Paul II and the Mystery of the Human Person," *America*, February 2, 2004, reprinted in **Dulles**, *Church and Society: The Laurence A.*