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CHRISTIAN PERSONALISM AS A SOURCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS¹

ABSTRACT

To mark the 70th anniversary of the adoption of the Universal Declaration of Human Rights, the author embarked on an attempt to analyze the theoretical and historical framework that contributed to the adoption of the document. The first part of the article discusses the development of the philosophy of personalism from Mounier to Maritain and analyzes Maritain's views on human rights. In the second part of the article, the author shows the decisive influence of the personalists Charles Malik and Rene Cassin on the adoption of the document, which clearly bears the mark of the Christian personalistic discourse and notions.

KEYWORDS

personalism, human rights, Universal Declaration, Christianity, Maritain, Malik

Last December we celebrated exactly seventy years since the Universal Declaration of Human Rights was adopted on December 10, 1948 by the United Nations General Assembly. Today human rights have grown into a kind of secular religion, and there are even those who claim that human rights should be a substitute for religion. They are understood predominantly in an individualistic way, as a framework that protects privacy, the rights of individuals in relation to various collective bodies, and are increasingly associated with the so-called individual rights of the last generation involving LGB and especially transgender rights. This direction in the interpretation and understanding of human rights, which spread on the horizon of Roman-Kantian philosophy of autonomy in the mid-sixties, and started to dominate since, has little to do with the original context and philosophy in which, during the 1940s and especially after the Second World War discourse, the documents and practice of human rights were established. The philosophy and background of the reconstruction and development of the human rights theory at that time was deeply Christian, associated with the personalistic school of Christian philosophy.

Several important researchers, including probably the most important historian of the human rights phenomenon today, Yale professor Samuel Moyn, have recently reminded us of this original context and framework for understanding

1 Abbreviated UNDHR.

human rights.² In the series of works followed here, Moyn notes that human rights at the time of the adoption of the UNDHR were not seen as part of a radical, revolutionary and republican tradition, but that they were more closely related to the serious reconstruction of conservatism during the forties, and to personalism and Christian democracy. He also suggested that this reminder of their original context and meaning might be useful for their current reevaluation and understanding.

In this article, we will first recall the complex relationship of Christian churches, and especially the Roman Catholic Church with the idea of human rights; we will then point out that during the thirties and forties, with the development of the Christian philosophy of personalism, the idea of natural law and human dignity was also restored within the church, and will then discuss how this new philosophy spread through international institutions and fundamentally contributed to the creation and adoption of the Universal Declaration of Human Rights seventy years ago.

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In today's Western world it would be difficult to find a Christian denomination in which the idea of human rights has not been appropriated. But this was not always the case: the history of the relationship of individual denominations toward the idea of individual human rights or inalienable human rights is very complex and controversial. As the Roman Catholic Church for a long time in the nineteenth century and for much of the first half of the twentieth rejected this idea, seeing it as originally associated with the Freemasonry movement, liberters and other enemies of Christianity and the Church, so a significant number of evangelists, for example, thought that this idea came from deism, and that therefore there was no place for it in the true Christian tradition (Traer 2001, second chapter). In other Protestant traditions, there was strong resistance to the idea of human rights because of the violation of the idea of *agape*, or love, as the basis of Christian relations between people. The idea of human rights as related to the notion of justice is rejected because it violates the principle of *agape*.

Contrary to the thinkers who seek to show that Christian churches have difficulty and are relatively late to integrate the idea of human rights, Wolsterstorff (2011) insists that this complex relationship and partial hostility of Christianity

2 After his important 2010 book *Human Rights as the Last Utopia*, Moyn developed ideas on the Christian, personalistic background of human rights in a series of articles and lectures, to synthesize the project in the extraordinary manifesto work *Christian Human Rights* (2015). Especially important is the Introduction in which he precisely presented his basic thesis. In addition to Moyn, Mary Ann Glendon should also be mentioned. See Glendon 2001. Mazower 2004 is significant because he also refuted the contemporary apocryphal image of the Declaration as an unhindered triumph of goodwill and liberal spirit. In his important study, he showed how much cynicism, trade-off, and controversial actions of the great Western powers were involved in this process.

in the twentieth century was some kind of aberration, because the very idea of natural law as the basis for human rights derives from the Christian tradition. The Enlightenment did not invent human rights, he argues: it only took this concept over from the Christian tradition of the Middle Ages.

This is no doubt true, but this tradition has long been obscured and suppressed within the Roman Catholic Church itself. The entire intellectual, social and political development in the interwar period prompted the general perception of human rights as individualism, atomism, liberal anarchism that ruled in the nineteenth century and because of which the European civilization collapsed into the abyss with the Great War. Therefore, everyone was trying to find a path leading away from this disadvantaged heritage. The Christian churches were part of this entire movement until the end of the 1930s when a very complex, spiraling movement began to restore the tradition of natural law, which only later led to the full affirmation of the idea of human rights and its codification in a series of documents such as the Universal Declaration of Human Rights (1948), the Basic Law of the Federal Republic of Germany (1949) and the European Convention on Human Rights (1950).

The most important name throughout this process is Jacques Maritain, a great Roman Catholic philosopher, who was very influential during the forties and fifties, and whose academic and ideological development – from being a member of *Action française*, through emigration and support of De Gaulle's resistance movement, and influencing the writing of the UN Declaration of Human Rights – best illustrates the path of restoring and developing the concept of human rights. The author who in an extraordinary way has recently reconstructed the Christian and personalist basis of the post-war human rights discourse, demonstrating that the modern left liberal secular discourse has fully usurped and covered the original meaning of human rights is the already mentioned Samuel Moyn, professor at Yale University, who also encouraged this research. Johannes Tavernian from the Catholic University of Leuven in Belgium is also a prominent name in contemporary personalism research. From our region one should single out the recently defended doctoral dissertation of Ivan Čulo *Influence of Personalism on Modern Legal Formulation of Human Rights*.³ With the help of their works and the views of Maritain himself, we will now summarize briefly how, above all, the Roman Catholic Church and its intellectuals formed a personalistic and communitarian discourse on human rights in the period 1935–1950.

Wolsterstorff rightly draws attention to a series of relatively recent works – as many as four books that trace the Christian tradition of natural law from

3 With Ivan Šestak and Vladimir Lončarević, Čulo also edited the very interesting and current proceedings *Odjeci filozofije personalizma (Echoes of the Philosophy of Personalism)*, based on the papers presented at the conference held in 2017 at the Faculty of Philosophy and Religious Sciences in Zagreb.

the twentieth century to the Renaissance⁴. The goal is to remind the audience that Hobbes, Locke and the Enlightenment tradition only took over and did not invent the idea of natural law and natural rights. But Moyn is also right when he points out that until the end of the 1930s, and especially during the nineteenth century, the Roman Catholic Church made a serious departure from this tradition and left the entire idea of natural rights to the liberal tradition⁵.

Preparations for the renewal of this tradition occurred, however, in the early thirties with the emergence of the so-called *personalist* movement. This tradition is today most closely associated with the names of French thinkers Emmanuel Mounier and the aforementioned Maritain. But there is another significant name that should be mentioned. De Tavernier (2009) begins his narrative on the development of personalism until 1939 with the German professor Rudolf Hermann Lotze, who through Rudolf Eucken made a major impact on Max Scheler. Another of his students was Borden Parker Bowne, who is considered the founder of the American branch of personalism. Eucken visited Boston and New York in 1912–1913 as a visiting professor. His criticism of Protestant individualism is especially emphasized, against which one should affirm personality, which always implies a connection with the community.

But the most important name in this early development is the French philosopher Charles Renouvier who in 1903 published a book called *Personalism (Doctrine of Person)*. At the center of his philosophy is the conception of freedom that must be defended from the heteronomy imposed by the doctrines of social sciences. He pointed out that everyone sees the need to rebuild relationships between an individual and a society. But his central concern is still to preserve the individual from the excessive meddling of the state and social order in his freedom. In order to preserve this, it is necessary to reform both the institutions and the individual at the same time. He, like later personalists, tries to discard any absolute, preserving the task of searching for justice and truth. Instead of looking for absolute perfection in this world, we should fight for even a little more justice, Renouvier argued.

Čulo in his work brings a very good overview of different personalistic traditions, introducing the significant influence of Russian thought, which is not always the case with historical reviews and reconstructions of personalism.

4 Wolsterstorff 2011: 42. These are the books by Brian Tierney, Charles Reid, John Witte Junior and Richard Tuck, dealing with natural law, canonical law in the Middle Ages, the Calvinist perception of natural rights and theories of natural law in the Middle Ages. Brian Tierney, *The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law 1150–1625*, Scholars Press, Atlanta, 1997, Charles J. Reid, *Power over the Body, Equality in the Family. Rights and Domestic Relations in Medieval Canon Law*, Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2004, John Witte, Jr, *The Reformation of Rights*, Cambridge University Press, 2008, Richard Tuck, *Natural Rights Theories. Their Origin and Development*, Cambridge University Press, 1979.

5 The change of attitudes towards the idea of European integration has had a similar evolution. Between the two wars the League of Nations was rejected as a Masonic project, but after the Second World War, the Roman Catholic Church became one of the promoters of this process, along with Free-mason organizations like Bilderberg.

He rightfully emphasizes the influence of Alexander Mark (Lipjansky), who was a direct connection with Mounier, as well as Berdjajev's colossal figure, very influential in certain Western circles in the period between the two wars after his arrival in Paris in 1924. Let us add that in 1925 the renowned St. Sergius Orthodox Theological Institute was founded in Paris and became an important base of theological and philosophical thought. Čulo (2018: 38) is well aware that, unlike the French and other traditions, they have never flirted with Marxism or demonstrated any understanding for such experiments.

In the early thirties (from 1932) Mourier published the rather influential magazine *L'Esprit*, which attracted the attention of important names like Gabriel Marcel, Denis de Rougemont and Maritain. The basic idea was the critique of bourgeois individualism, an idea in which the individual is extracted from all social relations, separated from God, the family, the community, and tied in to the materialistic system of values. Also rejecting communism as a variant of the same materialism, Mounier sought spiritual restoration and a system in which an individual, as God's image, would be integrated and returned to a system of communities that respect human dignity.⁶ He suggested returning to the point in which the Renaissance took the wrong path, and restoring Christian humanism that would free Europe from the mistakes of liberal and secular individualism.

A similar search was pursued by the great German philosopher, Max Scheler, and Louis Jansen, a thinker from Leuven who in 1939 published the notable book *Personne et société*. Some of the less prominent names De Tavernier cites include Cardinal Mersie, Dietrich von Hildebrand and Heribert Doms, author of the *Meaning of Marriage* (1939).

The quest for the overcoming of bourgeois liberalism led the personalists in different directions, so Maritain claimed in 1947 that there was a group of movements essentially connected only by the fact that they build their system around the idea of a *person*. However, Mounier's action aimed at restoring communitarianism and rooting the individual into a wider framework, above all religion, had the most important role until the church's leadership entered the game again. Moyn rightly points out that throughout this period, until 1942, neither Mounier nor Maritain referred to *human rights* but rather renewed the tradition of natural law and human dignity. Moreover, for Mounier, individual rights – as claimed in the *Personalist Manifesto* – are only a reflection of the bourgeois worldview. They are the legacy of the tragic ideology of 1789 (Moyn 2010: 89). During the twenties Maritain was a member of the French Action, and even in the 1930s, when, like a considerable number of Roman Catholic intellectuals, he started his transformation toward more

6 Mounier, (1936), Chapter I, "Bourgeois and Individualistic Civilization". See also the entry on personalism in the Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/personalism/>, as well as Raush's comprehensive monograph on Mounier's work in the period 1932–1950 (Rauch 1972). Also, De Tavernier 2009.

moderate positions, he still does not mention human rights (for example, in his book *Integral Humanism* of 1936).

Pope Pius XI, however, at the end of his pontificate felt the need to react to totalitarian movements which he clearly recognized as forces that systematically destroy human dignity and act against religion. In two encyclicals published in 1937, he began to use the discourse that had been developed in personalistic circles and reaffirmed the Thomistic idea of natural law. First on March 14 the encyclical *Mit Brennender Sorge* was published, which concerned the persecution of the church and other victims in the Third Reich; merely five days later it was followed by the encyclical *Divini redemptoris, On Atheist Communism*. With this, the Pope condemned both types of totalitarianism. While the second encyclical particularly emphasized the right to property as part of general human rights, the first explicitly stated that “a man as a person (persona) possesses rights he holds from God and which any collectivity must protect against denial, suppression or neglect”.⁷

That same year, as Moyn notes in his book from 2015, the Irish revolutionary leader and President of Ireland Eamon de Valera, succeeded in integrating a personalistic view of the world into the constitution of this young republic, as well as a discourse on human rights. He incorporated it into the preamble, but also in the normative part of the text. The preamble formulation in an extraordinary way reflects this original communitarian and personalist background of the idea of human rights and human dignity.⁸

Although Pacelli as Secretary of State in the same year followed this direction in his performances, after being elected pope, he made a reversal by opening various options for the church, including those that in some problematic systems had worked well with the government or even supported it. But in America, the personalistic direction and discourse of rights had already largely come to life, so Maritain, during his war emigration, strengthened his movement toward the discourse of individual rights and did a tremendous job to restore human rights as part of the Christian tradition (Moyn 2010: 94). For the first time in 1942, in his articles, and then in the book *Natural Law and Human Rights* (Maritain 1944), he stated that the renewal of the idea of natural law implied a broad set of pre-existing human rights. In his Christmas speech of 1942, Pius XII spoke in terms of human dignity and human rights.

This Maritain’s discourse was clearly also addressed to those who had accepted the theory of fascism and Nazism as a lesser evil that might be useful in the fight against communism. Together with human rights, he again legitimized democracy, rejecting discourses (including Mounier’s and his own earlier

7 http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_14031937_mit-brennender-sorge.html

8 “... and seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations...”. See Constitution of Ireland, original text, [https://en.wikisource.org/wiki/Constitution_of_Ireland_\(original_text\)](https://en.wikisource.org/wiki/Constitution_of_Ireland_(original_text))

ones) that saw both concepts as elements of the Western world's hypocrisy, capitalism and general degradation. With Pacelli's famous Christmas speech of 1944, even formally from the head of the Church, democracy was accepted and supported, as well as human rights and the alliance with the victorious liberal democracies of the West. Of course, the rights are accepted and defended from the Roman Catholic, personalistic and communitarian perspective, as a necessary element of the renewal of Christian societies. In the post-Second World War period, even Mounier briefly incorporated the discourse of individual rights into his personalism, but then again began to attack Maritain for that, from an extreme leftist position.

Moyn shows how a new discourse spread among various personalists after the war. Discussions of crimes against humanity were introduced in Nuremberg (François de Menton, a student of Mounier's, led the French prosecuting team). Maritain expanded his influence first to UNESCO, creating the philosophical basis for the UN Declaration of Human Rights, then as the French ambassador to the Vatican, and finally as a professor at Princeton University. In addition to Maritain, a great contribution was made in 1948 by Charles Malik, a Christian and personalist from Lebanon, who shaped the essential identity of the text of the Declaration, clearly building on a Christian basis.⁹ At that time Malik served as the Secretary of the Commission on Human Rights and the President of the Economic and Social Council of the UN. With him, there was René Cassin, a French Jew with remarkable sympathies for Christian democracy.¹⁰

The personalist discourse also marked the period of the creation of the European Community, when mainly Christian-democratic parties led the reconstruction of their countries and at the same time created a united European space¹¹. Even the Belgian socialist Paul-Henri Spaak came from a branch of the personalist movement. Under this influence, the European Convention on Human Rights was also written, a Convention which once emerged as a sharp protest against the materialist civilization, and is now used to promote the hedonistic aspects of contemporary global ideology. The same approach can be found in the Basic Law for the Federal Republic of Germany from 1949, where it can be seen that the Protestants also accepted the personalist discourse of dignity and rights. Moyn extensively demonstrates this phenomenon by presenting the work of Gerhard Ritter, who also insisted that the entire complex

9 See Carlson 2015.

10 The second part of this article offers a detailed overview of both of their contributions to the Universal Declaration. For Cassin see the recently published monograph Winter, Prost 2013.

11 Here Moyn rightly points to the works of Wolfram Kaiser, the most prominent contemporary historian of the Christian democratic movement and the role of Christian democracy in the creation of unified Europe after the war. But he also recalls the Italian and French contributions made by Papini and Philippe Chenaux respectively. See Moyn 2010: 100. Kaiser's bibliography is included in the references at the end of this paper; the monograph Kaiser 2007 is particularly relevant here.

can be meaningful only if it separates itself from abstract discourses of equality and from the atomistic heritage of the earlier mercantile civilization.

As Moyn concludes, in this period a fundamental transition from individual to person is seen, i.e. the individual as a dignified person of God deeply rooted in and bound up in divine natural law and customs and the moral norms of his (Christian) community. From the sixties onwards, however, a radical departure began, which resulted in the complete suppression and forgetting of this original, communitarian, moral and Christian basis of human rights.

With these works Moyn almost went against the complete academic mainstream and the intuition of the general public. He of course is aware of this, and himself cites competing narratives about the origins of human rights, such as Straus's famous book *Natural Law and History*.¹² But his work is very well-founded and based not only on documents, but also on the very clear logic of the post-war situation that we have forgotten today. Neothomism and the personalistic tradition of natural law were indisputably if not the only one then certainly one of the most important intellectual incentives for the birth of the modern human rights discourse and its codification in internationally accepted documents and agreements.

What seems to be the developed, subtle and almost scholastic philosophical basis of this discourse can be found in the fourth chapter of Maritain's book *Man and the State* that discusses human rights.¹³ Although the author defends and advocates the pragmatic approach that prevailed during the adoption of the Universal Declaration, the most important contribution, in fact, is his insistence on the fact that the natural law by which the rights are inspired is fully objectively and realistically taken (understood) in the best Thomist tradition, directly against any nominalistic, Occamian tradition from which pragmatism originates. He explains that for the purposes of adopting the Declaration for strategic reasons it was necessary to find the pragmatic minimum between the parts of mankind that belong to various religions, cultures and worldviews. So they all give up the need to impose their own interpretation and foundation of human rights in order to enumerate and accept a common minimum of rights that would be binding for everyone. This, however, does not prevent him from saying in the next step that we need a clear understanding in the Western culture, but also (a metaphysical) explanation of the concept, and according to him, it has to be sought in the tradition of natural law, which must be renewed (Maritain 1951: 80, 85).

Maritain clearly defies Condorcet's Enlightenment ideas of universal laws that can be copied from nature; he also rejects deism, and demands that the real theory of natural law be restored following the trail of Suarez and Vitoria. The fact that there is a natural law which a person can access and slowly reveal does

12 One such criticism of Moyn for exaggeration is the extensive review of Professor John Witte Junior. See Witte Jr. 2016.

13 These are six lectures held in Chicago, published in English in 1951, and in French two years later. The book was translated into our language and published in 1992 in Zagreb. See Maritain 1992. This article uses the original English edition, Maritain 1951.

not mean that it can be transcribed, easily intelligently discovered and adopted. Moreover, Maritain argues that it is not seen by reason, but by inclination or intuition, and reason can only clarify, explain and develop this perception.

Natural law, he claims, is at the same time clearly ontological and ideal in nature (Ibid: 89). The main principles are, of course, published in the Decalogue, and their content is primarily moral. Every positive law can obtain its legitimacy only on the basis of this natural law. Values for Maritain are clear, real in nature, and their foundation in natural law is metaphysical (Ibid: 96).

Of course, due to the limited human cognitive capacities, some flexibility in their interpretation, construction, gradual detection and development is necessary. These rights are inalienable, but in a *prima facie* sense. Rights which are both substantially and absolutely inalienable in reality can be temporarily alienated because, due to the potential damage that can stem from their unlimited exercise, states and societies must have the right to suspend them partially, postpone their realization, etc. This clearly shows the purely communitarian foundation of the conception and the dependence of human rights on the state of the community. At the end of his text Maritain mentions three types of societies: liberal-individualistic, communist and personalistic, based on the natural law, which he advocates (Ibid: 106). So even though natural law is an unchangeable ontological law, it is also relative in terms of man's awareness of this law, so progress can be made in its acknowledgement. That's why people are actually debating the extent of the law in practice.

Maritain attempts here to reconcile the old and new rights, with family rights being particularly important (he claims they are older than political and positive rights), as well as labor rights. He ultimately argues that international law draws its strength from the basis of natural law (despite the advocacy of the pragmatic foundation) and on page 100 lists basic human rights as he sees them.

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Only the experience of brutality perpetrated in the Second World War, and especially by the Nazi regime, could have explained such a strong need of humanity to return to the idea of universal, divine natural law. The Enlightenment tradition in all its political forms believed that by secularizing the world, its disenchantment and by promoting the constructivist methodology and ideology, on the basis of which man creates himself, his concepts, relations and the world, it will elevate human nature and stimulate the realization of the greatest possible technological and political achievements. However, it turned out that man, when deprived of his supernatural duties, fear and foundations and left to his own devices, deconstructed etc, showed the worst traits of his nature. Nazi death camps, eugenics and Mengele's unimaginably brutal experiments on living people have shown that by depriving itself of the divine foundation, humankind quickly reverted to its animal nature deprived of dignity and sacralization, thus enabling some to see other members of their kind as consumable, expendable cells, flesh and bones.

That is why the terrible need was felt for the human being not only to be returned to dignity, but also to re-establish it in the tabooed area of the supernatural, or Divine transcendent natural law. Christian personalism, which, as shown above, developed greatly in the 1930s and early 1940s, with its renewal of natural law and the return of the idea of human rights since 1942, was the most satisfactory and the most convenient existing philosophical and metaphysical framework for the development of the human rights culture after the Second World War. This worldview was imposed immediately after the formation of the United Nations and UNESCO, and in 1946, a secretariat in the form of a commission of 18 members was formed with the idea of compiling a global list of rights according to the model of the American Bill of Rights. This endeavor, as described below, ended with the adoption of the UNDHR.¹⁴

Of course, the Secretariat and the General Assembly, which adopted the declaration, were international institutions made up of representatives coming from different cultures, religions, countries and peoples. Hence, the discourse of the Declaration and the manner of explaining and defending its solutions needed to be acceptable to all. But as Malik explained later,¹⁵ in the spirit of Maritain's approach, the personalists who led this process knew very well what they were doing, and in the end, through a certain kind of diplomacy and negotiations, succeeded in including most of their ideas in the document.

Eleanor Roosevelt, the wife of the recently deceased US President, was the chair of the Commission. She first led the US delegation in the first UN establishing meeting in London in January 1946. Immediately she had a conflict with the representative of the USSR Vyshinsky about the fate of millions of people who were displaced at the time, about former camp prisoners, etc. The issue of the right to asylum in the declaration would also become one of the numerous points of contention between communist and non-communist countries.

The first session of the Commission itself was convened in January 1947 and it was decided that the draft be submitted by Roosevelt, Peng Chung Chang, the representative of China, and Charles Malik as the representative of Lebanon. The Commission was slowly expanded to include 18 members. Rene Cassin, the representative of France and John Humphrey, the Canadian delegate, would play a particularly important role. Charles Malik, born and educated in a Christian family in Lebanon, received a doctorate in philosophy from Harvard University. The most important intellectuals in the Commission were Malik, who based all of his arguments on the theory of natural law, and P.C. Chang, who at one point suggested that the Commission should take some time and, for example, familiarize itself with Confucianism, i.e. with the value and metaphysical basis of the Chinese and other non-European cultures.

14 The narration is reconstructed according to the following works: Jacobson 2008, Habib 2000, Glendon 2001, Glendon 2011, Winter, Prost 2013, Čulo 2018, Muadri Darraj 2010, and in particular Morsink 1999, which is so far the best overview of the whole drafting process with all of its conflicts, struggles and debates.

15 See Malik 1980. Disputes about the extent to which the Declaration is a product primarily of the Western tradition are still ongoing.

Malik, in contrast to the presidents who put emphasis on the economic and material needs of people, insisted on the intellectual and moral basis of human rights: “If we do not emphasize the true nature of man, his mind and spirit, protect them and promote, the fight for human rights will be a shame and irony.” René Cassin was a French Jew and judge who would receive the Nobel Peace Prize in 1968 for his efforts in the composing of the final draft of the UNDHR. During the war, the Germans had put a price on his head, and 29 members of his extended family were killed in concentration camps.

The first draft was made by John Humphrey and his associates. It was actually a list of some 48 areas, that is, the rights that needed to be regulated and pointed out. For every right there was a sub-commentary and explanation, which all eventually covered the 400-page material. Humphrey started out from the traditions familiar to him: the Magna Carta, the Declaration of Independence, the Bill of Rights, and the French Declaration of the Rights of Man and the Citizen. The fact that this was the material that provided the starting ground for future debates and efforts just strengthens the arguments about the Western character of the Declaration.

Eleanor Roosevelt herself wanted to make some sort of Universal Bill of Rights, while others sought a document that would have a higher binding legal force. After numerous debates and Humphrey’s material, the task of writing the draft of the Declaration was entrusted to Cassin. He was at that time at the top of the French supreme court or the Conseil d’État and was a well-known jurist and philosopher, with great sympathy for the idea of Christian democracy. His draft was completed in June 1947, with the preamble, six introductory articles, and thirty-six normative ones divided into six parts, and two articles on their implementation. Among other things, there was a claim that would later be removed, insisting that there would be no peace in the world if human rights and freedoms were not respected.

In December 1947, the next meeting of the entire commission was held in Geneva. The Indian delegate Mehta asked that gender issues be discussed, and that instead of the Declaration of Human Rights they speak of the rights of persons or human beings; her suggestion was not adopted. After Geneva, the next meeting was scheduled for May 1948, and a smaller commission continued to work on the draft. However, Malik and Cassin had a serious disagreement over the first Israeli-Arab war, which was just beginning. The Soviets also made a lot of problems, and Roosevelt accused them of trying to destroy the draft declaration altogether.

Malik revised the preamble and in June the draft was ready for the next instance (ECOSOC, the Third Committee, and finally the General Assembly). There were many dilemmas and debates in the meantime: how will the declaration and rights be implemented; would the declaration necessarily undermine the sovereignty of states; whether the rights were natural or obtained from God, etc. In the end, however, the committee decided to rename the document from the International to the Universal Declaration. The draft was adopted on December 7, and the Declaration was presented to the General

Assembly by Malik, who had already become a highly respected person. The declaration was adopted by 48 states, and 8 including the Soviet Union and Yugoslavia abstained from voting.

The idea of dignity that appears in the preamble and in the famous first article ('human beings are born free and equal in dignity and rights'), as well as its separation from the rights bears a deep personalist stamp. Today, especially due to the development of bioethics, there are intensified debates in which transhumanists, for example, insist on removing the idea of some special dignity of man (Rosen 2012: 120) and claim that the evolutionary list of rights is all that is needed. Precisely because of this kind of tendencies Malik and Cassin insisted on the introduction of a special affirmation of dignity, as was also done in the German Basic Law.

The second basic concept of personalism is the idea of a person, where, unlike individualism, it insists on the communitarian nature of man, as integrally embedded within the community. Mary Ann Glendon aptly defines this model of understanding the human by commenting on Malik's vision: "Malik saw man as uniquely valuable in himself, but as constituted in part by and through his relationships with others – his family, his community, his nation, and his God". (Glendon 2000: 3)

Malik and Cassin, along with Maritain's mediation, happen to be most responsible for two key personalist contributions, articles 16 and 18, which have been the subject of great struggles and harsh debates. Strongly opposed to these contributions were the Soviet participants, as well as some representatives of the Western countries (Great Britain, for example), who included the "spirit of modernity" and whose ear, as Malik said, did not like the notions of nature, mind and conscience that the drafters fought for, in spite of pressures.

In his later speeches, Malik emphasized the importance of winning the fight for Article 16, which he proposed in several versions. The importance of this victory would become apparent some six decades later, when the Obama administration on several occasions tried unsuccessfully to initiate the process of removing this article from the Declaration. What bothered them the most was the definition of family in paragraph 1, which defines marriage as the union of man and woman, and paragraph 3, which determines that the family is a natural and basic cell of society and that as such it has the right to protection from society and the state.

During the drafting of the text, British representatives and some US delegates argued that there was no need to emphasize the significance of the family, and that this article should be removed, as allegedly such rights were covered by the provisions of the right to association and social protection. In this way they sought to equate the family with political parties or joint stock companies. Cassin and Malik reacted together against this, and they succeeded in securing the majority to eventually accept a somewhat more moderate formulation than the one in which Malik mentioned "A Creator as the one who endowed the family with inalienable rights that precede positive laws" (Morsink 1999: 254). Cassin very precisely clarified that these were two types

of philosophy, and that it is not good that the human being is mentioned only as an individual who chooses to get in touch with other people. In the end, the continental personalistic perception which insists on the communitarian nature of humans and sees the family as the most basic and most important community emerged victorious.

Malik made this clear by offering explanations coming from the classical Christian, that is, the Christian-democratic perspective of the importance of intermediary institutions. He first criticized the idea of seeking rights only from the state, noting that family, church and other natural groups of people come before and independently of the state, and therefore their rights should be recognized as basic and inalienable, even in relation to the state. At the session of the Commission held on January 1, 1947, Malik explained that we must defend man against the tyranny of the state, "... and the tyranny of systems, because man has other loyalties than his loyalty to the state. He has loyalty to his family, to his religion, to his profession; he has his loyalty to science and to truth. These loyalties are as exacting on him as his loyalty to the state. And, in my opinion, the fight for freedom today consists primarily in asserting the rights of these intermediate institutions." (Malik 2000: 26, Jacobson 2008: 2) In a speech in February 1948, Malik said: "Where and when are we really free and humane? ... Is not it true that we enjoy the deepest and the most authentic freedom and humanity in our family, in the Church, in the intimate circle of friends, when we are embedded in the joyful forms of our people's lives, when we seek, find, see and accept the truth? These intermediary institutions between the state and the individual are the real source of our freedom and our rights." (Malik 2000: 95, Jacobson 2008: 4)

Another extremely important communitarian article is Article 18 of the Declaration, which is today severely under attack; a neglected but, as Matthew Jones remarked ten years ago, fundamentally important dictum. Unfortunately, he noticed, in the UN this right is not only one of the weakest developed over the decades, but is directly under attack due to anti-defamation laws, declarations, provisions, and the spread of allegedly anti-discrimination legislation, which is reduced to discrimination of Christians and believers wherever possible and also the deprivation of the rights to freedom of thought and conscience (Jones 2008). This article reads as follows: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹⁶

Morsink explains that the entire spirit of the Declaration is based on the personalistic idea that communities, or intermediary institutions as Malik terms them, are "a cradle of human rights" because they teach people about the reciprocity of rights and duties (1999: 252). After the family, the other two most important institutions of this type are the religious community and the

16 UNDRH, article 18, https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

educational institution which a child is attending. Therefore, together with the freedom of religion, this article also affirms the freedom of religious teaching and freedom to educate children in one's own faith.

During the preparation of the Declaration, this article was a major point of contention. By the way, it should be noted that here too, any speech on minority rights was avoided, that is, there is no mention of the rights of religious minorities. As a result of Hitler's abuse of the minority discourse and minority rights in the case of Czechoslovakia and Poland, the matter of minority rights is avoided throughout the text of the Declaration (Morsink 1999: 269–280).¹⁷

Some states were fundamentally bothered with this provision of the possibility of changing religion. Saudi Arabia was thus one of the eight countries that had abstained on December 10, 1948. However, these were not only Islamic states, but also Sweden, which at that time had a state religion and a legal ban on abandoning the Lutheran denomination. Similar concerns were shared by Greece. On the other hand, some secular Western countries and the USSR demanded that no religious rights be mentioned or that the right to atheistic propaganda be recognized. But eventually a compromise was reached and so this article together with Article 2, provides an adequate combination of communitarianism and pluralism when it comes to clearly defining the right to religion, its practice and transmission to children.

The communitarian and personalist nature of the text of the Declaration is also apparent in the first paragraph of the last article 29, which reads: "Everyone has duties to the community in which alone the free and full development of his personality is possible." And this position deeply stems from the so-called spirit of modernity of which Malik speaks as the main obstacle in the process of elaboration, and which today solely affirms the rights, and negates any idea of obligation, duty and responsibility. That is why this final article is important: it reminds us that without the communitarian basis and the existing order of the community, there can be no other appropriate rights. So, in order to enjoy the rights, we must respect the obligations imposed on us by the community. Therefore, in his speeches before the General Assembly as well as later on, Malik insisted on the close bond between freedom and responsibility.

A great battle was also fought around the perception of the origin and source of human rights. Here is how at the end of his presentation of the Declaration on September 27 Malik presented this issue reflecting views of the majority of the Commission that had prepared the draft: "Finally, there is a question of their origin, where do they come from? Has it been given to me by any external visible power like the state or the UN so that what has now been granted to me can easily be confiscated? Or do they belong to my nature so that if they are violated in any way, I cease to be a human being at all? If they really

¹⁷ Mazower 2004, devotes the entire first part of his article to the analysis of the process in which from the promotion of minority rights after World War I, politicians came to the affirmation of universal human rights as a way to avoid dealing with minority rights at all.

belong to my essence, then should not they also be founded in the Supreme Being who, being the Lord of history, could guarantee their meaning and stability?" (Malik 2000: 115, Jacobson 2008: 4)

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The UN Declaration of Human Rights remained the most important monument to this personalistic, Christian foundation of human rights after the Second World War. But since the 1960s, a complete change in the metaphysical, moral and content nature of this idea has begun. The evolution of human rights today has gone in the direction of completely opposing the aforementioned personalist sources. Western Christian denominations, however, continued to indefinitely defend the universality of human rights and natural law, although secularist, anti-Christian fundamentalism and very dangerous concepts are now often pushed under this guise.

Seven decades after the adoption of the UNDHR we live in a world of no less turbulence and fear. We have seen in this area that the very idea of universal human rights can be instrumentalized and abused for political purposes, just as Malik warned, appealing for responsible handling of this issue. But today's atheist fundamentalism seems to be radically progressing and, as Scruton notes, the human rights religion is used as a cover for the advancement of new totalitarianism and the suppression of the rights of traditionalists and people of faith, even though this directly violates Articles 16 and 18 of the UNDHR. Or, let's take a look at, for example, the third paragraph of Article 26, which states that "Parents have a primary right to choose a type of education for their children." The draft of the Civic code in Serbia, however, directly violates this right by transferring it to children, claiming that a child, for example, can alone choose in which high school to enroll. In short, the entire contemporary generation of rights that are now spoken of as the rights of the fourth generation directly goes against some of the basic postulates of the Universal Declaration, further confirming its personalistic and essentially Christian background and framework.

This presentation was an attempt to remind us of this suppressed and obscured original spirit of the Declaration of Human Rights, as well as a call to wake it up and ensure that human rights again get a meaning and a responsible implementation framework, rather than being instruments for the destruction of particular societies and the entire international order. It is worth recalling the following warning words of Malik: "The superficial folk mocked the classical ages of faith: today they pay the price of their unguarded superficiality ... It is dangerous to ignore the mind and spirit of man and mock the logos." (Malik 2000: 115)

Malik, a true Christian, saw the catastrophe of the Second World War as a logical outcome of human deviation from God, from the supernatural source of natural law and law, and therefore he did everything to stop this process and restore a framework that gives holiness and dignity to man as well. Today,

unfortunately, we live in a time that violates the divine frame and dignity of man, brings back paganism, eugenics and the possibility of playing with the human genetic code.

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Miša Đurković

Hrišćanski personalizam kao izvor Univerzalne deklaracije o ljudskim pravima

Apstrakt

Povodom 70. godišnjice usvajanja Univerzalne deklaracije o ljudskim pravima, autor je pokušao da analizira teorijski i istorijski okvir koji je doprineo usvajanju dokumenta. Prvi deo članka razmatra razvoj filozofije personalizma od Munijea do Maritena i analizira Maritenove poglede na ljudska prava. U drugom delu članka autor pokazuje odlučujući uticaj ličnosti Čarlsa Malika i Rene Kasana na usvajanje dokumenta, koji jasno nosi oznaku diskursa i pojmova hrišćanskog personalizma.

Ključne reči: personalizam, ljudska prava, Univerzalna deklaracija, hrišćanstvo, Mariten, Malik