In a comprehensive commentary on religious freedom in international human rights law, Paul M. Taylor noted, “The architecture of all core freedom of religion Articles makes the same inescapable and immutable distinction between the unrestricted forum internum and the right to external manifestation.”¹ This understanding of the concept of religious freedom as resting on a binary opposition between the “inner” and “external” aspects of religion is well established among international human rights bodies. In an oft-cited 1993 General Comment, the UN Human Rights Committee affirmed that whereas the inward dimensions of religious freedom are “protected unconditionally” under international human rights law, states may legitimately circumscribe the right to manifest religion and beliefs if such measures are necessary to preserve ends like public order and security.² In a similar vein, the European Court of Human Rights has often returned to the point that religious freedom is “primarily a matter of individual conscience” and “does not protect every act motivated or inspired by a religion or belief.”³

² UN Doc. CCPR/C/21/Rev.1/Add.4 (1993). For an important critique of this way of framing religious freedom in international law, which stresses how the concept of “public order” can function to legitimize discrimination of religious minorities, see Saba Mahmood and Peter G. Danchin, “Immunity or Regulation? Antinomies of Religious Freedom,” South Atlantic Quarterly 113, no. 1 (2014): 130.
³ As is well known, this distinction premised the Court’s reasoning in a series of controversial decisions upholding local restrictions on wearing the Islamic headscarf in public
There is no doubt that the understanding of religious freedom as premised on a distinction between the forum internum and forum externum has deep historical tap roots. Some scholars claim that it “arose out of a complicated interweaving of classical Greco-Roman and Christian notions” (Thomas Aquinas, Martin Luther, Roger Williams and John Locke are among the thinkers often credited with establishing it as a central component of Western theology and philosophy). Others suggest that it entered political discourse as a by-product of pragmatic solutions to confessional strife in early modern Europe. Others still trace it back to the Councils of Trent of 1545 and 1563 and the development of Latin Canon Law.

The deep history of this dualistic understanding of religious freedom, and its taken-for-granted status in present-day human rights law, makes it difficult to think that it was ever contested in the drafting of Article 18. But when read alongside other statements on religious freedom in international law from the first half of the twentieth century, Article 18 stands out, precisely because it rests on an implicit distinction between the freedom of thought, conscience, and belief on the one hand and the freedom of external “manifestation” on the other. This was a subtle break from the language contained in the minority rights treaties of the interwar period, the Paris Peace Treaties of 1947, the American Declaration of the Rights and Duties of Man of 1948, and some of the most prominent draft bills of human rights of the late 1940s. In these international instruments, religious freedom had generally been articulated as a right to free exercise institutions. Dahlab v. Switzerland (December), no. 42393/98, ECtHR, 2001-V; Leyla Şahin v. Turkey, GC. no. 44774/98, ECtHR 2005-XI; Case of Dogru v. France, no. 27058/05, ECtHR, 2008. For a nuanced reading of these cases that take the early modern as well post-1945 histories of this distinction into consideration, see Nehal Bhuta, “Two Concepts of Religious Freedom in the European Court of Human Rights,” South Atlantic Quarterly 113, no. 1 (2014): 21–35.


7 The decision to foreground the inner freedoms has sometimes been described as an “easy case” in the drafting process, see Scheinin, “Article 18,” 379.
or a right to the freedom of worship. 8 A striking example is Article 2 of the Polish Minority Rights Treaty of 1919 (a clause that Woodrow Wilson had originally intended for the Covenant of the League of Nations), which prescribed that “All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion, or belief, whose practices are not inconsistent with public order or public morals.” 9

It is true that the concept of “conscience” appeared in some international treaties and declarations of the interwar years, most notably in some of the regulative instruments for the League of Nations’ mandates system. 10 But even if the freedom of conscience was mentioned, it was generally interpreted as a freedom of religious practice. This can be illustrated through Taina Tuori’s pathbreaking research on the ways the concept was invoked by the Permanent Mandates Commission in the 1920s and ’30s. Among other things, she reveals how the discussions on the “liberty of conscience” generally centered on the status of different missionary organizations in territories under mandatory rule, and how this effected the development of the native populations. In this setting, the freedom of conscience was not, in other words, primarily used to safeguard what is now seen as a core dimension of individual religious freedom, but the institutional rights of a specific class of religious communities. 11 So although it is clear that the Universal Declaration did not

8 See, e.g., The Treaty of Peace with Italy, February 10, 1947, Article 15. This language was in keeping with earlier antecedents such as the Treaty of Berlin of 1878, which offered protection of the right to “outward exercise of all forms of worship” in four successor states (Romania, Serbia, Montenegro, and Bulgaria) of the Ottoman Empire. Fink, Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1938 (Cambridge: Cambridge University Press, 2004), 28–9; Evans, Religious Liberty and International Law in Europe, 69–70.


10 See, e.g., The Covenant of the League of Nations (1919), Article 22; The Palestine Mandate (1922), Article 15.

mark the first time the freedom of conscience received international recognition, it helped to redefine it as a freedom of the individual human person.

AN ABSOLUTE AND SACRED RIGHT

To understand why Article 18 was organized around this implicit distinction between the inner and external aspects of religious freedom, we need to return to the early stages of the drafting process. A possible starting point would be the Draft Outline of an International Bill of Rights that the UN Secretariat presented to the UN Commission on Human Rights in mid-1947. This was not so much a draft, as an expansive inventory of rights to be considered for inclusion. It contained several articles that had relevance for the question of religious freedom, including (as we shall see in Chapter 3) articles recognizing institutional rights for religious minorities, such as the right to establish and maintain religious schools. The Outline also included a general religious freedom article, which simply stated that “There shall be freedom of conscience and belief and of private and public worship.”12 This open language was in keeping with the existent international standards and reflected the Secretariat’s aspiration to compose a neutral compendium of rights that were already enshrined in international law and domestic constitutions.

When pressured on this point, John Humphrey – the head of the Human Rights Division, who had led the process of piecing and tying the Outline from a multitude of different texts of new and old vintage – assured the delegates that the document reflected “no philosophy whatsoever.”13

But as the Secretariat Outline was being finalized, the members of the UN Commission on Human Rights had already opened an ideological debate that would later pave the way for a more differentiated statement on religious freedom. The Commission’s first formal session was convened in Lake Success in January 1947. Its principal focus was to settle

13 Cited in Glendon, A World Made New, 58. For a critical reading of the Secretariat outline, see Simpson, Human Rights and the End of Empire, 410–4. Humphrey’s diaries have revealed how he nonetheless espoused distinct views on what rights were apt for a UN bill or not. He was also openly critical of Malik – the main advocate for segregating the inner and external freedoms – for his dogged commitment to natural law. John Humphrey, Human Rights and the United Nations: A Great Adventure (New York: Transnational Publishers, 1984), 23.
the procedures and division of labor for the work ahead. But these technical discussions were occasionally interrupted by heated debates on what fundamental ideas should guide the UN human rights project in the making. The discussions were prompted by interventions of representatives from the USSR and Yugoslavia suggesting that the UN should accelerate the divorce between the concept of human rights and the ideology of bourgeois individualism. They insisted that an adequate international bill of human rights should echo the “consciousness of solidarity” or “collective spirit” characterizing the present age. Here is Vladislav Ribnikar of Yugoslavia:

Personal freedom could only be attained through perfect harmony between the individual and the community. The social ideal lay in the interests of society and of the individual being identical. We are at present in a transitional period. The Commission should regard the social and political ideals of the middle classes as those of another age, and not look on certain principles as eternal. [...] The International Bill of Human Rights should be in conformity with aspirations of the popular masses of the world.14

This statement met with approval among the communist states, but was immediately contested by other members of the Commission. One of them was Charles Malik of Lebanon, who said that the human rights challenges currently facing the UN were previously unknown to human history. In the mid-twentieth century, the rights of the individual were no longer curtailed by “kings or dictators,” but faced a “new form of tyranny; that exercised by the masses and by the State.” To a certain degree, Malik thus agreed with Ribnikar on one fundamental point: The Commission should not simply revive the revolutionary ideals of the rights of man, which had been limited to a project of liberating individuals from the abuses of centralized power. But the path that he urged the Commission to pursue was still radically different to one of aligning the human rights project with what Ribnikar called the “social ideal.”15

A few days later, Malik returned with a set of basic principles that he encouraged the Commission to adopt as a basis for its future work. Above all, he insisted that its outcome texts should construe the bearer of human rights through the figures of “human person” rather than the “individual.” He explained that this choice of terminology was of great import because it was an indication of what basic understanding of man the UN

human rights project would ratify. By siding with the “human person,” Malik explained, the Commission would also acknowledge that man was not just a species-being, but a creature with a unique and God-given capacity to acquire knowledge of “the truth” and to choose between different ends of life.

1. The human person is more important than the racial, national, or other group to which he may belong;
2. The human person’s most sacred and inviolable possessions are his mind and his conscience, enabling him to perceive the truth, to choose freely, and to exist;
3. Any social pressure on the part of the State, religion, or race, involving the automatic consent of the human person is reprehensible;
4. The social group to which the individual belongs, may, like the human person himself, be wrong or right: the person alone is the judge.¹⁶

Some observers of the drafting process, including the Catholic magazine *The Sign* and the *YMCA Bulletin on International Affairs*, applauded Malik’s proposals as one of the most encouraging moments of the opening session and cited his four principles at length.¹⁷ But the meeting records indicate that this enthusiasm was not shared by all of his colleagues, even outside the communist bloc. Some delegates voiced serious concern with the direction the debates seemed to be taking. As one commentator noted, even if Malik claimed to speak on behalf of essentially Western ideas of human dignity and rights, the “West has not accepted Lebanon as its spokesman.”¹⁸ In a response to Malik, Charles Dukes of the United Kingdom claimed that it was unrealistic “in an organized society, to prevent groups from exercising a certain pressure upon individuals. That was the price which had to be paid for freedom of association, the necessity of which no one would contest.”¹⁹ Hansa Mehta of India also dismissed the quarrel between Malik and the communist delegates, arguing that the Commission “should not enter into this maze of ideology.”²⁰

Despite this seeming unwillingness to fully embrace Malik’s take on the human rights project, some elements of his interventions would

soon make their way into the first drafts of the Declaration text. The French delegate, René Cassin, openly welcomed Malik’s contribution. He claimed that “the Lebanese representative was absolutely right. It was this right to the freedom of conscience which gave the human person his worth and dignity.”21 As Cassin was later commissioned to revise the Secretariat Outline, he designed a religious freedom clause that drew a sharp line between the inner and external freedoms. In line with Malik’s second point, Cassin also marked the freedom of thought and conscience as “absolute and sacred,” thus awarding it a special status, both within this specific article and the UN declaration at large.

The individual freedom of conscience, belief and thought is an absolute and sacred right. The practice of a private or public worship and the manifestations of opposite convictions can be subject only to such limitations as are necessary to protect public order, morals and the rights and freedoms of others.22

This draft, along with a much more elaborate text submitted by the United Kingdom,23 constituted the basis for the Commission’s Drafting Committee, which began its more detailed deliberations in June 1947. The eight members of the Committee eventually agreed on a revised version, which, in keeping with the UK draft and, largely due to Malik’s persistence, also included the right to “hold or change religion or beliefs” among those singled out as “absolute and sacred.” The second tangible difference was a reference to the right to manifest beliefs in the form of “religious observance.”24 In December 1947, the draft was brought before the Commission, which – although making some minor

23 For a comparison between the outline and the UK draft: UN Doc. E/CN.4/AC.1/3/Add.3 (1947), 5. Many delegates felt that the UK version was far too lengthy. Cassin suggested that “French written law relating to the subject of conscience and belief was very brief and concise. Similar brevity might be the best method for the Bill of Rights and would help to protect the United Nations from a flood of red tape.” UN Doc. E/CN.4/AC.1/SR.3 (1947), 2–4.
24 For the discussions in the Drafting Committee, see UN Doc. E/CN.4/AC.1/SR.8 (1947), 12–13 and UN Doc. E/CN.4/AC.1/SR.13 (1947), 19–20. The revised draft reads: “Individual freedom of thought and conscience, to hold or change religion or beliefs, is an absolute and sacred right. The practice of a private or public worship, religious observances, and manifestations of differing convictions, can be subject only to such limitations as are necessary to protect public order, morals and the rights and freedoms of others.” UN Doc. E/CN.4/21 (1947), 77.
revisions – decided to preserve the basic distinction between the inner and external aspects of religious freedom:

1. Individual freedom of thought and conscience, to hold and change religion or beliefs is an absolute and sacred right.
2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching, and practice.25

It was not until the Commission prepared the final text for submission to the General Assembly in mid-1948 that this statement was condensed into what is now Article 18. At this final stage, the Commission made a number of changes. The most conspicuous of these was to include the word “religion,” which had not been part of the earlier drafts. Though some delegates followed Cassin in arguing that religion was implied in the broader concept of conscience, others were less willing to have a statement that was ambivalent on this point. This argument was first made by the Orthodox Jewish organization, Agudas Israel, which reminded the delegates that the term religion had been enshrined in the central eighteenth-century bills of the rights of man, and that not mentioning it in the UN Declaration could “lead to misunderstandings in certain countries.” According to Nathan Kurz, the primary concern was to ensure that the international human rights framework would safeguard the practice of kosher slaughtering.26 Yet it was not until the United States – probably encouraged by O. Frederick Nolde and the CCIA – finally got behind this proposal that “the freedom of religion” became part of the draft article.27

The other significant – and for our concerns even more important – decision was to drop the epithet “absolute and sacred” to the inner freedoms. The rationale for this is not directly discernible in the official records. What is clear, however, is that some delegates reacted to the high-sounding language, as well as the religious connotations of the term

25 UN Doc. E/600 (1947), 19. It was kept largely intact through the Second Session of the Drafting Committee (UN Doc. E/CN.4/95 (1948), 8). During the Second Session, the Drafting Committee also considered, and defeated, a proposal by the Soviet Union, which read: “Every person shall have the right to freedom of thought and freedom to practice religious observance in accordance with the laws of the country and the dictates of public morality.” UN Doc. E/CN.4/AC.1/SR.40 (1948), 4.
“sacred.” As Carl-Gustaf Andrén rightly noted in a pioneering 1975 account of the drafting process, stripping the Declaration text of direct allusions to God, or other metaphysical grounds for human rights, was a crucial step in garnering wide acceptance of the text as it was being prepared for submission to the General Assembly. Although the absence of references to any particular school of natural law thinking was decried by some, many of the supporters of natural law language were either convinced that the metaphysical basis of human rights was implicit in the term itself, or that the need for international recognition trumped the desire to settle the debate on foundations. At any rate, most agreed that it would itself be a triumph for positivism if the question of whether or not rights were derived from a divine order were subject to a vote by the General Assembly.

The main supporters of segregating the inner and external freedoms in Article 18 appear to have regarded these last-minute changes as insignificant. The final draft of the Declaration, which the Commission adopted during its Third Session in the Summer of 1948, still awarded a special status to the human faculties of “thought and conscience.” This was not only reflected in the architecture of Article 18, but was even more tangible in the wording of Article 1. The Declaration’s opening clause echoed the principal point made by Malik and reiterated by Cassin, namely that the most important characteristic of human beings in the context of human rights is that “they are endowed with reason and conscience” and are vested with the responsibility of acting toward one another “in a spirit of brotherhood.”

No one voiced serious concerns with the latter part of this clause. The Sub-Commission on the Status of Women was behind the reference to the

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30 It is worth noting that the informal drafting group that crafted the final version of Article 18 also recommended the UNCHR to replace the word “thought” in the articles on freedom of expression and freedom of information (later merged into what is now Article 19) by “opinion.” It is difficult to discern the rationales for this in the stenographic records. However, it may have been an attempt to underlie the exceptional status of religious freedom. The drafting group consisted of France, Lebanon, the United Kingdom, and Uruguay. Its final proposal was presented by Malik. UN Docs. E/CN.4/113 (1948), E/CN.4/SR.62 (1948), 12–13.
“spirit of brotherhood,” which replaced what was seen as the even less-inclusive phrase “like brothers” contained in a previous draft. But few delegates were enthusiastic about including the description of humans as “endowed with reason and conscience.” Alexander E. Bogomolov of the USSR thought that the language of Article 1 gave the Declaration a “pompous and ridiculous effect,” which was difficult to reconcile with the more sober character of the UN Charter. In the Commission, the United Kingdom, India, and China even motioned to delete the reference to “reason and conscience,” a motion that was defeated by the narrow vote of 6–5, with 6 abstentions. According to Morsink, those who voted in favor of keeping these words did so, not because they captured an essential part of the human rights idea, but simply “out of respect for Malik.”

It is clear that Malik was not alone in the struggle to make thought and conscience central to the UN Declaration. Although espousing fundamentally different conceptions of human rights, Malik and Cassin found common ground in thinking that man’s capacity for reason and conscience needed to be placed at the heart of an international bill of rights. But it is difficult to pin down what brought Cassin to this conclusion. Some scholars – although recognizing that Cassin had no deep interest in philosophy – argue that his writings display the same kind of neo-Kantian dispositions as many Jewish internationalists of the Third French Republic. Judging from the meeting protocols, Cassin came to prefer the terminology of conscience for the more simple reason that it harmonized with the French law on state–church separation of 1905. We also learn that he primarily viewed the freedom of conscience as a means of protecting individuals from situations where they were forced “profess a belief which was not held.” By featuring the aspects of thought and

34 Morsink, The Universal Declaration of Human Rights, 297.
35 See, e.g., Moyn, The Last Utopia, 256, note 37.
37 UN Doc. E/CN.4/SR.60 (1948), 10. Here is an interesting parallel to a point made by a leading figure of the International Missionary Council, William Paton. In 1941, he called attention to the Christians and Buddhists compelled to engage in shrine worship in the Japanese Empire, even if this went against their personal conscience: “He is asked to commit blasphemy, albeit with a mental reservation.” William Paton, The Church and the New Order (London: Student Christian Movement Press, 1941), 136.
conscience in his revised draft Declarations, and by defending them in the course of the debates, Cassin was no doubt important for ensuring their salience in the final text. That being so, his writings from this period do not indicate that the freedom of conscience was central to his understanding of human rights. At some points, he maintained that man cannot only live out of material goods (“l’homme ne vit pas que de pain”), but needed intellectual freedom, as well as proper education, to fully participate in what he at other points would speak of as “the life of the nation” (see Chapter 3), or “la vie intellectuelle, sociale, politique.”

But as we shall see, this was incomparable to the significance that Malik ascribed to the protection of thought and conscience in his interpretation of the international human rights project.

Thus far, this chapter has mainly drawn on the official UN records. It should be evident that these records allow us to recover the outlines of the drafting process by which Article 18 acquired its structure and content. But these records also leave us with a number of questions unanswered. Above all, the UN documents do not help us to locate the debates precipitating this statement in a wider historical framework. It is true, for instance, that Malik made generalized references to the threats posed by the “masses” and the “state” to motivate a strong focus on the aspects of thought of conscience, but he did not elaborate on what he meant by those terms. Was he speaking of a set of localized threats, or deeper currents in modern society? And in what way would a text highlighting man’s inner freedoms help to address these threats? We might be tempted to jump to conclusions on what the relevant contexts were, but we have to accept that for the most part, these contexts are not discernible in the official records.

In the remainder of this chapter, part of my aim is to suggest a route that allows us to overcome these difficulties. To begin with, I delve into the recent historiography of human rights to extract some preliminary answers to what premised the foregrounding of the forum internum in Article 18. I show that some of the studies on the connection between human rights and Christian personalism provide important keys to solving this puzzle. In these accounts, Malik has generally been identified as the main champion of personalist rights-talk in the drafting of the Universal Declaration, including suggestions to describe the rights-bearer as a person rather than an individual. But so far, few accounts have

sought to retrace how Malik’s personalist or neo-Thomist understanding of human rights played into the work on specific aspects of the text, including the shape of Article 18. Malik is generally considered more as someone who wielded personalist ideas in the drafting group, rather than a thinker in his own right. Very few accounts have thus involved close readings of Malik’s own writings on human rights from this period. This is unfortunate because they arguably shed important light, not only on Malik’s own thought and intellectual trajectory, but also on why certain aspects of the Universal Declaration – including the distinction between inner and external religious freedom – acquired such urgency in the late 1940s.

PERSONALISM AND THE TURN FROM WORSHIP TO CONSCIENCE

Historians have rightly acknowledged the prominence of Christian democratic and personalist ideas in Western European political discourse of the early postwar period.\(^\text{39}\) In Continental Europe, Christian democratic parties celebrated unprecedented electoral triumphs, and several of the figures that were decisive in the establishment and consolidation of organizations, like the Council of Europe and the European Communities, were self-professed Christian democrats, who saw their efforts toward European integration as part of reviving a “Christian humanist” legacy that had been violently negated by the totalitarian forces of the preceding decades.\(^\text{40}\) We also know that concepts of human rights and human dignity became significant rhetorical devices in these movements and helped to define the moral boundaries of the nascent Cold War.\(^\text{41}\)

But it is only recently that we have seen studies demonstrating how important these currents were for the emergence of an international framework for human rights. In one of the first serious attempts to write Christian democracy and personalism into the history of human rights in the twentieth century, Samuel Moyn argues that the main reason for this neglect by scholars of human rights is that bringing these currents into the


picture poses a direct challenge to our “current expectations and desires” of the kind of history that we can attach to the concept of human rights. In contrast to the dominant accounts in the field, Moyn claims that the emergence of human rights in the 1940s had little to do with moral repudiation of World War II atrocities or the return of a revolutionary discourse of the rights of man. To the contrary, he suggests that one of the main reasons for why human rights gained some currency in Western European discourse in the 1940s was that it functioned as a tool for an “an epoch-making reinvention of conservatism.”

Moyn is careful to point out that personalism, Christian democracy, and conservatism are vague ideological labels that do not refer to coherent schools of thought. What united many of the leading personalist thinkers of the 1930s and ’40s, was a desire to spell out an alternative path between the “rival materialisms of liberalism and communism,” centered on the figure of the human person. This vagueness of the personalist label, Moyn continues, “was, in a sense, its genius; it signaled the identity of the opposition clearly, while leaving flexibility about what the alternative program was.” This flexibility also meant that concepts like human rights and religious freedom were not standard ingredients in personalist writings of this era. In fact, many leading personalists – including the founder of the literary review Esprit, Emmanuel Mounier – actively avoided references to rights because of their intimate association with revolutionary ideals.

Following Moyn’s lead, a growing group of scholars have begun to explore how personalist ideas contributed to the institutionalization of human rights after 1945. Marco Duranti suggests that French personalists and British conservatives were the main players behind the European Convention of Human Rights of 1950. For many of these, the European human rights project was “a means to rehabilitate a discredited conservative worldview” and a bid for Western European unity against the diffusion of communism. It is telling that the prominent federalist and personalist movement, La Fédération, concentrated much of its activism – both domestically and in the negotiations on the European Convention – to habeas corpus rights, not least as a way of addressing

the excessive purges of suspected collaborators in postwar France. This alone disturbs the common notion that the development of international human rights emerged from a response to the massive suffering of World War II. In this particular instance, invoking human rights was also a way of stressing the need to move forward.

The by far most significant thinker to work out a connection between personalism and the language of human rights was the French Catholic philosopher Jacques Maritain. Moyn places Maritain’s trajectory center-stage in his account, tracing his metamorphosis from a member of the antirevolutionary movement Action Française in the 1920s to a warm-hearted champion of human rights in the 1940s. Maritain’s political awakening was largely sparked by the Spanish Civil War, the rise of political anti-Semitism in Germany, and his experiences as an émigré in North America during World War II. But Moyn also indicates that one of the reasons why Maritain turned to rights, and reached back into a Thomistic natural law tradition to support it, was the more general transformation of Vatican policies in the mid-1930s. Pius XI invoked rights language in *Mit brennender Sorge* (1937) and *Divini redemptoris* (1937) – two analogous encyclicals that condemned the totalitarian policies of Nazi Germany and Soviet Russia. This was followed by a series of statements by his successor, Pius XII, including his highly influential Christmas Address of 1942.

More than a leading thinker of human rights in the 1940s, Maritain has also been remembered as a significant agent in determining the orientation of the Universal Declaration. The main evidence for this reading is Maritain’s involvement in the UNESCO study on theoretical grounds for justifying an international statement on human rights. The

report appeared in late 1947 and consisted of a wide range of reflections on the early drafts of a UN bill of human rights. What is more rarely noted is that the report itself was not well received by the Commission on Human Rights. Fernand Dehousse of Belgium said he was “sorry to learn about its existence” and asked whether it had been commissioned by the UN Secretariat. Humphrey’s apologetic answer that “he had the impression that UNESCO had acted on its own initiative” shows just how sporadic the communication between these two groups working on human rights in a UN context actually was.\textsuperscript{50}

But even if the report itself – contrary to what is often suggested – was not important in determining the direction of the negotiations on the Declaration, it offers a fascinating (albeit somewhat arbitrary) inventory of different ways of thinking about human rights in the first years after World War II.\textsuperscript{51} Maritain wrote the introduction and an individual chapter summarizing some of his earlier views on the subject. Most famously, he argued that theoretical disagreement on the grounds of justification did not preclude practical agreement on the norms themselves. What is less frequently noted is that, in the next breath, he warned that practical agreement would not automatically produce uniformity in practice. To Maritain, practice hinged on philosophical grounding. An international bill of human rights thus had to be matched by a common “philosophy of life” for its norms to mean the same thing wherever they were institutionalized.\textsuperscript{52}

In the introduction to the UNESCO report, Maritain was relatively open with what he himself took to be the proper foundation for the framework of international human rights. “If both believed in the democratic charter,” he asserted “a Christian and a rationalist would still give mutually incompatible justifications for their belief, if their hearts and

\textsuperscript{50} UN Doc. E/CN.4/SR.26 (1947), 11. His episode is also highlighted by Morsink, \textit{The Universal Declaration of Human Rights}, 301. However, I do not agree with his interpretation that the opposition to the UNESCO report proved that the delegates were generally disinterested in philosophical questions. This fits too neatly into the narrative that their activities were only motivated out of empathy with the victims of World War II atrocities.


\textsuperscript{52} UN Doc. UNESCO/PHS/3(rev) (1948), ix.
minds and blood were involved, and they would fight each other for them. And God forbid that I would say it does not matter to know which of the two is right!”\footnote{UN Doc. UNESCO/PHS/3 (rev) (1948), iii.} In fact, to take part in such a struggle, and to demonstrate that human rights could only find proper foundation in classical philosophy and theology, appear as perhaps the most significant threads in Maritain’s writings on the topic. He consistently maintained that the problem with the conception of the rights of man associated with the American and French revolutions was not primarily the contents of the bills of rights that emerged in the course of these processes, but that these documents had been accompanied by the “illusions” of rationalist philosophers who suggested that human rights needed no other basis than human reason.\footnote{Jacques Maritain, The Rights of Man and Natural Law (New York: Charles Scribner’s Sons, 1949), 80.} Freeing human rights from such “illusions” and reattaching them to their origins in the Eternal Law was in broad strokes what Maritain was after.\footnote{Maritain, The Rights of Man and Natural Law, 11, 79.}

In some of his central texts of the era, Maritain also engaged with the concept of religious freedom and offered direct commentary on the ways this concept was construed and wielded in political discourse. In his influential 1942 book, Les droits de l’homme et la loi naturelle (which, according to René Cassin, was widely read among the drafters of the Universal Declaration), Maritain mainly focused on the International Law Institute’s 1929 draft bill of rights, but also stopped to reflect on some of the points President Roosevelt had made in his more recent Four Freedoms address of 1941. In the passage on religious freedom, Maritain claimed to do nothing more than to explicate what Roosevelt must have meant when speaking of the person’s freedom “to worship God in his own way.”\footnote{Maritain, The Rights of Man and Natural Law, 115–8. For the connection between Maritain and Cassin, see Alastair Davidson, The Immutable Laws of Mankind: The Struggle for Universal Human Rights (New York: Dordrecht, 2012), 458. See also, René Cassin, “Vatican II et la protection de la personne (1966)” in La pensée et l’action (Boulogne-sur-Seine: Éditions F. Lalou, 1972), 152.}

But Maritain’s commentary was more than a simple elaboration on Roosevelt’s message. His engagement with religious freedom also involved a shift from the freedom of worship to the freedom of conscience. His starting point was the first principle of the natural law: the imperative to do good and avoid evil. This principle called on the person to be “open and generous” toward others and work for the common
good of the political society, but it also commanded the person to realize that he is “made for God and for a life superior to time.” It was to use his free will for this proper purpose (libertas) that the human person was entitled to a freedom of choice (liberum arbitrium) vis-à-vis the temporal powers. It was this distinction that Maritain saw implied in the American President’s proclamation.

With respect to God and truth, one has not the right to choose according to his own whim any path whatsoever, he must choose the true path, in so far as it is in his power to know it. But with respect to the State, to the temporal community and to the temporal power, he is free to choose his religious path at his own risk, his freedom of conscience is a natural, inviolable right.

In a footnote, Maritain clarified that although the freedom of conscience enjoyed the status of inviolability, the right to the free exercise did not. “If this religious path goes so very far afield that it leads to acts repugnant to natural law and the security of the State, the latter has the right to interdict and apply sanctions against these acts. This does not mean that it has authority in the realm of conscience.” The conscience, William Sweet summarizes in his exegesis of this aspect in Maritain’s thought, “exists on a plane higher than that of the political community, and therefore it can never be limited by the community.” The right to the free exercise of religious beliefs may have been inspired by the natural law, but it belonged to the subordinate, and changeable order, of jus gentium. It was thus legitimate – perhaps even imperative – for the political power to intervene against acts in the public sphere that were incompatible with the requirements of the natural law.

57 Maritain, The Rights of Man and Natural Law, 11.
58 Maritain, The Rights of Man and Natural Law, 82. Italics in original.
59 Maritain, The Rights of Man and Natural Law, 82, note 1. In a later passage of the book (at 90) Maritain also affirmed that the political community “has the right to resist the propagation of lies or calumnies; to resist those activities which have as their aim the corruption of morals; to resist those which have as their aim the destruction of the State and the foundation of common life.”
61 For an analysis of how these ideas came into play during Vatican II, see Émile Perreau-Saussine, Catholicism and Democracy: An Essay in the History of Political Thought (Princeton, NJ: Princeton University Press, 2012), 129. Though Maritain himself was never that explicit, the target was most likely atheism and various forms of antireligious propaganda. Murray claimed that political power had no right to intrude in the forum internum of any person, but also contended that atheists had no right to manifest their views in the public sphere: “Has the atheist the “right” to carry his atheism into social life by propaganda, education, and organized activity, in such wise that the State would have
We encounter a similar appropriation and remaking of FDR’s second freedom in some of the contemporaneous writings of one of Maritain’s most well-known affiliates, the Jesuit theologian John Courtney Murray—who would later become influential in shaping Dignitatis humanae, the Vatican II declaration on religious freedom.62 The brilliance of Roosevelt’s address, Murray argued in 1946, was that it marked a break with the “absurd” concept of religious freedom enshrined in the liberal tradition—“the right of the individual to worship God as he pleases, if he pleases”—and instead acknowledged its true, ethical nature. When Roosevelt declared the “right of every man, as against the state, to worship God according to his conscience” he implicitly affirmed “the sovereignty of God over the human conscience.” “And this,” Murray continued, “is no nonsense, but sound ethical doctrine, which the Catholic Church has always taught.”63 By underlining the words “God” and “in his own way” instead of the freedom of worship, Murray was pointing to the possibility of supporting FDR’s statement from the standpoint of Catholic doctrine. Interpreting religious freedom primarily as a right protecting the person’s principal instrument for hearing “God Himself speaking,” was also a way of rejecting the “liberal” alternative of construing the concept as indifferent to religious truth.64

These progressive Catholic readings left discernible marks in the programs of some of the most significant NGOs dedicated to the cause of international human rights and religious liberty in the 1940s. Even Protestant groups like the Joint Committee on Religious Liberty in the United

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62 For a detailed analysis of Murray’s contribution to Vatican II and his philosophy on religious liberty, see Lawrence E. Brandt, “John Courtney Murray and Religious Liberty: An American Experience” (PhD diss., Pontificia università lateranense, 1983).


64 Although Maritain did not go into detailed discussion on how this notion of religious liberty related to Catholic doctrine, this was one of the central questions to Murray. See, for instance, “Freedom of Religion. I, The Ethical Problem,” Theological Studies 6, no. 2 (1945): 254, 279–83. It was not clear who Murray had in mind when referring to the liberal position. He either associated it with Protestant thinkers, who seemed more open to allowing atheists to carry their convictions into the public realm, or cited Leo XIII’s 1888 encyclical Libertas by which the Church had denounced rationalism for its faith in the “supremacy of the human reason.” See also, Pope Leo XIII, Libertas: Encyclical on the Nature of Human Liberty, June 20, 1888.
States (see Chapter 2) openly welcomed Maritain’s work, even if they above all read it as an example of how individual Catholic thinkers – awakened by the recent surge of totalitarian regimes – had come closer to an original Protestant position. But the most clear-cut example was the National Catholic Welfare Conference (NCWC), which, under the apt leadership of Catherine Schaefer, came to function as an informal “facilitator of Catholic action” in the UN during the world organization’s first years of existence. In February 1947, the NCWC issued its own Declaration of Rights, which it also circulated to the members of the UN Commission on Human Rights. The NCWC statement underscored how personal duties and rights were two sides of the same coin. It was to fulfill the “obligations arising from his personal dignity, from his immortal destiny, and from his relationships as a social being” that the human person was entitled to certain rights. In keeping with recent papal documents, not least Pius XII’s 1942 address, the Declaration accorded much weight to the rights of the family and the right to a formation “suitable for the maintenance and development of man’s dignity as a human person.”

Several writers belonging to other branches of the Christian church were openly inspired by Maritain’s work. In 1939, the émigré Russian Orthodox philosopher Nikolai Berdyaev (who like Maritain was linked to the personalist journal Esprit) wrote jealously of the recent embrace of personal freedom in the Catholic Church, pointing explicitly to Maritain and the encyclicals of Pius XI. Protesting the ousting of the Christian democratic essayist and historian Georgy Petrovich Fedotov by his colleagues at the Orthodox Institute of Theology in Paris for his alleged leftist leanings, Berdyaev underscored the need for a change of attitude to personal freedom within the Orthodox Church.

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66 Joseph S. Rossi, Uncharted Territory: The American Catholic Church at the United Nations, 1946–1972 (Washington, DC: Catholic University of America Press, 2006), 88–9, 95–6. Rossi probably overestimates the influence that this statement had on the members in the Commission, especially René Cassin, who, though clearly influenced by personalist rights language, probably did not draw directly on the NCWC Declaration.

67 Cited in Rossi, Uncharted Territory, 264–8. See also, Pope Pius XII, The Internal Order of States and People, Christmas address, 1942.
Reform does not at all signify reforms on the type of the Lutheran or the Catholic, it should be otherwise. It should defend freedom of spirit, freedom of conscience, the freedom of thought, more so than did Luther and Calvin, who defended it insufficiently and inconsistently. Reform begins with the acknowledgement of the supremacy of the personal conscience, not subjected to alienation and exteriorisation, i.e. it is the freedom of spirit and the independence of spiritual life from the influences of the “kingdom of Caesar.”

In the late 1930s, a series of Protestant theologians also began to frontline the concept of human rights and the figure of the “human person.” The Oxford Conference on Church, Community and State of 1937, which addressed similar trends as the encyclicals of Pius XI, marked a crucial watershed in defining the dignity and rights of the human person as a central political concern of the international ecumenical movement. The outcome of the conference underlined both the right of the Church to maintain its institutional autonomy, and the right of the human person to freely determine his or her religious beliefs and ways of worship. Terence Renaud accredits neo-orthodox and existentialist theologians like Karl Barth, and above all, Emil Brunner, for providing the intellectual ferment that was reflected in this statement. The outcome document was suffused by an anthropology that “emphasized both the privacy of each human being and the dependence of all people on life in a community.” The responsibility of the person that the Oxford statement recognized consisted both in accepting God’s calling, and in engaging creatively for the bettering of the social order.


69 In his theological anthropology, Karl Barth argued that we learn the meaning of “humanity” through the human person of Jesus Christ by which God has entered into human history. In being created to the image of God, the human person is destined as “God’s partner.” Wolf Krötte shows that this had implications for how Barth construed freedom. “Barth cannot understand the freedom that God grants the human person in the covenant with himself as an abstract freedom to choose between affirming and denying God. […] A person can and must really decide for him- or herself. God has given time and space in this world for this to take place. But a person can and must decide rightly in face of the fact that he or she must also say ‘no’ to disobedience.” Wolf Krötte, “The Humanity of the Human Person in Karl Barth’s Anthropology,” in The Cambridge Companion to Karl Barth, ed. John Webster (Cambridge: Cambridge University Press, 2000), 164.

In a piece published in 1947 – as the drafting of the Universal Declaration was unfolding – Brunner, then serving as Professor of Systematic and Practical Theology at the University of Zürich, argued that human rights had no meaning if not firmly established in the eternal order: “Entweder sie sind *jus divinum*, oder aber – ein Phantom.”\(^{71}\) Like Maritain, Brunner held that the Declarations of the Rights of Man of the French and American Revolutions had little to do with rationalist philosophy, but reflected the confluence of two separate traditions of natural law – an antique on the one hand, and a Christian on the other.\(^{72}\) In the more subtle passages of his text, Brunner made the case that only the latter of these traditions was still viable. Whereas the antique tradition had revolved around the autonomy of the individual man, the Christian tradition centered on the person’s responsibilities to God and to his creation. Brunner asserted that, in a society permeated by Christian values, neither of the two ills of the modern age – atomistic individualism and totalitarianism – would find the conditions to subsist.\(^ {73}\)

It is difficult to capture how these coterminous streams of personalist rights talk were related beyond such occasional cross-references that I have alluded to here. This is beyond doubt an area that merits further research. For now, we know that the early postwar saw a hesitant rapprochement between Protestant, Catholic, and Orthodox thinkers and movements – and occasionally between Christians and Jews – that found a common concern for the dignity and rights of the human person.\(^ {74}\) Although they made slightly different readings of the genealogy

\(^{71}\) Emil Brunner, “Das Menschenbild und die Menschenrechte I,” *Universitas* 2, no. 3 (1947): 269.


\(^{74}\) Vögele, “Christliche Elemente in der Begründung von Menschenrechten und Menschenwürde im Kontext der Erstehung der Vereinten Nationen,” 105–7. Vögele stresses how the dignity of the human person became a means for facilitating Jewish–Christian dialogue in the aftermath of the Holocaust. Although the outcome document of the
of rights, and held different conceptions of the natural law, the sponsors of personalist rights language in the 1940s displayed many similarities. Their individual writings and declarations targeted totalitarianism, without making any apparent distinction between its communist, fascist, and Nazi incarnations. But they also imparted the message that human rights must be reclaimed from liberalism to effectively address these threats. Maritain’s main contribution to these movements was probably to provide an exemplary revisionist reading of the history of human rights where the Enlightenment and the Atlantic revolutions were pushed to the side by stoicism, scholasticism, and ultimately, the Gospel. With roots stretching back to the birth of Western civilization, human rights arose as a potential rallying cry for a united religious front against the ills of secular modernity.\(^75\)

The freedom of thought and conscience were close to the heart of all these personalist theories of human rights. What distinguished the “human person” from the “individual” was precisely the capacity to transcend the finitude of this world by the right use of mind and conscience. The rights of the individual were only rights that aspired to man’s liberation from the constraints of temporal powers. By contrast, to declare that man had rights as a person was to affirm that this liberty originated in the intrinsic purpose of human existence. Man was entitled to a space of liberty to follow his natural inclinations, or – to use Barth’s terminology – for the freedom realized in the act of responding to God’s call to partnership. What in hindsight may seem like an insignificant or stylistic choice of terminology was to personalists the difference between a dead and a living conception of human rights. Associating rights with personhood was to give them the meaning and direction they had been denied in the hands of liberals.

1946 Oxford Conference of the Council of Christians and Jews (CCJ) contained no reference to human rights per se, it affirmed that “Each individual possesses worth as a person and must treat others as such, while other persons and the community must accord similar treatment to him.” However, Vögele is probably wrong in construing this statement as an important precursor for the Universal Declaration. While leading human rights advocates of the ecumenical movement frequently referred to interwar statements – most important the outcome of the churches’ meeting in Oxford in 1937 – they rarely, if ever, referenced the ICCJ meeting in 1946 as a significant achievement on the road to the Universal Declaration.

It is tempting to think of Malik as a spokesperson for these intellectual currents, as someone who wielded personalist and neo-Thomistic takes on human rights and religious freedom developed by others. That is also how he was characterized by some of his colleagues in the Commission on Human Rights, and how he is fitted into Moyn’s textured and nuanced treatment. But even if we accept the basic point that Malik was the key figure for bringing personalist rights language into the Universal Declaration, we must also come to terms with the fact that his own engagement with the concepts of human rights and religious freedom was influenced by other philosophical currents as well, and was powered by very different concerns than we find in the writings of Maritain or Murray. If we consider him solely as a representative of any distinct ideological current, we cannot fully grasp why he found certain parts of the Universal Declaration to be of tremendous importance, including – as I explore later on – the right to change religion or belief.

CHARLES MALIK AND THE FREEDOM OF THE HUMAN PERSON

In the literature on the Universal Declaration, Malik is generally recognized as the youngest (he was 42 when the Declaration was adopted), by far the most independent, and one of the most influential members of the original Commission on Human Rights. Unfortunately, this realization of Malik’s significance has not been matched by thorough studies of his interventions in the negotiations or his writings from the same time. On the contrary, Malik’s name is often invoked to demonstrate that the drafting process was not a moral outgrowth of Western imperialism, but a rare achievement of cross-cultural consensus in the wake of World War II atrocities. Paul Gordon Lauren describes him as a “former professor of philosophy and a brilliant scholar, born into a family of Greek Orthodox Arabs, raised at a crossroads of many cultures, and personally and professionally shaped by both Christianity and Islam” – the implication being that Malik was positioned to represent all of these intersecting identities at once.


77 Glenn Mitoma, Human Rights and the Negotiation of American Power, 12.

Others have suggested that Malik’s own trajectory – which in 1948 included graduate studies in philosophy at Harvard University, a stint in Freiburg as a student of Martin Heidegger, a term as Head of the Department of Philosophy at the American University of Beirut, and an appointment as Minister of Lebanon to the United States and the UN – made him a particularly inapt spokesperson of anything like a mainstream “Middle Eastern” standpoint on human rights. This critique of Malik is reinforced in reference to elements of his later career, not least his efforts as Foreign Minister to facilitate the US intervention in Lebanon during the crisis of 1958, and his involvement in the formation of *Front libanais* in the lead-in to the country’s ravaging civil war.79

Glenn Mitoma is one of the few historians who have engaged thoroughly with the archives to paint a more nuanced portrait of Malik and his work in the Commission in the 1940s and ’50s. Mitoma sees Malik’s activism for an effective international framework for human rights, which included both the Universal Declaration and the stalled attempts to adopt a binding Covenant, as shaped by “philosophical training and deep Christian beliefs combined with experiences in the United States, Europe, and the Near East.”80 He argues that Malik’s stay in Germany in the mid-1930s was particularly crucial for his profound rejection of racism and totalitarianism. The encounter with National Socialism, Mitoma argues, led Malik to consolidate his belief in the inviolability of the human person, but also the conviction that it was through the “intermediate institutions” between the individual and the state (including the Church and the family) that individual freedom was realized (see Chapter 4).81 The gist of Mitoma’s argument is that Malik’s activities in the Commission on Human Rights can be read as attempts to “wake the Giant” (i.e., the United States) to a heightened sense of global responsibility for the promotion of these values, values that Malik referred to as the pinnacle of the “glorious Greco-Roman-Hebrew-Christian-Western-European-humane-outlook.”82


The most dominant theme in Malik’s articles and talks on the topic is that matters of human rights cannot be isolated from questions of human nature. In a piece that appeared in the *Rotarian* in mid-1948, Malik argued that the activities of the UN in the human rights field had deep philosophical and spiritual significance. The negotiations on what rights should be included in an international statement, and how they should be ordered and expressed, were only proxies for the deeper struggle over what fundamental conception of man the community of nations would adhere to in one of its constitutive documents.

The first [issue of the Commission on Human Rights] is whether man is simply an animal, so that his rights are just those of an animal. All those who stress the elemental economic rights and needs of man are for the most part impressed by his sheer animal existence. This is materialism, whatever else it may be called. Materialism is a popular philosophy of our times, making it difficult to champion the cause of the spirit and mind of man; and to impress on the international community the point that even after man is fully secure in his so-called “economic rights” he may still be not-man. But unless man’s proper nature, unless his mind and spirit are brought out, set apart, protected, and promoted, the struggle for human rights is a sham and a mockery.83

The immanent threat of materialism – of every ideology that considered man as nothing but a highly developed animal – was arguably the main reason why Malik considered it crucial to get the terminology in Article 1 and Article 18 right. In some of the texts that he published shortly after the drafting process had come to a close, he expressed disappointment with the document as a totality, which in the end included far too many articles focusing on the conditions for man’s material well-being. The Universal Declaration was, in short, not as beautiful, logical, or adequate as if it had been composed by a single genius – “a Plato, a Saint Thomas or a Leibniz.” That said, there were still valuable elements in the final text. In its strong emphasis on the personal freedom of thought and conscience, the Declaration still marked a “faint echo, on the international plane, of a spiritual reaction against the modern dissolution of the human soul.” The rise of totalitarian regimes was thus construed as mere manifestations of a much deeper, positivist current in modern societies.84

There is evidence suggesting a clear link between Maritain and Malik. Malik occasionally referred to Maritain in his writings, describing him as

one of the great intellectuals of the age (together with Berdyaev, William Temple, Christopher Dawson, José Ortega y Gasset, Miguel de Unamuno, Karl Jaspers, and Martin Heidegger). What united these thinkers, Malik claimed, was their dedication to the question of whether “any free, separate personal life be left to the ind. in the socialized world of tomorrow? Will the ind. be left alone, to seek, to see, to sin, to think, to pray?”

In 1955 – the same year as he returned to pursue a political career in Lebanon – Malik also asked Maritain to send him “one of your autographed portraits to keep as a precious souvenir of my high regard for you and my indebtedness to your thought, and also of our many friendly contacts and conversations together during the last few years.”

There is also evidence that Malik cooperated closely with the Catholic organizations that took part in the drafting of the Universal Declaration. According to Joseph Rossi, he was associated with an informal grouping known as “les amitiés catholiques,” which was formed for the purpose of giving the Declaration a “Catholic focus.” In particular, he established a close working relationship with Catherine Schaefer of the NCWC. In mid-1948, he asked Schaefer to review the final version of Article 18. She wrote in a letter to the NCWC General Secretary, Monsignor Howard Carroll, that she liked the draft, although regretting that it did not explicitly affirm that there was no right to error: “Dr. Malik is sympathetic to the idea that one has no right to atheism,” she reported, “but since the majority do not have the same notion of right in relation to God and truth, the drafting difficulties are great.”

But it would also be a gross oversimplification to characterize Malik as an emissary of Catholic rights talk, especially if we equate this with the works of Maritain. Maritain and Malik differed, not only in their

86 Letter from Charles Malik to Jacques Maritain, July 5, 1955, Papers of Charles Habib Malik, Box 34, Folder 1.
87 Rossi, Uncharted Territory, 20.
religious affiliations (Malik was Greek Orthodox by birth, but remained dedicated to the cause of Christian unity throughout his professional career), but also in their political concerns, intellectual trajectories, and ways of deploying human rights and religious freedom in their political writings.\textsuperscript{90} Whereas Maritain had come to espouse rights in the late 1930s and developed his theories in the early 1940s, Malik did not, as far as I can tell, use the language of human rights before he was appointed a member of the UN Commission on Human Rights.

When the Commission members first convened in early 1947, the moral and political front lines of the Cold War had already begun to crystallize (the Truman Doctrine was declared only a few weeks later). This new ideological landscape can be sensed in Malik’s and Maritain’s different takes on the economic and social rights. In his works of the early 1940s, Maritain devoted some energy to justifying a range of social and economic rights from a Catholic standpoint. He used the freedom of association to argue for the right to establish trade unions and the personal right to freedom of choice to denounce all forms of forced labor and servitude. He even defended the right to a just wage, “for man’s work is not a piece of merchandise subject to the mere law of supply and demand; the wage which it yields must enable the worker and his family to have a sufficiently human standard of living.”\textsuperscript{91}

In contrast, Malik displayed much unease with awarding these rights a central place within the Universal Declaration framework. In the Commission, he spoke of “the error of over-simplification” that consisted in thinking that “such things as nondiscrimination and universal employment, guaranteed by the State, represented the most important factors of human life.” Economic welfare and non-discrimination could only be justified as supporting structures for the inner freedom; as a “means to a higher end, namely, the freedom of the spirit.”\textsuperscript{92} It is indeed true that Malik cooperated in the drafting of the articles on social and economic rights, but it is important to note that he took it as his main mission to ensure that such articles could not be used by states to expand their reach to all domains of economic and social life.\textsuperscript{93}

\textsuperscript{90} For more on Malik’s family background and his early years in the Greek Orthodox village of Bterram in Northern Lebanon, see Mitoma, “Charles H. Malik and Human Rights,” 227–30.

\textsuperscript{91} Maritain, \textit{The Rights of Man and Natural Law}, 94–6, 107.

\textsuperscript{92} UN Doc. E/CN.4/SR.50 (1948), 5.

There is no doubt that Malik pictured communism as the central ideological threat to human rights and religious liberty. In his view, communism marked a complete negation of everything that human rights meant; it denied all forms of spiritual freedom and hindered the person from fulfilling his or her responsibilities as a being created in God’s image. This antagonism was clearly strengthened in the debates, where Pavlov and Ribnikar proved to be the most ardent opponents of virtually all of Malik’s proposals. “In this age of spreading socialism,” Malik noted in his 1948 think-piece for The Rotarian, “it is difficult to shout from the housetops that man cannot be absorbed by society, that he is by nature free to think, free to choose, free to rebel against his own society, or indeed against the whole world, if it is in the wrong.”

But we rarely find Malik responding directly to particular events or violations by communist regimes. In a 1949 statement before the Political Committee of the General Assembly, he explained that he saw no need to distinguish between theory and practice when addressing the forces of communism because “every decision taken by the Communist parties or the Communist States has been the direct result of a certain aspect of Communist philosophy.” Instead he devoted his speech to a lengthy reading of Marx, Lenin, and Stalin with the purpose of identifying what was at stake in the looming world crisis. Though praising the achievements of the Red Army in the last years of World War II, he feared that its advance into the European mainland had come at a very high price. Communism, he explained, was an inescapably disruptive and destabilizing force, a direct challenge to all “older tested values”:

Man, you and I in person, is conceived as a purely material being, whose spiritual and inward experiences and achievements are nothing more than modifications attendant upon and reducible to the movement of the matter which he is. The dignity of man – which the Classical tradition saw as consisting of man’s rational and creative powers, and the Christian traditions as emanating from man’s status as the Image of God destined for eternal life – is replaced, in the Communist philosophy, by the status of man as a unit in a multitude, a part of a greater whole, determined in his worth, like that whole itself, by his contribution to the production of material goods. So engrossed are the Communists in the materialistic

phenomena of capital and labor and sheer economic goods that man is conceived, to use the famous phrase of Stalin, as at best “the most precious capital.”

Malik expressed great hope that the defeat of Communism would come from within Russia itself. This belief, he specified, was derived from his reading of Russian literature, and above all from the works of Dostoyevsky. Engaging with Dostoyevsky had taught him that the “The Russian soul at its best is consumed by a mystical flame of the purest type.” If only the “Russian soul may assert the more spiritual side of itself,” there would in Malik’s view be grounds for a rapprochement between the West and the Russian people. But such reconciliation, Malik was clear, could never occur as long as communism, with its inherent revolutionary zeal, constituted a potent force on the world stage.

Malik’s anticommunism is well known in the scholarship on the Universal Declaration. What has been less frequently noted is that he also devoted much space of his writing to addressing what he considered as materialist and positivist tendencies within the West. In his numerous articles and speeches of the late 1940s and 1950s, Malik often identified such trends as central threats to the prospect of Western influence in Africa, Asia, and the Near East after World War II. “Western man is too much wrapped up in himself,” Malik claimed in a 1951 article for the Fordham University Quarterly, Thought, written in close connection to China’s intervention in the Korean War. When confronted with the ideals of “taking a college degree, getting married and settled, rearing a family, having a dependable job, making lots of money, and having a comfortable and ever-expanding bank account, Asia is not impressed.” Instead of construing the global mission as one of addressing economic poverty and spreading industrial modernity, Malik argued that the West needed to be reawakened to a “radical moral responsibility”; to an engagement with the world in which it did not compromise with ultimate and

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universal values, above all the integral dignity of the human person as “an
end in himself,” and the “ultimate freedoms of thought, conscience and
decision.”99

But there was also a more academic side to the ways in which Malik
made use of the concepts of human rights and religious freedom in this
era. In his numerous talks and writings, he tended to portray the Com-
mission on Human Rights as a philosophical seminar as much as a
political committee. Though many scholars have noted that Malik came
to the Commission from an academic position, they rarely search for
continuities between his philosophical oeuvre and his way of handling
human rights in the drafting process. To most historians, Malik’s philo-
sophical career – which included studies for both Alfred North Whitehead
(who is widely known as a pioneer of modern process theology) and
Martin Heidegger – is treated as a biographical side-note, as a back-
ground factor that adds color to his portrait, but that is nonessential for
grasping the contributions he made to the final text.

Malik completed his PhD in philosophy at Harvard in 1937. His
doctoral thesis was a systematic study of Whitehead’s cosmology (White-
head was his supervisor) and identified some unlikely similarities with
Heidegger’s phenomenology. The thesis contained no references to
human rights or religious freedom, and it was clearly beyond Malik’s
objective to launch his own theory.100 Yet, as Martin Woessner shows in
a rare effort to read Malik as a philosopher, it is obvious that he was
more attracted to the “concrete outlook” of Heidegger’s existentialist
examination than the too-detached cosmology of Whitehead. “Professor
Whitehead’s philosophy knows no chasm in existence,” Malik wrote in a
frank interlude of thesis, “It recognizes no cataclysmic distinctions. It
never quite works up to something like ‘radical particularity.’”101

99 Malik, “Appeal to Asia,” 17. See also: Martin Woessner, “Provincializing Human Rights?
The Heideggerian Legacy from Charles Malik to Dipesh Chakrabarty,” in Human Rights
from a Third World Perspective: Critique, History and International Law, ed. José Manuel
100 Charles Malik, “The Metaphysics of Time in the Philosophies of Alfred North White-
head and Martin Heidegger” (PhD diss., Harvard University, 1937).
101 Cited in Woessner, “Provincializing Human Rights?” 72–3. Malik later criticized White-
head for turning God into a cog in his speculative cosmology. His critique, which was
also directed at Bergson, resembled God’s words to Job (Job, 38:4): “They were never
there, neither in evolution when it occurred, nor in the table or the brain, not certainly in
far-off empty space, to be sure that what they were talking about was true; it is only a
pennant of their mind.” Charles Malik, “The Metaphysics of Freedom,” in Freedom
One of the central similarities between Malik and Heidegger, Woessner argues, was their emphasis on the moment of decision, the moment when the person liberates himself from inauthenticity and comes to shoulder the responsibility of his own existence. With Heidegger, Malik also shared the conception of the philosopher as a prophet. “A prophet,” Malik explained in his dissertation, “is a person who has handed himself over to God to use him in rousing otherwise descriptively lethargic people to a consciousness of decision.”¹⁰² Heidegger and Malik came to translate this prophetic mission of philosophy into diametrically opposed political projects. Heidegger notoriously bridged themes in his philosophy to the official doctrines of National Socialism. Malik instead resorted to Christian existentialism.¹⁰³ Heidegger’s main weakness, he claimed in a later piece, is that “he does not raise the radical question of origins. He discriminates and describes authentic and unauthentic existence, but how to be authentic over against [sic] unauthentic existence he never tells us.”¹⁰⁴ Heidegger’s phenomenology was, in other words, valuable as a diagnosis of human ontology, but it failed to pave the path to “the joy of being,” which could only be experienced “in the presence of the Supreme, by participating in its being,” a state in which “the philosopher suddenly forgets all his philosophy. And he never regrets it.”¹⁰⁵

In some of his texts on the Universal Declaration, Malik was very open with how he viewed the connection between his philosophical work and his activities in the Commission on Human Rights. A telling example of this is a talk that he delivered at a luncheon organized by the CCIA shortly after the Universal Declaration had been adopted. The topic for the address – which was later published in The Ecumenical Review – was “Human Rights and Religious Liberty.” One might expect that such a talk by a diplomat, who had just chaired the Third Committee of the General Assembly, would begin with a few general remarks on the state of human rights and religious freedom in the world, or an introduction to the just-completed drafting process. But Malik instead began by referring to Whitehead (who passed away in 1947) and the critique of the

“Platonic-Christian” concept of the immortal soul that had formed part of the latter’s 1935 book, *Adventures of Ideas*.  

“In his own metaphysical construction,” Malik proclaimed, “Whitehead has no place for this conception of the human soul,” and, in fact, “typifies his age” in his “radical subordination of the soul to ‘experience,’ to ‘the universe,’ to ‘society,’ to ‘the flux.’” Malik then turned to Heidegger’s conception of *das Man* in his classic *Being and Time*, which he characterized as “the most wonderful philosophical description I know of this characterless, dark, distracted, gossipy, irresponsible, self-lost, impersonal, undecided [sic] and unauthentic spirit of the masses.” Against this “dissolution of the human soul” unfolding in “the present enlightened age,” Malik contrasted the work of the UN Commission on Human Rights and the text of the Universal Declaration. As the text recognized man’s natural ability to “reason and conscience,” it did, in fact, make for a reaction against the modern malaise of regarding man as guided by nothing but “his reflexes, impulses, desires, drives, instincts, dreams”; or as determined by “his sociological and national functionings, to his economic wants, to the dark forces of the nether world.”

In including modern psychology and sociology under the banner of materialism, and in pinpointing them as hostile to the idea of human rights, Malik advanced similar ideas as another of his teachers at Harvard, the leading American idealist philosopher and missiologist William Ernest Hocking. In July 1947, Malik wrote to Hocking asking him to comment on the draft version of an international declaration of human rights that the Commission had adopted a few weeks earlier. “It is most important to bring to bear upon the formation of this document the best thought of the ages,” Malik wrote. Hocking responded that he found the

106 Alfred North Whitehead, *Adventures of Ideas* (Cambridge: Cambridge University Press, 1935), 266–7. For a taste of Whitehead’s take on individual freedom, see Alfred North Whitehead, “Aspects of Freedom,” in *Freedom: Its Meaning*, ed. Ruth Nanda Anshen (New York: Harcourt, Brace and Company, 1940). In some passages, Whitehead decried the tendency within the Western tradition to equate freedom with “the picture of contemplative people, shocking their generation. When we think of freedom, we are apt to confine ourselves to freedom of thought, freedom of the press, freedom for religious opinions. Then the limitations to freedom are conceived as wholly arising from the antagonisms of our fellow-men. This is a thorough mistake. The massive habits of physical nature, its iron laws, determine the scene for the suffering of men. Birth and death, heat, cold, hunger, separation, disease, the general impracticability of purpose, all bring their quota to imprison the souls of women and of men” (at 65).


draft declaration promising, although it had considerable flaws in its logical structure and displayed a strange mix between legal and moral rights. He appreciated the draft version of Article 1, which affirmed that man was “endowed with reason and conscience” as a “very fine literary statement,” but claimed that its meaning should be made even clearer.

The possession of reason and conscience is the mark of the genus homo: Article 1 states that this quality transforms the genus into a “family” of “brothers.” In other words, humanity cannot be a mere genus. Why not? Because men have to treat one another as being what they are! To recognize the existence of “reason and conscience” in another creature is to recognize “freedom” and “dignity.” To accord “right” to a being is not something else than recognizing his freedom and dignity: it is the same thing. Man has rights because he has freedom and conscience; why not say that, instead of making rights an addendum?

Although Hocking’s name is virtually absent in histories of human rights in the 1940s, this was, in fact, not the first time that he had engaged with the concept or, for that matter, with that of religious freedom. In a 1931 article for the International Review of Missions, Hocking outlined a theory of individual religious freedom, which centered on the concepts of thought and conscience, but also involved an instrumental role for the outward dimension of religious action. “The point at which individual life is growing,” Hocking maintained, “is called conscience. This is the point at which old ideas are brought into flux, habits are revised, and fertility, originality and social inventiveness brought about. Religious worship is the protection of the mental fertility of the growing individuals of the community.”

In his 1942 book, What Man Can Make of Man, Hocking laid out a more elaborate theory of human rights, engaging in critical dialogue with both socialism and liberalism (Hocking’s culprits were Karl Marx and John Stuart Mill), but also targeting the conceptions of man premising the modern social sciences. To Hocking, the origin of the idea of human rights was neither modern nor medieval. “It is as

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109 “All men are brothers. Being endowed with reason and conscience, they are members of one family. They are free, and possess equal dignity and rights.” The full text of the draft is reproduced in Glendon, A World Made New, 281.

110 Communication between Charles Malik and William Ernest Hocking, July–August, 1947, Papers of Charles Habib Malik, Box 20, Folder 12.

primitive as that Roman period when Christianity and Stoicism were side by side and agreed with one another that the respect due a human being is founded not on his desires, nor on anything that psychology can demonstrate in him, but on the ‘spark of Zeus’ that he is.”

The American revolutionaries, Hocking claimed, had only echoed this tradition when drafting the Declaration of Independence in 1776. In their later distortions of this tradition, Marx and Mill – though “worlds apart in their practical programs” – had agreed about the fundamental point that a right “was simply a social arrangement which favored social health.” These two giants of modern political thought had thus helped to usher in a materialist era in which men had forgotten about the soul. In the hands of the modern psychiatrist – “the embodiment of applied science, attempting to deal with the ravages of the mistakes of science” – the destined soul had instead been replaced by the human self.

Hocking’s point was that by forgetting the soul, we had also lost access to the authentic meaning of human rights. “He who claims a right accepts a responsibility to destiny, and holds his right just so long as he maintains that ultimate bond which rebukes his frivolity and his sensation-yardstick for the worth of living. There are no costless rights. There are no rights for desire as such. There are no birthrights without condition in the good will, which means among other things the modest self-estimate, of the user.” Apart from encouraging a return to the classical, theocentric notion of rights, Hocking then reminded his readers of what the main capacity of the human soul was, and what distinguished man from other creatures, namely the ability to self-imposed change. Man “is clay with an inner resilience, alive with a bent of its own. He desires to be fashioned toward the type: but the type finishes no one – the last definitions must all be his.”

With regard to human rights, Malik and Hocking were clearly on the same page. They both viewed their own philosophical work and the struggle for the internationalization of human rights as analogous projects. The principal aim was to breathe new life into the old notion of the human soul and to affirm the human person’s natural responsibility toward himself, his fellow men, and ultimately, to God. In his talk at

the CCIA luncheon in 1949, Malik concluded that this was essentially what the Commission on Human Rights was doing in the struggle to codify human rights: “We are trying in effect, knowingly or unknowingly, to go back to the Platonic-Christian tradition which affirms man’s original, integral dignity and immortality.”

Seen through the lens of Malik’s writings, the Universal Declaration appears more as document intended to make human beings aware of their place and purpose in a larger order, than an instrument designed to address political violence or indicate the direction of political reform. It was a text written for individual human beings, not only for the cause of their protection. This was also the point that Malik made in “The Metaphysics of Freedom,” a text that appeared in a 1965 volume edited by John Courtney Murray, and that offers one of his clearest expressions of the freedom of thought and conscience. “This is what I have found, this is what I have gathered, this is what I believe, this is what I know from a life of study, reflection, intense experience, and direct vision,” he stated in the opening passage. From this he continued by trying to pinpoint his own fundamental philosophical standpoint. This position was marked by allegiance to God as revealed through the Bible (‘not the God of Whitehead or of the philosophers, but the God of Abraham, Isaac, and Jacob’), the whole positive tradition “from Pythagoras to Socrates to Hegel and Whitehead,” and the existentialist notion that every human being is condemned to freedom and responsibility. He acknowledged that this made for an eclectic mix, but suggested that it was not “different from the eclecticism of the Bible, or indeed of Aristotle.”

Following this grandiose introduction, Malik offered his interpretation of the ideas that had underpinned the Universal Declaration and the reference to human “reason and conscience” embedded in Article 1. He asserted that this reference was “grounded in the metaphysical fact that man must be able to rebel and reject the truth to be free.” The possibility of rebellion, just like the possibility of suicide, revealed that the person had a choice and thus proved that freedom existed as an ontological fact. But to the extent that the Universal Declaration carved out a space for rebellion, it did not encourage it. “When you do rebel,” Malik explained, “it was neither your freedom nor God who created you free that caused you to rebel, but some independent dark power. That is, of course, the devil. The devil is the technical term given throughout the ages to the

mystery inherent in the strange metaphysical situation, more or less dimly perceived by virtually all peoples and all cultures.” 119 This is also shows why it was essential to give the freedom of conscience as privileged position in Article 18. Equating religious freedom with the freedom of conscience was a way of recognizing that the individual person was entitled to a free choice without succumbing to indifference as to how this freedom was exercised.

Although Malik presented reason and conscience primarily as instruments for personal growth and existential choice, it is worth noting that his insistence on placing these concepts at the core of the Universal Declaration also betrayed a belief in their political relevance. The right to the freedom of thought and conscience was also a right to engage in critical evaluation of the workings of social and political life. This point can be illustrated by the way that Malik’s early introductions to the Universal Declaration often ended by indicating that the natural right to be free in thought and conscience also entitled the person to be critical of any attempt, including that of the UN Commission on Human Rights, to capture the proper meaning of human rights in positive law. Unlike Cassin, who presented the Declaration as an indivisible entity, Malik repeatedly lamented the text’s lack of coherency and warned against the prospect of idolatry. 120 In his contribution to a 1949 study guide on the Declaration published by the YMCA, he claimed that it was only a sign of the immaturity of the modern man that he would turn to the United Nations instead of his own conscience for the purpose of learning about the nature of rights and freedom.

Destitute and desolate he goes about begging for his rights at the feet of the world, and when the Commission votes on an article by 10 to 8, or the Assembly by 25 to 17, he rejoices that there, there he is granted a right! Having lost hold on God, or more accurately, having blinded himself to God’s constant hold on him, he seeks for his rights elsewhere in vain. The spectacle of a human being having lost his true being – can there be anything more tragic? 121

In this ambivalence to the very enterprise of codification, Malik remained true to the premises of the natural law tradition of rights. A text of this

120 Cassin famously likened the Declaration to the portico of temple, whose different elements constituted an “entryway to a better world.” Glendon, A World Made New, 174.
kind could at best be an icon, a window onto the idea of human rights. It could never be its embodiment. This was one of the reasons why the emphasis on human reason and conscience constituted the text’s most adequate features. These were passages that encouraged the person to peer beyond the walls of the text itself in search for his or her God-given rights and duties. The hope that he attached to the Declaration text was not, in other words, that every single item therein one day would be universally implemented through the laws and mechanisms of enforcement, but that the text would function as a kind of wake-up call for individuals; as a reminder of their divine origins and their true missions as human persons.

CONCLUDING REFLECTIONS: EMBODIED VULNERABILITY?

One of the central claims that Johannes Morsink makes in his thorough study on the genesis of the Universal Declaration is that the drafters displayed little “interest in philosophical arguments of human rights.”122 Instead, their common efforts were sparked by an intuitive desire to “avoid another Holocaust.”123 Drawing on Morsink’s research, some scholars of human rights have developed appealing proposals for how we should interpret the Declaration in our time. The key to unlocking the text’s central message, Anna Grear maintains, is to realize that it “carries at its heart a visceral awareness of a common human vulnerability – an awareness that was starkly and tragically lit by the fires of Auschwitz and Treblinka.” By reminding ourselves of how the international human rights project emerged to protect the individual human being in her bare nakedness, or “embodied vulnerability,” we can revive our commitment to its central principles and protect the framework from contemporary misuse, not least, Grear stresses, in the hands of multinational corporations.124

There may be certain features of the text – such as the preamble’s reference to the “barbarous acts which have outraged the conscience of mankind” – and certain interpretations in the literature on its making that make such readings credible. Yet, at a minimum, we must acknowledge

123 Morsink, The Universal Declaration of Human Rights, 37.
that such readings discord with how the Declaration’s amorphous language was interpreted by some of its framers. As Glenn Mitoma affirms, Malik’s perception of the Nazi regime’s violations of human rights was above all shaped by the experiences he gained during his stint at the Nazi-controlled University of Freiburg in the mid-1930s.125 To Malik, the most formidable threat to the rights of individuals posed by totalitarian regimes was not brute force, but denial of intellectual and spiritual freedom. The consequence of this denial was that the person was kept from realizing its subordination to God’s will.126 Under the harsh conditions of totalitarian rule, as Malik put it, man “cannot stand being alone; he cannot bear his personal freedom; he finds it, as Dostoyevsky would say, too heavy a burden to bear. Consequently he surrenders it at the feet of the first group he finds himself belonging to.”127 The practical value of human rights and religious freedom was not directly to secure the goods of material subsistence, nondiscrimination, and bodily integrity. Rather, the point was to liberate the person from the external pressures that made it impossible to carry the existential burden of being free. The point is not that the memory of Nazi terror was an unimportant context in the drafting process, but that the drafters often focused on other aspects than the acts of genocide.

It is important to underscore that the Universal Declaration was not an unequivocal triumph for personalist human rights.128 The text comprises much more than the references to the freedom of thought and conscience singled out in this chapter. If there was any document of this era where the personalist language of human rights did succeed, it was the European Convention of Human Rights. For even if the drafters of the 1950 Convention adopted verbatim some of the UDHR’s language – including the formula of Article 18129 – they also, as Marco Duranti suggests, saw their project as a critique of the far too expansive UN bill of rights.130

128 See, for instance, Joe Hoover, “Rereading the Universal Declaration of Human Rights: Plurality and Contestation, not Consensus,” Journal of Human Rights 12, no. 2 (2013), who also reminds us that this conclusion does not mean that it was a product of cross-cultural consensus.
It should also be stressed that even if it was personalists like Malik who most strongly advocated a focus on the freedom of thought and conscience, this would probably have led to nothing if this understanding of human rights had not been possible to justify from other philosophical and political standpoints as well. Most notably, Zhang Pengjun of China – who was one of Malik’s fiercest critics and who forcefully dismissed the idea of making open references to natural law as the basis of human rights so that “others with different concepts would be able to accept the text” – agreed that the text should stress the “non-animal parts of man,” and went along with the proposal of highlighting the concept of conscience in Article 1.131 In the Chinese version of the Declaration, the equivalent of conscience is the character 仁 (ren), which Zhang translated into English as meaning “two-man-mindedness.” Through this “translingual reworking of ideas,” as Lydia H. Liu puts it, Zhang was seeking to “reground” the concept of human rights in “the originary plurality of humanity rather than in the concept of the individual.”132

In the course of the negotiations, the USSR also submitted a competing version of what later became Article 18.133 The draft contained no references to conscience or religion, but stressed the freedom of thought. This freedom, Alexei P. Pavlov explained, was crucial for “the development of modern sciences” and for the “existence of free-thinkers whose reasoning had led them to discard old-fashioned beliefs and religious fanaticism. The times when scientists were condemned to be burnt at the stake were past, and science occupied a most important place in human life.”134 The amendment was quickly rejected, but reminds us how the emphasis on man’s inner freedoms could be justified from conflicting ideological positions.

Yet, although it is not possible to reinterpret the Universal Declaration and its Article 18 as straightforward reflections of personalist conceptions of human rights and religious freedom, we should not be too quick to characterize the whole process as an instance of overlapping consensus or


133 UN Doc. E/800 (1948), 42.

As is evident from the drafting records, it was the ideological debate between Malik and Ribnikar during the Commission’s first meeting in January 1947 that provided the initial impetus for distinguishing between the inner and external freedoms in Article 18. Already at that stage it became clear that, even if this distinction was acceptable to many, it was one that personalists like Malik considered as vital for the entire human rights project. And arguing for why the freedom of thought and conscience needed to be fronted in the text, Malik was not – as some chroniclers claim – merely defending a long-standing human rights tradition against the statist and collectivist ideas of the communist delegates. He was also making an argument about how the concept of human rights should be transformed to meet the challenges of the present age.

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137 It is also clear that the image of the Universal Declaration as an abstract consensus does not capture how Malik and other personalists interpreted the final text. In his early commentary, Malik instead construed the Declaration’s shape and content as a sign that the “Platonic-Christian” idea of “man’s original, integral dignity and immortality” had returned after being expelled to the wilderness by the forces of modern materialism. To others, such as the Filipino delegate Carlos P. Rómulo, this revival of a Christian natural law tradition was most clearly sensed in the Declaration’s elusive references to human dignity. See, e.g., Carols P. Romulo, “On Natural Law and International Law,” Virginia Law Review 35, no. 8 (1949): 1053. For more on the language of human dignity, see Charles Beitz, “Human Dignity in the Theory of Human Rights: Nothing but a Phrase?” Philosophy & Public Affairs 41, no. 3 (2013): 264–8; Moyn, Christian Human Rights, chapter 1; Michael Rosen, Dignity: Its History and Meaning (Cambridge, MA: Harvard University Press, 2012), 53.