

## Review Essay

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Pierre Manent, *La loi naturelle et les droits de l'homme*. Paris: Presses Universitaires de France, 2018, 134 pp., \$22.84 (kindle), \$27.12 (paperback).

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### What Is Wrong with Human Rights?

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In 1942, under the shadow of World War II and the distressing situation of a divided and occupied France, Jacques Maritain wrote a small book which he described as “an essay in political philosophy.”<sup>1</sup> The author felt that not only civilization was at stake, but the need to win the peace after winning the war. This required a political philosophy able to keep totalitarianism at bay. Maritain was among the most famous French neo-Thomist philosophers, having written extensively about Aquinas’s metaphysics, epistemology, philosophy of nature, and ethics, but his own contribution to political matters had hitherto been scarce. It would probably have remained in the background had it not been for his active involvement in the UNESCO commission that debated the philosophical basis of the yet unborn Universal Declaration of Human Rights. The book-essay, entitled *Les droits de l'homme et la loi naturelle*, starts from the relations between person and society and argues that the recognition of the dignity of the human person had its apex in “Christian philosophy,” notwithstanding the acknowledgment of other contributions.

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<sup>1</sup> Jacques Maritain, *Les droits de l'homme et la loi naturelle* (Paris: Paul Hartmann Éditeur, 1943), 7.

The fundamental thesis of the book is that while the human person is by nature political and human society is a requirement of man's nature, the individual person matters. Political philosophy, "under penalty of denaturalizing itself, implies the acknowledgment of the fundamental rights of the person"<sup>2</sup>—including the aspiration to liberty. "Natural Law and the light of conscience do not merely prescribe what to do, or not to do, but acknowledge rights, in particular the rights tied to the very nature of man."<sup>3</sup> To sum up, Natural Law leads to the recognition of the rights of man as its corollary.

Pierre Manent, Raymond Aron's faithful assistant at the Collège de France, who nevertheless has declared himself in recent interviews to be intellectually closer to Leo Strauss than to Aron, has just published a small book with a title that seems to pay homage to Maritain's essay. The title, however, inverts the expressions and it reads instead *La loi naturelle et les droits de l'homme*. The book, while also concerned with a theme that both authors call the naturalization and denaturalization of man,<sup>4</sup> reverses not only the title but Maritain's fundamental thesis, despite Manent sharing with him a Thomism of sorts (through Louis Jugnet).<sup>5</sup> According to Manent, the language of human rights is in opposition to Natural Law, which, he argues, has been radically discredited by modern philosophy and despised by enlightened opinion, owing either to its archaism or to its opposition to the recognition and enforcement of human rights (1). To sum up, the rights of man necessarily result in the concealment of Natural Law.

Manent's recent book seems particularly harsh on the philosophy of human rights, often making sweeping statements (most of which the author of this review is in agreement with), and is always interesting and insightful. The book is probably *the* most important and ambitious work by Manent to date. Human rights theories are re-chartering all social life, and Manent aims at questioning and re-chartering the field of "human rights" theories, providing an original account of the modern state. We are in need of a map. This review essay's focus is on situating the work in the landscape of studies of human rights and, more closely, in the author's intellectual itinerary, while

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<sup>2</sup> Ibid., 15.

<sup>3</sup> Ibid., 67.

<sup>4</sup> See Pierre Manent, *La loi naturelle et les droits de l'homme* (Paris: PUF, 2018), 12–13, with Maritain, *Droits de l'homme*, 15. Parenthetical page references will be to the book here under review.

<sup>5</sup> Pierre Manent, *Seeing Things Politically: Interviews with Benedicte Delorme-Montimi* (South Bend, IN: St. Augustine's, 2010), 20–21; see on Strauss 49ff.; on the "triangle" Aron, Strauss, Maritain-Aquinas see 59ff.

marking the divergences and convergences between him and the philosophers that most influenced him: Aron and Strauss.

## I

The book was published a few weeks ago by the Presses Universitaires de France and is based on the six lectures given in the context of the Étienne Gilson Chair of Metaphysics, created in 1995 at the School of Philosophy of the Institut Catholique de Paris. The chair is generally awarded to a single holder by invitation, taking into consideration his reputation in historical or speculative research in the field of metaphysics, and involves delivering a lecture series in French. (Manent curiously mentions the word “metaphysics” only a couple of times, and as a close synonym of “chimera.”)

The book opens provocatively with a “great contradiction” or an indestructible knot. Following in Strauss’s footsteps in *Natural Right and History*, Manent argues that the notion of natural law, which in the past was at the center of political debate, is now forgotten, though not completely dishonored, since it is maintained within a certain Catholic tradition.

The impossibility of undoing the knot reveals itself in our present situation, which the author seeks to describe in a somewhat cavalier but not inaccurate survey (2). There is an undeniable duality of criteria between the West (*ici*) and the Rest (*ailleurs*). We live here. “We” are the citizens of modern democracies who adhere to the idea of justice that the Enlightenment has validated. In the West, the most venerable institutions are now subject to an unrestricted criticism that evaluates and reforms everything according to the standard of human rights. One sign of the severity of this evaluation, and of its dogmatism, is the request for public recognition for LGBT lifestyles and the enforcement of this criterion “without precaution or reservation” (5). The new discourse implies a metaphysical claim, which shouts: There is no Natural Law (18). Manent asks himself why so many citizens embrace these ideas as such evident and salutary truths that they call for the intervention of the secular arm of positive law. Later in the book he explains how destructive of social ties the philosophy of human rights is for society, to the extent that they involve the consideration of abortion, divorce, and euthanasia as human rights (as opposed, say, to lesser evils).

Here (*ici*) in the West, then, a desire to severely judge and to reform everything prevails. When, on the other hand, we speak of what goes on outside the West, abroad (*ailleurs*), it is our duty to avoid any evaluation, to

“neutrally” contemplate all mores and traditions, the exotic, even the most barbaric, as an ethnologist or a tourist would contemplate them. The clearest sign of this “schizophrenia” is the attitude towards Islam: rights are universal, but cultures are all of equal value and we must refrain from all indignation (4).

The duality of criteria, which seems to us to be in need of nuance, is certainly one that invites reflection. How convincing really is the argument that this reveals “a sickness of judgment” (7)? Not very.

On the contrary, it seems reasonable to defend such duality between “thick” or maximalist moral arguments “at home”<sup>6</sup> and “thin” or minimalist moral arguments “abroad,” for purely prudential reasons. Even in Manent’s own terms, within the framework of the Greek city, or of the modern nation—that is, according to him, the two most important political forms, which are the result of two “revolutions” in the dynamics of the West (94)<sup>7</sup>—we can, and the philosopher should, certainly judge the “soul” of these regimes. Within a familiar culture, we can devise a republic in words that are the yardstick for evaluating extant regimes. Abroad, and just as we enter new territory and move away from what is familiar to us in time or space, some cautious abstention from “strong” evaluations may be preferable, at least before we are able to understand others as they understand themselves. Moreover, the social scientist studying different civilizations and “tribes” does not wish to remain enmeshed in a learned parochialism.<sup>8</sup>

More promising is the idea that such “division and re-composition” between the “at home” and “abroad” has now become more complex with the arrival of those who come from outside and live among us. The clash between the various cultures and tribes has been what in the past triggered an inquiry into the nature of things and made us question the equation of the ancestral with the good, the natural with the manmade or conventional, the divine with the human.

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<sup>6</sup> Charles Taylor, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: University of Notre Dame Press, 1994). Even if we do not embrace this “division of the self” in the terms in which Taylor defends it, a duality of sorts seems to us unavoidable.

<sup>7</sup> See also Pierre Manent, *La raison des nations: Enquête sur la souveraineté nationale et les fondements de la démocratie* (Paris: Gallimard, 2006), 1: “Une forme politique—la nation, la cité—ce n’est pas un léger vêtement que l’on peut prendre et déposséder à volonté en restant ce que l’on est. Elle est ce Tout dans lequel tous les éléments de notre vie se rassemblent et prennent sens.”

<sup>8</sup> See Leo Strauss, “The Frame of Reference in the Social Sciences,” Leo Strauss Papers, box 14, folder 10, Special Collections Research Center, University of Chicago Library.

Even if we were able to discard entirely the duality of criteria that Manent calls the “great contradiction,” his instincts about our current predicament are surely right. Even those who, like him, defend the rights of nation-states to control immigration often resort to a rationale about human rights that can lead to the type of infinite extension of these rights that Manent fears.<sup>9</sup>

Successive waves or generations of “new rights” thus aim to eliminate all obstacles to individual freedom. The right to a universal income, for example, reveals according to Manent a profound trend in our society (91–92).

## II

Manent thinks that the authority of human rights derives from their presumed universality. This assertion, made in passing (5), requires an important qualification: if this certainly applies to the rights theories within modern philosophy generally, it is more problematic as regards the current version of those theories, at least since 1948. We now know better the intricacies involved in the Universal Declaration drafting process, since sources such as memoirs and the personal correspondence of its main protagonists have come to light.<sup>10</sup> Most such “narratives” obviously have, in tone if not in every detail, the character of a celebration, but most scholars agree that the problem of the universality of the new declaration cast a long shadow over the work of the UN human rights commission in charge of drafting the declaration. As soon as the plan was announced, the American Anthropological Association advised that the document should not be “conceived only in terms of the prevalent values in the countries of Western Europe and America.”<sup>11</sup> Serious doubts were raised early on about whether it would be possible to prepare a

<sup>9</sup> Although motivated by the same gut feeling as Manent as regards immigration, David Miller, for example, re-examines how the possibility of recognizing human rights is ascertained. The possible criteria he addresses are three: a specific right is necessary to fulfill an essential human need (direct argument); a right that is a means to realizing other, directly grounded rights (instrumental argument); and the rights recognized by a process known as “cantilever,” that is, levered or anchored in existing rights, because of the similarity with other rights already included in extant charters, which would make the rejection of new rights inconsistent. See David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016). See however Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), 245: “cantilever argument is only as strong as the foundation on which it rests.”

<sup>10</sup> The best accounts of the drafting of the Universal Declaration are Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001); Paul Gordon Lauren, *The Evolution of International Human Rights*, 2nd ed. (Philadelphia: University of Pennsylvania Press, 2003); and Johannes Morsink, *Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

<sup>11</sup> American Anthropological Association, “Statement on Human Rights,” 539.

document that all the represented nations would accept.<sup>12</sup> The framers of the declaration were more aware of the rupture with the past they were aiming at than the more recent defenders of human rights.

Let us briefly recall some details in the drafting of the Universal Declaration. Among the delegates to the San Francisco conference that established the United Nations was a young Lebanese philosopher, Charles Malik, a Greek-Orthodox Arab who had completed his PhD at Harvard on “The Metaphysics of Time in the Philosophies of Whitehead and Heidegger.” Upon arriving, he noted that many delegates from small countries, especially from Latin America, were disappointed with the agenda of the major powers. Malik also questioned the idea that it would be possible to maintain peace without addressing the underlying causes of conflicts. Eleanor Roosevelt, presiding over the drafting committee, later on declared: “Many of us thought that lack of standards for human rights the world over was one of the greatest causes of friction among the nations, and that recognition of human rights might become one of the cornerstones upon which peace could eventually be based.”<sup>13</sup> The Chinese nationalist delegate Peng-Chun Chang was the vice president of the commission, and Charles Malik was responsible for preparing the official reports of the group. Chang was educated in the 1920s under John Dewey at Columbia University and his frequent quotes from Confucius were often merely pragmatic suggestions for compromise.<sup>14</sup>

“Universality” was wishful thinking. Julian Huxley, the UNESCO director, upon hearing about the project created his own commission to investigate the potential for agreement among cultures. This other commission was presided over by the Marxist historian E. H. Carr and included Richard McKeon, a philosopher from the University of Chicago, and the neo-Thomist philosopher Jacques Maritain, who would become one of its most active members. The UNESCO commission sent questions to statesmen and academics around the world, including such figures as Mahatma Gandhi, Benedetto Croce, Pierre Teilhard de Chardin, and Aldous Huxley. To the commission’s surprise the lists of basic rights coming from the four corners of the globe

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<sup>12</sup> Indeed, the document to be drafted had to be vetted by delegates representing four-fifths of the world’s population. Of the original members of the UN, six belonged to the Soviet bloc, eleven were of Islamic culture; four had a large Buddhist population and thirty-seven were marked by Judeo-Christian culture and the Enlightenment.

<sup>13</sup> Eleanor Roosevelt, “The Promise of Human Rights,” *Foreign Affairs*, April 1948, 470, 473.

<sup>14</sup> On Chang, see Glendon, *A World Made New*, 33. According to his colleagues’ memoirs, he was at bottom a pragmatist. See John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, NY: Transnational, 1984), 17.

were roughly similar. The McKeon report concluded that it would be possible to reach agreement across cultures *on certain rights* which “may be viewed as implicit in the individual and individual nature of society.”<sup>15</sup> This optimism was not confirmed in the course of the drafting process, nor is “consensual” the right word to describe the final declaration, which is at best a problematic “compromise.” The illusion of consistency is the work of another dominant figure in the commission: the French jurist René Cassin. He was commissioned to give order to documents already prepared by John Humphrey, a Canadian academic and diplomat. Cassin was a secular Jew who had been a legal adviser to Charles de Gaulle. Thanks to Cassin, the document that emerged from the working group was an instance of continental codification in the Napoleonic tradition.

Approval of the final document was far from secure throughout the process.<sup>16</sup> Surprisingly, and although the debates dragged on for months, in the evening of December 4 the committee sent the document to the General Assembly for final approval. It was approved without any vote against and only eight (but significant) abstentions: the Saudis did not approve of marriage and divorce “by choice,” the South Africans did not approve of “nondiscrimination,” and some communists rejected “individualistic” political rights. Roosevelt, Malik, Maritain, McKeon, Cassin, Chang, and their colleagues had succeeded while remaining aware of the fragility of the document and the problems in its implementation. There was almost never universal agreement, and often not even a universal compromise.<sup>17</sup>

The framers of the contemporary Declaration of Human Rights were aware of its “novelty.” Malik’s presentation speech, on December 8, emphasized that, contrary to previous statements of rights, which had roots in *particular cultures*, this new Universal Declaration broke new ground, for it was “a composite synthesis of all these outlooks and movements and of much Oriental and Latin American wisdom.”<sup>18</sup> Malik’s own philosophy had been challenged

<sup>15</sup> UNESCO, *Human Rights: Comments and Interpretations* (London: Wingate, 1949), 259.

<sup>16</sup> On the contrary, at the time, each delay made the prospects darker with the onset of the Cold War and the problem of Palestine and the new State of Israel dividing the commission itself. See Humphrey, *Human Rights and the United Nations*, 63.

<sup>17</sup> The statement is nonetheless undoubtedly a monument, like the Justinian Corpus Juris Civilis, the Napoleonic Code, or the Constitution of the United States. See Mary Ann Glendon, *The Forum and the Tower*, 218.

<sup>18</sup> Charles Malik, speech to the General Assembly, December 9, 1948, in *The Challenge of Human Rights: Charles Malik and the Universal Declaration*, ed. Habib C. Malik (Oxford: Centre for Lebanese Studies, 2000), 117.

both by the Soviet bloc, eager to subordinate the person to the state, and by the “individualists” of the West, but Malik’s existential personalism, backed by Chang and the Latin Americans, left its mark in the document nonetheless. *But any position on the ultimate nature of reality was excluded.*

To sum up, the agreement was not profound. Maritain related the famous story of the man who expressed surprise at the agreement between so many different ideologies, to whom the answer would have been: “Yes, we agree on the rights, but on condition no one asks us why.”<sup>19</sup> Indeed, if we ask “why?” it becomes clear that no core values are shared, and not even an “overlapping consensus” is revealed. Universality was largely rhetorical, and for a long time its proponents did not consider such a composite to be philosophically interesting. Almost no one claims for it perfect consistency. It was not truly universal, but it was “new.” Raymond Aron, Manent’s mentor, stressed that despite apparent continuities, the new charter, making demands on the state, was essentially different from the French Declaration, which put individual rights in opposition to the state (or political authority). Inconsistent, without “whys,” the statement was “universal” only in the sense that the extent of its endorsement and its ambition was wide, not that it was the fruit of universal agreement.

### III

The so-called human rights philosophy trying to “make sense”<sup>20</sup> of these rights addresses a wide range of questions about not only their content, justification, legal status, and universality, but also about the *very existence* of human rights. Claims in the name of human rights gather strength, as Manent asserts, because they are assumed to be independent of cultural and legal traditions and justified by higher or universal standards. Such allegations have often caused doubt, leading some (such as Alasdair MacIntyre) to say that “there are no such rights, and belief in them is one with belief in witches and in unicorns,”<sup>21</sup> and some (such as Richard Rorty) to say that no justification is necessary, only a sentimental education, since “Serbian murderers and rapists...are not being inhuman, but rather are discriminating between true humans and pseudo-humans.”<sup>22</sup> But the new language is

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<sup>19</sup> See Maritain, introduction to *Human Rights: Comments and Interpretations*, 9.

<sup>20</sup> See James W. Nickel, *Making Sense of Human Rights*, 2nd ed. (Malden, MA: Blackwell, 2007), xii and ff.

<sup>21</sup> Alasdair MacIntyre, *After Virtue* (London: Duckworth, 2000), 69.

<sup>22</sup> Richard Rorty, “Human Rights, Rationality, and Sentimentality,” in *Philosophical Papers*, vol. 3, *Truth and Progress* (Cambridge: Cambridge University Press, 1998).



pervasive, and it shows the remarkable success of the Universal Declaration. Whether to preserve their own power or provide security to those they lead, dictators, military factions, and elected officials resort to such means as arbitrary detention, torture, murder of political enemies, and even genocide of entire populations. Such cases are now described as “human rights violations” and no longer as immoral, unjust, or even “barbarous” acts (which ultimately means strangers to our culture, without implying a hierarchy, as Manent notes).<sup>23</sup>

Behind the popularity of this “rights talk” is often the assumption (or the illusion) that debates about the rationale of universal human rights in a world of very diverse beliefs and practices will soon be an obsolete discussion. This seems plausible, considering that in recent decades there has been a growing acceptance of rights in new parts of the world. Most countries have ratified some of the main human rights treaties and are participating in regional conventions with international tribunals.

We may doubt the sincerity of some ratifications, such as that of the USSR in Helsinki, which may be merely the hypocritical homage that vice pays to virtue, to paraphrase La Rochefoucauld. The declarations are obviously not always enforced by their signatories. A rule may even be formulated: the more a country violates human rights, the more treaties it subscribes to. Since such violations are less frequent in more democratic countries, the benignity of the accumulation of treaties can be and has been questioned. But this expansion has a simple explanation: many countries use similar political institutions (that is, laws, courts, parliaments, executives, regular armies, bureaucracies, police, prisons, taxes, and public schools), which are now widespread throughout the world. “Globalization” has already reduced the differences between peoples, and eventually will make these differences negligible, or at least some dream in this way of a world beyond politics. In short, although some advocates of the rights talk, such as Ronald Dworkin and Jeremy Waldron, have come to the fore,<sup>24</sup> there is no lack of skeptics of various genres and species about human rights philosophy, going back to Bentham, who described them as “nonsense on stilts.”

Manent is among the skeptics. Assistant to Raymond Aron at the Collège de France, friend of Allan Bloom, critical admirer of Leo Strauss—he

<sup>23</sup> See Manent, *La loi naturelle*, 6–8 with James W. Nickel, *Making Sense of Human Rights*, xi.

<sup>24</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978); Jeremy Waldron, *Dignity, Rank, and Rights* (Oxford: Oxford University Press, 2012).

never understood the figure of the philosopher and is highly critical of what he calls Strauss's "naturalism" or "élétisme."<sup>25</sup> (!) Manent already wrote his own "narrative" of the emergence of human rights in his 2004 book *Cours familier de philosophie politique*.<sup>26</sup> He there asserts that "the notion of human rights is today the common political and moral reference point in the West" and that "every political party, school, and 'sensibility' appeals to it,"<sup>27</sup> and he emphasizes that such unanimity is extremely rare. He suggests that it would even be necessary to go back to the fourteenth century to find a similar consensus. The "unanimity" to which he refers is what others have called "rights talk." It is manifest in the fact that even to celebrate "difference," we claim the universal *right* to difference, conflating two distinct concepts. Yet difference can in fact alternatively be supported by a duty: the Muslim difference can be framed by the duty to be a Muslim.

In 2004 Manent acknowledged that such unanimity is a recent phenomenon. Although taking root in the charters drafted after the French and American Revolutions, it was only in the 1970s and 1980s that it became an uncontested reference point in the West.<sup>28</sup> Communist dissidents did not invoke an alternative regime, but instead demanded respect for human rights, that is, for certain elementary principles which the communist governments had vowed to respect by signing the Helsinki Accords, including its provision about the free movement of people.

The novelty of the recent human rights movement lies in its *apolitical* nature. Human rights language was not often used in "civic discourse" before the 1970s. The 1789 declaration was a declaration of the rights of man and citizen. As Aron and Arendt stated, human rights make little sense without citizenship. In the nineteenth and twentieth centuries, there was a recurrent tendency to inscribe charters of human rights (and sometimes duties) in political constitutions, which is why John Humphrey was able to put together a volume comprising what the UN proclaimed to be "the most extensive documentation on the subject of human rights ever assembled."<sup>29</sup> But the framework, as Manent remarks, was that of the nation-state. The situation

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<sup>25</sup> Pierre Manent, *La cité de l'homme* (Paris: Fayard, 1993), 96. See Daniel Tanguay, "Pierre Manent et la question de l'homme," *Politique et Sociétés* 22, no. 3 (2003): 71–98.

<sup>26</sup> Pierre Manent, *Cours familier de philosophie politique* (Paris: Gallimard, 2004), translated as *A World beyond Politics? A Defense of the Nation-State* (Princeton, NJ: Princeton University Press, 2006).

<sup>27</sup> Manent, *A World beyond Politics?*, 98.

<sup>28</sup> *Ibid.*

<sup>29</sup> Human Rights Commission, Third Session (E/CN.4/SR.64, pp. 5–6).

has changed: “The insistence on human rights today has an undeniably anti-political flavor.”<sup>30</sup> Military service and even voting are held to be cumbersome, if not synonymous with coercion—something that for Manent is equivalent to the dismantling of the republic.

Manent’s *précis historique* did not ignore the opposition to human rights by the church, which changed only in 1965, with the Declaration on Religious Liberty. This marked the end of the opposition of the rights of God and the rights of truth to the rights of man, despite the church, even today, fighting against the current on issues such as abortion, sexuality, and marriage. The other source of opposition to the language of rights that Manent points to was “Burkean.”<sup>31</sup> It came from the opposition to a “metaphysical” idea which asserted that man was born without ties or chains.<sup>32</sup> Marx curiously sided with the conservatives and was among those who opposed human rights as illusory, and Manent pays homage to Marx’s insight about the link between “individuality” and selfishness.<sup>33</sup>

Taken at face value, Manent’s survey of human-rights critics is a warning against the tendency towards “taking human rights for granted.”<sup>34</sup> But he immediately adds that the very idea is “problematic.” We do not even have a clear notion of what human rights are, except perhaps that we live in a democracy whose purpose is to protect them. He points to an interesting study to be done, about the history of our institutions and how they were shaped by the declarations, but he puts this aside and diverts his attention to its “fundamental spiritual meaning.”<sup>35</sup> Simply put, before 1789 the framework in which man lived was not of human creation; man lived *sub lege Dei*. But henceforth the revelation of the Law of God was replaced by the “Rights of Man” (in uppercase). Man reached his maturity with the Enlightenment, adopting Kant’s motto: *Sapere aude*. Man has gone from heteronomy to autonomy. Obviously, free and equal birth is not a biological birth, but the “abandonment of the state of nature.”<sup>36</sup>

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<sup>30</sup> Manent, *A World beyond Politics?*, 99.

<sup>31</sup> *Ibid.*, 100.

<sup>32</sup> *Ibid.*, 101.

<sup>33</sup> *Ibid.*, 104–5.

<sup>34</sup> *Ibid.*, 101.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 103.

Only those who have been inattentive to Manent's earlier thought will be surprised to find him among the human-rights discontents. But why exactly does Manent oppose human rights? There are evidently many species of skepticism, which Beitz, in a recent book, catalogs properly: those who question their feasibility, those who question their universality, those who question the very concept as vacuous, and so forth.<sup>37</sup> Manent's antagonism is not like that of Aron, who judged "rights talk" to be inconsistent, ineffective, and utopian, or that of Strauss which stressed their low, dogmatic, and incoherent character. Manent considers them to be extremely consistent<sup>38</sup> *and very effective*. Harking back to his first work on Tocqueville, Manent distinguishes the art of democracy from the nature of democracy,<sup>39</sup> noting that "individualism" is recent. Individualism is not eternal "selfishness": it is a feature of the man who isolates himself in a democracy, which fatally "dries up the public virtues."

Manent comments extensively on the passage in which Tocqueville describes the transition from aristocracy to democracy.<sup>40</sup> In aristocracy, man was always attached to something outside himself, to the point of self-forgetfulness, while in democracies human bonds are both extended and loosened. But Manent seems even more dismayed than Tocqueville about the trade-off presented by the new situation: In aristocracies "one hardly thinks of dedicating oneself to the cause of humanity" because the notion of human nature is "obscured." Democracy, on the other hand, follows a trend towards the denunciation of the "imposture of human bonds," a denunciation that is implicit in what it is "to become an individual." (Aron, by contrast, attached great importance to aristocratic "obscurity," and never abandoned the aspiration, looming on a distant horizon, to the difficult recognition of the humanity of the "other.")

For Manent, the main problem, what makes him skeptical, is that the idea of "humanity" is as empty of content as the man from Mesopotamia in Ortega y Gasset's tale about Victor Hugo. Hugo, unable to recall anything significant about its people, greets the ambassador of Mesopotamia as the representative of "humanity." For Manent, the feeling of humanity does not evoke any truly human figure, and this "void" gives rise to a new religion: the

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<sup>37</sup> Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 3–7.

<sup>38</sup> But see Manent, *La loi naturelle*, 124.

<sup>39</sup> Manent, *A World beyond Politics?*, 111.

<sup>40</sup> *Ibid.*, 111–20. The passage is Tocqueville, *Democracy in America*, ed. and trans. H. Mansfield and D. Winthrop (Chicago: University of Chicago Press, 2000), 482–83.

religion of humanity based on the spiritual power of the scientists. This faint copy of Catholicism seems today a bit ridiculous, or would seem so, had it not been very much alive in the efforts to secularize Western society. Nietzsche was therefore right about the despicable platitude of the last man and his “invention of happiness,”<sup>41</sup> which is a mere contentment. But Nietzsche’s alternative was to create new values: the idea of nature was almost forgotten.<sup>42</sup>

The historical panorama, which is sometimes painted by Manent with broad strokes, has an undeniable vigor and accuracy. The novelty of human rights born after 1948 and expanding in the 1970s and 1980s, which some historians relate to the failure of all previous utopias,<sup>43</sup> seems nevertheless forgotten in *La loi naturelle et les droits de l'homme*. The new book focuses instead on the project Manent put on the back burner but announced in his previous book: showing how our institutions have been shaped by human rights declarations. While seeking for the philosophical view behind the present declarations (plural—they multiplied), it might at first glance be thought that their “novelty” should be sought in the more recent “wave of modernity” that arises from Nietzsche and is shaped by Heidegger. (Heidegger’s and Whitehead’s historicism certainly inspired Malik, one of the framers of the 1948 declaration.)

But that is not the route that Manent follows. Instead, he now looks into contemporary human rights and what he sees at their core is a Hobbesian world, built on “*les conseils de la peur*” and disfiguring the idea of Natural Law. That is, he looks into the “first wave” of modernity and into the city *tanquam dissolutio* (9) to explain the current success of the philosophy of human rights.

To be clearer, Manent flattens out what Strauss calls the various waves of modernity.<sup>44</sup> Manent moves easily between the work of Machiavelli, Hobbes, and Rousseau, but ignores Nietzsche’s value creation and the wholly arbitrary dependence on the “spirit of the time” that Heidegger upholds and of which Charles Malik became a spokesman in the drafting—all of which seem to belong to Leo Strauss’s third wave of modernity. (It is true that even for

<sup>41</sup> Manent, *A World beyond Politics?*, 127.

<sup>42</sup> *Ibid.*, 128, 130.

<sup>43</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010) and Jean Cohen, *Globalization and Sovereignty* (Cambridge: Cambridge University Press, 2012) are the best accounts of the history of international human rights after 1948.

<sup>44</sup> Leo Strauss, “The Three Waves of Modernity” (1975), in *An Introduction to Political Philosophy: Ten Essays by Leo Strauss*, ed. Hilail Gildin (Detroit: Wayne State University Press, 1989), 81ff.

Strauss the germs of Heidegger are in Hobbes: we are all alone. We therefore have no duties. We are alone because we die alone. Anxiety is the deepest feeling. And feeling—passion—is deeper than reason). We may think, however, that Manent's earlier intuition was well founded. During the drafting of the UN Universal Declaration of Human Rights, the use of expressions found in the American Declaration of Independence (namely, to redact Article 1 as follows: "Created in the image and likeness of God, [men] are endowed with reason and conscience"), as well as a tribute to Locke and a possible reference to Natural Law, were discussed. The final wording resulted in what one scholar describes as "a bargain about God and nature."<sup>45</sup> Despite the profound influence of Christianity and other religions that resonates in expressions such as "shame" and "human dignity," any references to God, nature, or reason were avoided. The document assumes that moral and political agreement can stand on its own without reference to any religion or philosophy. This type of moral-nonreligious theory is recent.<sup>46</sup>

We must perhaps move away from the idea that human rights are the result of a long and uninterrupted history and pay careful attention to the most recent changes in the understanding and advocacy of them. Although cultural changes are often difficult to date (the more so since they create their own prehistory), in other cases the breakdown is so overwhelming that it does not seem difficult to choose a moment. It seems to us that human rights as we conceive them in the international sphere are indeed very recent, and began in 1948 with the Universal Declaration.

The main change from modern natural law from 1948 to the present is that by default we are all historicists: we have difficulty imagining that every thought is not a function of time and place. Liberals used to be universalists, but today they prefer to appeal to liberalism's "tradition" of human rights than to "natural rights." Historicism is the basic presumption common to today's democracy. We also assume that all philosophy is essentially historical, that is, that it is the expression of the spirit, "soul," or situation of the time, and the (immutable) biological nature of man consists in his historical being.

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<sup>45</sup> Morsink, *Universal Declaration of Human Rights*, 284–302.

<sup>46</sup> Because widespread disbelief in God is so recent, "Non-Religious Ethics is at a very early stage" (Derek Parfit, *Reasons and Persons* [Oxford: Clarendon, 1984], 454).

## IV

Whatever the case, Manent's new book will stir some waves on an otherwise quiet lake. On the seventieth anniversary of the Universal Declaration's approval, Manent appears as the uninvited guest disturbing the celebration. The notion of natural law, he claims, has become unintelligible and at the same time scandalous: according to prevailing opinion, natural law subjects human life to a dogmatic truth about man and ignores what is more proper to man, his original freedom, which makes him the sovereign author of the human world. But, Manent points out, this makes us slaves of a necessarily false or mutilated idea of ourselves. At the same time, our societies are subject to an ever more radical idea of human rights, on behalf of which the most venerable rules and institutions of civilization are reconstituted.

The book has the important virtue of clarifying why the considered idea of a universal human nature, or of "humanity as such," is empty. The philosophy of human rights (in modernity, we add) was born against the idea of natural law in the Christian context, with recourse to the idea of a fictitious state of nature. A beginning in freedom replaces the biblical idea of a humanity under the law. Obviously, a reference to nature cannot be entirely avoided, and indeed the idea of the doctrine of human rights is based on a certain idea of nature, but its holder is the individual, separated from others, made concrete by his biological nature as a living being and only afterwards enriched by all social determinations (9). To mention "biological nature" is, however, somewhat inaccurate: "the biological nature, being alive, is based on the sexual difference, which is the principle of reproduction and, therefore, the difference of generations. Now the nature that keeps men apart and free is the nature emptied of all ties, indifferent to the differences of sex, age or ability, the same for the members of the species. Nature devoid of inner complexity and depth, which teaches us nothing about what it is to be human, because a liberation from all ties, devoid of natural motives—desires, inclinations, ideals—is not human" (10).

Nature in modern philosophy is a raw fact that we can construct and deconstruct at will, like "Meccano." It does not include any relation to "dispositions, purposes or institutions proper to human beings" (11) and with its silence affirms that there is nothing natural beyond the individual. The authority of nature has not really been abolished, but it is not a "culture," it does not imply a good society (13). The power of nature henceforth "translates" into the thirst for a permanent effort to rebuild the human world artificially (13), while reversing the rules of the public and the private. By this Manent means that human "identity" is for the moderns a choice, entirely denaturalized in

the name of human rights (15). Henceforth, what before was private is now a public matter: prevailing opinion turns sex into gender and turns homosexual deviance contrary to physical nature into a chosen orientation, and the desire of male and female for each other is but a social construction (16).

In short, Manent contends, human nature is never naked; it is only our cultural relativism that validates almost all the rules followed in other cultures, at the same time as it judges and wants to reform all the rules followed here. Manent suggests the rationale behind such an idea of nature is an idea so poor that it would be compatible with all cultures. From this he goes on to argue that human nature cannot remain poor and naked.

The presumed “evidence” of the endorsement of enlightened opinion leads the author to a retrospective of the origin of modern natural law, which forms the center of the small book, going back to Hobbes (and from Hobbes to Machiavelli), Rousseau, Luther, and so on. It is difficult to describe the depth of the intuitions that pervade the book, if not only because many theses may surprise the reader. To mention just a few insights: Machiavelli, who does not deal thematically with natural law (32), proves in fact that imaginary men are the real ones, because Machiavelli’s starting point is the “*tanto discosto*” (the great distance) between real and imaginary men (29), but it would not be possible to define a practical policy arising from Machiavelli’s words (37); Luther recognizes as equals the just and the sinner (45); the difficulty with Hobbes’s thought is not his unrealism, but his meaninglessness (53) because in the state of nature there are no rights, which cannot exist or can make no sense in a lawless world (56).

This latter idea is Manent’s point of support for the narrative of the construction of the modern state, which is inconceivable without the philosophical elaboration that accompanies or guides its formation (93). The state is the apparatus that irresistibly produces the obedience of its “shareholders” (*sociétaires*) but it has a reverse: the state that claims obedience does not command or “order” the human world, or at least it ignores the principles of its order and lacks purpose. The modern state imposes peace within its borders, but it ignores the kind of peace it imposes because it lacks the inner sense that gives meaning to the external order of the human world (71). Moreover, in representative regimes the citizen does not obey; he consents. The *archē* of the polity is dismembered.

Manent’s new book is probably his most important and ambitious work, considering both the wide landscape he portrays and its originality.



Moreover, “without vanity” (120), near the end of his essay he advances a “simple” solution to the dilemmas involved in the inference of value statements from statements about facts. These dilemmas tormented important modern philosophers, namely, Hume, Kant and all those in their wake who turned an absurd mouse into a mountain (to paraphrase Horace).<sup>47</sup> Manent has been able to solve it, based on very modest principles (123) whose evaluation he leaves to the reader (113): between the is and the ought there is no abyss or pit, just a gentle slope (*pente douce*).

Carefully considered, according to Manent, all proper human action implies a balance between three motives, the “agreeable,” the “useful,” and the “honest,” which includes the fair and noble (*bonum honestum bonum utile bonum delectabile*).<sup>48</sup> No human being is moved by something that does not belong to this trilogy of goods (114). Manent does not define the “scholastic concepts” but they have roots in classical ethics. The good man acts with a view to the noble,<sup>49</sup> but to be happy every man needs external goods (loosely, the useful), goods of the body (the agreeable) as much as he seeks the goods of the soul, which are superior (or in Aquinas the moral good, *bonum honestum*).<sup>50</sup> According to Manent no one is able to evade the force or power over human action of these three motives, and no one can modify this “rule of action” at will. It is part of our common nature as men. The ideas of the honest or noble have a particular plasticity and vary greatly with time and place, which explain the “infinite diversity of laws and customs” that the social sciences discover and that might, in ignorance of this plasticity, seem incompatible with the stability and constancy of human nature.

Manent judges that the phenomenology of this diversity does not affect the practical man, who is always moved by the same three motives (115, 119), which are found everywhere (like fire in Persia and Greece, we assume). They are the source of the rules of justice accepted by all; they provide the criteria

<sup>47</sup> Manent reverses the famous saying: “parturiunt montes, nascetur ridiculus mus” (the mountains are in labor, [and] an absurd mouse will be born) (Horace, *Ars poetica*, 136–39).

<sup>48</sup> Aquinas, *Summa theologiae* II-II q. 145, a. 3; Cicero, *De invent. rhet.* 2.53. See, on this terminology, Stephen F. Brown, Thomas Dewender, and Theo Kobusch, eds., *Philosophical Debates at Paris in the Early Fourteenth Century* (Leiden: Brill, 2009), 169ff.

<sup>49</sup> Cf. Aristotle, *Nicomachean Ethics* 4.1.1120a20–25, etc.

<sup>50</sup> But if Manent is looking for perennial “motives” (as opposed to “goods”) of the action, he does not really evade controversy, considering that per Hume, Christian virtues such as “celibacy, fasting, penance, mortification, self-denial, humility, silence, solitude, and the whole train of monkish virtues” are neither *agreeable* nor *useful*. On the contrary they “stupefy the understanding and harden the heart, obscure the fancy and sour the temper” (David Hume, *An Enquiry concerning the Principles of Morals* [Oxford: Clarendon, 2006]).

for the rules of human action. Such rules of action are the essence of Natural Law, but they cannot be isolated from a culture or particular “city.”

Moreover, these rules do not apply only to man in isolation—to a Robinson Crusoe on an island—but make it possible to evaluate “a society, a regime, an institution that does not make enough room for the three main ‘motives’ and therefore to evaluate whether such a society, regime or institution is against Natural Law” (120). Manent at this point offers his most unfortunate example: communist regimes (like all regimes) can be assessed by the importance they attach to the three human goods. Communist regimes showcase themselves to the most naive of travelers as regimes not providing enough room to the “useful” and the “agreeable” (122) and thus making it possible to immediately establish that they are not in accordance with Natural Law. Oddly, nothing is said by Manent about police, political prisons, concentration camps, torture, censorship, freedom of thought, oppressive “secular religions,” the Big Lie, or, in general, tyranny in communist regimes.<sup>51</sup>

Manent seems to think that such a “simple and concrete criterion” (123) as he lays out allows us to judge the adequacy of a regime, but his critique of communism seems superficial. Raymond Aron asserted more clearly than Manent the difference between regimes that have imperfections and the “essential imperfection” of totalitarian regimes. Moreover, the poverty of the evaluation of regimes seems inadequate when compared to Manent’s own criticism of modern representative democracy. With such a “simple and concrete criterion” as Manent gives us, Plato’s presentation of his best city and Aristotle’s dialectical presentation of his *politeia* would be much abridged.

Manent is of course right to argue that it is appalling to see how easily “eminent modern philosophers” such as Kant accepted without question the Humean dichotomy between means (which we can evaluate on the basis of a “moral arithmetic”) and ends, so freely chosen that it is impossible to rationally evaluate or decide between our goals, be it the destruction of the whole world or the scratching of a finger. However, it seems that Manent’s alternative gentle slope could also lead us to an abyss or a pit. The reader may find himself hesitant to agree with Manent’s modest principles.

## V

Let us avoid any ambiguity. We find it sound to recover the idea that natural right is in the first place the natural order of virtues or “the natural perfections of the human soul (cf. *Laws* 765E–766A), as well as the natural order

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<sup>51</sup> Cf. Taylor, *Thick and Thin*, 63–64.

of the other things that are by nature good.”<sup>52</sup> Such an approach is very different from the usual inference of a set rules of natural law with no ifs and buts, derived from an abstract idea of human nature. Strauss, for example, went even further than Manent and stated in a letter to Helmut Khun that if justice is taken as all-inclusive virtue, this (Platonic) doctrine of “the order of the soul and of the order of the virtues *is the doctrine of natural right*.”<sup>53</sup>

But it was not without reason that Strauss preferred to speak of “natural right” instead of Natural Law, as Manent and Maritain do, and the difference is substantial. This was not only because the conjunction of “nature” and law” is in a way an oxymoron, law being manmade and therefore necessarily nonnatural. Nor was it simply because the idea of Natural Law implies a “legislator,” as in the prephilosophical idea of a divine law common to all peoples, or in a theological context such as we find in Aquinas.<sup>54</sup>

Strauss however expressed his view as follows: “There is a universally valid hierarchy of ends, but there are no universally valid rules of action.”<sup>55</sup> He judged that such hierarchy was insufficient to assess what is right *here* and *now*. He moreover deemed that even *premodern natural right* in the classical tradition of natural right was not of the kind that can be expounded as a scheme independent of all positive law. Premodern natural right was instead, he argued, the framework for all positive law. Manent’s “simple” scheme is, by contrast, a scheme.

Jacques Maritain, from an explicit Christian or theological perspective, devised a gradual continuity between natural law, the “common law” (as manifested in the *jus gentium*), and positive law (*droit positif*). That is why he deemed useful a positive “law” stating the rights of man.<sup>56</sup>

Manent therefore deviates from Aron, Strauss, and Maritain, and upholds a strict opposition between natural law and human rights, and in fact re-charters the field of human rights philosophy. But we may wonder if such “language” is in fact entirely useless for addressing any and all practical questions, here and now, and for justifying political action at home and abroad.

<sup>52</sup> Leo Strauss, “Natural Law,” in *International Encyclopedia of the Social Sciences*, ed. David L. Sills (New York: Macmillan, 1968), 11:80.

<sup>53</sup> Strauss, letter to Helmut Khun, n.d., *Independent Journal of Philosophy*, no. 2 (1978): 24.

<sup>54</sup> G. E. M. Anscombe, “Modern Moral Philosophy,” *Philosophy* 33, no. 124 (January 1958): That “the concept of legislation requires superior power in the legislator” seems commonsensical.

<sup>55</sup> Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1965), 162.

<sup>56</sup> Maritain, *Droits de l'homme*, 72–73, 75.