

KELVIN KNIGHT

An Argument within Aristotelianism: Maritain and MacIntyre on the Theory and Practice of Human Rights

ABSTRACT: *Jacques Maritain and Alasdair MacIntyre are two of the leading Thomistic Aristotelians of the past century. Their most striking difference is on the subject of human rights, and this paper explores their rival approaches. It first attempts to explain Maritain's move from rejection to promotion of human rights, and to demystify his historical role in their political actualization. It then grounds MacIntyre's own rejection of such rights in his concern with social practice, whilst comparing this sustained concern with the similar concerns of the young John Rawls and John Searle. It concludes by enquiring whether the increasing institutional actualization of human rights weakens this ground for their rejection.*

KEYWORDS: *human rights, Jacques Maritain, Alasdair MacIntyre, social practices.*

Alasdair MacIntyre's critique of human rights is informed by a conception of human agency and ethical practice, and of its social and natural conditions, which he identifies as Thomistically Aristotelian. He has always considered human rights to be a "moral fiction", as he famously put it in *After Virtue*. That he has never tired of pressing this critique is due to the incompatibility of human rights with his idea of the social conditions of human agency.

Jacques Maritain was the most famous living Thomist when MacIntyre first encountered the philosophy in the 1940s, and his fame remained when, a decade after Maritain's death, MacIntyre followed him in becoming a philosophical convert to Roman Catholicism. That the Church which MacIntyre joined was very different from that joined by Maritain owed something to Maritain's own influence, and owed much to the history that Maritain both exemplified and theorized. Nothing exemplifies the philosophical difference between them, and between their different kinds of Thomistic Aristotelianism, than their rival approaches to human rights. This paper contrasts those different approaches.¹

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1. MARITAIN, AND HISTORY

Maritain's move toward human rights began with his attempt to justify philosophically the Papal condemnation of *Action française*. Previously, he had been one of the intellectual leaders of this movement, which was accused in the first academic treatment of the generic history of fascism of having been its 'first face' (Nolte 1965). Catholics' common longing to return to the institutions of mediaeval Christendom had seemingly been underpinned by Papal endorsement of the mediaeval philosophy of St. Thomas Aquinas. In France, therefore, Catholics had supported *Action française's* reactionary, anti-republican politics of monarchism and so-called "integral nationalism". The Papal condemnation therefore came as a shock, not least to Maritain. Although interested primarily in metaphysics, he had contested the idea of necessary progress in *Theonas*, characterized his own position in and as *Antimoderne*, and attacked the intellectual modernism of Luther, Descartes and Rousseau in his influential *Three Reformers*.

Three Reformers argued that "the modern world confounds two things which ancient wisdom had distinguished. It confounds *individuality* and *personality*" (Maritain 1928, 19, Maritain's emphases.). Whereas individuality is natural, temporal and particular, personality is spiritual, transcendent and universal. This analytic, conceptual distinction between the bodily matter and spiritual form that together constitute human being remained the first metaphysical principle of Maritain's practical philosophy, even as he came to progressively embrace and celebrate modernity. For Maritain, this personalist premiss was theistic and Thomist. Nonetheless, it came to function in his practical philosophy in a similar way to that in which the distinction between natural individuality and free personality functioned in the philosophy of Kant.

Maritain's first move upon accepting the condemnation was to elaborate an "integral *humanism*" in opposition to any racist or "naturalist conception of patriotism" (Maritain 1939. 73) and, increasingly, to what in *Man and the State* he eventually called "the plague of Nationalism" (Maritain 1998. 5). Rather than integral nationalism's prioritization of politics, integral humanism was to give primacy to the personal and spiritual over the individual and temporal, including the political. As natural individuals, human beings are merely dependent "parts" of the analogical body politic. Conversely, as spiritual persons they have the dignity of being "wholes" in themselves, properly independent of any temporal command. The temporal end and good of human beings may be understood as "a progressive conquest of the self by the self accomplished in time", an *integration* of the personal and spiritual with the individual and material that gives primacy to the spiritual as "a center of liberty" (Maritain 1995. 247, 245).

The common, temporal good is what Maritain calls an "infravalent end". This way of characterizing such a good is absent from Maritain's *The Degrees of Knowledge*, which concerned only the metaphysics of being and not of historical time,

but is introduced the following year in *Freedom in the Modern World*. Here he distinguished the concept of a simple “means” to an end from that of an “infravalent” or “intermediate end (which is a true end though it is subordinated to a higher end)”. Understood as a mere means to salvation in mediaeval Christendom, “the common good of the temporal order” has now become both an “autonomous” and an “intermediate end” (Maritain 1996a. 57). Repeated in a more theoretical text, Maritain proposed a “conception of the temporal as an order of means and ends with its own last end *infravalent* and subordinated with regard to the ultimate supernatural end” (Maritain 1940a. 128). This was to remain an important component of his conceptual scheme.

For almost all Catholics, the restoration of social order had meant restoring mediaeval institutions and, as Maritain now put it, “prop[ping] the altar against a worm-eaten throne” (Maritain 1931. 18). What he proposed instead was replacing the mediaeval “ideal of the Holy Roman Empire” with “a new ideal” (Maritain 1931. 27). Following Renaissance and Reformation, Revolution and Republic, changed conditions preclude any universal alliance of temporal and spiritual powers. The mediaeval ideal “of the Emperor on the summit of ... the body politic of Christendom”, “a ‘myth’ strictly appropriate to the cultural conditions of [its] time”, presupposed “a vast ignorance of the universe and an imperious optimism” that “earthly institutions ... are at the service of God” (Maritain 1931. 14–15). For Maritain, this ideal belonged irretrievably to the past. Thomists must not make the idealist error of assuming a single, unchanging form of the political good. God may be unchanging but the world is not. Since human beings are necessarily caught in the flux of historical change and particularity, the universal can and should be approximated to in different ways under the differing conditions of time, place, and culture. “The defenders of tradition” must not “repeat ... the same sort of mistakes in ... practical and social philosophy” that they had once made in condemning Galileo (Maritain 1940b. 164). Indeed, to avoid such mistakes, he proposed “a sort of ‘Copernican revolution’ in the[ir] conception of political activity”. He advised Christians not, as they had, to take their political starting point from any prevailing order but, rather, “to begin with oneself” (Maritain 1996b. 311).

What Maritain advocated was a *new* Christendom, different from but analogous to the old. This emergent society would “reproduce in an analogous fashion certain characteristics of medieval civilization” (Maritain 1996a. 32), being similarly ordered to the common good, but in an entirely new form. This innovative extension of “the philosophy of analogy” (Maritain 1996b. 240; Maritain 1995. 442–45.) from being to time enabled him to claim a Thomistic warrant in correcting what he considered to be errors within Catholic politics.

In not assuming a single, unchanging form of the political good, Maritain was able to pose his new Christendom as a “concrete historical ideal” (e.g. Maritain 1996b, 233–313). From the observed fact that history is the product of persons’ free will and agency, he had inferred that there can be no necessity to progress

(Maritain 1933. 117–28, 149–50). Although change is inevitable, its direction is not. A “*historical ideal*”, he now added, is something singular and unique that *may* be made, in time, by free human agency. Such a metaphysical ideal can *inform* action, in the sense that it can motivate and guide action by providing a target at which to aim. He argued that people *ought* to propound and pursue a “concrete”, materializable ideal, because moral progress really *can* be actualized through such “a definite enterprise in history-making” (Maritain 1940a. 75; 1996a. 78; 1996c. 134).

Politically, Maritain attempted to take sides with good and against evil. Even if this did not side him unequivocally with republicanism in the Spanish civil war, it certainly opposed him to nationalist atrocities and, therefore, to the majority of his fellow Catholics. Soon after the fall of France and the rise of Vichy, he overcame any equivocation and sided straightforwardly with the wartime alliance of United Nations. It was these allies who represented moral and political progress. Once again, politics assumed primacy.

On 18th January 1942 Maritain publicly committed himself to the idea of human rights. Seventeen days earlier the Arcadia Conference, hosted by Franklin Delano Roosevelt and attended by Winston Churchill, had issued the Declaration by United Nations. This committed 18 governments and 8 governments-in-exile “to preserve human rights and justice in their own ... [and] other lands”. Although France was not yet a signatory, Maritain had identified the universal agency of political progress and history-making with which he must now side. His political task was to adopt the political terms and concepts that might be used to secure an alliance of Americans and Free French, whilst his philosophical task was now to theorize and elaborate that agency’s *telos*, its concrete, “noble and difficult historical ideal, capable of raising up and drawing forth ... goodness and progress [as well as] men to work, fight, and die” (Maritain 1942. 123–24). From here onward, human rights were to be focal to the infravalent end that was his concrete historical ideal.

Maritain’s declared his commitment to human rights fifteen years to the month after quitting *Action française*. Until quitting, he had mocked the “religious pomp [with which] the modern world has proclaimed the sacred rights of the individual”, opposing the particular “rights” of the Church and the family *against* the equal rights of human individuals (Maritain 1928. 19). In a remarkable reversal, he now announced that the sacredness of the rights of the person is really proclaimed by the classical tradition of natural law:

The human person possesses rights because of the very fact that he is a person, a whole master of himself and of his acts, and who consequently is not merely a means to [an] end, but [is] an end, an end which must be treated as such. The expression, the dignity of the human person, means ... that by virtue of natural law the human person has the right to be respected, is a retainer of rights, possesses rights. (Maritain 1942. 118.)

In *The Rights of Man and Natural Law* he identified human rights with

the ‘myth’ which temporal history needs. If we understand it as applying to states where human existence is progressively established by the structures of common life and civilization, it concerns history itself and represents a ‘concrete historical ideal’, imperfectly but positively realizable. (Maritain 1944. 29.)

He repeated a formulation from *Three Reformers*, that the common good of persons in society is common “*to the whole and to the parts*” (1944. 9, Maritain’s emphasis; 1928. 23, Maritain’s emphasis). It is, that is to say, an attribute of both the community as a whole and of those persons who participate in the community, who are themselves wholes of another kind. His position is therefore “*communal and personalist*”, as he put it elsewhere (1996a. 27, 31, 32, 32n., Maritain’s emphases). For Maritain, whereas human beings are creatures of God, the political community is a human and historical construct. What had changed was not so much his conception of our nature, or even of the nature of the common good, but his appraisal of intellectual, political and moral enlightenment, and, more especially of the idea, politics and ethics of rights.

Having once opposed France’s republic, he now worked to recruit one republic to fight for the restoration of another. Catholics should not resist the rights of man and the citizen. Rather, they should embrace *civil* rights as granting them independence from “the things that are Caesar’s”, and should embrace *human* rights as an aspect of the universality and, indeed, the *naturalness* of natural law, and should identify the enlightened progress of moral conscience as an increasing recognition of that natural law. “A right”, he later reflected, is “a requirement which emanates from a self with regard to something as *its* due, and which other moral agents are bound in conscience not to frustrate” (Maritain 1990. 187).

The familiar claim that Maritain was an author of the Universal Declaration of Human Rights (UDHR) is entirely false. What he did contribute to was a virtual United Nations Educational, Scientific and Cultural Organization “symposium”, at the invitation of his old rival, the independently minded scientific humanist Julian Huxley. Far from contributing to the UDHR, this symposium was politically marginalized and its publication prohibited until after the Declaration. In his introduction to the eventual book, Maritain noted the diversity of approaches to rights and

the paradox ... that ... rational justifications are at once indispensable because each one of us believes instinctively in the truth, and will only assent to what he himself has recognised as true and based on reason [and yet] are powerless to bring about a harmony of minds because [the justifications] are fundamentally different, even antagonistic and the philosophic traditions to which they are related have long been divergent. (Maritain 1949a. 9.)

He referred back to his opening speech to the second annual conference of UNESCO, in which he opposed Huxley's intellectual ambitions by proposing that international intellectual collaboration aim not at philosophical agreement but, rather, at what we might call an overlapping consensus. Huxley was heir to British idealism. In contrast, Maritain sounded almost Wittgensteinian:

However deep we may dig, there is no longer any common foundation for speculative thought. There is no common language for it Agreement ... can be spontaneously achieved, not on common speculative notions, but on ... the affirmation of the same set of convictions concerning action [which] constitute ... a sort of unwritten common law It is sufficient to distinguish properly between the rational justifications ... and the practical conclusions which, separately justified for each, are, for all, analogically common principles of action. (Maritain 1952. 179–80.)

Although he did advertise the point in his more exoteric and consensual addresses and publications, this position was, of course, informed by his theoretical belief in the intuitive “connaturality” of the natural law, as an unwritten common law. Given this belief, he saw no reason why ideological or religious disagreement on the nature of rights should obstruct moral conscience's progressive recognition of their practicality. Indeed, a warrant existed for this in *The Degrees of Knowledge*. To the degree of knowledge that Maritain called “speculatively practical science”, his metaethics and conception of politics' first principle and final end changed little through the 1940s. What developed was his conception of political means, which he had already differentiated in the early 1930s as the cognitive realm of prudence and of “practically-practical moral science” (Maritain 1940a. 138n.; 1995, 333).

Maritain's position on human rights reflected his broader historical ideal. He now advocated supranational, global government. Although not comprehensively Christian, such a pacific and tolerant union should be the aim, also, of any new Christendom, in which church should be independent of state. This is the end to which politics should order the means, and human rights constitute the kind of morally “pure means” for which Maritain had always sought since breaking from the instrumentalism of *Action française*. These means may be accepted alike by “advocates of a liberal-individualistic, a communistic, or [like himself] a personalist-communal type of society” (Maritain 1949b. 22). Still believing in progress, he left it to the future to determine which of these rival conceptual schemes best suits human beings.

After fully elaborating his account of human rights, Maritain systematized his metaphysics of history. Here, he identified what he calls history's “natural ends”: of “mastery over nature; conquest of autonomy; and the manifestation of all the potentialities of human nature” (Maritain 1959. 96, 108). These are all “intermediate or infravalent ends” (Maritain 1959. 102). Each “is a *relatively* ul-

ultimate end, an ultimate end in the order of nature” (Maritain 1959. 103). In this way, he sought to overcome Kant’s dichotomy of nature and freedom without, like Hegel, resorting to their identification (see 1996 a, 6). Into this historical teleology he fitted his account of “history-making”. This is the expression of increased human mastery over their own and other natures, of what Maritain consistently called humans’ conquest of their own freedom and autonomy, and of the actualization of the potentialities inherent in created human nature, which is related to divine creation as “the pursuit and conflict of uncreated and created liberty — one in time, the other outside of time” (Maritain 1959. 96). Maritain was thereby able to accommodate a constructivist account of human history alongside a theodicy and within a theological account of being.

2. PRACTICES, AND MACINTYRE

For Maritain, as for Kant, moral practice is a matter of individual action informed by individual reason and, for both, such personal and fully human moral reasoning and action must be differentiated from merely animal and instinctive behaviour. Twentieth-century philosophy generated far more sociological accounts of practice. In *After Virtue*, MacIntyre proposed that “a moral philosophy ... characteristically presupposes a sociology” (MacIntyre 2007. 23) before going on to replace Aristotle’s “metaphysical biology” with teleological accounts of tradition, of narratively understood lives and, most basically, of shared social practices.

Ludwig Wittgenstein’s famous reflections on rule-following were developed by John Rawls. Before arguing for the superiority of contractarianism over utilitarianism (because “utilitarianism does not take seriously the distinction between persons”; MacIntyre 1999. 24) Rawls advanced the case for rule-utilitarianism, as distinct from act-utilitarianism. This case was based in his “practice conception of rules”. On this conception, “rules are pictured as defining a practice”, so “that being taught how to engage in [the practice] involves being instructed in the rules which define it, and that appeal is made to those rules to correct the behavior of those engaged in it” (Rawls 1955. 24). The paradigmatic instances of practices are, of course, such games as Wittgenstein’s “chess, or baseball” (Rawls 1955. 16). Without the constitutive rules of the game, there could be no game. Rawls extends the concept’s scope by drawing analogies between games and such ethically crucial activities as punishing and promising. What is here important for Rawls is “distinguishing between the justification of a rule or practice and the justification of a particular action falling under it” (Rawls 1955. 4). The obligatoriness of keeping a promise, he argues, is justifiable by reference not to the likely effects of any particular act but only to those general rules by which the act is defined. His subsequent account of justice as fairness is premised upon analogical extension from games to political laws and institutions, and

to what he generalized as “the system of practices” (Rawls 1958. 169) and later renamed society’s “basic structure”. From the start, he explicitly limited the scope of his theory of justice to “social institutions, or what I shall call practices”. Having precluded “justice as a virtue of particular actions”, he added omission of justice as a virtue of “persons”, insisting that “justice as applied to practices” is justice in the “basic” sense (Rawls 1958. 164–65). A practice as such is to be defined as

any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure. As examples one may think of games and rituals, trials and parliaments, markets and systems of property.

His theory of justice as fairness was to formulate “restrictions as to how practices may define positions and offices, and assign thereto powers and liabilities, rights and duties” (Rawls 1958. 164). This is all carried over into *A Theory of Justice*, where he adds that “an institution” “may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules”, and that he intends the latter (Rawls 1999. 48). These refinements were influenced by the way in which John Searle had, in the meantime, redescribed Rawls’ two concepts of rules as “regulative and constitutive rules” and renamed practices “institutions” (Searle 1964. 55). In adopting the language of “institutions” and their “constitutive rules”, Rawls (Rawls 1999. 49, 303) followed Searle.

Searle has built a social ontology upon an account of the linguistic generation of desire-independent reasons for actions, which began with his identification of constitutive rules as the way to derive “ought” from “is”. In playing such a game as Searle’s beloved baseball, one assumes both the institutionally factual obligations and rights of a player.

Similarly, Rawls wrote of “the assignment of rights and duties in ... common practices”, of rights’ relation to “the justice of practices”, and of “the distribution of rights and duties established by a practice” (Rawls 1958. 174, 175, 186), in a line of thought which focussed in *A Theory of Justice* upon “the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Searle 1999. 6). For both Searle and Rawls, then, rules constitute institutions (or practices) and institutions constitute rights and duties, as rules, and these rights and duties ought therefore to be acknowledged and enacted by participants in the institution and can be justifiably enforced. In this way, the bedrock in which Rawls’ political “contractarianism” is rooted can be identified as Wittgensteinian.

Others have pursued such a line of thought about normativity so far as to describe rights themselves as “a practice”. For Rawls and Searle, to say this would be to confuse the rules that constitute a practice with those that regulate action within it, once constituted. Nonetheless, Richard Flathman took himself to be following both Searle (Flathman 1973a; 1973b) and Rawls when, in *The Practice of Rights*, he accounted for such a practice, and identified *its* roots in a non-metaphysical, political “tradition that goes back to at least Aristotle” (Flathman 1976. 18). Even so, “the concept of a right as we know it seems not to have become an identifiable part of Western social and political thought and practice until well into the seventeenth century”, and even this modern “concept of rights is being misused” in the UDHR (Flathman 1976. 76). More recently, Charles Beitz has radicalized Rawls’ *The Law of Peoples* to reconceptualize human rights as a practice with roots that go back only so far as the UDHR (Beitz 2009). Duncan Ivison warrants his claim “that rights are best understood as a *social practice*” by reference not to Rawls or Searle but to MacIntyre’s famous account of practice, as “any coherent (and complex) form of socially established cooperative human activity” (Ivison 2008. 18; cf. MacIntyre 2007. 187).

Long before writing *After Virtue*, MacIntyre appreciated the move made by Rawls and Searle in distinguishing two concepts of rules.² He, too, followed Wittgenstein in exploring the sociological and ethical import of rules, most notably in *A Short History of Ethics*. For MacIntyre, what is most important in shared practices the way in which socialization into practices educates our individual desires, so that our internal, subjective reasoning is rendered susceptible to external, objective, shared reasons. *After Virtue* repeats the earlier book’s point about the essential attributiveness of “good” as the opening move in a distinctively Aristotelian case for moving from “is” to “ought”, and for the social constitution of an ethical reality. “We define ... ‘farmer’ in terms of the purpose or function which ... a farmer [is] characteristically expected to serve”, so that if someone is a farmer he ought to do whatever a farmer ought to do. MacIntyre therefore concurs with Searle that it is “a grammatical truth” that “an ‘is’ premise” can entail “an ‘ought’ conclusion”, and that social practices give real ethical content to this truth (MacIntyre 2007. 57–58). MacIntyre broke from Searle in drawing the Aristotelian inference (see *Nicomachean Ethics* 1097^b22–1098^a20) that a functional conception of “good” can be attributed to certain human beings as such, and not just as enactors of particular social roles. Whereas Maritain drew an analogy be-

² In Knight 2013 I compare Searle’s account of practices with that of MacIntyre, and I give fuller accounts of MacIntyre’s account of practices in Knight 2007 and 2008. MacIntyre does not acknowledge Rawls by name but, given that it is elaborated at length as “an attempt to shore up utilitarianism”, his account of “rational, because rule-governed”, practices with shared “criteria of success or failure” clearly refers to Rawls’ “Two Concepts of Rules” (MacIntyre 1967. 243, 241).

tween the function of a human being and a piano in making his Aristotelian case for human rights (Maritain 1998. 86), MacIntyre's analogy is with a watch.

It is the first principle of Aristotelian practical philosophy that actions are undertaken for the sake of goods (NE 1094a), and MacIntyre's account of practices is Aristotelian and teleological. Practices are constituted in part by collectively intended rules but also, on his account, by commonly intended goals and goods, and it is these goods that give point and purpose to the shared rules. Common goods also justify particular duties and rights, insofar as those rules and rights contribute to the achievement of the goods. Even though moral responsiveness to the ethical demands and needs of others is seldom "rule-governed" (a point which would hardly surprise those who, unlike Searle or Rawls, share Wittgenstein's apparent scepticism), trustworthiness in the "rule-following" of "truth-telling and promise-keeping" is a necessary virtue within every role and practice (Blackledge 2010. 9–12), so that practices function as the schools of the virtues.

What most crucially distinguishes MacIntyre's concept of practices from all earlier and all rival accounts is the distinction between what he denotes by the Greek-derived "practices" and the Latinate "institutions".

Chess, physics and medicine are practices; chess clubs, laboratories, universities and hospitals are institutions. Institutions are involved in acquiring money and other material goods; they are structured in terms of power and status, and they distribute money, power and status as rewards. Nor could they do otherwise if they are to sustain not only themselves, but also the practices of which they are the bearers.... Indeed so intimate is the relationship of practices to institutions — and consequently of the goods external to the goods internal to the practices in question — that ... the ideals and the creativity of the practice are always vulnerable to the acquisitiveness of the institution, in which the cooperative care for common goods of the practice is always vulnerable to the competitiveness of the institution.... Without ... justice, courage and truthfulness, practices could not resist the corrupting power of institutions. (MacIntyre 2007. 194).

As MacIntyre "warn[s]" in chapter 14 of *After Virtue*, he uses "the word 'practice' in a specially defined way which does not completely agree with current ordinary usage, including my own previous use of that word" (MacIntyre 2007. 187), and, as Ivison evinces, disregard of his distinction allows his account of practices to be misconstrued as a premise for describing rights as a practice. Of course, *After Virtue's* famous critique of human rights, even though it precedes the book's stipulative definition of "practice", should be sufficient to preclude such misconstrual. Though famous, the critique is too often misunderstood. Its premiss is that "the possession of rights ... presuppose[s] the existence of particular types of social institution or practice" (MacIntyre 2007. 67), and this premiss allows MacIntyre to date the concept's appearance earlier than Flath-

man — to “near the close of the middle ages” (MacIntyre 2007. 69) — and even to warrant description of “human transactions” in terms of rights “in times and places” that lack any such express concept. His crucial point is about the particularity not of language but of rights. It is that any such description must identify “some particular set of institutional arrangements”, in which the rights are “institutionally conferred, institutionally recognized and institutionally enforced” (MacIntyre 1983. 12). In the absence of any appropriate “set of rules”, “the making of a claim to a right would be like presenting a check for payment in a social order that lacked the institution of money”. First one needs the institution to be constituted, and *then* one can engage in the new kind of reasoning about action that it makes possible. The sets of rules that confer rights “are in no way universal features of the human condition” and, MacIntyre continues, “always have a highly specific and socially local character” (MacIntyre 2007. 67). This is what underlies his critique of claims for the universality of human rights, and his provocative observation that in the UDHR “what has since become the normal UN practice of not giving good reasons for any assertions whatsoever is followed with great rigor” (MacIntyre 2007. 69). What we may now add is that rights are amongst those powers “distribute[d]” to individuals by organizational “institutions”, in the sense stipulated by MacIntyre later in the book. In MacIntyre’s terms, successful claims to the possession of rights therefore presuppose the existence of particular types of institution.

Organizational institutions formalize and enforce rules and distribute money, power and status. The question we should ask about the reality of human rights is that of the extent to which modern, western-style, bureaucratic nation states — and the “international” system that they comprise, now globally extended and formally unified by the UN and its “international law” — successfully institute and enforce individual, universally. Insofar as they do, we might regard them as constituting a historically (but no longer locally) particular set of institutional arrangements capable of institutionally conferring, institutionally recognizing and institutionally enforcing human rights as a set of positive rules.

3. CONCLUSION

As MacIntyre said in *After Virtue*, Maritain is one of a couple philosophers “for whom [he has] the greatest respect and from whom [he] learned most” (MacIntyre 2007. 260). Some of what he learned is already apparent in his own first publication, “Analogy in Metaphysics” (MacIntyre 1950). As he made clear in *Three Rival Versions of Moral Enquiry*, the Thomism to which he turned following *After Virtue* was close to that of Maritain, notwithstanding the “uncharacteristic lapse” of Maritain’s “quixotic attempt to present Thomism as offering a rival and superior account of” human rights (MacIntyre 1990. 76). He has since admitted

both that he “sometimes followed Maritain too closely” (MacIntyre 2008. 262) and that his stance on human rights had been “too negative”, and that there is a “need for an Aristotelian grounding for a proper understanding of rights”. Such a grounding must be located not, as for Kant or Maritain, in the reason or dignity of persons or “individuals as such” but in “the common good” as something social, and in “justice as a virtue, both of individuals and” of institutions, that is directed to the common good. He credited “the institutionalization of” rights by “American and French revolutionaries” with some such good and justice (2008. 272) but also with what he elsewhere calls “a mistake of theory.... embodied in institutionalized social life” (MacIntyre 1998. 229).

MacIntyre’s conception of human nature is that of dependent rational animals (MacIntyre 1999), who need virtuous others if they are to attain those qualities that Kant and Maritain separate from material individuality as personality. Personality is therefore for MacIntyre a social achievement, a consequence of successful participation in social practices. Intellectual and moral virtues exist initially in individuals as no more than potentialities, which require others for their actualization. We attain personality through participation in social practices, which are the schools of the virtues. Therefore it is a mistake of theory to ascribe rights to human beings apart from and prior to their relations with others, and apart from the historically particular practices and institutions into which they are socialized. The problem that MacIntyre persists in attributing to individualist (but not necessarily to social and economic) rights is that they threaten “the bonds” and “authority” of practices and “institutions intermediate between the individual on the one hand and the [state] on the other” (MacIntyre 2008. 272).

MacIntyre’s critique of human rights may have lost some of its force since the time of *After Virtue*. As Samuel Moyn argues, this was the time that the language of human rights was, for the first time, attaining salience in international politics, but when the concept still lacked much purchase on reality. Then, like Huxley before him, MacIntyre identified the concept with the earlier idea of natural rights. Now, he is prepared to follow Moyn in acknowledging that our conception of human rights is a more recent idea. They are the stuff of Maritain’s concrete historical ideal, or, as Moyn puts it, of “the last utopia” (2010) which first presaged and now follows the death of state socialism. Maritain had already told us why, during the Cold War, no theoretical justification could be agreed universally for the UDHR. Now, human rights is a crucial aspect of that international law to the implementation of which all states are committed, formally and institutionally, as a condition both of their legitimacy and of their participation in global capitalism. MacIntyre is more resolute in his resistance to global capitalism than was Maritain, and, whereas Maritain saw global governance as the best guarantor of perpetual peace, MacIntyre is no less resolute in his defence of the goods of practices and the politics of locality. Perhaps, though, MacIntyre’s argument will have to be made in the face of the progressive actualization of Maritain’s institutional hopes.

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