

# BORDERS NOT WALLS, BROTHERS NOT OTHERS: CHOOSING INTEGRATION OVER LOSERS AND WINNERS

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## INTRODUCTION

The European Union (EU) is challenged today by seeming friend and foe alike (UK and the Russian Federation) to grab for the hotly-contested prizes of the nation states of old. Grabbing territory and refusing to cooperate sew division, forego fraternite' and solidarity, and

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wipe out pluralism. At this crossroad for the EU stand two signs, Respice (look backward or Stop) and Prospice (look forward or Go). The EU will either slip back into the wars of the nation states, one against the other (“I can negotiate better than you”) or look forward together, putting in the effort it takes to make good neighbors. Integration rather than splintering into self-interested groups means working hard together. The resolve to cooperate over a long period of time, especially under difficult circumstances, is harder to maintain than descending hot-headedly into fighting for an immediate, if uncertain and volatile, piece of the action: French Prime Minister Emmanuel Macron recognized the level of effort needed.<sup>1</sup>

In particular, integration means making the effort to promote growth and also to devise ways to share that growth. Beyond promoting growth over all, integration gives everyone a fair participation in a healthy economy across the EU, or among any other trading partners, through a jobs-and-job-training policy. Because it is hard to work out how to share, the threat of disintegration proves stronger in hard times than we expect it to be. Splintering the integration of the EU by returning to the bad old days of isolated countries (before they became cooperating Member States) grabbing at whatever assets and opportunities could be snatched from weaker countries. Integration takes all that hard work and more to overcome splintering and to extend growth to all. Today the thrust of splintering takes the form of “populism” hunkering down in “nationalism.”<sup>2</sup>

This phenomenon is no more pleasant to contemplate than watching the larger, stronger brother grabbing the bigger piece of cake before Mom can teach him that when he cuts the cake, his little siblings choose first. In the public square, in the past, the disintegration of cooperation was multiplied when bigger states grabbed as much of everyone’s cake for themselves at the same time so that the specter of dangerous fighting comes to mind. Currently, the Russian Federation criticized the EU and NATO even as it violently snatched parts of

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<sup>1</sup> During his speech on the future of Europe, Sep. 26, 2017, M. Macron invoked the post-World War II values of Robert Schuman. “The time when France proposes is back. At this moment, I am thinking of Robert Schuman, who dared to propose building Europe, in Paris on 9 May 1950. I remember his powerful words: ‘A united Europe was not achieved and we had war.’” *Initiative for Europe: A Sovereign, United Democratic Europe*, ELYSEE.FR, <http://www.elysee.fr/assets/Initiative-for-Europe-a-sovereign-united-democratic-Europe-Emmanuel-Macron.pdf>.

<sup>2</sup> Populists today have gained traction in numerous countries “by calling forth the idea that the world is rotten to the core . . . that there is no right and wrong, only winners and losers . . . that greed, vengeance and gratuitous cruelty aren’t wrong, but are legitimate motivations for political behavior.” Masha Gessen, Op-Ed *In Praise of Hypocrisy*, N.Y. TIMES, Feb. 19, 2017, quoting HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 156 (original publication 1951, Harcourt print 1994). Arendt traced superfluous wealth excluding in principle “the idea of humanity which constitutes the sole regulating idea of international law unconscious of the solidarity of mankind and having in common only the instinct for self-preservation.” *Id.* at 157.

Georgia and Ukraine, while UK embraces political isolation from its closest neighbors.

Historical causes for the reversal during the last decade in the momentum of the EU toward deeper union are difficult to posit with the assurance half a century's perspective will provide. For a start, the Great Recession of 2008-2009 exposed and exacerbated the decline in job opportunities. In a different direction, technological improvements increased productivity, bring to global markets products made at lower cost in other places but at the same time eliminated many jobs factories had staffed in the past. Around the same period, political instability in different geographical areas put pressure for several years on different societies in Europe as economic immigrants and political refugees continued to arrive in ever greater numbers.

Although those greater numbers increased the total demand for food, clothing and shelter as well as other goods and services in the EU, not enough thought and social coordination at the EU level or among the Member States were devoted to integrating the newcomers into European society. Furthermore, some political destabilization in the form of terrorist attacks was visited upon UK although it had accepted no refugees. France and Belgium had many new residents and citizens over the last two generations who were not fully integrated into society with jobs. The arguments of the terrorists therefore seemed more plausible to young people. Germany itself found that several terrorists had infiltrated the ranks of the refugees.

In different parts of the EU, once flowing Schengen borders became clogged with immigrants and accusations against foreigners, immigrants and refugees. A hushed agreement in March 2016 with Turkey to manage EU refugees arrived late in the proceedings without being well designed. Finally, the political parties within the Member States and in EU institutions did not commit the attention and resources which proved necessary to cope with these issues and the attendant stresses. Instead, the political parties became infiltrated not by physical terrorists but by wealthy corporations and individuals with special interests seeking advantage for themselves. That gave other sorts of politicians the chance to play to fears about immigrants.<sup>3</sup>

Besides violence, people during the first half of the 20th century

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<sup>3</sup> NADIA URBINATI, *DEMOCRACY DISFIGURED: OPINION, TRUTH, AND THE PEOPLE* (2014) (explaining that "Populist democracy radically polarizes the public forum in which opinion is debated."). Mudde noted that the lack of a clear definition of populism makes it difficult to generalize about current incarnations of the phenomenon. CAS MUDDÉ, *POPULIST RADICAL RIGHT PARTIES IN EUROPE 5* (2007) (citing Othon Anastasakis). The "populist" candidate's ability to communicate to an audience about the audience's emotional needs—safe borders, few immigrants and other signals to close the border—gives those feeling vulnerable a safe space.

had also faced to their horror the destruction of war and the near annihilation of whole peoples, such as one million Armenians at the hand of the Turks in 1915, more than 6 million Jews by Hitler and unknown millions by Joseph Stalin. History does not replicate itself exactly but some of the same threats reappear in different periods. Today's "populism" challenges the values and norms of civilization. Values including human rights, the rule of law, peace, prosperity, solidarity, stability and trade are embodied in democracy and civilization's accompanying international, public and private institutions. These institutions act in partnership with each other: 1) the EU, NATO, the UN, the predecessor of the OECD and various international lenders<sup>4</sup> and 2) public and private educational, religious and medical organizations. Especially in a globally oriented society, more integrated by world trade than the founders of the EU saw after World War II, these supra-national institutions are only the beginning of what builds a peaceful international world order. Enormous commitment and energy on the part of each generation is necessary to renew and perform the EU's duties to humanity beyond self-preservation and self-aggrandizement.

Therefore, the experiences and approaches of the EU founders provide valuable insights for those of all persuasions today desiring to play their parts in combating the ravaging effects of populism. Kim Lane Scheppele refers to the intersection of three great intellectual traditions which "produced the distinctive ideology of the post-war European space," specifically the humanist/socialist, the liberal/Kantian and traditional natural law in a newly revived Christian perspective.<sup>5</sup>

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<sup>4</sup> The United States of America played an enormous, essential role in establishing and supporting NATO, the UN and various other organizations establishing and keeping peace in as many areas of the world as possible, a vast field important to, but beyond the scope of, this topic. A sampling of books on NATO is illustrative of the vast literature these very important subjects have generated. ROBERT E. OSGOOD, *NATO: THE ENTANGLING ALLIANCE* (1962); RICHARD J. BARNETT, *THE ALLIANCE: AMERICA, EUROPE, JAPAN, MAKERS OF THE POSTWAR WORLD* (1983); NATO: *THE FOUNDING OF THE ATLANTIC ALLIANCE AND INTEGRATION OF EUROPE* (Francis H. Heller & John R. Gillingham eds. 1992); *A HISTORY OF NATO* (Gustav Schmidt, ed. 2001).

<sup>5</sup> Kim Lane Scheppele, sociologist of Eastern Europe at Princeton University, EuropeanCrises@PRINCETON.EDU (Dec. 2016, in a conversation with the author). The concerns of natural law before it received its Christian gloss are cogently set forth in many places. The Athenian playwright Sophocles (495-405 B.C.E.) looked at the Theban royal family through the tragedy of Antigone and her family and brought enthusiasm for the healer-god Asclepius to Athens. See SOPHOCLES, *ANTIGONE* xxvii (Paul Woodruff trans. 2001). See CHARLES TAYLOR, *A SECULAR AGE* 505-522 (2007) (tracing the decline of religious influence in politics, starting with strands in Christian humanism itself). Thus, the Preamble of the Treaty of Lisbon recognized several strands in the inheritance of values in the various Member States to the effect that Europeans draw "inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law." Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community, signed at Lisbon, 13 Dec 2007 [2007] OJ C306/01. Article 17 (1) recognizes that "The Union respects and does not prejudice the status under

The argument of this Article is that the personal commitment and determination of the founders and early leaders of what eventually became the EU can inspire today's leaders.<sup>6</sup> These founders, Schuman, Adenauer, and De Gasperi, were after all human beings with very real flaws, as set forth in the press of the day. The source and commitment of their determination derived from what these founders saw as their personal religious faith. The history of the infighting and compromises within Christian Democratic parties has been written in great detail and is not retraced here. Instead the continued slippage away from early goals shows how much renewed commitment to solve new and difficult problems is needed. This is not a great age of religious faith in any event. All three current leaders of France, Germany, and Italy have a strong commitment to democratic principles and values. In the face of today's threats, they can work harder and more closely together to provide wider solutions to the problems of refugees from abroad and people at home left behind. Furthermore, the enlarged EU also needs stronger co-operation from more than three Member-States to solve the plight of refugees and to renew the competitiveness of the EU in a global economy.

After the Second World War, several leaders in the six founding Member States of the EU shared in common certain Christian and western principles which motivated these founders from a small

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national law of churches and religious associations or communities in the Member States;" Article 17 (3) also recognizes the specific contribution of the churches. Consolidated Version of the Treaty on the Function of the European Union [2008] OJ C115/47. RONAN MCCREA, RELIGION AND THE PUBLIC ORDER OF THE EUROPEAN UNION 56 (2010) (explaining that balancing the acknowledgement of religious influence with cultural and humanistic tendencies reduces the role of religion in public life); NORMAN DOE, LAW AND RELIGION IN EUROPE: A COMPARATIVE INTRODUCTION 237-258 (2011).

<sup>6</sup> GARY WILTON, CHRISTIANITY AT THE FOUNDING: THE LEGACY OF ROBERT SCHUMAN, IN GOD AND THE EU 27 (Jonathan Chaplin and Gary Wilton, eds. 2015) (explaining that "Along with that of De Gasperi, Monnet, and Adenauer, Schuman's Christian faith was the inspiration for a life dedicated to the rebuilding of Europe. Schuman and his peers worked with a profound sense that it was their vocation to restore and re-unite Europe to peace and prosperity. Before attending the Paris conference of 1951 they retreated for meditation and prayer at a Benedictine monastery on the Rhine. As Christian Democrats they shared a common foundation that would underpin the nascent European Community. Although Schuman's initial focus was on coal and steel his underlying concern was to embed democracy in Europe as a bulwark against war and as the authentic expression of Christian political economy. For Schuman, democracy owed its existence to Christianity's commitment to human dignity, freedom, and love", citing J. FOUNTAIN, DEEPLY ROOTED: THE FORGOTTEN LEGACY OF ROBERT SCHUMAN 41 (The Schuman Centre for European Studies Fountain, 2010). More historical studies of the role of religion among the founders as well as current materials are becoming available on the role of faith (personal or in an organized religion) in motivating individual action in the public square. Thus the annual meeting of the American Society of Comparative Law in 2017 covered the theme of Comparative Law, Faith and Religion: The Role of Faith in Law. Recent books include: RONAN MCCREA, RELIGION AND THE PUBLIC ORDER OF THE EUROPEAN UNION 56 (2010) (explaining that balancing the acknowledgement of religious influence with cultural and humanistic tendencies reduces the role of religion in public life); NORMAN DOE, LAW AND RELIGION IN EUROPE: A COMPARATIVE INTRODUCTION 237-258 (2011).

geographical area along the borders of three Member States (France, Germany and Italy) and three small Member States (already acting closely together as the Benelux countries) near those borders to act for peace. The argument of this Article does not depend on the current relevance/irrelevance of Christian “heritage,” or of the validity/or not of Christian doctrine. The founders themselves stated that their principles did not depend on revelation but are rooted in reason; these principles have a long social, intellectual and political history. This intersection of Christian, humanist and Kantian ideas has in a very real sense something for everyone. Jacques Maritain (1882-1973) talked about “brotherly love forever disturb[ing] our human conscience,” as he urged in his work late in 1947 and during 1948 for UNESCO publicizing the Universal Declaration of Human Rights. He called upon his fellow intellectuals from every, and no, faith and all backgrounds to support universal cooperation and a search for common good.<sup>7</sup> It is therefore illuminating to examine what Robert Schuman, a founder of the EU, did to sustain himself during the war and to promote the Union afterwards.

With a perspective in Part I on what Robert Schuman did during and after the War to ensure the continuation of peace, human dignity and prosperity, Part II traces whether Schuman’s goals for the Union, the implementation of fundamental rights, the commitment to democracy and the embrace of pluralism, moved forward or suffered from missteps. By using Schuman’s principles in Part III of this Article, we can renew our political will to keep our vital commitment to peace and human dignity in concrete terms and apply the most modern insights, techniques and approaches to working with the new generation of forthright Europeans who care about each other’s flourishing. No less than the same enormous personal courage, together with the strong desire to cooperate with other leaders, is needed today in the EU. (Lest I seem to urge only Europeans to renew their commitment to do difficult things, I here invoke the courage of Senator John McCain in addressing the Senate on healthcare Tuesday July 25 and voting on Wednesday July 26, 2017, having been dragged off the floor of the Senate for one more argument from the Vice President.) Part III may therefore present

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<sup>7</sup> On March 10, 1999, celebrating the 25th anniversary of the Jacques Maritain International Center in Rome, sponsored by UNESCO, the director general of UNESCO, Federico Mayor, looked back on Maritain’s decisive contribution to the General Assembly’s later ability to proclaim the Universal Declaration with his “research into the reasons for, and a common method of, cooperation among men coming from the four major geographical centers of the world, with their own cultures, spiritual outlooks and diverse philosophies.” Federico Mayor, *Jacques Maritain e l’Unesco*, 31 NOTES ET DOCUMENTS 38 (2015). Samuel Moyn, *The Universal Declaration of Human Rights in the History of Cosmopolitanism*, 40 CRITICAL INQUIRY 365 (2014). JEAN LUC BARRE, JACQUES & RAISSA MARITAIN: BEGGARS FROM HEAVEN 393 (Bernard Doering trans. 2005) (quoting Maritain’s opening speech as head of the French delegation in Mexico City, Nov. 1947 to the second general conference of UNESCO to which 48 countries sent representatives).

the most challenges. We are required to envision the society we want. We must provide the tools to achieve our goals of peace and prosperity with respect for human dignity in the way we educate young people and strengthen our dedication to our own community in a globalized world with far greater concentration of wealth and power than the founders faced but it will take the commitment and cooperation of more than three intrepid and war-worn leaders.<sup>8</sup>

## I. THE FOUNDERS: GOOD POLITICIANS INSPIRED TO DO GREAT THINGS BY WORKING TOGETHER

Robert Schuman (1886-1963) had a vision of society and the state that took into account the demands and requirements of human dignity. By the time World War II erupted, Schuman, a lawyer and French parliamentarian with twenty years' experience as a Deputy in the National Assembly, knew what a democratic society and good government should look like. When France fell in June, 1940, Schuman made his way home to Metz. He wisely burned all his political correspondence with lawyers, politicians and intellectuals across Europe because if the Gestapo had found them, many of those lives would have been in danger. On September 14th, he walked into the police station to ask for papers to leave. Instead, Schuman was arrested, the first of many, and for seven months was held in solitary confinement in the prison in Metz during the cold fall and worse winter that followed, also enduring what he only described as strong interrogation for his anti-Nazi activities.

Because the Nazi governor of Alsace-Lorraine wished to turn him (so that he would espouse the return of Alsace-Lorraine to Germany),<sup>9</sup> he was transferred in mid-April 1941 to house arrest in Neustadt in the Rheinland Palatinate. On August 1, 1942, Schuman managed to escape and made his way, despite hardships during the great manhunt for him with a bounty on his head of 100,000 Reichmarks, to the demarcation line nearly two weeks later. He crossed about 25 miles east of Poitiers

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<sup>8</sup> Jason Zweig, *Disturbing New Facts about Winner-Take-All Capitalism in U.S.*, WALL ST. J., Sat.-Sun., Mar. 4-5, 2017, at B1.

<sup>9</sup> The Treaty of Westphalia (1648) had transferred Alsace-Lorraine to France but did not dampen down the controversy over the next three hundred years. The area was returned to Germany as a result of the Franco-Prussian War in 1870-1871 but then again after World War I, it became French, thus allowing Schuman to run for a seat in the French Parliament. While Schuman fought to protect the religious and customary liberties of his region, with support and thanks from his constituents, he got into trouble for calling out the captains of industry who converted interests in coal and steel for their own use without compensating the local people. That prevented Schuman's rise to a ministerial post before the Second World War. For the full text of the treaties, see [avalon.yale.edu/17th\\_century/westphal.asp](http://avalon.yale.edu/17th_century/westphal.asp).

and on August 13, risked entering St Martin's Abbey Liguee,' where he did not know the abbot. The risk was great because many bishops and abbots had capitulated on the theory that they could not otherwise protect the civilians in their cities and villages. The abbot had also heard from other escapees and was convinced to join the resistance.<sup>10</sup>

Meanwhile, Schuman hid out in abbeys and convents, writing drafts for a new French constitution after the War. In fact, he later worked on the drafting committee. Just as he had attended conferences with other like-minded politicians before the War, Schuman also kept thinking about what meetings, ways and institutions, such as a common defense policy or a council of European statesmen coordinating in solidarity, to unite the war-ravaged continent. Right after the War, Schuman attended many conferences both as Prime Minister of France, for a short time, and then as long-term Foreign Minister. By mid 1948, planning occurred for the creation of a European association which later became the Council of Europe. Talk about customs and economic union was also current after the Benelux countries moved in this direction in 1944. Later, during 1948, Schuman participated on committees studying European unity. Early in 1949 work followed on the Consultative Council of Europe and then in May, concentration turned to the rule of law, human rights and fundamental freedom in the context of spiritual and political cooperation.<sup>11</sup>

During a famous speech before the Council of Europe at the Festival Hall in Strasbourg on May 16, 1949, Schuman said "the European spirit signifies being conscious of belonging to a cultural family with a willingness to serve that community in the spirit of total mutuality, without any hidden motives of hegemony or the selfish exploitation of others . . . .Our century must attempt and succeed in the reconciliation of nations in a supranational association. This would safeguard the diversities and aspirations of each nation while coordinating them in the same manner as the regions are coordinated within the unity of the nation."<sup>12</sup>

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<sup>10</sup> DAVID HEILBORN PRICE, SCHUMAN'S WARNING OF THE NAZI DESTRUCTION OF THE JEWS (2014) (explaining that Schuman was given access to information as part of the governor's efforts to convince him to change sides; having studied statistics, Schuman was able to understand reports indicating enormous shortages of food, supplies and manpower as predictive that the Nazis would lose the war and to pass this knowledge on to resistance leaders).

<sup>11</sup> WOLFRAM KAISER, CHRISTIAN DEMOCRACY AND THE ORIGINS OF EUROPEAN UNION 168-180 (2007).

<sup>12</sup> Speech, Robert Schuman, *The Coming Century of Supranational Communities*, quoted in DAVID HEILBORN PRICE, SCHUMAN OR MONNET: THE REAL ARCHITECT OF EUROPE 47 (2003). Schuman used the word "supranational" to explain that the European Community does not possess the characteristics of a state but that the Community holds and exercises certain sovereign powers. Schuman elaborated on the exact legal nature of the Community. The Community "is independent with regard to the national governments, within the limits of the Treaty: this independence is irrevocable, as is the transfer of competence which is its source. The Treaty confers its own function



In his Declaration, Schuman presided over the beginning of a new Europe, born of a specific vision “to give peace a real chance . . . so that Europe [c]ould exist.” The Declaration of May 9, 1950 is a blueprint for a peaceful, prosperous and just society. “Europe will be born from this:” unity “constructed around a strong framework . . . a Europe where the standard of living will rise by grouping together production and expanding markets, thus encouraging the lowering of prices.”<sup>13</sup> The new Europe “will work together for common goals .”<sup>14</sup>

Schuman, wrote a book at the end of his life, *Pour L'Europe*, setting forth his most cherished beliefs.<sup>15</sup> He quoted Maritain whose philosophy he adopted for himself and referred to passages in *Christianity and Democracy*. To keep up the spirit of the people during the resistance, Maritain’s book was printed on very thin paper and dropped from planes in various parts of the Free Zone in southern France, where Schuman had gone after he escaped the Nazis. We do not, however, know whether Schuman read *Christianity and Democracy*

on the Community. It is not the exercise of a qualification of a delegation to account to the state adherents. The High Authority is not responsible [to render account] before the state adherents but before the institutions of the Community (the Assembly, the Court). The declaration of 9 May 1950 had already previewed the “voices of recourse” against the decisions of the High Authority.” PAUL REUTER, *LA COMMUNAUTE’ EUROPEENNE DU CHARBON ET DE L’ACIER* (1953), with a Preface by Robert Schuman, at 7. In that Preface, Schuman sketched forth the constitutional and legal structure he foresaw for the Community. It was much like the constitutional considerations he sketched out during his captivity and after the War (once he had applied to General De Gaulle to clear his record) on the committee of the National Assembly charged with drawing up a new constitution for France. Montesquieu must not have been very far from these concerns.

<sup>13</sup> See EUROPA-Declaration of 9 May 1950, available at: [http://europa.eu/abc/symbols/9-may/decl\\_en.htm](http://europa.eu/abc/symbols/9-may/decl_en.htm). Schuman mentioned that even when he was a teenager, a coordination of coal and steel production in Germany and France was part of the local conversation, much as Medicare and health care here were discussed for decades without congressional action. Kaiser discussed the various factors entering into the use of the coal and steel community in the Declaration. KAISER, *supra* note 11, at 224, citing WENDY ASBEEK BRUSSE, *TARIFFS, TRADE AND EUROPEAN INTEGRATION, 1947-1957: FROM STUDY GROUP TO COMMON MARKET* 64-67 (1997). Schuman could only bring up the integration of the coal and steel industries “with a reasonable chance of success in May 1950 because transnational Christian democracy had discussed this option for a long time and was immediately able to garner strong political support and to construct domestic and transnational alliances with other parties and social groups to make the Schuman Plan a success.” *Id.*

<sup>14</sup> See EUROPA-Declaration of 9 May 1950, available at: [http://europa.eu/abc/symbols/9-may/decl\\_en.htm](http://europa.eu/abc/symbols/9-may/decl_en.htm). The lawyer Paul Reuter (1911-1990), Schuman’s close associate in the Foreign Office, drafted the Declaration at Schuman’s direction. REUTER, *supra* note 12. The six countries joining together in the European Coal and Steel Community spent the years following the Declaration figuring out in different ways how far they wanted their cooperation to go and what it meant. See e.g. Morten Rasmussen, *Revolutionizing European Law: A History of the Van Gend en Loos Judgment*, 12 INT’L J. OF CONST. L. 136, 142 (2014). From the beginning, uncertain and different positions characterized the history of the EU and its immediate antecedents.

<sup>15</sup> ROBERT SCHUMAN, *POUR L’EUROPE* 51-66 (1963); ROBERT SCHUMAN, *FOR EUROPE* 41-58, esp. 50-51 (trans. the Center for European Studies Nagel Editions SA 2010) (referring without citation to JACQUES MARITAIN, *CHRISTIANITY AND DEMOCRACY* (trans. Doris C. Anson 1943), at 53-54). RAYMOND POIDEVIN, *ROBERT SCHUMAN: HOMME D’ÉTAT 1886-1963* (1986) is the major French scholarly biography. Catherine M.A Mc Cauliff, *Union in Europe: The Constitutional Philosophy of Robert Schuman, May 9, 1950*, 18 COLUM. J. EUR. L. 441 (2012).

when it first came out.<sup>16</sup> Certainly, Maritain's concentration on democracy was fortified by the war years, since *Integral Humanism*, a work of the 1930s, referred little to democracy itself. *Integral Humanism* is a plan of action for a society having overcome populism, nevertheless written when populism was still growing apace, as it is again today. Maritain wrote his book to vanquish the arguments for populism. Both Schuman and Maritain thought about what would be necessary to restore civilization and civilized life after the war. Their vision encountered some difficulties but saw the rise of avowed Christians in politics over the next decade.

Both Schuman and Maritain were intellectually and philosophically attuned to Giovanni Battista Montini (1897-1978) who shared these same views. Margriet Krijtenburg explains that both the Gaullists and the communists opposed reconciliation.<sup>17</sup> These groups tried to tar Schuman with the notion of a conspiracy to form a Vatican Europe. Schuman spoke against the notion of his political opponents and asserted that he and like-minded leaders emphasized the role of the laity rather than looking to the Vatican or an emperor for political leadership. DeGaulle himself had no compunction about using the church as a vehicle for promoting the glory of France. Schuman, Maritain, Montini and Alcide de Gasperi (1881-1954) shared a vision of lay political leadership in temporal matters and Schuman's beliefs have a "remarkable similarity to Maritain's."<sup>18</sup>

Schuman, Konrad Adenauer (1876-1967) and de Gasperi held similar values and were from, or had ties to the same border region, Lotharingia or Lorraine.<sup>19</sup> They learned to compromise and were, in a very real sense, men without borders or frontiers, seriously insistent on reconciliation and the notion that all people are brothers and sisters. Schuman knew that international cooperation and peace depend on respect for human rights. He was born in Luxembourg because his father did not want to become German after Alsace-Lorraine was lost in the Franco-Prussian War of 1870-1871. Alsace was just on the western

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<sup>16</sup> See Rene' Mougel, *Schuman et la philosophie politique de Jacques Maritain*, in ROBERT SCHUMAN: HOMME D'ÉTAT, CITOYEN DU CIEL 73, 86 (Raphael Clément & Edouard eds. 2006) (explaining that the thoughts and even the language tracked Maritain's. Schuman of course mentioned Maritain as his inspiration in Chapter 3 of POUR L'EUROPE.)

<sup>17</sup> MARGRIET KRIJTENBURG, SCHUMAN'S EUROPE: HIS FRAME OF REFERENCE 116 (2012) (also available as a Leiden Ph. D. dissertation).

<sup>18</sup> *Id.* at 139.

<sup>19</sup> Giorgio Campanini, *La cultura personalista dei protagonisti dell'integrazione europea: De Gasperi, Adenauer e Schuman*, in L'APPORTO DEL PERSONALISMO ALLA COSTRUZIONE DELL'EUROPA 119 (Roberto Papini, ed. 1981). Philippe Chenaux, *L'influence du personnalisme dans le de'but de la construction de l'Europe (1932-1950)*, in AGIR AVEC MOUNIER: UNE PENSEE POUR L'EUROPE 33 (Jean-François Petit & Rémy Valle'jo eds. 2006); E'douard Husson, *L'Amitté' de Robert Schuman et de Konrad Adenauer*, in ROBERT SCHUMAN: HOMME D'ÉTAT, CITOYEN DU CIEL 33 (Raphael Clément & Édouard Husson eds. 2006).

side of the Rhine. De Gasperi was from the German-speaking part of Italy (Pieve Tesino) which had been part of Austrian-Hungarian empire and later under the treaty of St Germain on October 10, 1920, became part of the province of Trentino in Italy. De Gasperi continued to speak German. Konrad Adenauer was on the eastern side of the Rhine, the mayor of Cologne in 1933, when he was put out of office on April 4 by Hitler's forces. It is remarkable that all these leaders came from that swath of land given to Charlemagne's grandson Lothar in 843, still during the EU founders' time the most seriously religious part of Catholic Europe. These founders met frequently together and of course spoke German during their meetings. They were committed to Christian personalism with its recognition of inherent human rights rather than to the secularist notion of the glory of the state which claims it provides rights to people.<sup>20</sup>

Despite those strong social, spiritual and political ties among these three leaders, Germany and France had grown further and further apart during their rivalrous industrial and political competition during the 19th century. The Enlightenment, at the same time it set forth individual rights, had unleashed slowly destabilizing questions about political power, science and the nature of society. Later outright hostility again broke out during the Franco-Prussian War and led the enemies only to further wars during the next century. Many of the same serious difficulties faced society after the uneasy peace following World War I. Even spiritual traditions within the same faith grew more separate, whereas French writing and learning spilled across into Italy and back into France, as the meeting during the late 1920s between J.B. Montini and Jacques Maritain indicates when Montini used Maritain's book with

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<sup>20</sup> Samuel Moyn, *Personalism, Community, and the Origins of Human Rights in Human Rights*, in *THE TWENTIETH CENTURY* 85 (Stefan-Ludwig Hoffmann ed. 2011). For the values of the aggressively secular state, see *infra* notes 64-65, and accompanying text. For the best conjecture on when Schuman and Adenauer might first have met, see KAISER, *supra* note 9, at 214. Because Gaullists, themselves populist politicians, wished to dominate Germany after the War, Schuman was not able to be open about his contacts with Germans, even westerners and not only Prussians. Kaiser referred to a conference of Catholic politicians from France, Belgium and Germany in Cologne in 1932, which Adenauer chaired and Schuman attended. *Id.* at 214. Among other things, "they agreed a resolution demanding the creation of a European 'common market' for the production and trade of goods." *Id.* at 107. Furthermore, when Schuman and Adenauer met in the French zone of Berlin in October, 1948, Adenauer made a report to the Christian Democratic Union in Germany referring to Schuman as "an old acquaintance." Kaiser notes that both Schuman and Adenauer were members of the "same Catholic student fraternity in Bonn," though at different times. *Id.* at 214. Alcide de Gasperi attended the same conference Adenauer chaired in Cologne in 1932 as Schuman. See ROBERTO PAPINI, *THE CHRISTIAN DEMOCRAT INTERNATIONAL* 22, 27 (Robert Royal trans. 1997). For more on the views of the charismatic de Gasperi, see Giulio Venneri & Paolo O. Ferrara, *Alcide de Gasperi and Antonio Messineo: A Spiritual Idea of Politics and a Pragmatic Idea of Religion?* in *RELIGION, POLITICS AND LAW IN THE EUROPEAN UNION* 109 (Lucian N. Leustean & John T.S. Madeley eds. 2010).

his university students.<sup>21</sup>

In *Integral Humanism* (1936), Maritain put the values of the Enlightenment and the French revolution into a Christian framework of human personality, much as Thomas Aquinas had interpreted Aristotelian principles in a Christian way. The Roman Catholic Church had been estranged from modern governmental developments because of what it saw as determined and hostile continental government secularity. Indeed, the Laïcité law of 1905 was a leading example of the time because it outlawed the activity of many priests and confiscated church lands.<sup>22</sup> Africa, so much a care on Schuman's heart, Canada, the Isle of Wight and other places benefitted from the services of displaced priests who set up schools and abbeys wherever they went.<sup>23</sup>

Maritain envisioned a new Christian civilization that was "lay rather than clerical, democratic rather than authoritarian, and capable of inspiring a mass political party in which all who shared such values could participate."<sup>24</sup> Maritain's vision of the church's influence was as an inspiration for guiding values rather than involvement with direct operational administration. Instead Maritain saw Christian society as accepting autonomous institutions such as political parties and trade unions relying on Christian members to set forth these norms and values, including solidarity and subsidiarity.<sup>25</sup> In Maritain's new vision, society would cohere because people have learned that they must respect each other's rights without an emperor—holy, Roman or otherwise—holding secular and ecclesiastical power. Caesar's and God's jurisdictions were different, as evidenced most fundamentally by Caesar's stamped face on the coinage.

21 PETER HEBBLETHWAITE, PAUL VI: THE FIRST MODERN POPE 83 (1993).

22 *Church-state separation in Constitution of 1795 and Law of 1905: Excerpts*, [http://www.concordatwatch.eu/showkb.php?org\\_id=867&kb\\_header\\_id=849&kb\\_id=1525](http://www.concordatwatch.eu/showkb.php?org_id=867&kb_header_id=849&kb_id=1525).

23 The anticlerical Law Concerning the Separation of the Churches and the State, familiarly called the Laïcité Law of 1905 abolished the public establishment of religion, causing many parochial schools to close and many religious orders to be dissolved in France, although those who left France often regrouped in new places. Elizabeth A. Forster, FAITH IN EMPIRE: RELIGION, POLITICS AND COLONIAL RULE IN FRENCH SENEGAL, 1880-1940, Ch. 3 (2013). Foster shows that some of the same rules derived from the Laïcité law affected colonial hospitals and schools as well. Ch. 3, *The Storm Approaches: Laïcité and West Africa, 1901-1910*. World War I softened this harsh governmental approach and in the aftermath of that War, some agreements were made with the church. Mireille Rosello, *Laïcité, Grammar, Fable: Secular Teaching of Secularism, 10 Postcolonial Studies* 153-169 (2007).

24 BARRE, *supra* note 7, at 122. Even in *Integral Humanism*, Jacques Maritain focused on "political democracy" as well as social pluralism and religious freedom and pluralism. Darity William A., THE INTERNATIONAL ENCYCLOPEDIA OF SOCIAL SCIENCES, (2d ed. 2008).

25 See also George A. Bermann, *Taking Subsidiarity Seriously: Federalism in the European Community and the United States*, 94 Colum. L. Rev. 331 (1994). Subsidiarity envisions the first solutions as coming from the smallest unit of local government as is relevant to a question while at the same time seeking *subsidiium*, or help, from larger levels of government which local government could not provide. In other words, solidarity works together with subsidiarity to protect local people facing economic distress in their neighborhoods, villages and departments.

Schuman agreed. While “Christian ideas” figure deeply “in today’s political life,” Caesar and God have different requirements and “Christianity is not [integrated] and must not integrate into a political system; it must not be identified with any form of government, however democratic it might be.”<sup>26</sup> Moral influence instead of rules, conscience rather than doctrinal (confessional) uniformity and a consensus of unity in diversity mean sharing the common good with all in the society, individual differences being left to operate as the citizen saw fit in her/his own life. Integral Humanism deals with Christian lay action in the face of the secular dictatorships of 20th-century Europe.

Meanwhile, in 1930, Maritain lectured in Milan, giving an early version of these ideas and then in Rome in 1934, presenting a formed version about culture and the role of religion in society. The new Christianity was designed to avoid the pitfall of the then-current political “-isms,” such as socialism, extreme capitalism, communism and fascism in order to avoid the errors of extreme individualism and its opposite in communism.<sup>27</sup> Maritain got into trouble lecturing on the “Twilight of Civilization” in a Paris theater on February 8, 1939. When France was occupied in June, 1940, the Gestapo seized Maritain’s books and records, along with those of other enemies. Maritain was on a lecture tour in Canada and the United States and unable to return to France but he and his family were therefore physically safe.<sup>28</sup>

Maritain in *Natural Law and the Rights of Man* set forth the various categories of rights which were later reflected in the Universal Declaration of Human Rights and in the new post-war constitutions in Europe.<sup>29</sup> Thus de Gasperi was also for a third way of neither excessive capitalistic individualism nor communism. In Italy, all the resistance parties got together for the new constitution. While the communist party strongly advocated employees’ rights, these same rights were also reflected in Maritain’s *Natural Law*. Workers’ rights were reflected in Article of the new constitution.<sup>30</sup> Public health was also seen as a right.<sup>31</sup> The record of the parliamentary debates on the constitution shows de Gasperi’s strength. Similarly, the German Basic Law of 1949 reflected its wartime experience in placing human dignity in a

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<sup>26</sup> SCHUMAN, *supra* note 15, POUR L’EUROPE, at 55; FOR EUROPE, at 46.

<sup>27</sup> BARRE, *supra* note 7, at 350-355.

<sup>28</sup> *Id.* at 337, 348.

<sup>29</sup> JACQUES MARITAIN, *NATURAL LAW AND THE RIGHTS OF MAN* (Doris C. Anson, trans. 1944). See Samuel Moyn, *Jacques Maritain, Christian New Order, and the Origins of Human Rights*, in *INTERCULTURAL DIALOGUE AND HUMAN RIGHTS* (Luigi Bonanante, Roberto Papini & William Sweet, eds. 2011).

<sup>30</sup> Art. 3-4, 35-38, 46 Costituzione (It.).

<sup>31</sup> Art. 2-3, 41-42 Costituzione (It.); Jorge Luther, *Realism and Idealism in Italian Constitutional Culture*, in *CONSTITUTIONALISM AND THE RULE OF LAW* 355 (Maurice Adam, Andne Neuweise, Ernst Ballin ed., 2017).

prominent position in the “constitution.” These were precursors of the EU’s Charter of fundamental rights.

*Integral Humanism* proved to be seminal because it served as a working document for Christian Democrats as they went underground for peace and studied ways to strengthen society for a different, more hopeful future and while they waited for fascists and Nazis to be thrown out of power since they could not oust the dictators politically. These Christians were very ecumenical and shared their point of view indirectly through their memberships in social, political and professional organizations.<sup>32</sup> But Europeans during and before the Second World War had very bad political parties and had decided to form new ones after the War, including the Christian Democrats who met together in conferences but who could not exert influence on the direction of society or the government during the 1930s. As Schuman explained in an interview in 1954, the Social-Christian movement, or the Christian Democrats, by then perhaps at their zenith, were not confessional parties, as Angela Merkel’s Christian Democrats show. After the war, *Integral Humanism* became a guideline for Christian Democratic parties.

## II. STEPS BACKWARD: THE LATER CHRISTIAN DEMOCRATS, THE REVISED EU CHARTER

The EU, as the greatest institutional vessel for European peace faces daunting challenges today, despite the heritage of the Christian Democrats and other strong intellectual traditions of sharing and liberty. It is not an exaggeration to depict these challenges as populist and as extending beyond the EU itself, as recent elections from the United States to the Philippines testify. In many areas, the values of Schuman and Maritain receive lip-service and the homage of hypocrisy, long the only tribute when so much more is possible. This Part looks at two institutions, different in kind: the political Christian Democratic parties; and the Charter of Fundamental Rights which came into legal force with the Treaty of Lisbon in 2009, so that it is no longer an aspirational or hortatory declaration only to test, if not thoroughly assess, how well we are living up to the founders’ values. The third topic in Part II combines some aspects of Democratic parties and the Charter in a short examination of social and political pushback against the values and norms expressed in party positions and the Charter.

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<sup>32</sup> In contrast to Europeans and without establishing a Christian Democratic party, Americans have integrated views from different religions and religious stripes within one faith into the major political parties.

A. *The weakness of the Christian Democrats and the strength of populist parties*

During the War years, Maritain wrote about democracy, and Christian Democracy in particular. The opportunity for Christian Democrats actually to govern and lead the way forward to European integration as peace was restored most probably arose because Christian Democrats were in the middle of the political spectrum, compared to Fascists and Communists. Christian Democrats claimed the center and reached a little right and left. In fact, they were able to do this for about a decade. Some Christians emphasized the importance of welfare benefits to civilians who suffered hardships during the War, including food shortages, lack of medical care, harsh cold during the winter and even lack of sufficient clothing.

Schuman had a foot in both parliamentary assemblies: the French Parliament and the predecessor of the European Parliament. When Schuman, the Christian Democratic candidate, was elected on March 19, 1958, the European Parliament had few democratic features to recommend it. The most difficult challenges, however, had to do with the compromises that political parties later made with each other. Jan Werner Muller points to the market-oriented economic “liberals” whose core principles defended property holders from contributing much in the form of income taxes to the national treasury of either Italy or Germany.<sup>33</sup> This great protection from taxes did not fit in with Christian principles of solidarity, treating one’s neighbor as one’s brother or sister and helping those in need. Nevertheless, to keep a balance in Parliament, Christian Democrats were willing to concede on the taxes and those conserving wealth were willing not to compete hard for every last seat, so long as the Christian Democrats did not fight to introduce their values into legislation.

There begins the hypocrisy that populists point out. Values are acknowledged but not put into practice. While the more conservative parties did not acknowledge the importance of social welfare, the national budgets were not robust enough to provide the support families

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<sup>33</sup> Jan-Werner Mueller, *Has Christian Democracy Reached a Dead End in Europe?*, THE GUARDIAN (June 10, 2010), <https://www.theguardian.com/commentisfree/belief/2010/jun/10/has-christian-democracy-reached-a-dead-end-in-europe.>; Successful democracy requires “not only strong institutions, with checks and balances, but also norms, principles, and the capacity to work across differences to get things done . . . so long as we find enough in common to see ourselves as one” in unity with each other. Suzanne Mettler, *Democracy on the Brink*, 96 FOREIGN AFFAIRS 120, 126 (2017) (referring to the balance between being part of a group (political party or country) and at the same time individuals, as David A. Moss, *Democracy: A Case Study* (2017) explains).; Grabbe treats the views of some of the parties flooding into the European Parliament. Heather Grabbe, *Populism in the EU: New Threats to the Open Society*, EUROPEAN POLICY CENTER (2014), [www.epc.eu/pub\\_details.php?pub\\_id=4955](http://www.epc.eu/pub_details.php?pub_id=4955).

needed to flourish and grow by being able to educate children in whatever field was most suitable for the individual child with the talent pool and physical health and aptitudes that child possesses. In a time of general prosperity and re-grouping after the deprivations of the war, such compromises worked well enough. Once recessions, such as the Arab oil crisis, of 1973, and the Great Recession of 2008, struck the economy and families, jobs were not available in the numbers necessary or at the salaries and wages necessary to support a family.

At the same time, surveys show that religious observance began to grow less strict during the late 1960s, around 1968, with the social unrest and upheavals as well as the Vietnam War in Asia. The European Peoples Party, the EPP, the Christian Democratic and Conservative Party in the EU, remains the largest single party in the EP, according to the numbers but the parties do not command strong allegiance.<sup>34</sup> Splinter parties like Il Movimento Cinque Stelle (M5S) can count on the loyalty of their followers, as the enormous outpouring of grief at the death on April 12, 2016, of Gianroberto Casaleggio showed. His work in the internet and publishing business, his life and his funeral (cameras waiting outside Sta. Maria della Grazia a Milano) were sometimes the only feature on the news, with an emphasis on the people's grief and their expression of so many heartfelt goodbyes to Gianroberto.<sup>35</sup> Populism sees through the phoniness or hypocrisy of the establishment but these same voters may not always be able to count on the populist

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<sup>34</sup> See the home page of the EPP, stating its foundation in 1976 as a transnational party for "over 70 national parties in 40 countries" (but not the UK) with members in the EP (President Antonio Tajani). Ministerial members include Donald Tusk, President of the Council and Jean-Claude Juncker, President of the Commission. They derive their values "from our Christian Democrat tradition: the dignity of the human being, freedom, responsibility, equality, truth, justice, solidarity and subsidiarity." These values are indeed the values of Robert Schuman and the other founders of the EU as well as Jacques Maritain but the issues revolve around how successfully the EPP translates these values into operation, especially since the Great Recession of 2008. THE EUROPEAN PEOPLE'S PARTY, <http://www.epp.eu>; Philippe Chenaux starts his article on the Christian Democrats with Leo Tindemans' justification for the foundation of the EPP in July 1976 at Luxembourg as "l'avènement des États-Unis d'Europe," our objective and our ideal. Phillippe Chenaux, *Les démocrates Chrétiens et l'union européenne*, in *CHRISTIAN DEMOCRACY IN THE EUROPEAN UNION (1945/1995)* 449 (Emiel Lamberts ed., 1997).

<sup>35</sup> Jason Horowitz, *With Success Comes Dissension for an Anti-Establishment Party Rising in Italy*, N.Y. TIMES, Dec. 13, 2016, at A4 (discussing the resulting defeat (and later resignation) of the Democratic Prime Minister, Matteo Renzi by populists using Gianroberto's web "as a platform and weapon of anti-establishment anger" to reject ("Io dico no") Renzi's reforms); the Democratic Party, however, has overcome recent internal challenges. Deborah Ball, *Renzi Wins Vote to Lead Party in Election*, WALL ST. J., May 2, 2017 at A8; nevertheless, M5S polled nationally at 32% in April, giving it more potential voters than the Democratic Party but in city elections in June, M5S did not reach the second round in 4 of the cities holding elections. Renzi's views are quite close to Emmanuel Macron's (see *infra*, note 86) with fidelity to the EU and the euro, as well as streamlining the labor market without getting rid of social supports. In addition, the number of refugees flooding Italy without enough help from Europe to pay for their assimilation has, according to a February survey, turned opinion against the EU and strengthened M5S; *Id.*



parties to deliver more just results to the people. Even compassion, along with religious commitment, has left the Christian Democrats and the EPP, having compromised in the past, short of their goals to enact policies benefiting ordinary people with training for better jobs in an era of rapid technological change.

This less than forthright behavior by the Christian Democrats on budget commitments does not mean that other parties have necessarily behaved better. The *Centro Europa 7* case sadly brought no satisfactory justice for the radio station in either the CJUE or the European Court of Human Rights.<sup>36</sup> The problems of an independent communications company trying to operate in a Member State with an extremely powerful media mogul, Silvio Berlusconi, at the relevant time for the difficulties in this case, also the populist Prime Minister of Italy, shows the culture of corruption, the use of political power for improper personal enrichment at the expense of the public.

Although the media company which owned *Centro Europa 7* won broadcasting rights in a public tender procedure, the Berlusconi government never assigned the radio frequency on which to broadcast. At the same time, it introduced national legislation which let Mediaset, Berlusconi's company, continue to use the frequency. In a political situation of overreaching and unfair dealing, how enforceable are fundamental rights against policies favoring monopolistic businesses? The disturbing answer leaves EU citizens unprotected, despite the ancient values of the Christian Democrats. As *Centro Europa 7* shows, the culture of political corruption appears in several national political parties inviting reprisals by loss of votes to splinter and populist parties, which destabilize society with false promises of draining the swamp. The CJUE could do nothing to address that abuse of fundamental property rights wholly within Italy.<sup>37</sup>

Political parties in many Member States and beyond are failing because they have moved far from their missions to serve their constituents. In recent years, voters themselves may not have seen the

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<sup>36</sup> In the ECtHRt, *Centro Europa 7* raised these same fundamental rights issues in a later case raising the issue of deprivation of the right of property to broadcast on the assigned airway, Francoise Tulkens presiding in the Grand Chamber, June 7, 2012. See *infra* notes 39 and 51; Roberto Mastroianni, *Media Pluralism in Centro Europa 7 srl or When Your Competitor Sets the Rules*, in *EU LAW STORIES* 245, (Fernanda Nicola, Bill Davies eds., 2017) (the author was involved in the litigation).

<sup>37</sup> See *infra* note 43; Another case, even more famous than *Centro Europa 7*, details corruption in the EP. The story of Edith Cresson, a former Prime Minister of France, who later joined the European Commission, suffices to show how far below Schuman's values the Commission fell in a betrayal of the people's trust. Cresson, the Research Commissioner, did not follow large amounts of missing money in a training program and did not report the fraud, so that the entire Commission of Jacques Santer ended up resigning in 1999. Cresson was charged with violating her official duties. *Commission of the European Communities v. Edith Cresson*, Case C-432/04 (July 11, 2006).

actual causes of their difficulties. Thus, “[s]ome voters attribute France’s economic ills to poor leadership, others to globalization and still others to an influx of immigration.”<sup>38</sup> Some political “leaders” know what should be done but over time depart from their missions for personal or political gain. Several compromises over two or three decades remove these parties from their original connections with the voters. In other instances, in order to appeal to constituents not otherwise recognized, politicians provide bad solutions which have no possibility of actually addressing those constituents’ needs. By focusing on immigrants as a problem instead of helping both immigrants and those left behind by poverty and a changing job market, populists may make their constituents feel better about themselves and their “right to belong” in their country. These poor politicians will neither feed their constituents and their hungry children today (by increasing the basic welfare stipends) nor help them obtain skills for new jobs in the factories of the future where they may need the mathematical literacy than brawn to fix the software program of the stuck arm of a robot. That poor fix instead leaves decreased demand for new services (and thus more jobs). Dealing with the problems of globalization requires the cooperation and partnership among people with scientific and technological knowledge, government leaders and private business. All of them must have a concept of fairness, social justice, a seat at the table for all groups and a cooperative spirit.

Poor leadership afflicts so many political parties because so many political “leaders” lack personal integrity. They compromise themselves by their greed for monetary advantages from being a politician or for power and business, thereby ensnaring themselves in conflicts of interest. It is therefore no surprise that political parties are imploding. Backwaters, rust belts and rural areas have votes but in recent years no seats at the political table or in the public square and thus no ability to get action to meet any of their needs. Similarly, bad decisions by those in charge at work give workers closest to the job little say about implementing new solutions and even less control over their own time at work. These situations destabilize the work place and add to the volatility and hardships in daily life without making the work place either more efficient or productive and contribute to the weakness of the political party system at the present time. Fear from the growing polarization and isolation contributing to the breakdown of the parties themselves fuels the fires of populism.

A culture of corruption presently endangers all democratic governments and attracts voters to populist parties who promise to

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<sup>38</sup> Alissa J. Rubin, *Only Sure Bet in French Vote is Uncertainty*, N.Y. TIMES, April 23, 2017, at 1, 15.

“drain the swamp,” whether or not they intend to do so upon entering office. The American Foreign Corrupt Practices Act<sup>39</sup> has generated familiarity with corporate bribery around the world. It is clear that people are quite familiar with private corporate corruption and recognize political corruption as well as corporate-political corruption both within Member States, and at the EU level as well as in all cultures globally. The annual costs of corruption in the EU alone are said to be 120 billion euros. A recent Eurobarometer survey found that about 3/4 of Europeans worry about corruption.<sup>40</sup>

The Commission published its first anti-corruption report in 2014.<sup>41</sup> It is clear even from *Centro Europa 7* that the Member States have not yet honestly begun to address the issue of corruption in light of the anti-corruption package of documents.<sup>42</sup> Corruption is pervasive not only in private transactions but also in politics and between business people and politicians. Therefore, various types of monitoring as well as cooperation, penalties and incentives for a culture of compliance must be implemented at all levels of society. Dreadful criminal trafficking in human persons is most damaging but such egregious behavior is usually treated separately from other kinds of corruption. It will require multiple sustained efforts across the EU and at every level within Member States to restore trust. Assessments indicate that so far compliance is insufficient to show progress, in part because the political will to ameliorate these criminal situations is quite weak. If progress against dangerous populist political appeal is to be made, the culture of corruption must be combated with much more serious political will. One trait Robert Schuman exemplified in spades was the will to do the right thing.<sup>43</sup> His example should be followed here.

One place today where the Christian Democratic Party has

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<sup>39</sup> Foreign Corrupt Practices Act of 1977, 15 §78dd-1 (1977) (prohibits the payment of bribes to foreign officials in return for business favors, such as setting up a deal involving a publicly traded American Corporation); See ROBERT POST, *CITIZENS DIVIDED: CAMPAIGN FINANCE REFORM AND THE CONSTITUTION* (Harvard University Press 2014) (For the notion that the free speech of political parties is derived from electoral integrity in the sense of freedom from corrupt campaign contributions speech).

<sup>40</sup> *Special Eurobarometer 397 Corruption Report*, at 6, [http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs\\_397\\_en.pdf](http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf).

<sup>41</sup> *Report From the Commission to the Council and the European Parliament EU Anti-Corruption Report*, COM (2014) 38 final (Feb. 3, 2014), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf).

<sup>42</sup> See *Fighting corruption: a stronger commitment for greater results*, [http://ec.europa.eu/home-affairs/what-is-new/news/news/2011/20110606\\_en](http://ec.europa.eu/home-affairs/what-is-new/news/news/2011/20110606_en) (anti-corruption package); see also Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law, COM (2016) 826 final (Dec. 12, 2016), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0826&from=EN>.

<sup>43</sup> Schuman's itinerary during the War illustrates his bravery and willingness to do the right thing despite daunting difficulties.

somewhat more success is in Germany, where it has taken on two very large projects since 1990. Germany decided to make large investments in integrating two then quite different states into one people, government and state. The East had suffered its share of bad government and did not want more of the same. The second project, again enormous, was opening Germany's doors to refugees who for the most part came with nothing but their memories. Among them are sprinkled people with bitter memories and people not refugees at all hiding until they can seek revenge on others for their poor circumstances.

Any Christian Democratic Party worthy of the name would have taken the same large risks in both projects. The first was a clear success. So, should the second be, if good government accompanies the integration of the new Germans. It is extremely difficult to fashion the right rules which properly integrate the refugees from many countries into German society and at the same time leave the resettled refugees, soon to be German, with their own identities when they have already given up almost everything else in their flight from perilous conditions at home. The demand for goods and services in German society from the nearly one million refugees should fuel the growth of this powerful Member State over the net quarter century at least. But the immediate growing pains present a formidable challenge to the Christian Democrats and other political parties with whom they partner as well as those in opposition. It is no wonder that some people falling behind sought an alternative (AfD), or "alt right" political outlet, however dangerous and imperfect its incarnation is (Frauke Petry's decision not to run in September is rumored to have resulted from discontent within her party because she hoped to include more moderates within the party).

While the Christian Democratic Party and other political parties seem to have maintained their ideals, various local state banks and, international banks (particularly Deutsche Bank), and other large companies assumed a culture of corruption in the years before the Great Recession. At the same time they failed to maintain enough reserve capital while taking risks with other people's money. Growing a culture of compliance with values of integrity is proving difficult. Resistance is high, even in companies further along the way back to good corporate governance. Thus, the Christian Democratic Party, with all its good government and leadership with integrity, faces many challenges. All parties in Europe are subject to the dangers of splintering. With even greater support, however, from good citizens who have been volunteering to help the new German refugees learn and perfect their knowledge of the German language and German culture and habits, integration should proceed. It is a project with a long timeline, as those

well-positioned in society recognize, but it is still harder for those Germans not so well off in German society, as far as their ability to obtain jobs in the future is concerned, especially when they see others as competitors for the work they now perform.

UK never had a Christian Democratic Party but current UK Prime Minister Theresa May is, like Die Kanzlerin Angela Merkel (Lutheran pastor), the daughter of a rector (Anglican). At least in her current “iron lady” Brexit hard hat, Ms. May does not exhibit the strength of making hard choices by accepting even one refugee at all. She will not need to seek creative solutions for integration. Many of people, not refugees, but resident in UK as EU citizens, face volatility, an uncertain status and an even cloudier future along with a possible lack of continued welcome, deportation or other expulsion. The present financial picture appears rosy but the danger of future economic and social isolation does not project strength to those who might want to open a business in the next two or three years or otherwise invest in UK. Political parties in UK are not strong. While they may not have broken up or been left out of elections, they are suffering their own eclipse in the face of difficult problems. Perhaps rather than being transformed from within, they are sclerosed and hollowed-out. As the tabloids and serious journalism showed, corruption scandals faced the Conservative Party itself under the last PM leaving no good models to follow. While the fate of UK looks splendid now in future isolation, there is no assurance that serious-minded people would be able to get together in a critical mass large enough to chart a clear path for UK as a good partner for Europe when isolation rather than integration looms all too large on the horizon.

Although other parties have not covered themselves in glory, over all, the Christian Democrats have not lived up to the promise and popularity they enjoyed when they were elected after the War. They had numerical strength in several Member States and later with the EPP in the European Parliament but did not counter arguments that the market and fiscal authority came before the middle class and rural constituents for whom fundamental rights and human dignity were part of the peace and prosperity after the War. It is no surprise that populist politicians have made inroads with the people who have been forgotten, ignored and shunted aside. That is one promise of the EU, that has not yet been fulfilled but which could now still be redeemed.

*B. The meteoric rise and partial fall of the EU Charter's promise: the states cut down rights*

The Universal Declaration of Human Rights was proclaimed in 1948, and all Member States signed the European Convention on

Human Rights drafted in 1950 under the auspices of the Council of Europe If Maritain was deeply involved in getting the Declaration safely launched, Schuman was doing similar work to launch the institutions which would administer the rights and duties of the new Europe. Meanwhile, Germany, France and Italy had written new constitutions after the war, guaranteeing individual human rights.<sup>44</sup> Member States expressed their worry that EU officials would not protect the rights EU Member States' citizens enjoyed. During the 1970s, the European Court of Justice (CJUE) declared that protection of fundamental rights was implicit in its function of judicial review.<sup>45</sup> A great tug and pull, emblematic of a federation, however loose or tight, ensued, demonstrating early the tensions within voluntary governmental arrangements. While states' rights arguments to restrain federalist governmental activity are well known in the United States, the progressive arguments of cities with large minority populations have only recently been felt.<sup>46</sup>

Here the interchanges between the CJUE and the Member States will be considered in ordinary cases beyond the famous *Internationale Handelsgesellschaft*.<sup>47</sup> At first, the situation seemed clear.<sup>48</sup> The EU was

<sup>44</sup> See *Costituzione* [Cost.] (It.).

<sup>45</sup> See DONALD KOMMERS, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* (3d ed. 2012). The first mention of human rights in the CJUE is 1969. In *Stauder v. City of Ulm, Sozialamt*, Case 29/69, [1969] ECR 419, the CJUE said that it would draw on the different constitutional traditions of the member states and this approach was later codified in Art. 6 of TEU. The Commission made the EU's surplus butter available to certain classes of social assistance recipients at below market prices when they presented coupons. Germany said the coupon had to identify the recipient by name. A German recipient thought that was discriminatory and violative of his right to privacy guaranteed by the Grundgesetz or Basic Law. The CJUE saw that the Commission did not violate fundamental rights; each Member State could choose how to refer to the recipient.

<sup>46</sup> Heather K. Gurken, *Federalism as the New Nationalism: An Overview*, 123 YALE L.J. 1889 (2014). Of great relevance for EU law is the exploration of how federal and local interest interact, as the works of Jessica Bulman-Pozen, Erwin Chemerinsky, Barry Friedman, Alison L. Lacroix, Christina A. Rodriguez, Robert A. Schapiro and Ernest A. Young amply demonstrate with regard to applications for the competence of Members States' courts and the CJEU. See Ernest A. Young, *Protecting Member State Autonomy in the European Union: Some Cautionary Tales from American Federalism*, 77 N.Y.U.L. REV. 1612 (2002).

<sup>47</sup> Case 11/70, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, 1970 E.C.R. 1126; See Bill Davies, *Internationale Handelsgesellschaft and the Miscalculation at the Inception of the ECJ's Human Rights Jurisprudence*, in *EU LAW STORIES: CONTEXTUAL AND CRITICAL HISTORIES* 157 (Fernanda Nicola & Bill Davies ed., 2017).

<sup>48</sup> See DESMOND DINAN, *EUROPE RECAST: A HISTORY OF THE EUROPEAN UNION* 4 (Lynne Rienner Publishers 2d ed. 2014). The institutions at the birth of the Union grew out of the structures left over from the War, including the streamlined High Authority for fast decision-making without much consultation which was necessary during the war but a drawback in the return to civilian life. Even at the beginning, however, "the most federalist [French] members did not miss the opportunity to complain about the lack of democratic control and the weak political structure of the new institution . . . . In their view, the Council of Ministers was too powerful and the extent of the use of the veto too great, and furthermore the lack of direct elections made the whole structure undemocratic. The Common market was 'like a heavy lorry with a two-horse engine.'" Linda Risso, *Cracks in a Facade of Unity: the French and Italian Christian Democrats and the Launch of the European Integration*

still in its infancy and the Member States did not consider the institutions oriented toward protecting individual rights as they themselves were prepared to do. The CJUE was thereupon inspired by the Member States' traditions in the area of rights to create its own rights. During the early 1970s, the CJUE stated it would protect fundamental rights as part of the EU legal order, especially because one very sensitive point was the conflict between Member States' constitutional rights and EU law. Thus, the CJUE upholds important EU human rights, however they are not absolute so that public interest exceptions not disturbing "the substance" of those rights are allowed.<sup>49</sup>

Later, the situation grew more complicated and the issues shifted. Residents and citizens sought both to obtain protection from the EU and to take advantage of the EU, when their own behavior was less than clear. With time, Member States grew to have an even more important role to "ensure that the Court of Justice is properly structured and supported, enabling it to play its critical institutional part in the complex narrative of EU integration."<sup>50</sup> Nevertheless they decided that although the Charter would have the force of law dating from 2000, they were not thinking of fundamental rights enforced against the national governments of the Member States.

Rather these Member States were concerned to hold the EU to observe in their own laws the rights the national governments allowed. One issue presented perhaps the greatest jurisdictional tension over the scope of the Charter: Immigration, despite free movement of workers who are citizens of the EU, was what UK and, to some extent, other Member States wished to curb. To this day rights for people from third countries, that is, from outside the Union, including those married to citizens of the EU are shaky in some Member States, if they exist at all, as Sheila McCarthy found to her sorrow in her marriage to a Jamaican

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*Process, 1945-1957*, in RELIGION, POLITICS AND LAW IN THE EUROPEAN UNION 102 (Lucian N. Leustean & John T.S. Madeley eds. 2010).

<sup>49</sup> Two cases dealing with regulations on the sale of goods during the deep recession of 1973 (Arab oil crisis) raised questions about the protection of property rights. *Nold v. Commission*, Case 4/73, [1974] ECR 491, arose when Germany's constitutional court, the Bundesverfassungsgericht, which protects property rights referred a case in which a small wholesale coal dealer sued the Commission because the terms were too onerous to fulfill, so its business suffered. *Nold* argued discrimination and inadequate reasoning (the EU did not give exemptions to small wholesalers) but the Court felt *Nold's* difficulty arose from the recession and not because the EU was discriminating. A princess who had a similar difficulty argued that her fundamental rights to property and the free pursuit of commerce were violated. *Hauer v. Land Rheinland-Pfalz*, Case 44/79, [1979] ECR 3727. The CJUE stated that fundamental rights are an integral pt of EU law (¶15) and that Member States and European Convention on Human Rights recognize property rights (¶17). Temporary restrictions may only be challenged if the regulation disproportionately interferes with the right to ownership. Therefore, her fundamental right to pursue her commercial activities freely was not violated.

<sup>50</sup> Niamh Nic Shuibhne, *THE COHERENCE OF EU FREE MOVEMENT LAW: CONSTITUTIONAL RESPONSIBILITY AND THE COURT OF JUSTICE* jacket, 258 (2013).

citizen.<sup>51</sup> This is only one area in which the competence of the EU grew murkier with time, especially upon the imposition of the standing hurdle known as the “purely internal situation.”

Member States had historically protected the rights of their nationals and wish to retain this power. They seek the deference the executive branch in the United States has customarily commanded. The jurisdictional dispute over competence is exquisitely set forth in the recent fate of the American President’s Executive Order (EO) January 2017 outlining who may or may not enter the USA, a competence strongly and traditionally within the sphere of the executive branch. The executive branch’s lawyer argued that the court had no competence to review what the president had done or the manner in which it was executed.<sup>52</sup>

The populist arguments of the radicalized/late terrorist groups left out of political expression in the emigrant countries repeatedly expose the hypocrisy of those American and other populists who eagerly exclude refugees. Human rights collide with the desire of budget-minded voters and politicians that are only concerned about the costs of accommodating and integrating new arrivals, refugees and immigrants is not so different from the budgetary concerns of Member States. Thinking only of the immediate costs of more pupils in schools using other services to flourish and grow into contributing members of the society in question limits good policy making. Those making the budget need to consult with experts who know about the needs of the Member State for more workers and the later contributions young immigrants will make to society. Those voters who see the governments of the Member States as bureaucratic actors frustrating the human rights of new residents look to these courts (federal in USA, the CJUE in the EU) to protect immigrants from executive denial of services and fundamental rights. Voters are heavily discouraged when the promise of

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<sup>51</sup> For the attempts of Sheila McCarthy to hold her family together, see C.M.A. McCauliff, *EU Citizenship: Why Can't the Advocates General Keep Sheila McCarthy's Family Together?*, 36 FORDHAM INT'L L. J. 1372 (2013). Sheila McCarthy v. Sec'y of State for the Home Dep't, Case C-434/09, [2011] ECR I-03375.

<sup>52</sup> *State of Washington v. Trump*, Case 2-17-cv-00141 (W.D. Wa. Jan. 30, 2017); *State of Washington v. Trump*, Case 17-35105 (9th Cir. 2/4/2017). Avi Selk, *Pence Once Called Trump's Muslim Ban Unconstitutional: He Now Applauds the Ban on Refugees*, WASHINGTON POST, Jan. 28, 2017. (Voters supporting the EO felt that 1) people coming into USA took jobs they believe they might otherwise have obtained and 2) they were less physically safe with newcomers and visitors in USA whether these newcomers came into their own communities or not. They felt president was arguably protecting both the security of the country and budget-minded constituents. On the other hand, voters working in laboratories, on technological innovations in agriculture or in other fields enjoying large immigrant workers are very familiar with the contributions of immigrants and are aware of the fundamental rights of the new residents as well as the contributions they make to society. These voters wish to protect the human rights of those recently arrived and those to come, for the sake of the essential values and reputation of the country itself for protecting human rights today and for future generations. In addition, industries short of labor support a liberal immigration policy.)



enlarging the scope of fundamental rights is precluded by Article 51 and its functional equivalents under the umbrella of standing, the commerce clause and states' rights not to provide for the needs of their vulnerable citizens in the face of lobbyists representing large corporations and wealthy citizens.

In this presentation of the issues, the government's restrictive action in denying services which are deemed to strain the national budget for those who are "others" protect the people already in the Member State in question. To the populists who do not emphasize public services, the courts appear to be overreaching their competence by failing to give due deference to executives and their agents and agencies. Populists believe separation of powers means deference to an executive that provides security at a lower cost by trimming the budget for social services rather than denial of rights to human beings.

One of the essential questions to ask when an official, European, North/South American, African or Asian, acts is whether his/her actions are subject/not subject to due process considerations. For some time, therefore lawyers have set forth the fundamental rights embedded in the interstices of legal actions, in the EU, including regulations, directives and other secondary legislation. The worst case scenario is that Member States sometimes desire to pre-empt their own citizens or residents' constitutional or fundamental rights which these Member States have sworn to uphold. In doing so, the Member States are happy to argue that the EU cannot interfere by adding EU rights to the rights their residents have from the Member States. The CJUE would therefore have no jurisdiction to remedy the wrong or harm the Member State is perpetrating.

According to one Advocate General, respect for fundamental rights is intrinsic to the EU legal order, giving rise at least to conventional judicial review, examining whether Member States provide the level of protection to fulfill their other obligations as members of the EU. Beyond that, without the murky jurisdictional limitation in Article 51 of the Charter, judicial review would extend to any national measure in the light of fundamental rights.<sup>53</sup> But, within the scope of Article 51, only a serious violation is deemed to affect free movement. Those who do not fall under the competence of the CJUE may have recourse to the European Court of Human Rights.<sup>54</sup>

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<sup>53</sup> Case C-540/03, *Parliament v. Council*, 2006 E.C.R. I-5679. (¶ 38 said that the European Parliament had acknowledged the Charter's importance by referring to it in the Directive's preamble.); *Charter of Fundamental Rights of the European Union* 83/02, 2010 O.J. (Article 51 does not "extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties."); Grainne de Burca, *The Drafting of the European Union Charter of Fundamental Rights*, 26 *EUR. L. REV.* 126, 130-1 (2001).

<sup>54</sup> Case C-380/05, *Centro Europa 7 Srl v. Ministero delle Comunicazioni e Autorita' per le Garanzie nelle Comunicazioni*, 2008 E.C.R. I-349 (opinion of AG Miguel Poiares Maduro delivered

No wonder the law of Article 51 seems chaotic, apart from the situation a citizen faces after moving within the EU. Three years ago, in *Siragusa v. Regione Sicilia* the question of Member State action arose in connection with the Charter, raising questions about the ability of the CJUE to treat the issues forthrightly as well as the need to have the Member States act more responsibly.<sup>55</sup> In that case, Cruciano Siragusa, an owner of land, wished to avoid, somewhat like the princess in *Hauer* and the coal wholesaler in *Nold*, legitimate regulation of the use of property. He relied on the Charter to help him. He relied on the Charter to help him and the CJUE wisely declined to apply the Charter. In the words of Shuibhne, case law coherence is a judicial responsibility vital to the rule of law.<sup>56</sup> Does the fact that a citizen did not travel from one Member State to another really mean that person should not have the protection of the Charter and deference to the Member State therefore takes precedence over a person's rights? A Member State will say that it can therefore protect fundamental rights, just as the majority leader of the American House of Representatives says that fiscal responsibility means a person will receive "access" to health care rather than health care itself. Without fulfilling many conditions akin to moving or remaining in place, care will not be triggered, such as having an income against which to offset the tax credits offered to the person who wishes or needs to use the health care system. Does the Member State's or the United States' desire to save money in order to cut taxes fulfill the vision of Schuman or Roosevelt or does it instead trigger populist sentiments? Cutting corners to leave more resources in the hands of those who have the most resources may not make honest constitutional sense in terms of fundamental rights or good political sense either in taking care of the common public interest in order to avoid populist disruption.

In this area of reverse discrimination concerning citizenship, Koen Lenaerts, Presiding Judge at the CJUE, has explored "how the [CJUE] has determined the existence of a cross-border element."<sup>57</sup> Citizenship, rather than simply being a fifth economic freedom, one for "economically inactive free movers," may provide protection "in the absence of a cross-border element," even in the context of Article 51 of the Charter of Fundamental Rights covering the underlying disputes between a worthy citizen with a need and the Member State, or, an actor

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12 Sept. 2007, points 16-18).

<sup>55</sup> Case C-206/13, *Cruciano Siragusa v. Regione Sicilia*, [2014].; SHUIBHNE, *supra* note 50, at 259.

<sup>56</sup> SHUIBHNE, *supra* note 50, at 3 (explaining that "ensuring case law coherence is a key element" of "the responsibilities attaching to constitutional courts").

<sup>57</sup> Koen Lenaerts, 'Civis europeus sum:' *From the Cross-border Link to the Status of Citizen of the Union*, 3 FMW 6, 16 (2011).

wishing to avoid legitimate requirements.

Where does the culture of corruption begin and end, leading to the populist notion that there is no right and wrong but only winners and losers? Can the laboratory owner evading taxes piggy back on a treaty provision to evade yet another legitimate Member State law? If Member States keeping their social welfare budgets in check on the backs of all those Sheila McCarthy's who do not move from one Member State to another can use a technicality to avoid legitimate responsibilities, why should Fernand Ullens de Schooten not try the same thing? At least in terms of one question Shuibhne raises, case coherence, commentators suggest that the Grand Chamber, as expected from the new Presiding Judge, is setting some bright-line rules by requiring the Member State court referring the case to assume the burden of proving free movement.<sup>58</sup> Will this procedural foray remove all the frustration? For practitioners, consistency and difficulty of use and interpretation of the free movement rules is streamlined. Justice for the Sheila McCarthy's of this world is not there yet, although a concept of citizenship in line with the promise of Maastricht would provide that fundamental right.<sup>59</sup>

Again, the Member States themselves have put budget considerations before fundamental rights and have failed to require their wealthiest corporate and individual citizens to assume duties and responsibilities commensurate with the rights and privileges they enjoy. It is no surprise that litigants before the CJUE would seek judicial protection fairly or not from the Member States but the strong desire of the Member States to restrict even legitimate claims by precluding jurisdiction is another indication that voters might be more than willing to consider populist politicians' promises. A Member State court (Italian Cour de Cassation) found on May 2, 2016 that a man who was truly hungry should not be treated as a criminal for taking 4.07 euros worth of cheese and sausage in a supermarket when he did not have the money to pay for the food, "in the face of the immediate and essential need for nourishment."<sup>60</sup> The newspapers reporting the court's decision

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<sup>58</sup> Ullens de Schooten v. E'tat belge, Case C-268/15, [2016], ¶s 50-53 (outlining the ability to rely on free movement).

<sup>59</sup> See EUROPEAN UNION LAW Chapters 11-15 (Catherine Barnard & Steve Peers eds. 2014) and accompanying EU Law Analysis blog, 16 November 2016 (post by Daniel Sarmiento).

<sup>60</sup> Unsigned article, *Italian court rules food theft 'not a crime' if hungry*, BBC EUROPE, May 3, 2016. After three rounds in the courts, the Court of Cassation decided taking small amounts of food when very hungry is no crime. The appeal had only asked that the conviction should be reduced to attempted theft and the sentence reduced after he had been convicted in 2015 of theft and sentenced to six month in jail and a 100 euro fine. Another customer had told a security guard in a Genoa supermarket that Roman Ostriakov only paid for bread sticks but had two pieces of cheese in his pocket and a packet of sausages. The BBC summarizes the op-eds: "the right to survival prevails over property" (LA STAMPA); noting 615 people are added to the ranks of the poor in Italy every day makes it "unthinkable that the law should not take note of reality" (IL CORRIERE DELLA SERA); the ruling derives from an idea that "informed the Western world for centuries—it is called humanity"

do not mention the strength of the culture of corruption indicated in the budget's inability to allocate sufficient funds to feed and train poor people capable of working or to help those not able to work. No one would fault the decision of the Court of Cassation which recognized the human being's fundamental right to eat but the five-year judicial odyssey and the failure of social service agencies means that much remains to be done to realize the promise of fundamental rights. But can Member States or the Commission, if empowered by the Member States, do more than say a person suffering from serious food insufficiency should not be fined and jailed?

The lack of basic income has manifold causes from global and technological elimination of different kinds of jobs, at first low-skill but after the Great Recession, also of many white-collar banking and other jobs through the collection and management of mass data and the automation of legal and other documents to accidents, bad physical and mental health conditions and lack of various educational skills. In some areas of the world where whole villages and regions had few services and resources, majorities of the population were (and in some instances still are) at risk, whatever their innate skills and health, experiments to supply people with cash through small long-term loans had proved successful, thereby attracting enormous attention.<sup>61</sup>

More ambitious and less tested suggestions, such as a basic income for all, have been discussed but comparatively few studies have addressed even how empirical testing for the operation of such a proposal might be conducted to obtain data for analysis of the feasibility of income projects. Like the loans from Grameen Bank, the fund transfers to people in the few basic income pilot programs so far attempted enabled the recipients to make investments in skills training or tools.<sup>62</sup> These experiments are as important for the data that will be

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(ITALIAGLOBALE.IT). Genoa, like Marseilles, is a port city with many poor people, but far from the ports, unaided poor people struggle for their existence.

<sup>61</sup> "In 1974, Professor Muhammad Yunus, a Bangladeshi economist from Chittagong University, led his students on a field trip to a poor village. They interviewed a woman who made bamboo stools, and learnt that she had to borrow . . . to buy raw bamboo for each stool made" at a high rate of interest and therefore always remained with a subsistence income. Yunus personally lent a small number of women weaving stools a small amount of money, repayable over a long term. He was surprised that the loans not only helped them survive better in their business but that the loans "create[d] the spark of personal initiative and enterprise necessary to pull themselves out of poverty." Nearly a decade later, Yunus set up Grameen Bank and made loans over the next thirty years to more than eight million people, with a 3% bad loan rate. See GRAMEEN BANK, BANK FOR THE POOR, <http://www.grameen.com>.

<sup>62</sup> Brishen Rogers, *Basic Income in a Just Society*, BOSTON REV. (Spring 2017), <http://bostonreview.net/forum/brishen-rogers-basic-income-just-society>. Pilot programs for limited amounts of money given to limited numbers in a selected community are being set up to track people's responses to having more money than basic subsistence with its accompanying food insufficiency. Paul Niehaus and Michael Faye set up a charitable organization, Give Directly (operating in East Africa), to follow what people will do with money given over a decade to all

assembled as for persuading politicians to consider the idea itself. These data, once generated, can be the basis for improved, more tailored guidelines for Member States already providing training programs and tide-me-over grants to young people transitioning from vocational education to work, for disabled people or people who want to set up local or neighborhood service businesses, including home repair, painting, hair-dressing or tailoring.

The EU has taken steps backward both in the serious failures of its own European political parties, including the EPP, to realize in concrete legislation the values it espouses and in the failure in Article 51 of the Member States to make a whole-hearted commitment to budget for and fund values in the Charter of Fundamental Rights in 2009 with respect to the scope and extent of the Lisbon Treaty. Protection against food insufficiency and an inability to flourish must be integrated into the Charter and into Member States' provisions for their residents.

### C. *Pluralism: political and religious acceptance*

The notion of religious pluralism is less forceful as a high priority in a formal religious commitment (as opposed to personal spiritual values) today than it was after the War. To some extent, the Second Vatican Council reflected the hard-won insight made more apparent during the War that everyone has a fundamental right to a seat at the table in the public square of politics, whatever the person's ethnic or religious heritage and regardless of whether the person adheres to a religion. The Council's Declaration on Religious Freedom did not claim

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the adults in a Kenyan village of 6,000. ("These recipients are some of the most vulnerable people in the world, living on the U.S. equivalent of less than a dollar [a day].") Paul Niehaus and Michael Faye, *Basic Income Works*, BOSTON REV. (Spring 2017), <http://bostonreview.net/class-inequality/paul-niehaus-michael-faye-basic-income-works>. The Finnish government is also taking on a pilot project, "in which 2,000 unemployed people [in different areas of the country] between the ages of 25 and 58 will receive a guaranteed sum [a basic income] of €560 a month for two years instead of their unemployment benefit, but they will continue to receive it whether or not they find work. The government hopes it will encourage the unemployed to take on part-time work without worrying about losing their benefits." Sonia Sodha, *Is Finland's Basic Universal Income a Solution to Automation, Fewer Jobs and Lower Wages?*, THE GUARDIAN, (Feb. 19, 2017), <https://www.theguardian.com/society/2017/feb/19/basic-income-finland-low-wages-fewer-jobs>. Some tech employers believe the availability of work may become less secure as automation and artificial intelligence increase. They are actively exploring the concept of basic income, which Mark Zuckerberg suggested may, among others benefits, encourage entrepreneurs to try new ideas. Clay Dillow & Brooks Rainwater, *Why Free Money Could be the Future of Work*, FORTUNE, 68, 71 (July 1, 2017) (explaining "You know an idea (universal basic income) has gone mainstream when one of the world's best-known CEOs invokes it in an Ivy League commencement speech"). Entrepreneurs, however, may seek legislation to skew the basic income toward business exploration by scrapping current social welfare programs in favor of basic income, thereby displacing social services for the disabled and otherwise endangering people with special needs. *Id.* at 76.

secular priority for any religion or denomination of a religion (in an earlier period termed the “confessional state” but instead invoked the vision of a wide, fundamental right to religious freedom “for persons, families, communities, and religious bodies when engaged in worship, education, observance, practice, witness and institutional governance.”<sup>63</sup> Jacques Maritain, whose writings provided the philosophical basis for Robert Schuman’s commitment to Christian democracy, was still alive in 1965 and remained an inspiration to the presiding pope at the end of the Council, Paul VI.

Today, the aggressive secular nationalism values uniform commitment to the glory of the state. The latest fallout in cases based on the ban of the Muslim burqa or hijab (scarf) appeared in the CJUE. The ability of the CJUE to split hairs ranks with the best of judicial personnel. Even if the reasoning assessed from a substantive stance is not clearly comprehensible the judicial hairsplitting at least saves some, if not all, people subject to these laws. On the 14th March 2017, the CJUE announced the judgments in two cases factually distinguished by the notion that “An internal rule of an undertaking which prohibits the visible wearing of any political, philosophical or religious sign does not constitute direct discrimination,” with the qualification that without such a rule, a customer’s influence on an employer to prohibit a female employee from wearing “an Islamic headscarf” (hijab) might be discriminatory.<sup>64</sup>

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63 DECLARATION ON RELIGIOUS FREEDOM, DIGNITATIS HUMANAE (1965), available at: [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vatii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vatii_decl_19651207_dignitatis-humanae_en.html). Angela C. Carmella, *John Courtney Murray, S.J. (1904-1967) in 1 THE TEACHINGS OF MODERN CHRISTIANITY: ON LAW, POLITICS, AND HUMAN NATURE* 115, 135 (John Witte Jr. and Frank S. Alexander, eds. 2006). See Catherine M. A. McCauliff, *Jacques Maritain’s Embrace of Religious Pluralism and the Declaration on Religious Freedom*, 41 SETON HALL L. REV. 593 (2011).

64 The cases are *Achbita v. G4S Secure Solutions*, Case C-157/15 and *Boungaoui v. Micropole Univers*, Case C-188/15. In *Achbita*, the Belgian case, the CJUE was asked to interpret the EU’s Council Directive 2007/78/EC (27 Nov. 2000) on equal treatment in employment with respect to discrimination on the grounds of religion. The Directive referred to the ECHR and the constitutional traditions of the Member States as well as the Charter. GrS’s company manual is written in neutral language and makes no distinctions among employees so the Court does not see any difference of treatment based on religion. Ms. Boungaoui received a different judgment. A student engineer, who stayed on at the end of her internship and was fired when customers did not want her to wear a hijab. The company had a neutrality policy toward customers, and it knew that the scarf had nothing to do with the employee’s capabilities or professional qualifications. Nevertheless, it fired her. The customer got no better service from a Muslim female employee forbidden to wear a hijab than one whose fundamental rights were recognized, just as the people banned from traveling to the United States did not affect American safety, especially with no incidents by nationals of the banned countries had taken place. The bans are neither reasonable nor scientifically supported. C.M.A. McCauliff, Dreyfus, *Laicite’* and the Burqa, 28 CONN. J. INT’L L. 117 (2012). The idea of limiting religion to one’s cultural identity, part of the humanistic approach, reduces at least the protections for more recently arrived or newer religions and belief systems (such as Scientology). MCCREA, *supra* note 4, at 189-192 (explaining in Ch.5 that in some Member States, individual political rights, but not free conscience to form a religious allegiance, receive full recognition while religion is deemed an

Those who compartmentalized religion (by the numbers, especially the Christian religion) in the private realm during the early decades of the last century are the ancestors of those who were “affronted” by the Muslim dress of girls in school early in this century. Rather than protecting the people practicing a minority religion from marginalization, the French legislature chose to prioritize the ‘affront’ it felt for its own state secularism from the practice of school girls wearing scarves not because it was cold or dusty but because they are Muslim. The view of “liberals” that they were engaging in the high activity of liberating pre-teen girls from their fathers extended to many people far beyond France. These fellow travelers would save the pre-teens from the possible natural “revolt” against a parent in teen or later years. Suits in the European Court of Human Rights brought the girls little relief but made the hypocrisy of those who imposed their secularity over the protests of fathers and daughters abundantly clear.<sup>65</sup>

Like the roll-out of the American EO imposing an anti-Muslim travel ban on Jan. 30, 2017, the head scarves ban did not work from the point of view of the government’s credibility and the trust many people could thereafter place in the government. Resentment against these laws is high. Women’s rights groups cannot make progress when secular governments disrespect a whole culture and religion, whether they wish to wear a veil or not, since some women’s rights groups seek to have Muslim dress accepted in the work place and other women’s groups seek freedom from Muslim dress. The next Muslim dress ban was kitted out as a security measure<sup>66</sup> against all those presumed macho terrorists who might choose to hide out in a Muslim dress with their AK-47s, much like the current EO travel ban on Muslims once scheduled to take effect on March 15, 2017 but suffering from the same anti-religious discrimination as the first EO. Both issues, the Muslim hijab (scarf) in France and the Muslim travel ban in USA, suffer from the same hypocrisy and exacerbate the volatility the responding populist voters project onto the larger society at this time.<sup>67</sup>

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affront to the secularism of the state.)

<sup>65</sup> Nusrat Choudhury, *From the Stasi Commission to the European Court of Human Rights: L’Affaire du Foulard and the Challenge of Protecting the Rights of Muslim Girls*, 16 COLUM. J. GENDER & L. 199 (2007) (describing suits based on the restrictions in the French Law on Secularity and Conspicuous Religious Symbols in Schools, Law # 2004-228 of March 2004).

<sup>66</sup> Ben McPartland, *Burqa ban five years on*, available at: [www.thelocal.fr/2015/10/12/france-burqa-ban-five-years-on-we-create-a-monster](http://www.thelocal.fr/2015/10/12/france-burqa-ban-five-years-on-we-create-a-monster) (12 October 2015) (explaining that instead of security, the ban has encouraged extremists to resent the French state (those who fight in Syria say this law encouraged them to go to fight for freedom from French tyranny, including 137 women, of whom 45 are teens, and has on the other hand encouraged Islamophobia on the part of French people). Despite this discriminatory, mean-spirited and anti-religious law, it continues on the books causing, if nothing else, divisiveness within many societies, since other Member States have also enacted such laws.

<sup>67</sup> The United States Supreme Court had a tradition of protecting people practicing minority religions and in the following case struck down the city of Hialeah’s ordinance. In *Church of Lukumi*

Serious discrimination against Jewish people has been a depressing and troubling feature in many Member States of the European Union in recent years. The EU has an agency, the Fundamental Rights Agency (EU FRA), designed to monitor ethnic and religious discrimination of all kinds (including expulsion of Roma people from several Member States) and to serve the educational function of publicizing and analyzing these crimes from the point of view of EU rights set forth in the Charter.<sup>68</sup> Every year, around the time Krystalnacht was perpetrated (November 9, 1938), FRA publishes its report on anti-Semitism. But frustration that not enough is being done mounts as crimes only increase. Amy Elman articulates that righteous frustration in her summary of the successes and shortcoming of the efforts of the Member States. Her analysis concludes that “each level of ‘integrated Europe’ off-loads responsibility [for the EU’s anti-discrimination efforts] onto another level for the promise of fulfilling” those efforts, thus deferring and ultimately denying redress.<sup>69</sup> Her powerful assessment shows how much more the EU must do and how powerfully the resentful rhetoric of populist politicians encourages the fear of their constituents to express itself.

The populist response to establishment hypocrisy has thus not been a general resolve, followed up by compliance, to ‘drain the swamp.’ Instead, an entirely different set of norms, including blame, resentment and discrimination, has captured the imagination of populist voters and politicians alike. Instead of cooperating for peace, prosperity and trade,

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Babalu Aye Inc. v. Hialeah, 508 U.S. 520 (1993), the city ordinance said nothing about the Santerian religion nor made any religious distinctions. The law simply ruled out the ritual method by which Santerians killed chickens as unacceptable in Hialeah, and received an unfavorable decision from the Court. In essence, laws against headscarves or fuller Muslim dress are similar to the American EOs of 2017 banning travel by people leaving from several states which had a majority Muslim population. Because protecting people practicing minority religions has traditionally been much less compelling in several Member States than it is in USA, these Member States do not so easily acknowledge the discrimination. Thus, one of the human rights watch groups styles itself the voice of the anti-racist movement, enar-eu.org, www.enar-eu.org. James McAuley, reporting from Paris, notes the “strong anti-immigrant sentiment” spreading into the political mainstream. James McAuley, *E.U. Court Says Employers Can Ban Muslim Headscarf in Workplace*, WASHINGTON POST, (March 14, 2017). As Shuibhne, *supra* note 50, points out, judges need to be brave but in the Belgian case, *Achbita*, *supra* note 64, the judges conceivably could have given into those unconcerned about the rights of the Moslem women because of the elections in several countries in the EU during 2017, on the ground that a populist judgment might save people from voting for populist candidates.

<sup>68</sup> See the agency’s website, fra.europa.eu, available at <http://fra.europa.eu>. Several independent analyses are concerned with this disturbing problem which has only grown during the 21st century. See Jean-Yves Camus, *Beyond the Republican Model: Antisemitism in France*, POLITICS AND RESENTMENT: ANTISEMITISM AND COUNTER-COSMOPOLITANISM IN THE EUROPEAN UNION 277 (Lars Rensmann & Julius H. Schoeps, eds. 2010); Paul S. Iganski, ‘Antisemitism’ and anti-Jewish Hatred: *Conceptual, Political and Legal Challenges in NEW DIRECTIONS IN RACE, ETHNICITY AND CRIME* 18 (Coretta Phillips & Colin Webster eds. 2013).

<sup>69</sup> R. AMY ELMAN, *THE EUROPEAN UNION, ANTISEMITISM, AND THE POLITICS OF DENIAL* 11 (2015).



the desideratum becomes winning with the image of a Homeric warrior in single combat against a foe after which outsized rewards await the winner and death the vanquished.<sup>70</sup>

While riches are outsized for the winner and his immediate family as long as they can keep their winning streak, society itself loses. Trade is set back in war time along with other cooperative efforts. Little beyond suffering and disruption comes the way of the average citizen. The personal status of the enemy and a recurring state of war more broadly interfere so greatly in human flourishing that devastation marks whole areas and periods after the Homeric warrior continues to assert control beyond his original time frame. The costs of this view of society are too high to pay but this embrace of war and naming enemies are on offer with the populists.

How can we avoid the abandonment of our values? Jacques Maritain was neither the first nor the last to suggest that the law has within itself the ability to regenerate. As Richard Hooker earlier had encouraged, God who gave the laws of the universe would not permit it to run down so helplessly without the ability to renew itself.<sup>71</sup> In the same fashion more recently, Martin Luther King wrote in a great natural law document of his continuing love for the church, despite his deep and bitter personal disappointments and the fact that “[w]e have waited for more than 340 years for our constitutional and God given rights . . . but we still creep at horse and buggy pace toward gaining a cup of coffee at a lunch counter.”<sup>72</sup> Robert Cover wrote about the law as encompassing a way of life based on deeply held values.<sup>73</sup> The EU had at its core the values of the Christian Democrat founders, as well as the ideas and values from other traditions of thought which shared some overlapping values, methods and concerns. The EU has nevertheless moved away from fidelity to these values and is being challenged by populist politicians for the political and voting allegiance of citizens, as well as being defended for purely secular motivations beyond self-

<sup>70</sup> In Alasdair MacIntyre’s graphic depiction of the Homeric warrior, by the 5th century BCE, the Homeric warrior’s personal values “are now, if exercised by the individual in the city state, antisocial. Self-aggrandizement, the use of the state as something to be preyed upon, these are the only courses open to the individual who wants in the fifth century to behave like a Homeric hero. The social order in which his qualities were an essential part of a stable society has given way to one in which the same qualities are necessarily disruptive. So the relationship of the [agathos/good warrior] to the social values and especially to justice has become a crucial issue.” ALASDAIR MACINTYRE, *A SHORT HISTORY OF ETHICS: A HISTORY OF MORAL PHILOSOPHY FROM THE HOMERIC AGE TO THE TWENTIETH CENTURY* 10 (2d ed. 1998).

<sup>71</sup> C.M.A. McCauliff, *Law as a Principle of Reform*, 40 RUTGERS L. REV. 429-465 (1988). (On Richard Hooker’s *LAW OF ECCLESIASTICAL POLITY*.)

<sup>72</sup> Martin Luther King, *Letter from a Birmingham Jail*, 16 April 1963, available online in the African Studies Center cache of documents at the University of Pennsylvania.

<sup>73</sup> Robert M. Cover, *The Supreme Court, 1982 Term-Forward: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

interest.<sup>74</sup>

Some candidates look in any election to appeal in particular to Catholic voters. Most recently, Marine Le Pen is said to have used a passage from a speech Francois Fillon, the Republican candidate, had given in April because he attracted nearly half the 15% of French voters who attend Catholic Mass.<sup>75</sup> An instrumentalist, rather than a religious, view would reduce Christian heritage to a buffer against immigration (especially Middle Eastern and Muslim immigrants). This view shunts aside the strong commitment made to ecumenical outreach during the Second Vatican Council to Jews, other Christians, Muslims and practitioners of other world religions in such documents beginning with the Declaration on Religious Freedom in some senses an application of the parable of the Good Samaritan. It is up to each of us to exert the effort required to establish a good, neighborly relationship with other people around us.

If the CD/EPP parties do not make a true commitment, not only to the values of the founders but also to the broad enactment of social justice into the law,<sup>76</sup> the price they will pay will be very severe indeed,

<sup>74</sup> Other ways of expressing some of these overlapping concerns include extending the notion of the economic, rational (selfish) person to cover other values under the broad heading of anti-utilitarianism dealing with values beyond self-interest. See Alain Caillé, *Au-delà de l'intérêt (Éléments d'une théorie anti-utilitariste de l'action I)*, 31 REVUE DU MAUSS 175 (2008), <http://www.cairn.info/revue-revue-du-mauss-2008-1-page-175.htm>. Some of the same concerns and values are focused on democracy in general without the inspiration of Christian Democracy, throughout the REVUE DU MAUSS (Mouvement anti-utilitariste dans les sciences sociales, Anti-utilitarian Movement in The Social Science REVUE DU MAUSS, [www.revuedumauss.com](http://www.revuedumauss.com)) (explaining that “MAUSS wagers on the possibility of renewing and extending the main innovation of *The Gift* by Marcel Mauss . . . and using it as a basis for a general social theory.”) Finally, economists such as Richard Thaler and Robert Schiller also look beyond the limitations of the Hobbesian selfish market to supply the defects by examining other motivations for human behavior.

<sup>75</sup> Max Colchester and Stacy Meichtry, *Le Pen Takes Up Rival's Words in Campaign*, WSJ, May 3, 2016, at A6. Both Macron and Le Pen each appealed to about 15% of the Catholic voters. *Id.* Today, the meaning of the parable of the Good Samaritan (Luke, 10: 25-37) must be re-emphasized. PAUL RICOEUR, LISTENING TO THE PARABLES OF JESUS (1973) (explaining that we do not simply have neighbors but through our own effort make ourselves neighbors). It may be worth noting that the President of France, Emmanuel Macron, served as a research assistant for Paul Ricoeur's last book, MEMORY, HISTORY, FORGETTING (2004). Pascal-Emmanuel Gobry, *Macron-Le Pen Runoff Reveals Fault Lines in French Catholic Revival*, May 3, 2017, <https://www.americamagazine.org/politics-society/2017/05/03/macron-le-pen-runoff-reveals-fault-lines-french-catholic-revival> (explaining that the Macron-Le Pen runoff embodies “a country divided—by globalization, technology and social liberalism—into winners and losers who are increasingly at each other's throats”). Gobry's citation of a poll indicated that about 40% of Fillon's voters planned to vote for Macron and 30% for Le Pen. While the French conference of Catholic Bishops did not endorse a candidate, its statement emphasized welcoming migrants. Several Catholic charities, the Catholic newspaper *La Croix* and several bishops, nuns and intellectuals supported Macron, but the fundamentalist base is subject to the blandishments of populist politicians. Gobry concluded that for them, “a militant, perhaps quasi-reactionary, embrace of political populism will keep working itself out in the heart of resurgent French Catholicism.”

<sup>76</sup> Property rights derived from the state as society's agent provide the notion of distributive

that is the possibility of wars, a cost much higher than the heavy cost of doing justice for the working citizen. As a career State Department official with Ambassadorial rank, described his nearly 40 years of service, “values have power . . . especially if you are serious about your objectives.”<sup>77</sup> Amb. Fried continued that some argue “values are a luxury, that in a Hobbesian or Darwinian world we should simply take our share, the largest possible. Consider the consequence of such arguments . . . it is not realistic to expect that [such a world] would be peaceful or stable. Rather the reverse: a sphere of influence system would lead to cycles of rebellion and repression and, if the past 1000 years is any guide, lead to war between the great powers, because no power would be satisfied with its sphere. They never are.” Pride in the peace and internal market extending across an expanded Union must sustain Member States and EU government officials alike in the hard tasks facing them now. The EU and its constituent Member States must 1) keep the specter of Hobbes from reclaiming the internal market; and 2) make sure that the EU is the anchor of peace in the face of challenges from politicians and other state actors interested in reasserting spheres of influence, thereby stealing from this generation their opportunity to flourish and grow in all aspects of their lives.

### III. RENEWAL: A RETURN TO THE UNITY THE SCHUMAN DECLARATION ENVISIONED?

How did this slippage in the realization of EU ideals, grave enough to attract populist politicians, come about? One factor from global trade to technology never provides a sufficient explanation but for this article, it is worth concentrating on how faithful to the values of Schuman and other founders the EU has proved and on the values instead that have supplanted fundamental human rights, solidarity and the rule of law. One very important factor is fairness in taxation both before and after the Great Recession of 2008.<sup>78</sup> Both financial and banking businesses and technological businesses provide extraordinarily large returns beyond the profits of staple manufacturing known in the 20th century but tax rates have not captured even a small fraction of a per cent of the extraordinary profits. The tax rates continue to apply to these new

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justice, the setting for the role of the wealthy in contributing to society. SAMUEL FLEISCHACKER, *A SHORT HISTORY OF DISTRIBUTIVE JUSTICE* 3 (2004). See also David Wasserman, *Distributive Justice*, in *DISABILITY, DIFFERENCE, DISCRIMINATION* 147 (Anita Silvers et al. eds., 1998).

<sup>77</sup> Antony Blinken, *After 40 Years of Service to America, Ambassador Daniel Fried Delivers Parting Shot*, DIPLOPUNDIT (Feb. 27, 2017), <https://diplopundit.net/2017/02/27/after-40-years-of-service-to-america-ambassador-daniel-fried-delivers-parting-shot/>.

<sup>78</sup> See C.M.A. McCauliff, *Didn't Your Mother Teach You to Share?: Wealth, Lobbying and Distributive Justice*, 62 RUTGERS L. REV. 363, 385 (2010).

businesses as though they produced only the profits of manufacturing of old, meaty to be sure but not profits in the hundreds of millions and billions. Yet those who vote for the populist claiming to drain the swamp see the inherent political unfairness of not adjusting the tax rates.

Robert Schuman's ideals remained constant and strong throughout his life, as both his behavior and his writings show.<sup>79</sup> His choice about how to spend what he knew from his poor health would be short years in retirement remained consistent with his previous behavior. He wrote down what he saw and what he thought, although he could have written a biography emphasizing his contributions as French Foreign Minister to the drafting of many treaties or the development of many plans to unite the people of Europe. Instead, Schuman left the glorious biographies to others and wrote *Pour L'Europe*, drawing upon his prior speeches and writings advocating unity and supra-nationalism in Europe. In the first chapter, he described the economic and political turmoil arising in Europe from the Second World War and suggested that these problems called for a European-wide solution.<sup>80</sup> In the second chapter, Schuman averred that Europe, "before being a military alliance or an economic entity, must be a cultural community in the most elevated sense of this term."<sup>81</sup> He finished his work by January 1963, nearly nine (9) months before his death in September. Schuman wrote the preface to the book his long-time friend and associate, Professor Paul Reuter, later provided on the unification of production in the French and German coal and steel industry in the Coal and Steel Community. There Schuman summed up the benefits accruing to Europe from the values of the Community. In 1963, Schuman expanded his treatment of these benefits and values in *Pour L'Europe*, Schuman's main writing in an accessible book format. Schuman's many speeches advocating the controversial idea of the unification of Europe on a

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<sup>79</sup> See generally Price, *supra* note 10. (For whatever reasons, Schuman's cranial arteries became constricted forcing him to retire. The stress of four years in prison and on the run took their toll on a man already in his 50s when his ordeal began. His 'sojourn' in the prison starting on Sep. 14, 1940, in Metz in solitary confinement and his 'strong' interrogation, his removal to Neustad where the Nazi governor of Alsace-Lorraine pressured Schuman to write an article for a German newspaper advocating the permanent return of Alsace-Lorraine to Germany until he escaped on Aug. 1, 1942, with a bounty on his head of 100,000 Reichsmarks and soldiers in pursuit, his constant moving from place to place for another two years within the French Free Zone (mostly abbeys and convents) to avoid discovery, must all have contributed to the occlusion. Schuman did not drink alcohol.)

<sup>80</sup> SCHUMAN, *supra* note 15, at 19-34. PAUL ALAN FIMISTER, ROBERT SCHUMAN: NEO-SCHOLASTIC HUMANISM AND THE UNIFICATION OF EUROPE, 1886-1963, 240-243, 255 (2008). (Schuman heard talk when he was young about the desire to coordinate the production of all the coal and steel in the region. It was easy for him to adapt this dream as a vehicle to unite Europe since he knew it was popular).

<sup>81</sup> SCHUMAN, *supra* note 15, at 29.

supranational basis are now easily available online.<sup>82</sup> We may think of *Pour L'Europe* as a commentary annotating the Schuman Declaration, with Chapter 3, the spiritual and philosophical motivation for pursuing union tirelessly.

As a society today, whatever the religious adherence or lack of it, we have drifted away from the high level of personal commitment Robert Schuman and the other founders and thinkers made to the values of EU, including fundamental human rights, justice and peace.<sup>83</sup> In concrete terms, what should we do to restore our commitment to the values of Schuman and the other founders? “[M]ainstream parties should become more active and reform the EU by making progress on issues such as fundamental rights and services liberalization.”<sup>84</sup> Similarly, the President of the European Commission Jean-Claude Juncker wants to make sure the EU is building a people’s union by enhancing and strengthening EU citizenship in the context of direct democracy versus populism, as well as the global refugee crisis versus the free movement of people in a secure environment. Juncker’s speech, delivered in French, recalled a European continent in 1945 “martyrised, torture, sanglant, malheureux,” but “dans [hac] lacrimarum valle, [cette valle]’e des larmes] . . . l’Europe a su faire la paix. (martyred, tortured and bloodied but in this valley of tears, Europe has made peace for itself.)”<sup>85</sup> To go forward during the extremely difficult challenges of the 21st century, Juncker believes we must draw strength at the outset by recognizing and building on the EU’s faithfulness to the Union’s founders central, continuing, and greatest achievement: Europe has maintained peace since World War II while expanding the Union during the 1990s to central and eastern Europe (even in the face of war in Kosovo).<sup>86</sup>

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<sup>82</sup> Jean Monnet did not like the word “supranational” and sought to change that word in Schuman’s Declaration of May 9, 1950. Supranational refers to the level of society “created by transcending the purely natural frontiers of the state . . . [through that charity which ‘makes of each man our neighbour’ and which generates the human rights that are the basis of a legal order beyond that of the state.” FIMISTER, *supra* note 80, at 228.

<sup>83</sup> Michael McConnell, *Believers as Equal Citizens*, OBLIGATIONS OF CITIZENSHIP AND DEMANDS OF FAITH: RELIGIOUS ACCOMMODATION IN PLURALIST DEMOCRACIES (Nancy Rosenblum ed. 2000).

<sup>84</sup> Heather Grabbe, Abstract for *Populism in the EU: New Threats to the Open Society?* (EPC Publications 2014). (This action involves actual pursuit of the goals of the mainstream political parties and better communication of these ideas through social media, which should bring the public into debates about the future of Europe.); *Id.* (The danger, however, is that the mainstream parties will instead simply be tempted to form “a grand coalition to protect the *status quo*.”); See Grabbe, *supra* note 33.

<sup>85</sup> Jean-Claude Juncker, president of the European Commission, State of the Union 2017, 13 September 2017, [https://ec.europa.eu/commission/state-union-2017\\_en](https://ec.europa.eu/commission/state-union-2017_en).

<sup>86</sup> Belgian Professor Dr. Roger Blanpain (1932-2016), ‘thinking globally and acting locally, taught us to be more continuously aware of the importance of language and culture. Juncker chose to speak in French to underline the tragedy Brexit brings in its wake. See also European

Juncker went on to state that the Member States had not equipped the EU to solve the problems, but instead blamed the EU to absolve themselves. It is no wonder Juncker used the example of youth unemployment as a prime example of a problem in the hands of national governments. The single most important action for a national government to take is to invest in its youth as if our lives and freedom depended on it. This means all youth, rural and city children and teens, should be given the attention, training, and encouragement to flourish. The story of Édouard Louis<sup>87</sup> illustrates the importance of taking political action to protect children and give them the resources they need to flourish when the extreme poverty of their parents renders their provision of their children's material requirements impossible. After a time, M. Louis did not want to remain Eddy Bellegueule, the boy whose family slipped below working class when his father suffered an accident

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Commission, *White Paper on the Future of Europe: Reflections and Scenarios for the EU 27 at 2025*, 1 March 2017, <http://europa.eu/rapid/attachment/IP-17-385/en/White%20Paper%20on%20the%20future%20of%20Europe.pdf>. (When recalling the disastrous war ending in 1945, one is reminded of Shakespeare's HENRY V, in which Henry distracted people from economic problems in England by invading France and driving the Duke of Burgundy to profound and extreme sadness. In Act IV, sc. VIII, ll. 85-111, at the end of the battle of Agincourt (1415) during the Hundred Years' War (1337-1453), Henry got the large French casualty figures (only to be replicated and multiplied in later centuries as the populations of England and France grew and France and Germany became industrial enemies, culminating in the First and Second World Wars as lands in Europe were scarred again and again). The Duke of Burgundy in Act V., sc. II, ll. 25-67, lamented the dead and the disruptions of food supplies with the devastation of the once beautiful and fertile fields of France together with other hardships in civil society and children without schools growing up feral "like savages—as soldiers will/That nothing do but meditate on blood" (ll. 59-60). Henry answered in Act V, sc. II, ll. 67-73, "If, Duke of Burgundy, you would the peace, you must buy that peace/With full accord to all our just demands." Similar scenes and thoughts occurred again and again after the Hundred Years' War and before the World Wars.); See PETER H. WILSON, *THE THIRTY YEARS WAR: EUROPE'S TRAGEDY* 41-42, 314-315, 586-587, 847-848 (2009).; Other wars and the Treaty of Westphalia are set forth, *supra* note 9.

<sup>87</sup> Édouard Louis, *The End of Eddy (An Autobiographical Novel)* (Michael Lucey, trans. 2017). M. Louis was interviewed over lunch with the FINANCIAL TIMES. John Sunyer, *Marine Le Pen, My Mother and Me*, FTWEEKEND, 1-2 Apr. 2017, at 3 (explaining M. Louis's interests in questions of class, culture and sociological inquiry: politicians on the center left "should be representing people like my mother and father, but instead they have abandoned them"). Cf. J.D. Vance, *Hillbilly Elegy* (2016) (setting forth the story of a boy from a poor and dysfunctional family in Appalachia). Vance talks about "a culture of instability, irresponsibility, anger and profound pessimism, made worse by opioid addiction and violence," as Gillian Tett summarized the conditions and analyzed the policies to deal with these conditions. *Halting the Decay of America's White Working Class*, FTWEEKEND, 29-30 Apr. 2017, at 6 (explaining that tax cuts will not suffice when "active, aggressive measures to inject more stability and functional skills into the lives of white working-class children" and their parents are not proposed, even as the people suffer great harm in obscurity instead of receiving mentoring, apprenticeships, education and support for families). See also Janet Adams & Paul Overberg, *Rural America Is the New 'Inner city'*, WALL ST. J. May 27-28, 2017, at A 1, A 10 (tracing the slow decline in rural wages and population since the 1980s, "the shift to a knowledge-based economy" during the late 1990s and a widening "wage gap between workers in urban and rural areas" since the Great Recession of "2007-09" when the housing market collapsed).

at the factory and could no longer work. Eddy was born in 1992 in the rural village of Hallencourt about 20 miles from Amiens in Picardie, an area like Appalachia or the rust belt, with many people living below the poverty line and welfare not sufficient to sustain regular availability of meals. Eddy's father, a high school dropout, continued to abide by the working-class standards he had expected to meet during his adult life, despite no longer being able to work. He believed that his wife must stay home with the children and the fact that she had little, and sometimes no, food to feed their children did not change M. Belegueule's mind.<sup>88</sup> He still managed to get to the local pub with other super-macho men who fought with each other after closing hours (much like the world in Appalachia).

Unlike most of the youth in the village and unlike his parents, Eddy managed to escape and attend a lycée in Amiens.<sup>89</sup> He wanted to put an end to Eddy's suffering, to finish Eddy off, not just to do away with his old self but to be done with him, as he put it, and he did so by writing his story at age 19. Symbolically, Louis did finish Eddy off by

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<sup>88</sup> Academic studies have shown that without good nutrition and regular meals children do not learn so well as other children who have these advantages. As with climate change and several other areas of public policy, two different political responses to scientific facts have been set forth.; Jane Brody, *The Importance of School Lunches*, N.Y. TIMES, June 6, 2017, at D5 (explaining that the House Agriculture Appropriations bill (2015) allowed school districts with lost revenue from any cause not to provide healthful meals, as push-back after a different Congress in 2010 had enacted the Healthy, Hunger-Free Kids Act). That approach at the local level includes shaming by snatching away children's lunch trays (when their parents had an unpaid lunch bill) and dumping the unfinished lunches in the garbage bins in front of all the children, much like calling out NATO members who had not built up their own national defenses by spending 2% of their national GDP a year on defense projects. *Id.* (citing another N.Y. TIMES article on punitive food dumping). Those who conclude from the scientific facts that they should provide food at school for the hungry children from "food insecure" homes have had good results: one example is Harding Sr. High, a public school in St. Paul, Minnesota with 90% of its students from poor families and an 80% graduation rate. This school provides three balanced meals a day to all students (including those who cannot arrive in time for pre-class breakfast) with take home dinners. The follow-up statistics report that Minnesota's Statewide Health Improvement Program results in "better school attendance, improved behavior and concentration and better academic performance." *Id.* There is no reason to suspect that the rest of the children in Hallencourt (besides Eddy) or in any other poor village, poor banlieue or the equivalent anywhere in the EU would not achieve the same results as Minnesota in general or Harding Sr. High in particular. Perhaps those with the punitive (economically short-sighted view) rather than the compassionate view of poor children could be persuaded that the *cost* to society of seeing only the extraordinarily academically-gifted child escape from poor conditions is too high (long-term economic view), although the greed at the basis of the view resulting in lower tax rates for the well off has admittedly been difficult for political parties to overcome. (Charles Dickens described the punitive approach in *Oliver Twist* (1838): "Please, sir," replied Oliver, "I want some more." The master aimed a blow at Oliver's head with the ladle; pinioned him in his arms; and shrieked aloud for the beadle." It is hard not to conclude that then and now individual greed (and the abuse embedded in it) was and is at the root of the thinly disguised, morally-cloaked punitive view, thereby depriving in economic terms the larger society of what the poor as a whole would undoubtedly be able to contribute to society with food and job training.)

<sup>89</sup> EDOUARD LOUIS, EN FINIR AVEC EDDY BELLEGUEULE (2014).

changing his name legally in 2013. Louis's literary rendition of Eddy's early life did not appear in print until he was 21, in part because publishers had to verify the facts of his economic, social, and cultural condition. They did not know firsthand that living below the poverty line brought with it such graphic deprivation, violence, and continuing hunger. It had not occurred to them that when politicians cut welfare benefits, affected children actually go hungry but also suffer malnourishment and its side effects, both temporary and permanent. After all, nothing much happens to us in the grocery store when politicians try to save money by cutting welfare benefits rather than seeking a more equitable contribution to the budget from those who had been able to build businesses using the country's roads and other infrastructure and resources.

To help people in situations like's Eddy's, the social assistance available in successful city programs of community policing should be expanded more widely. Many young people in poor rural and urban areas would benefit from career counseling, help with apprenticing and training for jobs and other social support. Real community policing covers relationships between officials and community leaders, athletics, leisure-time activities, food, and after school care in coordination with many community volunteer organizations, including Jewish, Christian, Hindu, and Muslim community centers. The social services these villages need could also help M. Bellegueule and his fellows both with retraining to do work that does not require the same physical exertion and with insight into his situation.<sup>90</sup> Political parties should put serious effort into doing good for their constituents, rural or urban. That includes persuading people living in rust belts and poor suburbs not to vote for populist politicians by meeting the just needs of these voting citizens and residents.<sup>91</sup>

Today emphasis is on cities, which have inspired many think tanks working on urban problems, strengths, and prospects.<sup>92</sup> Greg Clark notes that "51% of the world lives in cities" and in little more than the next half century "80% will live in cities."<sup>93</sup> Cities are both global

90 Both M. Bellegueule and his son felt invisible to the world of the bourgeoisie: "our existence didn't count and wasn't real." Edouard Louis, *Why My Father Votes for Le Pen*, N.Y. TIMES, May 7, 2017, at SR 4 (explaining that his "father had felt abandoned by the political left since the 1980s, when it began adopting the language and thinking of the free market . . . The left wasn't fighting for the working class, against the laws of the marketplace; it was trying to manage the lives of the working class from within those laws).

91 "We have to fight for the powerless, for a language that gives a place to the most invisible people—people like my father." *Id.*

92 The Brookings Institution has partnered with JPMorgan Chase to establish the Global Cities Initiative; many universities such as University College London's City Leadership Laboratory at the Department of Science, Technological Engineering and Public Policy provide studies and assistance to cities.

93 Heidi Mitchell, *Why a City Needs to Create Its Own Global Brand*, WALL ST. J., April 17,



competitors (perhaps one hundred long-established cities like Paris with populations nearing or above 10 million) and new global centers prominent after the Great Recession of 2008, focusing on technology and quality of life, including safety, education, entertainment and sports activities in a small, more manageable size (perhaps 30-40 cities all with populations under 5 million, such as Boston, Stockholm and Glasgow). Cities large and small share, and have always shared, a commitment to “trade, migration, diversity and the latest technology.”<sup>94</sup>

Paris at the center of the Ile-de-France region typifies the advantages and continuing challenges to cities, as the Global Cities initiative describes its problems.<sup>95</sup> Extending just beyond the region, Paris contributed more than 30% of France’s GDP, with about 20% of its 63 million population in 2015. While Paris is quite prosperous (the 4th-largest city economy and 5th-highest average wealth), Paris also faces challenges in making sure it has enough skilled labor and develops new opportunities for employment and greater income. Like many large older cities, it needs better infrastructure from airports to well-connected roads to suburban-city subways and public goods, such as a reliable and innovative government. Parisian centralized government is not flexible enough to prepare more workers well for work in new and expanding technological businesses.<sup>96</sup> Its small and medium-sized businesses do not have, or perhaps know about, enough opportunities for trade and need both venture capital and collaborative research involving industry and science.

The Brookings sketch of Paris shows clear need for greater effort in developing the human talents, or “assets,” of workers in and around

2017, at R8 (explaining that cities “are engines of economic development, sustainability, social mobility and encourag[e] citizens cross-culturally.”) GREG CLARK, *GLOBAL CITIES: A SHORT HISTORY* (2016). See the classic predecessor studies of the “organic city” in balance with nature and technology, by preserving the mixed use city in contrast to the method of Robert Moses who destroyed large neighborhoods deemed blighted. LEWIS MUMFORD, *THE CITY IN HISTORY: ITS ORIGINS, ITS TRANSFORMATIONS, AND ITS PROSPECTS* (1961) (explaining that democratic values should be used to evaluate the changes and put the inhabitants in charge of developing and adapting technology, communication and community organizations); JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961) (sharing the vision of the woman who stopped Robert Moses from running a sunken road through Washington Sq. Park).

<sup>94</sup> Fernanda Nicola, *Invisible Cities in Europe*, 35 *FORDHAM INT’L L. J.* 1282 (2012) (arguing that cities have traditionally been centers of civilization and integration until they took a back seat with the advent of the internal market, thus rendering Europe less accountable democratically to its residents). MICHAEL BLOOMBERG & CARL POPE, *CLIMATE OF HOPE: HOW CITIES, BUSINESSES AND CITIZENS CAN SAVE THE PLANET* (2017) (describing how subsidiarity works when people and businesses deal with international problems at the local level).

<sup>95</sup> Joseph Parilla, Nick Marchio, Jesus Leal Trujillo, *Paris*, available at: <https://www.brookings.edu/research/global-paris-profiling-the-region’s-international-competitiveness-and-connections>.

<sup>96</sup> Here the authors of Brookings’ snapshot of economic Paris refer to the World Bank’s *Doing Business* report, analyzing the opportunities for a business in each of the largest world cities, <http://www.doingbusiness.org/reports>.

the city of Paris. Too many young workers on temporary contracts receive little or no training in numeracy or literacy.<sup>97</sup> Nevertheless, Paris has continued to make strong efforts beyond hosting the climate change conference in 2015.<sup>98</sup> Thus, “France has already become one of Europe’s top destinations for start-up investment.”<sup>99</sup>

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<sup>97</sup> Current economic analysis of Paris tracks “the story emphasized by Emmanuel Macron.” Greg Ip, *Round Two Will Challenge Ideas on Nation’s Workers*, WALL ST. J., April 24, 2017 at A6 (explaining that many young workers (59.6% in France in 2015, according to the OECD) have temporary contracts, whereas those with protective contracts have high wages, high taxes and little job mobility). French corporate taxes are 33.3%; Macron advocates a reduction to 25%. Editorial Board, *France’s Stark Choice*, WSJ, April 24, 2017 at A16 (chronicling unemployment at 10%, youth unemployment at 25%, youth migration and economic growth only above 1% while expressing business enthusiasm for M. Macron’s “ability to attract job-creating global capital” to France). The President campaigned on reforming labor laws and, with a 64 % approval rating in an Ifop survey June 25, is seeking fast track legislation to allow labor reform by decree with a goal of having reforms in place by September. Carol Matlack & Gregory Viscusi, *Macron v. the Unions*, BLOOMBERG BUSINESS WEEK, July 3, 2017, at 30-31 (explaining that M. Macron chose Muriel Pe’nicaud, formerly head of personnel at Danone SA, to negotiate as Labor Secretary with the workers’ unions to streamline the process for layoffs (56% in the same opinion survey oppose limiting severance pay but opinion is equally divided on layoffs) and to allow employers to negotiate with the workers in each company, thereby opening the government to facing political pushback and even investigations). These policies track the EU’s four freedoms (which Brexit voters oppose, in particular the free movement of workers) and single market. REM won outright 308 of the 577 seats in the National Assembly and 42 seats went to REM’s allied party MoDem. The low turnout for the second round of voting on June 18 (only 43%) leaves much work to be done in reaching the voters who stayed home. *Id.* Many discouraged voters live in the French equivalent of the American rust belt (with high levels of poverty, unemployment, temporary jobs and poor infrastructure, termed la France périphérique by geographer Christophe Guilluy). These voters, feeling marginalized and ignored, can best be reached by concerted efforts on the part of politicians, local and national, working together to attract new employers and businesses to these voters’ towns and old industrial cities. *See* Louis, *supra* note 87.

<sup>98</sup> Michael R. Bloomberg, the UN Secretary-General’s Special Envoy for Cities and Climate Change, and Paris Mayor Anne Hidalgo, co-chairing the Climate Summit for Local Leaders (December 4, 2015), during the United Nations’ 21st Session at the Conference of Parties (COP21), stated the opportunities for cities to deal with climate change and both believe that cities can tackle many aspects of dealing with climate change, <https://www.mikebloomberg.com/news/mike-bloomberg-paris-mayor-anne-hidalgo>.

<sup>99</sup> Liz Alderman, Benoit Morenne & Elian Peltier, *Station F: Why France Is Taking a Lesson in Culture from Silicon Valley*, NY TIMES, June 29, 2017, at B6-7 (explaining that President Macron inaugurated the repurposed train depot “in the heart of Paris” as part of France’s effort to become “the leading country for hyper-innovation” in such areas as AI, food tech and high-tech fabrics, including Facebook’s Startup Garage at Station F, designed to mentor tech entrepreneurs in health and education expecting to improve image and speech recognition and other AI applications). Greater skill and adaptability in servicing the needs of the people in the largest city might eventually spread out to other towns and regions but lack of resources should not prove entirely prohibitive. Many applications of data are designed to save money, including sensors to dim lights when vehicles or pedestrians are not present, even in smaller cities, towns and villages. Michael Totty, *The Rise of the Smart City*, WSJ, April 17, 2017 at R1 (explaining how the collection of data and their availability through applications to make urban areas safer, healthier and more efficient may also benefit poor neighborhoods in such applications as tracking the presence or absence of smoke alarms and distributing them to poor neighborhoods through non-profit associations, locating garbage-plagued areas or areas with air pollution so that asthma inhalers can be distributed or other measures used to deflect heavy traffic areas or to plant trees along-side heavily trafficked roads adjoining residential

Boston and other American cities are beginning to work on long-term projects, such as putting homeless Boston veterans into permanent housing, rather than shelters, and then focusing on job-training. Other Boston city programs include making public transportation safer and more reliable as part of the city's new infrastructure plan.<sup>100</sup> The city had commissioned reports on poverty and income inequality and sought out several businesses to partner with the city to connect workers with lower paying jobs with more secure employment. Later, in October, 2014, the mayor launched the Office of Financial Empowerment as a vehicle for streamlining the process. Mayoral associations can help in coordinating new programs and finding grants to launch the programs. We are already familiar with Italian business philanthropies restoring buildings in Italy's rich cultural heritage<sup>101</sup> but much more must be done in all EU Member States to enter into business-governmental partnerships which take care not only of buildings in need of maintenance but also of people just getting started in life and of older and disabled people in need of a helping hand. German apprenticeship programs are also famous in South Carolina, where the German car manufacturers team up with local high-school students to show them the types of jobs available to graduates and the sorts of mathematics courses they will need to qualify for those jobs.<sup>102</sup> Home-grown terrorists from the second and third generations of Americans, or any EU Member State, will not appear in great numbers if we focus resources and attention on all children and integrate them into the broader society with social acceptance and job skills. Rural poor, neglected at least since robots proved more efficient than humans, like many of their urban

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areas).

<sup>100</sup> Boston is attempting to put all of these programs together to improve the quality of life for all, including especially modest but successful neighborhoods like Dorchester. Live Interview with Mayor Martin J. (Marty) Walsh of Boston at Symphony Hall, March 7, 2017, on Bloomberg Markets. Previously, Mayor Walsh had raised the minimum wage. Other programs include providing "learn and earn" apprenticeship programs for youth, building 53,000 affordable housing units, strengthening schools with extended learning time and advanced curriculum choices and free tuition at community colleges. Because of the technology employers, the city moved to upgrade its digital infrastructure. It also launched a municipal Office of Recovery (drug-addiction) Services. Unsurprisingly, these efforts take more than partnership with financial and high-tech employers. Bloomberg Philanthropy's innovation grant program provided help with housing and Bloomberg LLP has partnered with the city and Eaton Vance to support the Boston Symphony July 4th musical celebration on the Charles, including its broadcast on Bloomberg TV (contrast Mediaset's corruption in the situation involving Centro Europa 7).

<sup>101</sup> Mitchell Owens, *The Italian Jobs*, ARCHITECTURAL DIGEST 108 (Dec. 2016) (featuring the cleanup and restoration of such Roman heritage sites as the Spanish Steps, the Colosseum and the Trevi Fountain underwritten by Bulgari, Tod's and Fendi respectively).

<sup>102</sup> Frederick E. Allen, *How Germany Builds Twice as Many Cars as the US While Paying its Workers Twice as Much*, FORBES Dec. 21, 2011. Now the "dynamism of the American IT sector" is contributing to the next stage of vocational training. Peter Wittig, *German Apprenticeships in South Carolina*, WALL ST. J., May 5, 2017, at A 13 (explaining that artificial intelligence and other digital technologies are transforming the factory and its apprentice system in BMW's Spartanburg plant).

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counterparts, need job retraining and the attraction of new sustainable jobs to their areas. Those job skills programs should be adaptable throughout the Member States. French and Belgian immigrants, isolated in neighborhoods with only their own group would benefit tremendously from further integration through jobs programs, although French cars have not proved so competitive as the German products.

Any parent would be happy with such programs honestly implemented and few people would then care about populist warrior politicians from Theresa May to Marine Le Pen. Such investments in human beings would require an investment of ourselves, our time, thought, tax money, concern and care allocated to youth and families. Is such an expensive program worth more than an investment in the toys of war games and death?<sup>103</sup> Only the voters can decide but they must have the choice born of the efforts of the centrist political parties, such as the Christian Democrats and their EPP counterparts rather than half-hearted placeholders when only our best and most serious efforts will suffice. Robert Schuman awaits his genius stage biographer to do for him what Lin Manuel Miranda did in bringing the cares and values of Hamilton and other American founders to the general public. If a genuine choice were available, the voters would demand those programs which strengthen the society and make it safe for children to flourish and they would vote accordingly.

## IV. CONCLUSION

This article has shown various activities on the part of mayors and other officials to help the new generation and those pushed out by technological and trading changes or injuries sustained during hard physical work. The EU Commissioner works diligently on this project.<sup>104</sup> If a critical mass of politicians do not more fully implement

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<sup>103</sup> The proposed U.S. budget emphasizes new weapons for the Defense Department, including a long cement wall, financed by cuts, among others, to the State Department, which up until now has worked to engage with partners and other friendly countries for peaceful international co-operation on various projects from trade to mutual security. Alexander Bolton, *Trump Team Prepares Dramatic Cuts*, THE HILL, Jan. 19, 2017, [thehill.com/policy/finance/314991-trump-team-prepares-dramatic-cuts](http://thehill.com/policy/finance/314991-trump-team-prepares-dramatic-cuts).

<sup>104</sup> European Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Marianne Thyssen, participated in a meeting of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on Monday 23 October 2017, in Luxembourg. A discussion of the compromise text drafted by the Estonian Presidency regarding the revision of the Posting of Workers Directive was the most important item on the agenda for EUMinisters of Employment and Social Affairs, with the aim of adopting a general approach. Ministers were also to consider a partial general approach on the Commission's proposal to modernise the rules on the coordination of social security systems in the EU. See European Commission, *Commission presents reform of the Posting of Workers Directive – towards a deeper and fairer European labour market* (Strasbourg, 8 March 2016), [http://europa.eu/rapid/press-release\\_IP-16-466\\_en.htm](http://europa.eu/rapid/press-release_IP-16-466_en.htm). See also, European Commission,

such strong and extensive educational and training programs, together with other important social justice programs, the values of the founders will be lost for a time. Instead of continuity, there will be a gap until some generation in the future slowly and painfully reclaims the values and works put forth after World War II to achieve continuing peace, honor fundamental human rights and work with the Member State governments for mutual flourishing and growth. After all, Robert Schuman and the other founders tried again when the civilized world came through to the other side of a very bloody struggle so that the peoples of France and Germany became, if not brothers and sisters, at least partners in a common enterprise and peaceful neighbors. What President Macron has done is to galvanize people to work together after the Great Recession and a depressing period of stagnation. If he succeeds and the enthusiasm lasts, the EU could see a rebirth.

In order to accomplish this "rebuilding" of Europe, with everyone working together, M. Macron recently set forth his optimistic vision for greater co-operation in a reformed European Union in a major speech at the Sorbonne: "We cannot afford to keep the same policies, the same habits, the same procedures and the same budget. No more can we choose to turn inward within national borders. The only way to ensure our future, is the rebuilding of a sovereign, united and democratic Europe."<sup>105</sup> Is this the time to realize more completely the norms and values of the EU with greater emphasis on fundamental human rights and participation for all in prosperity with social justice? If we work hard enough to realize social justice goals under the rule of law, the populist warrior can lay down the sword and contribute to the growth of a peaceful, prosperous society with dignity and solidarity where all have a seat at the table, a say in the contrasted populism (which degenerates into totalitarianism at the end of the spectrum) with democracy. Populism "keeps the people under the illusion that it has the monopoly of complete, immediate and final truth. Thus there can be no delay or stages, especially when it is embodied by a man who . . . aims at the immediate completion of his task."<sup>106</sup> While Schuman did not know Trump or Putin, he met their type writ-large in Hitler, whose

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*Fairness at the heart of Commission's proposal to update EU rules on social security coordination* (Brussels, 13 December 2016), [http://europa.eu/rapid/press-release\\_IP-16-4301\\_en.htm](http://europa.eu/rapid/press-release_IP-16-4301_en.htm). To prepare for the Social Summit for Fair Jobs and Growth, scheduled for 17 November in Sweden, Ministers discussed their endorsement of the European Pillar of Social Rights. Finally, the Council was due to endorse the main messages of the Employment and Social Protection Committee in view of the European 2018 Semester cycle for economic policy coordination. The Ministers were to hold a lunch debate on fair labour mobility. More information, see *Employment, Social Policy, Health and Consumer Affairs Council*, 23/10/2017, EUROPEAN COUNCIL, <http://www.consilium.europa.eu/en/meetings/epsco/2017/10/23/>.

<sup>105</sup> Macron, *supra* note 1.

<sup>106</sup> SCHUMAN, *supra* note 15, POUR L'EUROPE, at 65; FOR EUROPE, at 57-58.

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decision-making and a share in the prosperity of the Union.

Schuman agent put a large bounty on his head, Mussolini and Stalin. But the steps backward can become more positive so long as we do not succumb to populism: democracy is under no such illusion that it has finished its tasks or will do so in the next “100 days” or other accelerated time-frame.

A short populist time-frame may encompass time for action but without getting anything remotely right (two EOs on immigration go to excess without protecting national security in any way). As Schuman said, democracy may be characterized as “unremittingly creative” because it is always searching for perfection.<sup>107</sup> Democracy “attaches great importance to the lessons of successes and setbacks [and] takes into account developments in ideas and amendments that come with experience and within the scope of free discussion and free judgment.”<sup>108</sup> Schuman’s life of courageous action, *Pour L’Europe*, and EU integration should inspire all who seek solutions to the social, political and economic problems brought to the forefront of public attention by populism.

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<sup>107</sup> SCHUMAN, *supra* note 13, *POUR L’EUROPE*, at 66; *FOR EUROPE*, at 57-58.

<sup>108</sup> SCHUMAN, *supra* note 13, *POUR L’EUROPE*, at 66; *FOR EUROPE*, at 58.