

# Review of Riccardo Saccenti's *Debating Medieval Natural Law: A Survey* (Notre Dame, IN: University of Notre Dame Press, 2016)

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## Preview

In this short monograph, Riccardo Saccenti surveys the various and competing interpretations of natural law and natural right from the late Middle Ages through the modern period. As “a survey,” the intention of this book is not so much to advance and defend a central thesis about natural law, but rather to paint a picture of how the various interpreters of natural law have responded to the most important primary texts (of Gratian, Thomas Aquinas, Duns Scotus, William of Ockham, and John Locke, for example) and to one another. One of the issues with which Saccenti is most concerned is the transition from the medieval understanding of natural law inspired by an Aristotelian concept of nature to a modern theory of natural individual rights. Where exactly does this transition begin and where is it more or less consummated? A reader of this book will be impressed by the complexity of this debate (among others) and the nuances of difference between its participants. Saccenti’s account of it succeeds in exposing the folly of overly simplistic readings of intellectual history that are ideologically motivated, and reminds us what a careful reading of primary and secondary sources can achieve.

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In his introduction, Saccenti sets forth the central questions of his book:

What is the relation between the writings of Hobbes or Locke to those of the late medieval canonists or theologians? Did a break in intellectual history marking the beginning of modernity as the age of natural rights really occur? Or was there continuity between the late Middle Ages and modernity in the use of *ius natural*. Do we have to look for a radical turning point at all, or should we approach the period between the twelfth and eighteenth centuries as a long intellectual shift in the language to our modern meaning of “natural law” and “natural rights”? (p. 11)

In the first chapter, entitled “Objectivity Versus Subjectivity,” Saccenti focuses upon the thought of the French intellectual historian, Michel Villey, who argued not only that the modern notion of natural individual

rights is foreign to the Aristotelian-Thomistic tradition, but that this modern notion begins somewhat identifiably with the thought of William of Ockham. What paves the way for modern natural rights (as opposed to classical/medieval natural right), according to Villey, is Ockham's rejection of the Thomistic understanding of nature:

According to Lagarde and Villey, Ockham's radical nominalism drove theology to bring into question the notion of *ordo naturalis*, in order to affirm the complete freedom of God's will. Duns Scotus had already stressed the need to preserve God's *potentia absoluta* (absolute power) and his consequent freedom from the limitations imposed by a supposed natural order. Ockham would have denied the existence of a natural order and stressed, on the contrary, the real existence of simple individual realities. (p. 17)

And yet, toward the end of this chapter Saccenti states that he finds this reading of history to be simpleminded, based more on "ideological assumption" than on "a careful historical analysis of sources and texts." (p.

20) Against Villey's thesis Saccenti offers the thoughts of Lottin and Grabmann, who identify traces of subjective rights in the medieval usage of "ius naturale." Saccenti also suggests that, granted their divergent metaphysical teachings, the connection between metaphysics and natural law may have been overstated by Villey, even suggesting that Ockham's theory of natural rights is more derived from "his long conflict with the popes" than from his metaphysical worldview.

In chapter two ("The Foundation of Political and Moral Order"), Saccenti recounts the contributions of three scholars, Francis Oakley, Richard Tuck, and John Finnis, all of whom argue for a medieval basis for modern individual natural rights theory. He points out, for example, that Oakley (as opposed to Villey) finds it "misleading to consider intellectual European history of the late Middle Ages simply as a dialectic confrontation between realism and nominalism." (p. 23) For Oakley, the redirection of attention to individual rights is part of a broader movement to separate faith and reason, "to stress the radical difference between philosophy and theology," and to emphasize theology's "complete independence from philosophical influences." (p. 24) For Oakley, Ockham's nominalism does not deemphasize so much as reinterpret natural law upon a new voluntarist basis, and this trend persists in later conciliarist thinkers he influenced. "Oakley notes that for authors like Pierre d'Ailly, natural law consists of the series of obligations and prescriptions established by divine will and immediately evident to human reason." (p. 25)

Whereas Oakley and Villey trace the modern understanding of natural rights back to 14<sup>th</sup> century voluntarism, Tuck and Finnis trace it back even

further. Whereas Tuck argues that the ancient Roman thinkers developed a notion of individual natural rights, Finnis argues that the concept is first developed in the thought of Thomas Aquinas. In both *Natural Law and Natural Rights* (1980) and *Aquinas: Moral Political and Legal Theory* (1998), Finnis argues that a careful reading of the *Secunda Secundae* (especially questions 57, 58, and 122) reveals Thomas' commitment to individual natural rights and even provides the foundation of the "contemporary concept of human rights." More specifically, Finnis distinguishes between two uses of "ius" in Thomas' thought:

On the one hand, [ius] indicates what is proper of a man, *quod suum est*, "what is man's right" (*ius suum*). What a man's right is, is what, for a matter of equality, he is entitled to (*quod ei secundum proportionis aequalitatem debetur*). According to Finnis, this sense of *ius* is equivalent to the modern term "right," placing Aquinas at the origin of a theory of natural rights. Aquinas' second sense of *ius* is "norm" or "rule," which is the general term of comparison for practical reason; in this sense, *ius* is a synonym for *lex*. (p. 34)

In chapter 3, entitled "The Long Road to a Common Lexicon," Saccenti focuses his attention exclusively upon the contribution of American scholar, Brian Tierney. As he reports, Tierney flatly denies that Hobbes and Locke are the originators of the idea of individual natural rights, a notion that these two English thinkers inherit from a process of evolution traceable back to the mid-twelfth century. As Saccenti explains, "to consider the content of this *longue durée* from 1150 to 1650, Tierney develops a careful textual analysis of many medieval, early modern, and modern writings that dealt with *ius naturale* and *lex naturale*, highlighting the peculiar features that natural law and natural rights language had in different historical and cultural contexts." (p. 36) Although Tierney acknowledges (contradicting Finnis) that Thomas Aquinas does not affirm a theory subjective natural rights, he criticizes both Villey and Tuck, who trace the notion back to Ockham and Gerson (respectively). For Tierney, the idea must be traced back much earlier, namely, to the 12<sup>th</sup> century canonists, who "provided a natural rights theory and created a lexicon and a set of ideas that became part of the common legal and moral culture from the early thirteenth century." As Saccenti continues, "Tierney considers the period from 1150 to 1250 as a sort of linguistic and conceptual laboratory where natural rights language was created." (p. 39) Perhaps the most distinctive feature of Tierney's analysis is the lack of a decisive turning point. For him, there is no original treatise or first discovery of subjective natural rights. The transition from an Aristotelian/teleological understanding of natural law and natural right to one of subjective natural *rights* was, on Tierney's account, slow and gradual. By

the time Hobbes and Locke make use of these ideas, they are already long established notions in Western legal thought.

Saccenti begins the fourth chapter (“Breaks, Continuities, and Shifts”) by presenting two major challenges to Tierney’s view, the first by Cary Nederman and the second by Adam Seagrave. Both of these authors challenge Tierney’s reading of history by appealing to what one might call a fundamental distinction between ancients and moderns (Seagrave’s own view is said to be taken from Leo Strauss). Both Nederman and Seagrave accuse Tierney of not fully appreciating the novelty of modern natural rights language as developed by John Locke, who “elaborated a natural rights theory that is not part of a long, continuous tradition” and which “represents a ‘Copernican moment’ in legal and political history.” (p. 46). Saccenti does not attempt to disguise his disagreement with these authors, both of whom he says “certainly underestimate the value of continuity in the history of natural rights.” (p. 47) Yet he considers their contribution important because they provoke us to appreciate the influence of distinctively modern “cultural developments first in Italy and then in the rest of Europe between the fifteenth and sixteenth centuries”. (p. 47)

One of the more interesting discussions in this chapter comes in a section entitled “Does Metaphysics Have A Role In The Foundation Of Natural Rights Theory?” For scholars such as Brian Tierney and Annabel Brett, the answer to this question, at least when it comes to the thought of William of Ockham, is no. Saccenti attributes their conclusion to “a careful study of language,” which, for Ockham, “was independent from theological and metaphysical concerns and focused mainly on political and legal issues.” (pp. 50-51) Others disagree. The role of metaphysics for natural law theory is difficult to deny in the thought of Thomas Aquinas, but even when it comes to Ockham, Arthur Stephan McGrade argues that Ockham’s notions of *lex naturalis* and *ius naturalis* are only fully understandable “with the nominalist doctrine of God’s absolute and ordained powers.” (p. 52)

Saccenti’s fifth and final chapter is entitled “Highlights and Shadows of a Portrait.” He begins this chapter by pointing out the twofold understanding of natural law presented in the twelfth century. On the one hand, there is the understanding of natural law going back to the *Digest* that presents the *lex naturalis* as “that which all animals have been taught by nature” and which “is not peculiar to the human species.” (p. 58) On the other hand, the natural law sometimes refers to that which is specific to humans, and Saccenti reports that we can see this especially in Gratian: “Even if he [Gratian] uses the elements of Roman legal tradition, the identification of *ius naturale* and *ius gentium* puts the former in the exclusively human sphere. It is no more a matter of natural order: *ius naturale* is a matter of human

reason.” (p. 61) Saccenti continues by calling our attention to Abelard’s distinction between natural right and positive right and the concomitant distinction between sin and crime. Once again, metaphysical questions take center stage, and Saccenti notes that whereas scholars disagree as to the role of metaphysical doctrine in William of Ockham’s discussion of natural law, the link is much clearer in the work of Thomas Aquinas.

In his conclusion to the book, Saccenti stresses that the history of natural law and natural rights must be viewed through the lenses of legists, philosophers, and theologians. Taking as broad a view as possible, he thinks, the medieval origin of subjective natural rights is undeniable, but the decision as to where we identify the precise origins of the modern understanding must be made much more carefully, and with special attention to how these three disciplines influenced one another.

In the final analysis, *Debating Medieval Natural Law: A Survey* is an extremely well-researched and useful book. If successful, it will convince philosophers and theologians of the need to pay careful attention to the contribution of the legal and canonical traditions in order to understand the origins of natural law, and vice versa. No scholar taking up the question of natural law in a serious way can afford to neglect the synthesis it provides.

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