

Debating Medieval Natural Law: A Survey

Riccardo Saccenti

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For several generations scholars have understood that the genesis of modern natural-rights theory stretches far back beyond the Enlightenment and finds its origins in the scholasticism of the twelfth to the sixteenth centuries. At the same time, controversies have swirled as to how compatible such medieval models are with the theories of modernity. Riccardo Saccenti provides a brief tour of the various, relevant strands of research and thereby traces the evolution of scholarship on the topic.

Saccenti provides neither an overview of the medieval scholastics themselves nor a map of natural-rights theory in particular. Rather, this is a guide to orient the student and to help him or her navigate the various directions of scholarly endeavor on these questions. This very short work (only 80 pages, exclusive of endnotes) does not even explore the evolution of natural-rights theory over the centuries but rather is simply a sketch of how academics have understood the origins and compatibility of such theories. Saccenti really does not even start his account until the 1920s, with the revival of interest both in medieval studies and of scholasticism. Consequently, in reality this work restricts itself to an account of scholarship in the last one hundred years.

If its narrow scope be granted, then the guide is a useful one, analyzing the various accounts of the effects of scholastic legal theory on modernity. The key for such scholarship was to explain the transition from theologically rooted natural law—common to the schoolmen—to a secularized form of natural law advocated by the Enlightenment. Early scholars had fixated on the place of Duns Scotus and William of Ockham, with their doctrines of voluntarism and radicalized nominalism (in the latter’s case), as the roots of subjective theories of rights. Such a view came to be challenged by people who emphasized Ockham’s medievalism, or who sought to root rights in more recent history.

Some scholars, such as Brian Tierney and John Finnis, were interested in finding a doctrine of natural rights in Thomas Aquinas himself. Eager to demonstrate the medieval origins of rights theory, they argued for the continuing relevance of medieval thinkers to modern sentiments. For them, a line runs through canon law and legal theory from Gratian and the medievals all the way through the modern founders of a secularized natural law, such as Hugo Grotius. Unfortunately, they often underplay considerations of the very real premodern concepts of medieval Christian scholars, so different from modern secular legal and political thinkers. While it is true that such a “continuity thesis” has some merit, in that previous scholars always stood on the shoulders of their predecessors, the cultural assumptions of the premodern world were radically different from the secular and liberal society that formed as a result of the Enlightenment and Revolutionary periods. What is interesting is that Finnis and Tierney reach the same conclusion from different backgrounds. Tierney sees the continuity thesis as evidence of the progressive

modernizing of Catholicism, while Finnis seeks to reassert the relevance of St. Thomas. Both approaches betray biases.

On the other hand, Cary Nederman accurately points out the radical disjunction of world-views that occurred in the sixteenth century. He cites this as a key problem in maintaining a pure continuity thesis. In other words, the worlds of the Renaissance and Reformation, while themselves premodern, bore within themselves seeds of a Copernican revolution of perspective. The intellectual and spiritual gulf became so wide that the premoderns and the moderns cannot share any intellectual world in common. Many Catholic scholars, for various ideological reasons on both sides of the spectrum, have sought a too easy elision between the medievals and the moderns, downplaying areas of radical opposition.

The study is heavy on English language scholarship, with Italian academics only coming in at the end. There is not much on parallel or competing traditions in the German- or French-speaking worlds. The apparatus usefully points to such studies, but the overall work would have benefited by their inclusion more comprehensively in the main text. The work closes with an admonition that both philosophical and historical approaches are necessary in order to effect a balance between the continuity thesis and that of a rupture. Surprisingly for such a short book, there is occasional repetition in terms of revisiting the various theories. As a finding guide to recent scholarship, it has some usefulness, particularly to introduce students of law and theology to contemporary currents of thought.

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