

Law Tradition," in *The Ethics of War and Peace: Religious and Secular Perspectives*, ed. Terry Nardin (Princeton: Princeton University Press, 1996), 15–39.

37. Aquinas, *On Kingship, To the King of Cyprus*, trans. Gerald B. Phelan, intro. Ignatius Karl Theodore Eschmann (Toronto: Pontifical Institute of Mediaeval Studies, 1982), I.4. It should be observed, however, that Aquinas' statement of human beings as social and political animals points in the direction of his eventual departure from strict Aristotelian teaching. He emphasizes the social dimension of human life to draw attention to the variegated character of human sociability. In the end, Aquinas is more interested in defending the pluralism of the medieval Christian order than with defending the uniquely political character of the Greek *polis*.

38. Aquinas, *Summa Theologiae*, I-II, 90, 3, ad.3m.

39. Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, trans. C. I. Litzinger (Notre Dame: Dumb Ox Books, 1993), 1, Lecture 1, no. 4.

40. Aquinas, *Summa Theologiae*, I-II, 94, 2.

41. Aquinas, "Commentary on Aristotle's *Politics*," in *Medieval Political Philosophy: A Sourcebook*, ed. and trans. Ernest L. Fortin and Peter D. O'Neill (Ithaca: Cornell University Press, 1991), Proemium, 4.

42. Aquinas, *Summa Theologiae*, II-II, 47, 10, ad.2m.

43. Aquinas, "Commentary on Aristotle's *Politics*," 1, Lecture 1, no. 39.

44. The same mistake has been made in a much less sophisticated way by Cal Thomas and Ed Dobson in *Blinded by Might: Can the Religious Right Save America* (Grand Rapids: Zondervan Publishing House, 1999).

45. This point is developed at length in Daniel J. Mahoney's impressive essay, "The Moral Foundations of Liberal Democracy," in *Public Morality, Civic Virtue, and the Problem of Modern Liberalism*, ed. Gary Quinlivan and T. William Boxx (Grand Rapids: Wm. B. Eerdmans Publishing Company, 2000).

Liberty, Right and Nature: Individual Rights in Later Scholastic Thought

Annabel S. Brett

Cambridge: Cambridge University Press, 1997, 249 pp.

Review by Alejandro A. Chafuen

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In 1978, Cambridge University published *The Foundations of Modern Political Thought* (2 volumes) by Quentin Skinner. Skinner, a professor of political science at Cambridge University, is respected as a leading authority in the English-speaking world on sixteenth-century European political thought. Approximately two decades later, Cambridge University Press released *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* by Annabel S. Brett. Her book is a wonderful complement to Skinner's work and essential for grasping

the richness and relevance of the arguments presented by Late-Scholastic authors.

Lord Acton once wrote that “the greater part of the political ideas of Milton, Locke, and Rousseau, may be found in the ponderous Latin of Jesuits who were subjects of the Spanish Crown, of Lessius, Molina, Mariana, and Suarez.” In this valuable work, Brett does not focus on those outstanding Jesuits. Her profound analysis is cast upon other authors, including noted Dominican and Franciscan theologians and jurists. In addition, Brett brings recognition to the contributions of Christian theorists concerning the political order of the free society.

Her analysis of objective rights in the Thomistic tradition introduces the reader to most of the major Scholastic and late-medieval authors. Her treatment is especially thorough on fourteenth to sixteenth-century authors such as Buridan, Saint Antoninus of Florence, Francisco de Vitoria, Domingo de Soto, and Fernando Vázquez de Menchaca. In fact, she provides one of the most elaborate analyses of Vázquez currently available in the English language.

Some, such as I, have found arguments in these authors that serve as the foundation of a market order based on freedom and property. Brett finds in them the foundation of a political order based on libertarian principles. Liberty and property are inextricably linked for the vast majority of these theorists. She quotes Buridan’s explanation of the meaning of freedom and equality as “it is licit for each equally to acquire for himself as much as he can, and to possess the things he has acquired, and to use them as it pleases him—on the condition that he does so without harming the community or his fellow citizens,” and concludes that “*A more exact or more precocious summary of the principles of libertarianism it would be hard to find.*”

The book recognizes the importance of Saint Antoninus as one who increased the respectability of moral philosophy and theology by treating them as sciences founded in an analysis of the nature of human action. Antoninus defines *dominium* as “the right of having, possessing, and using a certain thing, either simply according to the pleasure of the will: or according to some predetermined mode: out of a certain superiority and authority.” Whereas, a *right* is defined as the “power of exercising a certain action with regard to a thing ... I have as much right with regard to a thing as I have licit power with regard to it.”

After explaining the essential aspects of the work of the Dominican Francisco de Vitoria, the founder of the School of Salamanca, Brett carefully analyzes the work of two of his followers: Domingo de Soto and Fernando Vázquez de Menchaca. Although less studied and less celebrated than Vitoria, Soto’s books on justice and law were republished in more than one hundred editions in the

two centuries after his death. A Spanish-Latin edition appeared in 1968, making his work readily accessible to contemporary historians. Soto speaks of two types of rights, one characterizing all of nature including man, and another applying only to rational human beings. He justified the rights of all creatures both through natural law and natural right. Brett concludes that "Soto's great achievement was to defend simultaneously the right of the city and the right of the individual man within it."

One of Brett's most original contributions lies in her analysis of Fernando Vázquez de Menchaca. Although Skinner makes only one passing reference to Vázquez (as one of Vitoria's important students), Brett devotes considerable space to his writings. According to her, he "represents a major step in the development of a radical legal tradition the analysis of right of which is based on a preoccupation with *fact*, or what escapes juridical determination." Vázquez demonstrates that "civil right is merely the constantly evaporating surface of the great ocean of *de facto* occurrence." He also distinguishes between power understood as *potentia* and *potestas*. The latter is based on position and wealth (might), whereas the former is based on law and natural right. Wider application of this distinction might help libertarians acknowledge a middle ground between power and markets.

Potentia belongs to the world of fact and is characterized by instability and mutability. He also compares *potentia* to a shadow. One application of this theory can be seen in the admiration Vázquez shows for popular opinion. He assigns greater honor to the wealthy and successful, because honor has more to do with custom and opinion than to intrinsic virtue.

"For Vázquez, men are fully men in civil society, without being subject to any power." However, "the man who is free, *homo liber*, is also *extra commercium nostrum*, recalcitrant to *dominium* and servitude. A man is free (from servitude) who is *sui iuris*, under his own right and not anyone else's." Brett observes that "Vázquez adds that the consent of previous generations can certainly not bind future citizens." This principle continued to influence leading Catholic theologians such as the nineteenth-century Jesuit, Mateo Liberatore, who, in his defense of private property argued that common ownership could be imposed only by the unanimous consent of individuals (e.g., shipwrecked people on an island). Yet, even in light of this unanimous consent, the children and grandchildren of these individuals would not be obliged to share goods because they "receive the right to property from nature and not from their progenitors." In his earlier writings Vázquez contended that citizens "have mutually bound themselves, by their consent, to obey the law, which gives rise to a natural obligation,

which is an obligation of conscience." In his later works, he insisted that the "prince has no power to oblige beyond the power given him by the citizens."

Moreover, Brett uncovers an interesting aspect of Vázquez's thought having to do with contracts. According to Vázquez, contracts as such belong to *ius gentium secundarii*, but issues surrounding contract adherence belong to the *ius gentium primaevum*. She alleges that Vázquez changed his mind over time regarding the form of obligation emanating from contracts. Vázquez insists that contracts require no "specific obligation" (*praecise obligatus* is the Latin term), meaning that one is only obliged to the extent of "undergoing punishment if he acts in violation . . .," but not to a perfectly defined predetermined fulfillment of the contract. Despite Brett's effort to show a significant shift in Vázquez's viewpoint, the previously mentioned view is consistent with his earlier writings and provides a sense of obligation. We might grasp the essence of his argument by using the example of a contract to buy a house that includes a "landscaped yard" without additional specifications. How many ornamental bushes, and what quality of grass (sod or new seeds) would fulfill the contract? If there is a dispute, the parties of that contract are not pre-obliged to any specific result. Nonetheless, they are still bound to some basic and essential duties to fulfill the contract.

It is not difficult to show the influence these Catholic authors had on Protestant jurists, or even to concur with Brett that "Vázquez's political construction, founded on the legal notion of an original absolute natural liberty, artificially limited by compact, stands behind a tradition of radical juristic political thought, which is generally recognized as beginning with Grotius, for whom Vázquez was a major source." She ventures into new ground, however, when comparing and contrasting the influence of these authors, especially Vázquez with Hobbes.

In the early part of the study Brett states that her work is "a history of the early language of rights." The reader should keep this caveat in mind when approaching the text to avoid being overwhelmed by the nuances of language and missing the essence of the arguments.

At times Brett assumes either greater development in an author's thought or more significant differences among authors than is warranted. This can obscure the fact that each of these sixteenth-century writers shared a similar anthropology. In the context of Late-Scholastic thought, any discussion of a creature's rights apart from the Creator would make no sense. These authors clearly recognized the difference between the theological, economic, and political aspects of rights. But their particular emphases do not negate their fundamental agreement on the origin of all rights. Vitoria and Soto emphasized the

theological and economic aspects, while Vázquez focused on the voluntaristic and legal foundation of rights. Brett occasionally presents these aspects as widely divergent, while most analysts (including myself) see them as sharing the same fundamental values. She states that Vázquez's work was a positive response to the achievements of the Spanish Dominicans, particularly that of Soto. However, her remark that Vázquez the lawyer "is not heir to the theology of the image of God" on which rights are based, seems to imply that he diverged from rather than complemented the views of his predecessors.

Nevertheless, I agree with Ralph McInerny, who, despite finding minor faults in some of Brett's arguments, contends that this is "a book from which anyone can learn and which proceeds with a care and taste for the truth that is wholly admirable."¹

Note

1. "On Natural Law and Natural Rights," *Modern Age: A Quarterly Review* 41, 2 (Spring 1999): 174–78.

The Splendor of Faith: The Theological Vision of Pope John Paul II

Avery Dulles, S.J.

New York: Crossroad, 1999, 204 pp.

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Near the end of this book, Avery Dulles contends of Pope John Paul II: "So prolific and many-faceted is his theological output that it almost defies reduction to any kind of schematic unity" (184). Dulles has demonstrated that *almost* is the operative word, performing the task admirably in this compendium of John Paul's thought.

As Dulles intimates, there are many facets to this book, but the present review will focus on those aspects most pertinent to readers of this journal. Of most interest perhaps is the fact that Dulles uses the pope's personalist