Natural Law and Natural Rights

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Review Article

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Few notions have elicited more controversy in the history of juridical thought of the early modern period than that of natural law. Although since the beginning of the nineteenth century this notion has often been denounced as outdated, the legacy of a theological age and of a naive metaphysics, and characteristic of precritical philosophy, few others have had as profound an influence on both juridical science and the reality of contemporary law. Indeed, it is to the fundamental affirmations of the philosophy of natural law that we can trace most of the ideas and institutions characteristic of juridical order today, from human rights to written constitutions, from civil marriage to international organizations. Although the very idea of natural law might still provoke some skepticism in the context of a general theory of law, it is hardly surprising that during the last half century historians of law and of juridical thought interested in determining the sources of modern law have turned their attention to it. Nor is it any more surprising that among these historians Germans and Anglo-Saxons have occupied a major place in the investigation of the role that German thought and English philosophy from the Renaissance to the Enlightenment have played in the metamorphoses of this notion and in the development of all its practical implications in the domain of constitutional law as in that of penal law.

Among the most recent publications in this field, Christoph Link's *Herrschaftsordnung und bürgerliche Freiheit* contributes strikingly to a determination of what the German school of modern natural law brought to both the doctrine and the institutions of modern public law. Through an examination of "limits of state power in the ancient German doctrine of the State"—as the author phrases the subject of his study in a subtitle inspired by Guillaume de Humboldt (p. 2)—Link presents a genuine summing-up of the principal exponents of the German natural law tradition as it touches constitutional law as well as ecclesiastical law.

[1] Christoph Link, *Herrschaftsordnung und bürgerliche Freiheit: Grenzen der Staatsgewalt in der älteren deutschen Staatslehre*. Wiener rechtsgeschichtliche Arbeiten, Nr 12 (Vienna, Cologne, and Graz: Hermann Böhlaus Nachf., 1979). Pp. 396. DM 138; Hans Thieme, ed., *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen: Ein Tagungsbericht*. Veröffentlichungen der historischen Kommission zu Berlin, Nr 48 (Berlin: Walter de Gruyter, 1979). Pp. xviii + 250. DM 88; Richard Tuck, *Natural Rights Theories: Their Origin and Development* (London and New York: Cambridge University Press, 1979). Pp. vii + 185. $24.50; John Finnis, *Natural Law and Natural Rights* (London and New York: Oxford University Press; Clarendon Press, 1980). Pp. xvi + 425. $39.00 (cloth); $19.50 (paper).

Link's work, a shortened version of the *Habilitationsschrift* he presented to the faculty of jurisprudence of the University of Munich, is divided into two parts. The first part ("Die naturrechtliche Bestimmung und Begrenzung der Herrschaftsgewalt," pp. 19–201) treats the bases of state power and its limits according to natural law, inventorying all of the doctrinal and institutional solutions worked out by the modern German school of natural law in response to the challenge of Hobbesian absolutism (cf. p. 17). The second part ("Die Bindung der Herrschergewalt an das jus divinum," pp. 203–350) outlines the place and fortune of divine law in the different conceptions of the exercise of state power from classical confessional theories to the natural law doctrines of the seventeenth and eighteenth centuries, with a substantial excursus on the principal theories of ecclesiastical law during the Enlightenment ("Staatsbegriff und staatskirchenrechtliche Theorie im Aufklärungszeitalter," pp. 292–342).

Taking the totalitarian system of Hobbes as a global reference point (chapter 1, "Thomas Hobbes—Der totale Staat," pp. 19–35) and studying the reactions and refutations that that system provoked in the German world from Ulrich Huber to J. H. Boehmer (chapter 2, "Die Hobbesche Theorie und die deutsche Staatslehre," pp. 36–44), Link inventories the limits that the older German publicists set to the power of the state. He first treats the genesis, the development, and the different functions characteristic to the discipline of general public law (chapter 3, "Das ius publicum universale," pp. 45–65), the first scientific formulation of which goes back to the *De jure civitatis libri tres, novam juris publici universalis disciplinam continens* (1674) of Ulrich Huber (p. 46) and which seems to have been conceived originally as a normative science regulating the "material right of the state" (pp. 48–49) according to the principles of natural law and of the law of nations, and even of divine law.

The author is essentially interested, however, in the "exemplary solutions" formulated by natural law doctrine and its most prominent publicists within the problematics of the "limits to state power" (cf. p. 65). He dwells on seven ideas fundamental to the old German public law doctrine in this regard: sovereignty (chapter 4, "Das Problem der Souveränität," pp. 66–88); the juridical status proper to the prince (chapter 5, "Princeps legibus solutus," pp. 89–112); the impact on state juridical order of the law of nature (chapter 6, "Naturordnung und Staatsordnung," pp. 113–31); the purpose of the state (chapter 7, "Die Lehre vom Staatszweck," pp. 132–155); the guarantee of subjective rights (chapter 8, "Staatsgewalt und subjektive Rechte," pp. 156–177); constitutional order (chapter 9, "Verfassung und Verfassungsbindung," pp. 178–192); and the right of resistance (chapter 10, "Das Rechts zum Widerstand," pp. 193–201).

Although determining the basis and the precise nature of sovereignty undeniably represents for Link "the great subject of natural law publicist literature," he sees its chief effect in its meaning—in "the juridical fixing of this concept and, as a consequence, in the juridical description of such a concentration of power at the head of the state, a concentration that the modern state needed in order to remain in control of the growing exten-

sion of its tasks" (p. 66). Indeed, the essence of the doctrinal work of the German school of natural law in this connection lies, on the one hand, in its rationalization of the problematics of sovereignty, correlative to its effort to secularize all authority (cf. pp. 78–79) and, on the other hand, and more particularly, in its systematization of this notion, by now unique and indivisible (cf. pp. 84–88). In secularizing sovereignty in order to base it in reason alone, German natural law doctrine did not go as far as absolutism. "Until the end of the eighteenth century," Link notes with pertinence, "there had never been an effective theory of the absolutist state in Germany" (p. 89), and he offers a counterproof by reviewing all of the theories that subject the prince to a respect of the laws of the state (pp. 99–112).

Also important to the system of limitations to state power in German natural rights thought is the doctrine of the ends of the state. Link clearly shows the strict correlation, thanks to the secularization of power, between the ends of the state and the key concept of the contract: henceforth, indeed, it was in function of the specific terms of the contract—generally a contract of subjection—that the ends of the state to which the prince was bound were laid down—objectives that range from the keeping of the peace and the promotion of the general welfare to the protection of morality and religion (for example, in Wolff; cf. pp. 141–143). The author does not fail to note in this connection that for a long time liberty played hardly any role in German publicist doctrine of the ends of the state. This fact is echoed in that doctrine's conception of the right of resistance: as with the objectives of the state, the right of resistance was first conceived exclusively in function of the terms of a contract of subjection (pp. 196–197). Furthermore, the exercise of this right was singularly limited by the presupposition, repeated from Pufendorf to Wolff, of the right of the prince. This is what led the publicist A. L. Schlözer to remark disenchantedly in 1973: "The people can resist, constrain, depose, punish; all the while holding strictly to the concept of a contract. . . . The people has these rights, the ancient publicists say, but it hasn't the right to exercise them" (cited p. 199).

Limits of another sort, however, are imposed on the prince: the limits of divine law, to which Link devotes all of the second part of his monumental study. Differentiating carefully between the sources and the areas of application of divine and natural law (chapter 1, "Göttliches Recht und Naturrecht," pp. 203–205) and emphasizing the thoroughly practical applications of positive divine law, notably in matrimonial, penal, and ecclesiastical contexts, Link begins by outlining the concept of divine law and its repercussions in Catholic theory of the state from the Reformation to the century of absolutism (chapter 2, "Das Fortwirken des älteren Jus-divinum-Verständnisses in der katholischen Staats-theorie des 17. und 18. Jahrhunderts," pp. 206–221) and in the corresponding Protestant doctrine (chapter 3, "Jus divinum und Staatsgewalt nach der älteren protestantischen Staatslehre," pp. 222–231). He then treats at greater length the place of divine law in the thought of the founders of the modern school of natural law

(chapter 4, "Das Jus divinum in der Naturrechtslehre von Grotius bis Pufendorf," pp. 232–252). This gives him the opportunity to emphasize the originality of Pufendorf's position concerning church-state relations in a close analysis of the *De habitu religionis christianae ad vitam civilem* (1687), bringing out the basic distinctions that must be drawn, on the one hand, between the citizen and the believer and, on the other, between the rights of the prince *over* the Church and the rights and obligations *within* the Church that arise from his status as *praecipuum membrum ecclesiae*. Link is primarily interested, however, in the fortunes of divine law within the natural law thought of the Enlightenment (chapter 5, "Das Schicksal des göttlichen Rechts in der deutschen Aufklärung," pp. 253–291). Here Thomasius plays a determinant role: he began as a typical champion of the obligatory force of positive divine law (*Institutiones jurisprudentiae divinae*, 1688—cf. pp. 259–260), but at the turn of the century he changed into an equally resolute partisan of its elimination from juridical order (cf. pp. 267–269). The consequences of this turnabout later affected penal theory and practice very directly, from the incrimination of heresy, sorcery, and magical practice to the exercise of pardon. But it is perhaps in the domain of church-state relations that this process of eliminating divine law from the juridical order of the state was to have its most profound repercussions with the proclamation of the state's neutrality in confessional matters and the subjection of the churches to the common rules of corporate law. The author shows this in an excursus devoted to the "consequences of the new understanding of divine law for the rights of sovereignty of the prince over the church in the doctrine of territorialism" (pp. 292–321) and in the "juridical program of collegialism" (pp. 322–342). As Link notes in his conclusion, the ultimate consequences of these two aspects of the process of the secularization of the state are not without importance today, since, through territorialism, they are part of the question of the freedom of individual conscience and, on the other hand, through collegialism, they belong within the corporative dimension of religious liberty (cf. p. 349).

The breadth of the perspectives that Link embraces, the richness of his documentation (reinforced by the voluminous and highly useful bibliography that accompanies the work, pp. 351–378), the clarity of his exposition, and the consistent precision of his references make this exemplary synthesis of the older German public law a first-rate working tool. The addition of a double index of persons (pp. 381–388) and subjects (pp. 389–396) further facilitates its use.

The elegant volume published and presented by Hans Thieme in the collection of publications of the Historische Kommission zu Berlin under the title *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen*, which also focuses on the modern German school of natural law, is of a quite different order. This volume—the result of a colloquium held in Berlin June 18 and 19, 1976 with the participation of twenty or so specialists in the history of ideas and juridical thought—presents the papers of a dozen of the

participants on the intellectual role of Prussia and of Berlin in the development of natural law theory in the modern period, along with discussion that followed.

H. Thieme's exceptional paper ("Humanismus und Naturrecht in Berlin-Brandenburg als Aufgabe der Geschichtsforschung," pp. 3–15) depicts an "other Prussia" than that of a "state of soldiers without culture" (*Kulturlosen Soldatenstaat*) (cf. E. Bloch, cited p. 4). Thieme outlines clearly the conditions necessary to the expansion of intellectual life in Brandenburg and the determinant role played by the Huguenots. He also describes the place of the universities and academies and the men who worked in them, from Thomasius and the Coccejis to Leibnitz, Wolff, and Darjes. It was in this milieu, he concludes, that the principal legislative and judicial reforms of the Enlightenment—and even of the great Declarations of the American and the French Revolutions—were to mature (pp. 12–13).

Such an expansion would hardly have been possible without the previous work of humanism. G. Oestreich's study ("Die Bedeutung des niederlandischen Späthumanismus für Brandenburg-Preussen," pp. 16–27) describes the spread of Dutch humanism into Brandenburg—particularly into the University of Frankfurt am Oder—and outlines its major components (later to play such an important role in the formation of the Prussian mentality): a pragmatic theory of government and administration (summarized in the Stoic adage often cited by the Grand Elector, *necessitas non habet legem*) and a voluntaristic ethic strongly tinged with asceticism (cf. pp. 20–21). After emphasizing the profound affinities that exist between Justus Lipsius's neo-Stoicism and Lutheran pietism (pp. 22–23), Oestreich points out in conclusion how Thomasius, Grundling, and Ludewig were to recognize, at the new University of Halle, all that natural law theory owed to Dutch humanism (cf. p. 24).

Equally important for the burgeoning of intellectual life in Brandenburg was the Huguenot immigration, encouraged by the Edict of Nantes and stabilized by the Edict of Naturalization in 1709. This is the conclusion of F. Hartweg's exposé on the role of the Huguenots in the cultural life of Berlin ("Die Huguenotten in der Berliner Akademie," pp. 182–205) at a time in which they represented as much as a third of the population of that city and in which the activities of their leading scholars—Chauvin, Ancillon, La Croze, Naudé, and even Barbeyrac—contributed much to the foundation of the Berlin Academy (cf. pp. 188–190) and to the launching of the famous Bibliothèque germanique (p. 192).

This intellectual activity was inspired particularly by the total rejection of religious concepts of history, and it arose in reaction to the confusion that resulted when spiritual and temporal political order lay in the hands of the prince. The intensity of this activity, illustrated by the first French translations of Pufendorf, soon spread beyond Prussia. With the call of Barbeyrac—Pufendorf's translator—to the new chair of law in Lausanne, this activity was to bring on the formation and determine the growth of a first school of natural law of French expression. I examine this school in

detail ("Die 'Ecole romande du droit naturel'—ihre deutschen Wurzein," pp. 133–143), tracing its sources of inspiration (Pufendorf, Thomasius, Wolff) and its principal exponents (Barbeyrac, Burlamaqui, Vattel), who were to introduce to French culture the broad theses of the German school of natural law.

But obviously it is natural law doctrine and its theoreticians in Brandenburg territory that concern the studies central to this volume. M. Schmidt's essay ("der theologische Hintergrund des Naturrechtsproblems," pp. 57–62) barely scratches the surface of the problematic of the foundations of modern natural law, limiting itself to raising a series of questions on the relation of natural law theory to the essential notions (cf. pp. 57–58) of the corresponding doctrines in Christianity, Aristotelianism, and ancient Stoicism. The essays of H. Denzer and others, however (H. Denzer, "Pufendorfs Naturrechtslehre und der brandenburgische Staat," pp. 62–75; H. Rüping, "Thomasius und seine Schüler im brandenburgischen Staat," pp. 76–89; H. P. Schneider, "Die wissenschaftliche Beziehungen zwischen Leibnitz und den beiden Cocceji, Heinrich und Samuel," pp. 90–102; and M. Thomann, "Die Bedeutung Christian Wolffs in der juristischen und politischen Praxis des 18. Jahrhunderts," pp. 121–133), present the double interest, on the one hand, of recalling the basic points and the overall orientation of juridical and political thought of the theoreticians of modern natural law who moved in the orbit of the court or the universities of Brandenburg and, on the other, of showing the specific nature of their relation with Brandenburg and their role, indeed of their influence, there.

H. Denzer's essay describing Pufendorf's juridical philosophy and his activities in Berlin from 1688 to 1694 has the merit of emphasizing Pufendorf's importance to the theory of the basic principles underlying the state and ecclesiastical law, but also of making clear how few ties and how little immediate influence he had in Brandenburg. Denzer denies that Pufendorf had any affinity for Brandenburg and sees his establishment as historian at the court in Berlin as due to practical and financial reasons (p. 68). He attributes Pufendorf's minimal direct influence in the states of the Great Elector to both the territorial states' indifference toward his theory of the state and to his own profoundly apolitical character and lack of personal interest in the diffusion of his doctrine (pp. 69–70). The success he met with after his death—his works, and particularly the *De officio hominis et civis*, were discussed in most of the universities of Prussia—seems to be due essentially to the efforts of his students and disciples, first among them Thomasius.

H. Rüping's study concentrates on the work of Thomasius in Brandenburg, both at the University of Halle and in political life, on penal practices and on legislative and judiciary reforms in the state of Brandenburg (pp. 76–81). He also describes the spread of the school of Thomasius throughout Germany and even into Denmark (p. 82 on von Holberg, pioneer of the Scandinavian Enlightenment) and the lasting influence of his efforts to secularize the law and render penal practices more humane, all of

which do much to make us forget his simplistic anthropology and the weakness of his juridical philosophy (pp. 84–85).

H. P. Schneider presents a radically different doctrinal study: that of the Cocceji, who made the will of God the fundamental principle of natural law (cf. pp. 92–93). Schneider treats at length Leibnitz's reactions to this question (pp. 94 ff.) and that famous philosopher's influence on the reform of Prussian justice (pp. 97 ff.). Finally, M. Thomann considers the exceptional dissemination of the thought of the last of the great German natural law theoreticians, Christian Wolff, spelling out the originality of his ideas in the context of the metaphysics and the jurisprudence of his times (pp. 122–127) and analyzing their impact on practice (pp. 127–132). Thomann notes the profound political influence of Wolff's theses, as illustrated by the formation of a "veritable philosophical sect, with political objectives" (p. 127) and with innumerable ramifications, including the Berlin "Aletophiles," who took on the diffusion of Wolff's ideas as their principal aim (cf. p. 128). It is hardly surprising that Wolff's view of natural law left its mark on most of the areas of law, notably on the law of nations (pp. 129 ff.), to the point of affecting the political thought of Frederick the Great, to which P. Baumgart devotes a pertinent essay ("Naturrechtliche Vorstellungen in der Staatsauffassung Friedrichs des Grossen," pp. 143–154). *Rex natura*—as a medal struck on the occasion of his ascent to the throne in 1740 put it—Frederick II actually seems just as much marked by his experience of history as by his reading of Pufendorf, Thomasius, or Wolff. It is not the least of Baumgart's merits that he insists on the realism and the pragmatism of the Philosopher King as the qualities that were to lead him to defend "reason in history" against the *Übervernunft* of the philosophy of the Enlightenment (p. 150) and to make sure that all orders of society were consulted in the drawing up of the Prussian code, thus demonstrating that in his states, according to Suarez's formula, "the social contract will be more than a beautiful hypothesis" (cited p. 151).

Given the broad range of subjects taken up, the variety of writers, and the high level of the papers published—the studies of U. von Lübtow on the historical development of the expression *suum cuique* (pp. 39–42), that of D. Tamm on Danish natural law tradition (pp. 110–111), and that of D. Willoweit on the decisive role of Wolff in both the founding of a science of public law in the Catholic states and the burgeoning of "general public law" within German jurisprudence (pp. 154–155) are also noteworthy—it is a pity there is neither a subject index nor an index of names, indispensable to practical use of a work of this sort.

Although the German school of natural law has an important place in the history of juridical and political doctrines and institutions in early modern Europe, it nevertheless joins a more than millennial tradition of juridical thought. It is to an examination of just that intellectual tradition—the tradition of natural rights theory—that Richard Tuck devotes his substantial study, *Natural Rights Theories: Their Origin and Development*. This study takes as a point of departure a recognition of the gap between the

place of the language of human rights in contemporary political debates and the disdain with which political and juridical philosophy in the universities treated this discourse (p. 1). Persuaded that the problems posed by the language of human rights can be resolved by a historical approach, the author sets himself the task of analyzing the genesis and development of this sort of language. He takes into account all of the theoretical and political implications of the notions he investigates, but he deliberately waives the methodology of "an exercise in historical lexicography" in favor of an approach more directly connected to that of the "traditional history of ideas" (pp. 1–2) and characterized by a serious consideration of the *texts* in the history of Western juridical and political literature. The result is a work of extremely high quality, enriched but not burdened by the alternation of citations and references.

Since Tuck considers the early Middle Ages and the era of classical natural law theory as two periods crucial to the understanding of the language of human rights (p. 2), he divides his work into eight chapters focusing on these two periods.

The first chapter ("The First Rights Theory," pp. 5–31) outlines the contribution of medieval juridical thought to the question, tracing the different transformations of the Roman notion of *jus* from the Republic to the later Empire and following its career in the writings of the Glossators—whom Tuck holds to be the authors of the "first modern rights theory" (p. 13)—and above all in the nominalist theologians and philosophers of late Scholasticism, from Occam to Jean Gerson, where the first account of a *jus* as a *facultas* and as a *libertas* can be found (pp. 26–27).

The second chapter ("The Renaissance," pp. 32–57) connects the "first rights theory" to its classical formulation in natural law theory. Tuck attempts to explain the reasons for the defeat of medieval juridical doctrines in the Renaissance by the preferences of the humanists, from Valla to Connan, for positive law—*jus civile* or *jus gentium* (pp. 33–34 and pp. 40 ff.). He then turns to the renewal of political and juridical philosophy that took place within Protestant thought (pp. 42 ff.) and in Spanish scholastic thought, to which he devotes two substantial sections (pp. 45–50 on Vitoria de Soto and Banez and pp. 50–57 on F. Vasquez, Molina, and Suarez).

The six final chapters treat exclusively, but in great detail, the different currents of thought in the language of natural rights during the golden age of natural law theory, on the one hand keeping largely to the most representative and most influential figures in juridical thought of the times (in the spirit of *Wissenschaftsgeschichte*) and, on the other hand, giving the lion's share to the contributions of English philosophy.

Two figures emerge here in a new light. The first is Grotius, who is discussed at length in a chapter concentrating on his conception of property and of the state (chapter 3, "Hugo Grotius," pp. 58–81) and whose profound ambivalence proved so rich in consequences for the following century (cf. Rousseau's judgment). For Tuck, "Grotius was both the first conservative rights theorist in Protestant Europe and also, in a sense, the first

radical rights theorist" (p. 71). The second figure is John Selden, best known for his *Mare clausum* of 1635, in response to the *Mare liberum* of Grotius. Tuck elucidates the whole of Selden's juridical and political thought, beginning with the *De jure naturali et gentium juxta disciplinam ebraeorum* of 1640, pointing out the voluntarism (pp. 92–93) and the absolutism (p. 97) that make him one of the major precursors of Hobbes (pp. 82 and 101), particularly in his authoritarian conception of the law and his negation of all rights of resistance.

A study of the influence of Selden's ideas in the England of the second third of the seventeenth century follows in the fifth and sixth chapters. In chapter 5 ("Selden's Followers," pp. 101–118) Tuck emphasizes the key role of the members of the "Tew Circle" (Dudley Digges, Henry Hammond, William Chillingworth, and others) among Selden's disciples, while in the sixth chapter ("Thomas Hobbes," pp. 119–142) he reviews the absolutism and natural law conceptions of the man he considers "the most interesting . . . and the most original" of Selden's disciples (cf. p. 101).

Having thus reviewed the conservative tradition in natural rights, Tuck devotes a brief seventh chapter to the study of the inverse radical tradition ("The Radical Theory," pp. 143–155), exemplified not only in the affirmation of people's rights vis-à-vis the prince (as in Henry Parker, cf. pp. 146–147), but also, in midcentury, by the egalitarian pretentions of the Levelers in their opposition to Parliament itself (as in Richard Overton, cf. pp. 149–150).

The necessary summing-up of the two traditions of juridical and political thought that had come out of Grotius by the end of the century is the subject of chapter eight ("The Recovery and Repudiation of Grotius," pp. 156–173). Here Tuck outlines the efforts to return to the original principles of natural rights theory that were made as early as 1660, in one line of thought or another, following Pufendorf (pp. 156–162), Cumberland (pp. 165–168), or Locke (pp. 169–173). Tuck cites in his conclusion one of the most unexpected offshoots of these attempts, the advent toward the turn of the eighteenth century of a new literary genre, the history of morality (pp. 174–177), a first attempt at historiography in natural law, the principal figures in which were Jean Barbeyrac and Christian Thomasius.

It is clear that Tuck's perspectives extend well beyond the objectives he has assigned himself, so much so that, whether he so intended or not, in the last analysis his study represents a new history of natural law. This difference in genre would be less striking if the author had not favored natural law theory in the modern period (without justifying his emphasis) (chapters 3 to 8, pp. 58–173)—particularly the English theorists (chapters 4 to 8, pp. 82–173)—over the "first rights theory" elaborated by medieval Scholasticism (chapter 1, pp. 2–31). Also regrettable—beyond minor errors such as the dating of the *De Jure Praedae* of Grotius as 1607 (p. 59) or the attribution to "Leopold" Krieger of an incisive study on Pufendorf (p. 182)—is the absence of any sort of bibliography, either at each chapter's end or at the end of the volume. The usefulness as a reference of a work

that is in other ways so well documented is thus hampered, in spite of the detailed index of names and subjects found in the appendix (pp. 179–185).

Although Tuck's work is to all appearances a doctrinal and literary history of natural law, the title of John Finnis's imposing volume, *Natural Law and Natural Rights*, should be less ambiguous. Indeed, the author advises his readers from the start, in his preface, that his objective is not historical in nature but problematical: it arises out of "analytical jurisprudence" and, since Finnis suspects that "there may be more to theories of natural law than superstition and darkness," he poses as his prior concern to bring his own response to "problems of human good and practical reasonableness" (pp. v–vi).

Finnis sets the tone, then, for a new attempt to rethink the fundamental problems of law in the more than two-thousand-year tradition of natural law—indeed, the two authors most frequently cited (more than a hundred times), according to the excellent index (pp. 415–425), are, significantly enough, Aristotle and Thomas Aquinas. The work is divided into three parts, subdivided into a variable number of chapters devoted to the major themes of the philosophy of law, from the basic requirements of practical reasonableness (2: V, pp. 100–113) to obligation (2: XI, pp. 297–350) and unjust laws (2: XII, pp. 351–368).

A brief Part One (pp. 1–55) permits the author to state his aims ("Evaluation and the Description of Law," pp. 3–22)—the identification of "human goods that can be secured only through the institutions of human law" and the "requirements of practical reasonableness that only those institutions can satisfy" (p. 3)—and to situate his thought in relation to that of contemporary theoreticians of law (H. Kelson, H. L. A. Hart, and J. Raz). In the discussion of natural law that follows, Finnis defines his understanding of the term (p. 23) and gives a remarkable analysis and a methodical critique of the caricatures that its censors in our own century, from H. Kelson to H. L. A. Hart, still give of it ("Images and Objections," pp. 23–55). These authors present a "travesty" of natural law, for historical reasons that Finnis discusses at length (pp. 36–48), and he opposes to this distorted interpretation a conception of his own that conditions the entire structure of Part Two of his book. He understands by natural law, first, "a set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realized," second, "a set of basic methodological requirements of practical reasonableness," and finally, "a set of general moral standards" (p. 23).

Part Two, conceived in function of this very broad definition of natural law, presents a full development of all of its epistemological and axiological elements (pp. 57–368). Taking up what underlies all moral judgments, Finnis first reviews the values he holds to be fundamental ("A Basic Form of Good: Knowledge," pp. 59–80 and "The Other Basic Values," pp. 81–99): life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion (pp. 86–90). This inventory of "basic forms of human good" (p. 100) is followed by an inventory of the basic require-

ments of practical reasonableness ("The Basic Requirements of Practical Reasonableness," pp. 100–133), which the author sees—following the Aristotelian and Thomistic tradition to which he refers so often (pp. 101–103, 125, and 127–131)—in the adoption of a coherent plan of life, the rejection of all arbitrary preferences amongst values or persons, a sense of detachment, of commitment, and of efficiency, a respect for every basic value in every act, a sense of the requirements of the common good, and following one's conscience. Turning to examine the same sort of question in interpersonal relations, Finnis outlines the types of human relationships and the specific communities that result from them ("Community, Communities, and Common Good," pp. 134–160); he then spells out the classical problematics of justice (pp. 161–197); and he gives an extremely penetrating analysis, based in the principles of "analytical jurisprudence" (pp. 198–205), of the problematic of human rights (pp. 198–230). But it is not only each man's due that interests Finnis: his consideration of authority (pp. 231–259) and, to an even greater degree, his detailing of his conception of law (pp. 260–296) and his theory of obligation (pp. 296–350) demonstrate that he is equally interested in the great problems of objective law, which have provided continual food for reflection to philosophers of law from Aristotle to our own times. These include the relation between law and coercion (pp. 260–264) or between positive law and natural law (pp. 281–290), the question of the bases of obligation (pp. 297 ff.) and that of the extent of its force (pp. 308–314), and that of the primacy of reason or will in decision (pp. 337–342). Although it is not the principal preoccupation of a theory of natural law (p. 351), Finnis concludes this second part with a discussion of unjust laws (pp. 351–368), treating the subject to a full casuistics, notably concerning the obedience due to such laws (pp. 354–362), and retracing the history of the Augustinian adage, *lex injusta non est lex* (pp. 363–368).

Finnis's work ends with a Part Three of metaphysical, almost theological character ("Nature, Reason, God," pp. 371–413). The author outlines his convictions—which are strongly marked by the ideas of Germain Grisez (see particularly the reference on p. 382, n. 27, to his *Beyond the New Theism: A Philosophy of Religion*, Notre Dame–London, 1975)—and gives his conception of the relations between natural law and natural theology, in the last analysis the cornerstone of Finnis's juridical philosophy and the exceptional renewal that it brings to the classical conception of natural law (pp. 403–410).

Finnis's book reflects both the crisis in contemporary juridical thought and the permanence of the tradition of natural law. Not only does it stand as a remarkable effort to synthesize modern juridical language and classical metaphysics; it constitutes, by the broad range of problems it takes up and by the judicious critical and bibliographical materials that accompany each chapter, a most useful *vade mecum* for anyone still interested in the bases of law.