Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law*

Changes of State: Nature and the Limits of the City in Early Modern Natural Law by Brett, Annabel S.

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This erudite and challenging book takes as its theme the moral and theological foundations of territorial polity. It addresses this question not as an abstract philosophical topic, however, but via the careful traverse of an array of historical discussions concerning the relation between “nature” and the “city” (1–9). By “nature” Annabel Brett means physical life and body as informed by teleological goods or norms of completion, which indicates that her theme is framed by the historical language of a broadly Thomistic Catholic scholasticism. Within this frame the theme of the relation between nature and the city is unfolded via the Thomistic conception of natural law, on which Brett has already published an important book. Understood thus, natural law is the form in which man becomes rationally aware of the rules governing the good-driven perfection of created natures, preeminently his own (72). Here natural law is located intersubjectively in a hierarchy of laws. It sits below the eternal law through which God inscribed goods or teleological ends in all creatures, but above the (ecclesial and civil) human laws through which the rules of natural law (thence eternal law) are mediated to the church and the city.

Brett’s book is driven by the thesis that from the mid-sixteenth to the mid-seventeenth century attempts to integrate nature in the “city”—understood as a local territory under political laws—encountered two different but reciprocally related obstacles, arising in part from Aquinas’s political metaphysics but more profoundly from Hobbes’s civil philosophy (5). On the one hand, in viewing the political community as a moral union formed for the realization of universal natural goods or ends, mainstream Thomism found it difficult to reconcile this conception with that of the community as a local group unified by the laws of a territorial city or commonwealth. On the other hand, in viewing the political community as formed through the command of a territorial sovereign for the “artificial” purposes of internal peace and external security, Hobbes threatened to exclude nature—life governed by natural goods and natural law—from the city altogether, dislocating nature and law, morality and politics, the man and the citizen.

By framing it within this sophisticated nexus of nature and the city, Annabel Brett unfolds her historical account of early modern natural law around an embedded normative question: can the universalistic conception of the political community as the realization of natural good or right be joined to the territorial form of the commonwealth without sacrificing Thomistic moral union to Hobbesian political command? This means that the book’s discussion of early modern natural law is itself conducted within the language of post-Thomist natural law, in relation to an unresolved problem for this tradition of political metaphysics. Her fluency in this language, in tandem with Brett’s exemplary philological mastery of the Latin sources, imbues her discussion of debates within the Catholic scholastic tradition—among and between the Dominicans Vitoria and Soto and the Jesuits Salas, Suárez, Arriaga, Vásquez, and Molina—with a remarkable felicity and subtlety. Situating the Protestant natural lawyers (Melanchthon, Grotius), political Aristotelians (Arnissaeus, Althusius), and humanist jurists (Gentili, Grotius) as interlocutors speaking dialects of this same language of natural law is also highly revealing of their concerns, as it allows them
to be seen as wrestling with the same problem—of nature and the city—as their scholastic opponents, rather than talking past or over them. Space limitations, however, forbid me making substantial commentary on this dimension of the book.

There might, though, be a price to be paid for this illuminating inclusion of the major protagonists (and antagonists) of early modern natural law within a single shared language—if, that is, any of them self-consciously sought to speak another intellectual tongue, with Hobbes providing the test case in this regard. This is a risk that the author assumes in full methodological awareness, as we can see in Brett’s comments that her focus is on “a ‘way of talking’ as a whole, rather than on particular authors as agents within their specific contexts,” giving rise to a “critical perspective” that is “both historical and philosophical” (9). If the “Cambridge school” of intellectual history deploys a broad-spectrum conception historical context—at one pole of which it is a language that serves as context while at the other pole context comprises the institutional setting in and for which a language is spoken—then, for the most part, Brett’s approach gravitates toward the first pole. Not only is this a defensible methodological choice, but it results in the book’s fidelity to shifts of register within the language of scholastic natural law, and it thus sets intellectual parameters that the reviewer may not disregard. The philosophical unity thereby imparted to Brett’s historical discussion will also commend her book to the readers of this journal. At the same time, should the relegation of local contexts in favor of a shared intellectual language threaten to preempt the question of whether the relevant language was in fact shared, then the reviewer will need to look beyond the book’s self-assumed parameters.

One of the most striking and original features of Brett’s book is the manner in which she uses an array of liminal beings—traveling beggars, animals, madmen, and condemned criminals—whose criss-crossing the borders between nature and the city brings them into focus. Unfortunately, on this occasion we will not be able to trace Brett’s mapping of all these sinuous paths and must instead follow the book’s main thread: that which leads to the discussion of the relation between a universal moral nature and a localized political order in chapter 7.

We can pick up this thread in chapter 4, whose discussion of natural liberty focuses Brett’s concern with the “metaphysics of human agency” and which is the only chapter where the author’s subtlety occasionally threatens to defeat the reader’s attentiveness. The crux here is provided by the double construal of natural law jus: as a subjective faculty of action (jus as individual right) and as an obligatory rule of action (jus as objective law). Risking a global characterization of the difference between Catholic and Protestant natural law in this regard, Brett argues that the Protestant natural jurists tended to collapse subjective right into obligatory law by deriving both from a civil philosophy of sociability; for their part, the Catholics pursued “a natural philosophy of human agency, an individual rule of action” that distinguished between “a rule of action with its source outside the agent and a right of action understood as a faculty of that agent itself” (91). This taxonomy will not do justice to the early seventeenth-century Protestant scholastics—largely absent from Brett’s account—especially to those like Joachim Stephani who used Platonic metaphysics in order to derive subjective political rights from transcendental insight into a rationally “ordered love” (caritas ordinata). Nonetheless, the broad division remains heuristically useful in allowing Brett to unfold a complex spectrum of Catholic
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scholastic variations in the space between *jus* as individual liberty of action and as obligatory law.

Here I can permit myself only two comments on this discussion. First, the intra-Catholic debates revolve around the right way to reconcile individual liberty or right—understood in terms of a subjective faculty of *dominium* or control over one’s actions—with the objective goods embodied in an obligatory natural law that should govern the exercise of this subjective faculty. This might suggest that these debates were rooted in ecclesial practices of individual pastoral care and spiritual guidance, and this is at least implied in Brett’s contextualizing comment that the Jesuits Salas and Molina discussed the relation between right and law in the context of determining religious penance and restitution (92–93). Second, when Hobbes is introduced at the end of the chapter, as the culminating representative of the Protestant conversion of natural liberty into civil right, Brett surprises the reader with the subversive suggestion that Hobbes might have been continuing the scholastic meditation on right and law rather than abrogating it. This is because Brett views natural liberty as the foundation of the Hobbesian sovereignty pact, understood as the voluntary and rational exercise of this liberty to appoint a sovereign to whom it can be alienated (108–14): “[Hobbes] thus joined hands both with Grotius and with the later scholastics in constructing a sense of liberty that does not resist the commonwealth but is in fact the very basis upon which it can be erected” (114). She thereby dissents from those commentators (Noel Malcolm, in particular) who argue that Hobbes treats natural liberty or right as the source of the war of all against all, hence as the central obstacle to the Hobbesian sovereignty pact, into which men are driven by mutual fear (rather than free consent) and a distinctively Hobbesian natural law (seek peace but prepare for war). This will be one of those occasions then when we can ask whether the author’s focus on a shared language of natural law might run the risk of eliding changes of context that call the continuity of the language into question; for example, the shift from ecclesial theologians concerned with spiritual direction and penance to a civil philosopher concerned with stabilizing civil rule in the face of religious civil war.

It might appear that Brett retreats from this view of the scholastic Hobbes in the fifth chapter—“Kingdoms Founded”—as here she does introduce Hobbes’s construal of the natural condition as one of universal war; but this is in keeping with her account of a change in Hobbes’s own thought: from a juridical right-based construction of the commonwealth in *De cive* to a political-psychological construction in *Leviathan*. Brett treats the conception of nature as universal war in *Leviathan* not as a continuation of the juridical language of natural law but as a supervening “psychopathology” of the natural condition (115–16). The author then parleys this disruptive intervention into one side of an argument as to whether the commonwealth is formed through a union or consociation grounded in a natural inclination, or whether it arises only when there is a superior capable of compelling adherence to the terms of the sovereignty pact. The former position is held by the scholastics (albeit with many internal differences) and regards the commonwealth in terms of unity and voluntary association, while the latter is held by Hobbes in *Leviathan*, where the commonwealth is viewed as the product of order and command: an exemplary opposition that Brett then further characterizes in terms of the opposition between citizenship and subjection, and finally law and politics.
In chapter 6 these highly abstract oppositions are moved a little closer to the concrete fields of use from which political theology and philosophy have abstracted them. The chapter’s topic is the relationship of the commonwealth to its members as physically embodied beings (142), although it is the natural norms or goods embodied in such beings that form the focal point. For this allows the author to refocus the argument between the scholastics and Hobbes in terms of whether such natural goods and their natural law give rise to enforceable civil rights and laws in the commonwealth or, conversely, whether the commonwealth’s civil laws and its citizens’ civil rights are grounded only in the commands of the sovereign. Brett’s discussion of the variety of scholastic positions here is highly informative and full of interest. In stressing the continuity between natural and human law, the Dominicans Vitoria and Soto focus on the synchronization of ecclesial and civil law directed in the joint realization of man’s spiritual and temporal felicity (145). Civil law can thus be used to enforce religious law, and the commonwealth should make men moral as well as law-abiding.

Although Brett does not say so, this would appear to give rise to a quasi-theocratic construction of the commonwealth associated with the rise of the early modern confessional state, and we should not forget that Vitoria continued to defend the burning of heretics by the civil authorities. According to Brett, the Dominican position was significantly modified by the Jesuits Suárez, Salas, and Arriaga. They introduced a series of distinctions between the bodily and the spiritual, the natural and supernatural, and external and internal acts—only the former being susceptible of civil command—thereby weakening the scholastic link between crime and sin, without breaking it though (145–49). In discussing Hobbes’s intervention, Brett concentrates on his thinning of the concept of freedom down to the notion of unimpeded movement which, in excising freedom as the faculty to act in accordance with natural good, cuts the knot between moral and civil law (159). Presumably this was with a view to secularize the latter, although Brett does not entertain that prospect. This may be in part because in continuing her subversive reading of Hobbes, she argues that it is only in \textit{Leviathan} that the link between conscience and civil command is actually severed, whereas \textit{De cive} maintains the link in an attenuated form by insisting that subjects should be inwardly obligated as well as externally coerced by the sovereign’s laws (160).

It is the seventh chapter, “Locality,” that brings the subthemes of the book to a head and perhaps best demonstrates the depth and originality of Brett’s analysis. For here the author confronts her central problem head-on: how can a conception of moral community grounded in universal natural goods be reconciled with a spatially limited conception of the commonwealth as a territory under laws that stop at its borders? It is also in this chapter that Brett strays farthest from her chosen context of a shared language of natural law and enters the less charted waters of the concrete uses of this language in particular institutional settings. She thus opens her discussion of the mismatch between universal morality and spatial jurisdiction with a fascinating account of Jesuit attempts to deal with the obligations of travelers in ecclesial jurisdictions whose laws and liturgies—pertaining to such things as marriage or the mass—differ from those of their home jurisdiction (171–74). These attempts issued not in a declaration of principle but in a “casuistics of
obligation” that outlined permitted relaxations of the general rules in these particular cases as a means of adjusting such rules to local jurisdictional differences. While full of interest in itself, this discussion is crucial for the lesson that Brett draws from it: that a practice of adjusting universal natural laws to regional jurisdictions presumes the existence of an institution claiming moral universality—the Catholic Church—whose rules can be adapted to its own regional jurisdictions regardless of the existence of territorial states: “The fundamental context is human law in the sense of ecclesiastical law; and because the church is universal—there is always a body of law to which the traveler will be subject wherever he goes, even if he crosses the borders of commonwealths. . . . the ‘national’ or political difference being irrelevant in the context of the common body and common law of the church” (174).

The real difficulties confronting the scholastics only come to the fore, however, when they move from ecclesial to civil law and jurisdiction, under circumstances of religious fracture and territorial state-building. For now the problem of reconciling universal norm and territorial law is compounded by the (post-Reformational) fracturing of the global institution that permitted their casuistic harmonization and by the concomitant uncertainties about how (or whether) to link eternal, natural, and civil law, as discussed in the preceding chapter. Faced with the problem of explaining how a subject “outside” a commonwealth might be exempt from its jurisdiction—since the commonwealth is regarded as the product of a universal moral union hence lacking an “outside”—the best that Francisco Suárez can do is reach for some scholastic distinctions: between local command and general law and between an original moral jurisdiction and its suspension under conditions of extra-territoriality (176–78). Brett observes acutely that these distinctions demonstrate little more than the extraordinary difficulty of absorbing the phenomenon of territorial civil jurisdiction within the political theology of moral community, finally showing the degree to which scholastic political theory remained tied to the context of a universal church (176). It is equally significant that in the critique of Suárez’s position launched by his fellow Jesuit Rodrigo de Arriaga, the latter rejected the Thomistic conception of moral union as constitutive of political community, insisting instead on the primacy of the purely spatial unity provided by the community’s dwelling in one place, a place, moreover, whose laws are dedicated to its peace and security (178–79). If Brett’s reading moves Hobbes closer to the scholastics then, with this account of Arriaga, she also moves the scholastics closer to Hobbes.

Annabel Brett’s account of the ramified conflict between the universal norms of “nature” and the spatial jurisdiction of the “city” raises more questions than it answers, pointing to the fruitfulness of the field that she is cultivating. Among these questions it was the following that impressed itself most forcefully on my mind: to what extent was the conflict a product of the fracturing of the Catholic Church’s global moral jurisdiction and the emergence of Protestant civil states that exercised territorial jurisdiction over their own churches?

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