

**Hittinger, Russell. *The First Grace: Rediscovering the Natural Law in a Post-Christian World*. Wilmington, DE: ISI Books, 2003. xlvii + 334 pages. \$24.95 hardcover.**

Russell Hittinger's second book on natural law jurisprudence confirms his central role in perpetuating the tradition of Western jurisprudence and political philosophy in our era of widespread amnesia. Combining previously published articles with new essays, *The First Grace* shares his learning in the Aristotelian and Thomistic traditions in an engaging form, moving between current political or legal issues and first principles of law, politics, and morals. There is also a hint of Augustinian foreboding, since Hittinger knows that today's reigning voices in law and political philosophy mostly have polite contempt for traditional natural law jurisprudence, or a perfunctory knowledge that little impedes their project to fuse skepticism about traditional learning and morals with a moralism of contemporary meanings. The genius of *The First Grace* is to show that one cannot seriously affirm the rule of law or any sound idea of justice while shutting out the metaphysical and moral understanding of the natural law tradition. The *zeitgeist* seeks to burrow further into the sub-cave beneath the cave of legal positivism, in which law and morals are human conventions and one need not even investigate a ground for "contemporary principles" in nature and the source of nature. Hittinger persists in manning the windows and air vents that long have carried sunlight into those caves. If law schools and departments of philosophy and political science -- not to mention many judges -- could raise their eyes from the latest egalitarian theory and legal skepticism, or from libertarian reactions to these, they might open themselves to a deeper kind of learning.

*The First Grace* opens by explaining the 5<sup>th</sup> century origin of its title, from a French presbyter who repented that, in trying to avoid the Pelagian heresy of human self-sufficiency, he had lurched to the predestinarian heresy of denying God's providence for all humankind in a

natural law that survived our sin. Four chapters on “Rediscovering” a jurisprudence of natural law are followed by seven chapters employing this traditional learning to illuminate the theoretical and practical quandaries of our “Post-Christian World.” This develops Hittinger’s *A Critique of the New Natural Law Theory* (1987) and his subsequent introductions to reprints of works by Yves Simon and Heinrich Rommen, expounding a traditional Thomistic view in which the epistemic status of natural law is secondary to its ontological status. His disagreement with the theory of Grisez, Finnis, and George is much moderated here, instead focusing on such secularists as H.L.A. Hart and Lon Fuller, and putative theists like Mortimer Adler and Joseph Fuchs, who would liberate the concept of natural law from natural theology or metaphysics altogether. Hittinger’s theme is to “investigate problems that arise once natural law is understood as free-floating with regard to authority, whether human or divine” (xiv). Issues of “order in the human mind” cannot be separated from “order in nature” and “order in the divine mind” (xvi). It is the views of modern jurists about our autonomy and “self-norming” capacity to invent moralities that have produced recent theoretical and practical problems undermining both decent morals and political community (xlv-xlvi), evident in public disputes in America about abortion, gay marriage, assisted suicide, religion, and the legitimacy of courts themselves.

Major themes of the first section, “Rediscovering,” include the neo-Platonic and Thomistic principle that natural law is reason’s “participation” in the order of nature and the eternal law of the divine lawmaker; that the displacement of theology by epistemology is a recent shift that dilutes natural law by weakening its status as law, and unwittingly abets the tendency to individualism and materialism in law; that Catholics and Protestants have much common ground on these issues; that a Cartesian, anthropocentric version of natural law dates to Suarez in the 16<sup>th</sup> century but that Pope John Paul II has restored its theological grounding; and, that natural

law in no way entails judicial activism, since the Aristotelian and Thomistic traditions endorse the rule of law and thus the primary duty of legislators, not judges, to implement natural law in positive laws. Throughout Hittinger masterfully synthesizes different authors and themes in the natural law tradition; he also integrates the different parts of St Thomas's *Summa Theologiae* rather than relying on isolated excerpts to discern his natural law teaching.

The second section of the book explores such contemporary issues as the constitutional and political problems caused by emphasis on unenumerated rights of individuals; assisted suicide and the broader "right to be left alone" recently imposed by courts; the status of religious belief under American constitutionalism and natural law, now beleaguered by near-dogmatic hostility to religion in the courts; the new breed of judicial supremacy untethered from the Constitution or any idea of fundamental law, epitomized in the Supreme Court's 1992 abortion ruling, *Casey*; and, Vatican II teachings on religious liberty for the Church. The final two chapters amplify these themes by addressing threats to civil society and human community from modern technology and impersonal commerce, dogmatic secularism, and the rationalist modern state. A main thread warns of the unprecedented power of American judges and lawyers in our time, expanding judicial power into any issues of morals and politics they choose, on the basis of perpetually shifting rationales. One chapter recapitulates the controversy sparked by the journal *First Things* in 1996 about the "crisis of legitimacy" that, it claimed, the US Supreme Court was bringing upon itself and the nation. Given the Court's assertions of supremacy in the last eight years on everything from elections to sexual morality, those who accused Hittinger of over-reacting in 1996 might think again. Recent rulings on gay marriage confirm that federal judges are a model for state judges and officials to boldly interpret state constitutions, overturning long-standing or newly minted statutes on the basis of new doctrines and slim court majorities, and in

the face of heated dissents. *The First Grace* explains that this conjunction of amazing power and fundamental confusion is no coincidence. The shift in Western law away from natural law, a tradition broadly shared by pagan philosophers and Christians through two millennia, has left the judges and lawyers at once blind and bold. This is not what the traditional depiction of a blindfolded Lady Justice sought to endorse. Under a quasi-lawless idea that law entails perpetual change to meet ever-new claims to equal dignity or relevance, judges declare that under “authority” of some self-created “higher law” the autonomous individual must “occupy some authority-free zone in the midst of civil society” (xv). Hittinger reveals the further contradiction that “there are no secular claims completely separate from propositions about the ultimate ground of authority,” however much jurists try to cloak them in anthropocentric garb (xv).

Those inclined to dismiss traditional natural law as reactionary, and those seeking a screed against contemporary morality or judicial activism, should note just how often Hittinger invokes principles of intellectual and political moderation, liberty, and constitutionalism. *The First Grace* cites Montesquieu, *The Federalist*, and Tocqueville as embodying the natural law tradition’s appreciation for legal complexity and plural sources of law, for liberty, for the family and other civil associations, and for basic conceptions of the common good. ISI Books is to be commended for bring forth this refreshing and mind-expanding resource, helping us to restore the big picture to our pressing debates about law, liberty, civil society, religion, and family.

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