

NATURAL  
LAW,  
LAWS OF  
NATURE,  
NATURAL  
RIGHTS

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CONTINUITY AND DISCONTINUITY  
IN THE HISTORY OF IDEAS

FRANCIS OAKLEY

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LAWS OF NATURE,  
NATURAL RIGHTS

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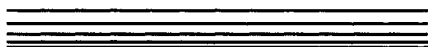
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# NATURAL LAW, LAWS OF NATURE, NATURAL RIGHTS

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IN THE HISTORY OF IDEAS



FRANCIS OAKLEY



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MEMORIAE  
A. P. d'ENTRÈVES  
DOCTORIS

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# PREFACE

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Over the years, as the historiographic fortunes of intellectual history have risen and fallen only to rise again, I have found myself persistently drawn, less by any contrasuggestibility of temperament than by a sort of ineluctable fascination, to two abiding preoccupations. The first has been with the internal interconnections and affinities among ideas, their dynamism or “particular go” (Lovejoy’s phrase),<sup>1</sup> and the logical pressures they are capable of exerting on the minds of those that think them. The second has been with the exploration of long-enduring intellectual traditions apt of their very nature to transgress not only disciplinary boundaries but also the chronological divisions that disciplinary training and historiographic tradition have made so prominent and obstructive a feature of the intellectual landscape. Neither preoccupation is altogether fashionable at the moment, though the growing prominence of the school of *Begriffsgeschichte* pioneered in Germany by Otto Brunner, Werner Conze, and Reinhart Koselleck, along with the recession in the Anglophone world of suspicions about the viability of the “influence model” as an explanatory tactic in the history of ideas, have both done something at least to fortify the epistemological confidence of those interested in the history of intellectual traditions.<sup>2</sup>

Whatever the case, the invitation extended to me to deliver the Merle Curti Lectures in intellectual history at the University of Wisconsin, Madison, in the autumn of 2001 afforded me

the opportunity to pursue both preoccupations a little further via an exploration of the long tradition of discourse in the Western world concerning the complex of notions denoted by the terms natural law, laws of nature, natural rights. It also permitted me to share my preliminary conclusions with a gracious and sympathetic audience and, in response to the questions put to me, to clarify and sharpen their import. My visit to the campus and my encounter with Chadbourne Hall and Bascom Hill — both memorializing early presidents of the fledgling University of Wisconsin — also afforded me the opportunity to reflect on continuities and connections of a different type. For, like myself, John Bascom enjoyed the distinction of having spent several decades on our faculty here at Williams, and Paul Chadbourne is numbered among my predecessors in the post-Mark Hopkins presidential succession at the College. That sense of historic institutional connection, as well as the warm welcome extended to me by colleagues and friends at Madison, made my visit there both enjoyable and rewarding.

In that respect, I am particularly indebted to Thomas T. Spear, chair of the history department at Madison, and to three of his colleagues from whom, over the years, I have learned a great deal — my distinguished fellow medievalist, William J. Courtenay, and, from the early modern period into which, in hot pursuit of one idea or another, I have persistently been led to intrude, J. P. Somerville and Lee Palmer Wandel. Here at Williams, I am much indebted to my former colleague, Gary J. Jacobsohn, now of the University of Texas at Austin, for his kindness in giving the manuscript a critical reading, as also to my colleagues at the Oakley Center for the Humanities and Social Sciences with whom I was able to share drafts of a couple of these chapters. For their characteristically prompt work in preparing the manuscript for the press, I must also thank Donna Chenail and her fine staff in our faculty secretarial office.

In the course of revision for publication, these chapters have mutated from three into four. And if, as a medievalist, I regret the loss thereby of a measure of Trinitarian cachet, as one whose scholarly interests also impel him forward into the seventeenth and eighteenth centuries, I can only welcome the room for additional maneuver that has permitted me to focus more intently on the theory of natural rights and the intriguing *quaestio disputata* concerning its origins.

This book is dedicated to the memory of the late Alexander Passerin d'Entrèves, from whose characteristic kindness I benefited when I was starting out as a young member of the Yale History Department. A scholar with a long and generous intellectual reach, he had at one time or another, whether in Italy, England, or North America, taught literature and law as well as legal and political philosophy. But *Ideengeschichte*, he once told me, was the subject closest to his heart, and he had the distinction, certainly, of having focused attention on the development of the natural law tradition at a time when, in the Anglophone world at least, that was far from being a fashionable thing to do.

F. O.

*Williamstown, Massachusetts*  
*August 2004*

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# METAPHYSICAL SCHEMATA AND INTELLECTUAL TRADITIONS

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My concern in this book is with the complex of ideas clustered around the age-old notion of natural law as well as with particular instances of continuity and discontinuity to be found in the histories of those ideas. In approaching these matters, political philosophers have characteristically postulated (or simply assumed) the existence of a sharp discontinuity between modern natural law and natural rights thinking and the “classical,” “Christian,” and “medieval” natural law tradition taken to have preceded it. For those of warmly Straussian sympathies, indeed, the existence of such a sharp discontinuity appears to have been elevated to the status of a pivotal and unassailable article of faith, unresponsive to changes in the intellectual temperature and pressure and immune to the querulous caviling of historians. Not that historians themselves are necessarily prone to challenging that or other instances of claimed discontinuity. In relation to the history of ideas, indeed, concern with the *longue durée* — in this case with long-enduring patterns of thought — has for some years had something of an antiquated feel to it, whereas rupture, caesura, discontinuity, break have come to command a degree of attention bordering sometimes on the obsessive.

That is the case not only among those prone to resonating sympathetically to Michel Foucault's attempt to map in synchronic fashion the networks or grids of relationship that confer unity on the four great epistemes (or "epochs of epistemic coherence") into which he believes the years since the later Middle Ages have fallen, and to identify (though certainly not to explain) the stark discontinuities that he claims separated them from one another.<sup>1</sup> Even those whose thinking revolves within what are, by comparison at least, the more sublunary orbits of the Anglophone historiographic world are prone to giving short shrift to those preoccupied with such long-enduring patterns of thought. Arthur O. Lovejoy's classic *Great Chain of Being*, however much it was acclaimed when it first appeared over sixty years ago, is now, one cannot help feeling, dismissed more often than it is read. To Quentin Skinner, indeed, the Lovejovian project of concentrating on the idea itself as a unit and of tracing its morphology across long stretches of time is clearly misguided, wrong in principle, grounded in "a fundamental philosophical mistake." "My concern," he once famously proclaimed, "is not empirical but conceptual; not to insist that such histories can sometimes go wrong, but that they can never go right."<sup>2</sup> And if one shifts to an otherwise quite different point on the historiographic spectrum, to the late Lawrence Stone, who, after a moment of perhaps unwelcome epiphany on the road to the historiographic Damascus, had grudgingly conceded in the late 1970s that "quantification [had] not fulfilled the high hopes of twenty years [earlier]," that there might well be something, after all, to the efforts of the historians of ideas, that in the enterprise of historical explanation, then, "ideas, culture, and individual will" had now to be recognized as "independent variables" — if one shifts to Stone, even as he made those edifying though somewhat belated concessions, one finds