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BOOK REVIEW: David McIlroy, *The End of Law: How Law's Claims Relate to Law's Aims*, (Cheltenham: Edward Elgar, 2019) ISBN: 9781788113991, pp. 180.

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Law is directed towards the end of justice (163). This statement initially appears relatively uncontroversial, however, the title *The End of Law* subtly refers to the end(s) to which law is directed. There are two aims set out in *The End of Law*. Firstly, in much the same way that the legal philosopher John Finnis applied Aquinas's thought to legal theory in *Natural Law and Natural Rights*,¹ McIlroy in *The End of Law* applies Augustine's thought to modern legal philosophy. Second, by applying Augustine's thought McIlroy posits a critical theory of natural law. By doing so, McIlroy seeks to fulfil a gap that he has identified in the literature surrounding the application of Augustine's thought. This is an ambitious task. And there are demanding and contentious claims made throughout the work.

For McIlroy, law cannot be defined without reference to justice. Justice is presented as the end of law (2) and so justice, in this sense, is the 'end' referred to in the book's title. McIlroy holds this to be the case because justice is the "ultimate purpose of law; it is the goal (*telos*) towards which law aims." (2) Justice is presented as a standard by which law can be criticised (166). For instance, the book focuses upon Augustine's question, what is the difference between a kingdom and a band of robbers?² (1-2) McIlroy then uses this question and suggests that both robbers and kingdoms can prey on people on the outside – laws can be applied unequally to individuals. This criticism leads to reflection on law and justice: justice according to law (shallow justice); justice behind the law (deep justice), and justice that judges the law (true justice). (23) This approach draws comparisons with Fuller's account of morality,³ yet it differs because the concept of deep justice is the form of justice most commonly associated with accounts of the common good and human flourishing. The legitimacy of individual laws are derived from and depend on their conformity to ideas of deep justice and so deep justice provides a measure to critique law (30). McIlroy draws on Augustine to find a Judaeo-Christian God as the source of true justice (154): a commitment to true justice is "the criterion by which to measure theories of deep justice." (145).

The End of Law is an original work in jurisprudence. Legal theory profits here from deep engagement not only with the usual suspects (Hart, Fuller, Dworkin) but those often neglected and notable for contributing to legal theory and theology (Kuyper [1837-1920], Dooyeweerd [1894-1977] and Anderson [1908-1994]). This inclusive approach also touches on many different areas such as political theology, American legal realism, and critical theory to present a reflection on justice. To do so, McIlroy draws from a wide range of literature to engage with an eclectic range of jurists, novelists and philosophers including, *inter alia*, Marcus Tullius Cicero, William Blackstone, Immanuel Kant, Friedrich Nietzsche, and – less conventionally – Terry Pratchett.

The monograph covers themes as wide ranging as a ‘Rule of law’ (chapter 4) to the ‘Agony of law’ (chapter 9). The first two chapters set out the purposes for law and justice, culminating in Chapter 3 with the presentation of law shown as a justifying force. This is because law is understood to rest on the twin pillars of morality and coercion. Chapters 4 to 6 develop the argument by considering the impact of the concept of deep justice upon rulers in a legal regime. The concept of deep justice allows McIlroy to provide an objective account of goods that are to be pursued. The discussion in Chapter 6 arguably moves at a too fast pace. The chapter moves from Plato, Aristotle, Cicero, Augustine, Mill, Finnis, Nussbaum, O’Donovan, Sandel in quick succession to justify how deep justice requires an account of objective goods. By doing so this arguably does not give appropriate attention to each writer. The effect is like a waiter serving dinner but taking the plates away before the individual courses are finished.

Chapter 7 ‘Critical natural law’ presents an alternative to natural law theory. This departs from traditional reliance upon Thomas Aquinas in the scholastic tradition.⁴ This is where McIlroy fills the earlier identified gap in literature by building from Augustine’s thought to create a critical theory of natural law to identify objective morality as the core commitment of natural law. This identifies the requirement for an account of morality to refer to objective goods when measuring deep justice [164]. Chapters 8 and 9 further analyse objective morality to focus on standards for justice. Chapter 10 considers the end of law at the point of which law is finished and completed. This is suggested to require a ‘Final Judgment’ which is the possibility of a real true justice.

By interpreting Augustine to advance a theory of law McIlroy shows how Aquinas built upon Augustine’s thought, allowing for a deeper, more developed engagement with Augustine’s political theology. For example, McIlroy notes that Augustine considered that political communities develop an account of the common good(s) (98, 108). This recognises Aquinas’s later contribution developing Augustine’s thought, through Aquinas’s own treatise on law⁵ (116).

In Chapter 8 the utilitarian Bentham, communist Marx, and social contractarian Rawls are held to be progressives committed to improving society “by better enabling human flourishing.” (138) The attempt to impose elements of natural law theory via finding objectivity in each authors’ work (138) and then aligning this to the concept of ‘deep justice’ arguably creates connections where none are to be found. In searching for objective truth about morality McIlroy holds that these three authors offer accounts of true justice (134). McIlroy does this to argue for principles of true justice found in human rights. The relationship between these authors on the question of ‘deep justice’ are a little too tenuous; a more convincing approach would have been to argue for these principles by establishing the connection between human rights and natural law.

McIlroy does attempt to set up a basis for human rights. For instance, McIlroy is correct in his identification that human rights theories are a modern form of natural law. A human right is said to be a natural right: a modern version of natural law theory being presented in a rights discourse as human rights (120). Human rights echo modern forms of natural law, presenting standards of justice applying across jurisdictions. For McIlroy, human rights promise “an objective, universal standard of justice against which laws are to be measured”. (120) This objective standard ties into natural law as McIlroy reads Augustine to suggest that both natural law legislated by classical theism, and now modern human rights, provide objective precepts for human flourishing.⁶ (126) Following the Universal Declaration of Human Rights 1948 and codification in the European Convention of Human Rights 1950, it is evident that a natural rights basis ground in human nature can be identified.⁷

In sum, *The End of Law* presents a valuable addition to contemporary jurisprudence and will particularly appeal to those developing interdisciplinary approaches at the intersection of moral philosophy and theology. McIlroy opens fertile ground for research into Augustine and his contribution to legal thought.

¹ John Finnis, *Natural Law and Natural Rights* (Oxford: OUP, 1980).

² St. Augustine, *City of God*, trans. Henry Bettenson (London: Penguin, 1965) IV.

³ Lon Fuller, *The Morality of Law* (New Haven, CT: Yale University Press, 1964) 208.

⁴ See Ralph McInerney, *Ethica Thomistica* (Washington, DC: The Catholic University of America Press, 1982); Robert George, *In Defense of Natural Law* (Oxford: OUP, 1999); Mark Murphy, *Natural Law and Practical Rationality* (Cambridge: CUP, 2001).

⁵ Thomas Aquinas, *Summa Theologica: The Treatise on Law*, I-II, qq. 90-97.

⁶ St. Augustine, *Confessions*, trans. Richard Pine-Coffin (London: Penguin, 1961) III, VII.

⁷ John Tasioulas, “Human Rights, Legitimacy, and International Law” *Am. J. Juris.* 58, no. 1 (2013): 1.