

Is Modern Liberty Ancient? Roman Remedies and Natural Rights in Hugo Grotius' Early Works on Natural Law

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Abstract

This paper argues that Hugo Grotius (1583-1645), a major protagonist in the history of individual natural rights, developed his highly influential rights doctrine by reference to ancient Roman legal remedies and Cicero's moral philosophy. The paper thus puts forward a fresh account of the historical background of modern thinking about rights, one that runs counter to the traditional liberal historical account, epitomized by Benjamin Constant, according to which modern liberty is distinct from ancient liberty precisely on account of the alleged lack of a concept of individual rights in classical antiquity. It is argued that Grotius, a humanist steeped in Roman law, had substantive reasons for using his Roman sources. Roman law had already developed a doctrine of the freedom of the high seas, based on the idea of the sea as having remained in a natural state. Furthermore, Roman law and Cicero's ethics provided a fair amount of commerce driven remedies in contract law, which were part of the so-called law of peoples (*ius gentium*), a body of law initially created to accommodate foreigners, especially merchants, and give them standing in Roman courts. Although this paper's focus is not on the Roman texts themselves, but on the use Grotius made of them in some of his early works, the paper does entail the claim that those texts contain a concept of subjective rights. Moreover, it is suggested that the paper's historical account can contribute not only to a better doctrinal understanding of Grotius' rights doctrine, but also to a better understanding of modern liberal doctrines of rights.