

## The Origin of Political Authority. An Essay in Catholic Political Philosophy (Book Review)

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This type of utilitarian approach is entirely proper in studying constitutional law. For here we are not dealing with law "properly so called" except in the Austinian sense. The oft quoted remark of John Chipman Gray who tried teaching constitutional law after a lifetime concern with the Rule against Perpetuities, "this is not law—this is politics" is the lesson from Powell's book and from his life. Powell, therefore—for all his logic—commits a grave fallacy when he uses these cases as a refutation of the eternal verities of natural justice. To be sure, there is no ideal "Chancellor's Foot" by which the principles of natural law can be measured. But few can be found, even in these days, who are willing flatly to assert that the unseen and unknown do not exist. Uncertainty is all that empirical logic permits. Yet these devotees of empirical logic insist that our conduct must be based on the assumption that non-existence of eternal light is the basic premise. To men of faith, this premise seems futile and unrewarding. More, much more is needed. The constitution, as the Supreme Court has interpreted it, has put into the hands of the Court a veto power on legislation. That power is, indeed, exercised by the Court in a manner more akin to the legislative than the judicial process. The decisions of the Court in this regard must be judged by right reason, by the extent to which they approximate the moral concepts that lie at the root of perfect law.

MAURICE FINKELSTEIN.\*



THE ORIGIN OF POLITICAL AUTHORITY. *An Essay in Catholic Political Philosophy.* By Gabriel Bowe, O.P. Fresno: Academy Library Guild, 1955. Pp. 102. \$2.00.

The problem of authority and how it is acquired is again proving troublesome to contemporary jurists and political theorists. Only a few weeks ago, the first meeting of the newly formed American Society for Political and Legal Philosophy, held at Brookings Institution in Washington, devoted two days to listening to and discussing three papers by Hannah Arendt, Charles Hendel, and Jerome Hall on various aspects of the nature of authority. The questions that followed the addresses indicated that, able though the papers were, the problem presents many aspects still unsolved. Perhaps the current concern with authority can be attributed to the juridical situation which arose in connection with the Nuremberg trials, where the lawyers had to work without precedents, procedural codes, criminal statutes, and

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established judiciary, and similar essentials which most practitioners are accustomed to take more or less for granted. In any event, the turning away from positive legal enactments toward the natural law, which has been notably gathering great momentum within the last ten years, has again brought us face to face with the question which confronted the Founding Fathers—that is, the struggle for law, the derivation of juridical authority, and the relation of both to the development of freedom and of self-government.

It is important to note that the teachers at the Pontifical Institute *Angelicum* in Rome have been no less concerned with the problem of political authority than the American Society mentioned above, for the book under review was completed there in 1952 as a thesis for the Lectorate in Sacred Theology by a young, Irish, Dominican priest, studying under the direction of the Master General of the Dominican Order, the Most Reverend Michael Browne, O.P., then Master of the Sacred Palace as well as professor at the Institute, and the Reverend Cornelius Williams, O.P., professor of moral theology. The author himself is now teaching economics at University College, Dublin.

This slender book does not attempt to cover the whole problem, but rather, as its sub-title states, restricts its consideration to the Catholic view, but is not so historical in treatment as theoretical. Briefly noting scriptural allusions to political authority, especially those made by St. Paul, the book then devotes a short chapter to the principal Papal documents on the subject from Gregory VII to Pius X, giving most attention to the *Silloniste* theories, advocated by Marc Sangnier in Paris at the turn of the century, only to be condemned by Pope Pius X in 1910.

Several short chapters are devoted to the "translation theory" in which the views of Francis Suarez, Thomas Cajetan, Francis de Vitoria, Dominic Soto, and St. Robert Bellarmine are cited and summarized. This is followed by a chapter on the "designation theory," where the views of more modern Catholic writers, such as Luigi Taparelli, Matthew Liberatore, Victor Cathrein, Joseph Rickaby, T. Meyer, P. Schwalm, Cardinal Billot, Cardinal Zigliara, and R. Jolivet, are briefly summarized. Then, noting that both schools quote St. Thomas Aquinas, the author devotes two chapters to the views of the Angelic Doctor, before concluding with a chapter entitled, "An Assessment" and a selective bibliography.

It is the author's view that the division of Catholic philosophers into "translation" and "designation" theorists appears to be somewhat misleading, largely because Suarez modifies the so-called "translation" theory in his discussion about the relationship of direct democracy to the natural law. The author says that,

In fact the rôle of the people is one of determination rather than of translation. Their *right of election* does not, of itself, constitute a form of government,

namely, democracy. Their *act of election* does, but the government so established may take any form.<sup>1</sup>

With respect to the "designation" theory, the author concludes that it is perfectly compatible with the principles of St. Thomas and many of his commentators, like Cajetan, Vitoria, and Bellarmine, who have hitherto been classified under the "translation" theory. He adds,

Whether we call it the translation theory or the designation theory the fact remains that the only fundamentally legitimate title to civil authority is the consent of the people.<sup>2</sup>

Noting that not until the nineteenth century, following the excesses of the French and subsequent revolutions on one side and of the Sillonistes on the other, was the derivation of authority from the consent of the people questioned, Father Bowe points out that the pronouncements of Popes Leo XIII and Pius X on the problem did not constitute a repudiation of the derivation of authority from the consent of the people, since they were not dealing with that particular point. The author's final word is that "democracy as a form of government is *permissible*, just as is any other form. It is not *imperative*."<sup>3</sup>

The book provides a very good introduction to the subject. Coming from a citizen of the Republic of Eire, which has its own enlightened Constitution, the approach is particularly interesting to Americans with comparable constitutional experiences. If its suggested bibliography be pursued methodically, and supplemented by dissertations on allied topics published at The Catholic University of America, a deeper understanding of the derivation of political authority can be obtained, which should prove useful in helping to solve the problems posed by contemporary political and legal philosophers generally in their turning toward natural law as a replacement for the unsatisfying principles of positivism.

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TREATIES AND FEDERAL CONSTITUTIONS. By James McLeod Hendry. Washington, D. C.: Public Affairs Press, 1955. Pp. V, 186. \$4.50.

The defeat in 1954 of Senate Joint Resolution 1, commonly known as the Bricker Amendment, brought into focus the serious

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<sup>1</sup> P. 95.

<sup>2</sup> *Ibid.*

<sup>3</sup> P. 97.

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