

THE SOVEREIGNTY OF THE PEOPLE

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I.—HISTORY OF THE PRINCIPLE

The current Protestant view is that democracy was introduced by the Reformation; and unfortunately this history of history is nowadays accepted as a commonplace by many Catholics.² It is admitted, of course, that the Jesuits artfully "took a leaf from the Calvinistic book of political theory,"³ and thus for a century or so propagated the accepted thesis of contemporary non-Catholic Liberalism, and it is also held by a recent school of Catholic conservatives who, from the opposite standpoint, are equally desirous of repudiating any connection between Catholic teaching and democracy. One has but to open some recent manual to find the doctrine of popular supremacy referred to as "the doctrine of the ancients," the view upheld by "Bellarmine, Suarez, and not a few Scholastics," "the theory of social contract advocated by Cardinal Bellarmine and Francis Suarez," and so on.⁴ It is plainly thereby insinuated that this democratic theory is a mere intrusion into Catholic political philosophy, due either to the inac-

¹ "Studies," March, 1921.
² I have attempted to refute this in two articles on "The Catholic Origin of Democracy" and "The Sources of English and American Democracy," in *Studies*, March and June, 1919.
³ H. D. Forster, *American Hist. Review*, 21 (1915-16), 500. Rankin's statement is more accurate, for he wrote before the idea of Protestant democracy had become an established fiction. "The Jesuits," he complains (*History of the Popes*, vi. 1, Eng. trans., 1848, ii. 4), "made no scruple of deriving the power of the prince from the people." He correctly gives the Protestant theory of absolutism and passive obedience: "God alone, as the Protestants maintained, appoints princes over the human race; He reserves to Himself the office of exalting and abasing them, of apportioning and moderating the powers they are called on to exercise" (*ibid.* ii. 12). Cf. also L. von Ranke, *Sämmtliche Werke*, 24 (1872), 227. *Cathrein, *Phil. moralis*, 1915, § 577, p. 391; Reinstadler *Elementa* 1913¹ ii. 470; Vermeersch, *Quaestiones de iustitia*, 1904 § 559, p. 704; Cronin, *Science of Ethics*, 2 (1917); Pius La Scala, *Cursus phil.* (1910-11) ii. 251.

tion. Hence, unless, with the Imperialist and Protestant absolutists of a former age, we wish to confound the spiritual and the temporal, we must reject as misleading and inaccurate the recently resuscitated theory that the people do not transfer power but merely designate its recipients.

THE STATE

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THE BEST STATE

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The problem of the best kind of government may be raised in practical form in either of the two following senses: first, taking the circumstances of each State into account, what is the best form of government for that State? secondly, normally speaking, and comparing one State with another, what is the form of government that realizes the essential ends of the State in the fullest and highest way all round, or that is subject to the fewest and least important defects? To the first question, no general answer can be given, except, perhaps, the not very enlightening answer that the best form is the form that *works* in each case, the form that has proved itself both enduring and progressive, that has grown under the influence of the special needs of the people, and been gradually shaped to meet those needs. In the first setting up of a State it would be very difficult to anticipate future possibilities, and to declare that such and such a form is or is not suitable to, or best for, this people's requirements. Indeed, whatever form is finally set up, is sure to be found wanting, and to require modification in many respects, even by the admixture of other and opposed forms. Above all things, it would be rash to attempt to judge of the best form for a particular people by a consideration of the special character of that people, it being no easy thing to formulate the character of a whole people, and their character being itself to a large extent a result of the particular kind of government to which they have been subject. Aristotle made the attempt to assign the forms of government most suited to each kind of character, but his attempt can hardly be regarded as

¹ *The Science of Ethics*, vol. II, pp. 584-587. (Benziger Brothers, New York.)

curate thinking of old writers such as St. Thomas, and their ignorance of the horrors of modern democracy,⁵ or else to the mistaken zeal of Jesuit radicals such as Bellarmine and Suarez, who exalted the people simply as a dodge to depress the prince and to bring power to holy Mother Church.⁶ It is quite in accordance with this idea that contemporary text-books of Catholic ethics usually dismiss as unworthy of serious or detailed refutation a theory which is assumed to be the temporary divagation of a few otherwise reliable Catholic thinkers.⁷

Now, as a matter of fact, this attitude of recent and contemporary writers is due to a twofold ignorance: firstly, of the very modern and rather dubious origin of the theory, or rather theories, which such writers confidently put forward as if in some way Catholic orthodoxy were bound up therewith; and secondly, of the continuous and practically unanimous adhesion which was given to the Scholastic theory ever since the thirteenth century. "In the later Middle Ages," admits Sidwick,⁸ "from the end of

⁵ Zigliara, *Phil. moralis*, 1912^{us}, p. 272; Comte de Vareilles-Sommières, *Les principes fond. du droit*, 1889, p. 113; Taparelli, *Saggio teoretico di dritto naturale*, note 79, ed. 1900, i. 269.

⁶ L. von Ranke, *Sämtliche Werke*, 24 (1872), 230; Franck, *Réformateurs et publicistes de l'Europe: dix-septième siècle*, 1881, p. 47. Following the Protestants, several modern Jesuit followers of Taparelli have made similar insinuations against Suarez: Meyer, *Inst. iuris naturalis*, 1900, ii. 353 (§ 396); Vermeersch, *De iustitia*, 1904², § 559, p. 705; Rickaby, *Scholasticism*, 1908, pp. 113f; Schiffini, *Disp. phil. moralis*, 1891, § 450 (ii. 399).

⁷ As examples of summary refutations: "Haec doctrina veterum . . . non videtur esse vera. . . . Negamus principes saeculares a communitate accipere condendi leges potestatem."—Tepe, *Inst. theol. moralis* (1898), i. 337, 339. "Our criticism of this theory can only be of the briefest kind. In the first place, the theory of Suarez rests on a purely groundless supposition. . . ."—Cronin, *Ethics*, ii. 501. It is not unusually considered necessary to give any quotations, hardly even references. Thus Zigliara mentions less than six names and gives one short quotation from Victoria (torn from its context and ambiguous), on the strength of which he declares the theory obscure and its upholders excusable only because they were not faced by present-day questions.—*Phil. moralis*, 1912^{us}, p. 272. Even this meagre account is exploited at second-hand, e. g. by Volpi, *Lectiones phil. moralis*, ii. (1900), 163, and Schiffini, *Disp. phil. moralis*, 1891, § 445 (ii. 387).

⁸ *Development of European Policy*, 1903, p. 332. So also Viollet *Histoire des institutions politiques et administratives de la France*, 2 (1898), pp. 2f. It is not really correct to say that the theory of

Hence the distinction between the appointment of a governor or ruler and the designation of a priest or pope. To group all these together as examples of designation—as the moral-occasionalists do—is to neglect a clear existent distinction and to confuse diverse phenomena under a double-meaning phraseology. Hence the Schoolmen all but unanimously refused to identify transfer of political power with designation to ecclesiastical office.⁵

"Designation of a person," says Suarez,⁶ is not enough, nor, if separated from donation or contract or quasi-contract, does it have the effect of conferring power; for natural reason alone does not sustain the translation of power from one man to another by mere designation of the person, without the consent and efficacious will of him by whom the power is to be transferred or conferred." That is, designation *per se*, apart from the deliberate efficacious will of God in case of supernatural jurisdiction and of man in natural appointments, is insufficient and ineffective; it must be conjoined with donation, trust or contract; it must, in other words, become transfer by agreement or consent. Such transfer implies both quantitative and qualitative control, i. e., authority to decide both the specification and the individuation of the power; it assumes that the entire efficacy of the act of authorisation is derived from the will and consent of the transferor or appointer; it results in a contractual or fiduciary relation between the two parties. Not a single one of these characteristics is to be found in ecclesiastical ordination or canonical designa-

⁵ The following, among others, reject the political designation-theory: Almain, *De suprema potestate*, q. 1, c. 16 (Goldcast, *Monarchia*, i. 623); Molina, *De iustitia* ii. 26 (1602, p. 124); Bellarmine, *Risposta alla difesa delle otto proposizioni*, *Opera*, Neap., 1859, 4 (2), 514; Navarrus, *Consiliorum sive responsorum libri quinque*, ii. 1. 3 (ed. 1602, i. 332f); Chastel, *De l'autorité et du respect qui lui est dû*, 1851, p. 196; Desorges, *De l'origine et de la nature du pouvoir*, 1869, p. 63f; Brugère, *De ecclesia Christi*, 1878², pp. 360f; Costa-Rossetti, *Phil. moralis*, 1886², pp. 62ff.; Mendive, *Ethica*, 1888, p. 329; Vander Aa, *Ethica*, 1889², pp. 192f.; R. Rodriguez de Cepeda, *Eléments de droit naturel*, 1890, p. 527; Billot, *De ecclesia Christi*, 1903², pp. 508f., 518. Also Suarez and Tanner, cited in next note; and Quilliet, Moulart, Macksey, Cavallera (p. 105), and Féret.

⁶ *Defensio*, iii. 2, 17. Cf. Tanner, *Theol. schol.*, tom. 2, disp., 5, dub. 1, n. 84 (ii. 10210).

tion is something more than the direct result of the operation of our will or of a physical action; we merely *posit* the material conditions determining the creation or transfer of rights. Those who take this view deny what may be called secondary moral causality, that is, all direct efficient influx of secondary causes on moral obligations. The refutation of this theory is quite analogous to the disproof of physical occasionalism. It need not be here considered except to emphasize the principle, forgetfulness of which has led to many confusions, that the immediate moral causality of the people does not in the least contradict the equally immediate moral *concursus* of God.⁴ In the natural order at least, secondary causes cannot be degraded into mere conditions without causal influence or efficiency.

designation-theory. Thus Fénelon: "Election, succession, just conquest, and all other means of attaining the sovereignty, are only canals through which it glides and not the fountain from whence it flows."—Ramsay, *Essay upon Civil Government*, 1722, ch. 17, p. 208. "That is, in the moral order God alone is fountain, created beings are simply canals; what about the physical order—are there no fountains? "All authority comes essentially, uniquely, immediately from God. I say this, without exception of all authority, general, partial, sovereign or subordinate. I mean that at the very moment when authority begins to exist, no matter in what individual, of whatever nature it be . . . it is God which creates for him the duty and the right to govern me well and for me the right to be governed and the duty to obey."—Bartriel, *Question nationale sur l'autorité et sur les droits du peuple dans le gouvernement* [1791], p. 100; cited in Fêret, *Le pouvoir civil*, 188, pp. 411f.

"*Catalano, De legibus*, c. 3 (*Universi iuris theolotico-moralis corpus integrum*, 1728, i. 18b) : "Accipere immediate a Deo non facit quin etiam immediate accipiat a republica; sicuti non per hoc quod immediate accipiat respública potestatem istam a natura, non immediate etiam accipiat a Deo." F. de Castro Palao, *De legibus*, i. 22, 4 (*Opus morale*, ed. 1700, i. 147) : "Respondeo omnem potestatem regiam a Deo esse immediate; sed non inde inferitur in alios prius immediate non fuisse, fuit quidem immediate in ipsa communitate a qua in regem translata fuit. Sed haec prioritas non obstat quominus in rege immediate a Deo sit potestas; tum quia non est alia potestas in rege quam illa potestas quae fuit in communitate, tum quia ipsemet Deus sua speciali providentia hanc translationem seu successionem ordinavit." Cf. also Miranda, *Manuale praelatorum*, tom. 2, q. 25, a. 14, concl. 2 (1630, p. 229a) ; and Navarrus, *Relectio "Novit"*, n. 147 (*Opera*, 1602, iv. 601) : "Per Deum quidem reges aetatis nostrae, quia regnant per potestatem quam habent ab ipso immediate creatam sed mediate acceptam."

the thirteenth century onward, it is the most accepted doctrine, that secular government rests on the consent of the people, who have an original right to choose their own form of government." Such a doctrine, which for so many centuries, right down to our own times, has formed an integral part of Scholasticism, deserves a better fate than to be left quietly to drop into desuetude and oblivion, especially in these days when a favorite argument of our enemies is that the Church is opposed to the People. If it has to be abandoned, it merits more research into its history and meaning than it has hitherto received. Moreover, it is the clear duty of contemporary compilers of manuals, intended for young Catholic students, to give to the Scholastic theory of political power due consideration and tolerance, and to refrain from urging some newly invented anti-democratic reaction, as if it were the only view which a Catholic reader is entitled to hold. No doubt, in matters philosophical we must not argue solely or chiefly from authority; the Scholastic democratic theory does not become true merely because it was held by practically all Catholic philosophers and theologians for six centuries. But at the present time it is really necessary to appeal to this extrinsic authority to establish one's liberty of thought against what looks very like a concerted conspiracy on the part of most (but not all) text-books issued since the appearance of Taparelli's Essay (1840-41).⁵ It is a common experience of every Catholic democrat to find half-a-dozen present-day manuals triumphantly quoted against him. The most effective retort is to point out that the argument from authority, if it is to be used at all, lies against those who have so lightly rejected the unanimous tradition of the School, not indeed in a thesis directly pertaining to faith, but concerning a matter where error may have very serious social and religious consequences.¹

government by consent—except as consciously formulated and generalized political theory—began only in the thirteenth century. It can easily be proved, for instance, to underlie the Gothic rule in Spain, as well as the Carlovingian and Merovingian monarchy. "As even de Vareilles-Sommieres (p. 357) practically admits: "In our century, at least until the appearance of Taparelli's work, most theologians also accepted the thesis of the alienable sovereignty of the people." "Ex auctoritate omnium scholasticorum communis sententia in re

It is obviously impossible within the limits of an article to outline the proof that popular sovereignty is the traditional political theory of Catholic philosophy. The only really satisfactory method is to make a tedious and exhaustive research by enumeration and citation. This has already been partially and imperfectly done;² a completer and more detailed investigation than has yet been made, I hope to publish in a long-delayed work on Catholic Democracy. It will suffice here to deal briefly with one point, namely, the rather common assumption that Suarez was an innovator and represents what may be called the left wing of Catholic politics. "Authority is a divine institution," says Father Joseph Rickaby,³ "but kings are a human invention. The saying is a platitude in our time; three centuries ago, when Suarez wrote, it was a bold and startling pronouncement." "Before the time of Suarez," writes Schiffini,⁴ "hardly a single writer can be cited for such a view." The most direct and conclusive refutation of this position is to give a brief list of some of the Catholic writers who, prior to the publication of the *De Legibus* of Suarez (in 1612), maintained the doctrine of popular supremacy and government by consent. I have personally and at first hand verified the doctrine in the following

quidem gravi, usque adeo probabilia sumuntur argumenta ut illis refragari temerarium sit. . . . Scholae igitur communem consensum non nisi impudenter et temere reiciamus."—Melchior Cano, *De locis theologicis*, viii. 4, 2 (ed. Migne, 1860, p. 400). "Quamquam controversia haec ad fidei dogmata directe non pertinet—nihil enim ex divina scriptura aut patrum traditione in illa definitum ostendi potest—nihiliominus diligenter tractanda et explicanda est; tum quia potest esse occasio errandi in aliis dogmatibus. . . . tum denique quia sententiam illustrissimi Bellarmini antiquam, receptam, veram ac necessariam esse censemus."—Suarez, *Defensio Fidei*, iii. 2, 2. Cf. Mendive, *Ethica*, 1888, pp. 423f.

² Costa-Rosetti, *Philosophia moralis*, Innsbruck, 1886², Féret, *Le pouvoir civil devant l'enseignement catholique*, Paris, 1888; Quilliet, *De civilis potestatis origine theoria catholica*, Lille, 1893.

³ Article "Authority," in *Cath. Enc.*, ii. 139b. The pronouncement was neither bold nor startling; it was the veriest commonplace in the Middle Ages and occurs quite formally in patristic commentaries on St. Paul's Epistle to the Romans, e.g., Chrysostom, *In Rom.*, hom. 23, n. 1 (P.G. 60, 615), Theodoret, *Interpretatio ep ad Rom.*, c. 13 v. 1 (P.G. 82, 193).

⁴ *Disp. phil. mor.*, 1891, § 460, ii. 427.

If it be held (says Dr. J. A. Ryan¹) that the consent of the people is always a necessary prerequisite to the assumption of political power by any person, it is of no practical significance whether the people be conceived as handing over to the ruler authority which God has deposited with them or as designating the person upon whom God will confer the authority. In either supposition, God does not bestow authority nor does the ruler receive it, until the people have somehow given their consent.

Which is quite true, provided we add that God withdraws authority when the people validly revoke their consent. And if these conditions and limitations are inserted, the whole language and analysis of the designation-theory become highly artificial and unnecessarily subtle.²

The theory is, in fact, a particular application of a more general tendency, which, for convenience, may be termed moral occasionalism.³ This is the view that moral obliga-

¹ *Catholic Doctrine on the Right of Self-Government*, 1919, pp. 6f. Cf. Balmes, *El protestantismo comparado con el catolicismo*, ed. Paris, 1887, ii. 431 (note 3): Eng. trans. (*European Civilization*), note 29. Cf. *Month*, Feb. 1921, p. 161: "There is little difference in practice between being the source and being the channel of authority." The following writers hold the theory of designation-by-the-people and so admit the general Scholastic thesis of government with the consent of the governed: Bailly, Audisio, Peltier, Cavagnis, Zigliara, de Belcastel, Schwalm, "M" (author of the Saint-Sulpice *Compendium philosophiae*), Deshayes, Farges et Barbedette, Blanc.

² Victoria (*Relectiones theologicae* iii. 8) is often incorrectly cited as holding the designation-theory. His language is certainly not clear and has been rejected by subsequent Scholastics: "Quamvis enim [rex] a republica constituatur—creat enim respublica regem—non potestatem sed propriam auctoritatem in regem transfert; nec sunt duae potestates una regia, altera communitatis." It seems clear that Victoria is merely trying to say that power in general (*potestas*) comes from God, while its concrete embodiment (*auctoritas*) comes from the people. Cf. Baldelli, *Disp. ex morali theologia*, v. 10, 6 (1637, p. 457a): "Si quis cum Victoria contendat potestatem regis esse a Deo, quia est illa ipsa quam Deus primo dedit communitati, . . . non est cum illo magnopere laborandum; dummodo constet quod translatio potestatis in regem et electio illius determinate in quem potestas est transferenda, sit ab ipsa communitate; et Deus non det regibus potestatem quasi primo et immediate, sed solum secundario et mediante communitate."

³ This denial of all human causality and transient effectiveness in the moral order is strikingly apparent in some expositions of the

that power is transmitted mediately or immediately, must hold that political power comes from God, and is not simply a congeries of individual contributions over which the people have absolute control irrespective of moral principles. The Scholastic doctrine of the sovereignty of the people, so far from denying, actually presupposes the sovereignty of God.

If, then, both the Scholastics and their modern Catholic opponents admit the divine origin of civil power, are their differences so vitally important? Does it make any practical difference whether we speak of designation or transfer? In answering this question in the negative, many writers have failed to distinguish between designation-by-facts and designation-by-the-people. Probably a majority of contemporary Catholic writers advocate a theory, or rather various theories which agree in maintaining that certain *facts* (e. g., occupancy) can designate and determine a sovereign immediately, i. e., quite independently of the people's consent. And it is precisely these writers who have chiefly striven to eke out their arguments by quotations from encyclicals; quite forgetful of the fact that another important school of Catholic philosophers, who seek to modify rather than to oppose the Scholastic theory, also quote the Popes on *this* side. Thus Cavagnis, Schwalm, the editor of Zighiara, and others, think that Leo XIII's language favours the theory of designation, not by facts, but by the people. This serious division among the misinterpreters of the encyclicals may serve as a final *reductio ad absurdum* of this misplaced ingenuity which seeks to bury obnoxious Scholasticism beneath authoritative documents.

With the various, and often contradictory, theories of designation-by-facts we are not here concerned; they will be dealt with elsewhere. We are considering merely that modification in the Scholastic theory which consists in substituting designation-by-the-people for transfer-by-the-people. And at first sight the designation is more metaphysical than practical. For, if popular election is regarded as the *sole* medium of designation, then, in practice, it is tantamount to the theory of transfer or appointment.

condition for the legitimacy of any form of government being that it has been constituted by the people."

among other Scholastic predecessors of Suarez, the date denoting the year of death where ascertainable:—

A. Fourteenth Century (i. e., writers who died before 1400).—John of Paris (1306), Engelbert (1311), Aegidius Romanus (1316), William Durand (1332), Alvarez Pelayo (1340), Petrus de Balude (1342), Marsilius of Padua (after 1342), Cardinal P. Bertrand (1349), Lupold of Bebenburg (1363), Nicholas d'Oresme (1382).
B. Fifteenth Century.—Cardinal F. de Zabarellis, P. d'Alilly (1425), John Gerson (1429), St. Bernardino of Siena (1444), St. Antonino of Florence (1459), Alph. Tostat (Abulensis, 1452), Petrus de Monte (1457), Card. Nicholas of Cusa (1564), Aeneas Sylvius (1464), John of Torquemada (1468).

C. Sixteenth Century.—James Almain (1515), Cajetan (1534), John Driedo (1535), Card. Gaspar Contarini (1542), Francis of Vitoria (1546), John of Medina (1547), John Major (1550), Ambrosius Catharinus (1553), Alf. de Castro (1558), Card. R. Pole (1558), Dom. de Soto (1560), Ferd. Vazquez Menchaca (1566), Diego Covarruvias (1577), Antonius Cordubensis (1578), Nicholas Sander (1581), Barth. of Medina (1581), Martin Azpiliceta (Navarrus, 1586), Peter of Navarre, Peter of Aragon, Michael de Palacios (1593).

D. Seventeenth Century (writers prior to 1612).—Barth. de Ledesma (1604), Dom. Bañes (1604), Luis Miranda, Gregory Sayr (1602), L. Carbo, Estius (Wm. Hessels van Est, 1613), Diego Cabezudo (1614), Ant. de Quintana-dueñas (1628).

E. Jesuit Predecessors of Suarez.—James Lainez (1565), Alph. Salmieron (1585), Card. F. Toledo (1596), Luis de Molina (1600), John Azor (1603), Card. Robert Bellarmine (1621), Gregory of Valencia (1603), Robert Persons (1610), Juan de Salas (1612), James Gretser (1625), Juan de Mariana (1624), B. Giustiniani (1622). An inspection of the above list of sixty names shows that it includes all the principal writers of the period. It could easily be extended by including writers prior to the fourteenth century—such as Hincmar of Rheims, Mane-gold of Lautenbach, William of Auvergne, St. Thomas, Duns Scotus—and canonists (such as Hostiensis), not to speak of legists. The significance of the list is further

increased by the fact that among accepted Catholic writers during these centuries there is not a trace of any rival or alternative political theory; the only discordant expressions which occur are uttered by a few unorthodox partisans of Lewis of Bavaria. It may, therefore, be taken as certain that Suarez was perfectly justified in declaring that his teaching, so far from being an innovation, was commonly accepted by theologians and jurists.⁵ That this was the case for two and a half centuries subsequent to Suarez, hardly needs to be proved.

No competent opponent has gone so far as to state that the Scholastic theory has now become obsolescent or obsolete; but the silence concerning recent defenders and the allusions to the theory as "the doctrine of the ancients," which characterize many widely-read text-books, are really tantamount to such an assertion. Even if it were true, there is no ground for surprise or discouragement at the decay of a theory which was once upheld by the Church's greatest philosophers and theologians. Three centuries ago Cartesianism almost completely ousted Scholastic philosophy from the Catholic schools; only in the latter half of the last century did Scholasticism again revive. In 1881 Liberatoro recast his *Institutiones* and in his preface recounted that, when forty years before he started to restore the all but extinct philosophy of S. Thomas, he was considered mad. "There was once a time," wrote Dalgairns in 1861,⁶ "when there reigned on earth a philosophy borrowed from an old heathen. . . . For hundreds of years it reigned paramount, if not alone, in the schools of Christendom. . . . It is now nearly forgotten."

It can be shown, however, that Scholastic political theory, thanks to moral theologians rather than to philosophers, survived even during the long interregnum of Scholastic

De legibus, iii. 2, 3; *Defensio*, iii. 2, 2, 5, and 10.

⁶ Holy Communion, ed. 1861, pp. 22, 35. Cf. Lemaire, *Le Car-tésianisme chez les Bénédictins*, 1902. In the early 19th century Scholastic philosophy was unknown at Maynooth. In 1908 the only philosophical text-books used there were Locke and Seguy.—Healy, *Maynooth College*, 1895, p. 271. "One whole year is always devoted to logic and metaphysics upon Locke's system; and another to mathematics, physics and astronomy, in which Newton is the chief guide."—Milner, *An Inquiry into certain vulgar Opinions concerning the Catholic Inhabitants and the Antiquities of Ireland*, 1808, p. 19.

This whole attempt to drag papal pronouncements into the midst of a philosophical discussion among Catholics is singularly irrelevant. As Cardinal Billot points out, the Pope is combating the atheistic individualism which was popularized by Rousseau and his successors. Here, as elsewhere, the Pope is engaged in refuting and condemning the sovereignty of the people solely and exclusively and formally in the sense in which this sovereignty denies the supremacy of God.⁹ Every Catholic, whether he admits

made it "the Catholic thesis." (The absurdity of this is evidenced by the fact that only a small minority of Catholic writers uphold the theory of *designatio* by the *people*). Cf. also Tepe, *Inst. theol. moralis*, 1898, i. 339; and note of editor in Zigliara, *Summa*, 1912⁸, iii. 271. Most of those who misinterpret the Pope (*e.g.*, Schiffini, Bouquillon, Blanc, Farges and Barbedette) content themselves with saying that he seems to favour the idea of designation. Thus Vareilles-Sommières (pp. 379f): The Scholastic theory "does not seem to be exactly adapted to the indications given incidentally by Leo XIII. . . . But it would be going too far to say that this opinion is not conformed to the teachings of the Holy See." The *Leçons de philosophie sociale* of Père Schwalm (†1908) were published posthumously from his lecture-notes and never received his final revision. But in his later article on Democracy in the *Dictionnaire de Théologie* (tome 4, pp. 271-321) he makes no mention whatever of the designation-theory and states clearly (p. 304) that the encyclical *Diuturnum* was directed merely against Rousseau.

With reference to the teaching in the Gregorian University, I have before me copies of the highly laudatory letters sent to the Rector (P. Luigi Caterini, S.J.), together with three gold medals, by the Cardinal Secretary of State on behalf of Pius X., on 19 May, 1914, 30 Nov., 1915, 11 Nov., 1916.

⁹ Cf. *Immortale Dei* (Denziger, n. 1868): *Ortum publicae potestatis a Deo ipso, non a multitudine, repeti oportere*. I have no space to deal with Pope Leo's two letters (*Au milieu des sollicitudes*, 16th Feb., 1892, and *Notre consolation*, 3rd May, 1892), whereby he sought to induce French Catholics to accept loyally the Republic. The letters are not really relevant and involve issues debated between Royalists and Republicans, which would require a whole article for adequate discussion. This is Archbishop Ireland's interpretation (*The Church and Modern Society*, 1897², pp. 395f): "The Pope declares that whatever be the form of government in a nation it cannot be considered so definite as to be unchangeable, even if this had been the intention of those who first constituted it. And when a nation has adopted a form of government however new, such form of government is binding upon citizens; for it is the expression of the will of the people, and the interests of social order demand that it be accepted and obeyed. Empires, monarchies, republics, are alike entitled to recognition and respect—the one

that the teaching of such great apologists should be characterized as "the error of philosophism" would be an utterly preposterous contention. But it passes all limits of our credulity and tolerance to be informed dogmatically, without reference to the score of authoritative writers who have emphatically repudiated the groundless suggestion, that a mere *obiter dictum* of a long papal letter, which is entirely devoted to upholding basic Christian principles, is to be construed as the official condemnation of a thesis which received the adhesion not only of Bellarmine and Suarez but of practically every Catholic philosopher and moral theologian for over five centuries; and this in favour of a view which was originally devised against the Papacy and has merely somersaulted into some recent Catholic books. "It is quite unfair and unscientific," says Dr. J. A. Ryan, "to read into two isolated sentences a condemnation of a doctrine which was taught by the great majority of Catholic moralists and jurists for upwards of seven centuries. Therefore, it cannot be seriously maintained that the traditional doctrine has been superseded by the official authority of the Church." This alleged extraction of a concealed definition displays ignorance of those scientific rules of interpretation which, in the interest of justice and tolerance, should always be applied to such ecclesiastical documents, which, unless they contain formal mention and explicit reference, may not be presumed to intervene in controverted questions of the School.⁸

⁸ Many, if not most, writers since 1881 (*e.g.*, MacEvilly, *Expos. of the Ep. of S. Paul*, 1898, i, 115) continue to regard the Scholastic theory as a perfectly free and very probable opinion, without referring at all to Pope Leo's Encyclicals. From 1911 to his death in 1919 Fr. Macksey, S. J., taught the Scholastic theory in the Gregorian University under the very shadow of the Vatican; his book, *De ethica naturali*, published in Rome in 1914, contains an able exposition of the theory and a detailed interpretation of the Encyclicals of Leo XIII and Pius X. I have been able to discover only two writers of repute who find a real discrepancy between the Scholastic theory and the Encyclicals: Archbishop Healy, who considered it "impossible to reconcile" Suarez with Leo XIII, though he admitted that the Suarezian was still "a perfectly free opinion" (*Irish Eccles. Record*, Dec. 1881, pp. 708, 704); and Père Schwalm, O. P., who (in his *Leçons de phil. sociale*, 1912, ii, 478) not only "extracts" from S. Thomas the designation-theory invented by later Gallicans and Protestants, but considers that Leo XIII has

metaphysics; and at the present day is showing an ever increasing progress and vitality. It would be possible to add to the names of Suarez's sixty predecessors just given the names of sixty Catholic nineteenth-century writers who upheld and uphold the same doctrine. Cardinals such as Gonzalez, Hergenröther, Mazzella, Lavigerie, Manning, and Billot; Archbishops Maret, Ireland, Hughes and Spalding; Bishops Parisi, Guilbert, de Ségur, Hugonin⁷; Jesuits such as Draghetti, Chastel, Ramière, Costa-Rosetti, W. Hill, Watt, Van der Aa, Castelein, Mendive, Holaind, Brosnahan, Macksey,⁸ Cavallera⁹; well known historical and critical writers like Marina, Rohrbacher, Balmes, Moutart, Férret, Guillaud; authors of widely-read text-books such as Dens, Scavini, Devoti, Brugère, Ratten, Vallet, Marcellus a Puerto Iesu, Rodriguez de Cepeda, Gredt; philosophers and publicists like Bautain, Ventura, Raboisson, Desorges, Godard, Férin, Frémont, Ryan; these and many other distinguished writers have within the last century maintained, handed down and improved the Scholastic theory of political authority. With such exponents it is in no danger of premature obsolescence.¹

II.—THE SCHOLASTIC THEORY

The Scholastic theory may be briefly stated; its underlying principles and arguments will emerge more clearly in considering some objections. The immediate and primary subject of political power is the people, not as a mere aggregate, but as forming a mystical body and as con-

¹ In 1848 nearly all the French Episcopate supported the democratic theory.—Bazin, *Vie de Mgr. Maret*, 1891, vol. i, ch. 15, pp. 190ff. Cf. Cabane, *Histoire du clergé de France pendant la révolution de 1843*, 1908.

² Professor of Ethics in the Gregorian University, 1911-1919. (See his *De Ethica Naturali*, 1914, p. 327).

³ Professor of Positive Theology in the Catholic Institute of Toulouse since 1909. (See his article on "Suarez et la doctrine catholique sur l'origine du pouvoir" in *Bulletin de Littérature ecclésiastique*, March, 1912).

⁴ Since writing the above I have discovered the following information concerning the teaching in Rome: The Scholastic theory is taught in the Carmelite International College (Dr. Ronayne), the Benedictine Scholasticate of S. Anselmo (Dom Gredt), the Gregorian University (Canon Law Professors Ojetti, Vidal, Graziosi, Steiger, Capello).

stituting a corporate personality. This power resides in the people *ex natura rei*, not by any special concession of God, apart from creation and conservation, but rather by way of natural concomitance or immediate result.

This power is not in individual men taken separately, nor is it in the collection or aggregate of men taken in confusion and without order and union of members into one body. Hence the constitution of such a political body is prior to the existence of such power among men, since the subject of power must be prior, at least in the order of nature, to the power. But as soon as that body is constituted, this power is in it immediately by virtue of natural reason. Therefore it is rightly understood to exist by way of attribute resulting from such mystic body, constituted in such concrete existence.²

That is, assuming the consent of men to form a community, sovereignty by the very fact pertains to that community without further intervention of human wills. Men have power to delimit this political authority, to make contours and boundaries in its distribution, to determine the totalities in which it is localized; but they neither create such authority nor can they suppress it, for it is a moral fact, inevitably and immediately consequent on the existence even of a consent-formed community.³ Sovereignty,

² Suarez, *De legibus*, iii. 3, 6. R. de Arriaga (following Salas, *De legibus*, vii. 2) puts this even more clearly: "Ea potestas non aliter a Deo provenit quam ut homines creat eosque conservat. . . . Si intellegeremus homines existentes etiamsi Deus non esset, esset tamen in hominibus potestas constituendi unam rempublicam et elegendi suum caput a quo gubernarentur."—*De legibus*, xiii. 2, 7-8. This idea of the people as a corporate personality already appears in St. Thomas: "Condere legem vel pertinet ad totam multitudinem vel pertinet ad personam publicam quae totius multitudinis curam habet."—1, 2, q. 90, a. 3.

³ Some Scholastics would not admit this, e.g., Arriaga (*De legibus*, xiii. 3, 13): "Dico de iure naturae non esse ut actu sit aliqua potestas. . . . Solum ergo est de iure naturae quod possint convenire homines." Cf. Bellarmine (*De laicis*, 6): "Non pendet ex consensu hominum; nam, velint nolint, debent regi ab aliquo." On which Vareilles-Sommières (*Principes fond. du droit*, p. 374) remarks: "The *nolint* is irreconcilable with the necessity of popular investiture which, nevertheless, the same Bellarmine requires for every government." This is a complete misunderstanding. The Scholastic analysis is: (1) consent to coexist as a community; (2) consequent authority as attribute of this community which, as Bellarmine

hostile and novel views. . . . It is denied, then, that by the people's choice the rights of government are conferred, that is, in the sense of those opponents of Catholic doctrine who say that the right of government itself comes altogether from the people, and not merely according to its contingent and variable forms or the contingent and variable titles to its possession. It is also denied that authority is constituted by the people's choice. This again is against those who consider civil society as born of men's free consent and attribute the same origin to authority. . . . In one word, what is denied is what has always been denied with unanimous consent by Catholic theologians.

We are not dependent even on the clear interpretation of Cardinal Billot and a score of other eminent writers (including opponents of the Scholastic theory such as Vermeersch). For Pius X in his letter on the Sillon cites this very passage of Pope Leo as "a refutation of the attempt to reconcile Catholic teaching with the error of philosophism."⁶ That Bellarmine and Suarez could be referred to as moderns following in the footsteps of (the 18th century) "philosophers" is chronologically impossible,

p. 55; T. Pégues, O.P., *Revue thomiste* 19 (1911) 607; L. Watt, S.J., *Irish Eccles. Record*, August, 1917, p. 97; P. Finlay, S.J., *Irish Catholic*, 19 Feb., 1921; L. Izaga, S.J., *Estudios de Deusto*, 10 (1918) 344f; E. Masterson, S.J., *Irish Theol. Quarterly*, April, 1921, p. 121. According to these twenty-four writers—and doubtless there are more—the Pope is simply combating atheistic individualism and makes no animadversion whatever on the Scholastic theory, which remains a perfectly tenable view supported by great authorities and strong arguments.

⁶ *Acta Ap. Sedis* 2 (1910) 616. The reply of a Roman Cardinal to the Abbé Féret (reference in previous note) is worth citing in full: [Leo XIII] animo intendens non ad innocuas catholicae gentis opiniones sed ad pestiferas novatorum doctrinas, qui, inter terram caelum quodvis vinculum abrupte pertinentes, civilis potestatis originem non a Deo sed ab hominum consilio emanare effutunt, iure meritoque clamat: Potestas a Deo est. Hinc ipse dum profunde ac copiose suum edisserit argumentum, ea duo vocabula, *immediate*, *mediate*, silentio praeterit; quo sane incedendi modo ibi ecclesiae non filios sed perduelles corripit, hosque tantum ad meliora consilia amplectenda excitari liquido constat. . . . Evidenter eruitur sedem apostolicam haud torvis oculis conspecturam illorum librorum novas editiones, in quibus civilis potestatis origo mediate a Deo vindicatur. Et re quidem vera, cum ex Leonis XIII oraculo haec opinio nullam iacturam perpessa sit, ecur ipsa in damnatorum errorum censum enumeranda erit?

That a theory with such an Imperialistic-Gallican-Protestant parentage should nowadays be expounded as the orthodox Catholic thesis, is somewhat of a shock. This particular contention is merely part of the general anti-democratic reaction to which reference has already been made. The chief argument in support of it is Pope Leo XIII's declaration⁵:

"Many more recent writers, following in the steps of those who in the last century gave themselves the title of philosophers, say that all power is from the people. . . . Catholics dissent from these men and seek the right to rule from God as its natural and necessary principle. It is important to note here that those who are to govern the State may, in certain cases, be selected by the will and judgement of the people, since Catholic doctrine is neither opposed nor repugnant thereto. By which selection the ruler is designated, but the rights of rule are not conferred; nor is the authority thereby constituted, but its wielder is determined. . . . As for political authority, the Church rightly teaches that it proceeds from God."

Now the very context, even as partially cited here, shows that the Pope is simply arguing against the anti-Christian theory which rejects the natural and divine law and makes the people the absolute creator of right and wrong. In this passage (says Cardinal Billot⁶) there is really expounded the pure and simple teaching of the faith against

⁵ *Diturnum*, 29 June, 1881: *Lettres apostoliques*, i. 142. In Denzinger, *Enchiridion* (with context mutilated), nn. 1855-6, There are similar passages in other Encyclicals of Leo XIII and Pius X. ⁶ *De ecclesia Christi*, 1903, pp. 515f. Similarly Hugonin, *Du droit ancien et droit nouveau*, 1887, p. 6; Costa-Kosselt, *Phil. morales*, 1886, pp. 628, 630; Castelein, *Inst. phil. morales*, 1899, p. 483; Quillet, *De civilis potestatis origine theoria*, 1893, pp. 349-355; Mouliart, *L'eglise et l'Etat*, 1895, pp. 87ff; Vermeersch, *Quaestiones de iustitia*, 1904, § 559, p. 704; Macksey, *De ethica naturali*, 1914, pp. 550ff; Ireland, *The Church and Modern Society*, 1897, pp. 16f; Fêret, *Le pouvoir civil devant l'enseignement catholique*, 1888, p. 177; Hickey, *Summula 3* (1919), 501; Cavallera, *Bulletin de lit. eccles.* (Toulouse), March, 1912, p. 112; Sortais, *Les catholiques en face de la démocratie*, 1914, pp. 199-240; Gemelli, *Rivista di Fil. Neoscol.* 10 (1918) 119; Chupin, *Valeur des décisions doctrinales et disciplinaires du Saint-Siège*, 1913, p. 358; Ryan, *Catholic Doctrine on the Right of Self-Government*, 1919, p. 12; Vallier, *Prælect, phil.*, 1890, ii. 438; Marcellus a Puerto Iesu, *Phil. morales et sociales*, 1913, pp. 718f. B. Gaudreau, *La fausse démocratie et le droit naturel*, 1911,

therefore, is essentially the attribute of the people as forming a juristic personality.

If supreme political authority is in any particular instance found to inhere in any other personality, sole or corporate, save that of the people, it is there only derivatively, and in virtue of communal consent. It is generally admitted by the Scholastics that this transfer of power to a "prince" may be either complete or partial; and this, as a matter of historical fact, is correct, for absolute monarchies have existed. But it is not at all clear that the mere existence of such instances of absolute alienation—apart from concomitant acquiescence—proves their moral validity, except such accidental, extrinsic and consequential validity as might follow from the actual functioning of such absolutism. The only argument adduced by some of the Schoolmen—that a nation as well as an individual may voluntarily enslave itself—is singularly weak.⁴ Moreover, it is vehemently rejected by many writers, who deny the historical occurrence of any such absolute and permanent cession of power to a ruler; and these theologians also maintain that the prior consent of the people is necessary for the validation of a law.

I conclude (writes Alfonso de Castro)⁵ that a law concerning a matter not necessary in virtue of divine law, which is passed by the prince or other magistrate in spite of the whole people, is of no force whatever—unless per-

says, "does not depend on the consent of men;" (3) concrete actualisation of this authority, which does depend on consent. "Supposita voluntate hominum conveniendi in una politica communitate, non est in potestate eorum impedire hanc iurisdictionem."—Suarez, *De legibus*, iii. 3, 2. So also Lessius, *De perfectionibus*, x. 2, 8. ⁴ Suarez, *De legibus*, iii. 3, 7, *Defensio*, iii. 2, 9; Castro Palao, *De legibus*, i. 22, 4; Arriaga, *De legibus*, xiii. 3, 16; Neubauer, *De legibus*, 89. ⁵ *De pot. legis* (1550), i. 1; *Opera* (1571), p. 1520. This must not be confused with the view—strangely liberal to modern ears—which the Scholastics and Canonists held with practical unanimity, namely, that any law which, though *per se* valid, was not accepted by the people, possessed no obligation. Other writers who reject complete alienation of power are Almain, *De suprema potestate*, q. 1, c. 16 (Goldast, *Monarchia*, i. 623); Major, *4 Sent.*, d. 15, q. 10, also ap. Gerson, *Opera*, 1706, ii. 1139; Mariana, *De rege*, i. 5; Tanner, *Theol. schol.*, tom 2, disp. 5, q. dub. 4, n. 129 (ii. 1040); Becanus, *Summa theol. schol.*, p. 2, tr. 3, c. 6, q. 8 (ii. 618f); Caramuel, *Theologia moralis fundamentalis*, § § 673, 869, 926, (1657, pp. 182, 238, 324).

chance the people may have without reservation transferred all their power to the prince or senate. But it can scarcely be believed that any people have made such a prodigal effusion of their power and liberty.

In any case even the absolute alienation, alleged as possible by some of the Scholastics, is not asserted to be unlimited and irrevocable; there are always reservations in virtue of natural-law; there is an ultimate right of re-assumption by the people in the interests of the common good.⁶ This limitation of all derivative sovereignty is expressed in various ways by Catholic writers. The people retain authority *in habitu* or *in radice*; or they retain its possession and alienate only its exercise or use.⁷

The right of instituting a new form of government and a new investiture of power (says Cardinal Billot), is always in the community, so far as is required by necessity of the public good. Hence, generally speaking, every government to which the community peacefully adheres is to be considered legitimate. The proof is essentially this, that the right of rule is, unlike the right of property, not ordained for the good of the possessor, but simply and solely for the good of the society for which it is exercised. It follows at once, by an evident and clear dictate of natural

⁶ Cf. *Irish Theol. Quarterly*, October, 1920, pp. 306f.

⁷ *In habitu*: Almain, *De auct. ecclesia*, c. 1 (Gerson, *Opera*, ed. 1706, ii. 987); Azpilcueta (Navarrus), *Relectio cap. novit de iudic.*, notab. 3, n. 120 (*Opera*, Ven. 1602, iv. 595); Bellarmine, *Apologia*, 13; *Opera*, Naples, 1859, 4 (2), p. 399; Suarez, *Defensio*, iii. 3, 3; Dominic of St. Thomas, apud Rocaberti, *Bibliotheca*, x. 179a; Billot, *De ecclesia Christi*, 1903², p. 521. *In radice*: Lessius, *De perfectionibus moribusque divinis*, x. 2, 9. Only exercise or use alienated: Navarrus, op. cit.; Ventura, *Essai sur le pouvoir public*, 1859, pp. 431f; Rutten, *Ethicae seu phil. moralis elementa*, 1872², p. 253.

⁸ Reference in previous note. Cf. Ryan, *Catholic Doctrine on the Right of Self-Government*, 1919, p. 31: "A politically competent people have the right to modify essentially their constitution, and even by passive resistance to force a monarch to abdicate, when they are unwaveringly convinced that they can provide a better government, and when this conviction corresponds with the facts." It may be observed (1) that the limitation of resistance to passivity is a question of expediency, not of principle; (2) that the final arbiter of the "correspondence with the facts" is the people, not the repudiated government; (3) that the most vital fact of all, perhaps the only really relevant one, is the conviction itself.

There is, however, a school of thinkers who would not only improve terminology but entirely reject the whole idea of communication of power through the people. This theory, which assimilates the concession of political power to the collation of spiritual jurisdiction, was originated by the imperialist opponents of the papacy. "God alone elects," says Dante,³ "hence electors should not be so called; they are rather to be regarded as declarers of divine providence." This view made no headway in Catholic philosophy, but after the Reformation it was adopted, as a moderate form of the theory of divine right, by many Protestants.

Between thirty and forty years since, when I was a young student in Cambridge (writes John Goodwin, in his *Obstructors of Justice*, 1649)⁴, such doctrines and devices as these: . . . that the interest of the people extend only to the nomination or presentation of such a person unto God, who they desire might be their king, but that the regal power, by which he is properly and formally constituted a king, is, immediately and independently in respect of any act of the people, derived unto him by God—these, I say, or such like positions as these were the known preferment-divinity of the doctorate there, and (were) as the common air, taken in and breathed out by those who lived the life of hope in the king and sought the truth in matters of religion by the light of his countenance.

³ *De monarchia*, iii. 16; *Opere*, ed. Moore, p. 376. Cf. the view cited by Ockham, *Octo quaestiones*, q. 2. c. 3 (Goldast, *Monarchia*, ii. 346f).

⁴ § 26, pp. 28f. The pervert Archbishop De Dominis (died 1624) seems to have introduced this theory into England; it was at least an improvement on the divine right theory of Henry VIII and James I: "Non ergo qui mutat formam regiminis defert aut transfert potestatem rectivam, sed novas personarum facit vel electiones vel Deo ita disponente etiam legitimas inductiones; et tunc illis Deus dat immediate potestatem."—*De republica ecclesiastica*, ii. 919 (*Ostensio errorum P. F. Suarez*, § 6). In § 7 (p. 921) he uses the expression designation. The theory is also to be found in Maxwell, *Sacrosancta regum majestas*, ch. 12, 1686², pp. 190f. Baxter, *Holy Commonwealth* (1659), thesis 182, p. 190: "When the freest people choose a prince, they do not properly and efficiently give him his power as conveying it from them to him, but are only a *causa sine qua non*, and denominate or design the person that shall from God, and not from them, receive it."

IV.—TRANSFER OR DESIGNATION?

In the older Schoolmen, such as St. Thomas, we find the view that political power is in the people, or in a ruler, in so far as he represents or takes the place of the people. But later on, under the influence of the famous *lex regia* of Roman law, the unanimous phraseology is that power is transferred by the people to the ruler. There is no doubt that many of the Scholastics took this to mean that the people first had the power and then despoiled themselves by handing it over, by way of donation or contract, to the ruler.¹ Now, this is not a very satisfactory position, inasmuch as it regards popular sovereignty as chronologically, rather than ethically, prior. Nor can the institution of government be viewed as the abdication of the community; it is rather the process whereby the community makes necessary provision for itself. In connection with the director or secretary of a company, a professor in a university, or the superintendent of an estate, we do not speak of a transfer of power, we use the word appointment. There does not seem any reason why we cannot similarly express the Scholastic theory by saying that the people *institute* the form of government and *appoint* the individual government or ruler.² It is really this communication or delegation of power which is meant by transfer, but which is, perhaps, less ambiguously expressed by appointment.

¹ This view was originated by certain legists, e.g., Baldus: "Populus Romanus . . . denudatus est generali potestate cum illa translatas fuerit in principem."—*Commentarium in l. ii. et iii. codicis liberos*, ed. Lugd., 1585, fol. 75c. But contrast Hugolinus (*Distinctiones*, 148, 34): "Certe non transiit sic ut non remaneret apud eum, sed constituit eum quasi procuratorem ad hoc."
² "Institueret namque potestatem est ordinare quod in communitate sit aliqua potestas tanta et talis, ad tot casus, ad talem populum, et sic de similibus. Et talis institutio tempore praecedere potest communicationem certae personae."—Almain, *De auctoritate ecclesiae*, c. 2; Gerson, *Opera*, ed. 1706, ii. 980. Some modern upholders of the Scholastic theory prefer to avoid the idea of transfer. Quillet, *De civilis potestatis origine theoria catholica*, 1893, p. 174: "Ius naturaliter et divinitus populo competens elegendi ac determinandi politicum suum regimen." Billoit, *De ecclesia Christi*, 1903, pp. 513, 515: "Non ipsa politica potestas sed solum ius determinandi legitimam regiminis formam, necnon et legitimam rationem investiturae gubernii, naturaliter in populo esse assertur. . . . Sed haec ad penitentiorem tantum doctrinae expositionem spectant, et forte lis esset magis de verbis quam de re."

III.—SOME OBJECTIONS

law, that in this matter only the public good is to be taken into account, so that if the necessity of the public good requires a new form of government and a new investiture of rulers, no pre-existing personal or family right can stand in the way. It follows also that this new constitution of a legitimate government pertains to the same as did the former; and thus the so-called constituent power always remains potentially (*in habitu*) in the community. The Scholastic theory may now be fairly summarized as follows. Sovereignty is an essential attribute of the people, as constituting a corporate entity; it is radically and fundamentally inalienable, but for convenience and efficiency it may be transferred, by and with the consent of the community, for such time and under such conditions as the people deem expedient for the public good. The ultimate test of the juridical validity of any system of government is the consent of the governed.

Several recent Catholic manuals have raised serious objections to the theory outlined above. A few of them will now be considered.

(A) Suarez and many other writers include just conquest as a primary title to sovereignty. It has been urged, and rightly urged, that this is not reconcilable with the principle that all sovereignty emanates from the people.³ Suarez attempts to make it appear so by saying that in this case consent is *due* as a result of some crime. But this is a new and contradictory idea; it admits that the conqueror has a right prior to consent and not founded thereon; it further assumes that a moral obligation to consent is, from the objective juridical and political standpoint, synonymous with actual consent, just as one might assume that an obligation to marry is identical with marriage. Furthermore, it is supposed, on the antiquated analogy of the enslavement of prisoners of war, that the suppression and subjugation of nations is a legitimate function of "just" wars. Finally, it has been conclusively shown by history that without a supernatural tribunal the Scholastic theory of

³ Varetillies-Sommieres, *Princ. fond. du droit*, pp. 374f; Liberatoro, *Inst. ethicae*, 1884, p. 259.

a just war is quite unworkable. The conquered think it unjust, the conqueror thinks it just. As Suarez himself concedes,¹ "it happens more often that a kingdom is occupied through an unjust war, and in this way the more famous empires of the world were extended. In that case neither the kingdom nor the true power is acquired, for the title of justice is lacking. But in course of time it may happen that the people freely consent or that the kingdom is acquired by prescription in good faith by the successors; and then the tyranny will cease and true dominion and power will begin."

The simplest answer to this objection is frankly to admit its relevancy, to deny the assumptions of Suarez, and to confess that it is only by the mere quibble of quasi-consent that he subsumes enforced conquest under free consent. This is the position of several among those modern Scholastics who adhere to the Scholastic theory.² In a just war the victor *quâ* victor has no rights; but *quâ* just he has a right to justice, i. e., to indemnity, reparation, and guarantees. That justice necessitates the enslavement of peoples is a false doctrine, whose refutation has been written in blood; its falsity is intensified by the fact that all victors deem their wars just; might likes to masquerade as right.³

(B) The quotation just given from Suarez seems to justify the objection that the Scholastic theory is inconsistent inasmuch as it apparently admits that usurpation may be legitimated either by consent or by prescription. But it is certainly hazardous to father such a view on Suarez merely on the ground that he *once* speaks of consent *or* prescription; especially as he distinctly declares elsewhere:⁴

"When a kingdom is possessed by mere unjust force,

¹ *Defensio*, iii. 2, 20. Cf. *De legibus*, iii. 4, 4.

² Zallinger, *Inst. iuris naturalis*, §207, Rome, 1832, i. 429; Macksey, *De ethica naturali*, 1914, p. 544; Macksey, *Sovereignty and Consent*, 1920, pp. 24f; Marcellus a Puero Iesu, *Phil. moralis*, 1913, p. 728.

³ On reconsidering the above paragraph, I think it is too severe on Suarez. In admitting title by just conquest, Suarez probably did not abandon his criterion of consent; he merely superseded national consent by world-consent. This is his argument: Conquest in just war is based in the *ius gentium* (*Studies*, June, 1918, p. 230), which is based on world-consent (*Studies*, Dec. 1920, p. 585).

⁴ *De legibus*, iii. 4, 4.

how can the people by natural right possess a sovereignty which they cannot retain or exercise? We might content ourselves with replying that if the people are unable to exercise sovereignty, they ought to be able; just as we might reply to an upholder of the divorce court that people ought to be able to observe monogamy. In other words, the alleged inability occurs *per accidens*. That is, we cannot have a real democracy because the individuals lack personality, religion and character; we cannot have direct democracy such as exists in the Swiss Landsgemeinden, because the natural small political units are absorbed into unwieldy centralized empires. But is it true as a matter of fact that the people cannot retain and exercise sovereignty, even in spite of these disabilities? The Scholastics not only freely admitted this possibility, but regarded republics like Venice and Genoa as being actual examples.⁵ The horror of popular sovereignty, so noticeable in recent reactionary Catholic writers, is largely due to the delusion that it implies anarchy and instability; as if Switzerland, where the people are sovereign, is more unstable and anarchical than England, where the Parliament claims to be sovereign. Popular supremacy, it must not be forgotten, is quite compatible with ample delegation of power and full equipment of officials; it simply implies the possession of ultimate control by the people, exercised through referendum, initiative and suchlike. This is no more an objection to democracy than the existence of innumerable appointments and offices in which assistants, secretaries, and subordinates are indispensable, is an argument against all human organization.

Schiffini, § 447 (ii. 392-4); Vareilles-Sommières, p. 371; Cathrein, § 585, p. 397; O. Hill, *Ethics*, 1920, p. 380.

⁵ Navarrus, *Novit*, notabile 3, n. 148 (*Opera*, iv. 602). Suarez, *De legibus*, iii. 4, 1: "Ex pura lege naturae non coguntur homines habere hanc potestatem in uno vel in pluribus vel in collectione omnium." Cf. *ibid.* iii. 9, 6. Bellarmine stands practically alone in maintaining that the people are bound by the law of nature to transfer their power, "for the nation cannot *by itself* exercise this power."—*De laicis*, 6: *Opera* (Naples ed.), ii. 317. But the nation can retain control, initiative, right of appointment, revocation, and ultimate decision. It is an utterly fallacious argument to say that a right does not exist because its detailed exercise and administration require the assistance and appointment of officials.

be true that such and such organizations originated in force or fraud or superstition. The genetic development of these institutions is quite irrelevant; at any given stage they are or are not ethically valid according as they are or are not founded on consent, however this consent be motivated.

It is true indeed that this theory, like every claim based on the concept of self or person, whether natural law or moral responsibility or deliberate volition, is idealistic in the sense of becoming continually more applicable as personality and self-consciousness grow. We may, therefore, adopt as our own what an opponent has declared by way of objection: "The individual has not at first the government of his acts; he begins by obeying fatal laws and then paternal authority. It is only after long years that he is master of himself. Reasoning by analogy, if it has any value here, would therefore lead to this conclusion: that civil society ought not to begin but to end with the sovereignty of the people."² Precisely. There is the same, as much and as little, historical evolution in the sovereignty of the people as there is in natural law or the Ten Commandments. As a modern Scholastic says, in replying to the objection that this theory is unhistorical and impractical:

"It exhibits the human ideal, of which the aristocratic or hereditary modes of designation are but imperfect approximations. And in our time it is specially urgent that we should consider this ideal. More and more the principle of heredity is becoming effaced in private and public posts; more and more the mechanism of modern industry is necessitating and developing the effort towards personal life, in the private and public order; less and less do civilized men appear inclined to leave the supreme magistrature hereditary when any other is no longer so."³

(D) We are now in a better position to answer this query: "What is the necessity or opportuneness of this authority in the people, since the people, without exercising it, immediately transfer it to the ruler?"⁴ That is,

² Vareilles-Sommères, pp. 367f.

³ Schwalm, *Leçons de philosophie sociale*, II, 502f. Cf. Bautain,

⁴ Vermeeersch, *De iustitia*, 1904, § 559, p. 705. So also Taparelli,

Esame critico, § § 88, 125 (i. pp. 70, 102); Zigliara, pp. 270f;

there is no true legislative power in the king. But it can happen that in course of time the people consent and admit such a rule; and then the (source of) power will be reduced to the transfer and donation of the people."

There is no doubt whatever that, consistently with its fundamental principle, the Scholastic theory has no place for prescription as a primary title to political power. Prescription, as such, has really no place in natural law at all; it is only in virtue of positive human law, for instance, that mere length of possession confers ownership. One of the propositions condemned in the Syllabus is that "an unjust fact, if crowned by success, does not injure the sanctity of right."⁵ What modern opponents of the Scholastic theory mean by prescription is that social conditions and circumstances, which usually take time to mature (though this is quite irrelevant), may create, on the part of the people, a moral obligation to consent to an existing rule. This, as a mere matter of theory, may be conceded. But this concession is rather academic, inasmuch as usurpation is practically always an oppression also and thus incapable of any such rights, and when it is really not oppressive but for the people's good, it is almost sure to receive the community's consent. The real mistake in treating prescription as a primary title to political power lies in the confusion of moral obligation to consent, which may possibly occur in rare cases, with actual consent, which *ex hypothesi* is not given. Whereas the Scholastics hold that even a forced consent is insufficient to validate a government, a usurping rule becomes juridically valid only when the people give to it their free consent.⁶

But the Scholastics were well aware that this consent may be given tacitly and gradually; and they permitted prescription, in the sense of long-continued peaceful pros-

⁵ No. 61: *Fortunata facti iniustitia nullum iuris sanctitati detrimuntum affert*. Cf. Balmes, *El protestantismo* II, 234 (ed. Paris, 1887). Eng. trans. ch. 55: "If Napoleon had succeeded in establishing his power amongst us, the Spanish nation would still have maintained the right on account of which it revolted in 1808; victory could not have rendered usurpation legitimate. . . . What will be safe here below if we admit the principle that success insures justice and that the conqueror is always the rightful ruler?"

⁶ Cf. Navarrus, *Relectio* "Novit," notab. 3, n. 151; *Opera*, Venice, 1602, IV, 603a.

perous possession, not as *title* but as *evidence* of the people's acquiescence and consent. Thus Lessius says:⁷

"A tyrant cannot prescriptively acquire a right of rule against a free people when he holds them only by fear so that they are not presumed to consent freely to him. The reason is that in such cases of forceful usurpation prescription cannot confer a right, *except in so far as long-continued exercise and possession beget the presumption of the free consent of those concerned.*"

The admission of such a kind of prescription, so far from being inconsistent, is merely an application of the Scholastic theory of government with the consent of the governed.

(C) Perhaps the commonest objection of all is the statement, usually made rather bluntly and dogmatically, that the Scholastic theory is "at variance with historical fact."⁸ To prove this we are told that "the first political rulers derived their authority at a time when such a compact would have been almost unthinkable, a period when any attempt to superimpose upon the family or tribal organization, based upon the tie of blood, another organization based upon a wholly different principle, viz., popular election to power, would have been exceedingly difficult, if not wholly impossible." This is merely an attempt to bury the problem in prehistoric darkness; one might with equal

⁷ *De iustitia et iure* ii. 5, 8, 41 (Antv. 1612, p. 48a). He also says (*ibid.* ii. 29, 9, 70; p. 370b): The usurper "not only sinned by invading the country, but also continually sins (both himself and his heir) by keeping the country oppressed and subject to him; until at length he is spontaneously received by the kingdom—which can happen if it is *sui iuris* and subject to no other ruler—or after a long interval prescription arises." Lessius is here thinking of a town or province incapable of being *sui iuris*. The Schoolmen admitted—as do also their modern opponents, though these latter exaggerate the quasi-property rights of the expelled ruler or dynasty—prescription *against the ousted government*, i. e., the cessation of the community's obligation-to-consent to the vanquished ruler if still existent. Cf. Costa-Rossetti, *Phil. moralis*, 1886², pp. 662f; Van der Aa, *Ethica*, 1889, p. 203; Desorges, *De l'origine et de la nature du pouvoir*, 1869, pp. 131f; Raboisson, *Du pouvoir*, 1874, p. 297.

⁸ Cronin, *Ethics*, ii. 503. So also Vareilles-Sommières, pp. 376f. Cathrein, § 584, p. 396; Vermeersch, § 559, p. 705; Reinstadler, *Elementa*, 1913², ii. 472; Rickaby, *Moral Philosophy*, p. 337, and *Political and Moral Essays*, p. 109; Pius La Scala, loc. cit.

propriety and relevancy refute the civilized idea of marriage (prescinding from revelation) by referring to a time when such a marriage compact would have been almost unthinkable. Practically everything of the kind does become unthinkable if one accepts the modern conclusions about prehistoric man. The Scholastics, however, apparently took Adam more literally than do their successors. And also, with more science and prudence, they largely confined themselves to the verifiable history of civilized peoples—the Republic and Empire of Rome, the Jewish Kingdom, the Frankish Monarchy, the Holy Roman Empire—in whose constitutional theories consent and election were included.

But the real answer to this objection goes to the root of the matter; the problem is moral and juridical, not historical at all. "Judiciously explained and not driven home too rigidly," writes Father Rickaby,⁹ "the Suarezian (he means Scholastic) theory of the origin of civil authority appears to be as accurate as any theory can be accurate under the vast variety of circumstances that have affected that origin in history." With all due respect it must be said that this distinguished Jesuit is confusing philosophy with history, politics and ethnology. Similarly, when another able critic¹ says that "to show what is general and invariable in the causes and in the formation of all civil societies is to indicate the philosophical origin of civil society," we must reply that it is nothing of the kind. Such an analysis is concerned solely with historical causative factors, whereas the philosophical origin of society and government means the ground of their validity. The problem has no connection with temporal priority or with antecedents in a historical process; it concerns the ethical justification, not only in the past but here and now, of a certain moral nexus between men. The Scholastic theory asserts that *consent* is the intrinsic essential moral factor which juridically validates these relationships. It may or may not

⁹ *Political and Moral Essays*, 1902, p. 112.

¹ Comte de Vareilles-Sommières, p. 57. On p. 137 he inconsistently remarks that "it is impossible to understand how force can by itself alone create a valid society; force constrains but does not oblige." Precisely. But this introduces the idea of *moral validity*, on the strength of which the Count rejects force without examining if it is a general and invariable ingredient of nascent societies.