

DIVINE RIGHT AND SECULAR CONSTITUTIONALISM: THE JESUIT-ABSOLUTIST DEBATES, 1580–1620

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Abstract: This article explores the emergence of a central feature of modern constitutionalism during a period of intense political conflict between the members of the Society of Jesus and the defenders of absolute monarchical authority in England and France. The crucial idea to emerge from this debate was that although political authority in general is ordained by God, it is most immediately shaped by human hands and is subject to the judgment of the entire body of citizens. Against Jesuit attempts to secularize the idea of the state, absolutists sought to sacralize civil authority in an attempt to shore up state sovereignty against the threats of popular resistance and ecclesiastical encroachment. They thus turned to the notion of ‘divine right’ as a strategy for bringing all secular and ecclesiastical authority under the control of a single sovereign. The article argues that these Jesuit thinkers re-shaped the natural law theories of Aquinas, Cajetan and Vitoria in order to arrive at the idea of the secular constitutional state: a civil authority constituted by the entire commonwealth and placed by the commonwealth under legal limits. Particular attention is given to four Jesuit thinkers: Luis Molina, Robert Bellarmine, Francisco Suárez and Juan de Mariana.

The Jesuits have long been cast as enemies of modernity and secularization in European political history.² Much of their notoriety stems from their attempts to subvert the authority of secular government and increase the power of the pope in temporal affairs. In recent years, scholarship on Jesuit political thought has encouraged a deeper appreciation for their unique contributions in the areas of individual rights, reason of state and constitutionalism.³ Yet

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² Historians of ‘modern natural law’ from the eighteenth century to the present have sought to distance the ‘modern’ theories of Grotius, Hobbes and Pufendorf from the clericalism and sedition of the Jesuit natural law thinkers. See Ian Hunter and David Saunders, ‘Introduction’, in *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought*, ed. I. Hunter and D. Saunders (Basingstoke, 2002); J.B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge, 1998), pp. 58–70; Gabriella Silvestrini, ‘Rousseau, Pufendorf and the Eighteenth-Century Natural Law Tradition’, *History of European Ideas*, 36 (2010), pp. 280–301.

³ Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c.1540–1630* (Cambridge, 2004); Stefania Tutino, *Empire of Souls: Robert Bellarmine and the Christian Commonwealth* (Oxford, 2010); Mónica Brito Vieira, ‘Francisco Suárez and the *Principatus Politicus*’, *History of Political Thought*, 29 (2) (2008), pp. 273–94; Mauro J. Caraccioli, ‘The Learned Man of Good Judgment: Nature, Narrative and Wonder in Jose De Acosta’s Natural Philosophy’, *History of Political Thought*, 38 (1) (2017), pp. 44–63. All of this recent scholarship is indebted to the work of Johann Sommerville,

none of these studies have taken issue with the Jesuits' reputation as enemies of the secular state. I attempt such a reappraisal by revisiting the well-known debate between Jesuit constitutionalists and divine right absolutists during the French and English wars of religion. I argue that the Jesuit attack on royal absolutism combines a constitutionalist political philosophy with a secular understanding of civil power.

In the history of political thought, the Jesuits are primarily known for their support for the papalist cause in the Oath of Allegiance controversy in England and in the controversy over the succession of Henry Navarre in France.⁴ In both cases, Jesuit political philosophy aimed to weaken or restrict the authority of Protestant monarchs over their Catholic subjects, while reasserting the pope's spiritual authority over all Christians. To this end, they adopted a 'dualist' strategy that employed a sharp distinction between secular and ecclesiastical powers.⁵ While they staunchly defended the civil authority of princes in temporal affairs (against radical Lutherans and Anabaptists), the Jesuits argued that civil power did not extend into spiritual and ecclesiastical matters. On issues of public worship and acceptable doctrine, the authority of the true Church — and its pontiff — remained absolute.⁶

On the other side of this conflict, defenders of absolute royal power argued that the civil sovereign possessed both secular and ecclesiastical authority; the monarch alone had the power to appoint bishops, settle doctrinal disputes and prescribe forms of worship.⁷ These arguments were aimed not only at papal indirect power but also against Presbyterian demands for the autonomy of the church from the crown and Calvinist-Huguenot resistance theories based on

especially J. Sommerville, 'From Suárez to Filmer: A Reappraisal', *The Historical Journal*, 25 (3) (1982), pp. 525–40.

⁴ J.H.M. Salmon, 'Catholic Resistance Theory, Ultramontanism, and the Royalist Response, 1580–1620', in *The Cambridge History of Political Thought, 1450–1700*, ed. J.H. Burns (Cambridge, 1991), pp. 219–53.

⁵ The dualist approach to church–state relations can be traced to the thirteenth- and fourteenth-century clashes between Philip the Fair and Pope Boniface VIII, during which John of Paris (c.1255–1306) argued for the co-existence of secular and ecclesiastical powers in their respective spheres. See J.A. Watt, 'Spiritual and Temporal Powers', in *The Cambridge History of Medieval Political Thought, c.350–1450*, ed. J.H. Burns (Cambridge, 1988), pp. 367–423.

⁶ Salmon, 'Catholic Resistance Theory', pp. 224–6; Tutino, *Empire of Souls*, pp. 28–9.

⁷ Quentin Skinner, *Foundations of Modern Political Thought, Volume II: The Reformation* (Cambridge, 1978), pp. 85–8; Francis Oakley, 'Christian Obedience and Authority, 1520–1550', in *Cambridge History of Political Thought, 1450–1700*, ed. Burns, pp. 175–7; John Guy, 'The Henrician Age', in *The Varieties of English Political Thought, 1500–1800*, ed. J.G.A. Pocock (Cambridge, 1996), p. 25; Joseph Lecler, *Toleration and the Reformation*, Vol. 2 (New York, 1960), pp. 396–7.

ancient constitutional rights.⁸ In order to explain how a secular monarch could claim a monopoly of ecclesiastical authority within a particular territory, royalists developed the philosophy that has come to be known as the ‘divine right of kings’. John Figgis identifies four basic tenets of this system: (1) that ‘monarchy is a divinely ordained institution’ over and above other forms of government; (2) that the hereditary rights of the royal lineage are divinely ordained and cannot be challenged; (3) that ‘kings are accountable to God alone’ and not bound by human laws or political institutions; (4) that citizens are never to actively resist their sovereign, even if the sovereign commands what is contrary to natural or divine law.⁹

The principal Jesuit political thinkers of this age — Luis de Molina, Juan de Mariana, Robert Bellarmine, Francisco Suárez and Robert Persons — devoted considerable time and ink to refuting these four positions. (1) They argued that any regime type chosen by the entire commonwealth held legitimate authority. (2) They argued that kings are placed on their thrones by the consent of the entire commonwealth, not directly or supernaturally by God. (3) They argued that each commonwealth, when constituting a particular regime, sets certain legal limits for that regime: the extent of the king’s power is set by the people, not by God. (4) They argued that all human beings have access to the natural law and can therefore stand judge against rulers who violate that law. All of these arguments are derived from two core principles. First, because all human beings possess equal moral worth, political power can only be exercised by the consent of the governed. Second, although all political authority is ordained by God, individual civil regimes are immediately created by human hands and are subject to the control of the communities that they govern. While the intended effect of these arguments was to elevate the power of the Church relative to secular princes, the result was a profoundly secular view of the state that has implications far beyond its historical context.

My argument is divided into three parts. In Part I, I highlight the late scholastic idea of ‘divine right’ that served as a common denominator in the royalist and Jesuit arguments: the idea that all civil power is ordained by God to allow the community to achieve its natural ends. In Part II, I describe the debate between royalists and Jesuits over the relationship between kings and subjects. While royalists used patriarchal ideas to argue for the permanent superiority of kings, the Jesuits argued for fundamental political equality of all based on natural law. In Part III, I examine royalist and Jesuit ideas about the extent of human agency in the construction of civil authority. Royalists

⁸ Johann Sommerville, *Royalists and Patriots: Politics and Ideology in England, 1603–1640* (New York, 1999), p. 10; Salmon, ‘Catholic Resistance Theory’, pp. 219–53; J.W. Allen, *A History of Political Thought in the Sixteenth Century* (London, 1928), p. 368; John Neville Figgis, *Divine Right of Kings* (Cambridge, 2nd edn., 1914), pp. 186–201.

⁹ Figgis, *Divine Right of Kings*, pp. 5–7.

argued that civil power descended immediately and only from God, while the Jesuits emphasized the freedom of the commonwealth to create various structures and institutions of secular power.

I

Natural Law and Civil Power: Thomist Foundations

Early modern debates over divine right kingship were largely shaped by the ideas of Thomas Aquinas (1225–74) and two of his intellectual heirs: Jacques Almain (c.1480–1515) and Francisco de Vitoria (1483–1546). These three thinkers, working in different political contexts, employed natural law theory to argue for the autonomy of secular political authority from ecclesiastical authority. Against the papacy's 'hierocratic' theory, they argued that the civil power wielded by kings and cities was ordained directly by God via natural law and was thus not dependent on either supernatural grace or the legal authorization of the Church. The political theories of both the Jesuits and their royalist opponents were built on the foundation of these scholastic ideas.

Aquinas' primary contribution to the notion of divine right is his distinction between the natural and the supernatural sources of legal authority in his treatise on law in the *Prima secundae* of his *Summa Theologiae*.¹⁰ Here Aquinas describes the relationship between four types of law: eternal law, natural law, human law and divine law. God's eternal law comes first because it comprehends all law; it is the eternal plan that governs all other divine and human laws.¹¹ From this plan flows the natural law, which, unlike eternal law, is immediately intelligible to rational human beings through reason. Through perceiving the natural law, human beings understand the basic natural goods that they are to achieve: self-preservation, sexual union, procreation, society and knowledge.¹² Next, human laws are derived from these fundamental and self-evident precepts. In promulgating laws for the good of the community, the human legislator applies the general precepts of natural law to the specific historical and political circumstances in which he lives. For example, says Aquinas, the legislator must devise appropriate punishments for each crime. Punishments are not determined by natural law but are necessary for the effective enforcement of natural law in human communities.¹³ Divine law occupies the final place in Aquinas' typology. Aquinas acknowledges that the typology appears complete with these first three types: law, being a precept of reason, descends from heaven (eternal law), is rendered intelligible through human reason (natural law), and is implemented in communities (human law). However, he argues, natural law only comprehends humans' natural ends, and

¹⁰ *Summa theologiae*, I–II, Questions 90–96, in R.W. Dyson, *Aquinas: Political Writings* (Cambridge, 2002). Hereafter, *ST I–II*.

¹¹ *ST I–II*, Q. 93, 1–3.

¹² *ST I–II*, Q. 94, 1–2.

¹³ *ST I–II*, Q. 95, 1–2.

divine law is necessary to direct human beings to their supernatural ends. These supernatural ends cannot be understood through human reason but only through divine law, which is given by God through revelation.¹⁴

Aquinas' natural–supernatural distinction corresponds with his distinction between civil and ecclesiastical authority. In *De regimine principum*, Aquinas states that civil and ecclesiastical government respectively exist to pursue humans' natural and supernatural ends. Although the civil government is sufficient to lead us towards natural virtue, the priestly government of the pope is necessary to care for our eternal end.¹⁵ In his commentary on Peter Lombard's *Sentences*, Aquinas clarifies that the civil power is not derived from the ecclesiastical power in the way that a Roman proconsul's power was derived from that of the Roman emperor. Rather, both civil and ecclesiastical powers are appointed directly by God for separate ends.¹⁶ Although Aquinas does not draw out all the ecclesio-political implications of this idea, his distinction between two divinely appointed powers — natural-civil and supernatural-ecclesiastical — became a fundamental precept for late medieval and early modern political thinkers.

Two centuries later, Jacques Almain used Aquinas' idea of natural law to articulate a theory of civil power as both divine and human in origin. Unlike Aquinas, Almain was chiefly concerned with the nature of *political power* and only secondarily with the origins and nature of law.¹⁷ Almain's theory of power centres around the concept of *ius*, which he defines as the right given to each person by God to pursue his or her proper ends, as defined by natural law. God bestows on beings not only the reason to perceive these ends but the power to achieve them. The most important end for Almain's theory is self-preservation. In the case of the individual person, for example, self-preservation is the primary end from which all other ends are derived. Individuals are thus endowed with *ius conservandi*: the right to defend themselves against internal and external threats to their lives. Borrowing an analogy from Aquinas, Almain argues that the individual has the right to cut off an infected limb to preserve his/her life. By the same logic, the commonwealth has the right to kill or expel any citizen who threatens the safety of the body politic.¹⁸ As we will see, this analogy of a body's power to coerce its members was widely used by both royalists and Jesuits. The principal point of contention, in both Almain's time and in the following century, was whether this power belonged

¹⁴ *ST I-II*, Q. 91, 4–5.

¹⁵ Aquinas, *De regimine principum*, ch. 16, in *Political Writings*, ed. Dyson, p. 41.

¹⁶ Aquinas, *Scripta super libros sententiarum II*, Dist. 44, Question 3, Article 4, in *Political Writings*, ed. Dyson, pp. 277–8.

¹⁷ Harro Höpfl draws this same distinction between Aquinas and the Jesuits. See Höpfl, *Jesuit Political Thought*, p. 186.

¹⁸ Almain, *Libellus de auctoritate ecclesiae* (1512), in *Conciliarism and Papalism*, ed. J.H. Burns and Thomas M. Izbicki (Cambridge, 1997), pp. 135–6.

to the entire body (the people) or resided in the head (the monarch). Almain argues that the entire commonwealth always retained the right to preserve itself against threats from its members (including the monarch), though it could delegate this power to a single individual or group. Almain also stresses the ambiguity of his theory without resolving it: although the power of the monarch does not come from God directly because it is delegated by the people, all legitimate power comes from God in the sense that it is derived from right reason.¹⁹

Almain's theory of civil power was largely adopted by the Dominican theologian Francisco de Vitoria, the thinker who had the most immediate impact on Jesuit political thought.²⁰ In his lecture, *On Civil Power (Relectio de potestate civili*, 1528), Vitoria demonstrates that God brings about the *civitas* through both natural and supernatural mechanisms.²¹ In one sense, God institutes civil power indirectly through his authorship of the natural law. Because civil power exists solely to fulfil natural ends, nature is the 'final cause' of civil power.²² Because God is the author of this natural law, He is the 'efficient cause' of the civil power.²³ In another sense, God institutes civil power directly through a supernatural act. God's direct involvement is necessary for the establishment of civil power because civil sovereigns have the right to exercise capital punishment. Because natural law and Mosaic Law prohibit killing, such a right can only be granted directly by God. From these two senses, Vitoria concludes that the civil power rules over its members 'by natural and divine right' (*iure naturali et divino*).²⁴

Vitoria adopts and expands Almain's idea that civil power resides originally in the entire body of the commonwealth. Because all humans are equal by natural law, civil power must be equally distributed among the members of the *civitas*: 'If no one was superior to any other before the formation of cities, there is no reason why in a particular civil gathering or assembly anyone should claim power for himself over others.'²⁵ Therefore, at its founding, the *civitas* is a purely democratic community of political equals. However, in

¹⁹ *Ibid.*, pp. 136–8. For an in-depth treatment of Almain's innovations on the concept of *ius* and his relationship with Aquinas, see Annabel Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge, 1997), pp. 117–22.

²⁰ Vitoria occupied the prestigious Prime Chair of Theology at the University of Salamanca from 1523 to 1546 and spearheaded the revival of Thomist natural law in the sixteenth century. See Quentin Skinner, *Foundations of Modern Political Thought*, Vol. II (Cambridge, 1978), p. 136.

²¹ Vitoria, *De potestate civili*, in *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (Cambridge, 1991). Hereafter, *DPC*.

²² *DPC* 1.2.

²³ *DPC* 1.3. Vitoria is employing Aristotle's four categories of causation. See *Physics* II 3; *Metaphysics* V 2.

²⁴ *DPC* 1.4.

²⁵ *Ibid.*

order to be effectively exercised, the civil power is best delegated to one person or a small group of people:

Though the commonwealth has power by divine law over the individual members of the commonwealth . . . it is nevertheless quite im-[possible] for this power to be administered by the commonwealth itself, that is to say, by the multitude. Therefore it is necessary that the government and administration of affairs be entrusted to certain men who take upon themselves the responsibilities of the commonwealth and look after the common good.²⁶

Almain had made the same observation about both civil and ecclesiastical power: it resides originally in the entire body and is later delegated to kings and popes.²⁷

It is in describing the process of this transfer and the nature of royal power that Vitoria breaks with the past and makes his most significant contribution to the concept of civil power. One of Vitoria's primary objectives in *On Civil Power* is to refute the Lutheran idea that Christians are not morally obligated in conscience to obey civil laws. To this end, Vitoria seeks to demonstrate that civil power descends directly from God to its possessor and that civil legislation is as morally binding as divine positive law: 'It is apparent that even though sovereigns are set up by the commonwealth, royal power derives immediately from God.'²⁸ This compels Vitoria to reject the medieval contractarian view of civil power:

To be sure, if men or commonwealths did not derive their power from God, but formed an agreement to set up a power over themselves for the public good, then this would be a human power. But it is not so, for power is set up in the commonwealth, even against the will of all its citizens, of administering itself, for which office civil kings were constituted.²⁹

It is crucial for Vitoria's theory that civil power can neither be created by human beings nor transferred from one person to another. If either of these were possible, civil power could be abrogated or taken away from the sovereign by the citizens of the commonwealth.³⁰

This anti-contractarian argument seems to be at odds with Vitoria's earlier assertion that all civil power resides originally in the entire commonwealth and is later delegated to monarchs. Vitoria attempts to reconcile these two positions by distinguishing between two powers exercised by the commonwealth: *potestas* and *auctoritas*: 'the commonwealth does not transfer to the

²⁶ DPC 1.5, §8.

²⁷ Almain, *Libellus de auctoritate ecclesiae*, ch. 1, p. 136.

²⁸ DPC 1.5, §8.

²⁹ DPC §8. According to Pagden and Lawrence, this final sentence is only present in Jacques Boyer's manuscript (Lyon, 1557). See *Political Writings*, ed. Pagden and Lawrence, p. 17 n.39.

³⁰ See also Vitoria, *On Civil Power* 1.3, §6, 10.

sovereign its power (*potestas*), but simply its own authority (*auctoritas*)'.³¹ In its original state, the commonwealth possesses *potestas*, by which it rules over itself, and *auctoritas*, by which it may elect a new ruler. When the whole commonwealth chooses an individual or group to exercise supreme civil power, it exercises its *auctoritas* to elect the power-holder, but the power itself must come from God.³² The commonwealth has the power to choose who will hold power, but they do not grant the power themselves. This avoids the danger of rendering civil power merely human and thus lacking sufficient power to bind the consciences of citizens against their wills.

Throughout Vitoria's discussion of civil power, there is an ambiguity that invites divergent interpretations by later absolutists and constitutionalists. There are two possible interpretations of Vitoria's assertion that civil power comes directly from God: (1) supernatural divine causation and (2) natural divine causation. The first regards civil powers as absolute, indivisible, and above human law because they are directly instituted by God *supernaturally* and thus beyond human control. On this reading, Vitoria views civil power as similar to the ecclesiastical power of the pope. Vitoria seems to confirm this interpretation in *On Civil Power*: 'For example, the pope is elected and crowned by the Church, but nevertheless papal power does not come from the Church, but from God himself. In the same way, the power of the sovereign clearly comes immediately from God himself, even though kings are created by the commonwealth.'³³ By drawing this close comparison between king and pope, Vitoria suggests that civil power arises through a supernatural process that is beyond the comprehension and control of the citizens of the commonwealth.

However, we can also see in Vitoria's thought the idea of civil power through *natural* divine causation, as bestowed by God via natural law, which operates through human reason. This naturalistic reading is supported by several passages from *On Civil Power*. Here Vitoria emphasizes that civil power is ordained by God indirectly through natural law: because civil power is necessitated by natural law, and because God is the author of natural law, civil power exists by God's command, and the commands of the civil sovereign are indirect divine law. God does not directly institute civil law but is rather the 'first mover' who sets in motion the natural mechanisms in human beings that give rise to cities and governments.³⁴ God does not directly institute political hierarchies and offices because these powers are rooted in natural law, which

³¹ DPC 1.5, §8.

³² Although Pagden and Lawrence translate *auctoritas* as 'authority', it might be more accurately translated as 'authorization' or 'authorship', both of which come from the same Latin root. Thus, Vitoria's concept of *auctoritas* is closely related to Hobbes's notion of authorship in Chapter 16 of *Leviathan*.

³³ DPC 1.5, §8.

³⁴ Vitoria, *On Civil Power* 1.3, 10.

is equally accessible to all. Such a natural mechanism cannot give rise to ecclesiastical power, which is ‘above the whole of nature’ and thus directly instituted by God.³⁵

Despite his ideas about original equality, in many ways Vitoria anticipates the principal arguments for divine right absolutism in the sixteenth and seventeenth centuries.³⁶ His distinction between *potestas* and *auctoritas* undermined the idea of a contract or constitution that limited the powers of the king or placed the king at the mercy of the popular will. By foreclosing the possibility that civil power can be simply transferred or delegated by its original holder, Vitoria directly opposes two fundamental constitutionalist principles. First, Vitoria argues that sovereigns cannot be placed under human law: ‘it is evident that public power is from God, and cannot be over-ridden by conditions imposed by men or by any positive law’.³⁷ Second, he rejects the idea of a partial transfer of civil power to a sovereign resulting in divided power or mixed government: ‘there is no question of two separate powers, one belonging to the sovereign and the other to the community’.³⁸ On both of these constitutional questions, the Jesuits explicitly broke with Vitoria while retaining his Thomist natural law framework.

II

Political Equality and Popular Consent

Scholars have long recognized the central role of patriarchalist ideas to the ideology of divine right absolutism in France and England.³⁹ Although patriarchalism is most commonly associated with Robert Filmer’s *Patriarcha*, the idea was ubiquitous in royalist and anti-Jesuit discourse in the century preceding Filmer’s treatise.⁴⁰ The central idea behind patriarchal theories of civil government is that the political power exercised by the king resembles the patriarchal power exercised by the father over his household. The advantage of this theory is that it mostly avoids theological and metaphysical controversy by defining political power in relation to the natural powers that exist in all

³⁵ Vitoria, (*I*) *On the Power of the Church*, in *Political Writings*, ed. Pagden and Lawrence.

³⁶ Vitoria himself was not an absolute but rather a strict dualist: he defended the right of the Church to oppose civil power that contradicted divine law. See *ibid.*, Q. 5, a. 6.

³⁷ *DPC* 1.3, §6.

³⁸ *DPC* 1.5, §8.

³⁹ Sommerville, *Royalists and Patriots*, pp. 29–30; Figgis, *Divine Right of Kings*, p. 150. John Plamenatz, *Man and Society: A Critical Examination of Some Important Social and Political Theories from Machiavelli to Marx* (2 vols., London, 1963), I, p. 173.

⁴⁰ Sommerville, *Royalists and Patriots*, p. 29. Cesare Cuttica, ‘Anti-Jesuit Patriotic Absolutism: Robert Filmer and French Ideas (c.1580–1630)’, *Renaissance Studies*, 25 (4) (2011), pp. 559–79; Linda Levy Peck, ‘Kingship, Counsel, and Law in Early Stuart Britain’, in *Varieties of British Political Thought*, ed. Pocock, pp. 102–4.

households. Like the Thomist idea of natural law, patriarchal theory seeks to identify universal and natural foundations for civil authority that both precede the arrival of ecclesiastical authority and transcend theological controversy. However, patriarchalism is also a form of divine right theory because it endows kings with a sacred authority that dates back to the creation of humankind.

Against patriarchalism, the Jesuits defended the fundamental political equality of all members of the commonwealth, even after the institution of a king. Although human beings were certainly not equal in all respects, on civil (secular) matters, all rational individuals had equal claim to exercise authority because they had equal access to natural law. This led many Jesuits to argue that all political associations are originally democratic and retain some democratic qualities after transferring power to kings. Most importantly, the latent democratic character of all commonwealths gives the people a permanent right to judge and possibly resist the sovereign powers.

Anti-Jesuit Patriarchalism

One of the earliest and most influential patriarchal arguments can be found in Jean Bodin's *Six Livres de la République* (1576). While Bodin's legacy is complex and contested, it cannot be disputed that his description of the relationship between the family and the commonwealth served as an inspiration for later patriarchalists, especially Filmer.⁴¹ Bodin begins the *Republic* by refuting Aristotle's view that the *polis* is the only perfect (i.e. self-sufficient) association. Aristotle argues that all the associations within the *polis* are imperfect and that the *polis* fulfils the ends of all these lesser associations.⁴² Bodin reverses this relationship by arguing that the well-governed household is self-sufficient and that the existence of the *polis* depends on these households. Bodin writes: 'Aristotle following Xenophon, seemeth to me without any probable cause, to have divided the Oeconomical government from the Politicall, and a Citie from a Familie: which can no other wise be done than if wee should pull the members from the body; or go about to build a Citie without houses.'⁴³ Here, Bodin is referring to the idea of 'oeconomics' — the science of household government — as discussed in both Aristotle's *Politics* and the pseudo-Aristotelian *Oeconomica* (which at the time was partially attrib-

⁴¹ G.L. Mosse, 'The Influence of Jean Bodin's *République* on English Political Thought', *Medievalia et Humanistica*, 5 (1948), pp. 73–83; Johann Sommerville, 'Introduction', in *Robert Filmer: Patriarcha and Other Political Writings*, ed. J. Sommerville (Cambridge, 1991), pp. xiii, xvi.

⁴² *The Politics of Aristotle*, trans. Ernest Barker (London, 1958), Book I, ch. 1.

⁴³ Jean Bodin, *The Six Bookes of a Commonweale*, trans. Richard Knolles (London, 1606), Book I, ch. 2, p. 8.

uted to Aristotle).⁴⁴ He argues that oeconomics is logically prior to politics because a well-governed commonwealth requires well-governed households. In these passages of the *Republic*, Bodin is responding to commentaries by contemporary Aristotelian humanists. Louis Le Roy, for example, argues that the household is dependent for its purpose on the commonwealth, just as the parts of the human body cease to have any purpose or function once the person is deceased.⁴⁵

Having established that the commonwealth is dependent on the household, Bodin argues that the rule of the commonwealth cannot be different in kind from the rule of the household, as Aristotle had stated. For Bodin, the authority of the sovereign is an extension and reflection of the father's authority over his household.⁴⁶ These patriarchal underpinnings of the sovereign's authority over his subjects are particularly apparent in Bodin's discussion of tyranny and the question of whether it is lawful for subjects to resist tyrants:

I cannot use a better example than of the dutie of a sonne towards his father: the law of God saith, That he which speaketh evill of his father or mother, shall be put to death. Now if the father shall be a theefe, a murtherer, a traytor to his countrey, as an incestuous person, a manqueller, a blasphemер, an atheist, or what so you will else; I confesse that all the punishments that can bee devised are not sufficient to punish him: yet I say, it is not for the sonne to put his hand thereunto . . . no impietie can be so great, no offence so hainous, as to be revenged with the killing of ones father.⁴⁷

The picture of political rule that emerges from this argument is of a permanent and natural inequality between sovereign and subject that can only be described with reference to that other relationship of natural subjection: the father and his children. A king may be judged wicked, cruel or unjust from the external perspective of natural and divine law, but his subjects have no standing to render such judgments against their sovereign. They are placed in a permanent subordination that does not depend on the right conduct of the sovereign. The patriarchal analogy allows Bodin to argue that citizens possess a natural duty to passively submit to their sovereigns. Bodin's references to the 'law of God' and 'impietie' serve to sacralize the king's position and connect patriarchalism to divine law.

Late sixteenth-century absolutists in France and England adopted Bodin's patriarchal analogy to refute the Jesuit and Huguenot arguments that popular resistance was permissible when kings lapsed into tyranny. Pierre Belloy, the fiercest Catholic defender of the Protestant King Henri of Navarre, argues in *De l'Autorité du Roi* (1587):

⁴⁴ Anna Becker, 'Jean Bodin on Oeconomics and Politics', *History of European Ideas*, 40 (2) (2014), pp. 135–54.

⁴⁵ *Ibid.*, p. 144.

⁴⁶ Bodin, *Six Bookes*, Book I, ch. 2, p. 8.

⁴⁷ *Ibid.*, Book II, ch. 5, p. 225c.

it is parricide to do any harm against their [kings'] Estate, person, or Majesty, to malign their counsel, and generally refuse the honour and subjection that is their due, even more so considering that, if the obedience and the honour to each father individually are recommended so highly, then the father of the nation [patrie], who is the King, embodying in his Person all earthly charity, should hold us to having so much greater reverence.⁴⁸

In England, Bishop Thomas Bilson offered a similar defence of Queen Elizabeth's royal powers in *The True Difference between Christian Subjection and Unnatural Rebellion* (1586): 'And if it bee a monster in nature and policie to suffer the children to chastise the father, and the servants to punish the Master, what a barbarous and impious devise of yours is this to give the Subjectes power of life and death over their Princes?'⁴⁹ Belloy and Bilson aimed these arguments at their Jesuit contemporaries, especially William Allen and Robert Bellarmine, who argued that royal power was set up by the commonwealth and was thus the product of human ordinance, not divine command.

King James VII/I adopted this patriarchal metaphor in order to re-appropriate the language of natural law in defence of absolute monarchical power. In *The Trew Law of Free Monarchies* (1598), James uses this patriarchal idea of natural law to describe both the duty of the king to care for his subjects and the duty of subjects to passively submit to the king. At the beginning of the treatise, he writes: 'By the Law of Nature the King becomes a naturall Father to all his Lieges at his Coronation: And as the Father of his fatherly duty is bound to care for the nourishing, education, and vertuous government of his children; even so is the king bound to care for all his subjects.'⁵⁰ At the end of the treatise, he turns again to the patriarchal metaphor to argue that the king is always above the law and can never be judged by his subjects. He states that it is 'monstrous and unnaturall to his sons, to rise up against him, to control him at their appetite, and when they thinke good to sley him, or cut him off. Even when a father attempts to take the life of his children, the children have no right to kill him but only to flee his wrath.'⁵¹ James — like Bodin, Belloy and Bilson — relies almost entirely on metaphor and tautology, appealing to his readers' intuitive understanding of the sanctity of paternal authority and the 'unnaturalness' of patricide.

These patriarchal arguments mostly evaded the question of the origins of political authority. While theorists of constitutions and resistance analysed

⁴⁸ Belloy, *De l'Autorité du Roi et des Crimes de Lèse-Majesté* [...] (Paris, 1587), p. 6b. Quotation and translation from Cuttica, 'Anti-Jesuit Patriotic Absolutism', pp. 569–70.

⁴⁹ Thomas Bilson, *The True Difference between Christian Subjection and Unnatural Rebellion* (Oxford, 1585), p. 385.

⁵⁰ *The Trew Law of Free Monarchies: or the Reciprock and Mytvall dyetie Betwixt a Free King and His Naturall Subjects*, in James VI and I: *Political Writings*, ed. Johann P. Sommerville (Cambridge, 1991), p. 65.

⁵¹ *Ibid.*, p. 77.

these origins — both historical and hypothetical — to the point of fetishization, their royalist counterparts argued that regardless of how particular regimes came about, their existence was required by divine and natural law and thus demanded passive obedience. The English royalist Robert Bolton wrote: ‘The question is not, by what meanes, whether by hereditary succession, or election, or any other humane forme, a Prince comes into his Kingdome, but whether by the ordinance of GOD we ought to obey him, when he is established.’⁵² Hadrian Saravia, one of the principal defenders of the Elizabethan settlement, argued that regardless of how kingdoms were established, their authority was determined by divine providence. Most kingdoms, including England, were established by conquest and did not require the consent of their citizens to establish sovereignty.⁵³

When they did address the question of origins, patriarchalists sought the origins of the *institution* of kingship rather than particular governments. They employed a historical argument according to which kingship evolved from Adam’s authority over his descendants — what Gordon Schochet refers to as the ‘genetic’ argument for patriarchalism.⁵⁴ Belloy draws on Bodin’s notion that political power is paternal power writ large: ‘the Royall & Monarchic principality originates in the paternal scheme of things, after which, suddenly, it appears that indeed in Enoch’s town [...] there was, from that time on, a form of Monarchy & arising from this event, Kings were considered as fathers of nations’.⁵⁵ The same idea was used by Hadrian Saravia: men are not born free and equal, he writes, because they are born into subjection to their fathers. The first fathers were also the first kings.⁵⁶ Filmer would later employ this idea in his argument against Suárez in *Patriarcha*, written about twenty years after these earlier royalist-Jesuit debates.

In all of these patriarchal arguments, the idea of natural and divine law is turned against resistance theorists to argue for the permanent and absolute subordination of subjects to their sovereigns. By tying political rule to the rule of fathers and the natural order within the family, patriarchalists sought to place political authority beyond the reach of human judgment and power. Jean Bédé de la Gourmandière summarizes this aim succinctly in his anti-Jesuit tract, *Droit des Roys* (1611): ‘to demolish the opinions of the Doctors of Lying who falsely maintain that royal power is hardly absolute and that it is a

⁵² Robert Bolton, *Two Sermons Preached at Northampton* (London, 1635), p. 16.

⁵³ Johann Sommerville, ‘Richard Hooker, Hadrian Saravia and the Advent of the Divine Right of Kings’, *History of Political Thought*, 4 (1983), pp. 239–42.

⁵⁴ Gordon Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Attitudes in 17th-Century England* (New Brunswick, 2nd edn., 1988), p. 8; Becker, ‘Jean Bodin on Oeconomics and Politics’, p. 152.

⁵⁵ Belloy, *De l’Autorité du Roi*, 20a. Quotation and translation from Cuttica, ‘Anti-Jesuit Patriotic Absolutism’, p. 575.

⁵⁶ Sommerville, ‘Richard Hooker, Hadrian Saravia and the Advent of the Divine Right of Kings’, p. 238.

human invention'.⁵⁷ The patriarchalists reject the idea that political authority may be constructed, reformed and resisted by ordinary citizens through the use of collective reasoning and popular power; like paternal authority, it is a permanent condition into which all human beings are born.

Jesuit Arguments for Political Equality

Although they rejected the patriarchal defence of kingship, the Jesuits mostly believed that monarchy was the best form of government. As students of Aristotle, the Jesuits held that the *civitas* could take three basic forms — monarchy, aristocracy and polity — as well as their three corrupted counterparts. Citing Aquinas and Vitoria, Luis de Molina argued that the rule of the one over the many was the best because it resembled the natural order of the universe and the rule of God over creation.⁵⁸ Robert Persons repeated Molina's arguments while adding that monarchies have fewer of the inconveniences and dangers of the democratic and aristocratic forms, which are prone to unrest, dissent and faction. A monarchy is also able to act more quickly and decisively in defence of the commonwealth.⁵⁹ Juan de Mariana was more ambivalent on the question of the best form of government, but, like Aquinas, he held that kingship more closely resembled the natural order of the world.⁶⁰

While they praised the just rule of wise kings, the Jesuits rejected the patriarchal idea that kings were directly appointed by God and thus not subject to judgment or resistance by the people. The first aspect of the Jesuit argument is the distinction between the family and the *civitas* and thus between paternal and civil authority.⁶¹ Molina describes the difference between these two basic types of power: the power of the father over his children arises naturally at birth, while civil power only exists through voluntary subjection. Although the first human beings — such as Noah's family after the flood — no doubt combined patriarchal and political power, after the world became fully populated, civil leaders were chosen by all.⁶² Francisco Suárez also acknowledges that ancient forms of kingship may have emerged gradually from the paternal authority of

⁵⁷ Jean Bédé de la Gourmandière, *Droit des Roys contre le Cardinal Bellarmin & autres Jesuites* (1611), 'Preface au Roy', A2, cited in Cuttica, 'Anti-Jesuit Patriotic Absolutism', p. 570.

⁵⁸ Aquinas, *De regimine principum*, ch. iii, in *Political Writings*, ed. Dyson, pp. 10–11; Vitoria, *On Civil Power* 1.8, 20; Luis de Molina, *De iustitia et iure*, I.II, disp. XXIII, in *Extracts on Politics and Government from Justice*, ed. G.A. Moore (Chevy Chase MD, 1951), pp. 23–4.

⁵⁹ Robert Persons (as 'R. Doleman'), *A Conference about the Next Succession to the Crowne of Ingland* (Ann Arbor MI, 2007), pp. 12–13.

⁶⁰ Juan de Mariana, *De rege et regis institutione*, I. 2, ed. and trans. G.A. Moore (Chevy Chase MD, 1948), pp. 115–20.

⁶¹ For a detailed discussion of Jesuit responses to patriarchalism, see Höpfl, *Jesuit Political Thought*, pp. 198–204.

⁶² Molina, *De iustitia et iure*, I. II, Disp. XX, pp. 1–2.

Adam and Abraham, but he argues that the transition from patriarch to king always requires the consent of the people.⁶³ This is because the domestic power of parents is fundamentally different from the political power of kings. Fathers only possess power over their children until they are adults, at which point parents and children stand as equals. Adam's adult descendants may have submitted to him as their king, but they had to freely consent to his rule.⁶⁴ Similarly, the Jesuits rejected Bodin's idea that the *civitas* is simply a corporation composed of families and thus retaining the essential structure of the family. Molina takes up this question and determines that the *civitas* is composed of individuals — not families — who unite to form a self-sufficient political association whose ends are fundamentally different from those of the family.⁶⁵

Suárez does employ one important familial metaphor in his civil philosophy: marriage. A comparison of the husband–wife relationship and the parent–child relationship illustrates the essential differences between royalist and Jesuit thought. Like a marriage, the *civitas* is a voluntary association of naturally free and equal individuals. As with much of Jesuit thought, this idea can be traced to Aristotle, who used household relationships to describe different forms of political rule. Aristotle writes that the man's rule over his wife is like the rule of a statesman over his fellow citizens. In the democratic polity, all citizens are fundamentally equal and therefore take turns ruling and being ruled. Those who rule establish only a temporary superiority over the ruled. Aristotle compares the father's rule over his children to kingship because kings must be naturally superior to their subjects.⁶⁶ Although the husband's rule over his wife is according to nature, it does not arise unless a woman freely consents to the relationship.⁶⁷ As Harro Höpfl has shown, the Jesuits on the whole believed that women were by nature equal to men and shared in their husbands' rule over the household. It was only because there must be one supreme head of each household that men were given authority over their wives.⁶⁸ As in the Aristotelian polity, inequality and hierarchy must be established for the sake of order but do not arise from the nature of things.

The Jesuit belief in the fundamental political equality of all human beings was rooted in a tradition of natural law going back to the Latin fathers of the

⁶³ Suárez, *Defensio fidei*, III. 2. 19. *Defensio fidei catholicae et apostolicae adversus anglicanae sectae errors*, ed. and trans. Peter L.P. Simpson (Birmingham, 2012), <http://www.philological.bham.ac.uk>.

⁶⁴ Suárez, *De legibus ac Deo legislatore* III. 2. 3, in *Selections from Three Works*, ed. Thomas Pink, trans. Gwladys L. Williams, Ammi Brown and John Waldron (Indianapolis, 2015), p. 431.

⁶⁵ Molina, *De iustitia et iure*, I. II, Disp. XXII, pp. 16–18.

⁶⁶ Aristotle, *Politics*, I.xii, in *The Politics of Aristotle*, trans. Barker, pp. 32–3.

⁶⁷ Suárez, *De legibus*, III. 3. 2, p. 436; *Defensio fidei*, III. 1. 8.

⁶⁸ Höpfl, *Jesuit Political Thought*, p. 197. This point is made by the Jesuit Benedict Pereira, *Commentarii in Genesim*, Vol. I, bk. IV. S. 71, cited by Höpfl, *Jesuit Political Thought*, p. 198 n.47.

Church. The earliest and most influential statement of pre-political equality was Augustine's assertion that God originally intended that humans only hold *dominium* over irrational animals and not over other rational human beings. Augustine equated political rule with interpersonal *dominium*, the enslavement and use of another person for one's own purposes. This enslavement does not arise from natural law as punishment for human sinfulness.⁶⁹ This idea was picked up by Pope Gregory the Great who interpreted Augustine as saying that humans are all equal under natural law: 'For all of us men are equal by nature, but it has been added by a distributive arrangement, that we should appear as set over particular persons . . . For as we have before said, nature has begotten all of us men equals, but, the order of merits varying, the secret appointment sets some above others.'⁷⁰ Augustine and Gregory were enormously influential in the thought of Aquinas, who sought to assimilate them to Aristotle. Aquinas argued that there was a type of political rule that respected the natural equality of persons and that would have existed even if humans had never fallen. He called this natural political rule 'directive' rule and distinguished it from the 'coercive' rule described by Augustine and Gregory. Adopting Aristotle's distinction between freemen and slaves, Aquinas stated that directive rule was carried out for the good of the ruled while despotic rule was only for the good of the master.⁷¹ This distinction — between the directive rule among equals and the coercive rule of despots and slave masters — was a core conceptual framework in Jesuit political thought.

These medieval ideas about natural equality influenced Almain and Vitoria who both described civil power as residing originally in the entire commonwealth and not granted by God to any one person or group. The Jesuits adopted and expanded on this idea by arguing that any form of government — the elevation of some citizens to positions of power — requires the consent of all. Robert Bellarmine, in his treatise on civil power, *De laicis*, argues this point by distinguishing between natural law (*ius naturale*) and the law of nations (*ius gentium*). Natural law dictates that civil power is necessary to govern and protect the *civitas* and to guide its citizens towards their natural ends. However, natural law is silent about the particular forms of government through which civil power is exercised:

Second, note that this authority immediately resides in the entire multitude as its subject because this authority is of divine law. But divine law did not give this authority to any particular man; therefore it gave it to all. Moreover, once we remove the positive law, there is no good reason why among many

⁶⁹ Augustine, *City of God*, XIX.14–15, trans. Henry Bettenson (Harmondsworth, 1972), pp. 873–5.

⁷⁰ Gregory the Great, *Morals on the Book of Job* (Oxford, 1844), XXI, p. 15.

⁷¹ Aquinas, *Summa Theologiae* I, Q. 96, a. 3–4, in *Political Writings*, ed. Dyson, pp. 3–4.

equals one rather than another should rule. Therefore this authority belongs to the entire multitude.⁷²

Bellarmino argues that the configuration of political power through the creation of governments is determined by *ius gentium*, which is not laid down by God but established by the consent of the commonwealth.⁷³ He writes that the establishment of relationships of ruler and ruled is necessary for the protection of the *civitas*, but the transfer of power from the commonwealth to the ruler cannot occur without the consent of the multitude.⁷⁴

Suárez makes a similar point in order to refute patriarchal theories of divine right. He acknowledges the patriarchal argument that fathers do in fact possess a natural superiority and right to rule over their children. However, this domestic authority is fundamentally different from political authority. There are certain mutual duties between parents and children, but these only persist while children are in their minority. Once children reach adulthood, they stand as political equals to their parents. Like Bellarmine, Suárez contends that political subjection only arises when naturally equal individuals consent to the creation of artificial hierarchies.⁷⁵

The centrality of consent in Jesuit thought emerges in Bellarmine's dispute with Pierre Belloy over the succession of the Protestant Henry of Navarre. Belloy had argued that the power of the French king and his successors was granted directly by God and did not depend on the consent of the people. Even unjust and tyrannical rulers — like the cruel Gentile kings who ruled over the Israelites — are placed on their thrones by God, who commands that we only obey and not question the justice or injustice of our rulers.⁷⁶ Bellarmine responds to Belloy by attempting to demystify the right of kings and asserting the role of human choice in the creation of political regimes. He argues that these tyrannical rulers gained power not through a direct gift from God or natural law but through their own volition. While royalists like Belloy often attributed the rule of specific kings and royal dynasties to the mysteries of divine providence, Bellarmine accused them of attributing injustice to God. There is only one thing, he writes, that can render usurpers and tyrants legitimate rulers — the eventual and begrudging consent of their subjects. But this act of human con-

⁷² Robert Bellarmine, *De laicis*, ch. 6, in *On Temporal and Spiritual Authority*, ed. Stefania Tutino (Indianapolis, 2012), p. 22.

⁷³ Not all Jesuit thinkers identified *ius gentium* with positive law, but Bellarmine clearly does so in this passage. For a discussion of the relationship between natural law, *ius gentium* and civil law, see Annabel Brett, *Changes of State* (Princeton, 2011), pp. 12–19, 75–89.

⁷⁴ Bellarmine, *De laicis*, ch. 6, pp. 22–3.

⁷⁵ Suárez, *De legibus*, III. 2, 3, p. 431.

⁷⁶ Pierre Belloy, *A Catholicke Apologie against the Libels, Declarations, Advices, and Consultations Made, Written, and published by those of the League . . .* (Ann Arbor MI, 2007), pp. 30–2.

sent and *ius gentium* must not be confused with natural law or divine mandate.⁷⁷ Here Bellarmine draws on and extends the ideas of the early Christian fathers. Augustine and Gregory had argued that all humans were equal by nature in order to emphasize the injustice of political despotism and the lust for power. The royalists recognized these injustices but argued that they were God-given punishments or tests to which citizens must submit. The Jesuits sought to eliminate or minimize these injustices by showing how a commonwealth could establish non-dominating governments through the consent of the people.

These Jesuit arguments for political equality also flowed from the secular nature of civil power. While the Jesuits sought to separate the civil power of kings from the ecclesiastical power of the pope, the royalists, especially in England, sought to unite secular and ecclesiastical authority under the monarch. In comparing the civil power with the ecclesiastical power, Suárez, Bellarmine and Molina emphasize that ecclesiastical power does not originally reside in the entire body of the (spiritual) commonwealth. This is because it is ordered towards supernatural ends, which depend on God's grace. The supernatural powers of bestowing grace and remitting sins belonged originally to Christ, who granted them only to the apostle Peter and not to the entire body of the faithful. Because each pope, as Peter's successor, is endowed with supernatural powers that are not common to mankind, the political organization of the Church is necessarily monarchical.⁷⁸ Moreover, the ecclesiastical laws promulgated by the Church are derived from divine positive law, which is revealed only to a select few and not universally accessible through reason. These comparisons shed light on the Jesuit view of civil power. Because civil power arises out of natural law and exists to carry out the ends ordained by that law, all rational human beings have equal claim to wield civil power. When the commonwealth delegates this power to a king, the people still have knowledge of natural law and can perceive whether the king is acting according to natural law or not. Does this give them an inalienable right to pass judgment on the king and possibly resist him? Molina and Mariana answer in the affirmative: even under a true monarchy, in which all power resides in one person, the people always retain a latent claim to exercise civil power.⁷⁹ On this reading, the secular and natural character of civil power directly contradicts the basic tenets of divine right absolutism.

⁷⁷ Bellarmine, *Reply to the Principal Points of the Argument which is Falsely Entitled Catholic for the Succession of Henry Navarre to the Kingdom of France*, ch. 16, ed. and trans. George Albert Moore (Chevy Chase MD, 1950), pp. 29–32.

⁷⁸ Suárez, *Defensio fidei*, III. 25. 2. Bellarmine, *De laicis*, 22–3. Molina, *De iustitia et iure*, I. II. Disp. XXVI, p. 34. Mariana does not take a position on ecclesiastical authority, but he uses the comparison to argue that civil authority resides in the commonwealth. Mariana, *De rege*, chapter 8, p. 160. The very same argument was made by Vitoria in (*II*) *On the Power of the Church*, in *Political Writings*, ed. Pagden and Lawrence, p. 119.

⁷⁹ Molina, *De iustitia et iure*, I. II. Disp. XXVI, p. 34. Mariana, *De rege*, ch. 8, pp. 157–8.

III

Natural Rights and the Construction of Civil Power

In his analysis of Stuart political thought, Johann Sommerville uses the term ‘designation theory’ to describe a strand of divine right absolutism that is distinct from patriarchalism.⁸⁰ The term was first coined by Heinrich Rommen to distinguish between two Catholic theories of legitimate political authority: ‘translation theory’ and ‘designation theory’. In *The State in Catholic Thought*, he defines translation theory as the idea that political authority is originally granted by God to the community as a whole and can then be transferred by the community to an individual or group. Rommen attributes this idea to a long tradition of Catholic political thinkers including Jean Gerson, Thomas Cajetan, Francisco de Vitoria and Francisco Suárez.⁸¹ Rommen writes that Catholic designation theory emerged around 1800 as a conservative reaction to the French Revolution. In order to ward off popular resistance and political instability, designation theorists argued that the commonwealth as a whole could never possess power over itself. The formation of a political society requires the setting up of a power over the community; in other words, the commonwealth cannot exist without a prior inequality of power between ruler and ruled. Because this power is never possessed by the commonwealth as a whole, it must be granted directly by God to the sovereign. This does not mean that God chooses the person or persons who exercise sovereignty; that right still belongs to the community. However, in designating their sovereign, the people are not granting him power; they are only granting him a title.⁸² As Sommerville and others have discovered, this designation theory closely resembles the anti-Jesuit absolutist arguments of the sixteenth and seventeenth centuries.

Although Vitoria is often numbered among the translation theorists, he actually puts forward an early argument for designation theory in his lecture *On Civil Power*. Recall that Vitoria argues that the people transfer *auctoritas*, while God alone grants *potestas*.⁸³ Vitoria’s argument here is borrowed from earlier theories of papal power. It was commonly argued, in defence of the

⁸⁰ Sommerville, *Royalists and Patriots*, pp. 24–9.

⁸¹ Heinrich Rommen, *The State in Catholic Thought: A Treatise in Political Philosophy* (St Louis, 1950), pp. 443–50. Gabriel Bowe affirms and expands on Rommen’s argument, identifying elements of translation theory in Cajetan, Vitoria, Soto, Bellarmine and Suárez. G. Bowe, *The Origin of Political Authority: An Essay in Catholic Political Philosophy* (Dublin, 1955), pp. 31–55.

⁸² Rommen, *The State in Catholic Thought*, pp. 450–6. Designation theory thus represents a rejection of both translation theory and Rousseau’s ideal of republican self-rule.

⁸³ Annabel Brett also identifies Vitoria as an early proponent of designation theory, at least with regard to monarchy. See A. Brett, ‘Luis de Molina on Law and Power’, in *A Companion to Luis de Molina*, ed. Matthias Kaufmann and Alexander Aichele (Leiden, 2014), pp. 171–2.

pope's absolute authority over the Church in spiritual matters, that although he was elected by the cardinals, the pope's power did not come from the cardinals but directly from God.⁸⁴ What was new about designation theory was the application of this distinction between title and power to secular kingship, thus imbuing civil power with spiritual elements. When he uses the idea of designation theory to describe the landscape of early Stuart absolutism, Sommerville acknowledges the Catholic origins of the idea, citing early seventeenth-century arguments by Robert Bolton, John Buckeridge and William Barrett, all of whom drew on the analogy of papal power to defend the divine right of kings.⁸⁵ Bolton (1572–1631) cites the Catholic argument that the pope has his authority directly from God, even though he is elected by the cardinals. On this basis, he argues that regardless of how a king is selected, the people are obligated by divine law to obey.⁸⁶ As with the patriarchalists, these thinkers focus on the morally binding nature of civil power in the abstract in order to dismiss the question of whether particular regimes are just.

The Jesuit Translation Theory

These arguments for an absolute obligation to obey civil power rely on an objective concept of natural law (*ius naturale*) found in the works of Aquinas, Almain, Cajetan and Vitoria. For absolutists, natural law served as a useful foundation for civil power because it bound the conscience of the citizen and demanded obedience to civil law. Natural law dictated the rational ends of human life, which all human beings were morally obligated to fulfil, and human law translated those precepts into specific legal obligations.⁸⁷ The Jesuits, especially Suárez, broke from these absolutist tendencies of their

⁸⁴ For example, see Cajetan's *De auctoritate papae*, tract. 2, part 2, c. 9, cited by Bowe, *The Origin of Political Authority*, pp. 32–3.

⁸⁵ Sommerville, *Royalists and Patriots*, p. 25. Several authors have adopted Sommerville's usage of 'designation theory', though without acknowledging the papalist origins of the theory: Mónica Brito Vieira, 'Francisco Suárez and the *Principatus Politicus*', *History of Political Thought*, 29 (2) (2008), pp. 273–94; Howard Nenner, 'Loyalty and the Law: The Meaning of Trust and the Right of Resistance in Seventeenth Century England', *Journal of British Studies*, 48 (4) (2009), pp. 859–70.

⁸⁶ Bolton, *Two Sermons Preached at Northampton*, p. 16. Here and throughout his *Two Sermons*, Bolton cites the Jesuit Juan Azor (Johannes Azorius). Like many Oxford students, Bolton was well-versed in medieval and contemporary Catholic theology, and he briefly fell under the spell of Roman Catholicism, even flirting with the idea of joining the Jesuits, before converting to Puritanism. See Edward Bagshawe, 'The Life and Death of the Author', in *Mr. Bolton's Last and Learned Worke of the Four Last Things* (London, 4th edn., 1639), p. 14; also see Stephen Wright, 'Bolton, Robert (1572–1631)', *Oxford Dictionary of National Biography* (Oxford, 2004); online edition, Jan 2008 [<http://www.oxforddnb.com/view/article/2806>, accessed 6 Dec 2016].

⁸⁷ Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979), pp. 46–50; Brett, *Liberty, Right, and Nature*, pp. 89–97. Later theorists of political absolutism, such as Grotius and Pufendorf, also relied on natural law: see

scholastic predecessors by positing a subjective concept of *ius* that denoted a realm of human freedom rather than obligation. These two senses of *ius* are described by Suárez in his exhaustive exposition of legal concepts in Book I of *De legibus*. He surmises that the objective meaning of *ius* is derived from the verb *iubere* (to command) and is therefore synonymous with *lex* (law). The subjective meaning is derived from *iustitia* (justice) and therefore refers to what is just or equitable.⁸⁸ Suárez defined the subjective concept *ius* as

a certain moral power, which every man has, either over his own property or with respect to that which is due to him. For it is thus that the owner of a thing is said to have a right in that thing, and the labourer is said to have that right (*ius*) to his wages by reason of which he is declared worthy of his hire.⁸⁹

As this definition demonstrates, *ius* was often linked with the idea of property and thus with the concept of *dominium* — the right to control and dispose of persons or things.⁹⁰ Suárez also maintains that this subjective right is limited by objective natural law. Turning to Aquinas' *Secunda secundae*, he argues that what is fair and just (*iustum*) is prescribed by law (*lex*).⁹¹

Employing this subjective concept of *ius*, the Jesuits described the construction of political regimes in contractual terms.⁹² Suárez states that when disparate individuals come together to form a self-sufficient commonwealth, they become a single body that naturally possesses rights over itself. This body has the freedom either to retain its rights completely as a democracy or to transfer all or some of its rights to a ruler.⁹³ Molina and Suárez both assert that at the time of the original contract, the commonwealth has the right to determine the extent of the ruler's powers and to specify conditions upon

A. Brett, 'Scholastic Political Thought and the Modern Concept of the State', in *Rethinking the Foundations of Modern Political Thought*, ed. Annabel Brett and James Tully (Cambridge, 2006), p. 131.

⁸⁸ Suárez, *De legibus*, I. 2. 1–6, pp. 27–32. Oddly, Suárez fails to mention that these are exactly the two meanings of justice described by Aristotle in Book V of *Nicomachean Ethics*.

⁸⁹ Suárez, *De legibus*, I. 2. 5, pp. 29–30.

⁹⁰ On the equivalence of *ius* and *dominium*, see Tuck, *Natural Rights Theories*, pp. 24–7; Brett, *Liberty, Right, and Nature*, pp. 10–48. The subjective notion of *ius* was also employed by Vitoria, who wrote that each individual possesses *ius* as a right to freedom of action with respect to herself and her property. If the prince interferes with this sphere of liberty, the subject can take legal action against the prince. Vitoria, *Commentary on Summa Theologiae*, Volume V, 62, 1, 5–13, cited by Brett, *Liberty, Right, and Nature*, pp. 128–9.

⁹¹ Suárez, *De legibus*, I. 2. 5, p. 29. Aquinas, *ST II–II*, Q. 57, a. 2.

⁹² For the contractualist element in Jesuit political thought, see Höpfl, *Jesuit Political Thought*, pp. 227–38; Sommerville, 'From Suárez to Filmer'; Tuck, *Natural Rights Theories*, pp. 56–7.

⁹³ Suárez, *Defensio fidei*, III. 2. 5; Molina XXVI, p. 34.

which the people may revoke this power. Thus, the people always retain a latent power to resist and resume their original power.⁹⁴ Suárez sees evidence of this freedom to contract in contemporary Europe. He cites the kingdom of Aragon as an example of an especially limited monarchy due to the conditional nature of its original contract. Other kingdoms are more absolutist in nature because their commonwealths have given away their power unconditionally, resulting in a type of political servitude.⁹⁵ The Jesuits thus allowed for the possibility of absolutism when the people consented to it.

This contractual idea was also a prominent feature of the political thought of the English Catholics of the early seventeenth century, particularly Matthew Kellison and Robert Persons.⁹⁶ Persons accepted Suárez' theoretical arguments and spelled out the radically democratic consequences for contemporary politics: the commonwealth had the legal power to alter succession, unseat current monarchs and abolish monarchical systems completely.⁹⁷ Persons argues that the commonwealth grants the king conditional power (*potestas vicaria* or *potestas delegata*), 'which is given with such restrictions cautels and conditions, yea, with such plain exceptions, promises, and oaths of both parties . . . as if the same be not kept, but willfully broken, on either part, then is the other not bound to observe his promise neither'.⁹⁸ Whereas Suárez sought to emphasize the stability of monarchy under contractual agreement, Persons spelled out the radically subversive implications of Catholic contract theory. Matthew Kellison followed closely in the Jesuit tradition, viewing political society as a community of equals instituted by natural necessity and possessing a natural power of self-government.⁹⁹ Like other Jesuits, Kellison maintained that the power wielded by kings was divine in nature because God has willed that the commonwealth achieve its proper ends, but this divine power does not descend directly from God but rather indirectly from both the 'designation' and 'donation' of the people.¹⁰⁰ Kellison, like Suárez, treats political liberty as the property of the people and uses the analogy of selling oneself into slavery to describe the granting of power to the king.¹⁰¹

What sets the Jesuits apart from later social contract theorists is that they did not view these contracts as hypothetical but literal and historical. They saw all existing monarchical governments as the products of previous legal

⁹⁴ Suárez, *Defensio fidei*, III. 3. 3–4.

⁹⁵ Suárez, *De legibus*, III. 19. 6, cited by Vieira, 'Suárez and *Principatus Politicus*', p. 288.

⁹⁶ Kellison's significance in this discourse has been pointed out by Johann Sommerville in 'From Suárez to Filmer'.

⁹⁷ Persons, *Conference*, pp. 32–6.

⁹⁸ *Ibid.*, p. 73 (spelling modernized).

⁹⁹ Matthew Kellison, *The Right and Jurisdiction of the Prelate and the Prince* (Menston, 1974), pp. 39–43, cited by Sommerville, 'From Suárez to Filmer', p. 529.

¹⁰⁰ Kellison, *Right and Jurisdiction*, pp. 50, 54–6.

¹⁰¹ *Ibid.*, pp. 51–2.

transactions and therefore limited in nature. Persons and Kellison both point to the fact that all monarchs are required to swear oaths to the people upon their succession to the throne. The people also swear oaths of allegiance to their monarchs, but these are conditional upon the monarchs' observance of the law. These oaths are legally binding mutual promises that, if violated, give the people the right to resist royal power and, for Persons, a duty to depose the tyrannical monarch.¹⁰² The consistent use of coronation oaths throughout Europe thus demonstrates that the source of monarchical legitimacy is not divine right alone but popular consent. Kellison also argued based on the empirical observation that some monarchs possessed extensive power over their kingdoms while others ruled precariously. These differences in power, he argued, were not due to kings' self-restraint — a political impossibility — but rather to different degrees to which peoples and their parliaments have conceded power to their kings.¹⁰³

The Royalist Designation Theory

These contractualist arguments prompted royalist critiques that attempted to turn scholastic natural law against the Jesuits. The two thinkers who did this most effectively were King James VI/I and Marco Antonio de Dominis, both of whom had been trained in scholastic natural law.¹⁰⁴ These thinkers levelled two critiques against the Jesuits. First, they argued that the Jesuit account privileged democracy over other forms of government and undermined the obligation to obey the king. Second, they argued that the fundamental precept of natural law — self-preservation — rendered political societies inherently hierarchical, thus making truly democratic government impossible.

The first critique seizes on the Jesuit idea that all power naturally resides in the people and attempts to show that this is incompatible with any but a purely democratic government. De Dominis writes: 'If the multitude holds such ruling power in itself, by the law of nature itself, as our [opponents] contend, then by the divine law of nature itself every commonwealth is democratic; and

¹⁰² Persons, *Conference*, pp. 78–9; Kellison, *Right and Jurisdiction*, pp. 53–4.

¹⁰³ Kellison, *Right and Jurisdiction*, p. 54.

¹⁰⁴ James was tutored by the great Scottish humanist George Buchanan. Through Buchanan, a Catholic-turned-Protestant who had studied at the University of Paris in the 1520s, James was introduced to the natural law theories of Aquinas and Almain. De Dominis was an Italian Catholic archbishop who apostatized, moved to England and joined the royalist cause in the court of King James. His familiarity with the natural law theories of Almain, Vitoria and Suárez allowed him to compose the most thorough and convincing articulation of the designation theory of this period, *De republica ecclesiastica* (1617–22). Benjamin Slingo argues convincingly that de Dominis successfully used designation theory to turn scholastic natural law against Suárez and Bellarmine. See Benjamin Slingo, 'Civil Power and the Deconstruction of Scholasticism in the Thought of Marc'antonio de Dominis', *History of European Ideas*, 41 (4) (2015), pp. 507–26.

not one is aristocratic or monarchical, except by positive human law, and from the free will of the multitude.' If the Jesuits are correct, he says, 'God instituted among men, and established by the law of nature, the worst of all forms of government, and the most imperfect; which is not true.'¹⁰⁵ Robert Filmer would later adopt this same argument in his attack on Suárez, writing that the commonwealth's act of handing over authority to a king was a violation of God's will.¹⁰⁶ A closely related objection, articulated by King James, was that if all forms of civil power, except pure democracy, were the product of human law and not directly from God, the basis for political obligation would be lost. In other words, they viewed the secularization of law as the deracination of law from the source of legal obligation.¹⁰⁷

The second critique was articulated by King James in *The Trew Law of Free Monarchies* (1598). James reiterates the Almainian idea that the body politic, like the human body, must have power over its members in order to defend itself against external and internal threats. However, he shifts the locus of power from the body as a whole to the head:

The King towards his people is rightly compared to a father of children, and to a head of a body composed of divers members . . . For from the head, being the seate of Judgement, proceedeth the care and foresight of guiding, and preventing all evill that may come to the body or any part thereof . . . As the discourse and direction flowes from the head, and the execution according thereunto belongs to the rest of the members, every one according to their office: so is it betwixt a wise Prince, and his people. As the judgement comming from the head may not onely employ the members . . . but likewise in case any of them be affected with any infirmite must care and provide for their remedy, in-case it be curable, and if otherwise, gar cut them off for feare of infecting the rest . . .¹⁰⁸

For James, the civil power and *ius conservandi* is never in the people as a whole but only in the sovereign head. A commonwealth could no more remove its king than a person could waive his right to self-defence.¹⁰⁹

De Dominis expands on this idea, drawing on the leading lights of scholastic natural law. Almain and Vitoria had suggested that the civil power resides originally in the commonwealth but that it cannot be effectively wielded by the commonwealth as a whole. Although the commonwealth has the right to

¹⁰⁵ Marco Antonio de Dominis, *De republica ecclesiastica* (1620), p. 526. Cited and translated by Slingo, 'Deconstruction of Scholasticism', pp. 521–2.

¹⁰⁶ Robert Filmer, *Patriarcha* (Oxford, 1949), p. 56, cited by Sommerville, 'From Suárez to Filmer', p. 530.

¹⁰⁷ King James raises this objection against Bellarmine in his defence of the Oath of Allegiance. James VI/I, *Triplici Nodo*, in *Political Writings*, ed. Sommerville, pp. 129–30.

¹⁰⁸ *The Trew Law of Free Monarchies*, in *Political Writings*, ed. Sommerville, pp. 76–7.

¹⁰⁹ Vitoria makes a similar point in *On Civil Power*, 1.7, pp. 18–19.

this power, its administration must be delegated away to a more effective body, preferably a monarch.¹¹⁰ De Dominis pushes the logic of this argument one step further and argues that if it is impossible for the commonwealth to effectively govern, then civil power never descends directly to the commonwealth as a whole but only directly to the effective ruler. Prior to the installation of the ruler, the people do not possess any power over themselves but are merely an anarchic and formless multitude:

Therefore when a disordered and headless people is drawn by its own nature towards imposing one or several rulers upon itself, it does not follow from this that the people retains in its own hands the same liberty [...] or has the power of deposing the rulers it has adopted; any more than dominion is given to matter over the form it has acquired.¹¹¹

De Dominis thus redefines political power as the power of the ruling part over the ruled part. It is the rule of the head over the body, not the body over itself.

In Book III of the *Defensio fidei*, Suárez composes a response to both of these critiques that serves as a succinct and elegant summary of the entire Jesuit constitutional argument. Suárez demonstrates why secular political power resides in the people and why secular, human laws are binding on the conscience. His argument is directed primarily against King James, but he also anticipates the critiques of de Dominis and Filmer. Suárez first responds to James's argument that royal power is bestowed directly on the king and not delegated by the people. He begins by distinguishing between two basic ways in which God can bestow a power or right on something. The first way is through the nature of the thing itself. Because the essence and nature of the *civitas* is the power of preservation, it cannot exist apart from this power; God's gift of civil power to the *civitas* is thus 'connatural'. The second way is by adding something non-essential onto a thing through a voluntary gift outside nature. For example, Christ bestowed on Peter a jurisdictional power to 'bind and loose'. This is not a part of human nature and is thus a 'supernatural' gift. The key difference between these two is that connatural gifts occur automatically through natural processes while supernatural gifts require an act of divine intervention that interrupts or alters natural processes. These two types of gifts clearly correspond to the civil and ecclesiastical powers; the former belongs to all individuals in every commonwealth, and the latter belongs only to the pope as a successor of Peter.¹¹²

Suárez then explains why secular power must fall on the entire commonwealth equally. He fully acknowledges that a unitary ruling power is necessary to preserve and maintain the commonwealth, 'whether it exists in one

¹¹⁰ DPC 1.5.

¹¹¹ De Dominis, *De republica ecclesiastica* (1620), p. 526. Cited and trans. Slingo, 'Deconstruction of Scholasticism', p. 516.

¹¹² Suárez, *Defensio fidei*, III. 2. 3.

natural person, or in one council, or in a congregation of several'.¹¹³ However, from the necessity of delegating power to a single head, it does not follow that God must bestow the ruling power on this one head. Because the gift of civil power is connatural, it is bestowed only according to the nature of the commonwealth. The essence of the commonwealth is a body of naturally equal individuals requiring some form of government. To bestow civil power on one person would contradict the nature of the commonwealth in two ways. It would elevate one person above the rest, which is contrary to the natural equality of all, and it would establish a monarchy, which is not natural or essential, as even de Dominis would admit.¹¹⁴

This conclusion leads to the second royalist complaint, which Suárez anticipates. If God cannot connaturally bestow civil power in any particular form, why do the Jesuits argue that the civil power is bestowed on the entire commonwealth? This implies that God and nature have established democracies in every commonwealth and that other regimes are somehow less legitimate.¹¹⁵ Suárez concedes that democracy arises as a 'quasi natural institution' in that it can come about without any further action on the part of the commonwealth. But this does not make democracy necessary or even preferred.¹¹⁶ On the contrary, Suárez, like all Jesuits found monarchy to be the best regime.¹¹⁷ The flaw in the objection, says Suárez, is to think of this original gift of civil power as a necessity (objective right) rather than a freedom (subjective right). The right of the commonwealth to rule itself is 'of natural law negatively, not positively, or rather of concessive not of absolutely prescriptive natural law'.¹¹⁸ This sphere of open-ended possibilities remains morally indifferent with respect to divine and natural law.¹¹⁹ As a subjective right, it is the moral power of the commonwealth to dispose of itself in a variety of possible ways. Analogously, all individuals are born free and equal, 'but the law of nature does not prescribe that every man always remain free, or (what is the same) it does not absolutely prohibit man being put into slavery, but only that it not be done either without the free consent of the individual, or without lawful title and power'.¹²⁰ Like individuals, commonwealths cannot be subjected to servitude (i.e. absolute kingship) without their consent. Even though monarchy is the best form of government, it requires the creation of inequalities of power that are not rooted in nature. In order to be just, it must

¹¹³ *Ibid.*, 1. 5.

¹¹⁴ *Ibid.*, 2. 7.

¹¹⁵ *Ibid.*, 2. 7–8.

¹¹⁶ *Ibid.*, 2. 8.

¹¹⁷ Suárez, *De legibus*, III, 4, 383.

¹¹⁸ Suárez, *Defensio fidei*, III. 2. 9.

¹¹⁹ See Mónica Brito Vieira, 'Francisco Suárez and the *Principatus Politicus*', *History of Political Thought*, 29 (2) (2008), p. 276.

¹²⁰ Suárez, *Defensio fidei*, III. 2. 9.

arise through a voluntary transfer of power from the commonwealth to the king. All of this helps to explain why the Jesuits ultimately rejected Vitoria's idea that the commonwealth only grants title (*auctoritas*) and not power (*potestas*). Because the commonwealth has ownership over its power by natural right, only the commonwealth, not God, can grant power to the king.

For the absolutists, this final point rendered civil law powerless to bind the citizens of the commonwealth in conscience. The king must have his power directly from God in order for his law to be binding. De Dominis is especially dismissive of this secular theory of civil law and argues that each new government and each change of government requires divine positive institution:

[God] regulates with his own judgement, and assigns with hidden power, elections, hereditary successions, conquests, and other ways of this sort, by which kings acquire kingdoms, not only by means of his permissive will, and as a first and remote cause — of which there is no doubt — but also by his absolute will, and as a proximate cause.¹²¹

The acknowledgement of God's 'permissive will' is a nod to Suárez's argument, but de Dominis feels the need to add God's 'absolute will' to the equation, thus removing human agency and the indeterminacy of natural law.

Suárez argues that such divine positive intervention in every change of political form is unnecessary and goes against the essence of civil power, which is natural and secular, not supernatural and divine. Through the construction of political power and positive laws, humans can construct new moral boundaries by commanding and prohibiting certain actions that are indifferent with respect to natural and divine law. Suárez demonstrates this using the analogy of property and economic exchange: 'For God did not immediately give (in the ordinary way of speaking) to any man property in and peculiar dominion over anything, but He immediately made everything common and private dominion was introduced partly by the law of nations, partly by civil law.'¹²² As we saw above, Suárez connects private property to political power through the institution of slavery. Although it cannot arise naturally, slavery entered into through mutual consent is as morally binding as the natural state of freedom.¹²³

Conclusion

In the foregoing discussion, we have seen that the idea of divine right kingship took on a wide variety of meanings in early modern Europe. While the notion of divine right seems contrary to the spirit of political secularism, I have endeavoured to show that the Jesuits carved out a secular theory of civil

¹²¹ De Dominis, *De republica ecclesiastica* (1620), p. 532, cited and trans. Slingo, 'Deconstruction of Scholasticism', p. 523.

¹²² Suárez, *Defensio fidei*, III. 2. 14.

¹²³ *Ibid.*, 2. 17.

government while retaining the idea that all political authority is ordained by God. This theory contained two basic arguments: the inherent equality of all individuals under natural law and the natural right of human communities to shape the political institutions that governed them. This Jesuit view stands in stark contrast to the royalist approach. In order to bolster the idea of civil sovereignty, royalists sought to sacralize the idea of political authority by opposing the idea of human agency in constituting governments.

In this particular debate, natural law philosophy served as an important tool of political secularization and democratization. Jesuit civil philosophy relied on a sharp distinction between civil and ecclesiastical authority, with the former being established solely for the pursuit of natural ends. Because civil authority was a product of natural law, it belonged equally to all rational human beings. By shifting towards a possessive and subjective understanding of natural right, the Jesuits granted each community the freedom to create a variety of possible political regimes, from pure democracy to absolute monarchy. The importance placed on consent and contractual relationships in creating new political obligations made this a remarkably secular political theory for this period.

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