CATHOLIC SOCIAL THOUGHT AND THE AMERICAN REGIME

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This symposium examines the issue of how well Catholic social thought fits with the underlying principles and philosophy of the American regime. The contributors to the symposium take different views of this issue. On one hand, Carson Holloway argues that Catholic social thought is at odds with certain aspects of the regime. On the other hand, Kimberly Shankman argues that a properly understood natural law teaching is essential to a sound American constitutionalism. These positions are subjected to careful scrutiny by contributors Leon Holmes and John Stack.

Introduction
by Gary D. Glenn
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The editor, Professor Ryan Barilleaux, has once again kindly published what seems to have become a continuing symposium in this Review. The participants are my students of political philosophy and American political thought, and the focus is the relation between our faith and the commitments of our country. Those commitments are what students of political philosophy call “regime principles.” Our country’s regime principles are authoritatively contained both in the Declaration of Independence and in the “Constitution, and the laws of the United States which shall be made in pursuance thereof.”

Notwithstanding our thus using the language of “principles”, I would encourage our readers to be cautious about that language. Moses was given “commandments.” Papal encyclicals contain “social thought” or “social teachings.” In contrast, “principles” is the language of philosophy and indeed more of modern than of ancient philosophy; today especially it is more the
language of Kant, say, than of Aristotle. Of course, faithful Catholics speak of “Catholic Social and Economic Principles” and we too will speak of principles, especially of “regime principles.” Nevertheless, it is prudent to caution about “principles” language. That caution is inspired by the observation that it has become common in contemporary Supreme Court opinions, and in the writings of legal philosophers justifying those opinions, to speak of “principles” in a manner that begs decisive questions. That manner calls “principles” things which may not be principles at all. For instance, they speak of “the principles of the first amendment” when it is not evident that the first amendment is accurately understood as embodying “principles.” John Courtney Murray, for instance, famously argued that what it embodies is not a principle or theory like “separation of church and state” but rather practical accommodations concerning religious freedom which he called “articles of peace.”

This use of “principles” gives a theoretical slant to the Constitutional text, suggesting that what was written should be understood as coherent and even unequivocal. Therefore, that the big decisions “of principle” were already made by the founders and that all that remains today for the governed to consent to is the mere application of principles previously decided to the particular facts at hand. Thus “principles” language conduces to judges removing questions of good and bad policy from the hands of the people on the grounds that “constitutional principles” have already done so.

In contrast, “articles of peace” is the language of prudence. It gives a practical slant to the Constitutional text, suggests that originally there were negotiations which left much open (perhaps even some equivocality), and implies that what is important is what the “articles” aimed at practically rather than a “principle” that was allegedly agreed upon. Above all, it suggests that the Congress and the State legislatures, not the Supreme Court, are the proper institutions to articulate and apply what religious freedom and non-establishment mean in concrete contexts.

Certainly, since separation of church and state came to be understood by the judiciary as a “principle,” it has been found to commonly affect adversely the political interests of most religious people and to so privatize religious freedom as to undermine religion’s legitimacy in the public arena. Moreover, being a principle means that those of us who oppose the judiciary’s view of its legal effects have had our opinions (e.g. on abortion) declared beyond the constitutional pale. That is, they are excluded from constitutional legitimacy in the body politic.

In contrast, “articles of peace,” with all its equivocality, is inclusive of the understanding of all the signatories: atheists, Deists, free thinkers, and mainline as well as dissenting Protestant Christians. It can include non-signatories including non-Christian religions. Even Catholics can and did sign on to the...
original first amendment “separation” as articles of peace whereas it has been imposed on us by the judiciary as a principle.

Our caution about “principles” language leads us rather to speak of “Catholic social thought” or “teachings.” Not only is this the predominant language of faithful Catholics (meaning no offense to faithful Catholic philosophers), but, by orienting us to our topic without using the doubtful, and in any case optional, philosophical language of “principles,” permits us to have a conversation with our country instead of, perhaps, requiring us to lay down a gauntlet. This conversation appears especially important at the present moment and for the foreseeable future, because whether Catholics continue to have a safe home in America has become more questionable than perhaps at any time in the past. This symposium takes place, to a substantial degree, in light of the awareness that this is what is at stake. We are, so to speak, trying to understand what would need to be done to restore the security of the home traditional, faithful Catholics used to have here.

Moreover, this conversation is a deliberation among ourselves at the same time as it is an addressing of our fellow citizens. We assume the latter may not know that Catholic moral teachings have to an important extent been read out of the American regime, in that some of our most fundamental moral convictions have been declared, by the highest court in the land, to be beyond the Constitutional pale as a basis for public law.

Since the current symposium builds on that of last year, a brief account of the latter will orient the reader to our current and on-going discussion. Last year’s symposium debated “whether [what the Holy Father calls]’the culture of death’ might be a legitimate and even necessary consequence of our founding principles?” One of our members, Carson Holloway, answered yes, in a powerfully argued essay. Holloway argued that our regime principles are most adequately understood as Locke’s and that Locke’s principles lead to the culture of death. However, three of us gave qualified—one extremely qualified—“no” answers. These argued that the culture of death is a departure from and corruption of our founding (regime) principles.

Against Holloway, I argued that the natural rights teaching of the Declaration of Independence does not in itself lead to the culture of death because these rights need not be understood only in a Lockean manner. While there can be little doubt that Locke was a source of that language, “natural rights” was the language of pre-modern Catholic political philosophers (Bellarmine, Suarez, Vittoria, Molina) before it was appropriated by Hobbes and Locke and given the modern meaning which Holloway persuasively argues opens the door to the culture of death. I argued further that, within modernity after Hobbes and Locke, Burke still defended the Catholic understanding of natural rights against the modern understanding of them which was reflected in the theory and
practice of the French revolution.

Finally, I pointed out that Jefferson, who was more clearly than Locke the author of the *Declaration*, described it as containing “the harmonizing sentiments of the day.” “Harmonizing” suggests it was meant to include all affirmation of natural rights, irrespective of how they were precisely understood. In contemporary language, Jefferson’s understanding is “inclusive”, that is, it admits some legitimate heterogeneity in the understanding of natural rights.

Thus, while agreeing with Holloway that the Lockean understanding does indeed issue in, or at least opens the door to and cannot resist, the culture of death, I argued that the culture of death results, not from the *Declaration’s* natural rights as such, but from the subsequent excluding from the American regime those understandings of natural rights as are Catholic or crypto-Catholic, if I may be so permitted to characterize Burkean natural rights.10

The symposiasts this year return to consider the relation of Catholicism to America. But the focus is not the culture of death but “Catholic Social Thought and the American Regime.” The animating question again is whether or to what extent these are harmonious or compatible. It is not a question whether they are identical—no one thinks that. The American regime is not, either in its founding principles or in its present day operation, what was once called a “confessional state,” that is, one which establishes Catholicism as the state religion and which adopts in its laws Catholic moral and social justice teachings as the one true teaching.

There seem to be three broad alternatives answers to this question. 1) They are fundamentally incompatible, hence one has to choose between them. 2) They are fundamentally compatible, so in being a good Catholic one is being a good American. 3) They are sufficiently, not to say simply, compatible if the regime principles are understood in certain ways; but they are not sufficiently compatible if they are understood in other ways. Very broadly, I would say that Holloway inclines to #1 while the rest of us incline to #3. Thus, the symposium has two dynamics: 1) the defense and critique of Holloway’s position and 2) the defense and critique of Shankman’s argument that a natural law jurisprudence is either necessary or useful (I do not mean to prejudge which) to harmonize Catholic social thought and American regime principles.

**What is Catholic Social Thought?**

“Catholic Social Thought” refers to the Church’s efforts to come to terms with the political and economic conditions of the modern industrial world. Nothing called “Catholic Social Thought” seems to have existed prior to *Rerum Novarum* (1891). What Catholic Social Thought is, as distinguished from the preceding centuries of Catholic moral teaching, is seminally revealed by that Encyclical. I
would say it is something like the following.

Christianity was born in a world based on an agricultural economy. There was commerce but, unlike modern commerce, it did not penetrate deeply into every aspect of everyday life. Ancient commerce was marginal to the everyday lives of ordinary people. In particular, social and family life was not fundamentally disrupted by agriculture and the commerce attendant to it. Ancient economy were compatible with family life.

The industrial revolution radically disrupted both social and family life. The first wave of that disruption produced a massive movement from the farms, villages, and countryside into the cities. One result was the fairly rapid replacement of what Max Weber called *gemeinschaft* (community) by *gesellschaft* (society). The informal ties of affection and kinship characteristic of the former were replaced by an increasingly pitiless struggle for economic survival characteristic of the latter. This struggle was intensified by urban industrial civilization’s undermining of the natural sentiments of sympathy born of kindred blood, shared experience, and long acquaintance characteristic of agriculturally based *gemeinschaft*.

Among the consequences of this revolution was a new form of class distinction. The old feudal class structure had tried, with some success, to foster the land-owning nobility’s Christian charitable caring for and about their serf’s well-being. However, the new industrial class structure seemed to foster an indifference on the part of the industrialists to the well-being of industrial workers. It did this especially by limiting the former’s responsibility to the latter to payment of wages. Various forms of political-economic theories justified this constriction of the “community” between workers and owners, thereby replacing Christian charity as the nexus between the rich and the workers, with the sometimes pitiless and always socially disruptive operation of the market.

“Catholic Social Thought” began as and remains an effort to make the Christian charity born into a pre-industrial world relevant to, and effective in, modern urban industrial civilization. It centrally involves an effort to articulate how that charity, applied in these new circumstances, requires a more humane political economy. Pitiless results of the unfettered market must be opposed in the name of that charity. There is thus a thrust in “Catholic Social Thought” away from the American Constitutional order’s traditional limits on government’s power to redistribute wealth and control the economy, and towards a more positive, i.e. less limited, government. On the other hand, that teaching also contains an explicit thrust against those doctrines which deny the right of private property or which assert that all property belongs to society or the state as a matter of right. “Catholic Social Thought” put the Church squarely into the middle—literally the middle—of the great 19th and 20th century debates between socialism, communism and liberal capitalism.
In this way “Catholic Social Thought,” a concern for the well-being of the working classes in the new industrial economy, becomes political thought. Prior to that time, Catholic political thought had been primarily concerned with defending the rights of the Church and the relation between the Church and the political order. Also prior to that time, Catholic moral teaching primarily focused on the struggle in the souls of individuals between good and evil. “Catholic Social Thought” brings together the Church’s political thought and its moral teaching in a new way. It redirects its moral energy towards “the social question.”

But the birth and development of “Catholic social thought” was accompanied by Papal Encyclicals distinctly unfriendly to political liberalism and democracy. This strand of Church teaching associated democracy with the French Revolution, anti-clericalism, liberalism, public atheism, authority rooted in will, rather than transcendent standards of right, and granting religious liberty as a matter of right to those whom the Church regarded as schismatics, heretics and infidels.12

Catholic Social Thought and the Natural Right Teaching of the Declaration of Independence

However, the late 20th century saw Catholic social thought become far more favorable to liberalism and democracy. Both the documents of Vatican II and writings of Pope John Paul II reflect and promote this change.13 This more favorable view of democracy was perhaps made possible by the 20th century demise of European-style secular/socialist inspired anti-Catholicism and anti-clericalism, by liberal regimes transforming themselves into welfare states, and by the absence of any decent and viable alternative to liberal democracy.

But there was something more and deeper than these contingent historical circumstances. Pope John Paul II has recently publicly praised “the founding documents of the United States” for asserting “certain ‘self-evident’ truths about the human person: truths which could be discerned in human nature, built into it by ‘nature’s God’.” He does not understand these truths’ assertion of “equality of rights” in a Lockean individualist way in which rights might be ultimately understood to trump the common good; for rights so understood provide no basis for actions born of self-sacrificing love. In contrast to this Lockean understanding, the Pope speaks of them in a traditional Catholic way, namely, as fully embedded in, and not prior to and independent of, society. They are a claim to “opportunities in the pursuit of happiness and in service to the common good;” to a “freedom designed to enable people to fulfill their duties and responsibilities toward the family;” and to a “respect and support for the natural groupings through which people exist, develop, and seek the
higher purposes of life in concert with others.” These are rights for the sake of man’s moral duties as a member of society. They are not claims to an autonomous existence originating in man as belonging by nature to a pre-social “state of nature.”

Hence, the Pope does not think, as is common among modern scholars, that natural rights requires liberalism and capitalism, though they may be compatible with both. Nor of course does he understand the Declaration’s truths in a collectivist way as wholly subject to the will of either the people or the state. In this way he is faithful to the tradition which speaks of the Church’s “social” rather than its “political” teachings. Those teachings point more to a culture or “way of life” that to a particular political form. It is enough for the Pope, as for the Declaration, if the political order, secures them. That is, if the state is neither indifferent to nor tries to subject, define and control them. As “social” teachings, securing these natural rights are first the responsibility of the family, the local community and intermediate private institutions, before they are the responsibility of the political order. The principle of subsidiarity teaches that, if the social orders are doing their jobs satisfactorily, the state has no right, let alone duty, to take over for them. It is much better for moral principles to be imbedded in the fabric of society than to be imposed by the state. Both Catholic social and natural rights teaching is about virtue before it is about law. But both are ultimately about the responsibilities of the political order and of law as well.

In thus publicly interpreting American’s “founding documents” as making possible a life of duty and virtue, and not merely a life of personal license and property accumulation, the Pope points believers to the historical truth that the idea that human beings have natural rights, which neither they nor anyone else have a moral power to either consent or take away, belonged to pre-Reformation Catholic (i.e. Christian) thought before Hobbes and Locke gave them the modern individualist cast they now seem to have. Those pre-modern Catholic thinkers noted above developed this doctrine out of their attempt to explain the right of the people to consent to government, and to withdraw that consent even to the extent of changing regimes. That lawful government rests on that consent is a consequence of Augustine’s apparently novel (and anti-Platonic and Aristotelian) teaching that “by the law of nature man has no right [to rule] over man.” Hence “men have of themselves logically only the right to command themselves, and no human being can of himself impose any authority on others.” But in Augustine this is not a Hobbesian or Lockean “state of nature” teaching. The authority of parents is by nature and the authority of the Church is from God. But the Church rules individuals only on the basis of their consent to that authority.

That the Declaration’s principles of natural right and consent had a root in Catholic thought was a theme of a once standard Catholic college text on
church and state. Moreover, it has even been claimed by an authority of some rank (though admittedly an historian) that “Thomas Jefferson derived from Bellarmine substantially the wording in which he stated these famous doctrines” of the Declaration.

The development of consent theory out of this natural political equality and natural rights, within an admittedly Catholic tradition, was apparently never much recognized outside of the Catholic tradition and has now been largely forgotten by Catholic scholars. But that to which the Pope now points us, was once known.

To the Stoics, all men are equal because they all have the same origin in nature, but this furnishes no basis for any such things as inalienable rights. In the medieval concept, all men are equal, having both the same origin and the same destiny, and hence the inalienable right to the necessary means to the attainment of their final end, which is ultimate happiness.

It appears that it was necessary for medieval Christian philosophers to begin to speak of rights partly because of the Christian duty to equally love all human beings as they loved themselves. In England, the 16th century Protestant thinker Richard Hooker continued the scholastic view that this mutual equality required charity which is the basis of the “several rules and canons natural reason hath drawn, for the direction of life.”

In addition to this root of “rights” in the duty of Christian charity, “rights” also emerged out of the long process in the late Middle Ages of developing a justification for the right of Christians to resist tyranny, notwithstanding the apparently categorical New Testament commands to “be subject to the governing authorities.”

This development culminates and comes to an end, so far as Christian thought is concerned, in Locke. In Chapter II of the Second Treatise, Locke at first presents a perfectly orthodox Christian view of rights rooted in Hooker who, in turn, is the end of an unbroken chain derived from the scholastics. We hold our rights as stewards, not as owners. In particular, we hold our right to life as “servants of one sovereign master, sent into the world by his order, and about his business.” We are “his property” because we are “his workmanship.” Thus we “are bound to preserve ourselves” and also others because we are by nature so equal that there is no “subordination among us that may authorize us to destroy another, as if we were made for one another’s uses as the inferior ranks of creatures are for ours.”

But it is here, within a space of a few sentences, that Locke introduces the idea of “the state of nature” that vitiates these Christian roots of his rights doctrine. The state of nature “has a law of nature to govern it.” However, Locke’s law of nature is utterly ineffectual without civil authority to enforce it against
wrongdoers, and by nature there is no lawful civil authority. It follows that every individual has a right to kill any other individual who threatens either his own or others’ preservation. This is necessary so that “the law of nature [may] be observed which willeth the peace and preservation of all mankind.” All lawful civil authority is by consent, and consent is understood as a human construct and, as such, opposed to nature.

It seems to be in thus understanding consent as radically opposed to nature that Locke breaks with scholastic consent theory. He denies two things that are affirmed by Catholic rights thinkers: 1) that established authority is lawful unless the people’s consent is withdrawn, and 2) that there is by nature parental authority as well as religious authority which does not depend on consent.

The connection of Locke to the rejection of Catholic natural rights is through Sir Robert Filmer. Filmer is the author of *Patriarcha*, a defense of the divine right of absolute monarchy. Locke’s *First Treatise* is a decisive refutation of Filmer’s Biblical argument in support of such a right. The argument is so easy to demolish, and Filmer so long out of date when Locke attacked him, that scholars have long considered it a puzzle why he bothered.

For our purposes what is important is that Filmer attacks “Jesuits” and in particular Bellarmine (but note also Calvin) for teaching that subjects have a right to overthrow both particular kings as well as “choose what form of government it please” because they are naturally free and equal. That is, for teaching what looks similar to what Locke afterwards will teach. Filmer attacks Bellarmine and Suarez (also a Jesuit) by name again and again. Their doctrine is not only revolutionary but “democratical.” Filmer returns to the literal meaning of Romans 13 “no remedy in the text against tyrants, but in crying and praying unto God in that day.” In support of this he cites Samuel, Jesus (“Render unto Caesar . . .), St. Peter, St. Paul and Augustine.

Filmer, of course, says nothing about natural rights in *Patriarcha*. His attack on Catholic political thought focuses entirely on the inference from natural rights to the right of what we would call tyrannicide, rebellion or revolution, i.e., the right to change both the particular ruler and the form of government.

In contrast to Filmer, Locke’s *Second Treatise* takes from the tradition of Bellarmine and Suarez the view that human beings have a right of tyrannicide, rebellion and revolution. But whereas the earlier Catholic tradition maintained that, even when this was lawful, there remained authority (either in the Church or in subordinate political authorities) which had to authorize such action. In Locke, no such authority is either recognized or required. It is enough for “the people” to judge. In other words, Locke thought that when political authority was gone, no other authority remained on earth to judge
disputes. The lack of political authority was “the state of nature” where there was nothing but us individuals. But the state of nature so understood is incompatible with any Catholic natural rights teaching because it denies God’s providence. God cares so little for us, according to Locke, that he does not provide any of that political authority which our nature requires as surely as it requires food. He has left us in “the state of nature,” “which is full of fears and continual dangers.”  

We have to construct government ourselves. Man’s work, not God’s providence, fulfills man’s fundamental need for government.

Locke’s denial of providence extends to affirming that our natural duty to care for others as ourselves does not oblige us contrary to our own natural rights to life, liberty, and property. Natural rights are more fundamental than natural duties and prevail when the two conflict. In contrast, the Catholic natural rights tradition regards moral duties as the fundamental moral phenomenon, not rights. Yes, a Christian might say that the man lying bleeding on the road between Jerusalem and Jericho had a natural right to the Samaritan’s aid. But that same Christian would also say not only that the Samaritan first had a moral duty to do so, but also that the moral benefit to the Samaritan of fulfilling that duty was at least as great a benefit to him, perhaps greater, than the benefit that accrued to the injured Israelite. That benefit more than compensated him for his time, trouble, and money.

This sacrificial love and the duties consequent to it, which is the matrix of the Christian understanding of natural rights, has no place in Locke’s teaching. Such acts are not even intelligible in that context. The Christian would say that the soldier who throws himself on the grenade to save his buddies in the fox-hole has shown that “greater love than this has no man, that he lay down his life for his friends.” While Locke would say that he has foolishly given away his inalienable right to self-preservation, perhaps even committed suicide.

The difference between the Christian and the modern Lockean view of natural rights was recently well-stated by Philippe Beneton. “Modern society is made for men who do not love each other.” He goes on to repeat the official self-understanding of Papal encyclicals well into the 20th century: “the language of the rights of man was born outside the Roman Church and to some extent in opposition to it.” But if the language of rights was Catholic before it was modern, then this is a misunderstanding caused by our having forgotten the thought of Bellarmine, Vittoria, Suarez, and Molina.

Modern natural rights looks like modernity’s moral substitute for loving ones neighbor as oneself. In contrast, Catholic natural rights is based on, and is an expression of, that love. Modernity, following Hobbes and Locke, regards such love as an unrealistic basis for civil society. In that there is more than a little
truth. But constructing society on the basis of that “no little truth” intensifies modernity’s tendency towards making individuals prosperous, lonely, and self-centered with cruelty seemingly just below the surface. Those bad tendencies can be mitigated by retaining (or rather restoring) the Christian understanding within our understanding of natural rights.

Thus this symposium’s original concern about whether Catholics continue to have a safe home in a regime from which our ideas of right have to a considerable extent been banished by the judiciary, becomes the concern whether, without our understanding, modern natural rights by themselves brings forth a world which moderns find fit to live in. I am encouraged in this by remembering that we were told to be “the salt of the earth” and what would happen if the salt lost its flavor. Perhaps our contribution has been that Catholic natural rights flavors and hence preserves from decay, the Declaration’s rights teaching. No one who knows Locke’s influence on the founders can think that Bellarmine and his band of “Jesuits” were the exclusive basis of that teaching. My argument has been that neither were they nothing. But it may yet be that an awareness of the cost of an exclusive reliance on Locke, may bring even those not of this fold to see the prudence of not dismissing our understanding.

Indeed, this description fits a serious and important thinker about these matters, who once might have pointed in this direction. Fifty years ago, Leo Strauss observed that “present day American social science, as far as it is not Roman Catholic social science” no longer believes that “the principles of the Declaration of Independence” are “truths.” By thus explicitly exempting Catholic social science from the “unqualified relativism” characteristic not only of American social science as a whole but “of Western thought in general,” Strauss invites us to wonder what it is in Catholicism that accounts for its continuing commitment to the truth of the Declaration’s principles. This introduction is the first fruit of my wondering about that.

Conclusion

In this Introduction, I have only tried to sketch the claim that Catholics and other traditional Christians have to expect our natural rights tradition to be included along with Locke and the modern political philosophers as constituent parts of the founding principles of the American regime. In what follows, Professor Holloway argues that in other respects, Catholic social thought is at odds with certain aspects of the regime, though not, I think, with what could be properly called “regime principles.” And Professor Shankman argues that a properly understood natural law teaching is both part of, and necessary to, a sound constitutionalism. Both these arguments are subjected to through-going,
sympathetic but thoughtful scrutiny by Mr. Stack and Mr. Holmes. Their critiques are a greater than usual combination of knowledgeable and critical eyes with careful analysis. All those who have the courage to put their controversial ideas into print would be grateful for the blessing of having them accompanied by such commentary. The reader is recommended to pay as much attention to these commentaries as to the principal essays.

Notes


2. The Constitution of the United States, Article VI, Sec. 2. Neither the Constitution nor the Declaration speak of “commitments”, “principles” or “teachings.” The Declaration speaks of “self-evident truths.” The Constitution uses no word which clarifies the cognitive status of its provisions. “Commitments” here covers those things in these documents to which our way of life as Americans is committed.


4. The first case in which separation of church and state is described as a principle is *Everson v. Board of education of Ewing Township* 330 U.S. 1. The momentous paragraph, which became one of the most cited paragraphs in all of Constitutional history, is at 15-16. A fine study of the consequences of Everson after 50 years is Jo Renee Formicola and Hubert Morken eds., *Everson Revisited: Religion, Education, and Law at the Crossroad* (New York: Rowman and Littlefield, 1997)


6. I.e. faithful, traditional Catholics. Catholics who are willing to go over to liberal secularism on the political issues secularism cares about, especially abortion and its progeny, continue to be secure here.

8. Carson Holloway, “Evangelium Vitae and Modernity: The Philosophical Origins of the Culture of Death” finds the natural rights teaching of the *Declaration of Independence* to mean what Hobbes and Locke meant, namely, that one has natural rights to life, liberty and property only because, and if, one can make trouble for others if they do not recognize and secure ones rights to these things. Thus, those unable to make such trouble have no claim to such rights, recognition or security, at least none that others are morally bound to respect. All of us broadly agree with this reading of Locke and modern political philosophy generally but the rest of us think that there is more to our founding principles than Locke and that that “more” mitigates the Lockean influence in our regime.

9. Kimberly Shankman, “Natural Law Constitutionalism and the Culture of Death,” argues that the founders incorporated natural law into the regime through common law, that common law is Locke mitigated by Blackstone, and that the later is close to traditional Catholic natural law. She thus suggests that a natural law akin to ours has a legitimate place in constitutional interpretation. John Stack, “Alexander Hamilton, Montesquieu, and the Humanity of the Modern Commercial Republic” argues that these thinkers promoted a commercial way of life that is—at least in this one respect—more hospitable to a culture of life than is the agricultural way of life favored by ancient political philosophers.


11. *Rerum Novarum* identifies “Manchester liberalism” which had greater influence in Europe. “Social Darwinism” was to the same effect in America. The latter was popularized especially by Herbert Spencer’s *Social Statics*. Mr. Justice Holmes dissenting in the Lochner case, which Professor Shankman discusses below, protested that “the Fourteenth Amendment does not adopt Mr. Herbert Spencer’s *Social Statics.”

12. The Encyclicals of Pius IX *Syllabus of Errors* (1864), of Leo XIII *Diuturnum* (1881) and *Immortale Dei* (1885), and of Pius XI *Quas Primas* (1925) treat democracy as a secular form of government not founded on revelation and antithetical to Church structure, teachings, and even, in some cases, existence. The experience formative of this view is primarily with European democracies. Catholicism’s American experience seemed to have been little noticed.

14. “Address delivered by Pope John Paul II” welcoming Lindy Boggs, the new United States Ambassador to the Holy See, December 16, 1997. It may be found at http://www.ewnews.com/news/viewrec.cfm?RefNum=6518. It is noteworthy, in light of the argument made at the beginning of this essay, that the word “principles” does not appear in this address.

15. Before the Reformation, “Catholic” was equivalent to Christian, at least in the West. So to say “natural rights” was Catholic before it was modern means it was Christian before it was modern. Accordingly, I am tempted to speak of Christian rather than Catholic so as not to give my argument a more sectarian rhetorical cast than necessary. However, in doing so I would run the risk of enormous confusion because probably the overwhelming majority of scholars regard Hobbes and Locke as Christian (though of course Protestant) thinkers. But this study presumes and argues that there is a decisive difference between the natural rights teaching of these modern political philosophers, on the one hand, and premodern Catholic political philosophers, on the other.


18. John A. Ryan and Francis J. Boland, Catholic Principles of Politics: The State and the Church (New York: MacMillan, 1940), Ch. VII. The Right of Self Government. This contains extensive quotations and references to Suarez and Bellarmine.

19. Ryan and Boland, p. 84. Gaillard Hunt, Librarian of Congress and editor of the papers of James Madison, of Madison’s Notes on the Federal Convention, etc. To evaluate Hunt’s claim about Jefferson’s lifting from Bellarmine see Hunt’s paper in The Catholic Historical Review, October 1917, p. 289.


25. Ibid., 1.1, 1.3, II.1, II. 5, II. 9, 10.
26. Ibid., II.2., II. 4, 5.
27. II.14
29. II.3ff, pp. 282-286.

30. That this tradition is not only Catholic is indicated by Filmer’s inclusion of Calvin.


32. Ernest L. Fortin, “The Natural Wrong in Natural Rights,” *Crisis*, May 1994, p. 21-22. Fortin explicitly critiques Michel Villey and Brian Tierney, the two leading scholars who have argued that “our rights theory is a product, not indeed of modern political thought, but of the medieval Christian tradition.” The essence of the critique is that they fail to grasp the “vastly different conceptions of morality, one that assumes the point of view of what a given action does to the person who performs it, and the other the point of view of what it does to the recipient.”


34. Matthew 5, 13; Luke 14, 34.