Brian Tierney. *Religion, Law, and the Growth of Constitutional Thought, 1150-1650*. Cambridge: Cambridge University Press, 1982. Pp. xi, 114.

The reader familiar with Brian Tierney's many years of fruitful scholarship on the relation between Church law and constitutional thought will probably find this little book (as its author calls it) to be something of a disappointment. Admittedly, one can hardly object to the impulse that led Tierney to write the volume. As both a corrective to and expansion of Figgis' classic studies collected in *From Gerson to Grotius*, Tierney proposes to disclose the significance of his discovery that certain constitutionalist "themes are common to medieval law, to fifteenth century conciliarism and to seventeenth century constitutional theory. The resemblances are too striking to be mere coincidences; but merely to call attention to resemblances is not to explain the whole phenomenon. The recurrence of similar patterns of thought in different historical environments is itself the problem that needs elucidation" (p. 103). Unfortunately, while *Religion, Law, and the Growth of Constitutional Thought* clearly identifies the various aspects of "resemblance," it never proceeds to explain such "recurrence" in historically intelligible terms.

Those who turn to Tierney's book for insights into the constitutional doctrines of early modern Europe will be particularly frustrated. In the first paragraph of the first page, Tierney announces that "it is impossible really to understand the growth of Western constitutional thought...unless we consider the whole period from 1150 to 1650 as a single era of essentially continuous development." Yet Tierney cites (according to a count of footnotes—there is no index) a mere ten texts dating from the last two hundred years of his time-frame. This might be excused on the grounds Tierney himself offers: namely, that the "material presented...displays the characteristic limitation of the lecture form"—the contents were originally delivered as the Wiles Lectures at Queen's University, Belfast—"extreme selectivity in the topics and authors considered" (p. xi). But such a rationale is not wholly valid; for in surveying the period from 1150 to 1450, Tierney manages to cite upwards of fifty treatises. And more substantively, the only authors dating to the era following the Council of Basle (1432) who merit extended attention are Althusius and George Lawson—hardly representative figures in the history of early modern constitutionalism. As a consequence, Tierney's attribution of medieval origins to early modern constitutionalism in general seems to be largely a case of imputed influence.

A more unsettling charge to be levelled against *Religion, Law, and the Growth of Constitutional Thought* is that Tierney has consciously left the most important and challenging portion of his book unwritten. After devoting in excess of one hundred pages to "the description of the evolution of constitutionalist themes, he admits that the more serious questions remain. Why did the medieval ideas persist? Why did they continue to prove meaningful and useful? Even when we can explain the process of transmission in the simplest fashion—even when we can construct a neat little chain of tests leading all the way from the twelfth century to the seventeenth (and this is indeed often possible)—we shall not have answered, we have not even addressed, the more difficult questions" (p. 105). Tierney then dedicates the final three pages of his conclusion to these "more serious questions."

Not surprisingly, his responses are so unsatisfactory that he is finally led to observe: "It may seem that the whole tradition of Western constitutional thought—both its origin and its persistence—can only be explained as the result of a random play of contingent circumstances" (p. 108). This admission has severe consequences. For the inability to explain in coherent historical terms the recurrence of constitutionalist ideas leaves him without the consolidated intellectual tradition he seeks. In Tierney's account, the various medieval and early modern constitutionalist doctrines are connected by a vague 'family resemblance' rather than by some more essential historical principle.

Does this mean that there is *no* historical foundation at all for a constitutionalist tradition extending from the Middle Ages into modern Europe? Assuredly not. But the identification of the basis for this tradition requires us to re-examine for a moment our historical and historiographical premises. Tierney staunchly dissociates the origins of constitutional theory from the practice of feudal politics. In defense of this view, he cites the fact that the most precious intellectual preconditions for constitutionalism—concepts of "sovereignty," "community," and "state" (pp. 9-10, 30)—were antithetical to feudal institutions, and moreover their introduction occurred only through "external" sources like Roman Law and Aristotle. In turn, Tierney's explanation (derived from Walter Ullmann) for the reception of these "foreign" ideas into the medieval tradition is their immediate applicability to such non-feudal political arrangements as "monasteries, cathedral chapters, collegiate churches, confraternities, universities, guilds, communes" (p. 11; cf. p. 36). It was the novel problems posed by the "new corporate groups" of this order that Tierney believes to have been the "soil" in which the essential constituents of constitutionalism first took root. But Tierney's opposition of feudal institutions to "corporative structures" is historically artificial. For the actual emergence of these corporate communities, so far from conflicting with and/or undermining the arrangement of feudal society, saw their rapid integration into the general pattern of medieval life. As much as Tierney wishes to see "communal experience" and feudalism as in principle antithetical, they were in matter of fact practically compatible. And the reason is that feudalism, understood as the narrow and personalized relationship of lordship and vassalage (*fodalit*), was but a single and limited aspect of a more general social system (*fodalisme*) characterized by the decentralized and fragmented distribution of political authority in essentially private hands. Hence, while various communal organizations, when viewed in isolation, seem incompatible with the personal bonds of the feudal contract, both political forms constitute prime instances of the widespread and uncoordinated dispersion of sovereign power upon which feudal society was constructed. Concomitantly, it was the process, internal to feudalism itself, by which this power was progressively reconcentrated—first in principalities, later in kingdoms—that provided the most crucial recurring political issues in medieval and early modern Europe.

When conceived in these terms, it then becomes possible to treat the constitutionalist tradition as a response to the increasingly pressing problem endemic to feudalism of the accommodation of public power (generally represented by monarchy) to the privatized distribution of jurisdictions and liberties. Of course,

constitutionalism was not the *only* sort of response to this historical reality, for as Tierney rightly remarks, "one could just as easily write a history of absolutism as a history of constitutionalism" covering the same era (p. xi). Where absolutist authors sought to integrate the power of private franchises into the state office structure by appeals to royal supremacy/sovereignty, however, constitutionalist theorists beginning in the Middle Ages proposed that at least some right and powers were so thoroughly imbedded in private hands that they could never be claimed (or reclaimed) by any superior authority. The constitutionalist view might take the form of an unabashed defense of local individualized and/or corporate rights; or it might adopt the more sophisticated strategy of the "mixed constitution" theory. But always it involved a denial of *plenitudo potestatis* on the part of an ultimate or "sovereign" ruler (regardless of composition). A recurrent aspect of the constitutionalist tradition throughout its medieval and early modern history was the principle that no ruler could be afforded a regularized set of arbitrary or discretionary powers which might be used to interrupt the particularized jurisdictions of the *dominus* and the *universitas*.

Tierney's insensitivity to the crucial historical dimension of medieval and early modern political thought does not, however, invalidate his claim that the constitutive features of constitutionalism first arose within the context of Christian ecclesiology. Conciliar theories of the church constitution—such as those advocated by Gerson and d'Ailley, whose influence was later felt in secular circles—were in fact founded on canonistic doctrines dating to the twelfth and thirteenth centuries. But this ecclesio-canonical impact upon secular constitutionalism can itself be explained historically. After all, the Western Church, as the most "advanced" system of feudal politics during the High Middle Ages, suffered at an early date from serious conflicts between local jurisdiction (bishops, communities, "national" churches) and the centralized administration of the papacy. It was these sorts of conflicts that were eventually to be transferred to the realm of secular politics. Despite the special circumstances implied by ecclesiastical government, the temporal organization and consequent jurisdictional disputes of the Church typify the feudal polity as accurately as do the conditions of the French or English kingdoms. The problems implied by feudal political organization were felt by clerical and lay lords, communities and rulers without substantial differentiation, and were addressed by authors concerned with the governance of ecclesiastical and secular affairs alike. Such facts are hardly incompatible with the basic insights of *Religion, Law, and the Growth of Constitutional Thought*. But Tierney's failure to inspect adequately the historical foundations of the constitutionalist tradition means that the more compelling issue of accounting for recurrent intellectual "resemblances" is, at least by inference, pushed entirely aside.

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