

ST. DOMINIC—A STATESMAN

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DOMINIC GUZMAN is a Saint. That fact is duly attested by the authority of an infallible Church. But that he was also a statesman—a statesman of the highest order—is a fact that has never been adequately recognized. His foundation of an Order of learned and holy men gave impetus to the great intellectual movement of the thirteenth century; the part he played in restoring the Gospel to its primitive place in the hearts of the faithful is widely acclaimed; it is acknowledged that, by the happy combination of the active and contemplative life, he revolutionized monastic influence on the world.

But these boons, great as they are, have little interest for those not of the True Faith. The world at large looks upon St. Dominic at best with indifference—it is not aware how extremely interesting, how modernly democratic, was this thirteenth century friar. England, however, has begun to discover his political genius,¹ but except for an occasional reference² to the perfection of the legislative code by which the Order of Preachers has for more than seven hundred years been governed, America has yet to learn that this mediaeval friar left behind him at his death a self-governing institution with a basic code of laws, so like in many respects to the Constitution of the United States, that we wonder if the Dominican Constitutions have ever received serious consideration as a possible source of our fundamental law.³ It may, indeed, come as a surprise to many, accustomed as we are to look upon our theory of representative government as a political novelty, to learn that self-government through

¹ Among recent studies may be mentioned: Ernest Barker, *The Dominican Order and Convocation* (Oxford, 1913); B. E. R. Formoy, *The Dominican Order in England before the Reformation* (London, 1925); G. R. Galbraith, *The Constitution of the Dominican Order* (Manchester, 1925).

² The editorial comments of *The Commonweal*, V (1926) No. 6, 146, concerning a radio address made last December by Rt. Rev. John J. Dunn, D. D., Auxiliary Bishop of New York, on "Religion and Democracy," suggested this study.

³ The popular tradition, still extant, that Thomas Jefferson possessed a copy of the Dominican Constitutions, seems to be without foundation. Jefferson, moreover, was in France during the sessions of the Constitutional Convention, but he was only one of the great men who shaped the destinies of the Nation.

elected representatives was one of the distinctive features of the Dominican code seven centuries ago.

It will be quite impossible to treat at length even one of the great and complicated problems that properly enter into a study of the origin of the representative system of government—volumes would be required for an adequate study—but, after a few preliminary notions on the meaning of terms, we shall select one principle that is fundamental in representative institutions and endeavor to show that, whatever the origin of the principle of representation, St. Dominic was the first to apply it in its populo-elective aspect to the legislative assembly of a self-governing community. The history of these chapters,—for such were they called—their acts, their development, their mode of transacting business, no less than the influence they exerted on the form and composition of ecclesiastical synods and political assemblies, would all make interesting studies, but they cannot be detailed here. We must be content with one phase which is essential in truly representative institutions, *viz.*, self-government through a sovereign legislative body chosen by the community.

The principle of representation is founded upon the natural relation between rulers and subjects. No man has by his nature the right to rule others, but only in so far as the community recognizes, either implicitly or explicitly, such authority as delegated to him. The idea is as old as society itself. Yet there is a distinctive type of government, which we designate *representative*, founded certainly upon this primitive concept but involving active participation of the people in the functions of government. We may define representative government, then, as that system of popular rule in which the people, the whole people, while not actually "present in person at the seat of government, are considered to be present by proxy."⁴ It is based, therefore, on some principle of specifically delegated authority freely given, and postulates popular sovereignty. A representative legislative assembly, then, is a law-making body in which the people, through delegates freely chosen by them to act for them and in their name, make the laws by which all are to be governed.

We can find no trace of a representative assembly in any of the great nations of antiquity that have exerted a marked influence on modern civilization.⁵ In the golden days of Greek democracy the people who were free and possessed of political rights (and this was

⁴ Henry J. Ford, *Representative Government* (New York, 1924), p. 3.

⁵ Otto Gierke, *Political Theories of the Middle Ages* (Trans. by F. W. Maitland, Cambridge, 1900), p. 64.

but a small minority), took part in matters politic, but their action was direct, not through representatives. We may consider the great Roman Senate as a representative body in the sense that all classes of freemen were there represented, for it will be recalled that not only patrician families were admitted to membership in that august assembly, but any freeman, who by dint of perseverance worked his way thither through the circuitous *cursus honoris*, was eligible for membership. But Senators were not the representatives of the Roman people.⁶ The Senate constituted a close aristocracy and took care to see that it so remained. In theory, indeed, law emanated from the people and the mockery of elections was gone through. But, although the jurists of the Middle Ages disputed as to whether or not the Roman people in originally constituting the Senate forever relinquished their sovereignty, the fact remains that in practice the Senate legislated *for* the people—the people did not legislate *through* the Senators, their representatives. Moreover, the Senate originated as the legislative body of a city-state and ever retained this local characteristic. Taking *representation*, then, in its widest acception, the Senate never *represented* the Empire over which it legislated.

Prior to the middle of the last century, the theory generally accepted was that representative government had its origin in the Middle Ages as an English constitutional development. During the past seventy-five years representative government has been viewed as a mere restoration of natural and primitive rights enjoyed and practiced in the ancient Teutonic assemblies of freemen. These institutions, germinating under the inspiring influence of a tribal freedom that had never yielded to Rome in her pagan days of military domination, that never fully accepted the spiritual lordship of the Greater and Eternal Rome, developed into the parliamentary system of England, the "Mother of Parliaments," and model and origin of all that is good and holy in this modern progressive world. This is the theory that prevails in popular histories today. And it is also held among the majority of scholars in the United States, despite the fact that English scholarship has rejected it as contrary to economic facts and lacking historical foundation.⁷

Without entering into too much detail, the theory assumes a

⁶ H. L. Havell, *Republican Rome* (New York, 1914), pp. 128-9, 333-4, 338.

⁷ The whole theory is based upon the existence of the Mark as a primitive Teutonic institution. Green made it the foundation of his popular *History of the English People*, and our own eminent constitutional lawyer, Hannis Taylor, interwove this theory throughout his scholarly work *The History and Growth of the English Constitution*. For full discussion, cf. Ford, *op. cit.*, p. 30 ff.

political condition obtaining among the Anglo-Saxons which modern research has failed to substantiate. Representative government demands popular freedom, and certainly the vast majority of the Teutonic races were not free men. The agricultural classes, around whom the Mark theory and its assembly centers, were downright slaves among the Teutonic tribes, and were held in serfdom in every state in Europe until well into the fourteenth century. It is indeed easy to account for the rise of feudalism in England if we view the Anglo-Saxons as a race of conquerors who lorded it over the Celtic population of Britain, but historians place themselves in sad plight when they encounter feudalism rising from a net-work of free communities accustomed to self-government and popular representation. The Norman Conquest certainly gives no satisfactory explanation, even in the light of Magna Charta being a simple restatement of ancient and primitive rights of Englishmen, for too much is read into the wording of that document today in view of modern political theories;⁸ in fact, intents and purposes are assigned that could not have occurred to the framers of that historic document. That John had encroached upon baronial and feudal rights, is the most that can be substantiated by subsequent events. It was not until the growing power of free communities made itself felt in the adoption of a system supplied by the Dominican constitutional model,⁹ that representative government had its first beginnings in England. A careful analysis of the political concepts of the Middle Ages must produce the conviction that the origin and history of representative government embraces a wider field than that of the English Constitution.¹⁰ Indeed it seems impossible to avoid the conclusion that it is a Latin contribution to civilization. However, the question has engaged the attention of historians for several generations, but as yet no satisfactory solution has been made.¹¹ Nevertheless, since we are concerned with the origin of one characteristic of representative government, *viz.*, self-government through a sovereign legislative assembly whose members are freely chosen by the people, we must hazard a conclusion.

⁸ G. B. Adams, *Civilization during the Middle Ages* (rev. ed., New York, 1922), p. 336 ff.

⁹ Barker, *op. cit.*, *passim*.

¹⁰ W. A. Dunning, *Political Theories—Ancient and Mediaeval* (New York, 1902), p. 251.

¹¹ The solution proposed by Ford, *op. cit.*, that the representative system was originally merely an appendage to royal authority formed upon a pattern supplied by the Dominican Order, has not been well received in non-Catholic circles.

It is universally admitted by scholars that in mediaeval political theory the power to make laws ultimately rested with the people.¹² And this is but a recognition of the contractual basis upon which society was then organized. Kings and emperors at times imposed their wills on their subjects, but feudal society was able to check and restrain the rulers of its creation: history, indeed, records many instances of deposition. The absolutism so characteristic of the later Middle Ages and the Reformation period was unknown in the twelfth and thirteenth centuries. This was due in no small part to the thoroughgoing Christian concept of human dignity and to the hierarchical division and tenure of lands which determined political rights and duties, and which recognized no absolute ownership of the land except that vested in the king as representing the community. The use of land was held immediately from the king, or mediately from a lesser feudatory,¹³ in return for services (usually of a military character) rendered and to be rendered. In either case the command of no superior lord could be proclaimed in the land of his tenants without their consent. Legal arrangements or enactments, then, somewhat resembled modern international conventions or agreements between sovereign states. "Hence, legislation takes on the shape of a *stabilimentum* or of an assize enacted in the court of the superior lord with the express or implied consent of the vassals."¹⁴ Consequently every king had his Witan or council of princes who spoke for themselves and for their tenants. But the phenomenal development of the mediaeval free cities, their commercial importance, the growth of national consciousness, presented new problems. The feudal lord might consent for his tenants and fiefs and take care of their assent, but how secure the acquiescence of free communities? A voice in the king's council was the only answer. So in the latter part of the twelfth and first part of the thirteenth centuries popular

¹² To quote a few: Gierke, *op. cit.*, pp. 38-39; Dunning, *loc. cit.*; James Bryce, *The Holy Roman Empire* (New York, 1907), p. 225; R. W. and A. J. Carlyle, *History of Mediaeval Political Theory in the West* (New York), I (1903), p. 292, II (1910), pp. 59-75, III (1919), pp. 45, 153. As St. Thomas puts it: ". . . condere legem vel pertinet ad totam multitudinem, vel pertinet ad personam publicam, quae totius multitudinis curam habet." *Summa Theologica*, Ia, IIae, q. 90, a. 3. He explicitly teaches that this public personage has no power to make laws, "nisi in quantum gerit personam multitudinis,"—except as representing the people. *loc. cit.*, q. 97, a. 3, ad 3am.

¹³ Bede Jarrett, O. P., *Social Theories of the Middle Ages* (Boston, 1926), p. 131.

¹⁴ Sir Paul Vinogradoff, "The Feudal System," *Cambridge Mediaeval History*, III, 471.

representatives first obtained admission to the Cortes, Councils, Assemblies or Parliaments, of nations. The Spanish states of Aragon and Castile were the first to admit delegates of the towns to the Cortes,¹⁵ most probably in 1163 and 1188 respectively. Sicily was the next to follow suit in 1232, Germany in 1255, England in 1265, and France in 1302.¹⁶ But none of these assemblies were sovereign legislative bodies—they were at best consultive councils in which the popular element comprised but a small and timid minority, and were summoned for the most part to consent to tax levies. Popular representation in legislative assemblies, according to the modern acceptance of a legislature as a sovereign deliberative body, had no existence in the political world of the Middle Ages. But it did exist in the ecclesiastical world. It had its origin in the Dominican General Chapter of 1220, and, in the case of England, seems to have found its way into the civil constitution through Dominican influence.

It should occasion no surprise that we speak of *popular* representation in connection with ecclesiastical institutions, for if the equality of men was ever recognized it was in the Church; if the equality of men ever found adequate expression, it was in the societies of those holy men who left the world and its honors to follow Christ more closely in a true brotherhood. There birth, rank, worldly greatness, counted for naught; all were brothers in Christ. There all were equal, all had a voice in the choice of their ruler; and if the masters of this world had allowed them freedom from external control in the regulation of their community life, the history of monasticism would not be disgraced by the scandal of its worldliness and consequent disorders.

But to return to our subject: when Dominic sought papal approbation of his long-cherished plan of founding a world-wide order of preachers, he was directed by Innocent III to choose, in consultation with his brethren, a rule of life from amongst those already approved by the Holy See. The Rule of St. Augustine was selected as the one most suitable upon which to build, and it seems that a rather definite constitution was then adopted to supplement the basic Rule.¹⁷ After the confirmation of the project by Honorius III, Dominic assembled the brethren at Prouille where he called for the election of an assistant to rule in his absence and to succeed him in

¹⁵ C. E. Chapman, *History of Spain* (New York, 1918), pp. 91 and 97.

¹⁶ Adams, *op. cit.*, p. 323.

¹⁷ cf. footnotes in *Analecta O. P.*, II, 631, 643-5; III, 29, for confirmatory excerpts from the early chroniclers.

the event of his death.¹⁸ Then utilizing the authority that he had received from the Holy See, and which was also his by reason of the vows of his brethren, he dispersed them to the great centers of learning.

The scheme was bold and unprecedented. Like all works of God it met with marvelous success. Indeed, within four years convents were established in all parts of Europe. Their administration required comprehensive organization and a more complete code of laws to supplement the Rule and primitive constitution. Dominic rose to the occasion in true statesman-like fashion. It must be remembered that he had full authority from the Holy See to legislate for his brethren;¹⁹ he might have drawn up a scheme of government and a code of laws as other founders of religious communities had done in the past, for in the Church, authority and jurisdiction are delegated from above by divine institution—not from the people. However, he was imbued with the growing expression of a principle, ever cherished in the Church, that, abstracting from the divine law, the community is somehow sovereign. Hence, in amplifying the basic Rule, in drawing up a definitive constitution, he would consult the brethren. Accordingly he summoned a general chapter of the infant Order to meet at Bologna on the Feast of Pentecost, 1220.

The abbot of the Benedictines had been a lawgiver as well as father and administrator; Cîteaux had brought into being an abbatial assembly to assist the Abbot General in regulating and moderating the established rule. The general chapters of the Premonstratensians had begun to assume legislative functions hitherto belonging to the abbot.²⁰ The Hospitalers and Templars had effected a strong centralized hierarchical organization. Dominic borrowed from them all—elections from the Benedictines, centralization from the Military Orders, the general chapter most probably from the Premonstratensians, for many sections of the Dominican Constitution were taken verbatim from the Norbertine model.²¹ But he went further—he boldly broke

¹⁸ The choice fell upon Matthew of France. He was the first and only one in the Order to bear the title of abbot. *Acta Sanctorum*, Augusti Tom. I, pp. 452 and 454.

¹⁹ Theodorich of Apoldia says this explicitly: “. . . ex concessione quippe Sedis Apostolicæ acceperat et habebat tunc temporis totum Praedicatorum Ordinem disponendi, ordinandi, corrigendi plenariam potestatem.” *Acta Sanctorum*, loc. cit., p. 590. The Bollandists confirm this on the testimony of Echard and Malvenda, *op. cit.*, p. 490.

²⁰ Bede Jarrett, O. P., *The Religious Life* (2d ed., New York, 1919), p. 115.

²¹ cf. *Analecta*, O. P., II, 622, quoting Bl. Humbert de Romanis, Fifth Master General of the Order.

away from old moorings and launched out into a hitherto uncharted sea. His chapter would be composed, not only of superiors, but also of representatives (*diffinitores*) chosen from amongst and by the brethren to act for them and in their name.²² He made a clear-cut distinction between legislative and administrative functions.

His was no great concourse such as the chapter of the Franciscans. They assembled, not for legislative action, but "for mutual edification."²³ But even if legislative, the action of the Franciscans was direct, not representative. Nor was Dominic's assembly a group of superiors only, after the manner of the Cistercians, Hospitalers and Premonstratensians. The Dominican chapter was to be composed of superiors and representatives of their subjects, summoned for the purpose of formulating laws which should bind the whole body.²⁴ How numerous were the representatives in this first chapter we do not know, but we do know that four were summoned from Paris and that among those sent was Jordan, not yet two months in the Order and destined to become the immediate successor of the Holy Founder himself.

One of the first acts of the chapter is most significant. St. Dominic wished to resign as head of the Order. The chapter would not yield; rather, he who heretofore had tenure of office by Apostolic authority was now elected by the suffrages of his brethren.²⁵ But the Saint, abjuring his authority during the sessions of the chapter, ordained that henceforth they should establish *diffinitores* who should

²² This power of the *diffinitores* is clearly stated by Bursellis: "Anno 1228 celebratum est Capitulum . . . in quo convenerunt omnes Priores Provinciales, singuli cum duobus Definitoribus a Capitulis Provincialibus deputatis, in quos omnes Fratres vota sua unanimiter transtulerunt eisdem potestatem plenariam concedentes . . ." *Analecta O. P.*, IV, 173. Their powers are more fully defined in the Constitutions.

²³ Johannes Jorgensen, *St. Francis of Assisi* (Trans. by T. O'C. Sloane, London, 1913), p. 178.

²⁴ The superiors and *diffinitores* were not to be summoned to the same chapter. The Chapter of 1220, with which we are now concerned, as well as the following Chapter of 1221, was composed solely of *diffinitores*. The superiors made up the assembly of 1222. This order was followed most faithfully for more than a century. cf. *Analecta O. P.*, III, 609, and Galbraith, *op. cit.*, pp. 255-8.

²⁵ Malvenda is quoted by the Bollandists, *Acta Sanctorum*, *loc. cit.*, p. 491, as saying in his *Annales*: ". . . et quod ante a Pontifice habebat, nunc electione Fratrum accepit, seu potius communi consensu, auctoritatem supremi praesidentis, quam in totum ordinem a Sede Apostolica acceptam exercebat, Fratres acceptarunt, agnoverunt, probarunt, inspexerunt, venerati sunt; et si opus esset, ipsi de novo eum in suum Magistrum et praefectum eligebant."

have power over him and the chapter during its deliberations.²⁶ Thus guaranteeing to it freedom from executive control, he established it as the supreme authority of the Order. Indeed, it seems that Dominic was carried away by his extreme democracy, for he wished to commit the administration of all temporals to the lay-brethren of the Order that the office of preaching might not be disturbed by worldly cares, but in this he was over-ruled by the chapter.

It is to be regretted that the acts of this and other early chapters have disappeared, but we know from Bl. Jordan²⁷ and other early chroniclers of the Order that the chapters were to be an annual affair, and that in 1220 and 1221, under the presidency of St. Dominic, the Order received the substantial form of organization which was embodied in the Constitutions of 1228.²⁸ According to this ancient code, the Order was divided into twelve provinces (four new ones being formed in that year in addition to the eight established in 1221). At the head of the whole Order stood the Master General and General Chapter; at the head of the provinces, the provincial prior and the provincial chapter. The unit of government was the convent whose chapter, composed of all the members of the community,²⁹ elected its prior. He, together with a companion (*socius*) chosen by the conventual chapter to represent it and care for the interests of the governed, made up the provincial chapter. Among the manifold functions of this provincial assembly were: the election of prior provincial, election of *diffinitores* to the General Chapter, and the selection of an inner council or committee of four, also called *diffinitores*, whose duty it was, among other things, in conjunction with the provincial, to draw up laws to meet the particular needs of the province for submission to the whole body for discussion and approval.³⁰

The General Chapter forms a most interesting study. It was presided over by the Master General and composed one year solely of provincial priors and in the two following years solely of elected

²⁶ *Acta Sanctorum*, loc. cit., p. 590, quotes Theodoric of Apoldia: “. . . decrevit . . . ut deinceps statuerentur diffinitores, qui haberent potestatem super ipsum et totum Capitulum diffiniendi, statuendi, ordinandi, donec duret Capitulum, salva imposterum reverentia magistrali.”

²⁷ *Vita S. Dominici* given in full in the *Acta Sanctorum*, loc. cit., p. 551.

²⁸ *Analecta O. P.*, II, 610-648.

²⁹ The Constitutions of 1228 required membership in the Order for one year to qualify as an elector.

³⁰ This inner circle seems to have been adopted from the plan of organization of the first general chapters. Galbraith, *op. cit.*, insists that the general chapters never had a small inner committee, but certainly this is not true of the Chapter of 1220. cf. *Analecta O. P.*, III, 609.

diffinitores from the provincial chapters. It was the supreme law-making authority of the Order. It had power to legislate, not only through the provincial chapters, but also directly on the whole Order. For a law to acquire or lose the binding force of a *constitution*, it had to pass through three successive chapters, i. e., through one composed solely of provincials and two made up of *diffinitores* or representatives. To the General Chapter also belonged the election of the Master General, and in this case was made up of both provincials and *diffinitores*, i. e., all provincial priors and two *diffinitores* from each province. This was also the make-up of the *Capitulum Generalissimum*, which, because it contained the personnel of three ordinary chapters, could at one fell stroke make or unmake a constitution. But every elective chapter was not a *Capitulum Generalissimum*. Because of its extraordinary power it could be convoked only by special extraordinary authority, and then only in cases of urgent necessity. In fact it convened but twice in the seven centuries of the Order's existence.³¹

Such in brief outline was the organization designed by St. Dominic to govern his army of preachers spread over the face of Christendom. That the whole plan, with the exceptions noted, was matured during Dominic's lifetime and under his direction is fully substantiated by the meagre accounts of the proceedings that have come down to us. That the scheme thus formulated has remained unchanged in its essential characteristics, should be sufficient proof of how well and how wisely he built. But it is chiefly in the practical expression of great fundamental principles that he merits to be ranked among the great statesmen of the world. Aside from ecclesiastical institutions freedom and equality found no recognition in mediaeval political theory, but it was accepted, even then as now, that sovereignty resided in the community, that the law emanates from the people; yet despite the philosophical discussions of the

³¹ As noted above, the priors provincial and *diffinitores* were not at first summoned to the same chapter. They were, however, jointly convoked in extraordinary session in 1228 by Bl. Jordan, then Master General of the Order, constituting what was called a *Capitulum Generalissimum*. It was there determined that the Master General should be elected by a chapter thus constituted; previously this had not been the case, for Jordan himself was elected by a chapter of provincials. Here also it was enacted that before an act of the chapter should become a *constitution*, i. e., have juridical effect, it must pass unchanged and in determined form through three successive chapters. To Bl. Jordan, then, and not to St. Dominic, these three phases of the Dominican legislation must be attributed. It is interesting to note here that this *Capitulum Generalissimum* of 1228 was, perhaps, the first Constitutional Convention, in the modern acceptation of the term, in history.

Schoolmen and the restless constitution making of the thirteenth and fourteenth centuries, these principles, though here subjected to the oft misunderstood divine authority of the Church, never found in the political world such democratic expression as that embodied in the Dominican Constitutions.

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