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God and Man in the Law: The Foundations of Anglo-American Constitutionalism

Robert Lowry Clinton

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Is man truly the measure of all things? If so, then perhaps that very premise accounts for our nation's constitutional ills.

In a wide-ranging study based on legal history, political theory, and philosophical concepts going all the way back to Plato, Robert Clinton seeks to challenge current faith in an activist judiciary. Claiming that a human-centered Constitution leads to government by reductive moral theory and illegitimate judicial review, he advocates a return to traditional jurisprudence and a God-centered Constitution grounded in English common law and its precedents.

Building upon his widely-discussed work *Marbury v. Madison and Judicial Review*, in which he urged the need for greater judicial accountability, Clinton reviews the transformation of legal traditions through the "Marbury Myth" and advocates a jurisprudence that would constrain capricious judicial interpretation by re-establishing traditional methods of legal analysis and rules of precedent. He seeks to ground constitutional theory in common law reasoning, and to ground common law reasoning in a naturalistic jurisprudence—conceived along Thomistic lines—that presupposes a transcendent source of legal order in the world.

Clinton argues that his proposed reorientation is superior to today's most influential approaches to constitutional interpretation, particularly academic moralism and subjective intentionalism. His account of the doctrine of original intention particularly helps to clarify an issue that has until now received much political attention but little scholarly analysis that is not already associated with these prevailing approaches.

God and Man in the Law joins a literature that stands at the intersection of political science and the study of law and will enlighten scholars who study constitutional matters in both fields. By focusing on the relation between judicial review and constitutional interpretation, it challenges judges to reclaim the traditions of the past for the sake of democracy's future.

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