

**THE PROBLEM OF THE COMMON GOOD AND THE CONTEMPORARY
RELEVANCE OF THOMAS AQUINAS**

by

Mary Martha Keys

**A thesis submitted in conformity with the requirements
for the degree of Doctor of Philosophy
Graduate Department of Political Science
University of Toronto**

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ABSTRACT

This dissertation considers the contemporary importance of the concept of the common good. It argues that an important contribution towards understanding the common good, especially in its relation to the good of individual human beings, can be made by reexamining the thought of Thomas Aquinas. The first chapter treats Michael Sandel's critique of John Rawls's *Theory of Justice*, insofar as it bears upon the possibility, nature, and limits of a genuine common good. Various limitations in Rawls's liberal and especially Sandel's communitarian notion of the common good prompt an inquiry into Aquinas's position. The second chapter analyzes the mid-twentieth-century exchange between Thomists Jacques Maritain and Charles De Koninck on the relation between personal and common goods. Chapters three through five center on Thomas's texts themselves. Chapter three aims to explicate how, according to Aquinas, the social and political orientation of human nature informs the human or moral virtues, thereby elucidating an important aspect of the interrelation between proper and common goods. Chapter four treats Thomas's conception of "legal" or "general justice," that virtue which considers human acts in their social orientation, and inquires why he posits it as a

preeminent personal excellence. The fifth and final chapter turns to human or civil law, which Aquinas stipulates should be framed for the community with a view to the common good. Aquinas's estimation of law's possibilities and limitations as an "extrinsic principle" of good acts and virtue are examined. The dissertation concludes by suggesting that Thomas's engagement of the problem of the common good, while not without problems of its own, is most timely for being both political and transpolitical. Aquinas reminds the contemporary reader of both the ethical core of politics, and the fact that human morality requires a political completion. At the same time, he stresses that the tensions, ambiguities, and limitations inherent in all things human can only be resolved in the light of the transcendent common good. As long as the full transcendence of the theological virtues is recognized and respected, Aquinas's reflections on virtue and the common good should prove as moderate as they are ennobling.

***The Problem of the Common Good
and the Contemporary Relevance of Thomas Aquinas***

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The Problem of the Common Good and the Contemporary Relevance of Thomas Aquinas

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Chapter 1: A Contemporary Perspective¹

Why would anyone engaged in the study of political science want to write a doctoral dissertation on the rather well-worn and abstract notion known as “the common good?” And why dedicate considerable time and energy to the treatment of that subject in the work of a medieval philosopher-theologian who built on classical foundations, rather than focus primarily on the writings of contemporary theorists?

These are certainly legitimate questions, but I believe that they can be answered. In this introductory chapter I will suggest that our own times and society are in particularly urgent need of an articulation of a viable theory of the common good and of its relation to the good of individual persons. I will then proceed to argue, in somewhat greater detail, that even the most

¹Sections of this chapter, in Spanish translation, are incorporated into an essay entitled “La persona: límite expansivo de la comunidad en M. Sandel” (“The Person: Expansive Limit of the Community in the Thought of Michael Sandel”), coauthored with Concepción Naval, publication forthcoming in *Razón Práctica y Multiculturalismo (Practical Reason and Multiculturalism)*, Enrique Banus, ed., EUNSA, 1998.

thoughtful contemporary efforts at such an articulation ultimately fall short of the mark. Perhaps then we shall find it easier to consider the possibility that pre-modern theorists might have understood certain aspects of this question better than we do, and thus that we might well learn something important from them. I will finish by indicating briefly the manner in which I propose to treat the problem of the common good as it comes to light in the thought of Thomas Aquinas.

I. Introduction: the problem and its contemporary significance

The sorry state of society in the modern West is evident to just about all intelligent and honest observers. From the family to the political community, the dissolution of social bonds and the abdication of social responsibilities have reached alarming proportions: it suffices to mention the divorce rate, high levels of abortion and child abuse, increases in violent crime, the heightening of racial tensions, and the relative apathy towards political participation coupled with widespread cynicism regarding politicians and political life in general. A parallel--and, I will argue, intimately related--contemporary phenomenon is a degradation of cultural life: pop-culture of videos and rock music, creating ever more passive minds and empty hearts ruled by constantly stimulated bodily passions; elite postmodern culture dedicated to "weak thinking" and "just gaming," and thus hardly capable of uniting individuals in endeavors to achieve high ideals, civic or other.

Citizens and scholars anxious to understand the causes of this situation with a view to ameliorating it might well begin by noting the great extent to which collective adherence to the principles underlying and justifying liberal political society has weakened in recent decades. When

a society's foundational norms of right are undermined in so widespread a manner, civic health and cohesion can hardly be expected to flourish. Modern natural right, once for us what Augustine (following Cicero) termed that “common notion of justice” or “common love” which binds society together, has been dethroned with nothing solid to succeed it.²

But perhaps this formulation of Augustine should lead us to recognize an even deeper level of the source of our social malaise, one located at the very heart of modern natural right or liberal political-economic theory itself. One way of expressing the problem is this: beginning with Hobbes and Locke, we observe that the liberal “common notion of justice” is not really founded on a “common love” at all. Rather, it is founded on a common or universal fear: fear of violent death or of bodily pain and privation. Put another way, there is no *summum bonum* for our intellects to discover and for all to recognize, love and strive to attain. There is instead only a *summum malum* of a material and sensible nature, immediately evident to all individuals, which the most primordial passions direct each to avoid at all costs.

Hence the foundations of civil society and government come to light as the product of a sort of clever human engineering, designed to create an environment in which each individual might defer, in the greatest degree and for the longest time possible, his or her inevitable encounter with the *summum malum*. Cast in a more positive light, civil society and government exist, or ought to exist, as rational means calculated to procure on as wide a scale as possible that somewhat oxymoronic commodity labeled by Machiavelli as “the common benefit of each” (Pangle 1988, 169). This strange term may be understood as the collective focus of each and all

²Cf. *City of God* II.21 with XIX.21, 24.

on procuring and securing individual well-being, comprised of those particular goods which are especially private or non-sharable: bodily health and pleasure, wealth, professional success, reputation and honor or recognition. Government, when it does its job well, preserves law and order and greases the wheels of a fluid capitalist economy, in order to ensure for as many as possible the opportunity to obtain and enjoy these private goods.

It is then not at all surprising that what has sprung from these roots has been a progressively more radical “privatization of the good,” as Alasdair MacIntyre has aptly termed it (1990). This privatization is manifest in two distinct but not unrelated senses: first, in a certain relativism or subjectivism regarding the identity of the good, or of the good life. From the plurality of opinions regarding the good it is inferred that there is no one highest good or set of goods to which we as individuals and as a society should dedicate ourselves to pursuing. The good for each person is ultimately what he or she decides or even merely feels to be so. The determination of the good is thus fundamentally a matter of private choice or even of whim.

Secondly, those “low but solid” commodities which are universally recognizable as best suited to putting off the *summum malum* are, as we have just seen, essentially the most private or non-sharable of goods. Most, such as health and comfort, relate primarily to the well-being of the body, identified since Plato as the principal locus of individuation and privatization. Even those goods which have more to do with the heart and mind of a person, such as success or recognition, diminish in value to the extent that they become shared by more and more people. To give a prosaic example or two, “an apple a day keeps the doctor away,” but not if I must divide it among all the students at the University of Toronto. An “A” in political science at the University of Toronto brings me recognition and honor, but not if it is shared by every last one of my

classmates. To be really good for me, to benefit me, such commodities must be more or less exclusively my own, my private possession.

So today, in United States at least, we are left with the following discomfiting and disconcerting situation: our society, “conceived in liberty and dedicated to the proposition that all men are created equal,” has become, partly through a conscious rupture with these beginnings but also in part through a natural evolution from them, more reflective of a principle once described by Uncle Screwtape (and also by Augustine and Thomas Aquinas, albeit in different words) as the foundational premise of hell:

The whole philosophy of Hell rests on recognition of the axiom that one thing is not another thing, and, especially, that one self is not another self. My good is my good and your good is your good. What one gains another loses (Lewis 1943, 92; cf. *Ciry of God* XII.1 and *Summa Theologiae* I 63, 2, c.).

Now there certainly are positive aspects of modern liberal society which should not be made light of, much less forgotten. Toleration rises and a certain humanity becomes more widespread; individual rights and liberties are recognized and protected by law; material well-being increases considerably. But now, perhaps, we are in a position to see more clearly and to face up to the more disturbing side of modern liberalism and its products: a greatly increased proportion of “hollow men,” or of unhappy, lonely, unfulfilled people who recognize no unbreachable duties toward others, certainly none beyond the minimal requirements of legality.

Countless individuals have descended to a frightening superficiality and apathy of existence, from which they occasionally seek to escape by such essentially irresponsible means as alcohol or drug abuse, or by extra-marital sexual activity desired primarily as a source of pleasure.³ One thing which these and other such pastimes have in common is that they make virtually no elevating demands of the individual's heart or mind. If Hannah Arendt was correct in identifying the “banality of evil” as a striking characteristic of our century, perhaps we might with equal reason lament a general “banalization of the good.”

It would appear that, as Tocqueville predicted, we have permitted the materialistic, individualistic tendencies inherent in liberalism to corrode social bonds at nearly every level and to weaken the sense of personal calling to fulfill a higher purpose in life.⁴ Paradoxical as it might seem, the evidence strongly suggests that excessive focus on the self and its rights has gravely endangered the existence of true or truly fulfilled human selves.⁵

³For brief but penetrating discussions of the effects of this situation on youth, see Christopher Lasch's *New York Times* guest column, December 27, 1989, quoted in Pangle 1992, 80; and John Paul II's homily for World Youth Day, August 15, 1991, Czestochowa, Poland, recorded in *L'Osservatore Romano*, English language edition, No. 34, August 26 1991, 7.

⁴See *Democracy in America*, Vol. II, Bk. II, chs. 2, 10 and 11, and Bk. IV, ch. 6.

⁵For contemporary analysis pointing to this conclusion at the levels of family and political community, see Glendon 1987 and 1991.

II. *Sandel's communitarian critique of Rawls's liberal justice*

As the superficiality and fragmentation of our social scene have become more and more difficult to deny, the academic world has witnessed what might be called the communitarian backlash. In its critique of individualism, communitarianism comes to light as the scholarly parallel of a growing popular “longing for community,” for a sense of belonging to a greater, more meaningful whole capable of elevating and fulfilling the individual's existence. Such a shift of emphasis is essential, its proponents argue, if we are to foster personal well-being and healthy societies.

There would then appear to be reason to hope that this new approach to politics might in fact be all that we need in order to recover a full and ennobling theory of the common good. And yet I will argue that, much as there is that is both commendable and enlightening in this strain of contemporary anti-individualism, a conversion to some form of modern communitarianism is an inadequate cure for our spiritual and social malaise. In order to see more clearly why this is the case, I propose to begin by analyzing the work of Michael Sandel, one of the most influential of contemporary communitarian scholars.

Sandel's theoretical enterprise is essentially a critique of what he terms Rawlsian “deontological liberalism.” He seeks to replace this rights-based vision of person and politics with one resting on the primacy of the common good. In this first chapter of the dissertation I propose to examine the arguments on which Sandel's new paradigm rests, and to bring to light the character of the common good he would reinvigorate. Although his communitarian theory is in

many respects deeper and more truly humane than the most common contemporary liberal alternative, in other respects it remains inadequate. The core of the problem, I will argue, is that Sandel seems simply to identify “community” or “our commonality” with the common good. He has too little to say as to just how or why community is the “first virtue” or “deepest good” of the persons comprising it. Hence, while much ink is spilt in describing the “limits of justice,” no similar attention is given to possible “limits of community.” Sandel’s focus is disproportionately on the “common”; an adequate theory of the common good would require greater heed paid to “the good” in its own right.

A. In his editor’s introduction to *Liberalism and Its Critics* (1984), Sandel provides a general overview of modern communitarianism and its aspirations. The purpose of this collection of essays, he says, is “[to] present leading statements of rights-based liberalism and some examples of communitarian or republican alternatives to that position. The principle of selection has been to shift the focus from the familiar debate between utilitarians and Kantian liberals—a debate now largely decided—in order to consider a more powerful challenge to the rights-based ethic, the one indebted, broadly speaking, to Aristotle, Hegel, and the civic republican tradition” (7).

This communitarian critique comprises at least two closely interrelated planes. On the social level, it opposes the “politics” or “party” which holds rights to be central, to a “politics” or “party of the common good” (6-7). But such a schema clearly has roots in and repercussions for the personal level as well. Sandel maintains that the primacy of the common good will not only promote social peace and tolerance most effectively, but also and perhaps more importantly will create conditions in which human “selves” may find meaning and fulfillment (7).

Communitarianism thus seeks to replace an autonomous, “unencumbered” vision of the self with one which is at least “partly defined” and “situated” by common purposes and ends (5-6). “If the party of the common good is right,” he concludes, “our most pressing moral and political project is to revitalize those civic republican possibilities implicit in our tradition but fading in our time” (7).

In order to grasp the arguments which move Sandel to embrace this communitarian alternative, we must turn to *Liberalism and the Limits of Justice* (1982).⁶ This more extensive work consists essentially of a sympathetic dialogue with and endeavor to transcend the liberalism of Ronald Dworkin and in particular of John Rawls. Sandel mounts a critique of the latter’s *Theory of Justice* both from within its own internal logic and “on the basis of our own moral experience” (177).

Sandel maintains that Rawls goes too far in his endeavor to “take seriously the plurality of and distinctions between persons,” a task central to his rights-based, neo-Kantian liberal paradigm (50-51).⁷ The result of this excess, suggests Sandel, is the preclusion of any sort of normative

⁶Cf. also Sandel, 1984b and 1984c. Most of Sandel’s subsequent publications (1989a, 1989b, 1996) engage aspects of specifically American republicanism and constitutional law from his communitarian perspective, and thus fall outside the proper scope of this chapter’s inquiry.

⁷Here we should note Rawls’s subsequent drift towards post-modern liberal pragmatism (1985; cf. 1993), and Richard Rorty’s (1991) masterful exposition of its implications. At the outset of his article “Justice as Fairness: Political not Metaphysical,” Rawls writes: “In this discussion I shall make some general remarks about how I now understand the conception of justice that I

“common good” beyond (purely arbitrary) shared sentiments of benevolence. Moreover, he argues that the individuals whose dignity Rawls seeks to protect and uphold are actually reduced to such morally and ontologically impoverished, “dispossessed” creatures, that they must await (wholly conventional) institutional recognition before they can be said to have any worth whatsoever (see 87, 138-39). On Sandel’s reading of Rawls’s account, each self’s autonomous choice and pursuit of his or her individual good paradoxically come to light as nothing more than a deterministic striving to satisfy a particular “system of desires” or “ends” (161-65). Such weak beings are capable of no deeper self-knowledge than that of recognizing their passions and the means best suited to satisfy them. Moreover, they are incapable of that friendship which depends upon some genuine knowledge of the friend’s good, and of that citizenship which requires the apprehension of shared ends or common goods (179-83). The closest they can come to such a public common good is a common agreement to abide by those rules of “pure procedural justice” or right, willed into existence in that hypothetical state of perfect neutral fairness and absence of

have called ‘justice as fairness’ (presented in my book *A Theory of Justice*). I do this because it may seem that this conception depends on philosophical claims I should like to avoid, for example, claims to universal truth, or claims about the essential nature and identity of persons. My aim is to explain why it does not” (223). Nonetheless, I would argue that “Political not Metaphysical” fails as an interpretation of *A Theory of Justice*, which clearly has higher goals than establishing or clarifying a *modus vivendi*. “Old Rawls,” theoretically more invigorating than the new, will remain our focus in this chapter, as both point of departure and foil of Sandel’s communitarianism

particularity or contingency known as the “original position” (64; cf. Rawls 1971, 17-22; 118-161).

Beyond calling our attention to the epistemologically and morally fragmenting character of such a theory, Sandel argues that Rawls’s conception of person and society is ultimately unable to sustain crucial features of the latter’s own theory of justice, most notably the “difference principle.” In the context of distributive justice, this principle requires that in the original position each would have agreed to regard those talents or assets which happen to reside in him or her as *common* assets, and that these assets are to be regarded as the prior possession of the community (66, 102-3). But in order to ground or justify such an assumption, Sandel alleges, one has to hold a much more “encumbered” view of the human self, as at least partly situated in a community or communities from which the constitution and very definition of this selfhood are derived. Such an alternative paradigm is what Sandel has in mind by the “strong” or “constitutive [conception of] community” (172-73). Only an individual “confidently situated” in such a social context can have a sense of self that is meaningful and solid enough to allow for deeper insight into or “strong reflection” upon his or her own identity, duties, and proper goods. Only such a self in such a community allows for true character development, friendship, and civic life, based not only on benevolent sentiment and mutual advantage, but also on shared reflection on common identities and ends (179-83). To the extent that we succeed in providing both the civic or institutional structure and the corresponding form of self-understanding necessary for such a way of life to

flourish, liberalism's primacy of right, of the "virtue [perhaps better, procedure] of justice," will be superseded by that greater "good" which is nothing other than the "virtue of community."⁸

B. Before continuing to consider Sandel's communitarian notion of the common good, however, we ought first to take a closer look at Rawls's treatment of the good and the common good in *A Theory of Justice*. The purpose of this digression is the following: in order to take Rawls seriously on his own terms, we need to do justice to those elements of his theory which reflect a rejection of radical individualism. This important aspect of Rawls's intention, which aims precisely to make room for a true common good within a liberal view of person and society, seems insufficiently stressed in Sandel's treatment (with the exception of his consideration of the "difference principle"). After all, if Rawls's endeavor to create the foundations of a genuine--and genuinely liberal--common good were to be successful, there would be no compelling reason to quit the liberal camp for the communitarian one.

In the third part of *A Theory of Justice*, entitled simply "Ends," Rawls insists that a narrowly individualistic view of human nature, and the corresponding political paradigm of

⁸My impression here is that Sandel's deprecation of justice rests at least in part upon acceptance of an early modern (Hobbesian-Humean)--if not a Rawlsian--version of this virtue. He does not seem to consider the arguably richer and nobler, if not unproblematic, accounts offered by Plato, Augustine, and Aquinas, among others. Compare, for instance, Aquinas's understanding of "legal" or "general justice" as a preeminent moral virtue, treated below in chapter four of this dissertation.

“private society,” fail to do justice to the deep meaning of “the social nature of mankind.”

Moreover, interpretations of contract doctrine as necessitating such an outcome are sorely mistaken. His own version of contract theory aims to take the common good very seriously indeed, as crucial to both personal fulfillment and healthy societies (Rawls 1971, 521-22, 545-46).

The basic thrust of Rawls’s argument may be summarized as follows: A well-ordered society, one based on the principles of justice chosen in the context of the original position, will best provide its members with the material means, self-respect, and greatest possible freedom (compatible with the equal liberty of others) to pursue their own conceptions of the good. In such favorable circumstances, what Rawls terms the “Aristotelian Principle of motivation” will be given free reign and take full effect. This principle states that “other things equal, human beings enjoy the exercise of their realized capacities...and this enjoyment increases the more the capacity is realized, or the greater its complexity.” Faced with a choice between activities which they perform equally well, they tend to prefer that which brings into play “the large[st] repertoire of more intricate and subtle discriminations” (426). The Aristotelian Principle is bound up with the “principle of inclusiveness,” for “the clearest cases of greater complexity are those in which one of the activities to be compared includes all the skills and discriminations of the other activity and some further ones in addition” (427).

The circumstances of life created by the institutional structure of such a polity are themselves a form of common good, loosely defined by Rawls as “certain general conditions that are in an appropriate sense equally to everyone’s advantage” (246). Yet this formal common good gives rise in Rawls’s schema to a more substantive common good. In these near-ideal

conditions, to put it somewhat poetically, a thousand flowers will bloom. Each individual will have a far greater chance of realizing to the fullest possible extent his or her own conception of the good, embodied in his or her unique plan of life. Moreover, these flowers will bloom not only as private goods but also as goods common to all citizens. Harmonized in accordance with the principles of right, the lives of all will weave a tapestry of dazzling variety and beauty, to which each contributes, and in the totality of which all take pride.

The substantive nature of the common good envisioned by Rawls is illustrated in considerable detail in sections 79, “The Idea of Social Union,” and 86, “The Good of the Sense of Justice.” It comprises three distinct but integrally related elements. First, as sketched above, in a well-ordered society, when each carries out his or her life-plan to the fullest possible extent, the citizens together “realize their common or matching nature.” Due to constraints of time and talent, of energy and inclination, each individual person can actually develop only a small fraction of his or her latent potentialities. But if community is genuine, citizens view themselves as benefiting from the flourishing of the others. Following Humboldt, Rawls posits a society “the members of which enjoy one another’s excellences and individuality elicited by free institutions, and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all” (523). Hence all concur in affirming the principles of justice and the institutions to which they give rise. In fact, they come to see in this affirmation, and in the community of life to which it gives rise, a “shared final end” or common good. Finally, all come to regard participation in the political life of their well-ordered society as a very great good in and of itself. This is so because it is upon this political regime that their self-realization and fulfillment in so many ways depend. At least in their privileged circumstances,

justice and the good are congruent. Furthermore, it is a consequence of a logical extension of the Aristotelian Principle, that to participate in public life is to engage in structuring the “most complex and diverse [hence presumably the most satisfying] activity of all” (528-29, 571).

Rawls thus establishes his contract doctrine as fulfilling the conditions of real “social union”: shared final ends and common practices valued as good in themselves (522, 525). His claim does not stop here, however. Rawls further posits the goods of community as attainable *only* where the right is prior to the good; where the shared commitment to the principles of justice suitably chosen serves as the bond of society, removes the circumstances of general envy, and frees the Aristotelian Principle to have its wider effect for individuals and for society as a whole. Only such just institutions create the spiral of development yielding the widest variety of human excellences, experienced as truly common goods. Rawlsian liberalism comes to light as the only adequate foundation for an inspiring vision of the common good, both in theory and in practice.

Such is Rawls’s strong claim. The question is whether he succeeds in accomplishing this amazing feat, constructing the good of social union upon principles of right chosen under the weakest possible conditions, upon a foundation that Rawls admits “in its theoretical base is individualistic.” I will suggest that he does not, and I will attempt to demonstrate why not in a manner consistent with Rawls’s preferred criteria for the “justification” (or verification) of a comprehensive theory such as his own:

[J]ustification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view... Accepting this idea allows us to leave

questions of meaning and definition aside and to get on with the task of developing a substantive theory of justice... The three parts of the exposition of this theory are intended to make a unified whole by supporting one another... (579).

I want to argue that important elements of this theory of justice do not in fact support Rawls's conclusion, that justice as fairness best provides for the "value of community" and the "congruence of the right and the good."

We may begin, as Rawls begins the third part of this work, with the notion of "goodness as rationality." Rawls repeatedly reminds us that what he has in mind by "rationality" is *instrumental* reason. In other words, reason's role in helping an individual attain his good is relegated to determining the means best suited to fulfilling his "separate system of ends"—i.e., his strongest desires. As for Hobbes, Locke, *et al.*, reason is the servant of passion. What is good for an individual is the plan of life likely to get him whatever he wants most here and now, to the extent that the contingencies of circumstance permit. The most reason can do is to help him clarify what he really wants, that is, to rank his multiple desires in a hierarchy of relative intensity (401, 410-24).

Now Rawls's vision of "the good of social union" is dependent upon a significant presence of "the excellences"—virtues and other "attributes of the person that it is rational for persons to want in themselves and in one another as things appreciated for their own sake, or else as exhibited in activities so enjoyed" (i.e., personal goods which are also good for others: cf. 443). He has no doubt whatsoever that this condition will necessarily obtain in a polity founded on the

principles of justice: “It is clear that these excellences are displayed in the public life of a well-ordered society... [I]t is by maintaining these public arrangements that persons...achieve the widest regulative excellences of which each is capable” (528-29).

But in retrospect this optimism appears ill-founded. Rawls’s principles of rational choice are not intended to provide persons with any guidance as to the ethical value of the ends open for them to pursue. The Aristotelian Principle only states that when they have the necessary “primary goods,” most people prefer to pursue more complex activities; it has nothing to say with regard to the intrinsic value of ends or practices in themselves. “More complex” is surely not synonymous with “better,” “more noble,” “truly excellent.” One does not have to think too hard to imagine perfectly legal pastimes which involve numerous intricate subtleties, but which are also a waste of time or even simply base. A society of individuals skillfully pursuing their own unique versions of the more complex could nonetheless fall far short of Rawls’s lofty vision of shared excellence in liberal community. In fact, with no authoritative guidance regarding better or worse available from regime, parents, friends, or even reason itself, the full “good of social union” would seem less likely than ever to materialize. The primacy of instrumental reason, coupled with the “democratic neutrality” (refusal publicly to judge or rank conceptions of the good) of the principles of justice and the public sector at large, might well convey the message that there is no true excellence, and thereby discourage the pursuit of noble yet arduous goods. Once again we are left with the paradox that means intended to promote the flourishing of individuals and of democratic polities emerge as threatening to impede both.

A final consideration which casts some doubt on the viability of Rawls's substantive common good follows from his "Kantian interpretation" of the desire to affirm just institutions, to act justly as the best expression of our common nature. Rawls needs to demonstrate that "the regulative desire to adopt the standpoint of justice belongs to a person's good...[;] that this desire is indeed rational; being rational for one, it is rational for all; and therefore no tendencies to [socio-political] instability exist" (567). This common desire and its object, as we have seen above, constitute the shared end on which the common good depends:

[T]he Kantian interpretation enables us to say that everyone's acting to uphold just institutions is for the good of each. Human beings have a desire to express their nature as free and equal moral persons, and this they do most adequately by acting from the principles that they would acknowledge in the original position. When all strive to comply with these principles and each succeeds, then individually and collectively their nature as moral persons is most fully realized, and with it their individual and collective good (528).

But such a common end is simply not possible when the good of each individual is essentially whatever he or she desires. It is ultimately in the hands of each subject to determine his or her own good, in accord with the "separate system of ends" he or she comprises. On Rawls's own terms, we cannot convincingly maintain that justice is congruent with the good for all persons; not surprisingly, Rawls himself is compelled to admit as much towards the end of his work (cf. 575-76

with 528-29).⁹ Because the good of persons hinges on their separate systems of ends or desires, a fully common good, and ultimately the common nature on which it must be founded, cannot truly be said to exist within Rawls's liberal paradigm.

III. *The common good and the limits of communitarianism*

A. Having considered the more serious, yet apparently untenable, alternative vision of the common good proposed by Rawls, we now return to the communitarian option Sandel offers. There is without doubt much to commend in Sandel's critique of liberalism. He effectively brings

⁹On this point, consider also Alasdair MacIntyre's assessment of current liberal theory and political culture, in *Whose Justice? Which Rationality?* (1988): "[T]he need for some conception of justice is in this liberal culture no more and no less than the need for some set of regulating principles by which cooperation in the implementation of preferences may be so far as possible achieved and decisions made as to which kinds of preference have priority over others. Notice that according to the standards of this culture one can be fully rational without as yet being just. The priority of rationality is required so that the rules of justice may be justified by appeal to rationality. Compliance with the norms of justice may indeed on occasion be necessary for someone to satisfy his or her preferences effectively, and efficiency and rationality may therefore dictate such compliance. But no disposition to care for justice as such will be first required in order to be rational" (342).

to light several of the principal weaknesses and failures, theoretical and practical, of liberalism in its “deontological” variety. Moreover, he reminds us of the need to take more seriously our “interconnectedness”; of our undeniable rootedness in and indebtedness to communities of various sorts, from the family up through political society; of the possibilities of a more genuinely republican politics.

Despite these praiseworthy aspects, there remain in Sandel’s thought, and specifically in his understanding of common good, significant weaknesses which need to be addressed. These troubling features are not likely to be noticed upon a quick reading of his texts, due to the fundamental decency characterizing the author’s intention. But a more reflective consideration of his communitarianism brings the following problems to light.

The first begins with the nature and status of the “moral worth,” or the dignity and virtue, of persons. For both Rawls and Sandel, this concept poses a formidable problem due to the difficulty they perceive in attributing moral responsibility in any meaningful sense to individuals (see Sandel 1982, 70-77, 138-39, 143). If my good or virtuous deeds are mainly the result of accident or contingency, if they have no intrinsic connection to “the person I am” or my character or free will, then it would seem that the intrinsic value or worth of my life is greatly diminished, and that the other humans with whom I deal similarly have little moral claim on my respect and good treatment. Rawls defines moral worth as “having a sense of justice” (1971, 312), or as having “the broadly based features of moral character that it is rational for the persons in the original position [or alternatively “for the members of a well-ordered society”] to want in one another” (437). Hence within his theoretical paradigm, the moral worth of human persons plays no role in the determination or identification of the principles of justice. These principles are the

result of what calculating individuals would freely, collectively *choose* to best satisfy their *wants*; they are not based on what these persons are or deserve according to the dignity of their nature, nor according to what would help them grow in the virtue and dignity proper to human beings as such. Nor according to Rawls is moral worth a factor in matters of distributive justice within a well-ordered society, for the simple reason that it cannot be defined in a meaningful sense unless the principles of justice have already been collectively chosen (see Sandel 1982, 76).

Sandel is concerned that Rawls's position effectively denies pre-institutional ethical status to persons, justice, and indeed all virtue. On his reading, the liberal primacy of the right over the good means ultimately that "*people have no intrinsic worth...in the sense that it is theirs prior to or independent of what just institutions attribute to them*" (1982, 88, italics in original; cf. 76-77). By contrast, Sandel's primacy of the good of community posits that individual subjects do have such worth, to the extent that they identify with and share in the intrinsic moral worth possessed by the community or communities of which they form a part (76, 80-95, 143-5). A community's preinstitutional moral status follows from the premises that, first (as explained above), moral dignity requires responsibility; and second, that "this particular society has made me what I am, and so is responsible for [my] assets and endowments [including, to a considerable extent at least, my character: cf. 71, 74, 179-183] in a way that I, individually, am not"(145).

Sandel argues, against Rawls, that community can be said to have an existence of its own, for it is in a certain sense "prior to and independent of" the individuals comprising it and their respective entitlements (cf. 101). Community at its best, when fully realized, can and should "confidently situate" its members, providing them with a common language of discourse, with

common meanings and ends. Community is the individual's "way of life," that which gives his or her life its "moral particularity." Our communities--and, as Aristotle suggests, the *polis* is the highest or most authoritative of these--may truly claim responsibility for making us the persons we are, endowing us with what potential we have for noble character, true friendship, and meaningful citizenship. Sandel's "constitutive community" is ontologically, hence morally, prior to individual persons. It is that "wider subject of possession," the origin, repository, and owner of whatever virtues, talents, and other assets reside in its members (102-3). By recognizing and administering well these goods as what they are, essentially the property of the relevant community, I recognize and attain my own moral worth (142-44).

But if all this is so, then it would seem of critical importance for Sandel to clarify just what constitutes a *good* community, one truly capable of forming virtuous and happy members, worthy of and in fact treated with respect. The problem may be restated as follows: Our ends, our conceptions of the good life, are given to us by the community or communities to which we belong. But then how are we to be sure that the ends espoused by our particular society are truly good for the community and for each of its members? How are we to know just which "values" *ought* to imbue and inspire any given community, including our own? In short, how may we distinguish genuine from spurious common goods? By what standards ought a particular community to be judged?

Sandel's failure to give serious consideration to these matters seems to follow from his tendency to collapse the "common good" into the "community," and to treat them as one and the same reality. As the antidote to the existential frustration of alienated modern man, true community comes to light as "the good," our "highest virtue." Yet to say this much is not to say

enough. Surely Sandel would acknowledge that not every community capable of “confidently situating” its members is or has been *ipso facto* truly good and noble. There must be some standard of the good not simply intrinsic to a particular community, by means of which its character and treatment of individuals may be weighed. Sandel’s communitarianism does not seem to acknowledge such a standard, nor even seriously seek one. I would argue that such an omission suffices to render a theory of the person and the common good neither impressive nor reassuring.

This central difficulty and its gravity can be illustrated by juxtaposing two political examples treated by Sandel (1984) in very different contexts. The first is the case, presumably occurring in the modern West, of freedom of speech putatively embodied in the pornography industry. Sandel suggests that a government acting on communitarian principles might well permit at least a small, more insular community to ban pornography from its premises. On what grounds? Not for the straightforward reason that such a use of freedom is in fact a perversion or misuse, constituting as such not a common good but rather an evil, which may legitimately be banned so long as a worse social evil is not thereby produced. Sandel’s argument is rather that “pornography offends [the town’s] way of life and the values that sustain it” (6).

Now it is critically important for us to realize that these two arguments are not the same, a fact easy enough to overlook when reading the work of someone as morally serious and concerned for virtue as is Sandel. Just a few pages earlier, however, while discussing the weaknesses of a utilitarian political ethic, Sandel situated us far from our comfortable liberal surroundings, in Imperial Rome and its Colosseum. In order to illustrate his point that utilitarian

social calculus is not necessarily so decent, liberal, or tolerant as it might at first glance appear, Sandel writes that “[i]f enough cheering Romans pack the Colosseum to watch the lion devour the Christian, the collective pleasure of the Romans will surely outweigh the pain of the Christian, intense though it be” (2).

Yet we may legitimately wonder whether Sandel’s grounds for banning a social practice--that it offends the community’s way of life and the values that sustain it--would be likely to offer any more solid reassurance to the early Christians of Rome. We can imagine a “Roman on the street” presenting the following case in support of Colosseum-style public entertainment: “Look, we Romans take pride in our way of life and the values that sustain it. Among these is the maintenance of public cult rendered to our gods, including homage paid the Emperor as a divine being. This commonality of religion is crucial to our civic unity and so also to our power. Moreover, we’re unusually open and tolerant in these matters. When we bring new peoples into the Empire, we’re happy to start honoring their gods too, so long as they worship ours and in particular make a show of political submission by burning a little incense to an image of the Emperor. They don’t even really have to mean it, just go through with the motions. The only exception we’ve made so far has been for those stubborn Jews, since they’re small and out-of-the-way enough, so long as they stay politically cooperative. Now tell me this isn’t reasonable. Then along come these “Christians”--some new Jewish sect out proselytizing all over the Empire--, many of whom refuse even to burn a little incense and mumble a few prayers. Such attitudes and behavior endanger our way of life. So we hold these public executions, in which we citizens vent our common anger, celebrate together the removal of our common enemies, and strive to deter

potential future offenders. Such common experiences serve further to strengthen the bonds uniting us Romans in community.”

My point is simply that Sandel’s ennobling intention requires, and at times his argument seems to assume, a standard for the common good not simply immanent in the particular community or the way of life shared by its citizens. Although Sandel clearly has nothing even remotely totalitarian in mind¹⁰, these sorts of “organic” formulations of the nature of community cannot but make one somewhat uneasy, as Rawls among others rightly suggests. It suffices to recall the case of the Colosseum, not to mention certain tragic political experiences of our own century and the theories which helped to inspire them. The slight attention paid by Sandel to such considerations suggests a certain confidence that liberalism has ingrained in us sufficient respect for individual rights, so that we need not worry about a return of the Colosseum. We ought

¹⁰Indeed, Sandel argues with considerable plausibility that a “thicker” republicanism, of the sort communitarians advocate, is less likely than “thin” liberalism to create the sort of existential vacuum that invites totalitarianism: “[Liberals often argue that] any attempt to govern by a vision of the good is likely to lead to a slippery slope of totalitarian temptations. Communitarians reply that intolerance flourishes most where forms of life are dislocated, roots unsettled, traditions undone. In our day, the totalitarian impulse has sprung less from the convictions of confidently situated selves than from the confusions of atomized, dislocated, frustrated selves, at sea in a world where common meanings have lost their force” (1984, 7). But the totalitarian threat reemerges where “community” *per se* is posited as our deepest good, as I try to argue in this chapter.

instead to look forward to transcending this rights-based liberalism *via* a sort of dialectical motion that will embody modern freedom in a fuller and more truly “constitutive” form of community.

This possibility prompts the further question of to what extent and in which respects modern communitarianism tends to follow Aristotle and/or Hegel (cf. Sandel 1984, 5, 7, and 10). Sandel’s understanding of “constitutive community,” together with his apparent optimism as to the prospects of safeguarding universal human rights within such community, definitely suggest a theory more Hegelian than Aristotelian. For Aristotle, we may recall, the political community is conceived as an association or “coming-together” of persons for the sake of an end or purpose (*telos*) which the city does not achieve by the mere fact of its existence. This highest end or common purpose is termed “the good life,” the life of the greatest virtue or excellence which the citizens are capable of attaining. The city (or for that matter, any community) does not itself constitute virtue; rather, virtue or the common good constitute both the end of persons, for which they strive at least in part through the formation and life of such associations, and a standard not simply intrinsic to the city by means of which it can be judged (cf. *The Politics*, *inter alia* 1252b27-1253a30, and 1278b15-1279b10). Knowledge of the nature of political life in general, and of any city in particular, includes in a preeminent place knowledge of its limits. Thus, true education—in philosophy, but also in political science—entails bringing the individual to transcend the community to some degree. He or she must manage to stand outside it in order to view it

with the necessary perspective. This is not to deny, however, that such critical distance is often very difficult, even painful, for citizens to achieve.¹¹

Quite different is Sandel's communitarian paradigm, in which "constitutive community" *constitutes* virtue and the common good (cf. 1982, *inter alia* 147, 161). Such community gives rise in its members to "intersubjective" or "expansive self-understandings," which culminate in a "wider subjectivity," in an "enlarged self, conceived as a community" (62-65, 143-45, 149-53).¹² The relevant definition of "self" or "moral subject" ceases to be determined by the empirical, "bodily bounds between human beings" (79-80); the person understands his or her own identity as given by membership in a particular society, which is the real repository of moral personality. Again, all this is developed without reference to a universal human good as *telos* of person and

¹¹A helpful treatment of the relation between civic and liberal, or political and philosophic education is to be found in Bruell 1991; cf. also Concepción Naval, *Educación Ciudadanos* (Pamplona, Spain: EUNSA, 1995).

¹²It would be very interesting here to compare Sandel's account of "expansive self" or "self conceived as a community," as a product of reasoned reflection and, as it were, in accord with human nature, to that offered by Jean-Jacques Rousseau in works such as the *Reveries* and *Political Economy*. Rousseau is perhaps the first modern theorist to identify such an "expanded self" as the basis for healthy community, and yet he seems to argue that this can only be the product not of reason, but of the inculcation of (unnatural) sentiment. His treatment thus quietly brings to light some potentially troubling implications of such a paradigm which Sandel fails to consider (again, perhaps as a consequence of the Hegelian elements of his theory).

community, and without much guidance as to when, how, and on what grounds individuals may distance themselves from their communities. The only indication Sandel gives in this regard concerns what he calls, following Charles Taylor, “strong reflection” on self-identity. Indeed, Sandel sometimes speaks as though the attainment of such deeper self-understanding by means of “dialogic reflection” is in fact the end, the highest purpose or aim of community (153, 160-61). The deepest moral self-understanding which could emerge from such reflection would indeed be a “self, conceived as a community.” But there is still room for some degree of individual self-determination. A person might well conclude that she owes her identity in varying degrees to different communities. By reassessing the amount and kind of allegiance due each, and their relation to “the person she is,” she may modify her self-conception, her aims and aspirations (146, 160-61, 180-81).

This account of the nature and attainment of genuine self-knowledge and its relation to community is in important ways more profound and truly humane than that put forth by Rawls (i.e., “direct self-knowledge” which fails to go much deeper than awareness “not only of what things we want but also of how much we want them”; cf. Rawls 1971, 416, with Sandel 1982, 158-165). And yet, preferable though Sandel’s version is, it is ultimately inadequate both as an account of self-knowledge, and as a basis for true growth in wisdom and moral virtue. Although I can here do no more than gesture towards a solution to the problem Sandel creates, I would suggest that Sandel’s focus on the self is too introspective. He fails to make sufficiently clear the person’s need to look beyond his or her own interiority to standards of excellence proper to human nature as such, intelligible to reason and exemplified in the lives of other, better human beings. There is too much emphasis on “discovering myself” (however “expanded,” well-situated,

and hopefully thereby ennobled) and too little on discovering an objective good towards which I am ordered in common with others, and to which I must strive to measure up if I am to achieve personal fulfillment. Sandel's approach seems likely to encourage accepting the weak points of myself or my community as simply part of "the person I am," and thus to discourage calling vice by its proper name and endeavoring to overcome it.¹³

B. If we have been correct in our identification of significant weaknesses in Sandel's approach to person and politics, the next point of inquiry would involve the deeper sources of these problems. Why is his communitarian criticism of Rawlsian liberalism so insightful, yet his constructive theory in many ways inadequate? Again, constraints of time and space permit only a sketch of a response; but hopefully it will be of some help nonetheless. I will suggest that, somewhat paradoxically, the origin of Sandel's difficulties lies in his "taking Rawls too seriously." By laying the groundwork for his communitarianism *via* an emendation of Rawls's own theory, he both begins from and in many ways remains within the paradigm of the very "deontological liberalism" he wishes to overcome. Sandel's vision is thus restricted by the defects of Rawls's approach to philosophy and politics.¹⁴

At the outset of his discussion (1982, 41-49), Sandel reviews for his readers Rawls's preferred method of inquiry, known as "reflective equilibrium." He explains that "[t]his method involves two different kinds of justification coming together to provide mutual correction and

¹³Compare Rawls's critical appraisal of "the virtues of integrity" in 1971, 519-520.

¹⁴For an alternative critical approach to *A Theory of Justice*, see Schaefer, 1979.

support”: on the one hand, “our settled convictions about justice”; on the other, “a standard of descriptive but not strictly empirical plausibility” (41, 43–44). Rawls elaborates the use of this procedure in constructing his theory of justice as follows:

In searching for the most favored description of [the initial situation or “original position”] we work from both ends. We begin by describing it so that it represents generally shared and preferably weak conditions. We then see if these conditions are strong enough to yield a significant set of principles [of justice]. If not, we look for further premises equally reasonable... By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium (1971, 20).

This approach to political theory is apt to concede too much to prejudice, or in the best of cases to stop at true opinion. Sandel’s presentation of Rawlsian “reflective equilibrium” accentuates its close relation to lab science. He walks us through the experiment at hand, describing in detail the equipment and materials used as well as the method followed:

The original position is the fulcrum of the justificatory process in that it is the device through which all justification must pass, the place at which all arguments must

arrive and from which they must depart... The description of the original position is the product of two basic ingredients: our best judgments of “reasonableness and plausibility” ...from one side, and our considered convictions of justice from the other. From the raw materials of our intuitions, properly filtered and shaped by the original position, a final product emerges. But it is a final product of dual dimensions... For what issues at one end in a theory of justice must issue at the other in a theory of the person, or more precisely, a theory of the moral subject. Looking from one direction through the lens of the original position we see the two principles of justice; looking from the other direction we see a reflection of ourselves. If the method of reflection operates with the symmetry Rawls ascribes to it, then the original position must produce not only a moral theory, but also a philosophical anthropology (47-48).

Hence the generally bloodless and, as Sandel suggests, excessively legalistic presentation of personal and political realities characteristic of Rawls’s theory.¹⁵ Yet Sandel quietly acquiesces in

¹⁵Cf. Sandel on Rawls’s treatment of “love of mankind”: “Not surprisingly, ...benevolence, even at its most expansive, depends on justice for its completion. ‘A love of mankind that wishes to preserve the distinction of persons, to recognize the separateness of life and experience, will use the two principles of justice to determine its aims when the many goods it cherishes are in opposition’ (Rawls 1971, 191). Even in the face of so noble a virtue as the love of mankind, the primacy of justice prevails, although the love that remains is of an oddly judicial spirit[:] ‘This love is guided by what individuals themselves would consent to in a fair initial situation which

Rawls's approach, and indeed adopts it as the principal method of his own investigation (49: "...I propose to work in the opposite direction, to take the principles of justice as provisionally given and argue back [*via* reflective equilibrium, through the 'medium of the original position'] to the nature of the moral subject"; cf. 66). Merely reversing as he does the direction of the procedure and increasing its technical precision does not suffice to exempt Sandel from its intrinsic deficiencies and the consequent faulty results. To borrow a Socratic metaphor, Sandel's political science is as incapable as its Rawlsian predecessor of giving us the means to depart—even provisionally—our liberal cave.

Sandel also inherits the conceptual and linguistic poverty proper to Rawls's contemporary paradigm. To indicate briefly just one way in which this limitation handicaps Sandel, the human person he seeks to rehabilitate is generally relegated to the status of a "self," and the community he aims to reinvigorate is especially treated under the aspect of a [wider] "subject of possession" (cf. *inter alia* 54, 149, 152). Both of these terms connote realities more fit to be "defined" and "situated" than ennobled or perfected. Sandel himself sketches a comparison between the concepts of the "self" and "person," "human nature," etc. (49-50). He notes, for instance, that 'self talk' "tends to bias the issue in favor of individualistic notions and to suggest that the self-understanding involved amounts merely to the coming to awareness of an individual person, as in psychotherapy, for example." He wants it clear from the outset that his own, broader project by contrast "concerns the nature of the human subject in its various possible forms of identity" (50). Still, I would argue that Sandel needs to move beyond the limits of "identity" and focus more on

gives them equal representation as moral persons' [*ibid.*]" (Sandel 1982, 171-72). Compare Thomas Aquinas on charity and justice in *ST* II-II 23, ff., and 57, ff.

human flourishing or fulfillment, if he is to achieve his communitarian aims. An approach in which “human person,” “soul,” and “human nature” were protagonists would, I think, better serve Sandel; but his philosophic foundation seems incapable of supporting such weighty notions.

A further deficiency which Sandel’s theory seems to share with Rawls’s is a certain leveling tendency (cf. 125-26, 128). By this I mean, restated in classical terminology, a poor handling of the “problem of universals and particulars,” or of “the whole and the parts.” Both Rawls and Sandel seem to want to dissolve the latter into the former, albeit in different ways. Rawls, while emphasizing the “plurality of individuals” comprising separate systems of ends, nonetheless seeks to efface the differences between them by means of an egalitarian distributive justice that rests on denial of any real individual merit, and of what Sandel terms the “democratic conception” of the self. “From the moral standpoint,” the self is to be evaluated in abstraction from its character, ends, and conceptions of the good; hence all selves are equal, even indistinguishable (94). Sandel, while seeking a richer notion of the human person, nonetheless tends to dissolve these persons into a “wider self,” a communal entity or identity, in order to uphold the “priority of unity” (cf. 125-28, 51-53). It may be instructive to compare Sandel’s approach to this problem with one shared, broadly speaking, by Plato and Thomas Aquinas among others. They proceed by means of an ascent from “the many” or “particulars” in all their richness to “the whole” or “universals.” As I shall explain in the following chapter, the unity which Aquinas argues to be in a certain sense primary is one of causality and of order, not a substantial or ontological oneness. I will try to show why this approach enables him to do greater justice to both parts and whole, each on their own proper terms.

At the root of these defects there is to be found a complex if not incoherent understanding of the relation between common sense and political science or theory. Both Rawls and Sandel are prepared to appeal to common sense as a fundamental standard and sound starting point against positions they oppose; yet they seem equally prepared to reject or ignore it when advancing some not very common-sensical theses of their own. Sandel, for example, defends his theory of constitutive community or intersubjective self— “questioning the sense that those [other members of my community] are properly described as ‘others’”— by explicitly deprecating common sense as a valid point of reference. According to Sandel, Rawls merely assumes that “the bounds of the subject unproblematically correspond to the bodily bounds between individual human beings,” a problematic claim that hides behind “its affinity with our unreflective common-sense view of the matter” (79-80; cf. 67). On his part, Rawls recognizes that his account of the “original position” as the appropriate conceptual tool for crafting the principles of justice, requires ignoring important common sense understandings of the basis of justice (see Rawls 1971, 310-11; cf. Sandel 1982, 87). I would argue with Jacques Maritain (1940, 133-143) and Leo Strauss (1962) among others that a sound theory or science of human things is not possible without beginning from common sense, even if scientific reason must later modify such “pre-scientific knowledge” to a greater or lesser extent.

Lack of a solid foundation in common sense is ultimately responsible, I would argue, for the excessive polarization of the debate between deontological liberals and communitarians regarding the nature and status of “the distinctions among persons.” Although both Sandel and Rawls do attempt to mitigate the one-sidedness of their positions, still, when all is said and done,

we are left to choose between radically individuated selves, each comprising a “separate system of ends,” and community as a sort of wider self, “prior to and independent of” individuals. It is either no real common good at all, or a quasi-organic communitarian good, of questionable relation to the good of individual persons.

Is there no *tertia via* by which we can affirm more conclusively both the dignity of the person and the centrality of the common good? Such a paradigm might prove to be only a rosy illusion, a sort of mythical philosopher’s stone which, much though we long for it, we shall never find. Yet before conceding defeat, we should note that Sandel himself briefly draws our attention to a theory which claimed to have achieved this very goal, that of the chief representatives of medieval Christian political philosophy (1982, 175). Although he is clearly sympathetic towards this vision of community and appreciative of its merit, this theory is not Sandel’s own. He does not seem to think he needs to explain his reasons for rejecting it, at least in part; in fact, he says precious little about his precise understanding of it. What hints he leaves in this regard suggest that respect for the achievements of modern natural science, coupled with approval of the “liberating” thrust of the “deontological project,” have moved him to distance his theory from the more teleological, hierarchical paradigms of the classical view of community and common good found in such authors as Thomas Aquinas (175-77; but cf. 167-68).

Rawls is much less ambiguous in his rejection of such teleological approaches to persons and politics, in which (in terminology common to both himself and Sandel) the good is posited as prior to and essential for the right. He maintains that all such theories pave the way for the most serious practical abuses of authority: sacrificing certain individuals and their goods to a putative

“good of the whole,” which on closer examination turns out to be simply the good of other individuals or “parts.” In a passage explicitly directed against others, but which I would argue is primarily intended as a thinly-veiled attack on Thomas Aquinas (together with that lesser-known political philosopher Ignatius of Loyola), Rawls alleges that any theory which proposes one conception of the good as the “dominant end” of human life is a sure recipe for a politics of “fanaticism” and “inhumanity,” to say nothing of paternalism and monotony (1971, 553-54, 215-16; cf. MacIntyre 1988, 165-66, 178-79).

These are certainly serious criticisms. And yet, in light of the patent weaknesses of the two contemporary alternatives we have been considering, a more thorough reexamination of this traditional approach would still seem to be in order. I propose, therefore, to undertake a study of this theory of the common good as it comes to light in the work of its classic exponent, Thomas Aquinas.¹⁶ In so doing, we will have occasion to ascertain whether and to what extent Rawls’s

¹⁶Of course, Aristotle is rightly credited as the first to assign the common good a place of preeminence in political theory, arguing that its intention or pursuit constitutes the defining feature of just or “correct” regimes (see especially his *Politics* III.6-7). Yet this concept is more central still to the political and ethical thought of his student Thomas Aquinas. One indication of this is the fact that the term common good (*bonum commune*), massively present throughout the whole Thomistic corpus, occurs approximately sixty-seven times in the *Summa*’s questions on law alone (I-II 90-108). By contrast, Wayne Ambler notes that the entire *Politics* contains just “eleven direct references to the common good or advantage (*to koinon agathon, to koinon sumpheron, to koinon lusiteloun*),” and that the nine of these which form a clear, integral part of “the Philosopher’s” teaching are to be found within the relatively narrow confines of Book III,

attack is justified. I will also try to consider more deeply some critical questions passed over or treated too superficially by Sandel: In what does the good or virtue of persons consist, and what is its relation to communities, political and other? Are community and the common good simply one and the same? And what is the proper relation among the different levels of community alluded to by Sandel (1982, 31, 143: family, nation, various “intermediary associations,” etc.), and among the common goods sought by or through each? How are such common goods bound up with integral human fulfillment and with happiness?

In the following chapter I provide an introduction to and overview of Aquinas’s presentation of the common good and its relation to the good of individual persons. The mid-twentieth century debate between Jacques Maritain and Charles De Koninck provides us with an excellent bridge linking the contemporary concerns we have noted to the thought of our medieval philosopher-theologian. We then turn our attention to Aquinas’s own texts, with a view to understanding more deeply his concept of the human good as both “proper” and “common.” While Aquinas of course does not deny that the right (*ius*) of a given person and the scope for exercising free-will are crucial for human flourishing, his own vision of the human good is nonetheless *virtue*-centered. Therefore, a fitting (but usually neglected) place to begin such an inquiry is with the “good of virtue.”

chapters 6-13 (Ambler 1992, 26, n. 13). For an insightful account of the general timeliness of a return to study Aquinas’s political thought, see Goerner and Thompson 1996.

In the third chapter I will aim to show how, according to Aquinas, the social and political orientation of human nature informs the human or moral virtues, thereby elucidating a central aspect of the interrelation between personal and common good. Beginning with the interior principles of human acts, we will follow Thomas's treatment of goodness of will, action, and habit. Then, in chapter four, we will try to understand how Aquinas conceives of "legal" or "general justice," that virtue which considers good human actions in their social orientation, and why he posits it as a preeminent personal excellence. The picture Aquinas paints is complicated, however, by (1) the ordination of the human person to various common goods, higher or lower in rank, more or less universal in scope; and (2) by the frequent failures of regimes to aim at the political common good rightly understood.

The fifth and final chapter will continue this investigation, focusing on Thomas's treatment of law as an "extrinsic principle" of good acts and virtue, framed explicitly for the community and with a view to the common good. Why does Aquinas consider civil law to be an important, even indispensable tool for the eradication of vice and the inculcation of virtue? Is there not something fundamentally misguided about endeavors to "legislate morality," which this understanding of law appears to sanction? Robert George's timely treatment of these questions (*Making Men Moral*, 1993), in dialogue with Aristotle and Aquinas, as well as with several contemporary theorists, will help us to engage these issues from a Thomistic vantage point without losing sight of their current problematic.

Chapter 2: Interpreting Aquinas for the Twentieth Century: Maritain and De Koninck on Personal Dignity and the Common Good¹

Many of the same concerns that we have seen animating the projects of neoliberals and communitarians alike are to be found at the root of the mid-twentieth-century Thomistic revival in its ethical and political dimensions. Some fifty years ago, Yves R. Simon could already maintain

¹This chapter also forms the basis for an essay on Maritain, De Koninck, and legal theorist John Finnis, entitled “Personal Dignity and the Common Good: A Twentieth Century Thomistic Dialogue,” published in *Catholicism, Liberalism, and Communitarianism: The Catholic Intellectual Tradition and the Moral Foundations of Democracy*, Kenneth L. Grasso, Gerard V. Bradley, and Robert P. Hunt, eds. (Lanham, Maryland: Rowman and Littlefield, 1995). I am grateful to Rowman and Littlefield for their kind permission to reproduce this material. See also the clear and carefully written doctoral dissertation of Michael A. Smith (Laval University, Philosophy), *Human Dignity and the Common Good in the Aristotelian-Thomistic Tradition*, published simultaneously (Lewiston, Canada: Mellon University Press, 1995). Smith’s lengthier study also treats the central question of the Maritain-De Koninck debate, but with greater emphasis on its metaphysical, “philosophic-anthropological” aspects (see Smith, 2). Hence its first part comprises a detailed study of the concept of “person”; its second treats the notion of “common good” and the debate *per se*; and its third focuses on civic friendship and human rights in relation to the subject matter of both preceding parts.

that “[o]f all the philosophical investigations which may throw light on our political, social and moral problems, none is more badly needed and eagerly demanded than a thorough study of the concept of the common good” (1944, 530). In our endeavor to recover a truly Thomistic conception of the common good, and to discern its relation to the good of individual persons, we may do well to begin with the highly publicized debate on this very subject between two contemporaries of Simon, both well-respected interpreters of Thomas’s thought. These were Jacques Maritain and Charles De Koninck. In recent years several scholars have brought this exchange back out of dusty library corners into the light of day, with renewed interest.² This is perhaps attributable to the intensification of the crisis of individualism in both scholarly and civic life. Yet only rarely has this debate been the principal subject of scholarly analysis. The central reason for this neglect would appear to be twofold: on the one hand, the common good as such is not the focus of most of the studies in question; on the other, the terms of the debate appear too difficult, abstract and unfamiliar for the modern reader to be bothered.³

²For some helpful recent discussions of the Maritain-De Koninck exchange, see J. Brian Benestad, “Rights, Virtue and the Common Good,” *Crisis* 2 (1), December 1983: 28-32; Louis Dupré, “The Common Good and the Open Society,” *Review of Politics* 55 (1994): 690-2; Ernest L. Fortin, “The New Rights Theory and the Natural Law,” *Review of Politics* 44 (1982): 598-601; and Ralph McInerny, *Art and Prudence: Studies in the Thought of Jacques Maritain* (Notre Dame, Ind.: University of Notre Dame Press, 1988) 77-91.

³For an example of this rationale, see Michael Novak, *Free Persons and the Common Good* (Lanham, Md.: Madison Books, 1989), 4: “In one sense, the fine points of this debate among

Before beginning our effort to fill this scholarly gap, we should note one further possible cause for its existence. Unfortunately, the original exchange between Maritain and De Koninck became a little too heated and, many perceived, nasty. Personal loyalties to one or the other professor therefore threatened to preclude the dispassionate assessment of their arguments. De Koninck's principal work on this subject, originally written in French, was never translated into English and its author, unlike Maritain, is all but unknown to my generation of students. But now, with the advantage of hindsight and personal disinterest, the time is ripe for a reexamination.

I. The debate in its historical context

To begin with, some historical background is in order. In 1943, the young dean of Laval University's faculty of philosophy, Charles De Koninck, published a little book bearing the inoffensive title *On the Primacy of the Common Good*. The problem was that he added a subtitle: *Against the Personalists*. Now, De Koninck always maintained that his work was directed against what he regarded as erroneous positions, and that he never intended an attack on specific persons. His message to all considering themselves "personalists" could be summarized with a piece of popular wisdom: "If the shoe fits, wear it."

Thomists need not detain us; much of it was ontological, even theological, in substance, rather than political or institutional."

But, if you will pardon the pun, some of those “personalists” took the whole thing personally. They read the book as an attack on Jacques Maritain, a major figure in the movement known as “personalist Thomism,” and they leapt to his defense.

Things got still more interesting when two self-appointed witnesses for the defense—both distinguished professors, friends and colleagues of Maritain—took the stand and proceeded to offer contradictory testimony. In a 1944 review of De Koninck's book, Yves Simon argued, in a generally civil and fair-minded manner, that De Koninck's interpretation of Thomas and the positions he upheld were indeed correct; that these conclusions were shared by Maritain and that the positions De Koninck refuted were in no way those of Maritain; that De Koninck had probably not intended it, but that the net-effect of allowing the public to believe that Maritain held such opinions resembled that of outright calumny (see Simon 1944, 530-33). But then, in 1945, I. Th. Eschmann published an essay entitled “In Defense of Jacques Maritain.” He assured his readers that the positions assailed by De Koninck were indeed those of Maritain, and those of St. Thomas and of “all the Christian Fathers and theologians and philosophers”! Absolutely speaking, Eschmann maintained, the personal good holds primacy over the common, except within the well-defined confines of the practical or political sphere. If nothing else, this confusion indicated that Maritain's views on this issue had not been set forth with sufficient clarity in early works such as *Three Reformers* (1927), *Integral Humanism* (1936), and *Scholasticism and Politics* (1939).

So the philosophic public awaited Maritain's own response. In the meantime, De Koninck wrote an extremely long response to Eschmann's attack entitled “In Defense of St. Thomas” (1945). As had been the case with Eschmann's piece, the tone of this rebuttal left much to be

desired. Polemics aside, it seems “fair to say that De Koninck demolished Eschmann,” as Ralph McInerny has noted (1988, 85). But it still remained to be seen whether Eschmann’s argument that the good of the individual person ultimately takes precedence over the common good was in fact shared by Maritain.

At last, in 1947, the real Jacques Maritain stood up. He published a little book of his own, *The Person and the Common Good*, explicitly intended to answer what he also regarded as an “anonymous attack” and to clarify his views.⁴ Since this is the work which Maritain himself regarded as the most precise and thorough presentation of his position, I will here focus my analysis on a comparison of its argument with De Koninck’s original presentation of his case in *On the Primacy of the Common Good*, although I will refer when necessary to other writings of our two authors.

⁴Jacques Maritain, *La personne et le bien commun* (Paris: Desclée De Brouwer, 1947); except where indicated, I have followed John J. Fitzgerald’s English translation, *The Person and the Common Good* (Notre Dame, Ind.: University of Notre Dame Press, [1947] 1985). It is interesting to note Leo Ward’s suggestion that this work is particularly reflective of the close collaboration between Maritain and Yves Simon: “As the letters show, Maritain and Simon kept working as one, even when hundreds of miles separated them; and Maritain’s *Person and the Common Good* (1947) was almost as if coauthored” (Ward 1982, 486).

II. “Personalism,” or the “primacy of the common good?”

The works of both Charles De Koninck and Jacques Maritain respond admirably to the two-fold vocation of the political philosopher. Each recognizes his responsibility to the times and society in which it has been given him to live, and hence seeks to combat the manifest evils of fascism and Marxist totalitarianism, while at the same time pointing out the serious inadequacies of a politics founded upon the principles of acquisitive individualism. Furthermore, as philosophers they do not content themselves with providing a specific situational analysis and prescription: the concrete predicament of the modern West is treated within the context of an endeavor to bring to light the perennial truths concerning the human person, his place within society, and the ultimate end or purpose of his existence. Indeed, it is this latter aspect of their work which constitutes their primary concern: if we are to reach a true understanding of those things which are “first for us,” we must never lose sight of those things which are “first simply,” or “first in themselves.”

Despite their shared purpose and equally-professed Thomism, however, we have already indicated that De Koninck and Maritain do not arrive at precisely the same conclusions regarding the relation of the personal good and the common good. This much can be gleaned from a cursory glance at the first few pages of the two books that are our focus in this chapter: Maritain’s *The Person and the Common Good*, in which he professes proudly and early on his adherence to “Thomistic personalism” (1947, 13), and De Koninck’s not-so-subtly-titled *On the Primacy of the Common Good: Against the Personalists*.

How does a “personalist” interpretation of St. Thomas's thought differ from one which focuses on the “primacy” of the common good? In our endeavor to grasp this distinction, we may do well to choose as our starting point the concept of human dignity, or personal dignity. What is the real or ontological basis of this dignity? At the risk of oversimplification, we may say that for De Koninck it is the person's rational nature, the foundation of his capacity to participate in and to adhere to freely, through knowledge and through love, an order (or better, as we shall see later, orders) which is greater than himself; whereas for Maritain it is above all personal freedom, understood as the spiritual capacity to act independently of and to transcend any given order (with one crucial exception, as we shall also see).⁵ De Koninck's approach to the problem is thoroughly and unabashedly classical, here taking this term to include medieval Christian or scholastic thought. Maritain's spirit is much more in tune with the times.

Nevertheless, modern as the thrust of Maritain's argument often seems, far from basing it upon, say, the thought of the German philosophers of freedom, he claims to ground it in the principles of the Angelic Doctor himself. How does Maritain substantiate this claim? His central piece of evidence, drawn from the corpus of St. Thomas's writings, appears to be the following

⁵Cf. Aquinas, *Summa Theologiae* [ST] III 4, 1: The cause of human “dignity” is that “human nature, as being rational and intellectual, was made for attaining to the Word to some extent by its operation, viz, by knowing and loving him”; cf. also I 29, 1 and 29, 3, ad 2. For an extremely clear presentation of the Thomistic ontological grounding of human freedom in our rational nature, see Antonio Milan Puelles, *La síntesis humana de naturaleza y libertad* (Madrid: Editorial Nacional, 1961).

line: “*Ratio partis contrariatur personae*” -- “The concept of part is opposed to that of person” (*Commentary on Lombard’s Sentences* III, 5, 3, 2). Whence Maritain maintains that “[i]t is a fundamental thesis of Thomism that the person as such is a whole,” and therefore not primarily a part of a greater whole (56).

In the footnote to the above-mentioned citation, however, Maritain himself at least tacitly admits that this quotation, so crucial to his argument (especially insofar as he conceives it as building on the work of Aquinas), is used out of context. Thomas is not there considering the human person in his or her relation to society, or with respect to an ordination or lack thereof to the common good; rather, he is discussing the separated human soul in relation to the whole or complete human person, a substantial unity of body and soul. Yet Maritain seems surprisingly undaunted by the scarcity and problematic nature of the textual support for his “personalist” position, despite the fact that most of his other citations from Thomas seem clearly to point the way to full agreement with De Koninck. In this same note Maritain contrasts the “sufficiently profound understanding” of Thomism possessed by himself and his associates with the mere “text-book Thomism” of at least one of his critics (our translator omits this passage, perhaps to smooth over the polemical aspect of the work). Maritain is surely correct in indicating that a deep understanding of a great philosopher’s thought normally requires a thorough, careful, and penetrating study of the texts he has left us. But for this very reason we cannot but expect a correct understanding of Thomas’s position and “principles” regarding so fundamental a question to find support in a far richer textual context than Maritain seems able to offer. A more careful examination of De Koninck’s thesis and the interpretation on which it rests would thus seem to be in order.

Against those who assert “that created persons are...absolute wholes and that their ‘being-part’ is secondary,” De Koninck maintains, as his view and that of Thomas, that “we are, primarily and principally, parts”—parts of the family, of political society, of the created universe, of the City of God (1943, 57-58).⁶ Now this is an awfully hard pill for children of modernity to swallow. We do not generally like the idea of being “parts.” Kant has already written; we regard such a status as beneath our dignity. These circumstances serve to render De Koninck’s book all the more helpful, for its author is that rare individual in modern times who is capable of making the counter-argument in a manner which is both coherent and, remarkably, palatable. To be a part of a greater, more perfect whole; to use one’s intelligence to recognize that fact; to freely choose to assume one’s place in the order which constitutes the whole; and to work generously for the common good of that whole: all this serves to ennoble a human being rather than to degrade him, to make him more of a person rather than less. The substantial integrity of his being remains untouched. Moreover, the human person’s rational nature is essentially open to the whole and finds its fulfillment or perfection therein. What is of greatest value in our human constitution (the spiritual faculties of intellect and will) tends naturally towards the greater-than-self, towards those goods which are most common in the sense of being intrinsically communicable or sharable. “For this reason, we love naturally and preferentially the good of the whole” (*ibid.*; cf. *ST I* 60, 5). Through participating in the common good, and indeed building it together with others on the practical planes of family, intermediate association, and political community, the person achieves

⁶Cf. *inter alia* the references to Aquinas listed in Fortin 1982, 598, n.14.

his end, i.e., attains his perfection and finds happiness. Paradoxical as it may seem, it is by appropriately subordinating our purely private goods to serve and partake of the common good that we achieve our truest and most complete personal good.

Here we must pause to emphasize that De Koninck's understanding of the common good is very far from modern collectivist or totalitarian notions of the nation-state as an organic or "substantial" whole. One student of De Koninck explicates this point as follows:

Civil society is not itself a person, even though it is often compared to one. Its unity is only a "unity of order" (*unitas ordinis*), as distinguished from the substantial unity of the individual person. Its function is to enable its citizens to attain their full development, and it deserves its name only to the extent to which it promotes the ends to which human nature is ordered. The human beings who compose it are not destroyed by it, as they would be if they were parts of a substantial whole. The perfection that they reach remains intrinsic to them. Differently stated, the common good is not an alien good but the "proper good" (*bonum proprium*) of those who share in it. If the common good were not distributed among the members of the community, it would not be truly common. Only on this condition can it be an object of desire. The good sought by any being is necessarily its own good (*bonum suum*), whether it be a particular good or the common good, for which it has an even greater natural love. The need for justice and civic virtue is rooted in the potential conflict between these two types of good, or the tendency of the part to set itself up as the whole (Fortin 1982, 600-601, n. 22).

In other words, the human being is a “part” of society in the sense that his or her fulfillment requires participating in or partaking of goods which transcend the purely private sphere of individuality. The human person is not “part” of the community just as the hand is part of the body, nor even, in Sandel’s terms, as discovering his or her identity in a collective subjectivity, the only true repository of moral agency. To state the fundamental question in terms of “self [or even “person”]- community,” argues De Koninck, is to miss the heart of the matter; moreover, it leads unavoidably to the sort of “individualism-or-totalitarianism” polarization we have seen germinating in the Rawls-Sandel debate. De Koninck proposes instead the following paradigm, learned from Thomas:

Instead of discussing the problem in terms of “person” and “society,” I approach it in the fundamental terms of “proper good” and “common good.” Ultimately, person and society are not to be judged by what they are absolutely, but by what is their perfection, i.e., by what is their good; that is the only way in which Aristotle and St. Thomas ever discussed this problem. To look upon the absolute comparison of person and society as the most basic consideration is distinctly modern. It is also distinctly modern to accord absolute priority to the subject... From such a point of view, the problem of person and society quite naturally becomes the question: is the person better than society? instead of: is the proper good of the person better than his common good? When the problem has been so distorted, what can be expected in the solution?

The totalitarian solution is that the individual person is ordered and subjected to society. We are inclined, in rejecting this doctrine, to swing to the opposite extreme; but if

we prescind from the common good of the persons which is the final, therefore first cause of society, we are left with a mere aggregate of individuals... (1945, 93-4; cf. 18-20).

De Koninck thus indicates the way in which Thomas upholds the centrality of the common good while carefully distinguishing it from the community *per se*. This is possible because for him the fundamental problem is not one of ontology simply, nor of epistemology, but rather of final causality. In other words, Aquinas takes the good seriously in its own right, focusing his concern on the good of persons and of the communities they comprise. For Aquinas, human persons--creatures possessed of reason and hence of free will--do have intrinsic moral worth and are capable of moral agency in a meaningful sense. Their communities are not "substantial" or organic wholes with a quasi-independent status; rather, they comprise "unities of order,"⁷

⁷"It must be known moreover that the whole which the political group or the family constitutes has only a unity of order, for it is not something absolutely one. A part of this whole, therefore, can have an operation that is not the operation of the whole, as a soldier in an army has an activity that does not belong to the whole army. However, this whole does have an operation that is not proper to its parts but to the whole--for example, an assault of the entire army. Likewise the movement of a boat is a combined operation of the crew rowing... There is also a kind of whole that has not only a unity of order but [also] of composition, or of conjunction, or even of continuity, and according to this unity a thing is one absolutely; and therefore there is no operation of the part that does not belong to the whole... For this reason it is necessary that such a consideration of both the whole and its parts should belong to the same science. It does not, however, pertain to the same science to consider the whole, which has solely the unity of order,

“accidental unities.”⁸ This sort of theoretical foundation appears well suited to support a moderate and balanced approach to political life.

To grasp the significance of De Koninck’s argument, it will help to review how Thomas characteristically employs the term “the good.” Thomas does speak of the “good” as a quality or manifestation of being (as does Aristotle), but he also indicates that its most precise meaning denotes final causality. The good in this sense is an end, the attainment of which completes or perfects an entity. “[T]he essence of good consists in this, that something perfects another as an end, [and therefore] whatever is found to have the character of an end also has that of good. Now two things are essential to an end: It must be sought or desired by things which have not

and the parts of this whole. Thus it is that moral philosophy is divided into three parts. The first of these, which is called individual (monastic) ethics, considers an individual’s operations as ordered to an end. The second, called domestic ethics, considers the operations of the domestic group. The third, called political science, considers the operations of the civic group”

(*Commentary on the Nicomachean Ethics* I, *lectio* 1 [5-6; cf. 4]). Hence Arlene Saxonhouse’s claim in *Fear of Diversity*, that the “language” of “organic unity” applied to political society “is medieval rather than ancient Greek” (1992, 204, n.17), strikes me as misleading, especially with respect to the only medieval theorist mentioned in that chapter, Thomas Aquinas (cf. 189, n.1).

⁸On different types of unities, see *ST* I 11. Cf. also *De Regno* I.2 [19]: “Wherefore, if artificial things are an imitation of natural things, and a work of art is better according as it attains a closer likeness to what is in nature, it follows that it is best for a human multitude to be ruled by one person.”

attained the end, and it must be loved by things which share the end..." (*Q. D. De Veritate* 21, 2; cf. *ibid.*, 1, and *ST I* 5, 4). This last sentence underscores the eudaimonism characteristic of Aquinas's view. According to Thomas, to live a good life and achieve one's end is not fundamentally a matter of repressing desires in order to follow some externally imposed, categorical imperative. It is rather, first and foremost, a question of fulfilling the deepest human desire, the universal, natural yearning for happiness (cf. *ST I-II* 5, 8).⁹

Hence what Thomas most precisely means by a "common good": a final cause common to many, a single end which is capable of constituting, in part or in whole, the perfection and felicity of many (cf. *ST I-II* 90, 2, c. and ad 2-3). Moreover, he follows the tradition in taking the good understood in this sense to be "*diffusivum secundum sui rationem*" – "diffusive of itself" (*Q. D. De Veritate* 21, 1, ad 4). It therefore seems to follow that the better a good, the greater will be its intrinsic communicability. It is in this sense that De Koninck takes Aquinas to posit a "primacy of the common good" in human life and its fulfillment.

To all of this Maritain responds with a "yes; but..." He summarizes the essential content of this demurrer in the opening paragraph of his second chapter, "The Positions of St. Thomas on the Ordination of the Person to Its Ultimate End":

⁹Of course, Aquinas also indicates that when it comes to "real" happiness, many people make fatal mistakes, reaching out for easily apprehended, immediately pleasurable goods which soon cease to satisfy and leave the soul thirsting more than ever. Note in this context his commentary on this line from Augustine (*De Trinitate* 13.4), "Happy is he who has all he desires and desires nothing amiss," in *ST I-II* 5, 8, ad 3; cf. *inter alia* 19, 1, ad 1.

The human person is ordained directly to God as to its absolute ultimate end. Its direct ordination to God transcends every created common good—the common good of the political society and the intrinsic common good of the universe. Here is the fundamental truth governing the entire discussion—the truth in which nothing less than the very message of Christian wisdom in its triumph over Hellenic thought and every other pagan wisdom, henceforth toppled from their dominion, is involved (1947, 15).

Maritain thus stresses the need to focus on the human person's final, supernatural end, the intimately personal and incommunicable act which is the "beatific vision" (the unitive participation in the Trinitarian life, the core of that state of perfect bliss for humans which is more commonly known as "heaven"). He reminds us of St. Thomas's daring assertion that "*bonum gratiae unius majus est quam bonum naturae totius universi*"—"the good of grace of one [single person] is greater than the good of nature of the whole universe" (18, n. 7; *ST* I-II 113, 9, ad 2). And this personal good of grace culminates in the state of being in which, according to Maritain, through "the intentional identification of each soul with the divine essence, the law of the primacy of the common good over the personal good comes to an end in a certain sense," for the two goods are at last one and the same (87-88).¹⁰

¹⁰But cf. n. 48, and De Koninck 1943, 62-63; 1945, 47-48. In this context, consider also Maritain 1947, 62-63, especially n. 33, where he makes a parallel argument for the primacy, in a certain sense, of the "personal good" over the common good within the natural order. He makes

At this point in the debate De Koninck steps in to suggest that it is not wise to skip so freely from rung to rung on the ladder of goods when comparing the common and the private:

[I]t is necessary to emphasize that St. Thomas does not oppose the good of grace of a single person to the good of grace of the community, but rather to the natural good of the universe. And if the spiritual [supernatural] good of the person is superior to the entire created common good, and if, in accordance with this spiritual good, the person ought to be loved with preference, in no way does it follow that the created common good should as such be subordinated to the singular person... [Furthermore,] the supernatural good of the singular person is essentially ordered to the supernatural common good... (1943, 62-63).

The human person is ordained to participate in various common goods, according to the various formalities which he comprises and which are ordered according to the relative perfection of the good to which each corresponds. At the top of this hierarchy of goods is God himself, universal and supreme “separated [i.e., fully transcendent] common good,” to whom the human

reference to Aristotle’s teaching of the superiority of the philosopher’s contemplative good to the common good of his *polis*. And yet, later in the same note, Maritain explains in agreement with De Koninck that this personal good proper to the contemplative life is of a higher dignity than that of the practical political life precisely because it constitutes a greater participation in and service to a superior common good: the truly cosmopolitan, spiritual common good of the universe.

person is principally ordained and union with whom constitutes the fullness of happiness for which each and every human being longs.¹¹ All inferior common goods are both subordinate to and ordained (directly or indirectly) towards this supreme common good (see, *inter alia*, 66-67). Below this supernatural good is the “intrinsic common good of the universe”—the order of creation, partaken of by rational creatures through the theoretical and moral truths by which people may attain the perfection of their intellects and live a good life in accord with the fundamental dictates of practical reason.¹² The rational nature of the human being is, to repeat,

¹¹With regard to himself, God is of course not a “common good,” but rather *bonum universale simpliciter*, infinite good and fullness of happiness in and of himself. Aquinas’s position is that with regard to his creatures, brought into existence freely and not of any necessity, and specifically to his rational creatures, God is their common good: that is, “the good which incommensurably surpasses anything which might be the proper good of a creature and which, by its very infinity, is communicable to others as *bonum universale*” (De Koninck 1945, 48; cf. also 47). The share of any or all rational creatures in this divine good or ultimate “objective beatitude” can never be more than a finite participation in the fullness of goodness which is God’s alone. See, *inter alia*, *ST* I-II 19, 10; 109, 3; and II-II 26, 3; cf. also Augustine, *City of God* XII.1.

¹²A certain natural knowledge of God is of course included here. But this is only an indirect and imperfect knowledge of God as first cause and of some of his attributes (wisdom, power, etc.), arrived at through his creatures. But because God is transcendent of the natural order, knowledge of him as he is in himself is available only in the supernatural order, through revelation, grace, and the *gift* of wisdom which is caused by the theological virtue of charity (cf. *ST* II-II 45, 2).

essentially open to the whole, to the universal, to what is most communicable. Therefore, as De Koninck emphasizes elsewhere in his book, “if the rational creature cannot limit himself entirely to a subordinate good—that of the family, for example, or that of political society—it is not because his singular good is as such greater, but rather because of his ordination to a superior common good to which he is principally ordered. In such a case the common good is sacrificed not to that of the individual *qua* individual, but rather to the good of the individual insofar as he is ordained to a more universal common good” (14-15).

Thomas argues that “wisdom as a gift is more excellent than wisdom as an intellectual virtue, since it attains to God more intimately by a kind of union of the soul with him” (*ST* II-II 45, 3, ad 1). This ultimately finds its fulfillment in the “beatific vision” (*ST* I 1, 6). Only in this unitive vision and the perfection of love to which it gives rise do human persons attain their perfect good and full happiness. As Thomas elaborates, in *ST* I-II 1, 3, “If therefore the human intellect knows the essence of some created effect and knows no more about God than that he exists, the perfection of that intellect has not reached the point of knowing the first cause absolutely, and there still remains in it a natural desire to seek out that cause. Consequently, for perfect happiness, the intellect must reach the very essence of the first cause. Thus its perfection will be had by its union with God as an object, and only in this does man's happiness consist....” Cf. also *ST* I-II 1, 8; and *Summa Contra Gentiles* (*SCG*) III, 39.

III. *Personalism and the primacy of the common good?*

Now, given the often-heated character of the polemic which ensued between these two Thomistic camps--the personalist people and the partisans of the common good--one might well be surprised to discover that Maritain and De Koninck are in essential agreement on most fundamental aspects of the matter at hand. And yet such is in fact the case. The only difficulty is that to grasp the full extent of the agreement one is compelled to do at least two things, the first of which is to read very carefully all the fine-print in Maritain's book, i.e., the footnotes, especially numbers 7 and 48. It would seem that what makes Maritain's text so murky at times is that its author wants to effect too close a union between a classical outlook and a decisively modern spirit. The end result is a work which upholds the primacy of the common good within each genus, while at the same time so focusing on the liberty and transcendence of the individual person that the centrality of the common good often fades from view. Maritain thus risks appearing to subscribe to a particularly modern trend which in another work he himself depicts as fatal to true philosophic investigation and discourse: that characterized by "[philosophy] discard[ing] the object in order to seek itself in the folds of subjectivity--a subjectivity entrenched within the individuality of the ego, instead of being spiritualized and universalized by its communication with objective being..." (1952, 47).

In more properly Thomistic terms, Maritain chooses to direct his attention above all to the subjective and uniquely personal act of ascent to and participation in an end (e.g., in the intrinsic common good of the universe, which the philosopher seeks to apprehend, or in God as separated common good), rather than to the objective, intrinsically communicable (therefore "common")

character of that end in itself, the ultimate goal common to all human persons.¹³ In short, he appears to be moved much more by the incommunicable than by the communicable aspects of personhood and its ends (again, see Schmitz 1991).

Yet Maritain's focus on the subjective is not in fact intended to displace--much less to deny--the objective. This is especially evident when *The Person and the Common Good* is read in the context of a wider selection of Maritain's works. His theory and his interpretation of Aquinas can be viewed as endeavors to develop a Thomistic account of subjectivity, both as a task philosophically worth doing for its own sake, and as particularly urgent given the political context within which he writes. And this brings us to the second prerequisite for grasping the deep agreement between these two Thomists: namely, more of an appreciation than De Koninck evinces for the sense in which Maritain's focus is compatible with and complementary to the preferred "objective" emphasis of traditional Thomistic theory.

We can begin to see how this is the case by turning to the opening questions of the *Prima secundae*. Thomas here presents our proper end or good as twofold: first, "the thing itself which we desire to attain" (the "end for which"); second, "the attainment or possession, the use or enjoyment of the thing desired" (the "end by which"). The "end for which" is what "constitutes" our happiness, as its "cause or object"; it is *what* we pursue as an end. But the "end by which" is what we generally mean when we speak of happiness, for to attain or to enjoy the good is "the very essence of happiness" (*ST* I-II 1, 8; 2, 7; 3, 1). Moreover, in the *Secunda secundae* Thomas

¹³For a helpful explatation of the distinct uses of the terms "object[ive]" and "subject[ive]" characteristic of ancient and medieval philosophy on the one hand, and of modern thought on the other, see Schmitz 1991, 192-193.

argues that while “the right ends of human life are fixed,” “[t]he means to the end, in human concerns, far from being fixed, are of manifold variety according to the variety of persons and affairs” (*ST* II-II 47, 15).¹⁴ Hence Maritain’s work, with its emphasis on the personal, the subjective, the incommunicable, may be understood as elucidating the character of Thomas’s “end by which” and highlighting the unique path by which each individual human must attain our common final end, or common good.

And yet, in response to the central place occupied by “freedom of autonomy” and related concepts in personalist literature, De Koninck suggests that “the personalists” have unwittingly fallen prey to the very individualism they seek to combat: “What the personalists understand as ‘person’ is in fact what we understand as mere individual, a material and substantial whole enclosed in itself; they reduce the rational nature to the sensible nature which has as its object the private good” (1943, 66-67). But here as elsewhere, some distinction among personalists of different stripes is clearly called for (cf. Simon 1944, 532; Maritain 1947, 12-13). This accusation simply is not justifiable with regard to Jacques Maritain’s brand of personalism. Maritain’s

¹⁴In citing from the *Summa Theologiae*, I generally follow the translation of the Fathers of the English Dominican Province. I have also benefited from consulting John Oesterle’s translation of *ST* I-II 1-21, published under the title *Treatise on Happiness* (Notre Dame, Indiana: University of Notre Dame Press, 1983). Where necessary, I have modified their translations, checking them against the Latin text of the Leonine Edition of Aquinas’s *Opera Omnia* (the definitive critical edition; however, the final version of the volumes containing the *Summa Theologiae* is still in preparation).

colleagues Mortimer Adler and Walter Farrell do indeed explicitly argue that the human person is, on the natural level, an essentially selfish being seeking first and foremost his own private or individual good.¹⁵ But not so Maritain: after all, he stresses repeatedly the openness and generosity of the person. For him, as for De Koninck, the human person is, in the most fundamental aspect of his or her being, a “being-for-self-for-God”--and therefore “for-others.”¹⁶ In consequence, Maritain defines the “freedom of autonomy” for which human persons strive not as absolute autarchy, but rather as “independence with regard to creatures and dependence with regard to God” (1952, 215; cf. Evans and Ward 1955, 25-27). Nonetheless, this precise definition occurs far too infrequently in his *oeuvre* to prevent the reader from mistaking Maritain's meaning for more common--and quite different--usages.

We ought further to note that De Koninck's strongly-voiced concern that a personalist approach (or rather, individualism cloaked in personalist garb) is apt to give rise to totalitarian politics seems exaggerated, to say the least, when applied to the sort of “Thomistic personalism” advocated by Maritain.¹⁷ And yet, interestingly enough, in this case there does seem to be some foundation for such a criticism in Maritain's argument.

¹⁵Mortimer Adler and Walter Farrell, “The Theory of Democracy,” *Thomist* 4 (1942): 323-24, 329-30; cited in De Koninck 1943, 129-130.

¹⁶Cf., *inter alia*, De Koninck 1943, 41, with Maritain 1947, 15, 39-41.

¹⁷Compare Maritain's conviction that “pure individualism” results, sooner or later, in “pure statism” (Evans and Ward 1955, 111); cf. Maritain 1947, 104-105: “...the tendency towards the materialism and atheism inherent in the city of the individual appears as one of the absurdities by which it destroys itself. In the political order, the internal dialectic of this tendency...drags it

In his eagerness to cast the person as an independent whole, Maritain finds himself led *de facto* to create, on the conceptual level, a radical divide within the human being to explain his or her place within political society and duty to obey legitimate political authority. On the one hand, we have the “material individual,” wholly indebted to the political community and hence fully subordinate to the state. This individual relates to the political community as a pure part of a greater and sovereign whole. On the other hand, we have the “spiritual person,” whose ends by far transcend political life and who therefore deserves to be treated by the community as a whole to which it is subordinated (see *inter alia* 1947, 70–76).

Now in theory such a perspective clearly ought to protect against totalitarianism: all those noble things which belong to the realm of human spirituality are untouchable; the highest aspects of human existence lie safely outside the sphere of political authority. The only problem here is that politics outside of Socrates’s “city of sows” (see Plato’s *Republic* 369a–372d) simply cannot avoid being concerned with some “spiritual”—moral and intellectual—aspects of human life. The political community is comprised of human beings who are, according to Thomas, substantial unities of body and soul, of matter and spirit. As Maritain himself readily acknowledges, there are not two races of human beings, the material individuals and the spiritual persons. There are just plain persons, and these need to be governed. So, in practice, where is the government of a given

towards dictatorship which is its proper negation.” Modern liberal democracy has embarked on “an unwitting quest of something good, the city of persons, masked by the error of the city of the individual, which, by nature, leads to dreadful liquidations.”

political community to draw the line between what lies within its competence to direct and what is off-limits? In this crucial context at least, the material individual-spiritual person formula seems to obfuscate more than it clarifies.¹⁸

Insofar as there is an important theoretical disagreement between the personalist Thomism of Maritain and De Koninck's focus on the common good, it hinges upon their respective

¹⁸The political thrust of this distinction appears in some tension with other elements of Maritain's own thought. In *Things That Are Not Caesar's* (1931), for example, he insists that the "temporal good" at which politics properly aims is a good "not only of the *material* order, but also and preeminently of the *moral and spiritual order*..." (Appendix II, 125; emphasis in original). Again, in his *Range of Reason*, Maritain maintains that the political common good (a "communicable good") is "at once material, intellectual, and moral, and principally moral, as man himself is; it is a common good of human persons..." (1952, 142).

This tension may be resolved by maintaining that while the political association and its legitimate authority ought to foster the moral and intellectual development of its citizens, the modern democratic "state" may direct or interfere with the more properly spiritual aspects of human life (religious, intellectual or scientific, etc.) only when compelling moral or practical necessity so dictates, for the sake of the common good (cf. *inter alia* "The Democratic Charter," in *The Social and Political Philosophy of Jacques Maritain* (1955), 141-144, and *The Person and the Common Good*, 73-74). Still, the suggestion that only the "material individual" is a full part of the political community cannot but cause some confusion within Maritain's broader understanding of the political association's nature and purpose.

understandings of what constitutes a “common good” in the most precise sense of the term. Maritain's formulations suggest that a common good “in the strict sense” must belong to the practical order. It must obtain only within the context of an actual human society, political or other:

[I]n the natural order there is a community of minds in as much as minds communicate in the love of truth and beauty, in the life and work of knowledge, art and poetry, and in the highest values of culture. However, this community does not succeed in constituting itself as a society in the proper sense of the word, the kingdom of minds, as Leibnitz put it. We could speak of its common good only in an analogical sense. In fact, the common good of the intellects can be understood in two ways: in the first way, it is truth and beauty themselves, through the enjoyment of which minds receive a certain natural irradiation or participation of the Uncreated Truth and Beauty or of the separated common good. This common good of the intellects is obviously superior to the personal act by which each intellect conquers a fragment of it; but it is not a social good, a common good in the strict sense (Maritain 1947, 82-83).

Maritain's criteria accords well with common sense: rare as it may be to hear of the common good in our contemporary discourse, when it is mentioned it is virtually always with reference to the well-being of (usually civil or political) society and its members. And yet De Koninck wants to argue, following Thomas's teleological understanding of the good, that “in the strict sense” the common goods of the theoretical order are in fact more deserving of the name.

In scholastic terminology, “the good of the speculative intellect is as such more common because it is formally more abstract, more separated from the singularity of the operable which involves potentiality, and hence more communicable” (De Koninck 1945, 88; cf. Schmitz, 203). Take, for example, the case of truth, the attainment of which perfects reason, the highest human faculty. Truth of itself (leaving aside for the moment the sometimes formidable obstacles to its attainment) may be possessed by innumerable persons without being thereby diminished in value.¹⁹ Moreover, on both the natural and supernatural planes, the speculative good is *divinius* as well as *communius*, for its possession constitutes the chief ingredient of *beatitudo* (“blessedness”), Aquinas’s term for the happiness proper to rational creatures (cf. *Commentary on Lombard* IV 49, 1; *ST* I-II 3, 5; *SCG* III.37-63).²⁰

Given his understanding of what qualifies as a common good “in the strict sense,” it is easy to see why Maritain avoids positing a generalized “primacy of the common good.” In his eyes, such a maxim would inevitably tend towards the sort of blanket “subordination of the person to the state” which we have seen De Koninck at pains to reject as a valid interpretation of this Thomistic principle. Maritain apparently agrees that this is not the drift of Aquinas’s theory, but

¹⁹Cf. Augustine’s treatment of truth as common good in *On the Free Choice of the Will* II.12-14.

²⁰At the heart of this difference is the question of the primary or controlling meaning of an analogical term: is it that which is “first for us,” “first in the order of learning or discovery,” or that which is “first in itself,” “first in the order of being or knowledge?” Maritain’s position on the “strict sense” of the term “common good” appears to follow the first possibility, De Koninck’s the second. For two accounts of the meaning and importance of analogy in Aquinas’s thought, see McInerney 1996 and Phelan 1948.

he fears that without some development or modification the classic philosophy of the common good is incapable of safeguarding the dignity of the human person:

The adage of the superiority of the common good is understood in its true sense only in the measure that the common good itself implies a reference to the human person... [T]he worst errors concerning society are born of the confusion between the substantial whole of the biological organism and the collective whole, itself composed of persons, of society. But to understand these things more profoundly, we must uncover the metaphysical roots of the question and engage in more subtle considerations about the individual and the person (Maritain 1947, 29-30).

Maritain thus develops his “material individual-spiritual person” distinction for much the same reason he focuses on freedom and indeed adopts a personalist stance to begin with: to make abundantly clear that the sacrificing of countless human beings to the idol of ideologically-concocted “collective entities” and their supposed well-being is both inhumane and intolerable; that it has nothing whatsoever to do with the Thomistic doctrine of the primacy of the common good. While De Koninck’s reading and presentation is more faithful to Aquinas’s position on this issue, Maritain departs from the letter of Thomas’s work in order to uphold the spirit informing it.

Theoretical subtleties aside, the European experiences of communism and fascism made a “personalist” approach seem to many the only conscionable one.²¹

²¹Father Eschmann suffered imprisonment in Hitler’s Germany, his “crime” proclaiming and explicating *Mit brennender Sorge* (“With Burning Anxiety,” the 1937 diplomatic protest issued by Pope Pius XI against national socialism) in Catholic churches. Maritain’s France was of course shamed by Vichy collaboration with the Nazi invaders. For an account of the Nazi use and abuse of the slogan “the common good before the good of the individual,” see Pieper 1987, 95 and 175; cited in Sherwin 1993, 324. From the opposite side of the iron curtain, the remembrances of a survivor of Stalin’s “terror-famine” (the term is Robert Conquest’s) illustrate well the nightmare misinterpretation of “the primacy of the common good” which Maritain sought to avoid at all costs:

[In the context of a visit to a Ukrainian village by “solemn, grim” Party officials who were “traveling throughout the county arresting people for no apparent reason”:] “Comrade Representative spoke first. The gist of his speech is as follows: a stray ant is of no account; it can become lost in its search for food; it may be mercilessly crushed by someone...or destroyed by other means. Who cares about a stray single ant? What really counts is the anthill, for in it the ant’s life is protected and perpetuated. The ants manage to survive only because they live in a close-knit and well-organized ant society. An ant is inconceivable without that society. So it is with human beings: alone, they are helpless; they can be exploited, persecuted, forgotten, or destroyed. Only in the Communist society can an individual find happiness, prosperity, and freedom. The collective farm is everything; the individual is nothing! The collective farm is the first step toward this

In the light of our current political and scholarly situation, however, and given the problems we have seen with Maritain's modifications of Thomas's theory, it seems well worth our while to reexamine Aquinas's own treatment of the political common good. Part of what makes this task so daunting is the widespread and immensely varied usage Thomas makes of the term *bonum commune* throughout his writings (on this subject, see Froelisch 1989). There is no one volume or passage to which one can point as the prime locus of a thematic explication of the concept and its social import. By contrast, as Wayne Ambler suggests, the fact that Aristotle confines his use of the term "to relatively short and isolated passages," making "the common advantage an explicit theme only at *Politics* III.6-7," "has at least the advantage that one knows where to begin" (1992, 4). In an effort to give our study sufficiently tight focus and appropriate perimeters, we will concentrate primarily on the relevant sections of the second part (*secunda pars*) of the *Summa Theologiae*. It is here that we find Thomas's most developed treatments of law and justice, treatments in which the "common good" figures prominently. We will also, of course, need to turn with some frequency and varying length of stay, to other works such as the *Commentaries* on Aristotle's *Ethics* and *Politics*, and the *De Regno*.

Finally, while at least two recent dissertations on this general theme have put forth (civic) *friendship* as the most adequate conceptual link between personal and common goods (see Froelich 1988 and Smith 1995), our investigation focuses primarily on the possibilities of (human)

Communist society; therefore, we all must join it. The Party so orders, and the Party knows what is best for farmers. There is no choice (Dolot 1987, 70-71).

virtue in this role. It should be obvious that these emphases are complementary rather than contradictory. After all, according to Aquinas, friends are joined together especially in the pursuit of some good or goods; and the best, deepest friendships are so joined by common love for truth and pursuit of virtue, in which the growth of one friend fosters the increased participation of the other, and vice-versa. And in his *Summa*, Thomas explicitly lists civic friendship, at least in its noblest forms, as among the ranks of such virtuous friendships (see *inter alia* II-II 26, 7).

Chapter 3: *Virtue as Human Good, vis-à-vis the Common Good*

In the conclusions to both preceding chapters, we have noted the concern, entered from a broad spectrum of philosophic and political positions, that Thomas's emphasis on the common good of political society might prove detrimental to the well-being of the individual persons comprising that society. Jacques Maritain, for example, believed a "personalist" development or modification of Aquinas's thought necessary to prevent totalitarian distortions of his focus on the common good. We proposed to return to Aquinas's own works, to determine whether his thought adequately addresses this concern. At the same time, however, we should be wary of letting the paradigms of more or less contemporary critics set our agenda. For it is surely the case that their noble concern to safeguard the human good is colored by a particular understanding of that good, or even by a denial that anything like a universally valid, overarching good exists. Political society organized around the goal of protecting the human good *qua* "separate and unequal capacities for acquiring property," for example, will take a quite different approach to protecting personal welfare than one where military victory and honor are upheld as the most desirable of goods. In order to be fair to Aquinas and to understand his position clearly, we should rather begin from his own, *virtue-centered* account of the human good. How does Thomas take the "good of virtue" to be related to the common good? And what in his estimation grounds this relationship?

In his *Philosophy of Democratic Government* (1951), Yves R. Simon articulates, as the first premise of his theory of healthy politics, the proposition that human virtue, by its very nature, implies orientation to the common good; that to call someone “virtuous” bespeaks love of, and subordination of private interests to, the common good (see *inter alia* 48). Indeed, Simon treats this as a self-evident proposition, capable of commanding immediate and universal assent:

The relevant and difficult question [concerning the essential social role of authority] concerns a society composed of good and enlightened people. At first glance, the answer may seem obvious: if all these people are well-intentioned, they *spontaneously* intend the common good and do not need to be directed toward it. By the very operation of their virtue they aim at the common good and want to subordinate to it their private advantages; without such basic volition and orderly subordination, they would be selfish people, bad citizens, or, at best, well-meaning people misled by illusions (37, emphasis in original; cf. also 26).

That virtuous people, as a proper effect of their very virtue, love the common good and subordinate their choices to its requirements is an entirely unquestionable proposition. Thus, *in a certain way at least*, the volition and intention of the common good are guaranteed by virtue itself, independently of all authority. Of this way we do not know, as yet, anything, except that it is essential and basic; for it is not by accident or in any superficial fashion that the just love the common

good and surrender for it their private interests. The [sole relevant] problem, accordingly, is to determine whether the virtue of the private person regards the whole of the common good or merely some fundamental aspect of it. (39, emphasis in original).

Moreover, it is striking that when Simon turns to support and explicate each of his six basic propositions, he declines to treat the first (“that virtue implies love for the common good...”) in any detail. He explains that this task pertains rather to “general treatises, most properly the treatise on moral virtues.” What supporting evidence he does provide again remains on the level of socio-moral phenomena: “Let us merely remark that the principle of the primacy of the common good, often misunderstood or denied by theorists of ethics, has, in fact, an extraordinarily powerful hold on the consciences of men. People of debased conduct and skeptical judgment still find it natural to die for their country or for such substitute for a country as a gang...” (50).

Simon thus provides us with a very helpful *beginning* for our study, one firmly founded in common sense, and building on a theoretical exposition of none other than Thomas Aquinas (*ST* I-II 19, 10 in particular; cf. *PDG* 40-41, n. 20). Still, one may well doubt whether, in our times and circumstances at least, his basic proposition will appear so self-evident as to require little or no justification. As Simon himself notes, intellectuals form the most likely group in the population to take issue with this premise¹; but the

¹Note for example the 1989 report of the American Council of Learned Societies, “Speaking for the Humanities” (cited in Pangle 1992, 78), which alleges that modern

average non-scholar might just as well wonder whether he or she is being “taken for a ride” in being told it is a sign of virtue, for example, to sacrifice concrete private gains for the welfare of family or civic community. Some account, however rough or provisional, must be given as to *why* human virtue should presuppose and include ordination to the common good, as well as to what this connection reveals or implies about the nature of human persons and human society. To attempt as much is, moreover, reflective of Aquinas’s peculiar approach to ethical investigation (see Fortin 1972, 259 and ff.). And since Simon posits the necessary interrelation of virtue and the common good as a primary premise of his “philosophy of (democratic) government,” it seems unjust to leave the entire task to writers of bulky ethical treatises.

In the course of this chapter I will suggest that, as the foundation of Aquinas’s account of human virtue is the essentially rational character of human nature, so too the first premise leading to the “virtue-implies-ordination-to-the-common-good” conclusion is that human nature is “social and political.” In Thomas’s estimation, the excellence proper to human beings cannot be conceptualized in abstraction from this central aspect of human existence. I will then endeavor to identify, explicate, and tie together some important implications of this natural sociability for the nature of upright wills, good acts, and moral virtues, especially as these come to light in the *Summa Theologiae*.

thought has successfully debunked, among other more or less noble lies, “the belief that members of a society can act against their own self-interest, recognizing a larger social good,” and that such a capacity is integral to universal human goodness.

I. Aquinas on human nature as “social and political”

In his celebrated question on natural law in the *Summa Theologiae* (I-II 94), Thomas specifies the human inclinations “to know the truth about God, and to live in society” as among those conducing to the goods most proper to specifically *rational* creatures (see 94, 2). Our focus here is, of course, on the second inclination. Why should one count sociability among the natural human tendencies? In this article, Thomas appears as convinced as Simon that this claim would meet no massive opposition, or at least is not such as to require lengthy justification. Yet he has left a sort of trail for inquisitive readers to follow, back to a more thorough attempt to ground and to explicate the case for natural human sociability.

Earlier in the *Prima secundae*, Thomas has posited a three-fold order in human life, whereby persons should direct their internal dispositions and exterior conduct towards virtue and according to virtue. The first consists of an ordered harmony *to* or *within oneself*: between body and soul, and among the faculties of the soul itself. The first part of this order Thomas likens to the rule of master over servant; the second is depicted as corresponding roughly to political rule, wherein reason directs and harmonizes the movements of the appetites or desires, but without appropriating to itself or annihilating the proper tasks of the lower faculties (cf. *ST* I-II 59, 4-5; *SCG* III 71.4). Secondly, Aquinas considers the order of the person *to God*, as first cause and last end of the universe, and especially as revealed source of eternal beatitude for intellectual creatures.

Aquinas observes that “if man were by nature a solitary animal, this twofold order would suffice. But *since man is naturally a political and social animal*, as is proved in *Politics* 1.2, hence *a third order is necessary*, whereby man is directed in relation to other men among whom he has to dwell”² (I-II 72, 4, emphasis added; cf. 73, 9; 85, 5). Aquinas thus points the reader in search of a fuller account of man’s political and social nature back to the first book of Aristotle’s *Politics*. A brief excursion to Thomas’s *Commentary* on the same will then be a sound way to discover the arguments supporting his assertions in the *Summa*.³

Thomas’s commentary on Aristotle’s Politics I

In his commentaries Thomas aims to elucidate the thought of Aristotle, paraphrasing the latter’s text and filling out his often terse argument, with a view to helping the student grasp its meaning with greater ease. While Aquinas cannot be presumed to agree wholeheartedly with every conclusion drawn by “the Philosopher,” in this case Thomas

²Aquinas goes on to elaborate briefly the relationship among the three: the first order is said to “contain and surpass” the third, while the second order in turn “contains and surpasses” the first.

³I have used Ernest L. Fortin and Peter D. O’Neill’s translation of Thomas’s *Commentary on the Politics* 1 and 3, in *Medieval Political Philosophy*, eds. Ralph Lerner and Muhsin Mahdi (1972), checking against the new Leonine edition.

explicitly indicates that he finds Aristotle's case persuasive (cf. *inter alia* ST I-II 72, 4, cited above). Our goal is not to ascertain the extent to which Aquinas correctly interprets Aristotle on this point, but rather to reveal the argument that Thomas finds persuasive, as he understands it, and thus to discern how he conceives of human nature as social and political.

Aquinas begins from an observation which we can trace back to Plato's Socrates, that by nature "each of us isn't self-sufficient, but is in need of much" (*Republic* II, 369b). The neediness of each individual opens, indeed impels him or her towards various forms of association with others. The first of these associations in what Aquinas terms the "order of generation" is the family, which looks especially to the procreation, sustenance, and education of offspring. But a lone family unit is incapable of complete self-sufficiency, of providing securely for its own preservation, and especially of attaining the best things in life for its members. So the "domestic society" fans out into clan and village units, which in turn require a specifically *political* society for their completion. Thomas comments: "After having treated of the societies ordered to the city, the Philosopher treats here of civil society itself. This treatise is divided into three parts. First, he shows what kind of society the city is. Secondly, he shows that it is natural. Thirdly, he treats of the foundation of the city" (*Comm. Pol.* I, *lectio* 1, 31). Expounding on the *what* and the *for what* of the city, Aquinas writes:

[Aristotle] shows the condition of the city with reference to three things. First, he shows of what things the city is made up. For, just as a village is made up of

several households, so a city is made up of several villages. Secondly, he says that the city is a perfect society; and this he proves from the fact that, since every association among all men is ordered to something necessary for life, that society will be perfect which is ordered to this: that man have sufficiently whatever is necessary for life. Such a society is the city. For it is of the nature of the city that in it should be found all the things that are sufficient for human life; and so it is. And for this reason it is made up of several villages, in one of which the art of the smith is practiced, in another the art of the weaver, and so of the others. Hence it is evident that the city is a perfect society. Thirdly, he shows to what the city is ordered. It is originally made for the sake of living, namely, that men might find sufficiently that from which they might be able to live; but from its existence it comes about that men not only live but that they live well, in so far as by the laws of the city the life of men is ordered to the virtues (*ibid.*).

Next, Thomas briefly explicates Aristotle's account of the naturalness of the city (32-33). The smaller associations of family and village are natural to human beings, as shown above; but these require political society for their completion, that is, to fulfill their aim of self-sufficiency. In this sense the city is the "end" of the more basic natural associations; and the end of the "growth" of natural things defines their nature *par excellence*. Of human things, it seems, only the city is self-sufficient; and "self-sufficiency is an end and what is best" (*Pol.* 1.2, 1252b35). Considered by itself, this argument is inconclusive. It proves no more than that a larger association for security and exchange is

desirable, perhaps necessary: a bigger, better clan or village, or a loose confederation of clans and villages. It abstracts from the *specific* nature of *political* society, which apparently hinges on the establishment and enforcement of justice and the inculcation of civic virtue, by means of the regime and its laws.⁴ Perhaps this critical weakness accounts for the “fresh start” Aristotle makes at the beginning of Book 3. There the Philosopher identifies the regime as the “form” of the city and the citizens as its proper parts, and undertakes an examination of justice and civic virtue.

The focus quickly shifts from the city to the human being, as naturally oriented towards participation in political society: man as “by nature a political animal.” Aquinas comments much more extensively here, and with good reason. This segment of the argument is both more intriguing and more compelling. It approaches more nearly to the core of specifically human existence; moreover, it comes closer than the preceding argument to considering political society as political. Aquinas first considers the political character of human nature as following necessarily from the “naturalness of the city”: “[The Philosopher] infers then, first of all, from what has already been said, that a city is made up of things that are according to nature. And since a city is nothing other than a congregation of men, it follows that man is a naturally political animal” (34). But as we have just seen, the city is not simply a multitude of men, without further qualification. More remains to be said before the reader is likely to be persuaded.

⁴Cf. especially *Pol.* III.9, 1280a25–45; Aquinas’s *Commentary* breaks off just prior to this passage, at 1280a7.

Aquinas continues: “Then [Aristotle] proves *from [man’s] proper operation* that man is a political animal, more so even than the bee or any gregarious animal, by the following argument” (36, emphasis added). Other animals have voices with which they communicate their perception of pleasure and pain, and their experience of the passions ordered to these. But only human beings, *rational* animals, have language or speech properly so called. Parrots may mimic human speech; yet “they do not properly speak, because they do not understand what they are saying but produce such words out of a certain habit” (ibid.). Human speech, by contrast, presupposes reason. It transcends the plane of pure passion, opening the door to deliberative and dialogic evaluation of passionate responses under the guidance of intellect. Speech “signifies what is useful and what is harmful, from which it follows that it signifies the just and the unjust. For justice and injustice consist in this, that some people are treated equally or unequally as regards useful and harmful things. Thus speech is proper to men, because it is proper to them, as compared to the other animals, to have a knowledge of the good and the bad, the just and the unjust, and other such things that can be signified by speech. Since language is given to man by nature, therefore, and since language is ordered to this, that men communicate with one another as regards the useful and the harmful, the just and the unjust, and other such things, it follows, from the fact that nature does nothing in vain, that men naturally communicate with one another in reference to these things. But communication in reference to these things is what makes a household and a city. Therefore, man is naturally a domestic and political animal” (37; cf. *De Regno* I.1 [6-7]).

This last formula confers on the family a dignity higher than we might have expected in light of earlier passages. Apparently, like civil society, domestic society comes to exist for the sake of mere life, but aims ultimately at the good life for itself and each of its members (especially the children). Yet the family still requires the city for its “completion,” for the establishment of the overarching context in which the domestic good may be best and most securely pursued. Civic association is further necessary to raise the sights of humans beyond self and nearest of kin, towards a more universal view of right, duty, happiness, and excellence. The city is the “whole”; domestic societies are “parts” of that whole.⁵ Political society, as we shall see, is essential for the establishment and determination of justice and friendship in that broader context of social relations necessary for human self-sufficiency. Its vision of the good life will profoundly influence the sort of upbringing most parents give their children. The coercive power of the city’s laws will prove essential in the effective repression of vice, a second beginning to the process of inculcating virtue when parental admonition goes unheeded. Hence Thomas concludes his commentary on this chapter with the following observations: “[M]an is the best of the

⁵In this sense Aquinas remarks that while individuals (and, one may assume, households) are prior to the city in the “order of generation,” political society holds precedence in the “order of nature and perfection” (38). Cf. Augustine, *City of God* 19.16: “Hence, because the human household ought to be the beginning or the building block of the city, and because every beginning is directed to some end of its own kind and every part to the integrity of the whole whose part it is, the consequence is clearly that domestic peace is directed to civic peace.”

animals if virtue, to which he has a natural inclination, is perfected in him. But if he is without law and justice, man is the worst of all the animals... But man is reduced to justice by means of the political order. This is clear from the fact that among the Greeks the order of political society and the judgment of justice are called by the same name, to wit, *dike*. Hence it is evident that the man who founded the city kept men from being most evil and brought them to a state of excellence in accordance with justice and the virtues” (41). At issue here of course is the necessity of founding and a founder for political associations, which some would argue undermines the naturalness of political life. Aquinas gestures towards a resolution of this dilemma as follows: “[Aristotle] treats of the foundation of the city and infers from what has been said that there is in all men a certain natural impulse toward the city, as also toward the virtues. But nevertheless, just as the virtues are acquired through human exercise, as is stated in Book II of the *Ethics*, in the same way cities are founded by human industry” (40).

II. Aquinas's “good of virtue”

With a better grasp of the arguments underlying his assertions that humans are by nature social and political, we turn to Aquinas's notion of the human good as virtue-centered. We have already caught a glimpse of Thomas's general notion of the good through the prism of Maritain's and De Koninck's interpretations. This “good” is of the teleological sort delineated by Aristotle, along with others among the classical and

patristic writers. The *what* of a thing can only be fully ascertained in context of the *why*, *what for?*; of the *where is it going, toward what is it directed? what constitutes its perfection or flourishing?* The answers to these questions are not determined by the choice or whim of an individual, nor is intensity of sentiment the crucial factor. According to Aquinas, human flourishing— “happiness” in more common parlance-- is not principally or essentially to be found in physical pleasure, nor in some nondescript “warm, fuzzy feeling”; rather, it is perfection through activity according to complete or highest virtue.⁶ Moreover, “[since] happiness is an operation, the true nature of happiness is taken from the object, which specifies the act, and not from the subject” (*ST I-II 5, 3, ad 2*). To illustrate the thrust of this abstract formula, recall the fictitious figure of the “grass-counter” from John Rawls’s *Theory of Justice* (see 432-33). Let us call him Jim. No matter how good Jim feels counting blades of grass (the activity around which he

⁶Cf. *ST I-II 3, 2*, “Whether Happiness is an Operation?” Thomas’s *sed contra* is drawn from Aristotle’s *Nicomachean Ethics*: “The Philosopher says (*NE I.13*) that *happiness is an operation according to perfect virtue*.” His own argument follows: “*I answer that*, Insofar as man’s happiness is something created, existing in him, we must needs say that it is an operation. For happiness is man’s supreme perfection. Now each thing is perfect insofar as it is actual; since potentiality without act is imperfect. Consequently, happiness must consist in man’s last act....” Cf. also *NE I.13*, and Aquinas’s *Commentary* on the same, both of which stress the importance of understanding human virtue for grasping the meaning of happiness, and the centrality of this investigation to ethics as well as political science.

autonomously chooses to organize his existence), the content and ends of this particular operation (say, trivia, numbers and addition, or grass itself as preferred object of attention) cannot be said to constitute genuine human happiness. Why not? For the simple reason that none of the specifying characteristics of this operation is perfective of the highest capacities possessed by rational creatures: to know and to love. The noblest faculties of Jim's soul, namely his intellect and will, are not fulfilled; the highest objects these can pursue and contemplate, such as God, cosmos, justice, etc., are nowhere in the picture.

According to Aquinas, human persons must attain the good towards which they are ordered, through action in accord with their rational nature. But such acting well is not purely spontaneous. One must take into consideration the "principles" of those actions which by their very nature conduce to or foster a good human life. Thomas divides these principles into two basic categories: (1) *intrinsic* to the individual human being; and (2) *extrinsic* to him or her. These constitute the subject matter for the second half of the *Prima secundae*. Thomas commences as follows:

After treating of human acts and passions, we now pass on to the consideration of the principles of human acts, and firstly of intrinsic principles, secondly of extrinsic principles. The intrinsic principle is power and habit; but as we have treated of powers in the First Part (77, ff.), it remains for us to consider them in general; in the second place we shall consider virtues and vices and other like habits, which are the principles of human acts (I-II 49).

This segment of the argument flows from the explication of habits in general, through to specifically “*good habits*, which are *virtues*,” and thence on to “bad habits, namely vices and sins” (cf. 55, introduction). Finally, with the treatment of intrinsic principles behind him, Thomas shifts his focus to the extrinsic. “[T]he extrinsic principle moving us to good is God, Who both instructs us by means of his law, and assists us by His grace: wherefore in the first place we must speak of law; in the second place, of grace” (90, introduction to the questions on law).

It therefore seems clear that an inquiry into Thomas’s understanding of the relation of the political common good to the human good without further qualification must pay special heed to *virtue* as *intrinsic* principle of good human acts and good human beings, and to *law* as *extrinsic* principle of the same.⁷ In this chapter and the following, we will focus on virtue as Thomas conceives it related to the common good. Then, in chapter 5, we will turn to law and its peculiar role in fostering both human virtue and the common good. At first glance, to posit a close connection between these two concepts might seem untenable. After all, virtue is the excellence of an individual human being, a substantial whole, while law is framed for the well-being of a complete or “perfect” community, a composite unity of order (cf. *ST* I-II 90, 2). Yet in the course of our examination of Aquinas’s common good as proper good and public good, it will become clearer how in

⁷Given the specific focus of this thesis, we will not treat the other “principles” (the soul’s “powers,” and supernatural grace) in detail, although they will certainly enter into our discussion. For Thomas’s treatment of these subjects in the *Summa Theologiae*, see I 77-83 and I-II 109-114, respectively.

his estimation these two are intricately interrelated. One cannot legislate or govern for the public good without seeking to foster the good of virtue; one cannot cultivate true virtue in his or her own life without appropriate orientation to the good of the community.

Virtue's typology

In order to understand how Thomas deems personal virtue to be related to the common good, it would be helpful to review briefly just what he conceives human virtue to be. Virtue is a stable quality of mind, will, and passions. It is an operative habit, inclining its possessor to those acts by which he or she may attain, enjoy, and put to proper use the goods towards which human nature is ordered (cf. *ST* I-II 55-56; II-II 47, 4). A given virtue may relate directly or mediately to a particular end. For example, the virtue of temperance, by which our concupiscible appetite (e.g., desire for sexual pleasure or for pleasures of the table) is inclined to follow the direction of reason, is or may be directed to many human goods. It is properly aimed at the good of self-mastery, at a graceful and harmonious interplay between passion and reason in one's affairs, with reason pointing the way. But indirectly, this virtue may pave the way for the attainment of other, higher virtues and goods: for example, strength of will and freedom of mind, which will not be swayed by the passions from either prudential judgment of human affairs or contemplation of eternal truth. And while one may recognize the nobility of moderation in itself, one

may primarily strive to acquire and refine this virtue as a prelude to the cultivation of wisdom, practical and speculative.

According to Aquinas, the end proper to human life may be considered as twofold: “Man is perfected by virtue, for those actions whereby he is directed to happiness, as was explained above (I-II 5, 7). Now, man’s happiness is twofold, as was also stated above (I-II 5). One is proportional to human nature, a happiness, to wit, which man can obtain by means of his natural principles. The other is a happiness surpassing man’s nature, and which man can obtain by the power of God alone, by a kind of participation of the Godhead, about which it is written (2 Pet. 1:4) that by Christ we are made partakers of the divine nature” (I-II 62, 1). Thomas posits a corresponding classification of the virtues: (1) “natural,” “human,” or “acquired” virtue; and (2) “supernatural,” “theological,” “infused” virtue.⁸

⁸While Aquinas stresses that the existence and nature of the theological, infused virtues eludes the grasp of unassisted reason, he does indicate that nature and reason may in some way presage this ordination to a perfection higher than human. At some key points in his argument (I-II 54, 3; 68, 1; and others referring to intellectual virtue), Aquinas cites Aristotle’s mention of “*heroic or divine virtue*, in respect of which some men are called divine” (I-II 68, 1, and *NE* 7.1; 10; *EE* 7.8; cf. also *Pol.* 1.3). Although it will not be possible to do so in this dissertation, further investigation might focus on Thomas’s thought on this subject, and his interpretation and use of Aristotle in this context. What did Aristotle mean by heroic, divine, godlike virtue? How does such virtue relate to Thomas’s classification of virtues? What does it indicate about an openness of human

The natural or acquired virtues are, following Aristotle, further distinguished as either moral or intellectual: “Human virtue is a habit perfecting man in view of his doing good deeds. Now in man there are but two principles of human [voluntary] actions, viz., the intellect or reason and the appetite... Consequently every human virtue must needs be a perfection of one of these principles. Accordingly if it perfects man’s speculative or practical intellect in order that his deed may be good, it will be an intellectual virtue; whereas if it perfects his appetite, it will be a moral virtue. It follows therefore that every human virtue is either intellectual or moral” (*ST* I-II 58, 3). “Human” is a key term here, because Thomas is about to argue that this two-fold classification, which Aristotle took as exhaustive, in fact is not.⁹ Question 62, article 1 begins with this query, “Whether there are any *theological* virtues?” The central importance Aquinas assigns this question is underlined by the close parallel between it and the question which opens the *Summa* as a whole: “Whether, besides philosophy, any further doctrine is required?” (*ST* I 1, 1). Here again, Thomas responds by recalling the revelation of a supernatural end for men, a

nature to the higher-than-human? The theological debate on the relationship between nature and grace appears quite relevant here.

⁹Cf. *NE* 2.1, which Thomas cites in the *sed contra* of I-II 58, 3: “Virtue [*simply*] is two-fold, intellectual and moral,” with the concluding sentence of Aquinas’s own article: “It follows therefore that every *human virtue* is either intellectual or moral” (emphasis added). Aquinas seems to have deliberately constructed the parallel, to call our attention to this significant difference between the Philosopher’s account and his own, Christian version.

higher-than-human happiness. He then describes the type of virtue which conduces to this end:

[B]ecause such happiness surpasses the capacity of human nature, man's natural principles which enable him to act well according to his capacity, do not suffice to direct man to this same happiness. Hence it is necessary for man to receive from God some additional principles, whereby he may be directed to supernatural happiness, even as he is directed to his connatural end, by means of his natural principles, albeit not without the divine assistance. Such like principles are called theological virtues: first, because their object is God, inasmuch as they direct us aright to God; secondly, because they are infused in us by God alone; thirdly, because these virtues are not made known to us, save by divine revelation, contained in Holy Writ (ibid.).

Aquinas proceeds in the second article to clarify what he has already implied, namely that these theological virtues--faith, hope, and charity (cf. 62, 3 ff.)--are really distinct from the acquired virtues, moral and intellectual, as to both their proper object and their respective modes of operation.¹⁰

¹⁰Here we should note that Aquinas also distinguishes what he terms "infused" moral and intellectual virtues, dependent upon and "proportionate to" the theological virtues. These infused virtues complete the task begun by the properly theological virtues, directing every aspect of human life and goodness to God as supernatural end (see I-II 63, 3 and 4). We

III. *Human excellence as “social and political”*

We have begun to see how Aquinas conceives of the interplay between natural sociability and human virtue. In the absence of healthy social context--family and political society in particular--it will be very difficult for the “seeds...of acquired virtue”¹¹ carried within the human soul to take root, grow, and flourish. In a more positive light, these associations aim, or ought to aim, at the cultivation of the virtues in the lives of their members. (We will return to this theme in our fifth chapter, in the context of the

will return to the infused moral virtues in chapter five, in the context of considering the scope and limits of human law’s inculcation of virtue.

¹¹*ST* I-II 63, 2, ad 3; cf. 51, 1; and 63, 1: “[V]irtue is natural to man inchoatively. This is so in respect of the specific nature, insofar as in man’s reason are to be found instilled by nature certain naturally known principles both of knowledge and action, which are the nurseries of intellectual and moral virtues, and insofar as there is in the will a natural appetite for good in accordance with reason... [T]herefore...all virtues are in us by nature, according to aptitude and inchoation, but not according to perfection, except the theological virtues which are entirely from without.” For a recent collection of essays treating “nurseries of virtue,” although primarily on the social level, see *Seedbeds of Virtue* (Lanham, Md.: Madison Books, 1995), edited by Mary Ann Glendon and David Blackenhorn.

pedagogical function of law.) But according to Thomas, the ramifications of man's "social and civic" nature for human virtue are not limited to the *mode of inculcating* that virtue. Rather, they penetrate the very *substance* and *character* of the virtues themselves. Just as the rational nature of human beings is of prime importance for specifying human virtue, so is the consequent inclination towards participation in various levels of community.

In the remainder of this chapter, I will try to elucidate this aspect of the connection Aquinas sees between virtue and the common good. I will begin with the root, as it were, of the moral life: the rational appetite or will. For Thomas, as Simon rightly stresses, truly good action and the consequent cultivation of genuine virtue require, as a necessary though insufficient condition, a good or upright will, which in turn entails concern for the common good. Simon's explication of this point focuses on establishing the importance for the common good of citizens' loving and pursuing particular goods (see *PDG* 51-58, including his assessment of Aristotle's critique of the best regime of Plato's *Republic*). I will instead seek primarily to elaborate the nature of the positive, direct devotion to the common good required of the upright. I will then move on to consider human acts proper, especially as they redound beyond the individual agent performing them and thereby earn merit or demerit. In this context, we will focus on Thomas's strong suggestion to the effect that there are no strictly, exclusively self-regarding acts. Finally, I will briefly consider the "cardinal virtues," noting Aquinas's approval of the tradition considering them "social virtues." Our efforts to understand the grounds he sees as supporting this conclusion will highlight the importance of "legal" or "general justice."

Aquinas presents this virtue, which directs the acts of other virtues to the common good “as to their end,” as in some sense the greatest of the moral virtues. It therefore merits a closer study, which will be undertaken in the following (fourth) chapter.

A. Community, common good, and goodness of will

In his *Summa Theologiae*, Aquinas quite naturally focuses on the ultimate happiness which consists in perfect union with God, a participation in the divine nature. Yet he also notes that, ordinarily, humans must live well in this world to reach beatitude in the next. Indeed, the “inchoate” happiness possible here below can constitute a preparation for, a prelude to the perfect bliss to come. Thomas further presents rectitude of the will—i.e., its good order or disposition towards its proper end—as an essential condition for happiness (*ST* I-II 4, 4). And in the penultimate article of question five, Thomas finds it in keeping with finite, temporal human nature for a good will to manifest itself through “good works,” which are in turn deemed “necessary that man may receive happiness from God”:

Rectitude of the will, as stated above (I-II 4, 4), is necessary for happiness, since it is nothing else than the right order of the will to the last end; and it is therefore necessary for obtaining the end, just as the right disposition of matter, in order to receive any form. But this does not prove that any work of man need precede his

happiness: for God could make a will having a right tendency to the end, and at the same time attaining the end... But the order of divine wisdom demands that it should not be thus; for as is stated in *De Coelo* 2.12, of those things that have a natural capacity for the perfect good, one has it without movement, some by one movement, some by several. Now to possess the perfect good without movement, belongs to that which has it naturally: and to have happiness naturally belongs to God alone. Therefore it belongs to God alone not to be moved towards happiness by any previous operation. Now since happiness surpasses every created nature, no pure creature can becomingly gain happiness, without the movement of operation, whereby it tends thereto. But the angel, who is above man in the natural order, obtained it, according to the order of divine wisdom, by one movement of a meritorious work, as was explained in the First Part (62, 5); whereas man obtains it by many movements of works which are called merits. Wherefore also according to the Philosopher (*NE* 1.9), happiness is the reward of works of virtue (I-II 5, 7).

In the questions which follow, Aquinas examines the acts proper to humans. He begins with the interior acts of the will or rational appetite, the principle of voluntariness in human action. What conditions are required for the will to be good or upright, well disposed, inclined toward those internal and external actions which conduce to happiness?

Especially relevant to our concern is article 10 of question 19, "Of the Goodness and Malice of the Interior Act of the Will." Yves Simon concurs that this article, while

generally overlooked (probably on account of its location and context), is especially revealing of Thomas's approach to citizenship, government, and the common good (see *Philosophy of Democratic Government*, "The Volition of the Common Good," 36-71, and especially n. 20). Thomas's main purpose in this part of the *Summa* is to elaborate the nature of the necessary conformity of the human will to the divine.¹² In this context, he posits at least a formal or implicit direction of the will to the common good, as an essential condition for moral rectitude. The foundation of this conclusion is clearly the natural human orientation towards participation in various communities and in their corresponding common goods: "[A] man's will is not right in willing a particular good, unless he refer it to the common good as an end: since even the natural appetite of each part is ordained to the common good of the whole. Now it is the end that supplies the formal reason, as it were, of willing whatever is directed to the end."¹³ Consequently, in order that a man will

¹²In the preceding article, Thomas has concluded that "in order that man's will be good it needs to be conformed to the divine will." His supporting argument runs as follows: "the goodness of the will depends on the intention of the end. Now the last end of the human will is the Sovereign Good, namely God....Therefore, the goodness of the human will requires it to be ordained to the Sovereign Good, that is, to God. Now this Good is primarily and essentially compared to the Divine will, as its proper object..." (I-II 19, 9; cf. 1, 8; 3, 1; 19, 7).

¹³Cf. I-II 90, 2, ad 3: "Just as nothing stands firm with regard to the speculative reason except that which is traced back to the first indemonstrable principles, so nothing stands

some particular good with a right will, he must will that particular good materially, and the common and divine good formally.¹⁴ Therefore the human will is bound to be conformed to the divine will, as to that which is willed formally, for it is bound to will the divine and common good, but not as to that which is willed materially, for the reason given above.”¹⁵

What constitutes this “reason given above”? It would seem to be two-fold: first, that a finite being or action may properly be considered good by human reason from one perspective, but evil from another; second, that human reason here below is incapable of comprehending the ultimate, universal good which is the object of the divine will, and

firm with regard to the practical reason, unless it be directed to the last end which is the common good: and whatever stands to reason in this sense, has the nature of a law.”

¹⁴Here I follow Oesterle’s translation, although perhaps ‘divine common good’ would be still more precise. The Leonine text reads *bonum autem commune divinum*; the Dominican translation substitutes ‘universal’ for ‘common.’

¹⁵By what is “willed materially,” Aquinas refers to the thing [*quid*] immediately or actually desired; by what is “willed formally,” he means the overarching cause of that thing’s being desired, the *propter quod* or that for the sake of which. For example, imagine that at the end of a long day’s work on my dissertation, I want to go swimming: that is what I am willing materially. I may or may not make explicit to myself at the moment my formal rationale for so willing: to improve my health and to get some necessary relaxation, as components of and means towards an integrally good, happy life. In other words, swimming is willed not solely for its own sake, but ultimately *sub ratione boni*; in willing swimming materially, I am evincing and rendering concrete my formal desire for the good.

especially of judging absolutely whether or not some things are truly good from the perspective of this final common good. In this context Aquinas offers an illustrative example of his own, the execution of a criminal. One might wish to substitute a more moderate penalty -- a prison term, for instance. Be that as it may, Thomas's analysis is quite helpful for its explicit connection to various particular and common goods he sees as relevant to human life, and the relation of these to moral rectitude. On the assumption that the condemned is both *paterfamilias* and *civis*, it is perfectly reasonable to consider his impending execution from the standpoints of both the domestic good and the well-being of civil society, as well as from that basic perspective which views the preservation of a human life (or the "good of nature" in this particular human being) as *per se* desirable or good. Accordingly, Aquinas reasons that "[a] judge has a good will when, because it is just, he wills the execution of a robber [*latronis*]; whereas the will of another, for example the robber's wife or son, who does not wish him killed, insofar as according to nature killing is evil, is also good." The *corpus articuli* continues as follows:

Now since the will follows the apprehension of reason or the intellect, the more common¹⁶ the nature of the good which is apprehended, the more common is the good to which the will tends. This is evident in the example given above. The judge has care of the common good, which is justice, and therefore he wills the

¹⁶The Leonine text reads *communior* and *communius*, which Oesterle and the Dominican Fathers translate 'universal'; 'common' is more awkward in this context, but still seems preferable for showing the intended contrast with *privatus*, *proprius*.

robber's death, which has the aspect [*rationem*] of good in relation to the common welfare [*statum communem*]. But the wife of the criminal has to consider the private domestic good, and from this point of view she wills that her husband the robber not be put to death. Now the good of the whole universe is that which is apprehended by God, who is its maker and governor; hence whatever he wills, he wills under the aspect of the common good: this is his own goodness, which is the good of the whole universe. On the other hand, the apprehension of a creature, according to its nature, is of some particular good proportionate to that nature. Now something may happen to be good under a particular aspect, which is not good under a universal aspect, or vice-versa, as stated above. Hence it happens that a certain will is good in willing something considered under a particular aspect, which nevertheless God does not will under a universal aspect, and vice-versa. Hence it is that different wills of different men can be good in respect of opposite things, inasmuch as under different aspects they will a particular thing to be or not to be (I-II 19, 10).

This article pulls together the various common goods in which, according to Thomas, human persons are naturally inclined to participate: the domestic or familial good (at times referred to as common, as at II-II 47, 10, ad 2; at times, as in this context, as private or particular); the political common good; the good of the universe or "cosmopolis"; and the divine Good, as cause and completion of all. As human beings, we normally participate in all of these and ought to direct our will towards their realization

and flourishing. Moreover, since the will as *rational* appetite is oriented to the good *per se*, under its universal aspect, one ought to rank higher levels of common goods ahead of purely private goods or goods *per se* communicable to only a few.

This directive to prefer the more universal common good is not intended to do violence to the natural order of human affections. Rather, it allows one to see beyond this order when necessary and to act in consequence. For example, imagine the case of a student taken hostage while traveling abroad. His captors threaten to kill him unless twenty terrorists justly held prisoner in the student's country are released within a week. It is most natural, reasonable, for the young man's parents to long for his safe return, and for the authorities of his country to do everything possible to attain this end. If the parents have a low level of education or public awareness, no one should be scandalized to see them lobby their government with all their might to release the prisoners: after all, they might reason, it's only a matter of letting twenty foreigners go home, where they won't bother us anymore; and our innocent 18-year-old goes free, as in all justice he should. But if the parents have greater familiarity, through study or experience, with the ways of the world, they will realize that to release convicted murderers and subversives is contrary to the order of justice, and would likely embolden them to commit more heinous acts against public peace and welfare, be it national or international. And though it might break their hearts, they would realize that to foster the good of their own family in a way that would risk great harm to hundreds of other families, who together with them form a nation or share a common humanity, would constitute a grave injustice. Thus they might directly *will* the common good, be it national or global, more than the particular good of their

family, although they would *feel* more acutely the harm done to the latter in the person of their child. Certainly public officials who would allow misplaced compassion wholly to dictate their course of action in this situation would have their wills in the wrong place. But conversely, a parent or even a fellow citizen who felt no pity for the lad would be inhuman.¹⁷

In his treatment of 19, 10, and its general moral and political gist, Yves Simon indicates that what the common good would require of the parents in our fictional case, is precisely that they press the government hard to do anything necessary to obtain the safe release of their son. Simon employs a variation of Aquinas's central example in this article, from which he draws the following conclusion: "The wife of the murderer, as she fights for the life of the man whom the common good wants put to death, does precisely what the common good wants her to do. It is in a merely material fashion that she disagrees with the requirements of the common good: by doing what the common good wants her to do, she formally desires the common good. The common good formerly understood is the concern of every genuine virtue, but it is the proper concern of the public person to procure the common good materially understood, which the private person may virtuously oppose" (*PDG*, 41-42). And again, "*That particular goods be defended by particular persons matters greatly for the common good itself*" (*ibid.*, 41; emphasis in original).

¹⁷Cf. Aquinas's treatments of the proper order of charity in II-II 26, and the impact of special ties on duties of beneficence at II-II 31, 3.

While this last statement is undoubtedly true, Simon's interpretation of Thomas's position still seems too one-sided. To the extent that the family members in question are also members of the civic community, to say nothing of the universal community under God, the parameters of the push to secure their loved one's release must be set by the overarching demands of justice and prudence. If, for instance, the parents were persuaded that the "terrorists" were unjustly convicted, or that in any case their sentence was excessively severe, then it would perhaps become legitimate for them to pursue the most straightforward path towards their son's liberation. If however such were not the case, then other means to a happy outcome, means more in accord with the "order of peace and justice," must be sought by the parents *qua* citizens, as well as by the competent public authorities. It is not that the former should cease willing their son's life and liberty; quite the contrary. Yet to the extent that their understanding permits¹⁸, they must do so in the context of desiring social peace, justice, and virtue. Despite the fact that their closest ties and primary duties are to their own kith and kin, that in fulfilling these well they positively contribute to the public welfare, the common good is not well served when even legitimate particular goods are set against, or wholly abstracted from, the more universal context of justice and virtue.

For all that, one still might wonder whether Thomas's connection of goodness of will and moral rectitude to the common good were primarily a matter of negatives, of *not*

¹⁸Cf. 19, 10, c.: "Now since the will follows the apprehension of the reason or intellect, the more universal the aspect of the apprehended good, the more universal the good to which the will tends."

willing a particular good when it clearly conflicts with a common good to which one's proper good is oriented. I would contend that a careful reading of his texts suggests otherwise; there is a more positive thrust to this moral pedagogy. Not only should individuals not will particular goods over and against the common; more fundamentally, they should direct all the things they do will to the common good insofar as they apprehend it. When Jane Doe sets her sights on a tenure track job at State University, for example, it is not only that she should not so will if she knows herself to be incompetent, and so likely to harm the university community's pursuit of the good of truth by bogus research and sophistic teaching. More fundamentally, she should perceive herself as a member of all relevant communities, and desire this particular good (the job) especially as conducing to the various common goods involved. Let us imagine that, as far as she can foresee, this position would benefit her, affording among other things security of "mere life" and a social context generally favorable to the cultivation of intellectual and moral virtue. Still, she ought (insofar as she is aware of the various common goods mentioned), in some respects at least, to refer these proper goods to the well-being of her family, the university community, her country and the human race, and ultimately to God as source and summit of goods. This referral should not alienate her personal sense of accomplishment and enjoyment of this job. Rather, it ought to enrich these by allowing for a deeper appreciation of the nature and ramifications of what might at first seem to be primarily a private good, incapable of being shared among all the candidates for the position. Because Jane is a social being, her proper good cannot be fully understood or rightly willed in complete abstraction from the common. As Thomas would have it,

cultivating this sort of refined moral sense is requisite for being both fully human and open to the divine.¹⁹

B. Natural sociability and the extension of the human act

We have begun to see how Aquinas's version of human sociability and orientation towards various common goods is not something purely or primarily external. Rather, *qua* natural, it penetrates a correct understanding of who we are as rational creatures and

¹⁹ A remarkable example of this ethical vision and insights into its inculcation are found in *Paterno by the Book*, the autobiography of the Nittany Lions' coach; cf. Benestad 1994, on what Virgil taught a young Joe Paterno about the nature of the good life. A more timely athletic example occurred during the 1996 summer Olympics. Gymnast Kerri Strug vaulted on an injured leg to insure the team's gold medal, but in the process aggravated the injury and lost her own chance to win individual medals. Afterwards, her comments to the media were along these lines: "I'm not a hero; I *wanted* to do it; it was just like I *owed it to everyone*." Her coaches praised her team spirit, sense of responsibility, courage, and patriotism. And paradoxically, she earned more honor and admiration than she would have with individual wins (note the parallel here with the ancient Roman mentality, as passionately depicted in Augustine's *City of God* IV and XIX.) One could also reflect on the social impact of a widely publicized, supererogatory act of virtue, as opposed to a simply impressive athletic triumph.

orients from within our inclinations, especially our rational appetite or will. Hence a good or upright will, one in accord with human reason, eternal and natural law, and the divine will, requires at least formal or implicit order to the common good at various levels of association (I-II 19, 10; cf. *ibid.*, articles 3, 4, and 9).

In the following article of the *Prima Secundae*, Thomas considers the corresponding “goodness or malice in external human actions,” which follow from and complete internal acts of the will (cf. I-II 20). He continues his treatment by reflecting on their general repercussions: “What follows upon human acts by reason of their being good or evil?” (I-II 21). In this context, Aquinas makes another contention of particular relevance to our study: namely, that acts of naturally social and political persons cannot but redound to the greater good or harm of the communities to which they belong, even in cases where social benefit or harm is not immediately apparent or does not enter into the agent’s explicit intention. Understanding Thomas’s argument here will thus elucidate another key aspect of the connection he posits among well-done deeds, personal good, and common good.

Thomas begins *questio* 21 with a further characterization of human acts themselves: voluntary or properly human acts, by reason of their moral goodness or evil, are *ipso facto* right or sinful (21, 1). Secondly, he considers moral acts insofar as their goodness or evil is properly imputed to the individual agent. In this sense, “an action is said to deserve praise or blame...since to praise or blame means nothing else than to impute to someone the malice or goodness of his action” (21, 2). As we have just noted, according to Thomas the goodness or malice of the internal act of the will is not

determined solely by the order of the person to or within himself. We might therefore expect that internal human acts, and the external acts which sometimes flow from them, will likewise have to be evaluated in terms of their social impact. This is in fact what Aquinas proceeds to argue, in response to the question “Whether a human action is meritorious or demeritorious, insofar as it is good or evil?” (21, 3).

We speak of merit and demerit in relation to retribution²⁰, rendered according to justice. Now, retribution according to justice is rendered to a man by reason of his having done something to another’s advantage or hurt. It must, moreover, be observed that anyone living in a society is, in a fashion, a part and member of the whole society. Wherefore, any good or evil done to the member of a society, redounds on the whole society: thus, who hurts the hand, hurts the man. When, therefore, anyone does good or evil to another individual, there is a twofold measure of merit or demerit in his action: first, in respect of the retribution owed to him by the individual to whom he has done good or harm; secondly, in respect of the retribution owed to him by the whole of society. Now when a man ordains his action directly for the good or evil of the whole society, retribution is owed to him, before and above all, by the whole society; secondarily, by all the parts of society. Whereas when a man does that which conduces to his own benefit or disadvantage, then again is retribution owed him, insofar as this too affects the community, forasmuch as he is a part of society: although retribution is not due to

²⁰Oesterle translates “recompense.”

him, insofar as it conduces to the good or harm of an individual who is identical with the agent, unless perchance he owe retribution to himself, by a sort of resemblance, in so far as man is said to be just in himself.

All the objections Aquinas entertains against this depiction of the social repercussions of individual acts hinge on a familiar claim: that some human actions which are noble or base, good or evil, affect no one besides the agent performing them, whether for good or for ill. They are simply unrelated to justice, hence also to merit and demerit. Thomas's replies are terse to the point of seeming mere assertions: "A man's good or evil actions, although not ordained to the good or evil of another individual, are nevertheless ordained to the good or evil of another, i.e., the community" (ad 1). "Man is master of his actions; and yet, insofar as he belongs to another, i.e., the community of which he forms part, he merits or demerits inasmuch as he disposes his actions well or ill, just as if he were to dispense well or ill other belongings of his, in respect of which he is bound to serve the community" (ad 2; cf. 96, 4). "This very good or evil, which a man does to himself by his action, redounds to the community, as stated above" (ad 3). But as we have seen, the foundation for such statements is the case for the "social and civic" nature of man, as presented in the *Ethics*, the *Politics*, and Aquinas's *Commentaries* on the same. Moreover, it is important to recall that this case is not based on some arcane, logical disputations; rather, it commences from common sense attitudes and pre-philosophic modes of practical reasoning. If the Philosopher and the Angelic Doctor are really on the

right track, we should not have to look beyond our own “life-world” for some supporting evidence.

Let us take an easier case first, that of an action performed primarily for the benefit of another and at great risk to the agent.²¹ During the winter of 1995-96, some little girls were playing on the banks of a frozen lake in southern Michigan. Two of them ventured out on the ice and fell through. A teenage boy out for a walk heard their cries and managed to pull them from the water. With the help of some neighbors he quickly got the girls to their homes in time to prevent hypothermia from setting in. Clearly, the direct beneficiaries of this action were the children and their families, who were effusive in expressing their gratitude. But in some way the entire town and even the region of “Michiana” were in the teen’s debt. The act of fortitude was a source of pride to the whole community²²; the life and health of two of its youngest members was a good appreciated, indeed felt, by many. So it was fitting that the lad received praise, honor, and thanks from the town mayor, the city council, and the “Michiana” press.

²¹This is a true story, reported in the *South Bend Tribune* at some point during the winter of 1995-96. I am relying on memory, so some of the details are probably not accurate. But minor inaccuracies should not impact the aim of the example: to illustrate the social repercussions and consequent merit of an individual act, and to do so in context of a modern liberal democratic polity.

²²On the important role Thomas assigns to fortitude in upholding justice and the common good, see *inter alia* *ST* II-II 58, 12; 123, 5; 123, 12, ad 1, 3, 5.

But what of actions which primarily benefit, and are intended so to benefit, the individual agent? Or what of, for example, an isolated act of intemperance? Typically, these are dismissed as irrelevant beyond the private sphere of human existence. Indeed, certain of Aquinas's own formulations seem to suggest just this sort of "private-public" dichotomy in moral life. Turning to question 72, article 4 of the *Prima Secundae*, for example, we read that "[I]n some things we are directed according to reason in relation to ourselves only, and not in reference to our neighbor; and when man sins in these matters, he is said to sin against himself, as is seen in the glutton, the lustful, and the prodigal. But when man sins in matters concerning his neighbor, he is said to sin against his neighbor, as appears in the thief and the murderer. Now the things whereby man is directed to God, his neighbor, and himself are diverse...[and] the virtues also, to which sins are opposed, differ specifically in respect of these three. For it is evident from what has been said (62, 1-3) that by the theological virtues man is directed to God; by temperance and fortitude, to himself; and by justice to his neighbor."

I would argue, however, that the disjunction between this passage and the one we have been considering is only apparent. To use a grammatical metaphor, the fact that different "direct and indirect objects" specify the proper acts of distinct virtues and vices, does not alter Aquinas's case that these all reflect and redound upon the soul of the same "subject," and that this subject is never an isolated, atomistic individual. Insofar as moral actions improve or worsen my character as a human being, they render me *ipso facto* a

better or worse family member, colleague, and citizen.²³ A weak patch in the social fabric may pass unnoticed; nonetheless, it undermines the quality of the whole and, without reinforcement, threatens to tear and damage the garment. The immediate social impact of specific actions will obviously vary dramatically (compare, say, a small act of self-overcoming or liberality to a friend in the context of one's everyday life, with an act of supererogatory fortitude that saves a multitude of fellow citizens and edifies still more). But the crux of the matter remains that, according to Aquinas, one would be hard-pressed to find a human act the effects of which remain entirely enclosed within the individual agent.²⁴

Granted all that, the question still remains as to whether *every* human act, as good or evil, virtuous or vicious, has specifically *political* relevance. While some of Thomas's

²³See Xenophon's *Memorabilia* II.1, where Socrates instructs the rather soft Aristippus on the political import of facility for performing acts of moderation; cf. also the case made by Joseph Pieper (1965, 158-159), that more attention needs to be given to temperance precisely in the context of justice and the common good.

²⁴Here we should perhaps mention, although we cannot treat it in any detail, a corollary to Thomas's conception of the social impact and import of individuals' moral acts: namely, that the character of a whole community, an action attributable to the whole community, and even the noble or shameful action of its founder, governor, etc., redound to some degree (but not absolutely) to the honor or disgrace of the individual member of that community. Consider *inter alia* *ST* I-II 81, 1; 87, 8; and the parallel discussion in MacIntyre 1984, 220-21.

formulations cited above do give that impression, he explicitly rejects this conclusion. In the final article of question 21, Aquinas distinguishes human ordination to political society from the higher and fully all-encompassing ordination to God: “Man is not ordained to the political community according to all that he is and has; and therefore it should not be [*non oportet*] that every action of his acquires merit or demerit in relation [*per ordinem*] to the political community. But all that man is, and can, and has, must be referred to God: and therefore every action of man, whether good or bad, acquires merit or demerit in the sight of God, as far as the action itself is concerned” (I-II 21, 4, ad 3; cf. 19, 9). Thomas’s case for this unqualified relation of every human act to God runs as follows:

As stated above (21, 3), the act of some man has the aspect of merit or demerit, according as it is ordained to another, whether to a person or to the community; and in each way, our actions, good and evil, acquire merit or demerit in the sight of God. On the part of God himself, inasmuch as he is man’s last end; and it is our duty to refer all our actions to the last end, as stated above (19, 10). Consequently, whoever does an evil deed, not referable to God, does not give God the honor due to him as our last end. On the part of the whole community of the universe, because in every community, he who governs the community cares first of all for the common good; wherefore it is his business to award retribution for such things as are done well or ill in the community. Now God is the governor and ruler of the whole universe, as stated in the *First Part* (103, 5), and especially of

rational creatures.²⁵ Consequently it is evident that human actions acquire merit or demerit in reference to him: else it would follow that human actions are no concern of God's (I-II 21, 4).

Considering this article in context of the previous one, it seems that Thomas's formula suggesting that all human acts affect "the whole community" should be read as signifying "various communities, hierarchically ordered among themselves, in various ways and to various degrees." Only with regard to the truly comprehensive, universal community, and especially to God as transcendent end and governor of the same, is there a total or absolute relation. As one scholar has argued, "[Thomas's] point seems to be that civil society is not the sole society to which human beings are ordered. The individual person does indeed transcend civil society, but only as a member or part of a universal community, ruled by God, whose common good is *eo facto* preferable to that of any particular society. The good in which human beings find their perfection is never a 'private good' but a good that is shared or capable of being shared by others and which for that reason takes precedence over any good that they could claim as theirs alone" (Fortin 1982, 600).²⁶

²⁵See Oliva Blanchette's *The Perfection of the Universe According to Aquinas: A Teleological Cosmology* (University Park, PA: Pennsylvania State University Press, 1992).

²⁶Needless to say, on this fundamental issue of the human person's relation to the universal community, and directly to God as ultimate end or highest common good uniting those

Still, what *exactly* does Thomas have in mind with regard to the ways human beings transcend the political order, by what they are and are capable of and have? One might well wish that the Angelic Doctor had said more here. Given the contrast he draws, we might tentatively begin from those interior actions whereby a person directs, or fails to direct, him or herself to God, and the highest perfections of intellect and will: wisdom, both natural (cf. I-II 66, 5, ad 1 and 3) and *a fortiori* supernatural (cf. II-II 45); and the theological virtues of faith, hope, and charity (cf. *inter alia* I-II 72, 4; 71, 6, ad 5; 71, 2, ad 4; 96, 3, ad 3). We will return to this crucial problem in the fifth chapter of this dissertation, in the context of human and divine laws and their respective jurisdictions.

C. Cardinal virtues as social virtues

Thus far in our attempt to grasp Thomas's account of the interrelation between the common good, and the human good more generally, we have focused on some ramifications of natural sociability for the roots of virtue: the will or rational appetite, and the human actions to which the will gives rise in pursuit of the good. Now we progress to the plane of virtue proper, by which the human being is perfected and habitually inclined to act well.

who love him, Thomas shows himself decisively more Augustinian than Aristotelian. For a related discussion, see Schall 1996, 132-135.

Thomas presents the moral virtues, insofar as they are properly *human* virtues, especially in the context of the social common good. While moral virtue is grounded in the good order of the human being within him or herself, such internal well-being is neither possible nor complete without proper dispositions and habits of conduct towards the other members of one's communities, and towards those communities themselves. Understood fully, these "acquired" virtues should not aim solely at the benefit of their possessor, but should extend to the service and well-being of family, civil society, etc., as to greater, more comprehensive ends. With reference to Aristotle's remark that the moral virtues are "more lasting even than the sciences" (*NE* 1), Aquinas suggests that this is the case only insofar as the moral virtues "are practiced in matters pertaining to the life of the community" (*ST* I-II 66, 3, obj. 1 and ad 1).²⁷ He thus indicates that the nature and dignity of moral virtue come fully to light only in the context of human sociability, which leads us to transcend our individual selves. Or, put differently, the human person, even in temporal affairs, is impoverished by a narrow focus on the self. By nature (to say nothing of grace), the soul's proper goodness, its excellence, extends much further. Commenting

²⁷The passage continues as follows: "Yet it is evident that the objects of the sciences, which are necessary and invariable, are more lasting than the objects of moral virtue, which are certain particular matters of action... Indeed, the speculative intellectual virtues, from the very fact that they are not referred to something else, as a useful thing is referred to an end, are more excellent. The reason for this is that in them we have a kind of beginning of that happiness which consists in the knowledge of truth, as stated above (I-II 3, 6; cf. 57, 1, ad 2)."

on the beatitudes, John Chrysostom underscores this point: “The gentle, the modest, the merciful, the just man does not shut up his good deeds within himself... He that is clean of heart and peaceful, and suffers persecution for the sake of the truth, lives for the common weal.”²⁸ Moreover, as I shall argue below, Aquinas views the temporal, or “social and political” orientation of the virtues, as merely the first step in an ascent of self-transcendence which culminates in union with God.

The cardinal virtues

Among all the virtues, the philosophic tradition, and later, the Christian theological tradition, singled out four as centrally important. These eventually became known as “cardinal virtues,” from the Latin *cardo*, *cardinis*: hinge.²⁹ By implication, they are the hinge upon which a fully virtuous life hangs and turns, the *sine qua non* of the good life.

²⁸Chrysostom, *Homilia* 15, 6 (Jacques-Paul Migne, ed., *Patrologia Graeca* 57.231); cited in the Dominican Fathers’ translation of *ST* I-II, note to 61, 5.

²⁹Ernest Fortin (1996, *Collected Works*, vol. 1, 165, n. 5) notes that this use of the term “cardinal” seems to have originated with St. Ambrose, *Commentary on Luke’s Gospel* V.49 and 62. Cf. also Ambrose’s *De officiis* I.14 (reference kindness of J. Brian Benestad).

Thomas's consideration of the cardinal virtues in the *Summa Theologiae* begins by inquiring whether it is appropriate to accord such dignified stature to *moral* virtues:

"Whether moral virtues should be called cardinal or principal virtues?" (I-II 61, 1; cf. 66,

3). He responds in the affirmative:

When we speak of virtue simply, we are understood to speak of human virtue. Now human virtue, as stated above (56, 3), is one that answers to the perfect idea of virtue, which requires rectitude of the appetite: for such like virtue not only confers the faculty of doing well, but also causes the good deed done. On the other hand, the name virtue is applied to one that answers imperfectly to the idea of virtue, and does not require rectitude of the appetite: because it merely confers the faculty of doing well, without causing the good deed to be done. Now it is evident that the perfect is principal as compared to the imperfect: and so those virtues which imply rectitude of the appetite are called principal virtues. Such are the moral virtues, and prudence alone of the intellectual virtues, for it is also something of a moral virtue, as was clearly shown above (57, 4). Consequently, those virtues which are called principal or cardinal are fittingly placed among the moral virtues (61, 1).

Following the tradition, which he considers correct on this count (cf. 61, 3), Thomas puts forth prudence, justice, temperance, and fortitude as the four cardinal virtues (61, 2).³⁰

The attentive reader of the *Summa* cannot help but note that its general treatment of the cardinal virtues (prelude to the detailed treatment in the *Secunda secundae* of each one and its “parts”), is markedly different in tone from most of the six preceding questions which also deal with virtue. The significance of this shift is most clearly revealed, I would suggest, by a comparison of the “authorities” Aquinas chooses to cite, particularly in the *sed contra* sections of the various articles. In the paragraphs which follow, I will first endeavor to describe and to analyze this important transition, which occurs from I-II 60, 5 to 61, 1. I will then consider what Aquinas might intend his account of the cardinal virtues to reveal about the nature and scope of the moral life, and of the common good(s) to which it is ordered.

Summa Theologiae I-II, questions 55-60 (on the essence of virtue; the subject of the virtues; the intellectual virtues; difference between moral and intellectual virtue; moral virtue in relation to the passions; and how the moral virtues differ one from another) are profoundly Aristotelian in tone. Of the thirty-one *sed contra* sections, Aristotle is cited as

³⁰For a contemporary treatment of this subject from a broadly Thomistic perspective, see Josef Pieper’s *The Four Cardinal Virtues* (Notre Dame, IN: University of Notre Dame Press, 1980, c1965).

an authority in no less than twenty.³¹ Moreover, in some of the remaining articles, the Philosopher occupies a prominent place in Thomas's own response. As if to underscore this aspect of his treatment, in the final article of this series Aquinas takes his readers on a veritable tour of Aristotle's classification of the moral virtues in the *Nicomachean Ethics* (see 60, 5). But then, in question 61, where Aquinas turns his attention to the "cardinal virtues" proper, Aristotle all but drops out of the picture. He is not cited in any of the five *sed contra* passages. Which "authorities" take the Philosopher's place? A cast of broadly neoplatonic and patristic characters: Ambrose, Gregory, Cicero, Augustine, Macrobius and Plotinus. A closer look at the fifth and final article of this question may serve to illustrate Aquinas's new emphasis and help reveal its significance.

Questio 61 concludes with this intriguing, neoplatonic account: Macrobius elaborates a four-fold division of the cardinal virtues, which he in turn attributes to Plotinus: "Plotinus, together with Plato foremost among teachers of philosophy, says: The four kinds of virtue are fourfold. In the first place there are social virtues; secondly, there are perfecting virtues [*virtutes purgatoriae*: literally, *cleansing virtues*]; thirdly, there are perfect virtues [*virtutes purgati animi*: literally, *virtues of the clean soul*]; fourthly, there are exemplar virtues" (I-II 61, 5, *sed contra*; citation from Macrobius, *Super Somnium Scipionis* 1). "Exemplar virtues" refer to the "types" of these virtues preexisting in God;

³¹Here is a more detailed breakdown of these *sed contra* citations of Aristotle: 55, in 3 of 4; 56, in 3 of 6; 57, in 5 of 6; 58, in 4 of 5; 59, in 3 of 5; 60, in 2 of 5. Aristotle returns as a central authority in 64 (on the "mean" of virtue), 3 of 4; and again in 66 (on the "equality" of the virtues), 3 of 6.

“perfect,” to the virtues proper to those who have already attained similitude with God; “perfecting,” to those by which human things are transcended as the soul moves towards God. But in terms of this world and properly human affairs, Thomas maintains that the cardinal virtues are best considered as “social.” In the body of the article he writes, “[S]ince man by his nature is a social animal, these virtues, insofar as they are in him according to the condition of his nature, are called social virtues; since it is by reason of them that man behaves himself well in the conduct of human affairs.” And, Aquinas is quick to clarify, “[i]t is in this sense that we have been speaking of these virtues until now”: the cardinal virtues are first of all “*social or human*” (61, 5; emphasis added).³²

Of the four objections and their corresponding responses, one is particularly relevant to our investigation. Objection 3 runs as follows: “[Macrobius] says that the *perfecting* virtues are those of the man *who flies from human affairs and devotes himself*

³²The order in which Thomas treats this fourfold, neoplatonic classification in the body of his article is also instructive: Thomas begins with the “exemplar virtues,” as the ultimate cause of human virtue. Then, instead of immediately descending to the “perfect virtues,” he addresses the “social virtues” as the most properly human, the first step in the self-transcendence which is the mark of true human dignity. Then the human ascent to God proceeds, from “perfecting” through to “perfect virtues.” In this way, Aquinas parallels the structure of the *Summa Theologiae*: God, the One who is Good, as first cause of all that is; the procession of creatures, with their proper natures, from the One; and finally the return of the many, especially the rational creatures elevated to the order of grace, to the One.

exclusively to the things of God. But it seems wrong to do this, for Cicero says (*De Officiis* 1): *I reckon that it is not only unworthy of praise, but wicked for a man to say that he despises what most men admire, viz., power and office.* Therefore there are no *perfecting virtues.*” A markedly ancient or classical republican ethos informs this moral stance. In his rejoinder, Aquinas invokes two authorities closer in both time and mentality to the source: the “other,” cautiously philosophic Cicero; and the less guarded Augustine.

To neglect human affairs when necessity forbids is wicked; otherwise it is virtuous. Hence Cicero says a little earlier: *Perhaps one should make allowances for those who by reason of their exceptional talents have devoted themselves to learning; as also to those who have retired from public life on account of failing health, or for some other yet weightier motive; when such men yielded to others the power and renown of authority.* This agrees with what Augustine says (*City of God* 19.19): *The love of truth demands a hallowed leisure; charity necessitates good works. If no one lays this burden on us we may devote ourselves to the study and contemplation of truth; but if the burden is laid on us it is to be taken up under the pressure of charity* (61, 5, ad 3).

Why, in Thomas’s general treatment of the cardinal virtues, this abrupt shift from a principally Aristotelian frame of reference, clearly indebted to the *Nicomachean Ethics*, to a broadly platonic-patristic perspective? And why end with Plotinus’s fourfold paradigm? To start with the latter query, it seems worthy of note that in this fourfold frame of

reference, none of the forms of a given cardinal virtue stays on the level of the individual. Each level is self or agent-transcending: first, towards society as a whole, and one's neighbors or fellow citizens; ultimately, towards God as transcendent good or end. On each level, the cardinal virtues are of course bound up with personal moral and spiritual development; but such perfection is never presented as a self-contained goal. Rather, it is always in reference to an "other," albeit one with which or with whom the individual human being is intimately connected.³³ Once again, Thomas's account of human fulfillment steers clear of two extremes: alienation from self on the one hand; absorption in the self on the other.

With regard to the first question posed above, I would suggest the following preliminary response: Recall that in discussing the "cardinal" virtues, Thomas is

³³ Cf. *ST* I-II 56, 6, "Whether the Will Can Be a Subject of Virtue?": "Since the habit perfects the power in reference to act, then does the power need a habit perfecting it unto doing well, which habit is a virtue, when the power's own proper nature does not suffice for the purpose. Now the proper nature of a power is seen in its relation to its object. Since, therefore, as we have said above (19, 3), the object of the will is the good of reason proportionate to the will, in respect of this the will does not need a virtue perfecting it. But if man's will is confronted with a good that exceeds its capacity, whether as regards the whole human species, such as divine good, which transcends the limits of human nature, or as regards the individual, such as the good of one's neighbor, then does the will need virtue. And therefore such virtues as those which direct man's affections to God or to his neighbor are subjected in the will, as charity, justice, and such like."

concerning himself with the “principal” moral virtues that comprise nothing less than the foundation or “hinge” of a good human life. His account must therefore engage the very core and purpose of the moral life for human beings. In consciously and conspicuously moving from an Aristotelian frame of reference, to a patristic perspective that incorporates important elements of neoplatonic, stoic, and biblical wisdom, Aquinas underscores the importance of understanding the moral life in terms of an *ascent*. This conception of the moral life and moral virtue, with its potential for analogical transcendence and relation to the divine, to God, goes beyond a purely instrumental, external means-to-end relationship. For Aquinas, it would seem, this vision is more complete and compelling as an account of human virtue in both its personal and social dimensions. Moreover, it gels better with divine revelation’s account of the place of morality in the grand scheme of things, especially in light of divine *condescension* and the theological virtue of charity. By comparison, the account of moral virtue in Aristotle’s *Ethics*—important and insightful as Thomas evidently considers it—stands revealed as too self-enclosed, hence incomplete and even deficient. One recalls Aristotle’s own remarks on Plato’s dialogues: “All the discourses of Socrates are extraordinary: they are sophisticated, original, and searching. But perhaps it is difficult to do everything finely” (*Politics* 2.6, 1265a 10-12). Perhaps the form of Aquinas’s quiet “criticism by omission” is dictated by his concern to keep *the* Philosopher’s “extraordinary” works viable in Christian social and educational circles.

Now all this could be dismissed with an argument something like the following: “In a work such as the *Summa Theologiae*, Thomas had no choice but to acknowledge the ‘cardinal virtue’ tradition, as an important legacy of the patristic writers. Since Aristotle

neither originated nor emphasized this ordering of the virtues, it is no wonder that the Philosopher and his *Ethics* either disappear from view or at least fade into the background during this segment of Aquinas's account. It's foolish to make too much of this shift."

There is, however, additional evidence indicating that more is afoot here.

Earlier, I mentioned that Aristotle dominates the landscape of questions 55-60. In both questions 57 and 58, for example, Aristotle is the authority invoked in all but one *sed contra*. The topics of those articles in whose *sed contra* Aristotle is *not* cited, where he once again takes a back seat or is absent altogether, are extremely revealing: (1) "Whether prudence is a virtue necessary to man?" (57, 5); and (2) "Whether there can be moral without intellectual virtue?" (58, 4). In other words, as in question 61, the subject matter of these articles bears directly on the nature, purpose, and dignity of ethical virtue. And here as well Thomas's "authorities" are scriptural and patristic.

The *sed contra* of 57, 5 is particularly revealing, highlighting the connection Thomas posits between divine wisdom and the four cardinal virtues: "[Prudence] is reckoned with other virtues necessary for human life, when it is written (Wis. 8:7) of Divine Wisdom: *She teacheth temperance and prudence and justice and fortitude, which are such things as men can have nothing more profitable in life.*" This prompts us to turn to Thomas's detailed treatment of this divine "gift" of wisdom (II-II 45), which he claims presupposes *faith* and is caused by *charity* (see 45, 1 and 2). Aquinas emphasizes that "supernatural" wisdom is superior to the preeminent intellectual virtue which bears the same name. One indication of this is the broader extension, or completely all-

encompassing character of divine wisdom; consider the third article, inquiring “[w]hether wisdom is merely speculative, or practical also”:

I answer that, As Augustine says (De Trin. 12:14), the higher part of the reason is the province of wisdom, while the lower part is the domain of knowledge. Now the higher reason according to the same authority (ibid. 7) is intent on the consideration and consultation of the heavenly, i.e., divine, types; it considers them, insofar as it judges of human acts by divine things, and directs human acts according to divine rules. Accordingly wisdom as a gift, is not merely speculative, but also practical.

Ad 1: The higher a virtue is, the greater the number of things to which it extends, as stated in *De Causis*, prop. x, xvii. Wherefore from the very fact that wisdom as a gift is more excellent than wisdom as an intellectual virtue, since it attains to God more intimately by a kind of union of the soul with him [*via* grace and charity], it is able to direct us not only in contemplation but also in action.

Ad 3: A thing is considered in itself before being compared with something else. Wherefore to wisdom belongs first of all contemplation which is the vision of the Beginning, and afterwards the direction of human acts according to the divine rules [cf. ad 2]. Nor from the direction of wisdom does there result any bitterness or

toil in human acts; on the contrary the result of wisdom is to make the bitter sweet, and labor a rest.

So for the Christian thinker Thomas Aquinas, love of the good is the root of the moral life, which is in turn naturally social and political in character and scope. Human excellence thus demands ethical virtue, developed as fully as possible. Nevertheless, it is apparent that particular human societies and their welfare do not suffice to quiet the longings of the human mind and heart; in particular, the greater, more permanent, and more communicable good consisting of knowledge of and friendship with God must be sought (cf. *inter alia* I-II 1-5; 94, 2). This latter is only attained by means of grace and the theological virtues. Charity in particular fulfills and informs the natural human inclinations to good and to fellowship, raising them to the level of the divine. Through this analogical ascent, human virtue *qua* social is in one sense transcended, in another completed or fulfilled. The intellectual virtue which seeks knowledge of God is likewise both surpassed and completed. Speculative science and virtue represent the salutary direction of rational human life towards the higher than human, the universal. Nevertheless, absent the rectification of the appetite (will and passion) which is the work first of moral virtue, finally and perfectly of supernatural charity, such knowledge may be misused through pride, focusing the philosopher on him or herself as ultimate goal and center, or abused with regard to others. Divine wisdom encompasses both intellectual and moral virtue, directing that they be cultivated with the ultimate common good in view. Transcendence is no longer the privilege of a few intellectual elites; the sage, statesman, and worker alike

are offered citizenship in the City of God (cf. I-II 64, 4). In all this, the Augustinian in Aquinas consciously and conspicuously prevails over the Aristotelian.

Conclusion: "legal justice," human virtue, and the common good

Aquinas of course views grace as *presupposing* human nature, not as destroying or supplanting it (see I-II 109, ff.). Therefore the "common good of [acquired] virtue" (cf. I-II 105, 3, obj. 5), informed as it is by that rationality which in turn entails sociability, remains essential to the flourishing of temporal human existence. The human good and human goodness, as we have seen Yves Simon grasp intuitively and Aquinas attempt to demonstrate, continue both ordered to and dependent upon the broader common goods proper to various levels of human community: "He that seeks the good of the many, seeks in consequence his own good, for two reasons. First, because the individual good is impossible without the common good of the family, city, or kingdom. Hence Valerius Maximus says of the ancient Romans that they would rather be poor in a rich empire than rich in a poor empire. Secondly, because, since man is a part of the home and political community, he must needs consider what is good for him by being prudent about the good of the many. For the good disposition of parts depends on their relation to the whole; thus Augustine says (*Conf.* 3.8) that *any part which does not harmonize with its whole is offensive*" (II-II 47, 10, ad 2; cf. 50, 1-4). For all its ennobling emphasis on the universal, the absolute, and the transcendent, Aquinas's thought is anything but apolitical.

When Thomas treats of human virtue in political context, it is striking how often the Philosopher's notion of "legal justice" comes to the fore. This is the case in the article from which we have just quoted (II-II 47, 10; cf. ad 1 and ad 3), as well in the (quite *un-Aristotelian*) article from the *Prima secundae* (61, 5) which has been the main focus of this segment of the chapter. Its fourth and final objection, together with Thomas's rejoinder, marks the return of Aristotle as a major interlocutor. The context involves justice, in its relation to the other cardinal virtues (cf. *ST* I-II 61, 3 and 4; II-II 58, 8, ad 2) and to the common good:

[Macrobius] says that the *social* virtues are those *whereby good men work for the good of their country and for the safety of the city*. But it is only legal justice that is directed to the common weal, as the Philosopher states (*NE* 5.1). Therefore other virtues should not be called social.

To this Aquinas responds:

Legal justice alone regards the common weal directly; but by commanding the other virtues it draws them all into the service of the common weal, as the Philosopher declares (*NE* 5.1). For we must take note that it concerns the human virtues, as we understand them here, to do well to not only towards the community, but also towards the parts of the community, viz., towards the household, or even towards one individual.

Aquinas's treatment of the cardinal virtues as *social* virtues thus concludes by turning the reader's attention to the virtue of justice, concretely "legal" or "general justice." Yves Simon, as we noted in the introduction to this chapter, limits himself to the general observation "that virtuous people, as a proper effect of their very virtue, love the common good," and direct their actions towards its achievement and flourishing (see *inter alia* PDG 39). By contrast, Aquinas attributes the active role in actualizing this essential aspect of human virtue, to one preeminent moral virtue in particular. He thus presents "legal justice" as the only virtue whose proper (or "direct") object is the common good, and which therefore considers and wills virtuous actions performed for a given part of society as ultimately redounding to good of the whole. Yet legal justice, precisely as a virtue, must also be an excellence of soul for its possessor. In order to complete our inquiry into the relation between human virtue and the common good, we propose in the following chapter to undertake a study of Aquinas's "general justice." Given what we have noted regarding his treatment of the cardinal virtues in general, we should not be surprised if Thomas's analysis were not to remain entirely within the Aristotelian framework in which it takes shape and from which it begins.

Chapter 4: Virtue at the Service of the Common Good, as Personal Excellence:

Aquinas's "General Justice"

To suggest that Thomistic legal or general justice has not been the subject of a flourishing body of secondary literature in recent years, is more than accurate: it is an understatement. In a 1984 article, "The Catholic concept of social justice: a historical perspective," J. Brian Benestad attributes this lacuna in part to the modern tendency to stress effective institutional arrangements over the inculcation of virtue and cultivation of prudence in fostering the public welfare. Conversely, he points to the prevalence of individualistic notions of human fulfillment, notions of which moral virtue and social responsibility are not considered essential components.

However, Benestad also notes that Thomistic general justice did enjoy something of a revival in the 1930's and 40's, in Catholic circles at least. The context was the burgeoning concern with "social justice," intensified in the aftermath of an encyclical Pius XI wrote to commemorate the fortieth anniversary of *Rerum Novarum* (Leo XIII's landmark social encyclical of 1891). In *Quadragesimo Anno*, Pius XI "[spoke] often of the common good (seventeen times) and social justice (ten times)," at times appearing to identify the two (Benestad 1984, 369-370). In equating the order of social justice with a community's common good, Pius emphasized the importance of the corresponding, virtuous disposition inclining people to love and strive for that common good. Social justice by its very essence requires moral reform and active contribution the part of each

member of the community. Without virtuous individuals, moreover, sound institutions will fail to be established or will not be justly administered. Hence many theological scholars commenting on the encyclical saw in it an attempt to “revive the Thomistic concept of legal justice,” that general virtue which has the common good for its proper end (ibid. 379; cf. 368-374).

Near the conclusion of his essay, Benestad makes a salient observation: to most people, scholars included, the statement “Pius XI’s ‘social justice’ is essentially Thomas Aquinas’s ‘general’ or ‘legal justice’” would mean next to nothing. Not only is the latter an unfamiliar, foreign-sounding concept: upon reflection, it easily evokes minimalist notions of calculating obedience to positive law (see 379). In order to recover the full meaning of this virtue, and to ascertain the grounds for Thomas’s evidently high opinion of it, a careful study of his texts on the subject will prove indispensable. In this endeavor, the central task of our fourth chapter, I will begin with the fifth book of the *Nicomachean Ethics*, the primary source for Aquinas’s own account. After offering a brief explication of the Philosopher’s discussion of “legal justice,” I will turn to Thomas’s *Commentary* on the same, following his interpretation and noting his endeavors to clarify some apparent ambiguities. Nevertheless, as I will suggest, the careful reader is left to ponder some perplexing problems, raised but not resolved in the relevant passages of the *Ethics* and *Commentary*. Perhaps the most central concerns the status of legal justice as a virtue, under a regime which is not “correct” and laws which are not “excellent.” Is there a source or type of “the legal just” which transcends a particular code of positive law? May a citizen still direct his or her virtuous actions to the “common good,” when the powers

that be do not share or badly misinterpret this noble goal? Moving to the second part of the *Summa Theologiae*, I argue that Thomas's independent treatment of "general justice" and its context in this work, provide both the sort of conceptual equipment ("natural law" in particular) and the outline of an argument which might allow us to resolve this dilemma. In so doing, I will have occasion to note some key aspects of Aquinas's account which distinguish it from the Philosopher's. Among these are an increased, explicit emphasis on the common good as the end informing this virtue; and in natural law, a more fully universal grounding for legal justice as both *legal* and *virtuous*. In all this, as should go without saying, our goal is to reach a deeper, more nuanced understanding of the connection Thomas posits between personal and common goods.

I. *Legal Justice in the Nicomachean Ethics and Aquinas's Commentary*¹

The year 1943 saw the first publication of William Ferree's provocative work, *The Act of Social Justice*.² As the lengthy subtitle announced, the author proposed to offer

¹In this section I employ the following translations: for the *Nicomachean Ethics*, Apostle's in consultation with Ostwald's; for the *Commentary*, that of Litzinger (whose translation of the texts of Aristotle follows William of Moerbeke's Latin rendition, the primary text used by Aquinas), as always checking it against the Leonine Latin text.

“[a]n analysis of the Thomistic Concept of Legal Justice, with special reference to the doctrine of Social Justice proposed by...Pius XI..., to determine the precise nature of the Act of this virtue.” As far as I am aware, *The Act of Social Justice* comprises the sole scholarly book in the English language which focuses on interpreting and “complet[ing]” Thomas’s notion of legal or general justice (see especially chapters II and IV). Its author seeks, moreover, to accomplish this theoretical task while bearing in mind the particular exigencies of modern social and political life (see preface, 1; cf. 5-7).

Ferree begins his analysis in a most sensible way, with Aristotle’s notion of “legal justice” as it comes to light in the *Nicomachean Ethics*, proceeding thence to assess Thomas’s appropriation and understanding of this concept (see Ferree, chapter I). Why then should we repeat this procedure? Why not simply refer the reader to Ferree’s discussion? Unfortunately, Ferree’s specific discussion of Aristotle is much less clear than most of the rest of his text. He devotes more space to explicating what Aristotle does *not* say about the virtue, or why the Philosopher’s account is vague and incomplete, than to explaining what the philosopher does say and how the pieces of his account might fit together.³ Moreover, Ferree introduces the comments of Aquinas and others into his

²Ferree’s book was reprinted in 1951. For an assessment of Ferree’s more popular rendition of his general thesis in *Introduction to Social Justice* (New York: Paulist Press, 1948), and its considerable influence in the United States, see Benestad 1984, 374, ff.

³See Ferree, 10-19: “Aristotle’s concept of legal justice” is marred by a “lack of precision,” or “lack of definition...which makes the first two chapters of Book five of the *Ethics* very hard reading indeed” (12); “[t]hus we need not be too surprised if a certain

explication so early and often as to render grasping the flow of the Philosopher's own argument unnecessarily difficult (see 12, ff.). He likewise jumps too quickly to investigate related themes (e.g., the question of whether to be a good human being is the same as to be a good citizen) which would be better treated after a thorough explication of the remarks on legal justice (see 12; 15-17). For these and related reasons, I will undertake to provide the reader with a more intelligible, orderly, and textual account of Aristotle's admittedly terse and difficult discussion of justice as a general virtue. This should provide firmer grounding for our assessment of Thomas's parallel treatments in his *Commentary* and *Summa*.

Aristotle

The Philosopher opens his treatment of justice in his usual fashion when investigating human things, beginning from the common-sense opinions of ordinary citizens: "We observe that all men, when speaking of justice, have in mind that kind of disposition by which one is disposed to do what is just and from which one *acts* justly and wishes what is just; and similarly with injustice..." (NE 5.1, 1129a 8-12). Thus far there is little probability of dispute. But what precisely does one mean by *justice*, a *just man*, *just actions*? Here the almost universal agreement quickly breaks down. Aristotle suggests a

vagueness and misunderstanding has plagued the notion of legal justice down to our own day--it was not clear from the beginning" (13).

basic obstacle to constructive discourse about justice: that it is apparently, at least as to common usage, an equivocal term. Why this should be such a problem is not immediately evident, to say the least. In everyday conversation it is easy enough to realize, for instance, that one is speaking of a “ball” as in a formal dance, while one’s interlocutor is interested in the sort of “ball” that is a child’s toy. But the Philosopher maintains that things are trickier with “justice.” Justice may have “many meanings, but because of the closeness of these meanings the equivocation of the term escapes notice and is not so clear as it is in cases in which the meanings are far apart” (5.2, 1129a 27-30).

To illustrate this subtle equivocation, Aristotle offers two different but not unrelated notions of “the unjust man.” First, he is thought to be one who routinely disregards the law: Professor Jones is “unjust” because he pays no attention to copyright laws and the restrictions they impose on xeroxing; embezzles federal grant money intended to support scientific research; and covers by paying his research assistants less than the stipend specified in the grant proposal and required by minimum wage provisions. Or an “unjust” person may refer to someone who is simply “grasping or unfair” (1129a 35): Professor Smith is “unjust” because, as department chair, she routinely “delegates” her own responsibilities to untenured colleagues who can’t refuse, and then takes the credit when those tasks are well done. From this Aristotle concludes that “‘the just’ means that which is lawful or that which is fair, while ‘the unjust’ means that which is unlawful or that which is unfair” (1129b1). In the following chapter he elaborates the first kind of justice, that which disposes to law-abidingness.

The beginning of Aristotle's discussion of "legal justice" proper, basic as it appears, is nonetheless somewhat difficult to follow. If the argument may be reduced to a syllogism, it would seem to run something like this:

Major premise: *the art of legislation yields laws, or lawful things, which "we say" are just.*

Minor premise: *laws and lawful things are about "what is commonly expedient, either to all or to the best or to those in authority, whether with respect to virtue or...some other thing [e.g., honor]."*

Conclusion: *therefore by just things we also mean "those things which produce or preserve happiness or its parts in a political community" (5.3).*

As virtue is the core or *sine qua non* of happiness, law properly aims at the inculcation of virtue by mandating the performance of acts of fortitude, temperance, etc., and forbidding acts proper to the opposing vices. And this, it would seem, works for the benefit of the individuals composing a community, as well as and especially for the well-being of the whole. But there is one crucial qualification: law fulfills its function (i.e., it will be *good*) "rightly if it is rightly framed, but less well if hastily framed" (ibid., 1129b 25-26).

Aristotle continues, singing the praises of legal justice in his own name and recording for posterity the admiration of others:

This kind of justice, then, is complete virtue, but in relation to another person and not in an unqualified way. And, because of this, justice is often thought to be the best of the virtues... And it is a virtue in the most complete sense, since the use of it is that of complete virtue; and it is complete, since he who possesses it can use it also towards another and not only for himself, for many men can use virtues whose effect applies only to their own household but cannot use those virtues which affect others. And it is because of this that the saying of Bias is thought to be well put: “the way a man rules will show him up”; for a ruler affects others and is a ruler in a community. And for the same reason justice alone of the virtues, by affecting others, is thought to be another’s good; for the just man acts for what is expedient for someone else, whether for a ruler or a member of the community. The worst man, then, is the one whose evil habit affects both himself and his friends, while the best man is one whose virtue is directed not to himself but to others, for this is a difficult task. Accordingly, this kind of justice is not a part of virtue but the whole virtue, and injustice, which is its contrary, is not a part of vice but the whole vice.

What the difference is between virtue and this kind of justice, then, is clear from what we said; for [numerically] they are the same, but their essences are not the same.⁴ Insofar as the disposition is defined in relation to something else, it is

⁴ Compare Ostwald’s translation: “the difference between virtue and justice in this sense is clear from what we have said. They are the same thing, but what they are (in terms of their definition) is not the same: insofar as it is exhibited in relation to others it is justice,

justice, but insofar as it is such-and-such a disposition, it is a virtue without qualification (1129b 27-1130a 14).

The Philosopher does not have much more to say about legal justice. His prime concern, in accord with the aim of his investigation in this part of the *Ethics*, is with the specific or particular virtue of justice, justice in the narrow sense, which regulates according to right reason one's desire for "honor or property or safety or something (if we has a single name) which includes all of these and has as its aim the pleasure which comes from gain" (5.4, 1130b 1-5).⁵ Aristotle concludes by indicating that this narrower, more specific virtue of justice--his version of "justice as fairness"-- will relate to justice *qua* virtue entire, as part to whole (cf. 5.5, 1130b 14-15).

Certain aspects of Aristotle's discussion seem worthy of note before we proceed to Thomas's *Commentary*. As we mentioned above, Ferree maintains that Aristotle's treatment of legal justice is disappointingly vague and confusing. In particular, it lacks the

but insofar as it is simply a characteristic of this kind it is virtue" (pp. 114-115); and Moerbeke/Litzinger: "How virtue and justice differ from one another is evident from what has been said, for they are the same in substance but different in concept. Virtue as related to another is justice; as this kind of habit it is virtue without qualification" (p. 284).

⁵For a helpful treatment of this "Aristotelian Justice as a Personal Virtue," see David K. O'Connor (1988); cf. also Alasdair MacIntyre's chapter "Justice as a Virtue: Changing Conceptions," in *After Virtue* (1984) 244-255.

precise definition required for the reader to comprehend the Philosopher's concept and its exact meaning. I would maintain, in the first place, that the account in the *Ethics* is not *so* difficult to follow, as I hope has been adequately evinced by the reading offered above and the generally intelligible flow of the discussion. In the second place, given that Aristotle's usual method of procedure is to begin from opinions commonly held on the subject, as the starting point for his investigation and analysis, it does not seem realistic to expect the sort of water-tight, "rigorously scientific" formula Ferree has in mind (cf. Ferree, *inter alia* 76, 79, 119; with *NE* 1129a 5; 1094b 13-27).

At times Ferree's tone bespeaks annoyance with Aristotle and the limitations of his account. At other points, however, Ferree comes across as more understanding. He even offers this excuse on the Philosopher's behalf, that after all Aristotle expressly brings up legal justice only in order summarily to dismiss it: "Since Aristotle states *ex professo* [at 1130b 17] that he is investigating only specific justice and injustice ('that which is a part of virtue'), we may well expect a certain lack of detail and definition in his passing treatment of the justice which is 'virtue entire,' and to which he gives the name 'legal justice'" (Ferree 10). And again, "[Aristotle] brought [legal justice] up only to make it clear...that that sort of justice was *not* what he intended to talk about" (13; emphasis in original). Ferree is certainly correct in his identification of the Philosopher's focus in the bulk of Book Five. Still, it is hardly the case that legal justice is brushed aside: it suffices to note the political focus of both the opening and closing chapters of the *Ethics*; the fact that Aristotle initially sets his agenda in Book Five as a consideration of justice without further specification; and the consequent time and energy dedicated to legal justice in the first

chapters of this fifth book. Moreover, given the fact that “legal justice” is said to be a comprehensive virtue, it stands to reason that one must first attain a grasp of the various individual, “partial” virtues, if one wishes later to comprehend the totality in its social dimension.⁶

Before moving on to consider the texts of Aquinas, we ought to note a perplexing formulation which occurs at 1130b 12, near the end of the explication of justice as a general virtue. In this context, Aristotle claims that “whatever is unfair is unlawful but not everything unlawful is unfair”; yet he never explicitly draws the corollary conclusion regarding the fair and the lawful. The attentive reader is left to wonder whether this is indicative of anything important, or just an avoidance of redundant expression. What does seem clear is that the assertion “*whatever* is unfair is unlawful,” implies a comprehensive law which aims at inculcating virtue as well as repressing vice, and has “got virtue right,” at least vis-à-vis “others” (cf. *Politics* II and III, and Aquinas’s *Commentary*). Common sense, however, seems strongly to indicate that not *everything* unfair is “unlawful,” as in positive or civil law. Aquinas’s expansion of the legal to include “natural law,” and his explanation of human law as “complete” insofar as it requires *some*

⁶ In this regard, consider also Ostwald’s observation in his translation of the *Ethics*:

“Although much of Book V is devoted to a discussion of justice in a narrow, or what Aristotle calls ‘partial,’ sense, Aristotle remains ever conscious of the wider connotations of the term: ‘justice’ is as ‘righteousness,’ ...[as], in short, the virtue which regulates all proper conduct within society, in the relations of individuals with one another, and to some extent even the proper attitude of an individual toward himself” (111, n. 1).

acts of each virtue and forbids *certain* acts of each vice, seem potentially more helpful and coherent in this regard. We will return to consider Thomas's own treatment of these topics in the *Summa Theologiae*.

Aquinas

Thomas's *Commentary* on Book Five of the *Ethics* follows Aristotle's text quite closely, seeking to render its intention, order, and argument more intelligible for the student. He further attempts to resolve questions that arise or to determine meanings which may not be clear, always endeavoring to do so *ad mentem Aristotelis*. *Lectio* 1 opens with Thomas's observation that in taking up justice, Aristotle moves from the virtues which are principally about the passions to that virtue which specifically concerns "actions" (885). More precisely, the Philosopher "says in the beginning that all seem to contend that justice is the sort of habit that brings about three effects in man. The first is an inclination to a work of justice in accord with which a man is said to be disposed to just works. The second is a just action. The third is that a man wants to perform just operations. We must say the same about injustice, namely, that it is a habit by which men are disposed to unjust deeds and by which they do and will unjust actions. For that reason we must presuppose these things about justice as apparently typical in such matters. Likewise, we must take into consideration that [Aristotle] properly explained justice after the manner of a will,

which does not have passions but nevertheless is the principle of external actions.

Consequently, the will is a proper subject of justice..." (888-89; cf. *ST* II-II 58, 1).⁷

Thomas goes on to explicate Aristotle's treatment of these themes. He reviews the Philosopher's distinction between equivocal terms easily recognized as such, and those, like "justice" and "injustice," whose "many meanings lie concealed because the things making for equivocation are close to one another in their agreement among themselves" (894). Then he turns to explicate the several "ways the previously mentioned habits may be signified." Thomas's commentary here underlines common-sense perception as Aristotle's starting point:

[At 1129b 6, ff., Aristotle claims that] first we must consider the unjust man in as many ways as he is designated. He is spoken of in three ways: in one way as the lawbreaking man, i.e., one who acts contrary to the law; in another way as the covetous man who wants too much prosperity; in the last way as the unfair man who determines to have too few burdens. It is obvious then that the just man is taken in two ways: in one way as a law-abiding person, i.e., as one who observes the law; in the other way as the fair person who is willing to have the smiles and frowns of fortune in equal measure. The equal is opposed to both, i.e., to what is excessive and to what is deficient. From this he draws a further conclusion that what is just is said to be according to the law *and* fair; and what is unjust, contrary

⁷Cf. Thomas's discussion of "[w]hether moral virtue can be without passion," *ST* I-II 59,

to the law *and* unfair inasmuch as objects are made known by habits, as was said before [see 892] (895-96; emphasis added).

Rather than grope impulsively for external goods, “goods of fortune,” the sensible and just man will pray that he learn to use these things well, in the service of what is truly and unqualifiedly good for him: “the proper exercise of virtue” (897; cf. *ST* I-II 57, 5, *sed contra*; and II-II 58, 3, c. and ad 1).

The legal just

In *lectio* 2, Thomas elaborates Aristotle’s legal justice. He observes that the Philosopher’s discussion is twofold: first, it “treats the legally just itself, which is the object of legal justice”; then it proceeds to the virtue proper. As regards the first, we are told that the legally just “is determined by law”—nothing too surprising here. Paraphrasing Aristotle’s text, Thomas adds this consideration: “since it was said above that the lawless man is unjust and the law-abiding man just, it clearly follows that all lawful acts are just *in some measure*” (900). This consideration takes us beyond the realm of different but valid, equivocal uses of a term, raising a critical problem with the whole notion of “legal justice” insofar as it depends on positive law as its rule and measure: What happens to the *legally* just when lawmakers either misunderstand or are not terribly interested in justice and virtue? The Philosopher gestures towards this difficulty more explicitly a few lines further

into his chapter, remarking that legislators may do their job well or poorly. But Thomas's commentary anticipates the dilemma, and in a manner that brings into play the crucial question of regimes. The notion that all lawful acts are just "in some measure" resonates immediately with the student of Aristotle's *Politics*:

[Aristotle] says "in some measure" because *every law is determined in relation to some regime*. Now, not every regime possesses what is simply just, but some have only what is partially just, as is evident in the third book of the *Politics* (3.9, 1281a 10; cf. *Comm. on Pol.* III, 413). In a democratic regime where all the people govern, what is partially just is observed but not what is simply just, so that because all the citizens are equal in one respect, i.e., in liberty, therefore they are considered equal simply. Consequently, acts that are prescribed by law in a democracy are not simply but only in some measure just. But Aristotle says that those enactments are lawful that have been fixed and determined by positive law, which is within the competence of legislators, and that each enactment so decreed is said to be just in some measure (901; emphasis added).⁸

Aquinas next engages Aristotle's inquiry into the matter and aims of legal enactments. "[Aristotle] says first that laws touch on everything that can be of any

⁸Cf. Xenophon's rendition of the conversation between the young Alcibiades and his guardian Pericles, beginning with Alcibiades's Socratic query "Pericles, would you be able to teach me what law is?" (*Memorabilia* I.2).

possible utility for the whole community, as in correct regimes where the common good is kept in mind [*intenditur*]; or for the utility of the best, i.e., certain elders of the city, by whom the city is ruled and who are called nobles; or for the utility of the ruler, as happens in regimes ruled by kings or tyrants” (902). This last formula is quite perplexing: one wonders what happened to kingship as arguably the very best regime, and certainly at the very least a “correct” regime which by definition seeks the common good rather than the private advantage of the ruler (cf. *Politics* III.6-7; 13-18; *Commentary on Politics* III; *De Regno* I.1, 6). Yet now Thomas seems to do an about-face, classifying kingship as an unjust, corrupt regime, “in which that which is simply just does not exist but only that which is just in a relative sense” (*Comm. Pol.*, 390). What is one to make of this, and what light might its resolution shed on “the problem of the common good” from Aquinas’s perspective?

While I cannot provide anything approaching a thorough treatment of this problem, I would suggest turning to the *De Regno* (yes, the *De Regno*) for an outline of the solution. True, in Book One, Thomas both puts forth kingship as the best form of government (I.6, 41), and proclaims that “a king is one who rules the people of one city or province, and rules them for the common good” (I.1, 15). Nevertheless, this little work of Aquinas’s abounds in references to the propensity of kingship to slip into tyranny (from the first book one is tempted to conclude that *On Kingship* would be better titled *On Tyranny*). Thomas observes that most ordinary folk understandably have a hard time recognizing real kingship when they see it:

Because both the best and the worst government are latent in monarchy, ...the royal dignity is rendered hateful to many people on account of the wickedness of tyrants. Some men, indeed, whilst they desire to be ruled by a king, fall under the cruelty of tyrants, and not a few rulers exercise tyranny under the cloak of royal dignity (I.4, 30).

Not only does such a regime make for easy resentment and instability; it also tends to produce a lackadaisical citizenry, unconcerned for the common good for the simple reason that they view it as *someone else's good*.

[I]t frequently happens that men living under a king strive more sluggishly for the common good, inasmuch as they consider that what they devote to the common good, they do not confer upon themselves but upon another, under whose power they see the common goods to be. But when they see that the common good is not under the power of one man, they do not attend to it as if it belonged to another, but each one attends to it as if it were his own (ibid., 32).

No matter how ideal a regime kingship may in principle be, the common good will be undermined in the extreme should the facile slide into despotism occur. Even if the king holds steadfastly to a just course, widespread resentment and/or loss of public spirit still threaten to damage the polity's welfare. Thomas thus follows Augustine in noting the superiority in these regards of the ancient Roman Republic, and in the *Summa* he will

finally present a form of “mixed regime” as that practically best suited for promoting the political common good (see I-II 95, 4; 105, 1).

We now return to the *Commentary*. Thomas sums up Aristotle’s observations on the matter and aims of legislation, with the observation that the good of the city’s principal element [*id quod est utile ei quod est principale in civitate*] is always looked to in the framing of laws. The type of regime, its laws, and the persons who rule in it indicate which subset of the good things in life are held in highest esteem, whether virtue, riches, power, or something else. All of these are desired for the sake of happiness, to which ultimately the legal just may be understood as directed: “Since human utility of every kind is finally ordered to happiness, obviously the legal enactments that bring about happiness and the means to it, i.e., the things that are ordered to happiness either principally, like the virtues, or instrumentally like riches and other external goods of this kind, are called just in some fashion. This is by comparison with the civic community to which the framing of a law is directed” (903).

Since law is for the sake of happiness, and virtue is the principal element of happiness, good laws especially endeavor to mandate acts of the individual virtues, and to forbid acts of various vices. Commenting on Aristotle’s proviso (at 1129b18-19), Thomas writes, “If the law is rightly drafted according to this it will be declared an excellent law. Otherwise it is called *aposediasmenos*,” a term Thomas takes to mean “drafted without a thorough knowledge” or “lack[ing] proper forethought” (905).

In the following *lectio* Thomas makes a related point, implicit in Aristotle's text, namely that there are laws which, without being *aposchediasmenos*, are not principally about virtue: "...there are certain determinations of the law that do not belong directly to the exercise of any virtue but to some disposition of external goods" (924; cf. 1130b 22-24). This does not appear to contradict what was said above regarding the matter and goal of the legal just, for external goods used by good men and women constitute as it were the equipment of virtue, and thus conduce to happiness. But according to the Philosopher and his commentator, these precepts should be in the minority: "The greater part of legal prescriptions are enjoined in agreement with the whole of virtue inasmuch as the law commands us to live according to every virtue and forbids us to live according to any vice" (ibid.). This forces us to entertain the possibility that the vast majority of positive legal codes are *aposchediasmenos* in the very worst sense of the term as defined by Thomas, lacking thorough knowledge of the human good. After all, of the types of regimes alluded to in Thomas's discussion thus far, only genuine aristocracy reflects the primacy of virtue, as the end to which external goods are ordered as means. The other regimes seem to view virtue, insofar as they consider it at all, principally as a means to the acquisition or enjoyment of some lesser type of good. So even if the corresponding legal codes require actions which, performed for the right reasons, would indeed help to inculcate virtue and repress vice, the structure of the regime and its preeminent way of life would still tend powerfully to obfuscate the highest reasons for action as well as the true nature of the good. But to faithfully reflect the content of the *Commentary*, we can at

present only note this difficulty. We will return to it in context of the *Summa*'s questions on law.

Legal justice

Aquinas's comments on legal justice proper focus on what he takes to be the three most important conclusions reached by Aristotle: first, that legal justice in a sense comprehends every virtue, or the whole of virtue; secondly, that it is an especially perfect virtue; and thirdly, as a corollary of these first two, that legal justice must differ in some respect from the rest of virtue and constitute a specific virtue in its own right. As we shall see below, Ferree argues that this last, supposed opinion of Aristotle is actually a "revolutionary advance," probably made by Thomas Aquinas himself, and certainly with little or no help from the Philosopher. Further, Ferree suggests that failure to recognize this innovation and its dynamic potential accounts in large measure for the centuries-old neglect of "general justice" in both scholarly and social contexts. We shall try to assess these provocative claims (and others as well) in the course of examining Thomas's own arguments in the *Commentary* and *Summa*.

Thomas's comments on the first proposition are predictably brief and to the point, as it appears quite simple to grasp: "[Aristotle] infers that legal justice embraces every virtue, for it pertains to legal justice to exercise virtue in regard to another. But a person

can practice every virtue in his relation with another. Hence obviously legal justice is not a particular virtue but has a connection with virtue in general” (911; cf. 907). The second conclusion, however, is not so self-evident. One might well wonder why legal justice should be deemed so perfect and praiseworthy a virtue. On Aristotle’s behalf, Thomas offers this justification, that “a man who has this virtue can employ it in relation to another and not to himself only—something not characteristic of all virtuous people. Many can practice virtue in things pertaining to themselves but not in the things pertaining to others. To make clear the previous statements [the Philosopher] introduces two common sayings or proverbs.” Both Aristotle’s use and Thomas’s explication of these sayings point to the close connection between legal justice and prudence, especially political prudence; hence those willing and able to govern effectively seemingly must possess legal justice in a higher degree. Thomas’s comments also seem intended to recall the link between natural sociability and these virtues (the former constituting as it were the ontological basis for the perfective, not “alienating,” nature of the latter):

Bias, one of the seven wise men, said that authority tests whether a man is perfect or deficient. The man who rules is already engaged in communication with another because it is his business to arrange the things which are ordered to the common good. So from this we see that the perfection of virtue is indicated by the fact that one person is in touch with another.⁹ [Aristotle] proposes another saying

⁹To modern ears, Thomas’s emphasis on *communicatio* and *conversatio* with regard to both political and personal flourishing is apt to sound strange indeed. For a helpful recent

to show that legal justice refers to another. For this reason legal justice of all the virtues seems to be the good of another (that is, relates to our neighbor) inasmuch as it aims to perform actions useful to another, viz., to the community or the ruler of the community. But some virtues aim to achieve an individual's good, for instance, temperance strives to quiet the disgraceful desires of the soul...

[Aristotle] draws the conclusion that, as that man is most wicked who practices vice not only in regard to himself but also in regard to his friends, so that man is most honorable who practices virtue in relation not only to himself but also to others. This is especially difficult. So then it is clear that the law-abiding just man is most virtuous and legal justice is the most perfect of virtues¹⁰ (909-910; cf. 907-908).

discussion of this aspect of Aquinas's thought, see Goerner and Thompson 1996, especially 630: "Social units, including polities, aim at a common good that is not a mere sum of individual goods even though it includes and affirms the goods of individuals. The end of politics is integral to human flourishing. Thomas calls it *conversatio*, to have conversation, intercourse, interchange in all dimensions, including mutual aid in intellectual and moral development to full human excellence...."

¹⁰For Aquinas's more explicit and detailed account of the psychological or subjective basis of general justice's preeminence (namely, its "being the most akin to reason" of all the moral virtues, having the will or rational appetite as its subject), see *ST* I-II 66, 4; II-II 47, 10, ad 3; 58, 4; 58, 5, ad 2; and 58, 12; cf. also II-II 58, 3.

Aquinas nonetheless underlines the Philosopher's conclusion that virtue and justice are not purely synonymous terms: "[At 1130a 10-13, Aristotle] clarifies something that may be doubtful from the premises. He says that it is clear, from what has been said, the way in which virtue and legal justice differ, since they are the same in substance but differ in concept" (912). In other words, specific virtues considered as operative habits in themselves and with their own specific subject matter, are virtues simply. But insofar as acts of these same virtues are further referred to the larger community, as fostering the common good, they take on the form of legal justice. The example Aquinas puts forth in this context is an act of refraining from adultery. While he does not elaborate his meaning, we may fill out the illustration as follows: Insofar as this constitutes an act of reason reigning in unruly sexual desire, as a good thing for the individual moral agent, it is an act of the virtue of temperance. Insofar as the act of self-restraint follows from a willful determination not to take or to give what belongs to another, it is proper to special (commutative) justice. But insofar as the act proper to either or both of these virtues is further considered and willed as conducing to the common good of the whole community (e.g., as contributing to preserving the atmosphere of trust necessary for civic friendship and healthy community; or fostering respect for the family as an institution and for sound laws concerning marriage; or as strengthening one's own self control with a view to becoming a more reliable citizen; etc.), it is legal justice.

Once this has been clarified, it becomes easier to grasp that legal justice must itself be a determinate virtue, by which the will is disposed habitually to refer acts of the other virtues to the common good. In making this case, Aquinas evokes the Aristotelian

distinction between matter and form: “[W]here a special formal aspect of an object exists even in general matter, there a special habit must be found. For this reason it follows that legal justice is a definite virtue taking its species from this, that it tends to the common good” (ibid.). The matter of legal justice is general, i.e., potentially including the acts proper to all the other virtues. But legal justice is specified as a virtue in its own right by the perfective orientation of the will to the common good, the goal of decent regimes and their laws, as its distinctive end.

As we noted in the introduction to this section, William Ferree takes issue with this last conclusion, insofar as Thomas maintains that it is at least implicit in the Philosopher’s own teaching on legal justice. Ferree is highly skeptical, to say the least, that any such specific virtue is recognized by Aristotle, although he alleges that it should have been. At times Ferree couches his claim in more modest language; at others he expresses it with great vehemence and certainty. Compare, for example, the following formulations:

It is at least doubtful whether from the text of Aristotle as it stands an objective interpretation can arrive at a notion of a legal justice which is not only identical with the whole of virtue, but is also “a determined virtue having its specific nature” (12).

A careful scrutiny of the text [of *NE V*], as a matter of fact, will reveal no trace of a legal justice with its own specific object, and therefore *specifically different* from every other virtue (10).

But [that legal justice should be a “determined virtue,” specified by the intention of the common good] is a doctrine which is simply not found in Aristotle. And more than that, it is...the most important part of the whole doctrine! (21).

It is certainly true that Aristotle’s formulations do not specify Aquinas’s conclusion in so many words (if they did, the latter’s commentary would hardly be useful). Moreover, as we have noted earlier, Aristotle generally prefers to stay closer to the surface, or within the rather restricted sphere of the moral and political phenomena which he considers, making a very precise definition of so comprehensive a virtue seem out of place in his treatment. But to conclude from this that legal justice as in some sense a determinate virtue is a concept entirely alien to Aristotle’s discussion, as Ferree would have it, seems both exaggerated and misleading. This is so for at least two reasons. The first regards the relevant passages of the *Ethics* itself. Aristotle suggests that the particular excellence and completeness of legal justice requires that it in some way transcend the cohort of the rest of the virtues, to which Ferree claims Aristotle reduces general justice:

Thus, this kind of justice is complete virtue or excellence, not in an unqualified sense, but in relation to our fellow men... It is complete virtue and excellence in the fullest sense, because it is the practice of complete virtue. It is complete because he who possesses it can make use of his virtue not only by

himself but also in relations with his fellow men; for there are many people who can make use of their virtue in their own affairs, but who are incapable of using it in their relations with others... (Ostwald trans., 1129b 26-35).

In other words, the practice of legal justice requires a praiseworthy quality which the possession of the other virtues does not guarantee, and which allows a person to actualize and perfect the social dimension of the excellence proper to humans by nature. In this sense, the other virtues require legal justice to complete them. It therefore does not seem at all alien to the Philosopher's perspective to conclude that legal justice is more or other than "the complexus of all virtues taken simply as habits" (Ferree 13).

In the second place, while Thomas's conclusion unquestionably goes beyond the letter of, and differs somewhat in tenor from, that of Aristotle, Aquinas nonetheless relies on *Aristotelian* resources, drawn from other works of the Philosopher, in reaching and explicating this conclusion. In this particular context, Thomas employs the concepts of (1) matter and form (cf. *Physics* I.9; II.2-3; *Metaphysics* XII); and (2) the common good, said in the third book of the *Politics* to constitute the measure of "correct" political arrangements (cf. *Comm. on NE, inter alia* 901, 902). It stands to reason that if the common good is the proper end of decent regimes and their laws, it should be the defining goal of legal justice as well.¹¹ Moreover, if the good at which justice aims is not in some

¹¹Ferree finally admits as much, but only for benefit of those readers willing to persevere to the very end of his study: "The final cause [end] of social justice is 'the common good' ... This has been clear since the time of St. Thomas Aquinas *and was implicit in*

real sense common, justice's "other-directedness" would seem to imply a form of alienation or exploitation, rather than a genuine human virtue or excellence of soul. The case at hand is one example of how Aquinas endeavors to respect the integrity of Aristotle's thought, when he considers it necessary to look beyond the letter of a text to render its full meaning intelligible, or to justify the spirit informing it. What Aquinas chooses to do with this "Aristotelian-virtue-made-more-precise" outside the commentary genre is, of course, subject to no such limitations, and remains to be seen.

II. *The general justice of the Summa Theologiae*

We come at last to Thomas's own, as it were independent consideration of the matter at hand. General or legal justice is treated near the beginning of the *Secunda secundae's* discussion of the cardinal virtue of justice. This discussion is preceded by the detailed consideration, first, of the theological virtues--faith, hope, and charity; and secondly, of prudence, which has pride of place among the cardinal virtues for being both an intellectual and a moral virtue. Fortitude and temperance still await consideration.

Aristotle, for whom legal justice was the virtue 'which obeyed the law or saw to it that it was obeyed,' and the law, of course, was for the common good" (Ferree 205, emphasis added). One wonders, therefore, how seriously to take his earlier, sometimes vehement assertions to the contrary.

There is considerable conceptual overlap between the versions of legal justice depicted in the *Ethics* and *Commentary*, and in the *Summa*. Nevertheless, certain differences are evident, most notably the *Summa's* increased emphasis on the common good, and decreased emphasis on regimes and their particular legal codes. Whether this is simply reflective of Thomas's preferred manner of expression once on his own turf and writing in theological context, or whether it is indicative of a deeper discrepancy in thought, remains to be determined. At any rate, the discussion in the *Summa* does appear to accentuate, at least initially, the respects in which his *Commentary* diverged from the letter of the Philosopher's account. His treatment commences with the fifth article of question 58, which inquires "[w]hether justice is a general virtue." Aquinas cites the authority of Aristotle just once, in the *sed contra*: "justice is every virtue" (*NE* 5.1). His own response runs as follows:

Justice, as stated above (58, 2) directs man in his relations with other men. Now this may happen in two ways: first as regards his relations with individuals, secondly as regards his relations with others in general, insofar as a man who serves a community, serves all those who are included in that community. Accordingly justice in its proper acceptation can be directed to another in both these senses. Now it is evident that all who are included in a community, stand in relation to that community as parts to a whole, while a part as such belongs to a whole, so that whatever is the good of a part can be directed to the good of the whole. It follows therefore that the good of any virtue, whether such virtue direct

man in relation to himself, or in relation to certain other individual persons, is referable to the common good, to which justice directs: so that all acts of virtue can pertain to justice, insofar as it directs man to the common good. It is in this sense that justice is called a general virtue. And since it belongs to law to direct to the common good, as stated above (I-II 90, 2), it follows that the justice which is in this way styled general, is called legal justice, because thereby man is in harmony with the law which directs [the] acts of all the virtues to the common good (II-II 58, 5).¹²

Thomas thus introduces law into the picture later than one would expect and in only the most general of terms. Neither is the “community” in question further specified. The passage cited from the *Prima secundae*’s questions on law (I-II 90, 2) treats of law *per se*, hence of those traits of law predicable of eternal, natural, human, and divine laws alike. For all we know at this point, Thomas’s legal justice may well admit of direction to political, universal, and divine common goods (cf. I-II 19, 10; II-II 58, 5, ad 2), although presumably in different ways and to different degrees. Its goal or proper object is emphatically the common good, with no mention of the partial or more exclusively

¹²Cf. especially I-II 90, 2, ad 3: “Just as nothing stands firm with regard to the speculative reason except that which is traced back to the first indemonstrable principles, so nothing stands firm with regard to the practical reason, unless it be directed to the last end which is the common good: and whatever stands in relation to reason in this sense, has the nature of a law.”

possessed goods alluded to in the *Ethics* (1129b 14-18) and Thomas's *Commentary* (902-903). In fact, in Aquinas's initial account of legal justice, the common good curiously emerges as prior to or more fundamental than the law. It therefore seems that the soul possessing Aquinas's general justice will "harmonize" with a given law only insofar as this latter truly directs to the common good. Along similar lines, Ferree observes that in this and other passages, "it appears that for St. Thomas legal justice is rather *analogous* to law (positive human law, of course) than dependent on it" (Ferree 25, emphasis in original; cf. 26-27, and 43).¹³

"Natural" legal justice, the most "general" of the human or moral virtues?

It is at this point in Thomas's explication of general justice, that we begin to grasp one possibility he offers for resolving the central problem we noted earlier, in our consideration of the *Ethics* and *Commentary*: namely, the status of *legal* justice as a

¹³Cf. also *Q. D. De Veritate* 28.1: "Virtue, insofar as it orders an act to the common good, towards which also the intent of the legislator is directed, is called legal justice because it serves the law (*quia legem servat*)... [T]herefore it is evident that although all virtue is in a sense legal justice, yet not every act of virtue is an act of legal justice, but only that one which is ordained to the common good: and this can happen with any act of virtue" (cited by Ferree, 50-51). The text of *ST* II-II 47, 10, ad 3 (which Ferree does not reference in this context) also seems to support his thesis.

virtue, when as must often and perhaps always be the case, humans live under deficient codes of civil law, the product of regimes unconcerned for the common good, or based on faulty or incomplete notions of justice. We were left to wonder whether there might be a transpolitical source or “type” for “the legal just,” which could guide a person in directing his or her actions towards the common good, regardless of the obstacles posed by bad positive law. Only thus, it would seem, could we salvage the status of general or legal justice as a *universally* praiseworthy quality, as a preeminent moral virtue.

As noted above, the strikingly *general* formula of Aquinas’s definition of general justice (II-II 58, 5) invites the reader to “plug in,” as it were, any of the various kinds of law treated earlier in the *Summa* (I-II 90, ff.), and the respective communities and forms of common good proper to each. In connection with the problem at hand, Thomas’s justly famous account of “natural law” comes immediately to the fore. Its principles are said to aim at the “natural common good” and especially the “moral common good” (see I-II 94, 3, ad 1). And these in turn constitute the foundation of all genuine “social and political” common goods. Natural law’s universally knowable, basic precepts and their “proximate conclusions” contain “the order of justice and virtue, whereby the common good is preserved and attained” (I-II 100, 8). Moreover, Thomas maintains that in a fundamental sense natural law encompasses all virtuous acts, in a way that positive or civil law cannot:

If then we speak of acts of virtue, considered as [generically] virtuous, thus all virtuous acts belong to the natural law. For it has been stated (94, 2) that to the natural law belongs everything to which a man is inclined according to his nature.

Now each thing is inclined naturally to an operation that is suitable to it according to its form... Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason; and this is to act according to virtue. Consequently, considered thus, all acts of virtue are prescribed by the natural law, since each one's reason naturally dictates to him to act virtuously (I-II 94, 3).

It would therefore seem in keeping with both Thomas's intention and the larger context of his argument in the *Secunda pars*, to posit a "natural legal justice" or "natural general justice." Indeed, only such a form of legal justice would seem truly "general" with regard to human life and human virtue, hence fully universal in its necessity and value.¹⁴ So while Thomas does not explicitly draw this conclusion in question 58 of the *Secunda secundae*, it is not surprising that he does offer a similar argument at least once in the *Prima secundae*. Treating of the Old Law, Aquinas maintains that its *moral* precepts, especially those of the Decalogue, "belong to the law of nature" (I-II 100, 1; cf. 100, 3, c. and ad 1; and 99, 4). Then, in the final article of *questio* 100, Thomas writes:

¹⁴Cf. II-II 58, 5, ad 2: "[Unlike temperance and fortitude], justice is in the intellectual appetite as its subject, which can have the *universal good* as its object, knowledge whereof belongs to the intellect. Hence justice can be a general virtue rather than temperance or fortitude" (emphasis added).

[T]he moral and judicial precepts, either in general or also in particular, contained that which is just in itself: but the moral precepts contained that which is just in itself according to that *general justice* which is *every virtue*, according to the *Ethics* 5.1; whereas the judicial precepts belonged to *special justice*, which is about contracts connected with the human mode of life between one man and another (100, 12).

Thomas thus offers the careful reader a universally human, rational foundation for the virtue of legal justice, in the moral precepts of the natural law. This “general justice,” the basic principles of which are accessible to all and impel each person further to seek more detailed knowledge of the human good and to cultivate the virtues, functions as a virtue regardless of the positive legal code in force in a given country and epoch. It serves as the basis for furthering the common good by virtuous actions, whether legally mandated; or transcending the letter of the civil law yet in accord with its spirit; or when necessary even opposed to positive legislation. Such is the first response to the problem of legal justice as a human or moral virtue which Thomas offers, beginning with the virtue’s definition in II-II 58, 5, and referring back to the *Prima secundae*’s questions on law.¹⁵

¹⁵See Dupré 1994 and Crosson 1996, for helpful discussions and differing opinions on the prospects for and problems with a genuine “international (*human*) community” (as more fully self-sufficient than an individual political community), and a corresponding common good. Although I will not be able to treat it in this dissertation, the breadth and extension

Nevertheless, it is striking that Thomas does not pause in the questions on general justice proper, to expound upon this “natural” or fully “general” form of legal justice.¹⁶ In the very next article (“Whether justice, as a general virtue, is essentially the same as all virtue?”) Thomas returns the reader to the more specifically *political* “legal justice,” to that “general justice” which is a *civic* virtue. Indeed, as I shall explain in greater detail below, he speaks as though this were the sole form of general or legal justice; and the “social and political” common good at which this virtue aims, the only “common good.” As I argued above (in chapter 3) with regard to the cardinal virtues, here Thomas also seems bent on highlighting the significant shift in emphasis, or sharpening of focus, which occurs from 58, 5 to 58, 6. And again he makes use of the *sed contra* to actualize his intention. As in article five, Aristotle serves as Thomas’s “authority”; but here the passages quoted from the Philosopher are more extensive, and their content more provocative:

The Philosopher says (*NE* 5.1) that *many are able to be virtuous in matters affecting themselves, but are unable to be virtuous in matters relating to others,*

possible (and/or desirable) for the social and political common good, is an important topic for future study. In this context, cf. also Blanchette 1992, for an extensive study of Thomas’s intrinsic common good of the entire universe.

¹⁶Cf. Ferree’s expression of disappointment with Thomas for not sticking to the “legal justice as congruent to positive law” approach (25, ff.).

and (*Pol.* 3.2) that *the virtue of the good man is not strictly the same as the virtue of the good citizen*. Now the virtue of a good citizen is *general justice*, whereby a man is directed to the common good. Therefore general justice is not the same as virtue in general, and it is possible to have one without the other (58, 6, *sed contra*; cf. especially *ibid.*, ad 4).

This explicitly political characterization of legal justice continues throughout the *corpus articuli* and into the following articles as well. One clear manifestation is Thomas's introduction of the distinction between those actually governing and ordinary citizens, or between rulers and ruled, vis-à-vis this paramount "social and political" virtue: "[L]egal justice is a special virtue in respect of its essence, insofar as it regards the common good as its proper object. And thus it is in the sovereign principally and by way of mastercraft, while it is secondarily and administratively in his subjects" (58, 6). This last sentence is clearly a paraphrase of Aristotle's remarks on prudence in the *Nicomachean Ethics* (6.8; cited by Thomas in *ST* II-II 47, 12), but here applied to justice. It makes explicit the existence of various degrees of general justice, corresponding roughly to those of political prudence, which we thought we saw intimated in Aquinas's *Commentary*. Again, in the following article, we read that "[t]he common good of the realm [as the end or goal of "general justice"] and the particular good of the individual differ not only in respect of *many* and *few*, but also under a formal aspect...even as the aspect of *whole* differs from *part*. Wherefore the Philosopher says (*Pol.* 1.1) that *they are*

wrong who maintain that the city and the household differ only as many and few and not specifically (58, 7, ad 2).¹⁷

In the first article of the subsequent question, Thomas offers a revealing characterization of the end or goal of this civic legal justice, as the “*human* common good” (59, 1, ad 1; emphasis added). Thomas’s use of the term “human” here parallels an important aspect of his treatment of the cardinal virtues, one which we considered briefly towards the end of the preceding chapter. Recall this passage from the *Prima secundae*: “[S]ince man by his nature is a social animal, these [cardinal or principal] virtues, insofar as they are in him according to the condition of his nature, are called *social* virtues; since it is by reason of them that man behaves himself well in the conduct of human affairs.” In this fundamental sense, they are “*social or human* virtues,” “that is to say, virtues of men living together in the world” (I-II 61, 5, c. and ad 2; emphasis added in the last sentence only). These lines are representative of Thomas’s general tendency to stress the broadly “social” side of the “social and political” equation (cf. *inter alia* ST I-II 72, 4; 94, 2; and SCG III 147, 2). Nevertheless, in this important article, most of the interlocutors whom

¹⁷Other relevant texts indicating the political community/civil law context of Thomas’s general justice include II-II 58, 9, ad 3; and II-II 101, 2 and 3. This last article, inquiring “[w]hether piety is a special virtue, distinct from other virtues,” is particularly instructive for the comparison it draws between the virtue of piety applied to one’s country (roughly what we would today call “patriotism”), and general justice: see II-II 101, 3, obj. 1 and ad 1; cf. also I-II 60, 3, ad 2. On this subject, see also Clifford G. Klossel’s article “Piety: the debts which precede our rights,” *Communio* 12 (1985), 33-48.

Aquinas has set the terms of the debate do place a distinctly *political* spin on the sociability in question. Witness, for instance, both Macrobius and Aristotle: “[Macrobius] says (*Super Somn. Scip.* 1) that the *social* virtues are those *whereby good men work for the good of their country and for the safety of the city*. But it is only legal justice that is directed to the common weal, as the Philosopher states (*NE* 5.1). Therefore other virtues should not be called *social*” (61, 5, obj. 4). It appears from these passages and others that Thomas posits political society and its common good as the full measure and goal for legal justice, as a general, human virtue.

The “real” general justice according to Aquinas: the civic or the moral virtue?

So what is one to make of all this? Where does Thomas Aquinas finally stand on the nature and scope of “general” or “legal justice?” Is its core or essence the *moral* virtue, informed by reason and the natural law, or the *civic* virtue molded by particular regimes and their legal codes? Or, as a third possibility, does Thomas’s presentation of this virtue stand revealed as self-contradictory or confused? Allow me to sketch a provisional resolution, along the following lines: For Thomas, as stated above, it is completely untenable, contradictory, to posit a social “common good” which opposes or even does violence to the fundamental human inclination to good actions and virtue, in accord with the first principles of practical reason. In this fundamental criterion of goodness, applicable to individuals and their associations alike, Thomas locates the distinction

between genuine and spurious common goods. I would contend that in this critical respect Thomas's perspective emerges as better and more thorough than Sandel's. As we saw in our first chapter, Sandel does not seem able clearly to distinguish between "good" or "virtue" on the one hand, and "community" or "our commonality" on the other, nor even to recognize the importance of attempting such a distinction.¹⁸ By contrast, Thomas emphasizes that just human or civil law, which has the political common good as its goal, must be in harmony with the precepts of the natural law:

As Augustine says (*De Lib. Arb.* 1.5), *that which is not just seems to be no law at all*: wherefore the force of a law depends on the extent of its justice. Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature, as is clear from what has been stated above (I-II 91, 2, ad 2). Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law (I-II 95, 2).

¹⁸Ferree also appears, at least at one point in his argument, to identify the community (albeit in different forms and at various different levels) with the common good, even while criticizing this very identification made univocally at the level of the political community: "Older writers are all too prone to identify the common good and the state. The state, especially in its modern nationalistic form, is only one level of the common good, and there are other levels both above and below it" (96).

Note that according to Thomas here, positive laws deviating from the natural law are deemed not only *unjust*, but *illegal* as well (compare *Comm. on NE*, 901, cited on page 139 above). And only civil laws in accord with the natural law qualify as, to use a strangely redundant phrase of Aquinas which we are now in a better position to appreciate, “legal laws” (96, 4). The “legal justice” which has the natural law for its rule is thus the fully *general* and, again to our surprise, paradigmatically *legal* virtue.¹⁹ It is general in the sense of universally applicable across the vast variety of political communities and regimes. It is universal too in that such a general justice will characterize any good human person living under any code of laws, whether the best possible, or merely mediocre, or even base. It calls upon him or her to seek the truth about what constitutes a human life well lived; to develop the virtues to the fullest degree of which he or she is capable; and to employ them as far as possible for the well-being of the society as a whole and its various members. Moreover, this common moral or human virtue implies a human fellowship of sorts which transcends particular political societies. Justice must be exercised towards *all* human beings. In this sense, the general justice based on natural right and law constitutes the first and most basic response to the “problem of legal justice”: how it can be fully general, truly legal, and universally virtuous. This general

¹⁹The scope of this dissertation does not allow for detailed discussion of “the legal character of the natural law”; for some significant contributions to the recent debate on this topic, see Brock (1988); Fortin (1982); Goerner (1979); and Hittinger (1994).

justice permits, even compels, service to good regimes and respect for their laws; and conversely, resistance to bad ones.²⁰

Nevertheless, there is a problem with this “solution,” one that Aquinas evidently recognizes. Human beings, nature’s curious combination of matter and spirit, possess in reason or intellect a powerful principle of universality. Yet their limited, contingent being also requires heed paid to the claims of particularity.²¹ Human nature is therefore *both*

²⁰Thus Ferree’s contention that the ability to criticize positive or human law, from the vantage point of legal or “social” justice, is an innovative advance of modern papal teaching strikes me as simply wrong, especially insofar as his judgment is based on the too hastily drawn conclusion that “for St. Thomas, the question [of the relation of “social justice” with law] may be considered somewhat open whether it is thus dependent on [positive] law, or rather analogous to it, in that both seek the common good (Ferree 114). Ferree himself admits as much on the following page, noting at last that the “older” approach made partaking of “the nature of law” dependent upon “deriv[ation] from the natural law.” The central advance which is Ferree’s focus turns out to be the modern preoccupation with “what is to be done,” with the continual “critique,” reorganization, and improvement of institutions (see *inter alia* 115); cf. Benestad’s discussion (1984, 375-381).

²¹See John Paul II’s 1995 *Address to the United Nations General Assembly*, for a helpful discussion of the inevitable “tension between the particular and the universal,” which characterizes human life precisely as social and political. John Paul maintains that for all its evident hazards (he mentions especially “the Balkans and Central Africa”), this tension

broadly social *and* specifically political. In one sense, for human life and human nature this fully general justice is *too* general; in another, it is not comprehensive enough. Put another way, natural law requires *both* “completion” *and* “specification” or “determination” by means of human law. It requires completion in order to be suited to guide and direct the common way of life which characterizes a given political community. To this end, to the precepts of the moral law must be “added” others, in many cases regarding things which were “originally matters of indifference.” These directives must be sufficiently specific to order the common conduct of the multitude, to facilitate the completion of the morally right in the concrete circumstances of a particular polity.

Along these lines, Aquinas writes that “[t]he general principles of the natural law cannot be applied to all men in the same way on account of the great variety of human affairs; and hence arises the diversity of positive laws” (I-II 95, 2, ad 3). That one ought to avoid harming one’s neighbors is a *sine qua non* of social life. But, for example, just how should one go about this in a society where automobiles, upgraded annually by the latest technology, are the standard means of transportation? Speed limits, quality control tests, red and green lights are devised and promulgated as conventional means intended to facilitate and safeguard an aspect of the “good of virtue” to which human nature is

may be “singularly fruitful, if they are lived in a calm and balanced way” (see 10-11, 12-13). And like Aquinas, John Paul stresses that what is universal to human nature and human morals must be accorded priority over the culturally particular. Reason and the “universal moral law” constitute the privileged, common ground from which to judge, and form the basis for meaningful international dialogue (cf. *inter alia* 7; 14-15).

inclined. To be truly effective, human or civil law must judiciously combine natural and positive right; precepts flowing from reason with those emanating from local custom and prudential determination by those in authority:

[I]t must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises; secondly, by way of determination of certain generalities. The first way is like to that by which in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details; thus the craftsman needs to determine the general form of a house to some particular shape. Some things are therefore derived from the general principles of the natural law by way of conclusions; e.g., that one must not kill may be derived as a conclusion from the principle that one should do harm to no man: while some are derived therefrom by way of determination: e.g., the law of nature has it that the evil-doer should be punished, but that he be punished in this or that way is a determination of the law of nature. Accordingly both modes of derivation are found in the human law. But those things which are derived in the first way are contained in human law not as emanation therefrom exclusively, but have some force from the natural law also. But those things which are derived in the second way, have no other force than that of human law (95, 2; cf. *ibid.*, ad 4; and 97, 1-3).

Aquinas's two general or legal justices, to speak somewhat loosely, and the tension which at least potentially exists between them, reflects his view of human nature as characterized by the union of universality and particularity. This union dictates the requirements properly *human* "completeness." Persons possessed of general justice on the truly universal level of practical reason, of natural law, will see the importance of cultivating all the human virtues. Moreover, they will recognize and desire them as tending to the betterment not of themselves alone, but also of their families, political societies, and the other associations to which they may belong. They will also be aware of the necessity of positive law, to complete the general moral principles by rendering them more determinate; to fill out their country's common way of life and create a genuine political community. It would seem that a person possessing the virtue of "natural legal justice" will recognize the necessity of cultivating "political legal justice." If the precepts directing the latter are in harmony with natural right and natural law, civic general justice will then seem the fully comprehensive social virtue.

And yet, paradoxically, civic legal justice simultaneously stands revealed as narrower, more dependent upon contingency and partiality and convention, however prudently crafted and essential these may be to human existence. As such, it is more prone to err, to deform the human person (cf. MacIntyre 1988, 179); more apt to produce confusion between the truly virtuous and the merely expedient, between the essential and the accidental, between the forest and the trees. In a case of conflict between positive law and natural law, the truly "generally just" individual will reject the former as guide under the tutelage and direction of the latter. The person guided by this universally humane rule

of goodness and virtue will recognize the legitimacy and delicacy of the particular. But he cannot sacrifice the regime in his own soul to it (cf. Plato's *Republic* IX, 591a-592b). In refusing to do so, he does not sacrifice the common good to his purely personal benefit. Rather, if he acts with prudence, this person upholds the universally human order of goodness, the prior and transcendent rule of any good community. At the least, he thereby recalls for his society and his fellows what sort of polity and persons they should strive to be.²²

Conclusion

In the context of ethics and political philosophy, the name Thomas Aquinas is immediately associated with law, and perhaps especially natural law. Yet we have seen that Thomas places even greater emphasis on virtue, as central to the happiness of human beings and the flourishing of their communities.²³ We began chapter three with Yves Simon's observation that human or moral virtue seems of its very nature to imply love of and ordination to the common good; we then proceeded to try to better understand Thomas's

²²In this context, consider also Václav Havel's "Letter to Aleksandr Dubcek," in *Open Letters* (1991), 36-49; and Robert Bolt's portrayal of Thomas More in *A Man for All Seasons* (1961).

²³Hence, for instance, he devotes a far greater number of questions in his *Summa* to virtue than to law.

position on the why and how of such ordination. Simon, of course, also emphasizes that this intrinsic direction of good wills to the common good is not enough: public authority, with its directive and harmonizing potential, is needed as well. And Thomas Aquinas further specifies that it is necessary and beneficial for rule in the majority of instances to be according to law (cf. *ST* I-II 95, 1, ad 2).

Thus it should be evident that, despite Ferree's fears to the contrary, the importance Aquinas gives to the spheres of politics and of positive civil law in no way rules out the "congruence theory." If intention of the common good informs the spirit of the laws, then virtuous actions which the law leaves unspecified, or never even envisions, can pertain to general justice if directed by the moral agent to the common good.²⁴ And even under a corrupt regime, the principles of natural law provide at least a foundational direction for action favoring the social common good. In order to round out this inquiry into the connection Thomas posits between virtue and the common good, we must proceed to investigate his view of the role of human or civil law in fomenting the "common good of virtue." This will be our aim in chapter five.

²⁴See Aquinas's treatment of "epikeia" or equity (*ST* II-II 120), and the sense in which a broad understanding of legal justice, based on the ultimate aim or purpose of the law rather than on its letter, encompasses even this virtue which dictates necessary or prudent disobedience to the law's letter.

Chapter 5: Legislating Moral Virtue? Aquinas on Civil Law and the Human

Common Good

In the preceding chapters, we have seen that in Thomas Aquinas's estimation political life, authority, and law are required for the "specification" of justice and the "human common good." We have also noted that he posits moral virtue as the core of this human ("social and political") good. In Thomas's less technical definition, law emerges as "the art...of directing or ordering the life of man" as a social creature, integrating individuals' characters and pursuits into a unified, ennobling, common way of life (see *ST I-II* 104, 4). In our endeavor to grasp the relation Aquinas posits between common and proper goods, we thus need further inquiry into how and to what extent human law may properly promote the "good of virtue"—a good of human persons, yet more communicable by nature than other temporal goods. Such the task we set for ourselves in this fifth chapter.

Yet already we can hear, as it were, a strong and principled outcry against any such undertaking. After all, in contemporary liberal democratic theory and practice, few objectives are considered more objectionable than that of "legislating morality." In such a context, we may do well to begin with a helpful recent work by Robert P. George, a contemporary legal and political theorist who is both sensitive to liberal concerns and well versed in the Thomistic tradition. In his *Making Men Moral* (1993), George endeavors to maintain, *contra* the reigning liberal orthodoxy, that political authority and civil law can

and indeed must consciously seek to promote human flourishing or integral fulfillment. To this end, they simply cannot avoid trying to discourage moral vice and to encourage moral virtue. Human law should help to “make men moral,” but in such a way as to promote rather than impede the exercise of freedom, without which genuine virtue is impossible; and in his effort to prove this, George begins by recapping for his readers the views on this subject held by Aristotle and Thomas Aquinas (see *MMM*, chapter 1, 19, ff.).

I. Robert George on Aquinas, Law, and “Making Men Moral”

George summarizes two basic arguments, both of which he attributes to Thomas Aquinas, in support of the repression of vice and the inculcation of virtue as legitimate legislative functions. The first is essentially that put forth by Aristotle, hence purely a product of reason, or of political philosophy *per se*. The second George attributes to the influence of Thomas’s Christian faith and theology.

The “Aristotelian” argument

The question to which George seeks the Philosopher’s answer is not so much “Why is legislative involvement appropriate in the realm of moral virtue?” as the narrower query “Why can’t most people refrain from vice and become morally virtuous without the

relevant laws on the books?”. For his answer, George relies almost exclusively on Book 10, chapter 9 of the *Nicomachean Ethics* (cf. *MMM* 22-28). According to his reading of Aristotle’s exposition, only an elite few, those blessed by nature with characters magnetically drawn to the acquisition of virtue, can become virtuous in the absence of proper laws. The vast majority of human beings are not so fortunate. Their weak reason and will are constantly, powerfully obscured and swayed by unruly passions. Ill-guided lust for pleasure renders them strong candidates for acquiring the most debasing of vices. Even sound parental advice and discipline are not likely to save them from such a fate. Only good laws can come to the rescue of these poor souls.

Why so? According to George, Aristotle’s account offers several related reasons, some explicitly expressed and others implied. First of all, apprehended and convicted lawbreakers are in for far more serious punishments than follow disobedience to parental injunctions. Fear of painful consequences provides powerful, passion-driven motives for checking vicious inclinations. Over time, the person so restrained may well be “tamed,” and even perhaps educated to some degree of virtue. Repeated efforts to avoid evil actions begin to habituate the agent in at least the most elementary forms of good deeds. This person begins to taste the pleasures of acting well. His or her reason is gradually unfettered and becomes free to assess actions and ends with greater impartiality. Nevertheless, on George’s reading, Aristotle just barely allows for any real virtue to be cultivated, as a result of good law, by the majority of the moral “plebes” (see *MMM* 23, 26).

Moreover, parental or friendly advice, because of its essentially *ad hominem* character, is easily resented: “He’s just jealous that I’m having such a good time...”; “She’s out to repress my personality!”; etc. Law, on the other hand, as a general, society-wide rule of conduct, is an easier moral medicine to swallow. Finally, as an additional justification of legislative endeavors to promote ethical conduct, George notes that the societal norm which is civil law is uniquely well-equipped to ensure the sort of “moral ecology” that supports rather than frustrates sound upbringing and character formation. What George terms “legal moralism” is essential, in Aristotle’s estimation, because “[p]eople, notably including children, are formed not only in households, but in neighborhoods, and wider communities. Parents can prohibit a certain act, but their likelihood of success in enforcing the prohibition, and transmitting to their children a genuine grasp of the wrongness of the prohibited act, will be lessened to the extent that others more or less freely perform the act” (*MMM* 27). In support of this Aristotelian claim, George provides an illustration which should resonate well with contemporary readers, especially those who are parents or otherwise involved in educating youth:

Parents can forbid their teenage sons to look at pornographic magazines; if, however, other boys with whom they have contact are freely circulating such material, it will be difficult for the parents to enforce their prohibition. Moreover, the boys...are likely to experience that prohibition as more onerous to the extent of their knowledge that other boys are free to indulge their taste for pornography... Whatever authority parents have over their own children, they lack the authority to

deprive other people in the community, or other people's children, of the legal liberty to perform immoral acts; only public officials possess authority of that kind. If, however, public authorities fail to combat certain vices, the impact of widespread immorality on the community's moral environment is likely to make the task of parents who rightly forbid their own children from, say, indulging in pornography, extremely difficult (ibid.).¹

George ascribes Aristotle's basic position to Thomas Aquinas, with no significant reservation or qualification: "When Aquinas comments on the *Nicomachean Ethics*, he expounds what Aristotle says there without demurrer, suggesting that he is generally in agreement with it" (*MMM* 29). These remarks seem curiously to miss the point of the medieval "commentary" *genre*, which (as noted above, in both chapters 3 and 4) is precisely to explicate and "expound" the thought of the author whose work is being discussed. Moreover, as we also argued above, there are significant instances when, writing in his own name, Thomas expresses or implies disapproval of certain Aristotelian teachings which he simply elaborated in the relevant commentary.

¹ Compare Sandel's brief communitarian assessment of the pornography debate, discussed above in chapter 1. Also compare our reservations regarding Sandel's approach to this and related issues, with the critique George levies against the relativistic, quasi-communitarian "legal moralism" of Patrick Devlin (see *MMM*, especially chapter 2, 48 ff.: "Social Cohesion and the Legal Enforcement of Morals: A Reconsideration of the Hart-Devlin Debate").

Be that as it may, George moves on to treat another aspect of the connection Thomas sees between law and virtue's inculcation, "a peculiarly Christian rationale which, of course, never would have occurred to Aristotle." To assess this "different," "though not necessarily incompatible" line of reasoning (*MMM* 29), George turns his attention and ours to the *De Regno*.²

The "Christian" case

The *De Regno* is a little *speculum principum* (mirror of princes) written for the Christian ruler of Cyprus. It was begun, but not completed, by Thomas Aquinas.³ According to George's reading of the text, the Angelic Doctor's basic premise therein is "that what is good for everybody, in the end, is getting to heaven."

The attainment of heavenly beatitude is the central common good of the people.

The realization of this good (or goal) is not only what the Church is there for, it is the ultimate reason for the existence of public authority as well. The king serves

²Unless otherwise noted, citations from the *De Regno* are taken from the Phelan-Eschmann edition (*On Kingship, to the King of Cyprus*, 1949), which George also employs.

³See the introduction to the Phelan-Eschmann edition for some background on the circumstances surrounding its composition, the integrity of the text, etc.

the common good by getting the community into shape so that people are meeting their obligations to love their neighbors, thus fulfilling the second table of the Decalogue, and, through the redemption effected by Christ, getting into heaven (*MMM* 29; cf. *ibid.*, *inter alia* 34, 41-42).

In support of this interpretation, George cites from sections 115-120 of Thomas's text, beginning with this passage: "Therefore, since the beatitude of heaven is the end of the virtuous life which we live at present, it pertains to the king's office to promote the attainment of the good life of the multitude in such a way as to make it suitable for the attainment of heavenly happiness, that is to say, he should command those things which lead to the happiness of heaven, and, as far as possible, forbid the contrary" (*DR* 115; *MMM* 29-30). The content of this fully virtuous life must be learned by the king "from the law of God, the teaching of which belongs to the office of the priest" (*DR* 116; *MMM* 30). George therefore concludes that, since the end of all human persons is heavenly beatitude, societies aiming at promoting the true common good must have as their principal purpose and goal to facilitate holiness of life and to discourage the contrary. According to Thomas, not only the ecclesiastical community, but the political society as well, must understand and enforce virtue *as divine revelation presents it*.

It is striking that most if not all of the passages George cites from the *De Regno* are situated near the end of Aquinas's text. Depending on the division employed, they comprise either the end of book one, or the beginning of book two (in which Aquinas himself barely begins the task he has set out for this section). And at any rate, sections

115-120 comprise most of the *conclusion* of Thomas's lengthier overview of the nature, advantages, limits, dangers, and duties of kingly government. It seems odd that Thomas would wait to articulate the work's "basic premise" (*MMM* 29) until he was so far into his substantive argument.

In fact, as is clear in light of both the opening chapters of *De Regno*, and the chapter (II. 3, or I. 14) immediately preceding George's central citation, Aquinas's "basic premise" is none other than natural human sociability, and his "minor premise," that moral virtue is the crown of the integral good life which human association properly seeks. While he draws from a myriad of sources philosophic, historical, and scriptural, in the opening sections and at key points throughout this work the Angelic Doctor is clearly instructing Cyprus's king in "Classical Political Philosophy, 101." Consider for instance the following passage:

Now the same judgment is to be formed about the end of society as a whole as about the end of one man. If, therefore, the ultimate end of man were some good that existed in himself, then the ultimate end of the multitude to be governed would likewise be for the multitude to acquire such good and to persevere in its possession. If such an ultimate end either of an individual man or multitude were a corporeal one, namely life and health of the body, to govern would then be a physician's charge. If that ultimate end were an abundance of wealth, then knowledge of economics would have the last word in the community's government. If the good of the knowledge of truth were of such a

kind that the multitude might attain to it, the king would have to be a teacher. It is, however, clear that the end of a multitude gathered together is to live virtuously. For men form a group for the purpose of *living well* together, a thing which the individual man living alone could not attain, and *good life* is virtuous life. Therefore, virtuous life is the end for which men gather together. The evidence for this lies in the fact that only those who render mutual assistance to one another in living well form a genuine part of the assembled multitude. If men assembled merely to live, then animals and slaves would form a part of the civil community. Or, if men assembled only to accrue wealth, then all those who traded together would belong to one city. Yet we see that only such are regarded as forming one multitude as are directed by *the same laws and the same government* to live well (*DR* II. 3, or I. 14, 106, italics added in last sentence only; cf. *ibid.*, *inter alia* 1-8; 10-14).

Moreover, in this little book Thomas takes pains to clarify the distinction between temporal and spiritual governance (*DR* 110; cf. *inter alia* *ST* I-II 99, 2, 3, and 5). He makes every effort to “hammer home” to the king of Cyprus that his job is not “to get people to heaven” *per se*, but to attend to the difficult and complex business of the “common good of justice and peace” (*ST* I-II 96, 3; cf. *DR* 117-121). As described by Thomas in section 118 of *De Regno*, this multifaceted task should suffice to keep even the most talented and ambitious of monarchs more than occupied. As for the former task, it belongs solely to the one with the power to bring about that end—namely, to the King

whose kingdom is, again emphatically, “not of this world.” Aquinas writes of the ultimate, supernatural end of human existence, the “enjoyment of God” (107), that if it “could be attained by the power of human nature, then the duty of a king would have to include the direction of men to it. We are supposing, of course, that he is called king to whom the supreme power of governing *human affairs* is entrusted. Now the higher the end to which a government is ordained, the loftier that government is... But because a man does not attain his [ultimate supernatural] end, which is the possession of God, by human power but by divine--according to the words of the Apostle: ‘By the grace of God, life everlasting’ [Rom. 6:23]--therefore *the task of leading him to that end does not pertain to human but to divine government*”(108, emphasis added).⁴ It is hard to see how Thomas could have been more explicit.

⁴Cf. *ST* I-II 98,1: “Again it must be observed that the end of human law is different from the end of divine law. For the end of human law is the temporal tranquillity of the state, which end law effects by directing external actions, as regards those evils which might disturb the peaceful condition of the state. On the other hand, the end of the Divine law is to bring man to that end which is everlasting happiness, which end is hindered by any sin, not only of external, but also internal action”; and 99, 3: “[D]ivine law is instituted chiefly in order to direct men to God; while human law is instituted chiefly in order to direct men in relation to one another,” with a view to “the common good of mankind” and “the formation of human morals.”

Nevertheless, George persists in insisting that Thomas's political thought is deduced from theological premises, that its first principles and proper ends are faith-based and supernatural:

[T]he fundamental and (to the modern reader) obvious problem with [Aquinas's] view is that it assumes the propriety of legislating not only morals, but also faith, and indeed of legislating morals in so far as they are accepted on religious authority and are the means to an end (i.e., heavenly beatitude) that religious faith puts forward but reason by itself cannot identify. *Aquinas makes the first principle of politics a matter of religious belief...*" (MMM 41, emphasis added).

George's concerns evidently revolve around the problem of making room for religious freedom and tolerance within a broadly Thomistic framework. Yet even for one (such as myself) who shares his strong disapproval of Aquinas's conclusions regarding the political treatment of heretics and apostates (cf. *ST* II-II 11, 1 and 3, with *ibid.* 10, 8; 10, 11-12; 12, 2), George's sweeping claims about the foundations of Thomas's political science seem far from persuasive. Indeed, George himself suggests an essentially *moral* (rather than theological) explanation for Aquinas's views on the political enforcement of religious commitments. This argument runs roughly as follows: Persons cannot be truly virtuous, nor political communities (especially those with the structure characteristic of Europe's Middle Ages) flourish without loyalty and faithfulness to one's promises. Yet it

is difficult to imagine a weightier covenant than one made publicly to God and Church.

Therefore, should an individual publicly and obstinately go back on his solemn word in such commitments, it is appropriate for political authorities to punish the offender, even with maximum severity (see *MMM* 34; cf. Goerner and Thompson 1996, 644-648).

Moreover, if Aquinas's "first principle of politics" were indeed "a matter of religious belief," his strong case against secretly or forcibly baptizing children of non-Christians—a case ultimately based on inviolable principles of *natural* justice (the *moral* virtue)—would seem simply incongruous (cf. *ST* II-II 10, 12; *MMM* 34-35). The "theology-based" or "theocratic" line of interpretation and criticism is all too facile, and in important respects apt to mislead.⁵

⁵ Goerner and Thompson also note that "[Thomas] claimed that the Church has no lawful business ousting from political power nonbelieving officeholders who never accepted the Christian faith" (645). Although the authors do not provide a specific textual reference in this case, they appear to have *ST* II-II 10, 10 in mind. In the course of Thomas's own response here, we find this further indication of the rational, human foundation of politics and law in his estimation: "[W]e may speak of dominion or authority, as already in force: and here we must observe that dominion and authority are institutions of human law, while the distinction between faithful and unbelievers arises from the divine law. *Now the divine law which is the law of grace, does not do away with human law which is the law of natural reason.* Wherefore the distinction between faithful and unbelievers, considered in itself, does not do away with dominion and authority of unbelievers over the faithful" (emphasis added).

The reader still might wish to press George's point, with an argument running something like this: The arts of government and legislation are primarily or immediately with a view to facilitating the "human common good" through the promotion of virtue, rendering its cultivation feasible by ensuring peace and freedom, security and economic prosperity (see *DR* 117-121). If this is so, if the fundamental or highest purposes of law and politics are as such accessible to reason, why does Thomas send the governor off to study divine law, to figure out what conduces to those ends (cf. *DR* 116; *MMM* 30)? Why does he need humbly to accept ecclesiastical instruction with regard to acquired virtue and the proper dispositions of a ruler? As George strongly suggests, if this sort of approach to governance isn't indicative of a faith or religion-based politics, what is?

To which set of precepts of the divine law could Thomas be referring the King of Cyprus? Certainly not the ceremonial precepts, which he considered not only "dead" but also "deadly" in the Christian era (see *ST* I-II 103, 3-4). Neither could he have the judicial precepts principally in mind, crafted as they were specifically for the people of Israel, in preparation for the Messiah who had already come (I-II 104, 3). (Thomas does not hold that these are "deadly," however, and we shall have more to say about their significance in his political thought.) We are left to conclude that Aquinas would have the monarch meditate on and learn from the *moral* precepts, the *sine qua non* of both just conduct in ruling and the "common good of virtue." Recall too that Thomas judges that these precepts are *per se* accessible to natural reason, as belonging to the natural law.

Aquinas argues that God is not “redundant” in revealing truths which human reason could in principle grasp: the effects of sin on the intellect, and especially on the will and passions, include obfuscation of the natural law (*ST* I-II 99, 2, ad 2; cf. *SCG* I.4). Given the very considerable amount of time and energy Thomas expends elaborating the great temptations to tyranny which monarchy always entails, warning against the evils that befall tyrants and enumerating the blessings that accrue to good kings (*DR* 21-35, and 41-90), he definitely does not assume this (or any) king to be already a paragon of moral virtue. Moreover, the popular tone of the *De Regno*, coupled with its explicit recognition of the “no subtleties for me,” unphilosophic education that future monarchs tend to receive and the lack of leisure their job normally entails, suggests Thomas’s awareness that the king may not be all that adept a practical reasoner. He therefore recommends that this *Christian* ruler and others like him avail themselves of the very clear, authoritative moral instruction that scripture and divine law offer, as a foundation for decent governance. Revelation comprises natural as well as supernatural truths, and contrary to what George’s exposition might seem to imply, it is far from clear that rulers are being instructed by Aquinas to base their temporal government on the latter.

Human law vis-à-vis acquired and infused virtue

As we saw in chapter three, Thomas considers that the social orientation of the moral life, as humanly complete or perfect, can and should be further referred to God, *summum*

bonum and ultimate *bonum commune*. The virtues of persons, facilitated by good government and laws, may be elevated by grace to the transpolitical order conducing to this supernatural end. But Aquinas stresses that this is a matter of strictly divine competence, *God's* job—not the king's, nor the aristocrats', nor that of the demos. The proper concern of the governor-legislator comprises promotion and harmonization of “whatever particular goods are procured by man's agency—whether wealth, profits, health, eloquence, or learning—[as] ordained to the good life of the multitude” (*DR* 114), the social or temporal common good. “Thus the king, taught by the law of God, should have for his principal concern the means by which the multitude subject to him may live well. This concern is three-fold: first of all, to establish a virtuous life in the multitude subject to him; second, to preserve it once established; and third, having preserved it, to promote its greater perfection” (116-117). When the rulers perform this task well, they do everything possible to promote a healthy way of life, one characterized by social harmony and conducive to virtue. In so doing, they help to prepare “building materials” that will prove as useful as possible to God, that most “architectonic” of artists.

But again, it is critical to stress that in this case, the finished bricks still require radical transformation at the hands of the “architectonic artist” of the heavenly city, if they are to be of any use whatsoever to his purpose (cf. *inter alia* I-II 98,6). Recall for a moment the distinction Thomas takes pains to elaborate in the *Summa Theologiae*, between human or acquired virtue on the one hand, and the theological and infused virtues on the other. These latter virtues are said to be “entirely from without” (I-II 63, 1), that is, “infused in us by God alone” (I-II 62, 1; cf. 63, 3). The theological virtues transcend

the realm of human reason, hence that of human society and governance (cf. I-II 72, 4). Their “object...is God himself, who is the last end of all, *as surpassing the knowledge of our reason*. On the other hand, the object of the intellectual and moral virtues is something comprehensible to human reason. Wherefore the theological virtues are specifically distinct from the moral and intellectual virtues” (62, 2, emphasis added). If, as Aquinas suggests, the intellectual virtues, and in particular wisdom as the highest of these, transcend the proper sphere of social life, and the jurisdiction of political prudence and authority (cf. *DR* 106; *ST* I-II 66, 5, ad 1), how much more will faith, hope, and charity? Moreover, if internal motives and dispositions are beyond the sure grasp of human governors and judges (*ST* I-II 91, 4), hence beyond the strict purview of human legislation and adjudication, this should prove *a fortiori* the case with divine grace, which under normal circumstances not even the individual in question can be certain of possessing.⁶

What of the infused *moral* virtues? These, together with their intellectual counterparts, differ from the acquired virtues by being “directed to a supernatural end,” “proportionate to the theological virtues,” and likewise “receive[d] from God immediately” (63, 3, c. and ad 1). Their mean is “fixed according to the divine rule,” rather than the properly human rule of reason. Thus, according to one illustration Thomas provides, although “[b]oth acquired and infused temperance moderate desires for pleasures of touch, [they do so] *for different reasons*” (cf. 63, 4, c. and ad 2; emphasis

⁶Cf. *ST* I-II 112, 5, with the reply of Joan of Arc at her trial, when asked if she were in the state of grace: “If I am not, may God bring me to it; if I am, may he preserve me in it.”

added). Thomas goes on to note a second way in which acquired and infused virtues differ specifically, namely, “in *the things to which they are directed*”:

[T]he Philosopher says (*Pol.* 3.3) that citizens have diverse virtues according as they are well directed to diverse forms of government. In the same way, too, those infused moral virtues, whereby men behave well in respect of their *being fellow citizens with the saints, and of the household of God* (Eph. 2:19), differ from the acquired virtues, whereby man behaves well in respect of human affairs (*ibid.*, c.).

Once again, Thomas seems quite clear: the virtue which a ruler can and should foster “by his laws and orders, punishments and rewards,” which in turn “restrain the men subject to him from wickedness and induce them to virtuous deeds” (*DR* 120), differs in nature, rationale, and objective from the virtue leading straight towards heavenly beatitude.

At this junction, however, a problem arises for the coherence of Thomas’s overall ethical framework. Does not this division, one is tempted to say this radical distinction between human and supernatural virtue rend the analogical ascent to full transcendence, which Thomas has suggested begins with ethical virtue *qua* social, political, hence fully human? Thomas does provide a basis for the link between the human and divine planes of virtue: the fact that both acquired and infused moral virtues share and perfect the same subject, in scholastic terminology rectifying the same faculty or appetite. Hence, in Aquinas’s estimation, the efforts of governors and legislators to eradicate moral vice and encourage moral virtue, while properly and primarily aimed at the “human common

good,” may nonetheless assist people “through virtuous living, to attain to the possession of God” (*DR* 107). In the *Summa*’s treatment of the “effects of law,” Thomas elaborates the positive impact which law’s habituation to good deeds may have even vis-à-vis infused moral virtue:

[T]he fact of being accustomed to an action contributes to both [acquired and infused virtue], but in different ways; for it causes the acquired virtue; while it disposes to infused virtue, and preserves and fosters it where it already exists. And since law is given for the purpose of directing human acts, as far as human acts conduce to virtue, so far does law make men good. Wherefore the Philosopher says in the second book of the *Politics* [actually *NE* 2] *that lawgivers make men good by habituating them to good works* (I-II 92, 1, ad 1).

II Beyond Reform School: Law’s Positive Pedagogy of Virtue According to Aquinas

We proceed now to consider Aquinas’s view of the modes in which human law appropriately seeks to promote acquired virtue. In *Making Men Moral*, Robert George does a clear and thorough job of explicating the “negative” case Aquinas mounts for law’s role in inculcating virtue. In other words, as we saw above in the context of George’s explication of the “Aristotelian” side of Thomas’s argument, his account focuses on law’s salutary influence on the *vicious*, or on those powerfully and habitually tempted to stray

from virtue's rough and narrow path. There is certainly considerable warrant in Aquinas's texts for George's emphasis (cf. *inter alia* ST I-II 92, 1, ad 2; 95, 1; 96, 1). But this is only half of the story. Thomas's view of law's moral pedagogy has a more positive side to it as well: namely, law presented as a *guide for the already good-willed*. While this side of his case for the relation of law to human virtue is but quietly, subtly present in the questions opening the treatment of law in the *Summa*, it takes on greater import in later contexts. I therefore propose to examine this positive legal pedagogy in greater detail, with a view to completing our grasp of the role Thomas assigns to human law in "making men moral."

Let us begin with question 98, article 6 of the *Prima secundae*, where Thomas inquires "[w]hether the Old Law was suitably given at the time of Moses." This subject may seem utterly unrelated to our enterprise; yet in the context of his reply, Thomas makes some general remarks about law and those subject to its jurisdiction which will prove most helpful for our purposes. Aquinas expresses the opinion that "every law is imposed on two kinds of men... [I]t is imposed on some men who are hard-hearted and proud, whom the law restrains and tames; and it is imposed on good men, who, through being instructed by the law, are helped to fulfill what they desire to do." Thomas restates this basic perspective on law's function a few questions later, in the course of considering why the Old Law should have included so very many ceremonial precepts:

As stated above (96, 1), every law is given to a people. Now a people contains two kinds of men: some, prone to evil, who have to be coerced by the precepts of the law, as stated above (95, 1); *some, inclined to good, either from nature or from custom, or rather from grace*; and the like *have to be taught and improved by means of law* (101, 3; emphasis added).

The attentive reader will recall that earlier, in his overview of human law's specific utility, Thomas employed an almost identical phrase to describe the possible sources of a strong inclination to virtue. In those so fortunate as to possess this healthy bent of character, it might be caused "by their good natural disposition, or by custom, or rather by the gift of God" (95, 1). But in that earlier article, Thomas's conclusion seemed to be that the well-disposed *have no real need of law's aid* in their personal "training" for mature human virtue. For those so "inclined to good," "parental training suffices, which is by admonitions" (ibid.). As we have indicated above, Robert George apparently takes this formulation as Thomas's final word on the subject. He therefore concludes that the "good" need good laws only to induce the "bad" to leave them alone; to prevent disruptions of social peace, which render focus on character formation quite difficult; and to guard a sound "moral ecology" which tends positively to favor the cultivation of the virtues (cf. *MMM* 44-45). Now, however, Thomas seems to "waffle," if not flatly to contradict himself. Suddenly, the well-disposed do need to be instructed by law, albeit in a distinct manner from those struggling with more powerful pulls towards vice. Every

good law should take into account the needs of both general “kinds of men”; the good lawgiver must formulate and promulgate precepts “expedient” to both (cf. 101, 3).

Can these opposing conclusions be reconciled? To complete the preparation necessary for addressing this question, we should try to fill out and to grasp more fully Thomas’s “second theorem”—that the well-inclined need law’s help to fulfill their good intentions. What kind of “help” does Aquinas have in mind? And how might human or civil law in particular impart that sort of “instruction”? In our efforts to discern Thomas’s meaning, we may begin with the examples and explanations of law’s positive pedagogy which he provides in the two articles cited above. Granted, these deal primarily with divine law (specifically, with the Old Law); but their general sense may be applied, *mutatis mutandis*, to human law’s competence as well.

In this context, Thomas first highlights law as a remedy for the moral ignorance which even the good may suffer. Law comes to the assistance of those who honestly want to do good, to do the right thing, but don’t know what it requires of them in this or that aspect of their moral lives: “With regard to good men, the [Old] Law was given them as a help, which was most needed by the people, at the time when the natural law began to be obscured on account of the exuberance of sin...” (98, 6). To whose “exuberant sinning” is the Angelic Doctor referring? He is most certainly not predicating it of “the good,” who though sinners are surely not characterized by lives bubbling over with gleeful wrongdoing. Thomas thus indicates that the moral evil and confusion of one’s society, forebears, and contemporaries can infect and blind even those with fundamentally good hearts and wills. While the latter, in adopting at least some of the evils characteristic of

their times, may perhaps plead invincible ignorance, still their lives will not attain the human perfection they might otherwise have achieved. In such circumstances, clear, authoritative law may be the voice of foundational reason, a spur to moral reflection and advancement. Imagine youths growing up in a community where recreational use of narcotics is the norm. With all the good will in the world, they may not see any problem with this practice. But laws on the books which criminalize the practice, and further mandate educational explanation of the harm it entails for persons and societies, may be the needed pedagogue to help them “to fulfill [the good] they desire to do.”

In the second relevant article (101, 3), Aquinas focuses on law’s contribution to the habituation necessary for virtue’s acquisition. In this educative capacity, laws expand the scope and variety of the agent’s practices conducing to the virtues in question, and provide more or less frequent reminders of their importance. Thomas alludes to both the words of law and the meaningful practices it mandates, as stimuli for reflection and deepening moral awareness. For those who want to live justice towards their neighbors and towards their communities, the myriad ways in which law directs their actions, and reminds them of the connection of those actions to the common good, “helps them to fulfill what they already desire to do.” Think, for instance, of anti-discrimination and anti-defamation laws; laws requiring employers to care for employees’ health and safety; laws prohibiting litter; laws requiring able-bodied youth to serve in the military when their country’s good requires it, or establishing a national service corps; tax laws; laws prohibiting public intoxication and driving while intoxicated; laws facilitating the common

observance of public holidays; etc. If well made and fairly enforced, these can assist those citizens who wish to live justly, peaceably, and virtuously towards others.

So much for Thomas's brief indications regarding law's role in educating those basically good individuals among us. In our search for a deeper, more comprehensive account of the cause of law's positive pedagogical role, we may turn next to a clue which Thomas leaves his readers, in 101, 3. It consists of a reminder of the relevance of question 96. There, in the first article, Thomas maintains that laws are made only for a "people" (cf. 101, 3) or "community" (96, 1): "Human law should be framed for the community rather than for the individual," Thomas writes, because "[w]hatever is for an end should be proportionate to that end. Now the end of law is the common good, because, as Isidore says (*Etym.* V.21), *law should be framed, not for any private benefit, but for the common good of all the citizens*. Hence human laws should be proportionate to the common good" (*ibid.*).

While Thomas does not provide the reference, both the quote from Isidore and the premise that (human) law's end should be the common good, serve to direct the reader back further to question 90, article 2, where he argues that it is of the very essence of "law" to be "always something directed to the common good." Attention to Thomas's response here is crucial for comprehending his later claim that the good need law too. That reply begins as follows:

I answer that, As stated above (90, 1), the law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end; and the last end of human life is bliss or happiness. Consequently, the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relation to universal happiness. Wherefore the Philosopher, in...[his] definition of legal matters, mentions both happiness and the body politic: for he says (NE 5.1) that we call those legal matters *just, which are adapted to produce and preserve happiness and its parts for the body politic*: since the state is a perfect community, as he says in *Pol.* 1.1 (90, 2, c.; cf. ad 1-3).

By referring the reader of 101, 3 back to 90, 2 *via* 96, 1, Aquinas indicates that the well-intentioned and lovers of virtue need law's influence and instruction to flourish, primarily and precisely because they are by nature social creatures. In order for their virtue to be full human virtue, it must be "proportionate to the common good" of their societies (cf. 92, 1, ad 3). Only law broadly understood, as a general societal norm, can serve as common guide or rule on the political level. Moreover, as we noted in chapter four, for Thomas natural morals require political completion. Customary and written laws

unite to form a common way of life which defines the “moral particularity” (to borrow a phrase from Sandel) of all those who share in it. Human law, when it “completes” natural law or “determines” social justice, “add[s] many things to good morals” (cf. *ST* I-II ; cf. also 95, 2; 97, 1-3). The person asking “What must I do to act well?” is not an isolated human in search of highly abstract answers, but is rather a member of various societies, especially of a family and civic community. In the latter capacity, he or she must often look to civil or human law, for concrete answers regarding how best to foster the common good under ordinary circumstances. Moreover, the shared form of life which law helps to create, strengthens the affection for one’s neighbor and society, the sense of responsibility for one’s own, etc., which engage the passions as well as reason. Thus too civil law may powerfully facilitate moral habituation for the already well-disposed.

Why then, in 95, 1 of the *Prima secundae*, does Thomas leave his readers with the distinct impression that human law teaches only in reform schools? Why the implication that, since parental and friendly admonition “suffices” for the moral education of those inclined to virtue, law has no role whatsoever to play in this nobler sort of character formation? Let me suggest three responses, which I consider might together comprise Thomas’s reply.

First and most obviously, the well-disposed do not normally require the coercive, punitive, fear-inspiring features of law’s moral education. In the second place, the parental upbringing and friendly advice which these individuals do require will normally include, in decent polities at least, (1) a healthy respect for laws, together with the

institutions and persons involved in their formulation and enforcement; and (2) an introduction, in the form of teaching, story telling, practices, music and celebration, etc., to the civic customs and public traditions which are integral parts of their country's way of life. Responsible parents seek to help their children develop into sound citizens, well prepared to fulfill their social and political duties, and eager to make positive contributions to the common good.⁷ In other words, complete moral education, even or especially when imparted primarily by parents and friends, both presupposes and includes the laws (their letter, but even more so their spirit). Finally, Thomas clearly sees (thanks to Aristotle among others, *pace* George) that the moral education which the legislator should intend will be best achieved by pedagogues not only well versed in the laws, but also intimately familiar with the individual pupil.⁸ Useful generalities aside, law is intended not merely for two generic types of human beings, but for a myriad of persons evincing a

⁷ Cf. *City of God* 19.16: "[D]omestic peace contributes to the peace of the city—that is, the ordered harmony of those who live together in a house in the manner of giving and obeying orders contributes to the ordered harmony concerning authority and obedience obtaining among the citizens. Consequently it is fitting that the father of a household should take his rules from the law of the city, and govern his household in such a way that it fits in with the peace of the city."

⁸ Cf. *ST I* 103, 6: "Now the highest degree of goodness in any practical order, design, or knowledge (and such is the design of government) consists in knowing the individuals acted upon; as the best physician is not the one who can only give his attention to general principles, but who can consider the least details; and so on in other things."

tremendous variety of characteristics, strengths and weaknesses, potential and needs. When it is heeded, parental or private, *ad hominem* instruction is the type of formation most conducive to law's general moral end: human virtue and the common good. And as George astutely notes, such education is best suited to compensate for the two pedagogical disadvantages which, paradoxically, are also reasons for law's great social utility: its generic formulation and impersonal nature (*MMM* 26-27; cf. *ST* I-II 95, 1 with 96, 1; *NE* 10.9).

III. *Regimes and Their Laws: Aquinas on the Problem of Civic Virtue*

In his crisp and concise review of Alasdair MacIntyre's *Whose Justice? Which Rationality?* (1988), Robert George takes the author to task for an excessive or misplaced "moral particularism."⁹ This term he takes to connote a historicist or tradition-bound account of practical rationality and justice, one which without significant revision cannot immunize itself against at least the "weaker forms of relativism" (George 1989, 602). Since *Whose Justice?* is the first major work in which MacIntyre declares his allegiance to "a specifically *Thomistic* Aristotelianism" (cf. MacIntyre 1990, 351; emphasis added), George also challenges the compatibility of "MacIntyre's strong moral particularism" with the "apparently universalist understandings of justice and practical rationality" of "the

⁹See "Moral Particularism, Thomism, and Traditions," *Review of Metaphysics* 42 (3), March 1989, 593-605.

Thomistic account” (594). In the course of his sympathetic critique, George makes the following observation:

Authentic Thomism is not inconsistent with recognition of the important respects in which traditions supply resources to practical reflection. Thomistic practical philosophy need not, and in fact historically does not, leave out of account the manifold ways in which context affects the rational application of practical principles. MacIntyre could embrace authentic Thomism merely by weakening his particularism to leave room for some autonomous (tradition-transcending, universal-truth-attaining) practical thinking (601).

Leaving aside for now the accuracy of George’s assessment of MacIntyre (on this point, I am inclined to agree with George), in this segment I would like to elaborate an important sense in which Aquinas’s ethical and political vision is more “moral particularist” (in a non-historicist sense, of course) than George’s. George’s version of “natural law theory,” at least as articulated and applied in *Making Men Moral*, appears sparser, more austere and abstractly rule-based than Aquinas’s. The former views any government restriction (and presumably *a fortiori*, requirement) of conduct as illegitimate *unless* it constitutes a direct “instantiation” of a natural law precept favoring the “basic human goods.” By contrast Thomas, whose natural law teaching has certainly been accused of over-abstraction, presents justice, law, and politics in a manner much closer to the classical vision. As we have seen, the fundamental principles of natural justice and

precepts of natural law form the basis for moral and political legitimacy according to Aquinas; but the human good, including justice, still stands in need of completion and specification. And while George reserves this work for individuals, Thomas envisions an important part of filling out the moral life for *social* beings resting with the “city or kingdom,” with the regime and its laws. The complete *moral* life, as its etymological roots imply, requires a “thicker” or more particularized context. Human reason itself indicates that natural law be determined with the help of custom and convention. These human laws, both written and customary, “*add* many things to [naturally] good morals” (cf. *ST* I-II). The common way of life which ensues facilitates the moral education and growth of the citizens, by engaging the affections and encouraging habituation in positive practices. Natural law is thus an indispensable beginning and point of reference for Aquinas’s moral and political teaching, but not its last word nor even its prime focus.¹⁰

A related divergence between the approaches of George and his medieval mentor centers around the political or legal implications of free will’s role in producing acts of genuine virtue. George argues that there are several basic human goods which he terms “reflexive.” By this he means that their value depends wholly on their being freely

¹⁰ Along similar lines, Douglas Kries (1994) writes: “The natural law, the most famous and most discussed of all of Thomas’s political ideas, may indeed be a grand theory, but Thomas understands that the careful political thinker seeks a more detailed, concrete description of the best regime. The law which ought to provide what natural law so manifestly lacks—a precise, determinate description of how one should live—is the human law” (101).

chosen.¹¹ Legislative attempts to mandate acts pertaining to these goods, or to forbid opposing acts of vice, actually denature them and strip them of any real worth. Hence most of George's justification of legislative concern for "making men moral" focuses on what government and law *cannot* or *should not* demand or forbid: "Once we have brought into focus the diversity of human goods, it becomes clear that legislators concerned to uphold morality cannot prohibit all that much. At most, they can legitimately proscribe only the fairly small number of acts and practices that are incompatible with any morally good life" (*MMM* 40). In the very cause of what George terms "perfectionism" or "legal moralism," maximizing scope for individual free choice emerges as more of the essence than helping people to choose well.

¹¹See *MMM* 14: "In the chapters that follow, I shall frequently distinguish 'substantive' and 'reflexive' human goods. 'Life,' 'knowledge,' 'play,' and 'aesthetic experience' are substantive goods: Although they can be instantiated through the choices by which one acts for them, each is shared in us prior to and apart from our choices and the practical understandings presupposed by our choices as a gift of nature and part of a cultural patrimony. 'Sociability,' 'practical reasonableness,' and 'religion,' are reflexive goods: they can be instantiated only in and through the choices by which one acts for them. Choice enters into their very definition; they cannot be realized or participated in except by choosing to realize or participate in them." In his list of these "basic human goods," George follows John Finnis's enumeration in *Natural Law and Natural Rights* (1980, 86-90); cf. *MMM* 13 and n. 16.

Aquinas, of course, also emphasizes the voluntary character of truly human or moral actions (*ST* I-II 6). Moreover, he suggests that even when a person is possessed of a full-fledged moral virtue or vice, it is ultimately up to his or her free choice whether or not to “use” this habit in any given instance (cf. *ST* I-II 50, 5; 53, 3; 54, 3). And finally, as George observes, Aquinas stresses the importance of prudent legislative reserve in regards to forbidding acts of vice or mandating those proper to virtue. To begin with, virtues other than justice should come under political jurisdiction only insofar as they are bound up with or essential for justice. Still and all, Thomas judges that true moral freedom depends upon proper habituation for its actualization, and, as we have tried to argue, that legislation has a key role to play in this education. Habituation from vice to virtue converts passion from enemy or two-faced friend, into a genuine and very helpful ally in the rational creature’s efforts to do well. It can also provide the needed experiential base for the self-correction of erroneous practical reason. What were once experienced as arbitrary restrictions or onerous burdens may thus be transformed into freely chosen acts which the agent recognizes as choice-worthy and performs with increasing ease, grace, and pleasure. Aquinas would entirely agree with George that civil law is in many ways a “blunt instrument” for eradication of vice and inculcation of virtue (cf. *MMM* 47; *ST* I-II 91, 4); yet Thomas pays greater heed than does George to the positive ways in which law can facilitate people’s habituation to moral virtue, the core of the “human common good.”

Perhaps an example from our own political culture might help clarify this distinction and elucidate Thomas’s meaning. According to George, one instance or manifestation of the “reflexive good” of “practical reasonableness” is the proper bestowal

of gratitude. Law and political authority therefore cannot demand or enforce gratitude without destroying it in the process. The gratitude shown by students to their teachers, for example, would surely be false and farcical if manifested under threat of failure—to say nothing of trial and imprisonment—for its omission. So much, George suggests, for the legitimacy of authoritative attempts to inculcate *this* moral virtue (cf. *MMM* 44).

Aquinas, however, with his stronger emphasis on social custom and habituation,¹² might reply that there are appropriate, broadly legal or political means of encouraging gratitude short of waving a pistol. Were he alive today, he might mention such “legal holidays” as Thanksgiving Day in the United States, which turns citizens’ minds and hearts towards this virtue on an annual basis and encourages its development. Thanksgiving Day is an excellent example of something that originated in human nature (the good quality of gratitude, as a integral part of a fully human existence); grew into a customary part (celebration) of a people’s way of life, inspired by an especially significant manifestation of this virtue; and was later sanctioned by Washington’s executive order, as a formal part of official law (cf. *ST* I-II 91, 3 and 95, 2, *sed contra*; both quoting from Cicero).¹³ Together

¹²For recent discussions of Aquinas’s political thought highlighting the central place it accords custom and/or common law, see *inter alia* Goerner and Thompson 1996, 637-639; and especially Mark C. Murphy’s “Consent, Custom, and the Common Good in Aquinas’s Account of Political Authority,” *Review of Politics* 59, Spring 1997, 323-350.

¹³This official sanction was not redundant or without important effect: over time, a primarily New England Protestant celebration gradually became recognized as an *American* holiday, marked, for example, in Catholic families such as my own, and meriting

with other holidays (Veteran's Day, Memorial Day, Mothers Day, and Fathers Day, to name but a few), and buttressed by institutionalized manifestations of gratitude and respect to those who have made outstanding contributions, in a wide variety of ways, to the common good (e.g., the Medal of Freedom and other civilian awards; military declarations; etc.), Thanksgiving Day teaches that to bestow gratitude where gratitude is due forms an integral part of a decent social existence.¹⁴ Moreover, the spontaneous, utterly uncoerced affection which many Americans feel towards this holiday and all it stands for is an indication of the limited but real educational or formative reach of positive, legally institutionalized social practices.

These differences in emphasis and approach may account for the fact that, in his summary of Thomas's view of the role of law in making men moral, George either misses or purposefully passes over an important aspect of the former's account. This is the distinction between moral virtue--or human virtue "simply," without further qualification--and civic virtue. Aquinas on his part practically thrusts the distinction into his readers' gaze. In response to his carefully worded question, "Whether an Effect of Law [in

a place in the liturgical calendar of the Catholic Church in the United States. Note as well, with reference to the general argument made above, that the family is definitely the prime locus of this element of moral and civic education; however, this parental formation both presupposes and is reinforced by the larger institutional, social significance of the practice in question.

¹⁴See Josef Pieper's *Leisure, the Basis of Culture* (1952), on the socio-moral significance of festivals.

General] Is to Make *Men* Good?”, he employs an equally studied sentence of Aristotle: “[T]he intention of every lawgiver is to make good *citizens*” (*ST* I-II 92, 1, s.c.; *NE* 2.1; emphasis added).¹⁵ One of the classical influences on Thomas’s thought is his awareness that human laws are made by any one of a wide variety of political regimes, and that these laws are intended first and foremost to inculcate virtue relative to that regime. In other words, the goal of the laws is not to foster good citizenship with no further qualification, but rather to form good citizens of *this* democracy, or oligarchy, or monarchy, or mixed regime, etc., as the case may be (cf. *inter alia* *ST* I-II 63, 4; 100, 2). Civic virtue is thus the vision or aspect of human excellence which is specifically well suited, in the eyes of the rulers and legislators at least, to uphold this particular polity, with its own form of government, and make it prosper as such.

In this context there arises one of the central tasks of political philosophy: the problem of identifying or discovering good regimes and especially the best regime, those that genuinely promote the common good, understood as well as possible. This investigation is tantamount to inquiring when, or in which regimes, the “civic virtue” which laws aim to inculcate is synonymous with true “human virtue.” Where is a good citizen *ipso facto* a good human being, and vice-versa? In endeavoring to comprehend Thomas’s response to this classical query, we will begin as usual by reviewing his interpretation of Aristotle’s position. Then we will consider the temporal regime Thomas advances as “best” in the *Summa Theologiae*, sketching its salutary determination of legal

¹⁵Unless I have overlooked a citation, George does not cite or discuss this article in

justice and its approach to inculcating moral virtue. Finally, we will consider his view of the limits of even this “best” regime (hence *a fortiori* of all others) vis-à-vis the “common good of justice and virtue,” and the implications of Thomas’s position for contemporary political thought and life.

Aquinas’s reading of Aristotle

The Philosopher first raises the problem of the relationship between human virtue and the virtue civil law seeks to foment in the fifth book of his *Ethics*.¹⁶ In moving from legal justice to partial or particular justice, he writes the following:

[T]he great majority of lawful acts are ordinances which are based on virtue as a whole: the law commands to live in conformity with every virtue and forbids to live in conformity with any wickedness. What produces virtue entire are those lawful measures which are enacted for education in citizenship. We must determine later whether the education of the individual as such, which makes a person good simply as a man, is a part of politics or of some other science. For being a good man is perhaps not the same as being a good citizen of some particular kind of state, whatever it may be (*NE* 5.2, 1130b 24-29).

¹⁶Here I employ the Ostwald translation.

Aquinas's commentary on this passage concludes as follows:

Last..., [Aristotle] raises a doubt. It is evident that positive laws are productive of virtue in general by the instruction given a man in reference to the common good. But there is another kind of instruction by which a man is trained in virtuous actions as applicable to him individually, i.e., to his proper good inasmuch as in this way a man becomes virtuous in himself. Therefore, there can be a doubt whether instruction of this kind should belong to political science or to some other science. He says that this question must be settled afterwards in the work on *Politics*. It is proved in the third book of the *Politics* (1276b16-1277b33; cf. Thomas's *Commentary*, *lectio* III, 365-377) that to be a good man simply and to be a good citizen are not the same in every state. There are some states not worthy of honor in which a person can be a good citizen and yet not be a good man. But in the most worthy state no one is a good citizen who is not a good man (925-926).

Thomas thus expresses his opinion that the Philosopher's final word on the subject is to be found in book three of the *Politics*. Here he interprets the final verdict to be that in the best regime, civic virtue coincides with human or moral virtue simply; while in "some" regimes, and given the context perhaps in *all* others, this will not be the case. Still, Thomas's "in a nutshell" summary of his conclusion is so terse and general, that we ought to turn to the *Commentary on the Politics* itself, to fill out our grasp of Thomas's

reading of Aristotle on this central question. Once again, our limited, immediate goal is to ascertain Thomas's understanding, not to determine its level of interpretive accuracy. Just what sort of political order is the "most worthy?" And why or how must all good citizens of such a regime be presumed fully virtuous human beings?

For our purposes, it should suffice to focus on the summary which Aquinas offers in his concluding comments on the relevant sections of *Politics* III. The best regime is precisely one in which human virtue is the highest goal, the primary characteristic of the common way of life the city endeavors to foster and the common good it seeks. Its governing offices are assigned to those among the citizenry possessing in a preeminent degree the virtue of prudence, that ethical virtue which is also intellectual, and upon which the perfection of justice and the other moral virtues depends. Insofar as the "citizen" is defined in the republican sense, as one capable of ruling and of being ruled in turn, the good citizen of such a regime is necessarily a good human being as well. Aquinas elaborates Aristotle's position (cf. *Pol.* 3, 1278a 40, ff.) as follows:

Regarding the question of whether the virtue of the good man is the same as that of the virtuous citizen, [the Philosopher] says it has been made clear that in a certain city, that is, in an aristocratic city, the good man and the good citizen are the same, inasmuch as ruling offices are distributed on the basis of the virtue which is that of the good man; while in other cities the good man and the good citizen are not the same. Such is the case in corrupt regimes, where ruling offices are not distributed on the basis of virtue. Moreover, the citizen who is the same as the

good man is not any citizen whatever but the statesman, that is, the ruler of the city, and the master or potential master of all that pertains to the care of the community, either alone or with others. For it was mentioned earlier that the virtue of the ruler is the same as that of the good man; but if by citizen we mean the imperfect citizen, who cannot be a ruler, the virtue of the good citizen and of the good man will not be the same, as is clear from the preceding remarks.

It goes without saying that for such a rule to be justified, it must truly aim at the human common good; in other words, those who rule on account of their virtue, must aim especially through wise legislation to help all the citizens acquire the highest degree of moral virtue and human fulfillment of which each is capable.

The best political regime of Thomas's Summa Theologiae

What of Thomas's own views on the regime or type of regime that is best ordered, and best able to foster acquisition of genuine virtue among the citizenry? In "Thomas Aquinas and the Politics of Moses" (1994), Douglas Kries argues persuasively that in his treatment of the judicial precepts of the Old Law, the regime on which they are based, and the aim common to both, Aquinas provides the reader with a concrete illustration of his view of

the most worthy type of temporal regime.¹⁷ Now the reader might object at once that this is a divinely revealed regime and law. Aquinas, however, insists that while the judicial precepts of the Mosaic legislation are an integral part of the Law which seeks above all to direct the people to God, their first and proper end is precisely to establish and guard the order of justice among human beings (cf. *ST* I-II 99, 4; 104, 2-3).

The Mosaic regime establishes an aristocratic form of polity which is the noblest version of the “mixed regime.” Its rule is based on prudence and virtue, fostering a form of social life explicitly based on the quest to live well. The chief governor is chosen by God directly, as a sign of the special relationship of this particular people to God. Still, Thomas considers that having the wisest and most virtuous person available as head of state is a universally desirable situation, both in terms of quality and unity of leadership. This individual is to be assisted in the tasks of government and adjudication by a council of seventy elders, chosen precisely on account of their wisdom and virtue. (There is no question as to the relevance of the “character issue” in this polity!)¹⁸ Finally, these

¹⁷In the subsequent paragraphs, I will for the most part either follow or build on Kries’s interpretation and analysis, and then consider its implications for our specific inquiry into the possibilities of civil law and its legal justice for achieving the full human common good through the inculcation of moral virtue.

¹⁸ But cf. *MMM* 39-40, where George asserts: “It is this diversity of [basic human goods, in the Finnis-George account] which confounds every attempt to identify a ‘highest’ or ‘best’ life to which those who are by nature suited to that life...should aspire. In any event, whatever may have been the case in Aristotle’s Athens, legislators in modern

individuals are to be chosen by the people, from among the people. In other words, Aquinas highlights the democratic or republican element present in this form of government.

Here and in other works, Thomas suggests a number reasons for this popular aspect of the best regime. Some rest on more pragmatic concerns: for example, people don't like feeling excluded from civic participation, so even the most decent regime would risk instability and perhaps revolution if they were so excluded; people are likely to have more affection for a form of government in which they participate; they are able to grasp the common good more easily as their own, and hence feel more responsible to contribute

representative democracies are unlikely to be morally superior to the people who elect them. One might even argue that, given what it takes to achieve public office, the average legislator today is likely to be generally less strict in the observance of certain moral norms than the average voter." This criticism simply misses the point of Aristotle's and Aquinas's concerns: anyone familiar with the *Politics* will note that the author does not uphold the Athenian legislature as a paragon of excellence. Moreover, Thomas would likely reply that if George wants laws that promote a sound moral ecology, he ought to be a bit more concerned about getting truly prudent and virtuous people, who know what conduces to healthy morals and actually care about promoting them, into office. Further, if George honestly considers the election mechanisms of modern democracies apt to ensure morally inferior office holders, Aquinas would suggest that he consider ways the regime might be modified to improve the situation. Once again, the connection between virtue and regimes comes to the fore.

to its preservation and flourishing even at the cost of personal sacrifice (cf. *DR* 31-32).

However, in view of the ethical status and content Aquinas assigns the temporal common good, none of its requirements could be completely lacking in moral significance. We can therefore infer that a regime aiming at the common good must do everything possible to encourage people to develop prudence, not exempting political prudence, to the greatest extent each is able (cf. *ST I* 103, 6). Hence the Old Law, while not burdening the people with political responsibilities preventing concern for livelihood and family¹⁹, encourages cultivation of prudence by placing an important political task in the people's hands. By making it conceivable that each might be elected to office, the Law encourages all to be as well-prepared as possible. What this polity loses in terms of order and tightly cohesive leadership is compensated by greater public-spiritedness and wider potential for acquiring political prudence.

The excellence of this political founding and regime is further apparent in that the judicial precepts exist to "determine" a form of social life which is explicitly grounded in the decalogue, especially the moral precepts comprising its second table. As we have seen, Aquinas argues that the moral precepts contain the very "order of justice and virtue." The Sinai legislation thus educates all citizens in the foundations of any genuine common good, as a prelude to proposing to them a concrete way of life meant to foster and facilitate that good. In Thomas's estimation, this is the paramount example of a regime in which political legal justice completes, but does not in the process mutilate or

¹⁹Recall Simon's insistence on the importance of particular goods and pursuits to the social common good (*PDG*, *inter alia* 41-42, discussed above in chapter three).

distort, natural justice. No one can be a virtuous citizen of this regime without simultaneously possessing a solid base of moral virtue. In sum, the common good which constitutes the immediate goal of Israel's judicial precepts is an explicitly articulated understanding of the good life hinging on justice and moral virtue, the core of any "human [common] *good*." The regime and its legislation also take seriously the *common* side of the common good, aiming to foster the good life of virtue as widely and deeply as possible among the people.

With regard to the inculcation of moral virtue in the service of justice, the judicial precepts do not aim solely at the reform of offenders through fear and appropriate punishments. They also set out to accustom people to actions and attitudes which *positively foment virtue*, making its acquisition easier and (so to speak) more "natural." They allow ample scope for personal determination and free choice, but at the same time view some restriction on that choice as essential for forming individuals willing and able to choose the good with pleasure, and facilitating or directing the deeds of those already well inclined. Here I can consider briefly just one example of Sinai's legislative moral pedagogy, which Thomas elaborates in his questions on the judicial precepts. For those readers interested in the fuller picture, I suggest recourse to Kries's article and especially to Thomas's text (*ST* I-II 104-105).

As we mentioned in the introduction to this thesis, property constitutes probably the least intrinsically communicable or common of human goods. In our own social and political context, moreover, "private" and "property" are almost inseparable traveling companions. Aquinas follows Aristotle in arguing that the institution of private ownership,

of division of goods, is a generally beneficial innovation conducing in many ways to the common goods of justice, virtue, and peace (see *ST* II-II 66, 2). However, as a Christian Thomas clearly recognizes human ownership as stewardship, rather than an absolute right of dominion. The external goods of this world are intended by its Maker for the benefit of all humans, so much so that Thomas considers retention of an unused belonging theft, should it deprive one's neighbor who has a serious need of it.²⁰

The judicial precepts concerning the possession, use, and exchange of external goods, in Aquinas's estimation, both convey these aspects of the nature of possessions, and help to habituate those who follow them into modes of living the truth about property and its role in a good human life.

²⁰ Cf. II-II 66, 7: "Things which are of human right cannot derogate from natural right or divine right. Now according to the natural order established by Divine Providence, inferior things are ordained for the purpose of succoring man's needs by their means. Wherefore the division and appropriation of things which are based on human law, do not preclude the fact that man's needs have to be remedied by means of these very things. Hence whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor. For this reason Ambrose says, and his words are embodied in the Decretals...: *It is the hungry man's bread that you withhold, the naked man's cloak that you store away, the money that you bury in the earth is the price of the poor man's ransom and freedom.*"

[W]ith regard to possessions, it is a very good thing, says the Philosopher (*Pol.* 2.2) that the things possessed should be distinct, and that the use thereof should be partly common, and partly granted to others by the will of the possessors. These three points were provided for by the Law (I-II 105, 2).

The two provisions regarding “use” reflect the two-fold demands of moral virtue’s acquisition and development, according to Aquinas: first, proper habituation to virtuous actions, in social context; and second, the self-determined, voluntary or free aspect of genuine virtue. Hence the law stipulated, for instance, that anyone passing by a field could eat of its produce; that harvesters should purposefully not be too thorough, leaving some of the crop behind for the poor to glean; that anyone seeing his neighbor’s animal straying must try to recover it for his neighbor; etc. The judicial precepts thus accustomed the people to perform certain acts of justice, moderation, liberality, and mercy, in such a way as to foster a real sense of fellowship among themselves. Yet even (or especially) this finest code of civil legislation made no effort to require *all* acts of virtue or to prohibit *all* vicious conduct, under positive precept and pain of punishment. Ample room was purposefully left for individuals to exercise greater virtue, to perform good acts which originate in their own mind and heart rather than in those of the legislator or governor. Conversely, those not willing to go beyond the minimum of legality were not compelled to do so. In Thomas’s treatment of the judicial precepts of the Old Law, we see both the formative possibilities of human legislation, and its significant limitations with regard to the repression of vice and promotion of virtue (cf. also *ST* I-II 91, 4; 96, 2-3).

Conclusion

Thomas Aquinas without doubt relates law and politics to “integral human fulfillment,” to borrow a phrase from Jacques Maritain; or more precisely, to the “human common good.” But to conclude therefrom that Thomas’s political thought is “totalitarian,” as even some of his sympathizers have in recent years done, is to misread him entirely. His engagement of the problem of the common good, while not without problems of its own, is most timely for being both political and transpolitical. That is to say, Aquinas reminds the contemporary reader of both the ethical core of politics, and the fact that human morality requires a political completion. At the same time, he stresses that the tensions, ambiguities, and limitations inherent in all things human can only be resolved in light of the “transcendent common good”: “it behooves man to do his utmost to strive onward even to divine things, as even the Philosopher declares...and as Scripture often admonishes us” (*ST* I-II 61, 5). With Augustine, Thomas views the City of God as the truly best regime (cf. *inter alia* I-II 63, 4). The demands that “polity” makes on its members sojourning in this world include sharing with other humans the task of seeking the temporal common good. As long as the full transcendence, or the transpolitical character of the theological virtues is both recognized and respected, Aquinas’s reflections on virtue and the common good should prove as moderate as they are ennobling.

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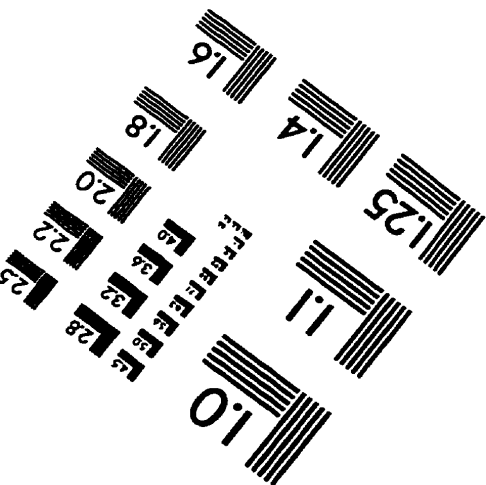
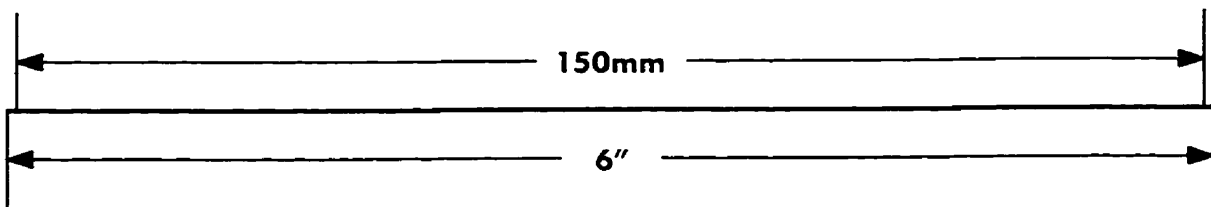
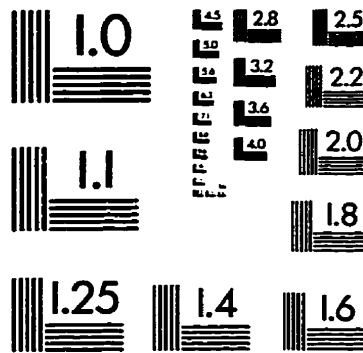
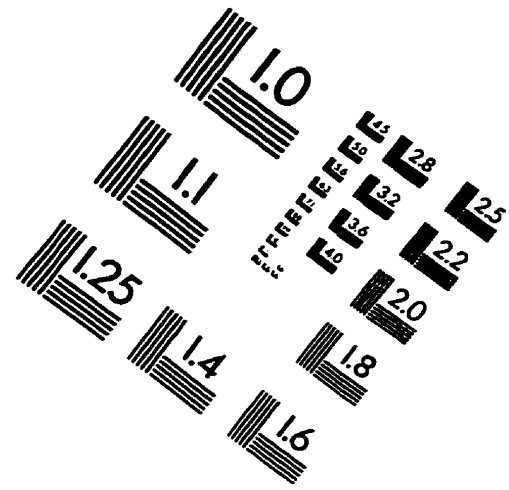
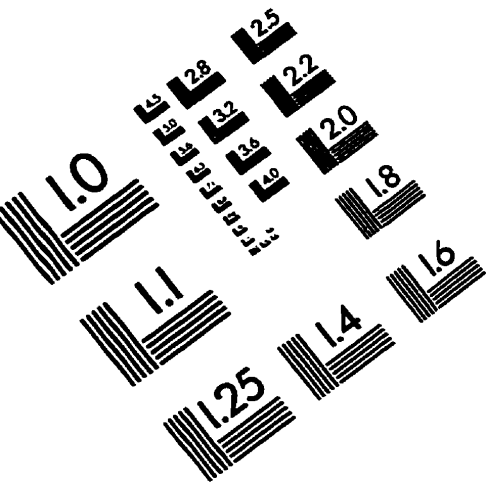
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IMAGE EVALUATION TEST TARGET (QA-3)



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