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IS THE COMMON GOOD OF POLITICAL SOCIETY LIMITED AND INSTRUMENTAL?

MICHAEL PAKALUK

ARISTOTLE SEEMS TO BE CORRECT when he asserts¹ that every association is to be accounted for by reference to some good which the members of that association hope to attain, precisely through their cooperation: or, in words close to Lincoln's, people form an association to accomplish together some good that each cannot attain, or cannot easily attain, through his own efforts. Even if this good—or, we might say, the “purpose” or “point”—of their association is not entirely clear to them, presumably there is some reason for their coordinated behavior, which can in principle be made evident. The coming together of persons in political society seems to be a form of association even more than most, because of its durability and coherence, and because of the authority of its rules. What, then, is the aim of political society—its common good? Is there a single correct answer here, or could political society correctly be arranged to attain any one of a variety of goals? What view of the common good is implicit in liberal democracies, and how does this differ from the more classical understanding as articulated in the political theory of Aristotle and perhaps also Aquinas?

John Finnis argues, in an extremely interesting and even provocative paper,² that the common good of political society does not itself instantiate a basic human good; that it is not, in particular, the object of a natural inclination, as to something intrinsically good; but that it is only a necessary means for the instantiation of such basic intrinsic goods, primarily within families. This view he expresses by calling the

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¹See *Nicomachean Ethics* (hereafter, “EN”) 9.9.1160a10.

²“Public Good: the Specifically Political Common Good in Aquinas,” in Robert P. George, ed., *Natural Law and Moral Inquiry: Ethics, Metaphysics, and Politics in the Work of Germain Grisez* (Washington, D.C.: Georgetown University Press, 1998), 174–209 (hereafter, “Public Good”).

common good of political society “instrumental.”³ What is sought by members who associate in political society is something that assists and promotes family life; it is instrumental to other goods, goods which are sought for their own sake.

Finnis is not entirely clear about the details, but presumably his view is that the members of political society should work together to attain such things as: a military and police for protection against the aggressor, both external or internal; practices and infrastructure which serve to facilitate trade and commerce; and various means for advancing culture, such as schools, museums, and libraries. These together provide a framework within which families can flourish—a framework which Finnis refers to as “peace.” Since laws should be restricted to the promotion of the common good, they are legitimately framed only if they advance peace or prohibit actions that would interfere with citizens’ enjoyment of goods meant to be attained through civic peace. Laws are not competent, in particular, to direct citizens to any further end, such as the development of their own virtue in its own right, or the achievement of their own happiness. Presumably they are also incompetent to regulate life within households, except insofar as this has some real bearing upon justice and peace.

Let us say that an action or forbearance that is required for the establishment or preservation of peace is an act of “justice.” Then laws, in the first instance, can command only acts of justice. Yet virtue is not something entirely unrelated to law. Laws may also promote virtue in citizens, Finnis allows, to the extent that such virtue is required if citizens are to succeed in doing acts of general justice. Finnis describes three respects in which this may be the case, which I here paraphrase:

(1) Laws may aim to promote citizens’ habitually choosing just actions, since peace will obviously be more stable if it is chosen by citizens as a consequence of an established character: and so, for example, national holidays can presumably⁴ be established by law, since such celebrations have the effect of encouraging civic spirit.

(2) Laws may promote virtues other than that of justice, to the extent that these are in some real sense needed by citizens in order for them to succeed in acting justly: for example, it may command (presumably) that a soldier not drink alcohol when on duty—an action characteristic

³ Finnis, “Public Good,” 187.

⁴ The examples in this section are mine, not Finnis’s.

of temperance but in the circumstances needed if the soldier is to fulfill his duty reliably.

(3) Laws may properly forbid the public expression of actions that do not attack peace and justice directly, but which, if imitated by the young, would result in the formation of beliefs or habits that would render them unable, or significantly less able, to act justly,⁵ or to enjoy the goods that are a consequence of peace: for example, the public display of homosexual affection can (presumably) be proscribed for the bad example it gives, whereas the private expression of such affection could not be proscribed.

Also, Finnis makes two points, almost in passing, which have a bearing upon the law's competence to inculcate virtue:

(4) Even if laws should not aim to make citizens in general virtuous, still, they should aim to insure that those who govern be virtuous⁶—though it is unclear how exactly this is to be achieved in legislation, especially if the motive of promoting individual happiness is not an allowable justification for law.

(5) Even those laws that command acts of justice should be framed with a view to the correct conception of individual happiness.⁷

The reason for (5) is presumably twofold: (a) even if laws should not aim to inculcate the all-round virtue of individuals, at least they should not throw up any obstacles to the achievement of such virtue, and thus, legislators should refrain from making laws that, for instance, would promote the military, economic, or cultural well-being of a society, only by making it more difficult for individuals or families to live virtuously; (b) as we saw in connection with (3) above, it is necessary for public officials to judge when a public action hinders a person's ability, as a private person, to enjoy one of the intended goods of peace, but what the latter are—what peace is supposed to be for—can only be decided on the basis of a proper understanding of virtue. Presumably (4) and (5) are related: only officials who have a correct conception of individual happiness will succeed consistently at framing laws that do not hinder citizen's attainment of happiness.

It is because the common good, as Finnis construes it, is instrumental to the flourishing of individuals and households, that law, which must be restricted to what concerns the common good, is

⁵ Finnis, "Public Good," 183–4.

⁶ *Ibid.*, 187.

⁷ *Ibid.*

limited to matters that either directly involve the common good or that have an indirect but real relationship to it. The instrumentality of the common good, then, implies limitations on the public good, on law, and on public authority.

Finnis attributes this view, in its basic form, to Aquinas as well. This is at first puzzling since Finnis's view seems *prima facie* incompatible with some well-known passages in Aquinas's political theory. Yet Finnis believes that this view is implied by Aquinas's considered statements on the nature of political justice and concord and that the problematic passages admit of being construed so as to be consistent with this view. Roughly, the interpretation proceeds as follows. Aquinas's thesis that "the purpose of law is to lead to virtue"⁸ amounts to: the law is to provide the framework in which members of households can grow in virtue (and, of course, it promotes the virtue of justice and other virtues insofar as they bear upon justice). The claim that individuals and the household are parts of the state⁹ becomes: they are components, which the specifically public good is meant to serve. That the state is not a mere alliance among citizens for commerce and protection against enemies¹⁰ becomes: the state is an alliance for serving the needs of households within which virtue in all its fullness is cultivated. That no one can live well apart from the state¹¹ becomes: the state is a necessary means for procuring goods without which families would fail to instantiate basic human goods.

Note that, for Finnis, there is indeed an "all inclusive good" sought within political society: it would be the complex that consists of all the households that compose the state succeeding over time in living virtuously and well. But this comprehensive good is not sought corporately; if it is sought at all, it is sought only privately, within

⁸ See, for instance, *Summa Theologiae* (*ST*) I-II, q. 92, a. 1c. All quotations of *ST* in English are taken, with occasional modifications, from St. Thomas Aquinas, *Summa Theologica* (New York: Benzinger Brothers, 1947).

⁹ Compare *De Regno*, 14. All references to *De Regno* cite paragraphs as marked in St. Thomas Aquinas, *On Kingship, to the King of Cyprus*, translated by G. B. Phelan (Toronto: Pontifical Institute for Medieval Studies, 1982). The paragraphs are an innovation of I. Eschmann, intended to facilitate precise reference to the text. Quotations in English are taken from this edition, with occasional modifications, and Latin quotations are from the Leonline edition.

¹⁰ Compare *De Regno*, 106.

¹¹ See *De Regno*, 106.

households.¹² Citizens acting qua citizens, and legislators, seek simply to provide the preconditions for this further good; they cannot rightly be said to intend or aim at it themselves through licit public actions.¹³

I

Some Initial Difficulties. A full assessment of this view requires that we investigate what Aristotle and Aquinas mean when they refer to political society as a “complete” society, and why they think that a variety of important features converge in that sort of association: that it has self-sufficiency (*autarkeia*, or, even, that it is “self-determining”); that the governing element in that sort of association alone is justified in using coercive power; that political society alone contains law in the fullest and strict sense; and that its members relate to one another as free and equal persons, so that it alone also contains justice in the strict sense. Aristotle and Aquinas standardly add, as another item on this list, and perhaps as a necessary consequence, that political society is an association which aims at the virtue of its members. To construe this last claim correctly, its relationship to the others must be made clear; and I shall venture some remarks along these lines near the end of this paper. At this point I simply raise some initial difficulties, and in an informal manner.

The chief problem in Finnis’s view, it seems, is that it apparently presumes that families (or households) are rightly understood as themselves stable and enduring associations; and that what a family is, is well defined, prior to, or apart from, the enactments or law in its

¹² One might wonder whether the intention of the members of any individual household could be so expansive.

¹³ This is not entirely clear. Certainly, on Finnis’s account, a legislator must prescind from intending the virtue or happiness of individuals (though, as we said, he must take care not to hinder them). But must citizens, acting towards others as citizens, also restrict themselves to promoting nothing more than the framework of justice and peace? Is it only in some private capacity that a member of political society can licitly promote what he takes to be human virtue and flourishing? Or, rather, should we say that citizens acts as citizens only to the extent that they are following an actual law—that there is no coherent notion of citizenship, and the virtues thereof, except as these are defined by actual law—so that the only intention available, when someone is acting as citizen, is that which provides the justification for the law?

fullest sense¹⁴—as though the relationship between families and the state were analogous to that between autonomous states and a federal government, as in the establishment of the United States Constitution. On this way of looking at things, the public good is then defined, for this confederation, as the ensemble of institutions and means that provides for the flourishing of the antecedently existing associations.

There have indeed been instances, historically, where families have banded together to form a larger association, which was identifiably a political association: but in such cases the “families” are in fact tribes, or clans, or large aristocratic households, which are akin to political units themselves.¹⁵ Yet typically families are relatively transient associations, easily disrupted, broken up, or displaced by death or other causes, with a relatively slight ability to remain intact if they lack governance from without; it seems to require argument to assert that they can be meaningfully referred to apart from such governance.¹⁶

A presumption against our doing so is perhaps derivable even from our present experience: since we see that to the extent that law has been withdrawn from the regulation of family life families have collapsed in disarray. Remove the coercive force of law, requiring adherence to the marriage contract, and fathers abandon their families; remove law requiring a mother’s nurturance, and mothers abandon or even do away with their children.¹⁷ Aristotle’s remark that without law man is either a god or a beast¹⁸ is perhaps not appropriately re-

¹⁴ “Prior to or independently of any politically organized community, there can exist individuals or families and indeed groups of neighboring families”; Finnis, “Public Good,” 189. One wants to know what is the force of the “can” and what is implied in this possibility’s being, apparently, so slight.

¹⁵ Aristotle might say (see *Politics* 1) that they were in the process of becoming political associations, the latter being the endpoint of development of what begins as a nuclear family.

¹⁶ Pioneers, colonists, the exiled, and so on, still define themselves in relation to some “complete” community, as providing either their origin or destination.

¹⁷ No doubt the private motives to faithfulness and nurturance are more fundamental and most important; yet it seems insufficient that the correct view on the nature of the family be held by citizens as a merely private opinion. The private opinion, and the private motives, seem to need the support of external law, which is perceived as objective, and of public opinion based on such law.

¹⁸ *Politics* 1.1.1253a4–5.

stricted to hermits or wild men, who are physically detached from society: it may also be taken to be confirmed by human action insofar as it falls completely outside the scope or authority of law; and in such cases it appears that, with very little prodding, men do act as beasts. Yet if law is required for the definition of marriage and for citizens' successful correspondence to what are admittedly natural and inherent standards for behavior within the family, then it seems plausible to maintain that the family is a creature of law, as well as of nature, and that it is not in the required sense prior to the state. It is unclear how law could be restricted, in principle, to providing solely for the preconditions of virtuous family life, if it is a function of law to define what counts as a family life and to distinguish and enforce the rudimentary responsibilities of family members.¹⁹

The same point might also be argued for from the phenomenology of marriage. It seems not incorrect for married persons to regard themselves as having taken on in marriage a role or position with regard to the broader community. To enter into marriage is to assume an office, a trust; it is not properly conceived of as something purely private. That it have such a role seems required, too, by the practice of the broader community's conferring benefits upon married persons since there would be no point in marriage's receiving public benefits if it did not confer a public service. However, then it seems something internal to or inherent in marriage, that it regard itself as directed toward the larger community; yet, if so, it is reasonable to regard the larger as having some direct responsibility for its goodness.

It might also be objected that it is unclear in what sense there is a natural impulse to marriage, that is not at the same time a natural impulse for political community. If by "natural impulse" we mean something like an urge or drive that has a certain character independently

¹⁹ One might say that a father's abandoning his child is against justice and disturbs the peace of society, and for that reason it can be proscribed by law. But "justice" in that sense means something other than "what provides the appropriate framework for family flourishing." Moreover, someone can be disturbed by that sort of action, with the result that it upsets his peace, precisely because he views it as simply wrong. But then it is unclear why the appropriate basis for legislation would be the disturbance, not the wrong which gives rise to the disturbance. In either case, vice becomes the concern of law directly, as something wrong, and not because of its bearing upon "justice and peace," that is, it falls within the ambit of law not as something specifically political or instrumental.

of culture and reflection, it seems incorrect to say that there is such an impulse toward marriage, that is, toward a monogamous, indissoluble relationship. In uninstructed human nature there is perhaps an urge to copulate, perhaps also to beget; but the understanding that copulation and begetting belong appropriately in a lifelong relationship with a single spouse seems a conclusion arrived at by reflection and experience. By a slight and natural extension of this sort of reflection, we arrive at the understanding of marriage as an “institution” with a public and objective character, recognized and given definition by law. Then why not characterize the impulse for marriage as that for lifelong monogamy within a broader community? In that case there would be a natural impulse for life in political society, as much as for marriage.²⁰

One might additionally argue in the other direction: it is unclear in what way one can maintain that political association is simply a “necessary means for the instantiation of basic human goods,” without being committed, at the same time, to holding that familial association is merely that sort of necessary means. The real subject of happiness is presumably an individual.²¹ So why is it not the case that a spouse is no more than the “necessary means” for a person’s instantiating the basic human good of sociality? If we say that one’s relationship to one’s spouse is somehow constitutive of a person’s happiness, and thus not a mere means to it, why not say the same of one’s relationship to fellow citizens generally? If we say that marriage provides the good of sociality in so exemplary a fashion, that nothing more is added by civic life; that the only role civic association can play, then, is as some sort of means—this seems first of all false, since civic life appears to provide something different in kind from familial life, yet not insignificant in value. Yet even if it is granted that civic life simply provides more of the same sort of thing found familial life, so that it serves as a kind of completion or fulfillment of familial association, it would not follow that civic association is dispensable or instrumental

²⁰ This seems to me essentially the argument of Aristotle, *Politics* 1.1.1252b31–2, which concludes: “Hence every city-state exists by nature, inasmuch as the first partnerships so exist; for the city-state is the end of the other partnerships.”

²¹ Compare Finnis: “Promoting the group’s good life is the king’s concern. But Aquinas never supposes that such groups attain perfect, that is, heavenly fulfillment”; “Public Good,” 182. Neither do families, as families.

to familial association. (Compare: association with a third friend can complete or fulfill, in some sense, the association between a pair of friends, but the former is not something superfluous or instrumental, for that reason.) Indeed, one might think that, generally, when one thing serves to complete, fulfill, or fully to actualize another, then the former is worth choosing on the same grounds as the latter.²²

Another difficulty involves Finnis's suggestion that perhaps political society is after all basic in one respect, that is, insofar as it is required if there is to be law having coercive power.²³ The argument is not entirely clear, but perhaps its point is this: you cannot have public peace and order without law that involves coercion for the disobedient; but coercion of that sort requires that when there has been an act of disobedience, a judgment of disobedience be pronounced; but that sort of judgment cannot rightly be arrived at by a single person or by persons affected by the disobedience; it requires, rather, an impartial judge who occupies a public and definite role, but such a judge is possible only within political society. The argument itself contains various difficulties: Why is a judge possible only in political society? Why is it that law with coercive power is something desirable as a basic good and not as an instrument? If the coercive power of the law is needed simply to ensure public order and tranquility, law would seem to have an instrumental character, as much as any other aspect of the public good. If, however, we grant that law, as having coercive power, instantiates a basic good, and is not merely instrumental, why not also grant that it is good simply as law? That is, if it is inherently desirable that there be a decisive and impartial sentence pronounced upon a crime, then why is it not similarly desirable that an action of a certain sort be clearly and impartially declared to be a crime, which would come simply from the articulation of a law proscribing it? If law is inherently desirable, yet it exists or is available only in political society,²⁴ then so would be political society *tout court*.

²² Again, this seems to be Aristotle's reasoning: *Politics* 1.1.1252b28–32.

²³ Finnis, "Public Good," 193–5.

²⁴ Finnis observes that, "the whole construction of a strictly 'public' realm is *by* law and *for* law"; "Public Good," 195.

II

Justice, Concord, and Peace. I now turn to the question of the correct interpretation of Aquinas. Finnis claims that Aquinas's remarks about justice and peace imply a view which, in outline, is not unlike Mill's harm principle,²⁵ and which anticipates relatively recent developments in liberal democratic political theory. I believe, in contrast, that Aquinas's position no more resembles that of Mill or Kant than does Aristotle's. My view, in brief, is that neither Aquinas's remarks about justice, nor his discussion of concord and peace, imply the result that Finnis wishes to reach—this on account of the formal character of Aquinas's remarks about justice and the systematic ambiguities in the words, "peace" (*pax*) and "concord" (*concordia*).

First let us consider justice. Aquinas follows Aristotle²⁶ in drawing a distinction between general and special justice. General justice has to do with the relationship a member of an association has with other members, qua member of that association; special justice has to do with a person's observing standards of fairness and equality in his dealings with others, not qua member. The distinction can be drawn as regards any association.²⁷ For instance, soldiers in an army have their behavior regulated by military offices, law, and command. Suppose there are two brothers in the army, one much older than the other, but the younger brother has the higher rank. When the older salutes the younger, in accordance with military law, he is observing general justice, as regards his position in the military: that is, he is doing what is required by the principles that regulate and coordinate their behavior as soldiers. When, as private persons, the younger shows due respect for the older brother, then he is following standards required by special justice.

General justice, then, is simply doing what is right and required according to the principles or laws regulating the behavior of members of an association, as members. The laws of any association are of course concerned with the actions of its members in relation to one another, as members. Again, we regard an association as the coordination of action by persons to achieve what they cannot achieve, or

²⁵ Finnis, "Public Good," 176.

²⁶ *EN* 5.1–2.

²⁷ Of course, in its strict sense "general justice" is only in political associations.

cannot easily achieve, by acting on their own. The principles or laws of any association, then, will be concerned principally and directly with that sort of coordination, which, by definition, is a matter of how the members relate to one another, not of how they act for their own purposes outside of the role they assume in the association. Clearly, the extent to which the laws of an association regulate the behavior of its members will depend upon the scope or extent of the association's purpose. In an association that has as its purpose, for instance, the complete harmony of its members, in thought, word, and deed,²⁸ everything whatsoever that any member of such an association does will fall within the principles or laws of such an association and thus be a matter of general justice, as regards that association. So that law is concerned with the relations of persons does not itself imply any significant limits on law.

The focal case of general justice, and that which is the referent of the term in the strict sense, is doing what is right and required by laws regulating the behaviors of members of political society, as members. It is clear from what has been said so far, then, that exactly what falls within general justice in the strict sense depends upon what the purpose of political association is: we cannot determine, from the mere idea that general justice has to do solely with the relations of citizens to each other in their cooperation to achieve the point of political association, whether there are any significant limits to the scope of law. If Aquinas's view is that the purpose of political association is simply to provide the conditions for flourishing family life, then of course general justice will involve only the actions of persons in that association insofar as such persons are related to one another to accomplish that goal. Yet if, on the other hand, he thinks the purpose of political association is greater, then the scope of general justice will be greater accordingly. If, for instance, the proper goal of political association is the (imperfect) happiness of all its members at once, then the matter of general justice becomes, roughly, the actions of persons insofar as they have some relation to one another's achievement of (imperfect) happiness—which would be a nearly unrestricted domain.

Aristotle's view, at least, seems to have been that general justice (in the strict sense) did have that sort of wide scope: he thinks it has to

²⁸ Aquinas believes that the relationship of Christians to God has this character: see *ST* I-II, q. 100, a. 2.

do with the use of virtue generally.²⁹ So he call general justice “complete virtue” and, in the end, asserts that it differs from the other virtues, taken in combination, only conceptually: in what they are, general justice is the same as virtue generally; they differ simply in definition.³⁰ On this view it would appear impossible for laws to aim at the inculcation and promotion of general justice without aiming at the inculcation of all-round virtue.³¹

It is not clear, however, that Aquinas’s view is very different from Aristotle’s. The *prima facie* sense of a variety of passages is that he shares the same view: “rulers . . . ought to induce their subjects to virtue”;³² “society must have the same end as the individual man”;³³ “men become a multitude for the purpose of living well together, a thing which the individual man living alone could not attain, and good life is virtuous life”;³⁴ the intention of a legislator is to make those subject to him good;³⁵ law, with its coercive power, leads it subjects to virtue more effectively than can a father;³⁶ and so on. These are familiar passages. The point is that we cannot interpret them as presupposing limits to legislation, simply on account of Aquinas’s view that law has to do with justice, and that justice has to do with the relations of persons to one another—for the scope of justice for an association itself depends upon what the goal of that association is.

There is independent support that Aquinas’s view was rather close to Aristotle’s, in what Aquinas says about the divine law, in particular, the Mosaic code, and its relation to positive law. His explicit view in *De Regno* is that a sovereign should study the Mosaic code and use it as a pattern for legislation;³⁷ the same view is suggested by various passages in the *Summa Theologiae* as well. But the scope of

²⁹ *EN* 5.1.1129b25–1130a13. Family members as such are not fully “other” to one another; Aristotle accordingly tends to look upon a person’s exercise of virtue within his household as “in relation to himself.” Presumably, however, a person, as citizen, is related even to a member of his family as to an “other.”

³⁰ *EN* 5.1.1130a12.

³¹ See *EN* 5.1.1129b19–25. We might also argue: to aim at the completion and use of a thing requires aiming at the thing.

³² *De Regno*, 28.

³³ *Ibid.*, 107.

³⁴ *Ibid.*, 106.

³⁵ *Summa contra Gentiles* 3.115.4

³⁶ *ST* I-II, q. 90, a. 3, ad 2.

³⁷ *De Regno*, 116.

the Mosaic code in its regulation of the behavior of men to one another is not significantly restricted. A good example of this is found in Aquinas's discussion of the judicial precepts of the Old Law. He describes them as concerning justice, since they involve actions "that are directed to the ordering of one man in relation to another, which ordering is subject to the direction of the sovereign as supreme judge."³⁸ He says explicitly there that a contemporary sovereign could rightly enact laws modeled on those precepts: "if a sovereign were to order these judicial precepts to be observed in his kingdom, he would not sin." (The question of sin arises, in fact, because the judicial precepts are determinations of the natural law, not derivations therefrom, specifically designed for the people of Israel by God; they therefore have no binding force on non-Israelites. So, for a Christian sovereign rightly to enact similar laws, he would have to be clear that he was not bound to enact them, as if the Old Law in itself still had force over Christians: his reason for enacting them, rather, would have to be his recognition of the wisdom inherent in the judicial precepts, which Aquinas in fact goes on to explain.) Yet the precepts extend to such things as household matters and exchanges between private persons: no area of life seems outside their scope in principle. It is true they do not extend as far as thoughts and affections; yet clearly it does little to establish a limited public authority, to say that thoughts and inner motions of the will fall outside of it.³⁹

Finnis's second argument relies upon Aquinas's remarks as regards concord and peace. "Concord" and "peace," however, are terms denoting a kind of unity, and "unity" notoriously has a variety of senses.⁴⁰ Thus, in Aquinas as well as Aristotle, "concord" can mean: (i) the mere absence of civil strife; (ii) agreement of citizens on important matters; (iii) civic friendship; or (iv) the complete harmony of persons, of their affections and impulses within and of their wishes and choices without. These obviously form a series of progressively greater unity, or, in the opposite direction, of increasing

³⁸ *ST* I-II, q. 104, a. 1, ad 1.

³⁹ As Finnis observes, the thoughts of a slave fall outside the bonds of his servitude (see *ST* II-II, q. 104, a. 5); but it would be odd, for that reason, to characterize slavery as a "limited" condition of bondage—as bondage, it is fairly extensive. To be sure, even slavery is something slight, from the point of view of heaven; but clearly that is not the sense in which Finnis wishes to maintain that the public good and political authority are restricted.

⁴⁰ See Aristotle, *Metaphysics* 5.6.

disintegration. How then do we interpret the claim that a legislator has as his aim the concord and peace of the state? It is perhaps most natural to understand this as: he should intend to move those subject to his rule along the series toward increasing unity.⁴¹ It would also be natural to characterize the first member of the series as being especially important, since it is a precondition of everything else (compare Lincoln's concern with the unity of the republic over the abolition of slavery). *De Regno* in fact likens this primitive unity to the life of an individual:⁴² clearly a person must be alive, if he is to do anything else at all. But if it is natural for this meaning of "peace" and "concord" to have a place of special significance, in passages in which Aquinas seems to suggest that concord in sense (i) is the aim, or the chief aim of the legislator,⁴³ we certainly cannot exclude the interpretation that he means that such minimal unity is the immediately required aim, or the aim which is decisive as being a precondition of anything else. That claim would not imply, of course, that such a limited goal was the legislator's only concern. Indeed, it is hard to see on what grounds a legislator would be bound to stop aiming at unity, in principle, at any point prior to (iv). Why would someone who could licitly intend a thing be restricted, in principle, from intending the fulfillment of that thing? It is easy to think that there might be practical impediments to the fulfillment of this intention but not restrictions in principle.

Aquinas, as was said, notices and recognizes the fuller senses of concord. Presumably concord in sense (iv) is something fully achievable in heaven;⁴⁴ it requires divine assistance and the theological virtues, and for that reason is something that human authority should not attempt to achieve through governance.⁴⁵ Yet, as Finnis observes, Aquinas asserts in one place at least that the aim of human law is to foster concord in sense (iii): "the principle intention of human law is to secure friendship of men with one another."⁴⁶ In that passage,

⁴¹ Not, of course, toward a unity so extreme as to destroy the state entirely—Aristotle's point against Plato's communism.

⁴² *De Regno*, 118.

⁴³ There are few passages which suggest this: perhaps *ST* I-II, q. 98, a. 1.

⁴⁴ *ST* II-II, q. 29, a. 1.

⁴⁵ Though even this would not imply that it cannot be intended, in the manner of something for which one makes definite and precise preparations. See the discussion of the significance of the term *congruit* in *De Regno*, below.

Aquinas explains that friendship involves the attraction of like to like, and, in particular, that of good persons to the good; so presumably the aim of fostering concord implies or includes that of leading persons to become good. Moreover, Aquinas suggests that concord in sense (ii), in the manner in which it is typically achieved in a state, is not true concord: “[I]f one man is in concord with another, not of his own accord, but through being forced, as it were, by the fear of some evil that besets him, such concord is not really peace, because the order of each concordant is not observed.”⁴⁷ Yet that condition seems to be what is found in a society in which good persons obey the law freely, because it is right to do so, and bad persons do so only out of fear. So long as some citizens are bad, then, there can be no real peace and concord in a society. A legislator who aimed at true peace and concord, then, would have to aim at the all-round virtue of all citizens.

Then how do we interpret *ST* I-II, q. 98, a. 1, which says that “the end of human law is the temporal tranquility of the state, which the law arrives at by proscribing external acts, insofar as those are bad things that can upset the peaceful condition of the state”? Nothing here requires that we interpret “peaceful condition of the state” in something less than sense (iii), and as not including the virtue of the citizens. Moreover, we are not required to construe the upsetting of this peace, as not involving more than large-scale infractions, or the ability or potential of an act’s serving to upset peace, as its not doing so in rather indirect and remote ways. In fact, Aquinas’s language seems crafted to allow for degrees, and a progression in the attainment of peace. What he says is schematic enough that it could apply to a legislator’s intent to aim at increasing unity among his subjects.

The remainder of the corpus seems to suggest, in fact, this kind of progression, insofar as it endorses a high ideal for human law. The question guiding the article is whether the Old Law was a good thing. Aquinas thinks the Mosaic code was a very good legal code indeed, so his concern is to account for passages in the bible which might suggest it was something bad.⁴⁸ His explanation is that the Mosaic code can be evaluated by either a human or divine standard. By the divine standard, it fell short since it did not confer grace and merely gave

⁴⁶ *ST* I-II, q. 99, a. 2.

⁴⁷ *ST* I-II, q. 29, a.1, ad 1.

⁴⁸ This is the Aristotelian technique of accounting for the *endoxa* that appear at odds with the view you wish to defend.

commands, without supplying those subject to it with the means of satisfying them meritoriously. By the human standard, however, it was exceedingly good. He then remarks that: “that which suffices for the perfection of human law, viz., the prohibition and punishment of sin, does not suffice for the perfection of the Divine law.” Charity is needed for divine law, but the suggestion is that the apparently unrestricted prohibition and punishment of sin, of the sort found in the Old Law,⁴⁹ would constitute perfection, if found in human law. There is no basis in this article, then, to conclude that the typical character of human law—that is to say, that it prohibits and punishes gross evils, which disturb concord in sense (i) and (ii)—amounts to anything other than a practical limitation on law, given fallen nature, as is suggested also by *ST I-II*, q. 96, a. 2.

In sum, it seems the more natural reading of Aquinas’s remarks about peace, and how this enters into a legislator’s intention, to understand these as implying a progression: the legislator should aim at as much peace, and therefore at as much virtue in his citizens, as is practically possible. From this consideration, it seems, one cannot derive a principled restriction in the scope and extent of law.

Finnis observes that Aquinas recognizes and discusses peace and concord in fuller senses, yet he claims that :

in the context of the passages about public good, it is clear that “peace” refers directly only to (1) absence of words and deeds immorally opposed to peace . . . ; (2) concord, that is, the “tranquility of order” between persons and groups which is made possible by love of neighbor as oneself, along with the avoidance of collisions (e.g., in road traffic) . . . ; and perhaps also (3) a sufficiency of at least the necessities of life.⁵⁰

However, even if this were true, the list would be problematic for his interpretation, since it contains items which imply concord and peace in the fuller sense, or at least a progression thereto: love of neighbor implies goodness and virtue; and “absence of words and deeds immorally opposed to peace,” if that phrase does not import a circularity, seems to imply the absence of vice generally. Yet the list is not derivable from passages about the public good: those passages are consistent with the interpretation which would take “peace” to represent an ideal that includes the all-round virtue of citizens.⁵¹

⁴⁹ Insofar, of course, as sin is manifested in exterior acts.

⁵⁰ Finnis, “Public Good,” 179.

Quite apart from this question of whether “peace” for Aquinas is something restricted or full, we might wonder how far the law should be taken to reach, in its authority or at least in its directive character, even in matters in which what it actually commands is rather restricted. Aquinas speaks of the law as in many cases commanding mediately what it does not command immediately;⁵² we might also suppose that law can direct by example and by analogy in matters that it does not command outright. It is useful to consider these points briefly, since it is unclear that, even when law is significantly restricted in what it commands (whether the restriction is practical or principled is for now unimportant), matters outside the content of what is commanded cannot properly be said to fall within the scope of the lawgiver’s intention. It would be possible, then, that the lawgiver intend all-round virtue in citizens, while commanding much less. The political common good, in that case, would similarly have this greater extension.

Here is an instance of the sort of thing I have in mind. A father needs to have some work done in the household—say, to have a room painted—and he asks his sons to do it. His concern in dealing with them, in this case as in others, is that they develop into good human beings. While overseeing their painting, he gives them instructions, or corrects them, only as this relates to the job. Suppose the sons quarrel: that they quarrel, and that their work is interrupted, provides the occasion for the father’s intervention; but his purpose in correcting them is principally their own development, rather than that the paint job get finished in due time. Again, he might tell them to arrive at some fair agreement about which brother will paint which part of the room, and how much. The directive is very general; yet, because they act on the directive, the brothers can appropriately regard whatever procedure they use, and even the consequences of that procedure, as something directed by the father—so that they can look upon their entire work as indirectly under their father’s supervision, though almost nothing is directly commanded.

⁵¹ When he interprets passages in which Aquinas refers to general justice, Finnis, it seems, takes them to be presupposing a limited and restricted end of peace; he then uses those passages, with that presumption built in, to limit and restrict what Aquinas says about peace.

⁵² For instance, at *ST* I-II, q. 96, a. 3.

We might similarly ask, first: Is it appropriate for citizens to regard what they do as citizens as simply providing, in an important sense, an occasion for their achievement of something more important, namely, goodness and virtuous happiness? We honor and admire, after all, not mere achievement, but virtuous achievement, when we assess the contributions of others to the common welfare. If so, then why not say that citizens regard the intention of the law, insofar as it regulates their activity as citizens, to include their goodness and happiness?⁵³ (Laws prohibiting harm, on this understanding, would be aimed, not merely at preventing impediments to citizens' activity as citizens, but also at their in fact gaining the goodness of character, for which their activity as citizens should provide the occasion.⁵⁴)

Again, can citizens reasonably regard all action that is indirectly regulated by law as being under the authority of law? For instance, can a person reasonably regard his possessions as under the authority of law, to the extent that he acquired them by means of institutions and practices regulated by law?⁵⁵

Arguably, Aquinas's views about general justice imply this sort of extension of law and its authority to nearly all of an individual's actions. When discussing the question at *ST* II-II, q. 58, a. 6, of whether general justice is essentially the same as all virtue, he interestingly does not argue that they are distinct, by claiming that there are some acts of some virtues other than justice, that do not fall under general justice. Then he proposes the analogy: "legal justice is said to be a general virtue, in as much, to wit, as it directs the acts of the other virtues to its own end, and this is to move all the other virtues by its command; for just as charity may be called a general virtue in so far as it directs the acts of all the virtues to the Divine good (*ordinat actus omnium virtutem ad bonum divinum*), so too is legal justice, in so

⁵³ For instance, the reason for the code of military honor is not simply that violations thereof tend to hinder the military effectiveness of the group; or that actions in violation of the code belong to vices which make their possessors less likely to be effective as soldiers. Rather, the code (arguably) stipulates fundamentals of behavior which are a precondition of military service's being honorable (or meritorious) at all.

⁵⁴ Thus law should have an intention very different from that allowed on Mill's principle.

⁵⁵ Compare the Laws' rebuke of Socrates in the *Crito*. Aquinas seems to explain the wrongness of self-mutilation in this way: "a man and all of his parts," that is, all of the parts of his body, belong to the state; *ST* II-II, q. 65, a.1.

far as it directs the acts of all the virtues to the common good (*ordinat actus omnium virtutem ad bonum commune*).” Let us follow out the analogy. Charity, in directing acts of virtue, becomes the form of those virtues, Aquinas says.⁵⁶ We should presumably understand this claim as implying something about the intention inherent in such actions: anyone who acts out of charity is capable of construing a virtuous action that he does as an act of charity, that is, of love of God, even if the goodness of God were not “in his mind” when acting. Then we can reason, similarly, that all acts that fall under the direction of general justice, however obliquely or remotely, contain the intention of promoting the common good, and are capable of being understood as such, even if that were not an explicit motive (for example, it was not in my mind to be serving my country when I was teaching this morning).⁵⁷ There are only two precepts of charity, but actions done in response to these precepts have the form of charity;⁵⁸ similarly, the legal code of a state may be quite restricted, but actions, not simply those involving the application or determination of that code, but also those in some manner governed by such actions, have the form of general justice.⁵⁹

To summarize what I have been maintaining in this section: Finnis would argue from Aquinas’s claim that law must be restricted to matters of justice, and that its purpose is peace and concord, to the conclusion that law and public authority are in principle instrumental and limited, in the senses explained. However, these notions are incapable of establishing that conclusion. General justice is, so to speak, a purely formal notion, and we cannot tell what its shape or scope is, until we know what the aim of an association is, the general justice of which is being considered. As for concord, it is an ambiguous notion, which, however, naturally implies movement toward an ideal; and there seems to be no necessity to understand it, in Aquinas’s application of it to political associations, as in principle restricted to something short of the ideal.

⁵⁶ *ST II-II*, q. 23, a. 8.

⁵⁷ “in morals, that which gives an act its order to the end, must needs give the act its form”; *ST II-II*, q. 23, a. 8.

⁵⁸ “the precepts of love virtually include the precepts about the other acts”; *ST II-II*, q. 44., a. 3, ad 2.

⁵⁹ “Charity is called the form of the other virtues not as being their exemplar or their essential form, but rather by way of efficient cause, in so far as it sets the form on all, in the aforesaid manner”; *Ibid.*, ad 2.

That these notions are inadequate for establishing Finnis's conclusion perhaps explains why, in the final section of his paper, Finnis writes as though he has not yet located the grounds for Aquinas's limited conception of public good: he raises anew, as though it had not been answered, the question, "But why judge the effort [to inculcate all-round virtue] wrong in principle, an abuse of public power, *ultra vires* because directed to an end which state government and law do not truly have?"⁶⁰ He turns at that point to a discussion of the natural equality of persons and households, which he suggests underlies Aquinas's view: it is necessary "to go behind the proposition that states are complete communities, and to consider the grounds for that assertion, on the tacit assumption that the institutions which give this community its completeness—law and government—need justification in the fact of the natural equality and freedom of persons."⁶¹ However, that discussion would be unnecessary if it were possible to deduce such limitations from the mere ideas of justice and concord.

Arguments based on claims of natural equality carry us well beyond, or even outside of, the framework provided by Aristotelian political theory, in which Aquinas operates.⁶² Aquinas, like nearly every thirteenth-century man, did not reject the doctrines of natural authority, of the natural subordination of some to others, and of the paternal character of political authority, which are stated and defended in book 1 of Aristotle's *Politics*, and which were passed on from classical to modern society, until the ascendancy of modern notions of

⁶⁰ Finnis, "Public Good," 187–8.

⁶¹ *Ibid.*, 189.

⁶² Samuel Johnson's defense of "subordination" as against the levelers is a good instance of the confrontation of this view with the modern view; for example: "So far is it from being true that men are naturally equal, that no two people can be half an hour together, but one shall acquire an evident superiority over the other"; James Boswell, *Life of Johnson* (New York: Scribner's Sons, 1917), 139. "Were we all upon an equality, we should have no other enjoyment than mere animal pleasure"; *Ibid.*, 121; "mankind are happier in a state of inequality and subordination. Were they to be in this pretty state of equality, they would soon degenerate into brutes. . . . Sir, all would be losers, were all to work for all: —they would have no intellectual improvement. All intellectual improvement arises from leisure: all leisure arises from one working for another"; *Ibid.*, 206. It cannot be denied, of course, that "subordination" is softened, and its significance greatly diminished, even within premodern Christianity. However, there is a huge divide here, and Aristotle and Aquinas are together on one side of it, with Locke, Mill, and Kant on the other.

equality. Yet if so, it would perhaps be better to view Finnis's thesis not as an account of what Aquinas held but did not articulate very clearly,⁶³ but rather as a possible development of certain elements of Aquinas's philosophical anthropology—one which is at odds, ultimately, with the Aristotelian political theory which he presupposes and uses.⁶⁴

III

The Interpretation of De Regno. There still remains *De Regno* and the reading Finnis has proposed of some key passages, which seems to support his interpretation of Aquinas on the common good. I maintain that a careful consideration of those passages does not support Finnis's interpretation. But then we should let stand the plain sense of those various passages in *De Regno* in which Aquinas endorses the view that the proper aim of any sovereign is the virtue and happiness of his subjects.

The texts Finnis discusses are found in a chapter entitled "Ad hoc Regis studium oportet intenere qualiter multitudo bene vivat."⁶⁵ It contains paragraphs 114–122. Finnis quotes paragraph 120 and construes it in light of paragraph 115, but it is necessary to look at the full context. Paragraph 114 begins by giving an argument based on the golden rule: the king should be subject to God, just as he expects his subjects to be obedient to him. The argument is interesting chiefly in that it suggests that all material goods are ordained to the common good. This is required for the argument to have the proper force: just as no subject can claim exemption or immunity from the king's

⁶³ "amid very different, obfuscating circumstances and concerns, St. Thomas had reached the same *sententia*"; Finnis, "Public Good," 196.

⁶⁴ It is not that Finnis's argument takes us "behind" the proposition that the state is a complete community; rather, Finnis effectively denies it, in the sense in which it was understood by Aristotle. (Importantly, Aquinas does not take pains to deny it; and insofar as he qualifies it, he does not do so by stressing the independence or equality of households or individuals, but rather by insisting on the subordination of state law to divine law.)

⁶⁵ Phelan renders this, "That regal government should be ordained principally to eternal beatitude" —not unjustified by the text which follows, but hardly a translation. The chapter is marked I.15, under one traditional system of capitulation.

authority, so the king cannot claim to escape the reach of God's authority:

As the life by which men live well here on earth is ordained, as to its end, to that blessed life which we hope for in heaven, so too whatever particular goods are procured by man's agency—whether wealth, health, eloquence, or learning—are ordained to the good life of the multitude. If, then, as we have said, the person who is charged with the care of our ultimate end ought to be over those who have charge of the things ordained to that end, and to direct them by this rule, it clearly follows that, just as the king ought to be subject to the divine government administered by the office of priesthood, so he ought to preside over all human offices, and regulate them by the rule of his government.⁶⁶

Again, the paragraph assumes a comprehensiveness in the scope of the king's authority, limited solely by the supervening, higher authority of God. The next paragraph assumes the king's subjection to this higher authority and explains what its character should be:

Now anyone on whom it devolves to do something which is ordained to another thing as to its end is bound to see that his work is suitable to that end; thus, for example, the armourer so fashions the sword that it is suitable for fighting, and the builder should so lay out the house that it is suitable for habitation. Therefore, since the beatitude of heaven is the end of that virtuous life which we live at present, it pertains to the king's office to promote the good life of the multitude in such a way as to make it suitable (*congruit*) 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.⁶⁷

Notice that two things are asserted here about what the king should effect. Just as the swordsmith both (i) makes a sword, a definite and distinct kind of thing, but in doing so takes care that he (ii) make a sword adapted to a particular use, so the king should both (i)' bring about "that virtuous life which we live at present," and (ii)' ensure that that life is, furthermore, adapted to heavenly happiness.⁶⁸ Finnis glosses the passage thus:

the group's—the political community's—good life is to be in line with (*congruit*) the "pursuing of heavenly fulfillment (*coelestem beatitudinem*)"; by promoting group good life in that way, rulers are like swordsmiths or house builders, whose role is to make an instrument suitable for others to put to their own good purposes.⁶⁹

⁶⁶ *De Regno*, 114.

⁶⁷ *De Regno*, 115.

⁶⁸ Thus "qualiter" in the title of the chapter.

⁶⁹ Finnis, "Public Good," 182.

However, this is too weak a construction of the text. Finnis, we might say, has taken into account (i) and (i)', but not (ii) and (ii)'. Aquinas does not say that the public good is like an instrument produced on its own terms, to be taken up by another and used or adapted by that other person for his own purposes. He says, rather, that it is like something made or fashioned to order, carefully crafted to correspond to the use to which it will be put.⁷⁰ Now, in the case of actual craftsmen, that kind of adaptation comes about by the intended user of the product making his needs and wishes well-known, which the craftsman then adopts as his own; these things then become part of his intention and guide his work. Yet that seems to be precisely the force of what is asserted here. The connection between kingly rule and divine rule which supervenes is one of close collaboration; the link between the virtuous life of the multitude and their heavenly destination is not supposed to be something accidental or merely instrumental.

Not surprisingly, Aquinas then explains how it is that the king is to come to know in what way, precisely, he should share in God's intention of leading his subjects to heavenly happiness: not only should the king be subject to priests, but also he should study the divine law with care and internalize it:

What conduces to true beatitude and what hinders it are learned from the law of God, the teaching of which belongs to the office of the priest, according to the words of Malachy: "The lips of the priest shall guard knowledge and they shall seek the law from his mouth." Wherefore the Lord prescribes in the Book of Deuteronomy that "after he is raised to the throne of his kingdom, the king shall copy out to himself the Deuteronomy of this law, in a volume, taking the copy of the priests of the Levitical tribe, he shall have it with him and shall read it all the days of his life, that he may learn to fear the Lord his God, and keep his words and ceremonies which are commanded in the law." Thus the king, taught the law of God, should have for his principal concern (*precipuum*

⁷⁰ *ST I-II*, q. 98, a. 3 gives a striking example of the adaptation of the governance of a subordinate to that of a superior: "Now it is to be observed that, wherever there is an order of powers or arts, he that holds the highest place, himself exercises the principal and perfect acts; while those things which dispose to the ultimate perfection (*quae disponunt ad perfectionem ultimam*) are effected by him through his subordinates: thus the ship-builder himself rivets the planks together, but prepares the material by means of the workmen who assist him under his direction." Quite obviously, the planks have to be prepared with precision so that they can be riveted exactly as planned; they are "made to specifications." The master shipbuilder is not satisfied with simply getting planks from the lumberyard.

studium) the means by which (*qualiter*) the multitude subject to him may live well.⁷¹

The divine law then becomes a pattern or ideal for his own legislation.⁷² Note that the divine law, according to Aquinas, prescribes all of the acts of all of the virtues;⁷³ furthermore, as we have seen, in its *iudicialia* it regulates domestic and personal life.

The next paragraph guides the discussion for the remainder of the chapter. Assuming that the king has internalized divine law and now understands the purpose for which human legislation should be adapted, he should attend especially to three aspects of the state, in setting down legislation:

This concern is threefold: 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.⁷⁴

That is to say, what it is for his subjects to live well (*bene vivere*) is something complex; it can be analyzed into: (a) the establishment of a good life in the multitude; (b) the preservation of that way of life, once established; (c) the perfection of that way of life, once preserved.⁷⁵ He goes on to discuss each of these: (a) in paragraph 118, (b) in paragraphs 119–20, and (c) in paragraph 121.

Finnis discusses 119–20, but, as will become clear, he takes them to involve a problem that is in fact raised and resolved in the immediately following paragraph, 118. It is in paragraph 118 that Aquinas

⁷¹ *De Regno*, 116.

⁷² Thus the sense of the phrase from the end of n. 115: “ea precipiat que ad celestum beatitudinem ducunt, et eorum contraria secundum quod fuerit possibile interdicat.”

⁷³ *ST* I-II, q. 100, a. 2. This article probably gives the more precise sense of the adaptation of human law to the eternal beatitude envisioned in *De Regno*. “Human law makes precepts only about acts of justice,” but divine law is concerned with the relation of men to God, which involves intellectual virtue: “Man is united to God by his reason or mind, in which is God’s image. Wherefore the Divine law [and not the human] proposes precepts about all those matters whereby human reason is well-ordered. But this is effected by the acts of all the virtues.” Human law should be adapted to divine law by seeing to it that, through acting justly, men have what is required for the intellectual virtue that relates them to God.

⁷⁴ *De Regno*, 117.

⁷⁵ This is as though—to revert to the swordsmith analogy—we were now told that, in making a sword to a soldier’s specification, the smith must attend to the metal he employs and the design of the hilt and blade.

presents a comparison between society and the individual, which is used to make a single and relatively simple point: whereas we can take the integrity of an individual's body and soul for granted, when we consider the question of how to educate him to live well (*bene vivere*),⁷⁶ this cannot be taken for granted by the state. The art of statecraft must provide for the existence or establishment of its objects, not simply their good function, once they exist. Thus, in order to accomplish goal (a) mentioned above, three things are needed: (i) to establish a body politic united in peace; (ii) to direct this society, now united, to living well, by setting down laws that direct to virtue; (iii) to provide it with adequate material instruments for the exercise of virtue. For an individual person, in contrast, it would be necessary only to educate him in virtue and then supply him with adequate material means:

For an individual man to lead a good life two things are required. The first and most important is to act in a virtuous manner (for virtue is that by which one lives well); the second, which is secondary and instrumental, is a sufficiency of those bodily goods whose use is necessary for virtuous life. Yet the unity of man is brought about by nature, while the unity of multitude, which we call peace,⁷⁷ must be procured through the efforts of the ruler. Therefore, to establish virtuous living in a multitude three things are necessary. First of all, that the multitude be established in the unity of peace. Second, that the multitude thus united in the bond of peace, be directed to acting well (*vinculo pacis unita dirigatur ad bene agendum*). For just as a man can do nothing well unless unity within his members be presupposed, so a multitude of men lacking the unity of peace will be hindered from virtuous action by the fact that it is fighting against itself (*se ipsam impugnat*). In the third place, it is necessary that there be at hand a sufficient supply of the things required for proper living, procured by the ruler's efforts.⁷⁸

If it were correct that the purpose of government is limited in the way Finnis maintains, the ruler's task would be concluded with (i)—or perhaps (iii) should be added. As it is, the sequence described is eminently Aristotelian and, it seems, not compatible with Finnis's view: make the thing exist, and endow it with the appropriate functions (a military, market, courts, and so forth); then inculcate virtue; then

⁷⁶ Or, to the extent that we consider this matter, it belongs to a distinct discipline, that is, medicine, not ethics.

⁷⁷ Here "peace" evidently means simply the absence of civil strife, and, far from being the end and limit of legislation, is simply the most basic condition and starting point.

⁷⁸ *De Regno*, 118.

supply it with necessary instrument for the fuller actualization of that virtue.

After Aquinas has discussed the goal we had labeled (a) in paragraph 117, that is, “to establish a virtuous life in the multitude subject to him,” he goes on to consider (b), “to preserve it once established.” He does so by enumerating the principal threats against what has been established and then indicating how each is to be guarded against:

When virtuous living is set up in the multitude by the efforts of the king, it then remains for him to look to its conservation. Now there are three things which prevent the permanence of the public good. One of these arises from nature. The good of the multitude should not be established for one time only; it should be in a sense perpetual. Men, on the other hand, cannot abide forever, because they are mortal. Even while they are alive they do not always preserve the same vigour, for the life of man is subject to many changes, and thus a man is not equally suited to the performance of the same duties throughout the whole span of his life. A second impediment to the preservation of the public good, which comes from within, consists in the perversity of the wills of men, inasmuch as they are either too lazy to perform what the commonweal demands, or, still further, they are harmful to the peace of the multitude because, by transgressing justice, they disturb the peace of others. The third hindrance to the preservation of the commonwealth comes from without, namely, when peace is destroyed through the attacks of enemies and, as it sometimes happens, the kingdom or city is completely blotted out [emphasis mine].⁷⁹

In paragraph 118, Aquinas had distinguished three things implied in goal (a). In this paragraph, similarly, he distinguishes three things implied in (b)—three distinct threats to the continued existence of (as we should assume) a well-functioning, virtuous, and prosperous citizenry.⁸⁰ The sense of the paragraph is that we should be surprised that something should go wrong: after all, if the state has been estab-

⁷⁹ *De Regno*, 119.

⁸⁰ Finnis claims that Aquinas’s ease in going back and forth between “virtuous living in the multitude” and “public good,” as though these were synonyms, supports his reading (“Public Good,” 181). By this I take it he means that “public good” connotes something limited and instrumental, and so we should understand “virtuous living in the multitude” similarly. Yet I think the point works in the reverse: Aquinas has explicated in detail, in paragraph 118, what is meant by “virtuous living in the multitude”; hence, given the synonymy of the terms, “public good” should be taken to mean precisely that.

lished well and is functioning well, what could go wrong? Aquinas, however, wishes to remind the king that, even at this stage, vigilance is required, and he enumerates three sources of potential threats: from nature, from within, and from without. Two of these are easy to understand: the threat from without, war; and the threat from nature, that is, the finite lifespan of rulers (thus procedures for training and replacing rulers need to be in place). The third is unaccountable: why should anyone be disgruntled in a well-functioning state? This can only be attribute to irrationality, to the perversity of fallen human nature (*in perversitate voluntatum*).

Note that these threats to the continued good life of the multitude do not imply anything that might properly be called a “goal,” “purpose,” or “end” of the ruler—just as it would be inappropriate to say that an athlete in training for a contest has, as his goal, avoiding sickness, or taking care not to get mugged on the way to the event.⁸¹

We now come to the paragraph that Finnis isolates and discusses:

In regard to these three dangers, a triple charge (*triplex cura*) is laid upon the king. First of all, he must take care of the appointment of men to succeed or replace others in charge of the various offices. Just as in regard to corruptible things (which cannot remain the same forever) the government of God made provision that through generation one would take the place of another in order that, in this way, the integrity of the universe might be maintained, so too the good of the multitude subject to the king will be preserved through his care when he sets himself to attend to the appointment of new men to fill the place of those who drop out. In the second place, by his laws and orders, punishments and rewards, he should restrain the men subject to him from wickedness and induce them to virtuous deeds, following the example of God, Who gave His law to man and requites those who observe it with rewards, and those who transgress it with punishments. The king’s third charge is to keep the multitude entrusted to him safe from the enemy, for it would be useless to prevent internal dangers if the multitude could not be defended against external dangers.⁸²

The first and third remedies are obvious and trivial. The second is interesting: it seems to be a recommendation that the king not diminish rewards for good conduct, or relax punishments for bad, as he might be tempted to do, even if things are going well in the state—and this on the model of God, who proposes rewards and punishments for all,

⁸¹ The threats give rise to three *curae* (see the next paragraph), not three *intentiones* or *fines*.

⁸² *De Regno*, 120.

and with constancy.⁸³ In any case, even if Aquinas is making a relatively restricted point here, about the role of rewards and punishments in ensuring the mere integrity of the state over time, that hardly takes away his earlier assertion, in paragraph 118 as regards goal (a), that is, that legislation ought to induce to virtue. Finnis claims, as regards this passage:

So the second concern or responsibility (*cura*) of rulers, a responsibility proposed by Aquinas precisely as the appropriate response to *these* just-mentioned “things incompatible with lasting public good”, is not: to lead people to the *fullness* of virtue by coercively restraining them from *every* immorality. It is no more than: to lead people to *those* virtuous actions which are required if the public weal is not to be neglected, and to uphold peace against unjust violations.⁸⁴

However, as we have seen, the paragraph, when read in its complete context, assumes that the ruler is governing over a state already established under laws designed precisely to lead people to the fullness of virtue, and which restrain as much as possible from vice; the present concern is, rather, how to fend off threats that would bring the whole thing to an end.⁸⁵

The next paragraph, paragraph 121, corresponds to goal (c), which was distinguished in paragraph 117, that is, “having preserved it, to promote its greater perfection”:

Finally, for the proper direction of the multitude there remains the third duty of the kingly office, namely, that he be solicitous for its improvement. He performs this duty when, in each of the things we have men-

⁸³ This gloss explains the reiteration of terms for reward and punishment: *penis et premiis . . . observantibus quidem mercedem, transgredientibus vero penas retribuens.*

⁸⁴ Finnis, “Public Good,” 182.

⁸⁵ Finnis says that “the argument [of paragraphs 119–20] develops a careful parallel between what is needed for an individual’s good life and what is needed for a community”; “Public Good,” 181. However, that parallel was used, rather, in 118, as we saw. Aquinas does draw, in 120, a parallel between an enduring office in a community, and the life of an individual, insofar as he says that officeholders need to succeed one another, as generations do. But this is not a parallel between individual and community, so much as an observation that a deficiency of individuals, that is, their mortality, will afflict a community as well, unless a remedy is employed in political society, much like the remedy nature employs. It is important to point out this apparent misconstrual in Finnis’s exposition since this seems to be what causes him to overlook paragraph 118 as though it simply contained material similar to what is found in 119–20. However, as we saw, Aquinas’s most telling remarks about the role of legislation in promoting virtue are found in 118.

tioned, he corrects what is out of order and supplies what is lacking, and if any of them can be done better he tries to do so. This is why the Apostle exhorts the faithful to be “zealous for the better gifts.”⁸⁶

This seems to be simply a recommendation that the king strive always to do better at promoting the goals contained in (a) and in being solicitous as regards the *curae* enumerated under (b). There are two points that are especially interesting here. First, we might wonder what the king might do better, for promoting (a), given that the state is already (as we are assuming) established and functioning well. Presumably Aquinas has in mind constitutional adjustments that might make the “bond of peace” more secure and perhaps also the fine tuning of laws, to make them even better at promoting virtue. Second, the quotation from 1 Corinthians 13:31, St. Paul’s famous encomium to charity, seems to suggest that this third element of kingly rule involves his exercise of charity, or that this third element requires charity if the king is to do well; and perhaps it is meant to suggest, also, that the zenith of accomplishment, for kingly rule, is to have provided for the growth of charity in the state under one’s care. If that is indeed the point of the quotation, then, needless to say, Aquinas is thinking of the intention of the king as containing within its scope a goal that is far richer than the mere absence of civil strife and gross criminal action.

As regards *De Regno*, then, the texts examined by Finnis cannot be reconciled with the view he wishes to ascribe to Aquinas; in fact, when examined more thoroughly, they can be seen to support the opposite conclusion. A careful exegesis of other passages in the tract would tend only to confirm this point. For instance, paragraph 69 maintains that “the ruler of a multitude stands in the same relation to the virtuous deeds performed by each individual (*in hiis que sunt a singulis secundum virtutem agenda*) as the teacher to the matters taught, the architect to the buildings, and the general to the wars”; paragraph 95 asserts that a king “is to be in the kingdom what the soul is in the body, and what God is in the world,” but these remarks hardly suggest that kingly rule is in principle limited. Again, that “society must have the same end as the individual man,” that is, to live virtuously, as a means of attaining to the possession of God,⁸⁷ and that “men form a group for the purpose of living well together, a thing

⁸⁶ *De Regno*, 121.

⁸⁷ *Ibid.*, 107.

which individual men living alone could not attain, and good life is virtuous life,"⁸⁸ are remarks that seem to attribute the same value or type of goodness to life in society, as is found in the most valuable goods attainable by an individual—and this hardly suggests that the worth of life in political society, or of the good attained in political society, is that of something instrumental.

IV

Limits to Government in Aristotelian–Thomistic Theory. One might think that, if there are no limits in principle, in Aristotelian–Thomistic political theory, to legislative command by the state, deriving from a limitation on the goal of legislation, then, in a state established on that basis, there would be no safeguard against totalitarianism, and the expansion of state control in a manner incompatible with individual or group liberty would be the inevitable result: state control of all aspects of life; politics is all.

However, there are many other safeguards against totalitarianism in the Thomistic and Aristotelian view of the nature of political authority, which are arguably at least as effective as the conception of rights inherent in individuals or households, serving as a check to state power.⁸⁹ These are all rather familiar. No elaborate discussion is required; it will suffice simply to mention them:

(1) The view that positive law is derived from or based upon a natural law, which is furthermore well-expressed in an actual legal code of a particular nation, that is, the Ten Commandments and the Law of Moses.

(2) That rulers need to be virtuous, so that, in particular, procedures for the selection of public officials must aim at this.

(3) That human nature is real; that it has an actual character; and that good government must be based upon an adequate understanding of it.⁹⁰

(4) That there are real “forms,” or natures in things, which imply a difference in kind and not merely degree in levels of authority, so

⁸⁸ *De Regno*, 106.

⁸⁹ Recall that totalitarianism is a modern phenomenon; it has in each case arisen in societies in which the notion of individual rights was antecedently widely accepted.

that, generally, no higher authority commands all of the actions of a lower, but simply corrects and directs. (In the Aristotelian picture, this hierarchy of authority is taken to be related to hierarchies in practical disciplines or *technai*, and to hierarchies in sciences. Perhaps: to the extent that either of these other hierarchies is denied, to that extent the claim that there can be a hierarchy in political authority seems similarly unaccountable. Thus, the modern notion of “technology” as involving simply various instruments, none having any intrinsic character, setting limits on its appropriate use; and the modern notion of a unitary science arrived at through “reductionism,” are at odds with the idea of a real hierarchy of political authority.)

(5) That there are natural differences in authority (for example, the knowledgeable have a natural claim to direct the ignorant; the good have a natural claim to direct the bad; the mature, generally, over the young), of which political authority is a development or rationalization. Political authority is not something *sui generis*; it is simply the highest instance of something common and widespread: society is rich with real and legitimate authorities.⁹¹ (In the absence of this view, it is difficult to see how political authority can be construed as ultimately other than an artificial and unjustifiable constraint imposed upon sovereign individuals.)

(6) That, since the role of any sort of governance is to inculcate virtue, and virtue itself implies authority and power, the role of governance is to increase the power and ability to govern of those subject to it. This together with (4) and (5) imply subsidiarity.

(7) That human activity is distinctively rational and thus we should expect that, in practices of long standing, there will be an inherent rationality, a point or purpose, which must be correctly articulated and interpreted, before a practice can be intelligently reformed or abolished. (This is a principle of conservatism.)

(8) That every association involves some sort of exchange or reciprocity (a kind of amity), so that the political community as well must be arranged so that the reasonable consent of the governed is gained.

⁹⁰ Thus, for instance, communism is excluded. The character of human nature should be taken into account in the design of the constitution, and a knowledge of human nature should be regarded as one of the virtues required of public officials.

⁹¹ This is the principle that Samuel Johnson called “subordination.”

It is useful to list these things, since it then becomes clear that Thomistic political theory, in its reliance upon Aristotle (supplementing this with a clearer view of the basis in nature of law, as in (1)), contains many weapons and hedges against totalitarianism. The postulation of natural equality, or of the priority of families to the state, is quite unnecessary, except insofar as a conception of natural equality is used as a kind of device or shorthand to explain and express the principles of natural law with which human law must be consistent.

V

The Common Good and Perfect Society. I conclude with some remarks about why Aristotle and Aquinas agree in saying that political association is for the sake of virtue, and what precisely they mean by this.

We should begin with Aristotle's remark that every association involves justice, because it involves some kind of sharing.⁹² How should this be understood? It helps to have a simple example before us, to fix ideas. Imagine a number of independent homesteaders—pioneers, perhaps, on the edge of civilization—who are not associated in any way, except for some occasional commerce, but who learn of some threat to them—say, the approach of a boat of invading marauders—and, as a consequence, resolve to form an association for mutual defense. What happens in that case is: each farmer realizes that he cannot defend his homestead well, or defend it at all, through his own efforts; so he chooses to cooperate with other homesteaders for this purpose. His decision to cooperate⁹³ requires what might aptly be called a “conversion” on his part. Prior to the formation of the militia, each farmer seeks his own defense, and the formation of a militia seems appealing to him as a means of his achieving what he is already doing on his own. After his decision to join the militia, however, he

⁹² See *EN* 8.9.

⁹³ This decision has three elements: first, that he will work with the others for their defenses; second, that he will work with others for deciding upon how their militia will be governed; third, that he will abide by the decisions of the governing body of the militia. The analogues for political society would be: the formation of a nation or political body; the establishment of a constitution; legislation in accordance with the constitution.

no longer has as his goal, simply, the safety of his own household. Rather, what he must adopt as his goal is the common goal of: defense of the group of homesteaders generally, which is aimed at by the militia, and by each homesteader as a member of the militia. He views the safety of his own household, now not as that for the sake of which he seeks the common goal, but rather as a necessary consequence of the attainment of the common goal. Once he thought of his own household's safety as an end, to which the militia would be a serviceable means; but as a consequence of his joining the militia, insofar as he thinks and acts as a militiaman, he makes his own household's safety a part of some larger goal, which is strictly his aim.

One might say: to join the militia just is to abandon the private goal in favor of the group or common goal. Thus the militia, and indeed every association, involves reciprocity and exchange. Precisely because individuals form an association to attain a good that they cannot or cannot easily each attain through individual effort, in joining the association, each gives up the seeking that good for himself and through his own efforts, and each gains the effort of the association on his behalf (through its pursuit of some common or general goal). This can be put in the language of rights and therefore justice: each gives up the claim or right to seek that good for himself; and each acquires a claim against the community for his fair share in the common good sought by the community. It is a consequence of an individual's joining any association, then, that justice with respect to what he seeks as a member of that association consists in his following the plan or law of that association. If a farmer who had joined the militia happens to pass by his own plot of land, en route to taking up an important assigned post in battle, he would act unjustly if he abandoned the task, his duty, to defend his own homestead, even though he joined the militia precisely to secure the protection of his homestead. Again, if it happened that the post to which a militiaman was assigned was his own homestead, then, even though his actions might in that case be similar to, if not the same as, those he would have undertaken, had he continued to try to defend his homestead on his own, his motive and practical deliberation are nevertheless entirely different; moreover, his actions are now expressive of justice, rather than, say, prudence and courage alone.

These reflections indicate, perhaps, how we should understand Aristotle's dictum that political society originates in need, but

continues for the sake of virtue.⁹⁴ The same could be said for any association, though with qualifications. Any association originates because of some good that individuals wish to procure for themselves on account of some need. Yet once the association is constituted, and some plan of action in pursuit of a common goal is defined, then the following of that plan becomes a matter of justice, which is something virtuous and noble (*kalon*).

We should perhaps say that what makes the following of such a plan virtuous and noble is that it is the ordering of action in a reasonable manner, in recognition of the equality of those involved. If it is inherently good, however, to act reasonably and furthermore to express or recognize the equality of others, then the following of any plan of any association would be something inherently good. That which is sought by the association is perhaps something only instrumentally good, for example, victory or defense; but the seeking of it by planned, cooperative action would be inherently good.

Yet we should observe three important qualifications that pertain to associations such as the militia we have been considering. First, the plan adopted by the militia defines justice for its members only “in a certain respect” or *secundum quid*: it articulates justice for the farmers “as regards matters of defense,” not justice without qualification or *simpliciter*. Second, the plan is consequently subject to being rightly overruled. For instance, a militiaman’s wife is deathly ill one day, and he decides not to report to his post, in order to attend to her. Did he do wrong, that is, act unjustly? (Recall, we are assuming that the farmers are bound together in no way other than by the militia, so there is no ordered way for arriving at a public decision on the matter.) Certainly the militia’s plan of defense cannot decide the matter: it assumes that those governed by it are going to be acting in the interests of defense and decides what they should do, on that assumption (or, if the plan did attempt to decide such things, it would no longer be simply a military plan, and it would fall outside the competence of persons given authority to make military decisions). Third, we might expect that any homesteader’s practice of justice “as regards matters of defense” would require the exercise, on his part, of only a few traits of character, primarily self-control and courage. Other good traits he might have would not come into play in his activity as militiaman.

⁹⁴ *Politics* 1.1.1252b29–30.

The claim that political society is perfect should be understood, I think, as the assertion that these three qualifications do not apply to it. We shall assume that political association is roughly self-sufficient, in the sense that all important human goods⁹⁵ are available within it or through it, either through the activities of that association itself or through those of other associations to which the members of the political association belong. We shall also assume that the authority of the political association is supreme and comprehensive, since otherwise it would not be correct to speak of it as a single association.

Clearly, an association of this sort would have important traits that lacked these qualifications. First, the plan or law of the association would not constitute justice “as regards X,” where X was some particular good, since all important goods are sought within and through the association. In that sense, the justice of following its law is general and unqualified.⁹⁶ Second, its law is not subject to being overruled, because the law of such an association has to be competent to compare and rank diverse and incommensurable goods. Note that that sort of competence, according to Aristotle, belongs to virtue (and especially the virtue of prudence).⁹⁷ To the extent that the law requires that those subject to it, in their actions, observe the same principles of ranking, to that extent it would inculcate the virtue required in making such laws. Third, the law of that sort of association, given its general scope and its ordering of the diverse aspects of human life, would make demands upon the resources of character generally; its good observance, we might expect, would require all-round virtue.

From these conclusions, we see that the law of a political association is deeply bound up with virtue, as regards both legislators and those subject to it. But what justifies the stronger claim that the aim of that sort of law is virtue? Why not simply say that its aim is the procurement generally of basic goods needed for human flourishing—that a political association differs in aim or purpose from a militia simply in aiming at more goods and at a greater variety of goods? Further, even if we admit that following the law of a political association is something inherently good (as is following the plan of the militia),

⁹⁵ With Finnis, I prescind from discussing questions about the relationship between the political association and the Church.

⁹⁶ Although perhaps Aquinas would wish to say that it involves unqualified justice as regards human goods required for imperfect happiness.

⁹⁷ See *EN* 6.5.

what justifies the claim that the end of political association is something inherently good?

The basic argument in Aristotle for these further claims has to do with certain characteristics of the sort of law found in political associations.⁹⁸ Let us suppose that, generally, that for the sake of which an association exists is to be located in what an individual forswears pursuing privately, in being a member of that association. Let us suppose, also, that virtue cannot be inculcated well without (a) the use of coercive power, and (b) the ability to judge whether some principle or rule has been overruled on good grounds. If, then, individuals or families were to seek, on their own, to inculcate virtues in their members, they would have to be seeking both (a) and (b). Yet in fact we see that individual and families in political associations forswear both (a) and (b): they neither seek to use coercive force, nor do they hope to be able to evaluate all competing claims and conflicts of interest.⁹⁹ Thus these things are included in that for the sake of which a political association exists, yet these things could not rightly belong to political association except for the purpose of inculcating virtue. Thus, the political association has, as one of its aims at least, the inculcation of virtue. (Perhaps we should then argue: Since virtue is rightly ranked above any instrumental goods that might also be sought by political association, virtue becomes the chief aim, or even the aim, of political association. Virtue cannot be a direct goal without being the chief goal.)

If law necessarily implies the possibility of its enforcement, and thus coercion, and if self-government implies law, then it is strictly speaking impossible for a single person to govern himself, and difficult if not impossible for a household to govern itself. In political association, what we might refer to as an individual's or household's self-government is therefore really: one is left free by law to employ,

⁹⁸ The argument is not very different from that which Finnis hints at as regards the coercive character of law in his final pages; but the consequences are greater than I think Finnis allows. Finnis would argue, I believe, that that character is itself a basic good, and to that extent participation in political society has the aspect of a basic good; I wish to argue, rather, that the coercive power of law is correctly construed as in the service of virtue, thus, the fact that coercion is given up by private persons in political association implies that the inculcation of virtue is delegated to that association, as a common goal.

⁹⁹ Moreover, the absence of such forswearing amounts to civil strife.

in affairs under one's control, something analogous to law, that is, practical reasoning, taking the form of admonitions or resolutions. However, if an individual's actions are subject, as they are, to being overruled by the law of the state, and rightly so (for instance, sometimes a man must leave his family and fight in war), then they are not in fact under his law, but under that of the state. The appearance that an individual is under his own law, arises from this: for the most part the law of the political association, on account of principles of subsidiarity, and so on, leaves things in place and directs lightly, as though, in our militia example, each farmer were to receive the command, "Stand guard at you own homestead, until you hear otherwise." Nonetheless, that the law of the political association typically leaves each person in charge of his own household does not imply that he is then in the same condition as if he were sovereign over its affairs, in some association that was prior to or independent of the political association.

On the view we have been considering, political society would be inherently good because its aim is inherently good, and furthermore the achieving of that aim is inherently good (on the grounds that the following of the plan of any association is so). However, there are further considerations, Aristotelian in spirit, that support the claim that it is inherently good to act in accordance with law in the fullest sense; I sketch these in the conclusion:¹⁰⁰

(1) It requires freedom to act in obedience to law, rather than out of impulse or emotion; thus, action under law is a sign or indication of the freedom of the person who acts, and (we might presume) the more fully a precept is a law, the more the action serves as such an indication; thus, freedom is especially well expressed by such action as is possible only in political society. "[J]ustice cannot be in the irascible or concupiscible as its subject, but only in the will."¹⁰¹

(2) Since laws are made to apply generally, and are deliberated in advance, apart from influence of emotions or the felt exigencies of need, they express reasonability in an especially clear way, and are inherently good as such. "[T]hose who make laws consider long

¹⁰⁰ Basically the procedure here is to examine justice (I have drawn upon *ST* II-II, q. 58) for aspects of it that plausibly are inherently good. If law and justice, in the strict sense, are available only in political society (which we must at this point simply assume), so are these inherent goods.

¹⁰¹ *ST* II-II, q. 58, a. 4.

beforehand what laws to make,” Aquinas remarks, “and it is easier for man to see what is right, by taking many instances into consideration, than by considering one solitary reasoning . . . lawgivers judge in the abstract of future events; whereas those who sit in judgment judge things present, towards which they are affected by love, hatred, or some kind of cupidity; wherefore their judgment is perverted.”¹⁰²

(3) If practical reasoning is analogous to theoretical, so that the basic laws of the former are like the axioms of the latter, then derivations from basic laws of action, and determinations of such laws, are akin to proofs,¹⁰³ but a proof is inherently desirable on account of the reflective confidence it gives us in the correctness of a result; thus a public, promulgated law, decided upon after due deliberation, is inherently desirable on account of the confidence it gives to the correctness of the behavior commanded by that law.¹⁰⁴

(4) If acting well toward someone who is other or “alien” is a distinctive achievement of a human being, different from acting well toward someone who is akin or one’s own (a family member or friend)—and if there is, furthermore, a virtue or excellence of character consisting of the habit of acting reliably in that way—and if, furthermore, we act well toward someone who is other through law in the strict sense, then action under law is inherently desirable.¹⁰⁵

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¹⁰² *ST* I-II, q. 95, a. 1, ad 2.

¹⁰³ *ST* I-II, q. 94.

¹⁰⁴ See *ST* II-II, q. 60, a. 5: the purpose of law is *iuris declaratio*.

¹⁰⁵ See *ST* II-II, q. 58, a. 2, ad 4: “[Man’s] dealings with others need a special rectification, not only in relation to the agent, but also in relation to the person to whom they are directed.”