

## AQUINAS AND THE LIMITS OF POLITICAL AUTHORITY: NATURAL LAWYER OR VIRTUE POLITICIAN?

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### Politics and The Renaissance of the Virtues

One of the most significant developments in moral philosophy at the close of the 20th century was a renaissance in the study of the virtues. Thinkers such as Alasdair MacIntyre sparked renewed interest in ancient virtue theories, especially that of Aristotle. As any good student of the Stagirite knows, *moralis philosophia* is a genus that includes the study of the individual and political goods among its species. According to Aristotle, the legislator is the primary person who must engage in the careful examination of human excellence undertaken in the *Nicomachean Ethics*.<sup>1</sup> One should therefore expect a close connection between the revival of virtue ethics and the application of virtue theory to politics.

Interest in 'virtue politics,' however, has lagged behind that of virtue ethics until recently. A plausible explanation for this gap is the natural tendency of virtue theory toward substantive and even perfectionist accounts of the common good, which is difficult to square with the procedural minimalism dominating recent liberal political theory.<sup>2</sup> This substantive conception may well be regarded as a virtue rather than a vice in the theoretical standpoint of virtue theories. Communitarians have rightly pointed out that procedural liberalism is unable to sustain a suitably robust understanding of civic virtue and a shared conception of the human good, which are required for a healthy

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<sup>1</sup> See e.g. *Nicomachean Ethics*, I.13, 1102a2ff.

<sup>2</sup> For a version of this thesis see Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (New York: Oxford University Press, 1991). For the best example of the minimalist view see e.g. John Rawls, *A Theory of Justice*, (Cambridge: Harvard University Press/Belknap, 1972) and also *Political Liberalism* (New York: Columbia University Press, 1993). For an excellent critique of the view see Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) and *Democracy's Discontent* (Cambridge: Harvard University Press/Belknap, 1996).

common political life.<sup>3</sup> On the other hand, we must acknowledge that the more substantive conception of the common good endorsed by many communitarians, if left unchecked, threatens to create an authoritarian state in the name of the production of civic virtue.<sup>4</sup>

Developing a satisfactory political theory thus requires one to seek a golden mean between the extremes of radical communitarianism and procedural liberalism. This mean must combine a revitalized focus upon the virtues with real limits upon the legitimate extent of political authority. It must therefore bring together concerns of virtue theory with those of political liberalism. It must provide a defensible conception of shared civic interests, rooted in an appropriate substantive account of the human good, at the same time as it articulates principled limits upon power. Here it will be argued that Aquinas' moral and political philosophy can provide the necessary golden mean.<sup>5</sup> This conclusion will be demonstrated through an examination of the recent debate concerning whether Aquinas is more properly described as a virtue theorist or as a natural lawyer. While that dispute has often been framed as a question about his ethics, it has obvious and immediate implications for his political theory.

Aquinas certainly had an abiding interest in the virtues on account of his thoroughgoing Aristotelianism. His mature treatise concerning

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<sup>3</sup> See e.g. Sandel, *Liberalism and the Limits of Justice*, p. 179ff. See also, Alasdair MacIntyre, "The Privatization of the Good," in *Review of Politics* 52, Summer 1990, pp. 3ff.

<sup>4</sup> For a discussion of this concern, see e.g. Kymlicka.

<sup>5</sup> As will become clear in the course of this study, although I am not prepared to agree completely with John Finnis' claim that Aquinas proposes a purely instrumental conception of the political good, my account draws upon his presentation of the essential limitations of the role of government and law in Aquinas' political philosophy. See e.g., "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, DC: Georgetown University Press, 1998). A revised version of this article appears in Chapter VII of Finnis' recent book: *Aquinas: Moral, Political and Legal Theory*, in *Founders of Modern Political and Social Thought* (Oxford: Oxford University Press, 1998).

the practical dimensions of the moral life, the *Secunda secundae* of the *Summa theologiae*, is structured in terms of the cardinal and theological virtues. Some contemporary Thomists have therefore been eager to label him a 'virtue theorist' and to eschew the more traditional perception of him as a natural lawyer. Doing so has the added benefit of dissociating his work from putative legalism in moral theology.<sup>6</sup>

Nevertheless, the framework of the contemporary debate in virtue theory has generated a false dichotomy between Aquinas' appeal to virtues and to principles of the natural law. Neither virtues nor principles play a strictly reducible role in his moral and political theory. While a rigid and strictly deductive account of the moral life must not be attributed to St. Thomas, there is a place for the deduction of certain concrete norms for action from the general principles of the natural law in his system.<sup>7</sup> This conclusion runs contrary to some interpreters of his moral theory who reject the characterization of him as a natural lawyer. It is, however, the key to understanding his conception of normative limits upon state authority in political theory, and also a basis for acknowledging both liberal and communitarian concerns.

Thomistic natural law theorists such as John Finnis and Germain Grisez have been engaged in a dispute with proportionalists about whether natural law theory can provide a basis for certain moral absolutes.<sup>8</sup> The former aim to protect the pursuit of genuine goods by

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<sup>6</sup> The most radical version of this argument, which will be examined in detail below, can be found in Daniel Nelson, *The Priority of Prudence: Virtue and Natural Law in Thomas Aquinas and the Implications for Modern Ethics* (University Park, Pennsylvania: Pennsylvania State University Press, 1992). A more moderate version of the view can be found in Daniel Westberg, *Right Practical Reason Aristotle, Action and Prudence in Aquinas* (Oxford: Clarendon Press, 1994), esp. pp. 229ff.

<sup>7</sup> See e.g. *Summa theologiae* I-II.95.2. See also John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, DC: Catholic University of America Press, 1991) and Germain Grisez, *The Way of the Lord Jesus Volume One: Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983) (hereafter CMP).

<sup>8</sup> See e.g. John Finnis, *Moral Absolutes* and Germain Grisez, CMP, esp. chap. 6.

the maintenance of certain absolute moral requirements.<sup>9</sup> The requirements of right conduct retain their force because they protect genuine ways of seeking human fulfillment. In this way, natural law principles are complementary to human goods and virtues. Admittedly, some Thomistic natural lawyers have not appreciated fully the centrality of the virtues in Aquinas' account of moral and political life. With proper clarification, though, his appeal to virtue and law must not be regarded as at cross-purposes. Furthermore, the specification of a narrow but well-defined range of moral absolutes establishes normative limits upon political authority. Aquinas may thus respond sympathetically to liberal political theorists' concerns about abuse of state power while recognizing communitarian concerns about the common good.

#### Contemporary Virtue Theory

To many recent interpreters of his moral philosophy who are inspired by the seminal work of Alasdair MacIntyre, Aquinas is evidently a virtue theorist. Careful scrutiny, however, shows that drawing such a conclusion is neither simple nor obvious. The category of 'virtue ethics' is a modern invention, forged as a replacement for the once dominant deontological and consequentialist schools of thought. It has a history and is a product of certain localized disputes with its predecessors. Uncritical identification of Aquinas' moral philosophy with contemporary virtue theory is not only historically anachronistic, but it also deprives his synthesis of the golden mean between communitarian and liberal political theory.

Virtue theorists often assert that principle-based models of ethical and political decision-making lead to interminable disagreement. These thinkers do not hold that appeals to principles must be supplemented by appeals to virtues. Rather, they think that appeals to principles must be replaced entirely or seen as strictly derivative from the virtues, and also that ethical universals must give way to moral particularism.<sup>10</sup> This

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<sup>9</sup> See e.g. CMP chap. 7 & 8, also John Finnis, *Fundamentals of Ethics* (Washington, DC: Georgetown University Press, 1983), esp. III.6, pp. 74ff.

<sup>10</sup> See e.g., John McDowell, "Virtue and Reason," *The Monist*, 62, 1979, reprinted in Roger Crisp and Michael Slote, eds., *Virtue Ethics*, Oxford Readings in

sharp dichotomy between the role of the virtues and moral principles is inadequate to capture the richness of Aquinas' position. We may tend to overlook this fact because renewed interest in the virtues was sparked by philosophers with certain sympathies for Aristotle and Aquinas. There is a temptation to assume that contemporary virtue theory is synonymous with the recovery of the historical tradition of the virtues. This assumption has produced some positive results, including a renewed sense of the importance of the virtues in Aquinas' moral philosophy and awareness that modern influences upon Thomistic natural law theory have pushed it in the direction of presenting Aquinas as a deontological theorist with a strictly deductive model of practical reasoning. If virtue theory is the answer to our Kantian discontents, then it may seem that liberating Aquinas from his position as a central figure in the natural law tradition will give new currency to his thought.<sup>11</sup>

Two important obstacles to this sort of reconstruction of Aquinas' moral philosophy are worth considering. First, some critics argue that virtue theories do not provide a basis for the resolution of putative interminable disagreements attributed to principle-based models of ethical discourse.<sup>12</sup> This point is bolstered by the fact that virtue

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Philosophy (Oxford: Oxford University Press, 1998), pp. 141-162. See especially, p. 161, "If the question 'How should one live?' could be given a direct answer in universal terms, the concept of virtue would have only a secondary place in moral philosophy. But the thesis of uncodifiability excludes a head-on approach to the question whose urgency gives ethics its interest."

<sup>11</sup> See e.g. Nelson, *The Priority of Prudence*, "[Natural law's] force as a coherent and identifiable moral and political doctrine has long been spent.... As a result, Thomas Aquinas, the main character in the story, appears to have only historic interest. If, however, there is a different story that can be told about St. Thomas, a story that makes his usual appearance in the natural-law narrative a case of long mistaken identity with profound cultural consequences, then there may be reasons to include him in another story—that of the virtues—which deserves contemporary interest."

<sup>12</sup> See e.g., John Haldane, "MacIntyre's Thomist Revival: What Next?" in John Horton and Susan Mendus, eds., *After MacIntyre: Critical Perspectives on the Work*

theorists have not been very successful in deploying political theories based upon their ethical theories. Second, the attempt to deny a substantive role for the natural law in Aquinas' moral philosophy faces important and stubborn textual obstacles, many of which are connected with his treatment of the relation between ethics and political philosophy. Aquinas looks to natural law principles, for instance, and to the norms we derive closely from them, for a set of transcendent moral goods that can help to resolve problems of fundamental moral and political disagreement. The use of these principles has a distinguished history, influencing important developments in the birth of international law and more recently in the fight for civil rights in the United States through Martin Luther King, Jr.'s, "Letter from Birmingham City Jail."

Some interpreters opt for a middle way, arguing that Aquinas' moral philosophy cannot be captured by exclusive appeal either to virtues or to principles.<sup>13</sup> This chapter contends that is the most accurate view of Aquinas' thought and it gives him the theoretical high ground. His integrated conception of law and virtue can offer much to the contemporary political debate between liberals and communitarians. In order to support this conclusion, one must do three things: 1) determine more precisely what is the nature of virtue theory, 2) evaluate the arguments for treating Aquinas as a virtue theorist, and 3) apply the fruits of this analysis to his political theory.

### Virtue Theory and Particularism

In their recent anthology collecting some of the most important work in the field, Roger Crisp and Michael Slote emphasize that an exhortation to live the virtuous life is not a sufficient condition for describing a theoretical position as a virtue theory.<sup>14</sup> After all, Mill and Kant could appeal to the virtues while subordinating them as *means* to the observance of universal rational norms. The virtue theorist, on the

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of Alasdair MacIntyre (Notre Dame, Indiana: University of Notre Dame Press, 1994), pp. 91ff.

<sup>13</sup> See e.g. Westberg, *Right Practical Reason*, p. 12, p. 229.

<sup>14</sup> Crisp and Slote, *Virtue Ethics*, p. 2.

other hand, must “carve out his or her own niche.”<sup>15</sup> Virtue itself must become the primary moral category. Concepts of duty and obligation must be regarded as derivative. As Crisp and Slote stress, “The virtue ethicist at least does not *need* such language.”<sup>16</sup> To give principles a co-equal role in one’s moral philosophy would render it subject to the repudiated struggles of predecessor theories. Hence, there is a built-in presupposition of tension between virtues and principles. Clearly, if Aquinas is a virtue theorist in the contemporary sense, it is necessary to free him from any intrinsic dependence upon natural law theory as a means of action guidance.

Rejection of principle-based approaches is closely connected to moral particularism, a point which can be seen most clearly in John McDowell’s provocative idea of the “uncodifiability thesis.”<sup>17</sup> According to McDowell, as long as we think of moral rationality as the attempt to formulate universal rules of conduct and to deduce particular conclusions from them, we treat virtue as a secondary concept.<sup>18</sup> He proposes an alternative model of practical rationality, one that he regards as inspired by Aristotle. McDowell models practical judgment on the notion of perception, specifically the perception of Lockean secondary qualities. What is unique in his conception is not merely the assimilation of practical judgment to perception. Visual metaphors abound in traditional accounts of the virtues. The crucial difference in his approach is the repudiation of any relation between ethical perception and moral universals. Secondary quality perception both reflects the world and requires an internal disposition in the agent. This discriminating ability is thoroughly cognitive, but it is not in any way syllogistic. The internal disposition of the agent is not a reasoning ability, but a rational sensibility. According to McDowell, agents can fail to be rationally responsive to the world around them. Like the perception of secondary qualities such as color, moral perception can be objective, even though the properties in question are not ‘brutely

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, p. 3.

<sup>17</sup> McDowell, “Virtue and Reason,” in Crisp and Slote, pp. 148ff.

<sup>18</sup> *Ibid.*

there' in the world like primary qualities.<sup>19</sup> Although we do not literally see the moral qualities of our actions, we train our rational faculty to grasp the fitness or unfitness of our actions immediately and non-inferentially. It is not difficult to see that this conception of virtue is the result of the historical attempt to define virtue theory sharply in contradistinction to utilitarian and deontological appeals to the deduction of moral conclusions from principles.

The intricacies of McDowell's position and its full implications for moral epistemology are beyond the scope of the present consideration, but it is important to note that he deploys his perceptual analogy using the Aristotelian account of habituation to the virtues. The ability to judge practical truth is, according to McDowell, literally a process of acquiring certain habitual dispositions or sensitivities to perceive reliably the moral qualities of our actions.<sup>20</sup> This characterization of moral knowledge in terms of virtue construed as a rational sensibility is central to McDowell's "uncodifiability thesis" and his moral particularism. He insists that the perceptual model for knowledge can do without a conception of "stateable propositional content."<sup>21</sup> Thus, the familiar idea of practical reasoning in terms of which particular moral conclusions are deduced from general principles is no longer appropriate. For McDowell, a conception of morality in which virtue is regarded as the primary category and principles as strictly derivative, requires us to reject the syllogistic model of practical reasoning. He notes:

This picture fits only if the virtuous person's views about how, in general, one should behave are susceptible of codification, in principles apt for serving as major premises in syllogisms of the sort envisaged. But to an unprejudiced eye it

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<sup>19</sup> See John McDowell, "Values and Secondary Qualities," in *Morality and Objectivity*, Ted Honderich ed. (London: Routledge and Kegan Paul, 1985), reprinted in Geoffrey Sayre-McCord ed., *Essays on Moral Realism*, pp. 166-180.

<sup>20</sup> McDowell, "Virtue and Reason," p. 142.

<sup>21</sup> *Ibid.*, p. 147.



should seem quite implausible that any reasonably adult moral outlook admits of any such codification.<sup>22</sup>

We may be inclined to agree with McDowell that attempts to subordinate one's whole conception of what virtue requires to a set of rules is misguided. But, his thesis goes further; making the argument that to conceive of practical judgment in terms of universal principles is to introduce an unacceptable form of deontological codification. This more radical interpretation of the tension between virtues and principles has fueled recent developments in virtue ethics and has significant implications for virtue politics. One who wishes to read Aquinas as a contemporary virtue theorist must discount the significance of his talk of deduction of specific moral norms from universal natural law principles. Once this category of norms has been eliminated, Aquinas is left without clear theoretical distinctions that help to establish the limits of political authority.

#### Aquinas: Natural law and Virtue

Whether or not McDowell's specific target of criticism is Aquinas, it is clear that the Thomistic natural law tradition played an important role in the development of the position he seeks to undermine. We must remember that the sources of Aquinas' moral philosophy include not only Aristotle's *Nicomachean Ethics*, but also the Stoic and Augustinian traditions, as well as the Biblical basis of morality in the Decalogue and the concept of a covenant. These sources necessitate reconciliation of appeals to the virtues with the notion of universal and immutable laws. Members of the natural law tradition have therefore paid special attention to the process of eliciting (including deducing) specific norms from more general principles. It should be granted that some inferior presentations of his thought have tended to misrepresent Aquinas by overemphasizing the degree to which he regarded the moral and political process as deductively specified. In reaction against the legalistic excesses of their predecessors, some 'virtue Thomists' have embraced a position very much like that espoused by McDowell. It is therefore necessary to examine whether Aquinas fits the

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<sup>22</sup> Ibid., p. 148.

stereotypical view of a natural lawyer and to what extent the revised description of him as a virtue theorist is apt.

### Aquinas as 'natural lawyer'

There are far too many natural law interpretations of Aquinas to enumerate in this space. For the sake of simplicity, we will look briefly at three representative instances: a popular 20<sup>th</sup> century introduction to his moral philosophy, a traditional Latin manual of moral theology, and more recent work from the so-called "new natural law theorists" John Finnis, Germain Grisez and their collaborators. This survey will demonstrate that while the stereotypical view of Aquinas has been adopted by some interpreters, a more comprehensive picture of Thomistic natural law theory shows much greater subtlety and depth.

Perhaps the most striking case for the stereotypical view of Aquinas can be found in Austin Fagothey's *Right and Reason*, a popular English language introduction to natural law theory.<sup>23</sup> If one compares changes made between earlier and later editions of the text, Fagothey presents virtually a textbook case of the view coming under fire from virtue theorists. Fagothey's work is noteworthy because it served as a key text for a generation of North American college students and seminarians. Despite Fagothey's evident erudition, his work leaves much to be desired in regard to his interpretation of Aquinas on the relation between natural law principles and virtues. What is even more striking is that Fagothey attempted to correct this problem in later editions of the text. He erroneously thought that in doing so he was departing from the letter of Aquinas' moral philosophy in order to save its spirit.

In the preface to the third edition of the text, he notes that he has made certain minor emendations to his presentation of the presuppositions and methods of ethics in order to bring them up to date. Specifically, his intention is to be less dogmatic and to alter the appearance of a legalistic attitude toward moral choice from previous editions.<sup>24</sup> Whether these changes were made in light of the new

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<sup>23</sup> Austin Fagothey, *Right and Reason: Ethics in Theory and Practice* (St. Louis: C.V. Mosby, Co., First Edition, 1953 [Third edition, 1963]).

<sup>24</sup> Fagothey, *Right and Reason*, Third edition, Preface.

climate in theology beginning to take shape at the Second Vatican Council, he does not say. His answer to this question would be instructive, since the Council was widely perceived as attempting to combat excessive legalism in moral theology and to restore the proper place of individual conscience and prudential judgment.<sup>25</sup> What we do know is that the emendations represent a major shift away from conceptualizing natural law theory as a deductive science toward an account of it in terms of the acquisition of certain virtues, especially practical wisdom.

In the first edition of the text, Fagothey had enumerated two primary methods of inquiry: the deductive or a priori approach and the inductive or empirical approach. Commenting upon the use of these two methods, he had asserted, "[T]he method of ethics is mixed, *with emphasis upon deduction.*"<sup>26</sup> In the third edition, the same sentence appears without the latter part about deduction, and it immediately adds, "It is no mere spinning of a string of conclusions from ideas found embedded in our minds with no reference to experience."<sup>27</sup> Fagothey continues with a curious series of paragraphs that attribute the empirical or inductive procedure in moral philosophy to Aristotle's *Nicomachean Ethics*. The deductive procedure is said to be proper to theological science and paradigmatic of the way Aquinas proceeds in the *Summa theologiae*.<sup>28</sup> Fagothey then asserts that Aquinas never wrote a properly philosophical treatise on ethics since he used the theological procedure of deduction rather than the philosophical method of induction.<sup>29</sup> Acknowledging that this latter method, putatively the procedure Aquinas prefers, is inappropriate to a philosophical treatise on natural law theory, Fagothey resolves to follow the philosophical procedure as more appropriate to his study.

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<sup>25</sup> For a useful discussion of this point see Daniel Westberg, *Right Practical Reason*, pp. 3ff.

<sup>26</sup> Fagothey, *Right and Reason*, First edition, p. 25; emphasis added.

<sup>27</sup> *Ibid.*, Third edition, p. 19.

<sup>28</sup> *Ibid.*, pp. 19-20.

<sup>29</sup> *Ibid.*, p. 20.

He inserts a paragraph in the chapter on natural law in the 3<sup>rd</sup> edition that muses, "There are some who look upon the natural law as a rigid and stifling box around their lives and cramping them into an unrelieved round of prescribed duties."<sup>30</sup> In an effort to dispel this myth about Thomistic natural law theory, Fagothey refers the reader to *Summa theologiae* I-II.94.4, the passage in which Aquinas grants that the universal principles of the natural law admit exceptions when we descend to matters of detail. This passage has been used more recently by proportionalists and 'virtue Thomists' to mount a critique of the stereotypical view of Aquinas' moral philosophy.<sup>31</sup> In the third edition of *Right and Reason*, this passage replaces a long discussion in the first edition of the necessity of demonstrating the immutability of the natural law.<sup>32</sup>

If we were to judge Aquinas' moral philosophy and the state of Thomistic natural law theory by the light of this once popular North American view, we would have to conclude that both were inclined toward the sort of deductive account of moral choice that virtue theorists aim to repudiate. Fagothey's presentation also tends to strengthen the case of virtue theorists within the Thomistic camp who complain that the tradition has seriously misread Aquinas, and that he is in fact a virtue theorist. The obvious evidence for their complain which is that, contrary to Fagothey's assertions, Aquinas gives relatively limited consideration to the question of the natural law and much more extensive and systematic consideration to acquiring the virtues in the second part of the *Summa theologiae*. While Fagothey's presentation of natural law theory fits the stereotypical mold, one should note that it is neither an accurate representation of Aquinas' moral philosophy, nor even of the whole manual tradition. Both points merit attention since some 'virtue Thomists' wish to discount the entire traditional reading of his work as seriously misguided. 'Virtue Thomists' are certainly correct to insist that Aquinas' method in moral philosophy is not primarily deductive. Both general and specific considerations support this view.

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<sup>30</sup> Ibid., p. 136.

<sup>31</sup> See e.g. Nelson, *The Priority of Prudence*, pp. 125ff.

<sup>32</sup> Fagothey, *Right and Reason*, First edition, p. 164.

The second half of the second part of the *Summa theologiae*, for instance, provides a concrete treatment of the moral life organized in terms of the cardinal and theological virtues. Aquinas is eminently clear about the reasons for undertaking his study in this way. He notes that universal moral principles are less useful because of the concrete particularity of human actions.<sup>33</sup> Furthermore, he asserts that all moral matters can be reduced to the consideration of the virtues, and the various virtues and vices can be brought under the scheme of the seven cardinal and theological virtues, with their opposing vices.

It remains to be seen whether the reduction Aquinas has in mind here can be equated with particularism of the sort endorsed by John McDowell, but it is evident that the method of the *Summa theologiae* is not strictly deductive as Fagothey originally claimed.

Various specific considerations in the text strengthen this conclusion. For instance, in treating the virtue of prudence, Aquinas postulates its dependence upon both universal principles and the moral virtues.<sup>34</sup> The moral virtues enable the agent to judge rightly about the particular ends of his or her actions in light of their correspondence to the universal principles of action. The moral virtues therefore have an irreducible cognitive role to play in the moral life.<sup>35</sup> In his discussion of natural law, Aquinas refers to the contingency of particular actions for which he has previously argued that the guidance of the moral virtues is required.<sup>36</sup> He notes that the descent from general principles to particular cases admits of variation. While the natural law always prescribes virtuous actions, it does not provide complete guidance for all of the acts of the particular virtues.<sup>37</sup> Lest we come to identify that process with a further set of deductions, Aquinas notes that the process is sometimes deductive, but in many instances it is not.<sup>38</sup> From this sampling of texts, it is evident that Aquinas envisions a complementary

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<sup>33</sup> See *Summa theologiae* (hereafter *ST*) II-II.prol.

<sup>34</sup> See *ST* II-II.58.5, also II-II.57.4.

<sup>35</sup> *ST* II-II.58.5.

<sup>36</sup> *ST* I-II.94.4.

<sup>37</sup> *ST* I-II.94.3.

<sup>38</sup> *ST* I-II.95.2.

relationship between principles and virtues in the moral life. Neither component can be eliminated in favor of the other.

Significantly, the same view of Aquinas' moral philosophy is held by a number of sources in the manual tradition. While 'virtue Thomists' grant that a few scholarly treatments of Aquinas' moral philosophy placed appropriate emphasis upon the virtues, the standard interpretation is that Thomistic moral philosophy has been excessively legalistic. This view conveniently and incorrectly supports the attempts to write off the traditional regard for the substantive role of the natural law in Aquinas' thinking.

The case of Prümmer's *Manuale Theologiae Moralis* provides a noteworthy counterexample.<sup>39</sup> This early 20<sup>th</sup> century manual of moral theology was a staple in pre-conciliar (and some post-conciliar) seminary programs. The general structure of the manual, like the second part of the *Summa theologiae* upon which it is based, is hardly legalistic. It deals concretely with the moral life in terms of the cardinal and theological virtues. A single tract in the first volume is devoted to the subject "*De legibus*," with a single sub-article concerning the natural law. The virtues in general are treated in another tract, with a separate tract devoted to each of the virtues individually.

Prümmer covers the traditional range of moral theology, including an extensive discussion of casuistry and probabilism. He makes use of the deductive model when describing the process of moral decision-making, but he pays special attention to the non-deductive role that prudence plays in conscience.<sup>40</sup> He specifically acknowledges the cognitive role of prudence and the moral virtues in choice. He postulates two other categories of practical theology, the mystical and the ascetical, which strengthen the impression that his view is far from legalistic. Prümmer's example demonstrates two important points: First, many traditional interpreters of Thomistic ethics paid attention to the virtues, which figure so centrally in Aquinas' own work. Second,

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<sup>39</sup> See Dominicus M. Prümmer, O.P., *Manuale theologiae moralis: secundum principia S. Thomae Aquinatis*, Editio Decima (Barcelona: Herder, 1946).

<sup>40</sup> See Prümmer, Tractatus IV, "*De conscientia*," pp. 195ff.; also Tractatus X, "*De virtute prudentiae et vitiis oppoditis*," pp. 454ff.

the radical distinction between principles and virtues drawn by modern virtue theorists appears to be an exaggerated and artificial dichotomy from the point of view of Thomistic moral philosophy.

Turning to a contemporary example, John Finnis, and his collaborators Germain Grisez and Joseph Boyle, represent a recent version of Thomistic natural law theory that is intended to address challenges to natural law ethics and more generally to moral cognitivism arising from modern philosophy. Their theory is innovative because it eschews a conception of natural law ethics as a deduction from a philosophical anthropology and metaphysics. They have been accused of turning natural law theory into a version of Kantian formalism whereby ethical judgments are merely logical requirements of practical rationality. While, on occasion, they appear to embrace this viewpoint, Finnis has offered a vigorous defense of how their theory can acknowledge the real dependence of the moral order upon human nature.<sup>41</sup>

The so-called 'new natural lawyers' are aware of the importance of the virtues in ethical analysis. They do, however, appear to regard the role of the moral virtues as derivative from and perhaps even reducible to that of general principles. Their view of the latter point is not uniform, however. Whereas Grisez appears to emphasize a more strictly deductive model of natural law theory in his *Christian Moral Principles*, Finnis and Boyle have made remarks that suggest a more moderate view. Nevertheless, the moral virtues are not accorded the non-derivative cognitive status in the moral life that Aquinas appears to attribute to them.<sup>42</sup> Their position is summarized succinctly by Joseph Boyle in the following manner:

. . . according to the natural law account, the moral virtues have an irreducible role in moral knowledge. As dispositions of character necessary for the developed capacity to make moral

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<sup>41</sup> See John Finnis, "Natural Inclinations and Natural Rights: Deriving 'Ought' from 'Is' According to Aquinas," in L.J. Elders and K. Hedwig eds., *Lex et Libertas*, Studi Tomistici 30 (Vatican City: Pontificia Accademia di S. Tommaso, 1987).

<sup>42</sup> Cf. *ST* II-II.58.5.

judgments correctly and easily they are necessary for mature, competent moral decision-making. But it is clear that the moral virtues do not constitute a source of moral knowledge independent of the knowledge of the universal principles of the natural law. It is true that the possession of the virtues adds to these principles what reasoning from them cannot provide, that is an ability to appreciate the moral significance of the emotional appeal of the particularities of possible actions. But these character traits would not be moral virtues unless they were shaped by the principles of the natural law.<sup>43</sup>

Although the virtues are an essential part of moral life according to proponents of the 'new natural law theory,' their cognitive function is derivative and limited.<sup>44</sup> For Aquinas, on the other hand, practical wisdom requires moral virtue both antecedently and consequently. The virtues enable cognitive insight into our grasp of both general principles and the applications of those principles to particular cases. As he notes in *Summa theologiae* I-II.94.4, natural law theory does not descend with apodictic certainty to all matters of detail. Consider, for example, ethical and engineering or business decisions made under adverse conditions. By definition, such instances involve circumstances where judgments must be made when we lack a decision procedure or algorithm for applying general principles to a particular case. Aquinas recognizes that only the virtues can help us to make rational but non-algorithmic decisions under circumstances in which no simple deduction is possible.<sup>45</sup>

#### Aquinas as 'Virtue Theorist'

The stereotypical picture of Aquinas as a natural lawyer does not do justice to his position, but calling attention to the importance of virtue in his thought does not thereby make him a virtue theorist. There are a

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<sup>43</sup> Joseph Boyle, "Natural Law and the Ethics of Traditions," in Robert P. George, ed. *Natural Law Theory: Contemporary Essays* (Oxford: Clarendon Press, 1994), p. 14.

<sup>44</sup> *Ibid.*

<sup>45</sup> See e.g., *ST* I-II.95.2c.



growing number of interpreters who wish to take this additional step. Perhaps the clearest representative of this position is Daniel Nelson's *The Priority of Prudence*. In Nelson's view, if Aquinas is a natural lawyer, then interest in his moral philosophy cannot be anything more than antiquarian nostalgia:

. . . even though natural law continues to figure in legal theory. . . its force as a coherent and identifiable moral and political doctrine has long been spent. Its claim as a compelling philosophical theory is understood, at least by most professional philosophers, to have been refuted. . . .<sup>46</sup>

According to Nelson, the tradition has seriously misread Aquinas. Recasting him as a virtue theorist will provide an alternative to those in Catholic moral theology who accept the repudiation of natural law theory, but who do not wish to become proportionalists.<sup>47</sup> Rendering Aquinas attractive to proportionalist moral theologians suggests just how far in the direction of particularism Nelson is prepared to push his reading of Thomas. For instance, an oft-repeated theme in the book is that virtue theory does not concern itself with universals, which are so abstract as to be of little or no value.<sup>48</sup>

Nelson's rehabilitation of Aquinas as a modern virtue ethicist is fraught with important difficulties, including textual obstacles that provide counterexamples to his thesis. He attempts to explain each of these away as insubstantial, using several different strategies: 1) he argues that natural law theory is an insignificant part of Aquinas' overall theory, having no essential epistemological role to play; 2) he argues that it merely serves as an explanatory device and not as a tool for guiding action; and 3) in at least one case, Nelson concludes that Aquinas occasionally lapses into use of stereotypical natural law talk.

In opposition to the deductive model of practical reasoning, Nelson stresses that for Aquinas moral judgment depends upon the experience of particular circumstances. Prudence looks to the singular, not to

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<sup>46</sup> Nelson, p. 8, also pp. 130-131.

<sup>47</sup> *Ibid.*, pp. 133-134.

<sup>48</sup> *Ibid.*, pp. 144-145, 46, 59, 72, 98, 100, 103.

universal principles.<sup>49</sup> Thomas does assert that prudence regards both the universal and the particular, and that it depends upon first principles. Nelson's strategy is to argue that this dependence is really of very little significance for Thomas.<sup>50</sup> As evidence for this claim, he points out that Aquinas does not offer an extensive treatment of how one is to reason from the first principles of the natural law to secondary precepts. Nelson argues that this explanation is lacking in Aquinas because Aquinas thinks it is, in principle, impossible to make this transition. The first principles of the natural law serve not as action-guiding postulates, but as an explanatory device for the structure of practical reasoning.<sup>51</sup> This provides a convenient way to dispose of the most serious textual obstacle to Nelson's position: Aquinas' repeated use of the natural *habitus* of *synderesis* in relation to prudence and practical reasoning. He argues that the general principles held by *synderesis*:

. . . are so abstract and general that they are devoid of any meaning except that which they receive in conjunction with the operation of the cardinal virtues under the direction of prudence. . . . Natural law plays no significant epistemic function in making practical moral determinations.<sup>52</sup>

This line of argument allows Nelson to build a barrier between prudence's ability to see the moral qualities of particular acts and the natural law's provision of universal principles, which is not unlike McDowell's "uncodifiability thesis." Nelson concludes that Aquinas' use of natural law language may have some explanatory theological significance, but it adds nothing of importance to his virtue ethics.

### Aquinas: Beyond Contemporary Virtue Theory

There are two lines of argument that militate against the acceptance of Nelson's particular categorization of Aquinas as a virtue theorist: 1) internal evidence in the text offers some important counterexamples,

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<sup>49</sup> *Ibid.*, pp. 144-145, et alia.

<sup>50</sup> *Ibid.*, pp. 144-145, 96-97.

<sup>51</sup> *Ibid.*, pp. 96-97, 144-145.

<sup>52</sup> *Ibid.*, pp. 144-145.

and 2) saddling Aquinas with a virtue theory that embraces moral particularism and excludes the appeal to substantive moral principles faces significant theoretical difficulties. It is beyond the scope of the present analysis to give a detailed treatment of the latter arguments, so a brief enumeration of a few of them must suffice.

First, virtue theories are unable to meet the very challenge they pose against principle-based theories, namely, that the latter cannot eliminate irreconcilable moral disagreements, which are a common feature of modern ethical discourse. Virtue theorists are fond of pointing to the inability of consequentialism and deontology to resolve substantive moral disputes in order to guide action, because of the conflicting nature of the conclusions their principles entail. Many virtue theorists, however, embrace particularism and eschew transcendent moral principles in favor of prudential perception. Because of this, they lack the tools necessary to solve disagreements about virtuous perceptions, and are thus in no better position than their principle-based counterparts.

Second, Nelson's particularist interpretation of virtue theory leaves no room for a category of intolerable acts. Even virtue theorists such as Alasdair MacIntyre have come to recognize the need for such a category. Nelson's attribution of a position equivalent to McDowell's uncodifiability thesis to Aquinas is inconsistent with an account of universal moral absolutes, something that Aquinas clearly considers important.

Third, without a substantive distinction between exceptionless moral absolutes and the full requirements of virtue, it is impossible to deploy a political theory based upon the virtues that fixes concrete limits upon legislative authority and state power.

In addition to these general theoretical problems, Nelson's attempt to discount the importance of natural law in Aquinas faces some stubborn textual counterexamples. Two kinds of textual evidence militate against Nelson's view. First, Aquinas' conception of virtue cannot be separated from that of fundamental practical principles, and second, there is substantial evidence to indicate that he thinks the natural law provides a concrete source for the guidance of action.

With regard to the first point, Thomas makes numerous references to the natural *habitus* of *synderesis* which contains indemonstrable

practical principles. He argues that the principles contained by *synderesis*, and indeed all the fundamental principles of the natural law, are formulable propositional realities.<sup>53</sup> Whatever else we may think about the relationship between fundamental natural law principles and concrete moral choices, this is incompatible with the uncodifiability thesis. Aquinas also maintains that there is a close relationship between principles and virtues, especially the virtue of prudence. For Aquinas, prudence provides the central link between intellectual and moral virtue.<sup>54</sup> Significantly though, he ties prudence to the virtue of understanding, and thus to the *habitus* of fundamental practical principles, noting that prudence must proceed both by universal and by particular knowledge. In a similar discussion of the same virtue in the treatise on prudence in the *Secunda secundae* (47.6), Aquinas directly references *synderesis*, arguing that it is *synderesis* not prudence that appoints the end to the moral virtues. Frequently, one finds that Aquinas refers to the central importance of principles when it comes to the exercise of practical wisdom. The virtue theorist may be tempted to dismiss these references. Nelson suggests that natural law principles exercise a purely formal role here, like the principle of non-contradiction, but it should be noted both that Aquinas often gives examples of syllogisms of prudence and conscience and that he offers general norms or principles which exercise a concrete action-guiding role.

Within Aquinas' treatment of the natural law, there are many further indications that he regards virtues and principles as intertwined, with principles having a meaningful role to play in the guidance of action. First, there is his general conception of law and the hierarchy of the forms of law, which has important implications for his political philosophy. While Nelson asserts that the dependence of the human law upon the natural law merely serves as an explanation for the existence of human agreement, for Aquinas the natural law

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<sup>53</sup> See *ST I-II.94.1c*.

<sup>54</sup> See *ST I-II.58.4*.

provides a means both for explaining agreement and for securing it.<sup>55</sup> The determination of justice requires the exercise of political prudence, but there are concrete norms of respect for human persons that can be formulated and derived from the fundamental principles of the natural law. Questions 94.4 and 95.2, for example, in the *Prima secundae*, contemplate definite limitations in the process of descent from universal principles to individual choices. At the same time, however, they postulate certain transcendent moral absolutes that concretely guide action. Those action-guiding principles are captured, according to Aquinas, in the principles of the Decalogue.

In Question 95.2, for instance, Aquinas asks whether every human law is derived from the natural law. In responding to this question, he draws a distinction. Some human laws are derived from the natural law as conclusions from their proper premises, i.e., syllogistically. Others are specifications of the general principles, requiring the exercise of political prudence. Much of the substance of moral and political life is determined in the latter way, for, as Aquinas notes in Question 94.4, the more we descend to matters of detail, the more the general principles cannot be embodied in particular circumstances.

It is evident that Aquinas thinks there is a place in the moral life both for deductive reasoning and rational but non-deductive choices guided by virtuous habits. The former possibility is untenable for contemporary virtue ethicists such as Nelson, since it maintains the necessity and truth of the general principles of the natural law.

The conflict between contemporary virtue theory and Aquinas' conception of practical reasoning is significant. His discussion of murder provides an illustrative example: the prohibition against intentional killing is derived as a proper conclusion from the principle that one should do no harm.<sup>56</sup> The latter principle Aquinas takes to be a proximate negative corollary of his first principle of practical reason. In other words, do no harm is a *per se nota* first principle of the natural

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<sup>55</sup> ST I-II.95.2c, for example, argues that the negative universal moral absolute regarding the prohibition of murder can be derived from the general principles of the natural law.

<sup>56</sup> ST I-II.95.2c.

law. He offers the same analysis of the precept against intentional killing in his discussion of the Ten Commandments.<sup>57</sup> The parallel treatment is noteworthy because he asserts that the precepts of the Decalogue are essentially the minimal specific content of the natural law. In discussion the Old Law, he draws a distinction between those principles which are absolutely required as preconditions of the moral life and those which conduce to the "well-being of perfect virtue."<sup>58</sup> The precepts of the Decalogue fall into the former class. They can and should be known by everyone since they are deducible directly from the first indemonstrable principles. They are also contained in divine revelation because of the fallibility of human nature in its fallen state. It is interesting to note that Aquinas restricts himself to the formulation of a certain small number of negative moral absolutes. The rest of the moral life is not amenable to this deductive procedure. Although the number of precepts is limited and their content is negative, they are nevertheless transcendent, exceptionless and action-guiding moral norms. Aquinas could not have discounted the importance of the Decalogue for the guidance of concrete moral choices. It was and is a critical Christian tool for the examination of conscience.

From this analysis, we can draw the following preliminary conclusions. Virtue theorists have pointed out correctly that not enough attention has been given to the centrality of the virtues in Aquinas' moral philosophy. Nevertheless, the anti-theoretical and particularist bent of contemporary virtue ethics is inconsistent with Aquinas' own version of the interrelation between virtues and principles. Despite the irreducible role that virtues play in the practical judgment process, Aquinas simultaneously maintains the deductive structure of natural law theory, especially for certain negative moral absolutes that define minimal universal standards for just human conduct.

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<sup>57</sup> See ST I-II.100.1,3; I-II.99.2.

<sup>58</sup> ST I-II.100.2c.

### Virtue Theory and the Limits of Political Authority

There are numerous lessons to be learned from the debate concerning whether Aquinas should be classified as a 'virtue theorist' or as a 'natural lawyer.' The first of these is that contemporary categories provide a sort of artificial dichotomy. The virtues have an irreducible role to play in his moral theory, but so do deductive reasoning, general principles and exceptionless moral norms. While this conclusion may disappoint virtue ethicists who endorse moral particularism, it provides Aquinas with a foundation to address the contemporary struggle between liberal and communitarian theorists over the limits of political authority and the nature of the common good.

Like his ethics, Aquinas' political theory cannot be classified neatly into one or the other competing camps. As an Aristotelian, he recognizes the political need to foster civic virtue and the common good, which runs contrary to procedural conceptions of justice and efforts to separate the specification of the right from the human good. Communitarians such as Alasdair MacIntyre, Richard Taylor and Michael Sandel have rightly pointed out the poverty of the liberal conception of the 'unencumbered self' and the procedural state. On the other hand, liberal political theorists wisely express reservations about investing the state with too much authority over the conception and pursuit of the good.<sup>59</sup> This is especially true of modern societies, which are more heterogeneous than their pre-modern counterparts.

Aquinas' position represents a compelling middle ground, offering to communitarianism a substantive theory of the good in terms of which justice must be defined and implemented, and offering to liberal political theory normative limits upon political authority. The boundaries of law and government are fixed largely by certain negative norms restraining external acts contrary to justice, which human positive law is especially suited for, given its coercive structure.<sup>60</sup> These negative norms provide moral absolutes, and they depend upon

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<sup>59</sup> See e.g., Kymlicka, ch. 6, pp. 238ff.

<sup>60</sup> See ST II-II.79.2c; also John Finnis, *Aquinas: Moral, Political and Legal Theory* (Oxford: Oxford University Press, 1998), p. 170.

elements of natural law theory that have been shown to be integral to Aquinas' position. While offering a substantive approach to the common good, Aquinas is therefore able to meet the objections of liberal theorists against perfectionism in political theory.

In order to elucidate this dimension of Aquinas' thought, one must look briefly at his account of the limits on law and government. John Finnis' seminal work on Aquinas' political theory is helpful for this task. Finnis argues that Aquinas carefully limits political authority. He is correct about this point, but he also maintains that these limits render the specifically political dimension of the common good instrumental. Human positive law, despite apparent evidence to the contrary, neither directly instantiates a basic good nor intends the fullness of human virtue in citizens. Finnis concludes that Aquinas' conception of the role of the state in securing the common good is essentially no different from that of John Stuart Mill's position in *On Liberty*.<sup>61</sup> In contrast to Finnis' conclusion, Aquinas' normative limits on political authority are consistent with the state intending that citizens achieve the fullness of natural and supernatural goodness. For Aquinas, law and government must intend certain ends which they are not sufficient or competent to produce without cooperation. Just as human nature is not capable of its true end without the cooperation of grace perfecting nature, so too the law can intend mediately what it cannot produce immediately.<sup>62</sup>

There is an apparent difficulty with this thesis. Communitarians, such as MacIntyre and Sandel, who claim Aristotle and Aquinas as their intellectual compatriots, hold that rational agreement about moral principles presupposes a substantive shared conception of the human good.<sup>63</sup> Furthermore, there is textual evidence to indicate that Aquinas, following Aristotle, conceived of the appropriate goal of the state as the

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<sup>61</sup> Finnis, *Aquinas*, p. 228.

<sup>62</sup> See *ST I-II.5.5*, *ST I-II.96.3*.

<sup>63</sup> I do not mean to assert that MacIntyre and Sandel are proponents of forms of communitarian political theory that cannot respond to the liberal objections concerning the limits of legislative and governmental authority. It is beyond the scope of this paper to adjudicate that debate. See Alasdair MacIntyre, "The Privatization of the Good," in *Review of Politics*, 52:1990, pp. 344-361.



production of virtuous citizens. If that is so, there would appear to be no intrinsic *theoretical* limits on what the state should do legislatively in order to produce that end. In order to demonstrate that Aquinas' views do not have these more radical communitarian implications, we should consider passages that appear to support a more radically unlimited conception of the state.

The most appropriate place to start is the "Treatise on Law" in the *Prima secundae* of the *Summa theologiae*. At the beginning of the treatise, Aquinas asks whether law in general should always be ordained to the common good (*bonum commune*).<sup>64</sup> Having established that it is a directive of practical reason (a1) and that the first principle in practical matters is the final end, he argues that law should concern principally the direction (*respiciat ordinem*) of activity toward the final end of happiness (a2c). Borrowing an analogy concerning parts and wholes from Aristotle, Thomas argues that the individual person is properly considered a part of the *communitas perfecta*, so that law should concern communal happiness (*felicitem communem*). It is worth noting that he uses the more specific term *felicitas* to indicate the end of the state rather than the common term good (*bonum*), leaving no doubt as to the relation of law to happiness, which includes the fullness of virtue. Of course, there is room to argue that just what it means to '*respiciat ordinem*' is open to interpretation, but the plain sense of the text is hard to ignore in the absence of further considerations.

As if to add further strength to the assertion of the previous passage, Aquinas maintains in *ST I-II.92.1* that it is an effect of law to make human beings good. He argues that if the legislator is virtuous and well-intentioned in accordance with the direction of divine justice, then the effect of law will be to bring its subjects to goodness *simpliciter*.

The overall sense of the argument in *ST I-II.92.1* is, however, not an unequivocal endorsement of communitarian perfectionism. Aquinas notes that sometimes law habituates persons to virtue through coercion and fear of punishment, rather than through the production of internally virtuous dispositions. He grants that it is enough for the procurement of the common good that those who are not rulers be

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<sup>64</sup> *ST I-II.90.2*.

merely obedient to the command of the law, presumably through fear of punishment rather than through an internal disposition to virtuous action. Thus, the law's direction to perfect virtue is in most cases more or less indirect. There are, at least, practical limits upon what states and rulers can reasonably expect of citizens in terms of virtuous conduct.

Another passage that appears to present the strongest case for the more radical communitarian reading of Aquinas is found in the *De regno*.<sup>65</sup> Aquinas' treatment of the office of the king is, by Finnis' own admission, one of the most difficult to square with his conclusion that the specifically political common good is instrumental. St. Thomas speaks of the purpose of law and government as to induce virtue and direct citizens toward happiness.<sup>66</sup> The language of the passage is most explicit in giving to the ruler not only the responsibility of directing citizens toward the imperfect happiness attainable in this life, but also toward eternal happiness.<sup>67</sup>

The passage is, however, in need of interpretation. Aquinas says that the ruler should promote the good life of the community in such a way as to make it *suitable for* (*congruit*) heavenly beatitude and should command those things that *lead to* (*du*) this goal. The sense of 'making life suitable for' and 'leading to' beatitude could well be interpreted instrumentally. Finnis points out that Aquinas offers an apparently instrumental analogy: The king is like the armorer who fashions an instrument so that a soldier can fight well.<sup>68</sup> But we must recall the point of that analogy. Aquinas is not comparing the instrumentality of the political community to the attainment of human virtue, but the attainment of human virtue as instrumental to the attainment of heavenly beatitude. If the analogy is meant to show that the actions of the political community aim only at a strictly instrumental good, then it will thereby diminish the intrinsic value of the attainment of happiness in this life as well. Furthermore, the strictly instrumental

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<sup>65</sup> Finnis, *Aquinas*, p. 228.

<sup>66</sup> *De Regno* 2.4 [1, 15].

<sup>67</sup> *Ibid.*

<sup>68</sup> Finnis, *Aquinas*, pp. 231, 182.

reading of this passage is still theoretically consistent with arguing that legislators should promote human virtue.

It is certainly true that Aquinas regards the cultivation of human happiness (*felicitas*) as subordinate and instrumental to the attainment of eternal happiness (*beatitudo*), but it is also true that he regards the attainment of human happiness as good in itself. It is an intermediate good. So, it is true that the king cannot have as the immediate object of his actions the production of eternal happiness; nor does it turn out that production of human happiness can be the immediate object of his actions. But this need not rule out that *felicitas* and *beatitudo* are mediately intended by the king with the cooperation of other agencies, including grace. Aquinas says that the king should not only command what conduces to the good life of the community, but that having established that good life, he should also preserve it (*conservet*) and do what he can to make it better (*ad meliora promoveat*).<sup>69</sup> The plain sense of this passage is that the fullness of virtue of the citizens should be a part of the king's intention.

Finnis' responses to this line of argument includes some terminological cautions and an appeal to other passages where Aquinas distinguishes the role of divine and human government. He notes that St. Thomas makes an almost imperceptible shift from speaking of the good life of the multitude, which the king should promote, to speaking of the public good (*bonum publicum*).<sup>70</sup> Aquinas elaborates his explanation of the 'public good' in terms of the transgression of justice (*transgrediendo iustitiam*) and disturbing the peace of others (*aliorum pacem perturbant*).

The terms 'peace' and 'the public good' are significant according to Finnis because they are synonymous with the limited and instrumental role of government, a point he discusses in several places throughout his analysis. One problem with Finnis' argument is that it is difficult to tell whether we should interpret the inclusivity of peace and the *bonum publicum* in terms of the role of the king in the passage or vice versa. Thus, Aquinas could be using *bonum publicum* in a narrow and strictly

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<sup>69</sup> *De Regno* 2.4 [I, 15].

<sup>70</sup> Finnis, *Aquinas*, pp. 230, 181-2.

instrumental sense or in a broader and more inclusive way, depending upon which set of concepts we regard as fixing the scope of the others. The term 'transgression,' on the other hand, is especially significant, since Aquinas associates the sin of transgression (*transgressio*) with a vice opposed to justice that disposes the agent to violate the negative moral absolutes derived from the natural law.

The term 'transgression' has been transferred from bodily movements to moral acts. Literally, someone is said to 'transgress' who steps across a fixed boundary. The term applies to moral acts insofar as one should not cross the boundary established by negative precepts of the natural law.<sup>71</sup> These negative moral absolutes help to establish the boundaries of limited government and positive law.

There is some uncertainty about the correct interpretation of Aquinas' terminology here, since *transgressio* and *iustitia* have both narrow and technical senses as well as broader less technical meanings. Aquinas indicates that transgression may be taken technically to mean the specific vice which violates negative moral absolutes or more generally to mean any kind of vicious or sinful behavior.<sup>72</sup> Similarly, *iustitia* considered as a general virtue which relates persons to others collectively rather than individually can be considered to include the acts of all the virtues, whether they concern the individual or group good.<sup>73</sup> Furthermore, the text of the passage in *De regno* argues that the king's responsibility is not merely to restrain vicious transgressions, but also to induce virtue and to be solicitous for its improvement. Aquinas maintains that transgressions against justice are a chief impediment to the maintenance of virtue, but he does not restrict the intentionality of the ruler merely to the removal of obstacles or impediments. The very fact that Aquinas mentions both the negative purpose of law to restrain vice and its positive role of inducing virtue suggests that he thinks both roles are appropriate for the ruler. And yet, it is true that he is silent about any positive program for the development of full virtue in the citizens.

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<sup>71</sup> ST II-II.79.2c.

<sup>72</sup> ST II-II.79.2.ad 1.

<sup>73</sup> ST II-II.58.5c.

From these observations we may draw the following conclusions: Finnis correctly emphasizes that the *De regno* calls for a narrower rather than wider scope for the role of law and government in the promotion of virtue. At the same time, the plain sense of these passages requires that we acknowledge Aquinas views the purpose of the legislator not merely in terms of the restraint of vice, especially injustice, but also in terms of the promotion of virtue. Finnis' anti-communitarian claim that, for Aquinas governments are theoretically and practically prohibited from legislating the fullness of human virtue is correct, but we must also reject the view that Aquinas has a merely procedural conception of justice in which the only purpose of government is to protect our liberty to pursue our own conception of the good.<sup>74</sup>

There is some reason to think that Finnis could ultimately concur with this conclusion, despite his bold claim that Aquinas' account is essentially identical to Mill's justice principle. Finnis grants that, for Aquinas, governments have an interest in inculcating virtues other than justice and the internal dispositions which all virtues require, for the sake of the political common good.<sup>75</sup> He also acknowledges a distinction between human law's "requirements" and its "legitimate objectives." He develops this point by differentiating between the good that the political community can attain, namely, complete virtue which is "unlimited," from the good that positive law can mandate and with which it can require persons to comply.<sup>76</sup> Finnis offers a distinction between the role of law and government, and the aims of the social order. He concludes that the "specifically political common good is *limited* and *in a sense* instrumental."<sup>77</sup> Where Aquinas falls on the spectrum between proceduralism and communitarianism for Finnis, therefore, depends greatly upon the "sense" in which the unlimited aspect of the common good can be said to form the deliberations of legislators and be intended by them. Given these qualifications, there is reason to hope that Finnis would ultimately agree with Alasdair

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<sup>74</sup> Finnis, *Aquinas*, p. 182.

<sup>75</sup> *Ibid.*, p. 183.

<sup>76</sup> *Ibid.*, p. 185.

<sup>77</sup> *Ibid.*, p. 187; emphasis added.

MacIntyre's observation that for a Thomistic political theory, "rational agreement on moral rules always presupposes rational agreement on the nature of the human good."<sup>78</sup> We should therefore concur with Finnis' insistence that there must be concrete normative limits upon political authority and state power, while maintaining that this does not require Aquinas to embrace a procedural conception of political life.

### Normative Limitations upon the authority of Human Law

If Aquinas' political theory can articulate a fairly clear account of these limits, it can provide an attractive middle ground between the pitfalls of liberal proceduralism and communitarian perfectionism. As it turns out, Aquinas' retention of the deductive aspects of natural law theory in the form of certain negative moral precepts, alongside his appeal to the importance of *prudentialia*, provides a critical component for his determination of the appropriate limits of political authority. This result should not be altogether surprising since some contemporary interpreters have tended to discount this aspect of his natural law theory in their efforts to label him a virtue ethicist.

This connection between Aquinas' ethics and politics can be articulated very briefly by examining two points: first, his account of the factors limiting the authority of human law, and second, the close connection between these factors and the nature of positive and negative moral precepts.<sup>79</sup> There are many practical limits upon what it is reasonable for governments to legislate. Aquinas suggests two such limits: the need to bring human beings gradually as opposed to suddenly into a virtuous state, and the fact that most human beings, given the present condition of human nature, would be unable to meet the tough standard of full virtue. Thus, he thinks it is unwise for human law to attempt to eradicate completely such vices as excessive drinking and prostitution, even though these constitute vicious moral acts. In some particular political community, it is conceivable that these pragmatic limitations could be set aside. The counsels of perfection

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<sup>78</sup> MacIntyre, "The Privatization of the Good," p. 345.

<sup>79</sup> As Finnis points out, Thomas discusses those limiting factors primarily when differentiating divine law and human law. Finnis, *Aquinas*, p. 183.

applying to the common life of a particular religious order might constitute a case in point for Aquinas.

The primary normative limitation upon positive law, however, comes from the nature of human acts and habits. Human acts involve external performances and internal intentional states. Positive law exercises control over human acts by regulating external behavior through coercion or the threat of coercion. Since human legislators cannot regulate or produce internal dispositions through the threat of external coercion, it is beyond the competence of positive law to judge internal dispositional states. Virtues and vices are habits or internal dispositional states that incline agents to act well or badly. It is therefore beyond the competence of human law to command all the acts of the virtues not only because human beings would have a hard time fulfilling such a demanding request, but also because human law is theoretically incapable of judging anything besides external actions and their consequences.

Since all human actions involve external manifestations and internal intentional states, we may wonder how it is possible for positive law to prohibit any vicious act or to enjoin any virtuous one. Aquinas' answer is that there are certain intolerable acts which should not be done, regardless of the state of mind of the agent. As Finnis has pointed out, Aquinas may lack the modern terminology of natural rights in his philosophical vocabulary, but he does have the concept of certain exceptionless just and unjust external acts which do not depend upon the state of mind of the agent for their character as right or wrong, enjoined or prohibited.<sup>80</sup> The regulation of such external acts belongs to the special competence of human law.

As it turns out, these negative moral absolutes correspond to certain moral norms that Aquinas regards as deducible from the primary principles of the natural law.<sup>81</sup> The negative precepts fix the boundaries that human beings cannot justly cross in the moral life.<sup>82</sup> The difference between negative and positive precepts of the law is fairly clear: the

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<sup>80</sup> See Finnis, *Aquinas*, pp. 137ff.

<sup>81</sup> *Ibid.*, p. 138.

<sup>82</sup> *ST II-II.79.2c.*

negative precepts forbid vicious acts, and the positive precepts enjoin the acts of the various virtues.<sup>83</sup> The negative precepts bind always and in every instance; the positive ones are always binding but not on every occasion.<sup>84</sup> The negative precepts are especially suited to the universal applicability of human law while the fulfillment of positive precepts requires the prudential discernment of the individual moral agent.

### Aquinas: Both Virtue theorist and Natural Lawyer

The foregoing considerations lead us to a substantive conclusion. The contemporary categories of virtue and principle-based ethical theory are inadequate to capture the true nature of Aquinas' moral and political philosophy. Thomas is not merely a 'natural lawyer' in the stereotypical sense of the term. The stereotypical sense of this term is, in fact, a product of the influence of early modern philosophy upon the scholastic tradition of interpreting Aquinas. The notion that Aquinas regards the moral life as fully specifiable in terms of deductions from natural law principles is a caricature of his position. At the same time, the particularist bent of contemporary virtue theorists is contrary to the genuine sense in which Aquinas thinks certain moral conclusions are deducible from the general principles of the natural law. These conclusions are represented by the negative moral absolutes that he associates with the Decalogue. While this result is unacceptable to virtue theorists like John McDowell, who hold that particular moral judgments are uncodifiable, it strengthens Aquinas' ability to offer an account of the virtues that leads to a coherent political theory. His simultaneous focus upon virtues and principles allows him to provide an account of political life that acknowledges the need both for a substantive account of the common good and for principled limits upon the legitimate extent of political authority. Aquinas' account of the virtues thus retains the appropriate unity of *moralis philosophia* in its original sense.

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<sup>83</sup> ST II-II.33.2c.

<sup>84</sup> ST II-II.79.3.ad 3.