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PART I

VIRTUE, LAW, AND THE PROBLEM OF THE  
COMMON GOOD

## 1

## Why Aquinas?

*Reconsidering and Reconceiving the Common Good*

This book began, appropriately enough in view of its topic, in the form of a “disputed question”: what benefit can contemporary political theory gain from engaging Aquinas’s ethical and political thought, most specifically his concept of the common good (*bonum commune*)? From this “focal question,” again appropriately enough, a number of related queries arose, sometimes from the author herself and sometimes from her colleagues: Why should a book on the political common good focus more centrally on Aquinas than on Aristotle, Aquinas’s mentor after all, and the founder in *Politics* III of common good–centered political theory? How does Aquinas navigate a key problem that seems intrinsic to the very concept of the common good, namely, how to give priority to the common good in social and civic life without undercutting or alienating the goods of individual persons? What for Aquinas is the nexus point of personal and civic flourishing, and how can locating and understanding that link alleviate the tension between personal and communal happiness?<sup>1</sup> Finally, what about the religious or theological nature of most of Aquinas’s works? Doesn’t that limit their theoretical significance and restrict their credibility for most scholars today? Doesn’t Aquinas’s theological emphasis imply that only a closed community of Christian or even Catholic believers can identify with his thought, especially when it deviates from Aristotle’s hard-headed philosophic reasoning? And if this is so, aren’t

<sup>1</sup> Douglas Kries (2002, 111) has recalled Ernest Fortin’s suggestion that a version of the personal good–common good question constitutes perhaps the central problem for political theory. Compare perhaps the more standard position (also advanced by Kries 1990, 89ff.) that the question of regimes, especially the “best regime,” is primary.

we better off accepting a potentially less complete but nonetheless more tenable account of personal and common goods? Once again, we are back to wondering *why Aquinas*.

The argument I advance in this book finds Aquinas's thought a very useful and perhaps even essential resource for political theorists today, precisely because it delves deeply into the philosophic-anthropologic and ethical foundations of social and civic life, and so better enables us to envision the purposes of politics. On this score I will argue that Aquinas's virtue theory and his legal theory are in key respects more illuminating than Aristotle's path-breaking accounts. Aquinas embarks in part from Aristotle's ethical and political thought, but also from significant problems that arise in it when one considers the full requirements of both the "common" and the "good" aspects of the Aristotelian political telos. Aquinas aims to do justice to both dimensions, or at least to approximate their meaning and demands as closely as possible; in particular, he seems to take the "common" or universal dimension of the common good and its normative implications even more seriously than his philosophic mentor did. This endeavor, I will argue, enables Aquinas to enhance Aristotle's theory of the ethical virtues and to give a fuller description of the common principles and precepts from which our moral reasoning embarks. In doing so, Aquinas offers a probing account of the relation between personal and common goods. He understands both as anchored in the social virtues and ultimately in the natural law, both of which in turn are oriented toward a transpolitical happiness. Awareness that personal and public goods point beyond themselves to something higher can moderate as well as ennoble civic endeavors in this world. The theological dimension of Thomistic theory certainly entails risks,<sup>2</sup> yet I will argue that it also offers significant insights into civic and political life.

In the course of this book I explicate and support this claim, first, by considering at some length the "problem of the common good" in contemporary context, theoretical primarily but also practical; second, by looking more closely at Aquinas's theory of social and civic foundations; third, through theoretical case studies showing the impact of Aquinas's approach on two ethical virtues of particular political import, magnanimity and legal justice; and fourth, by facing objections that Aquinas's common good theory paves the way for a politics of moralizing legislative coercion and religious extremism. In this chapter I begin the first task, exploring some prospects for and problems of the common good

<sup>2</sup> These pitfalls will be treated most extensively in Chapter 9.

in contemporary theory and practice, with special attention devoted to the question “Why Aquinas?” In the chapter’s concluding section I offer a preview of topics and arguments yet to come.

### 1.1 The Promise and Problem of the Common Good: Contemporary Experience and Classical Articulation

In recent years, the concept of the common good and the reality it purports to signify have been experienced on the one hand as a deep desire, perhaps even a need, yet on the other as an insurmountable difficulty. This is so, it seems to me, on many fronts: domestically, in U.S. civic life and culture; globally, in international relations and world politics; and philosophically, in many diverse contemporary political theories including some important Anglo-American analytical thought. On the home front, the common good has increasingly been seen as an apt counterbalance to what many consider an excessive or overly exclusive emphasis on individual rights. Yet concerns remain that concepts of the common good, especially if they comprise concrete ethical norms and substantive accounts of human goods and virtues, are inextricably bound up with particular religious convictions that have no place in the civic forum of a liberal democracy. Current debates over the legitimacy of government support for “faith-based” social service initiatives and filibusters blocking judicial appointments on account of controversial religious and ethical convictions are but two cases in point. Can any polity buttressed by a “wall of separation” between church and state be guided by considerations of common good(s)?

Analogues of these features of the American political scene appear, *mutatis mutandis*, across the global political landscape and in the realm of international relations. Particularistic communal memories of insult and humiliation or of triumph and ascendancy; practices indigenous to one people but foreign and even offensive to others; violence on account of (or under the pretense of) a given religion over and against its rivals: these are all too familiar features of the post-Cold War era. In this context a crucial question arises: does there exist or could there ever exist a common good of universally human appeal, at once open and amenable to religious belief (a social fact even in its “thick” or traditional varieties that shows no sign of withering away) and resistant, at least in principle, to cooption for intolerance and oppression? A related inquiry must be whether theological theory and religious practice can contribute in any way to the development of a humane, philosophic common good

theory capable of speaking and resonating across confessional borders to persons of good will?

Finally, common good theory faces the difficulty that utilitarianism in its various instantiations currently constitutes the reigning paradigm for approaches to political science that are explicitly teleological and seek a common good or, as Rawls and others would have it, a “dominant end.”<sup>3</sup> So, for example, even the Thomistically inclined analytic philosopher John Finnis commences a chapter section on “The Common Good” by noting: “Confronted by the term ‘the common good,’ one is first inclined to think of the utilitarian ‘greatest good for the greatest number,’” and therefore to reject common good theory out of hand (Finnis 1980, 154). This identification, as Finnis also notes, oversimplifies the situation considerably and gives a bad name to alternative common good theories such as Aristotle’s and Aquinas’s. Nevertheless, it also seems true that critiques of utilitarian theory raise critical questions that any common good theory must somehow address. In the following two sections I will elaborate briefly upon these windows into the promise and the problem of the common good: individual rights, religion, and the “realism” reflected in assigning utilitarianism the status of “focal meaning” for common good theory.

### *Rights Rhetoric and the Promise of the Common Good*

Despite the many philosophic attacks the past two centuries have witnessed on the notion of natural or individual rights, the belief in and focus on these rights have continued to dominate civic life and discourse in the United States. Many contemporary critics of rights acknowledge an aura of greatness about them: Robert Kraynak, for instance, writes without irony that rights “are noble and glorious when used against tyranny and oppression” (Kraynak 2001a, 16). In Kraynak’s words one hears echoes of Alexis de Tocqueville’s praise in *Democracy in America* for the concept of rights. No friend of democratic individualism, Tocqueville nonetheless gives “the idea of rights” a prominent place among the “real advantages that American society derives from the government of democracy”

<sup>3</sup> For example, Rawls assumes that the “dominant-end theorist” wants “a method of choice which the agent himself can always follow in order to make a rational decision.” This involves three requirements, according to Rawls: “(1) a first-person procedure which is (2) generally applicable and (3) guaranteed to lead to the best result (at least under favorable conditions of information and given the ability to calculate)” (Rawls 1971, 552; 1999, 484). These may be requirements of the utilitarian dominant-end theorist, but they are neither a general nor a necessary feature of teleological, common-good, or dominant-end theory as such.

(Tocqueville 2000, 220, 227–9). He commends the United States for its recognition of the centrality of rights to a great republic, indeed to any free and prosperous people, and in a significant comparison maintains that rights are to political societies what virtue is to individuals:

After the general idea of virtue I know of none more beautiful than that of rights, or rather these two ideas are intermingled. The idea of rights is nothing other than the idea of virtue introduced into the political world.

It is with the idea of rights that men have defined what license and tyranny are. Enlightened by it, each could show himself independent without arrogance and submissive without baseness. . . . There are no great men without virtue; without respect for rights, there is no great people: one can almost say that there is no society; for, what is a union of rational and intelligent beings among whom force is the sole bond? (Tocqueville 2000, 227)<sup>4</sup>

Tocqueville's analysis highlights the way in which the concept of rights ennobles the average citizen even as it undergirds the public welfare. This twofold function reveals the concept's specific excellence or virtue, the outstanding benefit it confers on society by means of the liberal-democratic political form. Rights appear to constitute the nexus point between personal and public good. Perhaps this is what Tocqueville has in mind when he denies that virtue and rights are really discrete ideas. Rights terminology, rights recognition, and rights protection on the part of institutions and officials tend over time to foment an active and engaged citizenry, aware of the stake that each individually has in the welfare of society as a whole. Citizens are cognizant that others' respect for their rights, including and perhaps especially their property rights, depends on their own habitual respect for the rights of others. Moreover, their personal and common interest in upholding rights often impels citizens to take an active part in local public administration and to contribute productively to society and its economy. Tocqueville thus makes a cogent case that at all times, but especially in modern times, when, he argues, ardent, "unreflective" patriotism and religion are on the wane, the universal extension of rights and the effective freedom to exercise them are essential for the public good (see Tocqueville 2000, 227–9).<sup>5</sup>

<sup>4</sup> One might well question the rather reductive options for achieving social and civic cohesion that Tocqueville offers here – either force or rights. In this book we will explore the common good as an alternative or supplemental social bond.

<sup>5</sup> Tocqueville himself adopts, apparently for pragmatic or "realist" reasons, a utilitarian understanding of the public good. It is never fully common; at its best or broadest, it is the greatest good for the greatest number. This conclusion seems to follow from a class-based and Aristotelian regime-based analysis that gives heavy weight to the distinction between rich and poor: see Tocqueville (2000, 223, 230–1).

Yet in recent years, even Tocquevillian social scientists respectful of rights have wondered whether liberal democracies in general and the United States in particular have not overemphasized to their detriment the “beautiful” idea of individual rights. Comparative legal scholar Mary Ann Glendon is one case in point. In *Rights Talk* (1991), Glendon finds that in the United States a near hegemony of rights language in law and politics has crafted a civic discourse dangerously short on the “language of responsibility” and the “dimension of sociality.”<sup>6</sup> Language reflects reality, or at least our perception of reality; yet over time language also helps to mold the reality of our way of life. When one lone concept such as individual rights defines the paradigm of public debate, the conceptual pluralism that makes genuine dialectic possible – and better expresses the manifold nature of shared, social human existence – is effectively barred from the civic forum. Hence the subtitle of Glendon’s book, *The Impoverishment of Political Discourse*, which both reflects and portends the impoverishment of politics.

To balance rights talk and reinvigorate our public life, civic discourse, and capacities for deeper political reflection and meaningful common action, Glendon prescribes a retrieval and robust utilization of relational concepts such as sociality, civic virtue, responsibility, and the general welfare. In this she is joined by a strong contingent of broadly communitarian and civic republican scholars, many of whom are dialogic partners for Glendon in her work: Robert Bellah, Jean Bethke Elshtain, Amitai Etzioni, Christopher Lasch, Michael Sandel, and Charles Taylor. One ethical and political thinker whom Glendon does not cite (perhaps to avoid the appearance of being “positively medieval” to contemporary readers), yet whose theory exemplifies a relational or social conception of humanity together with an emphasis on virtue and the common good, is Thomas Aquinas. A central aim of this book is to help reinsert Aquinas into contemporary debates in political theory, to explore various ways we might enrich our political-philosophic discourse with conceptual resources drawn from his works.<sup>7</sup>

<sup>6</sup> From an explicitly “Thomistic Aristotelian” vantage point, Alasdair MacIntyre (1990b) develops a similar line of argument, albeit one far less friendly than Glendon’s to the aspirations of liberalism.

<sup>7</sup> In this I join the efforts of Edward Goerner (1965, 1979, 1996 with Thompson), John Haldane (1999), and Russell Hittinger (1994, 2003), among many others. Alasdair MacIntyre (1988a, 1990a, 1999) and Ralph McInerny (1961, 1988, 1990) have, of course, engaged in a parallel task in moral philosophy, as have John Finnis (1980, 1985, 1998a, 1998b) and Robert George (1989, 1993, 1999) in legal theory and constitutional scholarship. The relevance of their writings to political thought happily attests to the continued viability, indeed the vitality, of interdisciplinary scholarship.

*Religion, Realism, and the Problem of the Common Good*

An ideal counterbalance to rights talk is arguably the concept and discourse of the common good. Rights highlight the particular, irreducible claims of individuals over and against one another and against unjustifiable encroachments from society as a whole or its government. Rights delineate what is the proper, inalienable possession of each. They have their basis in our separate selves, particularized by what Michael Sandel has termed our “common-sense” apprehension of “the bodily bounds between individual human beings” (Sandel 1982, 80). Rights often point us back to a prepolitical and even a presocial state of human existence, conveying to us that we are autonomous self-owners before we enter by contract or convention into society, whether matrimonial, associational, civil, or political.

By contrast, the concept of the common good reflects and relates an ethos of communicability, relation, shared practices and benefits, and responsibility. Where rights references may *prima facie* prompt citizens in election years to wonder whether they are “better off today than [they] were four years ago,” concern for the common good elicits rhetoric along the lines of “ask not what your country can do for you, [but] what you can do for your country.” The concept of the common good is most at home in theoretical paradigms of teleology, natural sociability, and natural orientation toward participation in political community. It reminds persons of the claims of ties that bind as well as of the importance of moral and civic virtue for personal flourishing and societal welfare. Rights highlight the *e pluribus*, the common good, the *unum* of our social and civic fabric. In intellectual, cultural, and civic environments marked by fragmentation and moral dissension, the time would seem ripe for a fresh study of theorists such as Aquinas, whose ethics and politics give pride of place to the common good. As Tocqueville wrote of the study of Greek and Latin literature in modern liberal democracies, an open-minded engagement with Aquinas’s thought may well help “prop us up on the side where we lean” (Tocqueville 2000, 452).

Yet if the effect of rights rhetoric in the “Natural Rights Republic”<sup>8</sup> makes a practically persuasive case for the *promise* of “common good talk” as a moderating and ennobling counterbalance, consideration of what are increasingly regarded as the two most likely sources of common good theory reveals rather the *problematic* nature of the concept. I refer to religion on the one hand and utilitarian social theory on the other.

<sup>8</sup> The phrase is Michael Zuckert’s (see Zuckert 1996).



*Religion*

There is a powerful tendency in contemporary political thought as well as American constitutional jurisprudence to equate any countercultural moral argument or substantive view of human good or goods articulated by a religious believer in the public square with “religious reasons” and “faith-based values” (cf. Hittinger 2003). We are constantly on our guard against the cooption of our political institutions and legislation to support particularistic religious convictions or to foist the religious morals of some citizens on the body politic at large. In an age of ethical skepticism and no more than “weak ontology,”<sup>9</sup> many secular denizens of liberal democracies assume that only religious faith underlies strong moral conviction. Many religious believers appear to concur, adopting fideist accounts of belief *sans-raison* and having recourse to the general will of, for instance, a “Christian America” to legitimately and democratically legislate substantive morals in accord with divinely revealed law. Where virtues facilitating and instantiating moral goods are at the center of a vision of the common good and legislation acts as its privileged articulator and instrument, rights and reason supporters suspect theocratic encroachment on their most cherished freedoms.

If any government in recent years has embodied our worst nightmare of religious regimes governing for virtue, law, and the common good, it is the Taliban regime that formerly ruled in Afghanistan. Scholars of my generation and earlier will recall the old Soviet times when almost any resister of expanding Marxism and politically enforced atheism looked good to us. A decade or two later, however, the more naive among us had a rude awakening to discover that once in power, the ruling elite from among the former coalition of “freedom fighters” systematically assaulted the freedoms of women and of political and religious dissenters. They used their hard-earned autonomy to harbor terrorists who periodically destroyed the freedoms and the very lives of others in fell blasts. And they did all this purportedly in the name of religion and the view of virtue and the public good that they understood their faith to profess.

The Taliban’s institutional structure included what is in modern times, and even in ancient times if one takes Aristotle’s account of regimes in *Politics* II and III to be revealing, a most original department: the Ministry for the Prevention of Vice and the Promotion of Virtue (hereafter the Vice and Virtue Ministry). This branch of government had its own

<sup>9</sup> See White (2000) for a defense of “weak ontology” as a viable approach to political theory.

police department for morals-enforcement purposes. Offenses policed against included women going unveiled or unescorted in public, but also men sporting no beard or longish hair and couples holding hands. Shortly before the U.S.-led invasion of Afghanistan, the world was aghast to hear of the Virtue and Vice Ministry's proposal that a law be enacted requiring non-Muslim Afghans to wear an identifying mark on their garments. According to government officials, this measure was meant to protect the Hindu population, Afghanistan's largest religious minority, from harassment for noncompliance with legal norms applying only to Muslims, such as mandatory beards for men. Memories of the Star of David measure in Nazi-occupied Europe half a century earlier, however, led to an international outcry. Afghan laws did permit non-Muslims to live in peace among their Muslim neighbors; however, at least since January 2001, they strictly prohibited any form of proselytism among Muslims; attempting to spread the Christian faith or (for Afghan citizens) converting from Islam to Christianity carried the penalty of death.<sup>10</sup> Citizens were forbidden by law to visit the homes of foreigners residing in their midst.

As shocking as these revolutionary political returns to religious law and penal practices in Islamic states seem to us liberal Westerners, in many respects they call to mind aspects of the United States' own theological-political origins. As Tocqueville notes early in *Democracy in America*, the Puritan pilgrims who founded the New England colonies often categorically denied to others the religious liberty they themselves had demanded in the mother country. Some colonies enacted strict religious "morals legislation" and penal codes with precepts modeled on those of the Mosaic Law. Tocqueville notes that mores in the New World were mild and the often-allowed death penalty was relatively rarely imposed; but regarding minor social offenses, "mores were still more austere and more puritanical than the laws. At the date of 1649, one sees a solemn association being

<sup>10</sup> The demise of the Taliban did not completely wipe out this sort of religion and morals policing for the public good, both within and without Afghanistan. In June 2003, for instance, the North West Frontier Province in Pakistan passed a bill introducing Islamic law (*sharia*) into their legal code and created yet another Vice and Virtue Ministry with a similar mandate to the Afghan experiment (see "Islamists impose Taliban-type morals monitors," *The Daily Telegraph*, June 3, 2003). Saudi Arabia and Iran have "morality police" forces with equivalent mandates (for a critical report on the Saudi Arabia morality police, see "Frederick's of Riyadh," *The New York Times*, November 10, 2002). Article 3 of the Iranian Constitution declares that one of the goals of the Iranian government is "the creation of a favorable environment for the growth of moral virtues based on faith and piety and the struggle against all forms of vice and corruption."