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Revisiting Human Law's Capacity to Cultivate Moral Virtue

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Abstract

This article offers a new perspective on the topic of human-made law's capacity to cultivate moral virtue by focusing on two questions. First, is cultivating an individual's virtue part of the goal of law or only a concomitant effect? Secondly, can our laws play a constructive role in fostering virtues beyond discouraging vices? To the first question, I will intervene in the debate between John Finnis and his interlocutors over the nature of the common good. To the second question, I will show how human law can contribute to key aspects of growth in virtue and thereby poise us to develop habits.

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This article seeks to offer a new perspective on the topic of human-made law's capacity to cultivate virtue by focusing on two questions. First, is cultivating an individual's moral virtue part of the goal of law, or is it a concomitant effect of it? Secondly, do our laws only instruct us in virtue by means of withdrawing us from undue pleasures, or can they play a more constructive role in fostering virtue? In exploring the link between legislation and ethical formation, the issue of laws that are felt to explicitly "legislate morality" and center on cultural debates that stoke polarization will not take center stage. Rather, my interest here is in discerning how legislation governing what we consider the more mundane aspects of life—the rules of the road, checking out at the store, taking a sick day—impart some measure of moral formation to us. Additionally, this paper will limit its analysis to growth in moral virtue, and leave the question of growth in infused virtue to the side. Thus, references to "virtue" should be understood as referring to moral virtue.

The topic of human law's ability to cultivate virtue is a perennial one. Yet, returning to this question of human law's influence is an important task for reasons emerging from within Thomistic scholarship itself as well as for reasons arising from

the wider field of Christian ethics and even beyond. Within Thomistic scholarship, there are at least three reasons to revisit the question.

First, Aquinas, following Aristotle, believes that different regimes, or types of government, require different measures of virtue from citizens. That is, the virtue of “the good citizen” may or may not be the virtue of “the good man” depending upon the governing responsibilities of the citizens in a particular regime. These differences result in more or less commonality between the virtue expected of rulers and that expected of citizens. Furthermore, Aquinas indicates that this distinction is relevant to the question of whether individuals’ virtue is a part of the common good. However, this distinction has yet to be appreciated in the debate over whether individual virtue constitutes any part of the final end of law. Attending to this distinction reveals a new configuration of the relationship between individual and common goods.

Secondly, a contemporary revival of interest in Aquinas on habit, virtue, and grace can enable us to speak with greater precision about the contribution that law, as an external force, can make to growth in virtue.¹ Virtue ethicists readily acknowledge that acquisition of virtuous habits depends not only on proper external formation but also on what the individual growing in virtue does. That is, the acquisition of virtue always requires the agent’s personal reflection, which includes internalizing paradigms of virtuous action and coming to see virtuous acts and habits as part of a good life as a whole.² This means that sources of formation external to the agent, such as law, can at best play a partial role in growth in virtue. Indeed, law is often described as a *launchpad* for virtue: Scott Roniger speaks of law as “foundational” for virtue and offering excellent “training in and support for virtuous action”.³ Additionally, years ago, Clifford Kossel wrote that “by accustoming people to do the right thing, it is the *hope* of law to lead them to virtue...”.⁴ Yet, can we describe law’s contribution with greater precision? In fact, I want to suggest that, given the above-mentioned recent work on habit formation according to Aquinas, the time is ripe for specifying law’s contribution to the formation of virtuous habits.

Thirdly, reflecting on the state of virtue ethics in the twenty-first century, Thomist scholar Thomas Osborne has stated that, “Perhaps the greatest difficulty for Thomas’ account of the virtues is not the theoretical challenges of contemporary science or philosophy, but the difficulty of thinking about virtuous action in light of our current practices and institutions”.⁵ My arguments here attempt to offer a clear

¹ A. McKay Knobel, *Aquinas and the Infused Moral Virtues* (Notre Dame: University of Notre Dame Press, 2021); W.C. Mattison, *Growing in Virtue* (Washington D.C.: Georgetown University Press, 2023). See also the special issue of *Studies in Christian Ethics* 36, no. 2 (2023).

² J. Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids: Eerdmans, 2005), 198-201.

³ S. Roniger, ‘Virtue without Law? A Problem and Prospect for Virtue Ethics’, in: E. Grimi (ed.), *Virtue Ethics: Retrospect and Prospect* (Cham: Springer, 2019), 130, 125.

⁴ C.G. Kossel, ‘Natural Law and Human Law (Ia IIae, qq. 90-97)’, in S.J. Pope (ed.), *The Ethics of Aquinas* (Washington D.C.: Georgetown University Press, 2002), 180.

⁵ T. Osborne Jr., ‘Thomas Aquinas on Virtue: Directions for Future Inquiry’, in: *The Thomist* 88, no. 1 (January 2024), 123.

articulation of how virtuous action is encouraged by the institution of laws governing our society.

Reasons for revisiting these questions of how law fosters virtuous habits emerge beyond Thomistic circles as well. Within the wider field Christian ethics, the impression of law as primarily coercive still has traction today: not long ago, Christian ethicist Cathleen Kaveny accused “much contemporary political theology” of speaking inaccurately about law in three particular ways. For our purposes, it is necessary only to single out one of these misconceptions, namely, that, “[law’s] main purpose is to coerce persons to act against their will, rather than help coordinate their actions to help them achieve their objectives”.⁶ What is more, understanding the law’s capacity for virtue can contribute to the increasing literature from Christian ethicists that seeks to articulate, a model for Christian political engagement, by offering a note of hope regarding the law’s capacity to train us in virtue.⁷

Additionally, the last several decades have witnessed a renewed interest in accounting for law’s influence among legal scholars as well as experts working at the intersection of law and psychology.⁸ Finally, contemporary political theorists such as Danielle Allen and Martha Nussbaum have argued not only that democratic societies need skills that notably resemble the civic virtues of piety, prudence, honor, and similar virtues, but also that public institutions should contribute to the cultivation of these emotional and intellectual abilities.⁹ Both Allen and Nussbaum, interestingly, are critical of the eminent political philosopher John Rawls insofar as they believe societies need citizens who possess, not simply “political virtues” which enable individuals to perform well roles specified by political institutions, but rather skills that shape an individuals’ pursuit of the good life, which also foster good citizenship.¹⁰

⁶ C. Kaveny, ‘The Role of Law in Creating Public Space for Religious Diversity’, in: *Political Theology* 21-4 (2020), 381.

⁷ E. Rain Kincaid, *Law from Below: How the Thought of Francisco Suarez, SJ Can Renew Contemporary Legal Engagement* (Washington D.C.: Georgetown University Press, 2024); K. Craycraft, *Citizens Yet Strangers: Living Authentically Catholic in a Divided America* (Huntington: Our Sunday Visitor, 2024); L. Lado, ‘Toward a Spirituality of Politics’, in: *Theological Studies* 84-2 (2023), 198-211; D. Van Drunen, *Politics after Christendom: Political Theology in a Fractured World* (Grand Rapids: Zondervan Academic, 2020); B. Burroughs, *Christianity, Politics, and the Predicament of Evil: A Constructive Theological Ethic of Soulcraft and Statecraft* (Lanham: Rowman & Littlefield, 2019); J. Bowlin, *Tolerance among the Virtues* (Princeton: Princeton University Press, 2016); T.J. Bushlack, *Politics for a Pilgrim Church: A Thomistic Theory of Civic Virtue* (Grand Rapids: Eerdmans, 2015).

⁸ See M. Moreland, ‘Friendship as the Primary Purpose of Law’, in: *The American Journal of Jurisprudence* 67-2 (2022), 279–292; J. Witte, M. Welker (eds.), *The Impact of the Law: On Character Formation, Ethical Education, and the Communication of Values in Late Modern Pluralistic Societies* (Eugene: Wipf and Stock Publishers, 2021); A. Fine, B. van Rooij, *The Behavioral Code: The Hidden Ways the Law Makes Us Better or Worse* (New York: Beacon Press, 2021); Y. Feldman, *The Law of Good People: Challenging States’ Ability to Regulate Human Behavior* (New York: Cambridge University Press, 2018); K. Brownlee, R. Child, ‘Can the Law Help Us to Be Moral?’, in: *Jurisprudence* 9-1 (2018), 31–46; L. Friedman, *Impact: How Law Affects Behavior* (Cambridge MA: Harvard University Press, 2016); C. Kaveny, *Law’s Virtues: Fostering Autonomy and Solidarity in American Society* (Washington D.C.: Georgetown University Press, 2012).

⁹ D. Allen, *Justice by Means of Democracy* (Chicago: The University of Chicago Press, 2023); M. Nussbaum, *Political Emotions: Why Love Matters for Justice* (Cambridge, MA: Harvard University Press, 2013).

¹⁰ J. Rawls, ‘The Priority of Right and Ideas of the Good’, in: *Philosophy & Public Affairs* 17-4 (1988), 251–276.

It is possible that these authors would, in some way, endorse the view that law, a mechanism shaping both individual citizens and institutions, should contribute to growth in habits that enable us to pursue the good, that is, virtues.

This article seeks to offer a new perspective on the topic of law's capacity to cultivate virtue by focusing on the two questions raised at the outset. Answering the first question will take the form of intervening in the debate between the noted legal philosopher John Finnis and several of his interlocutors over the relation between the common good and individual virtue to argue that individual virtue is a component of the final end or goal of law, namely, the common good, and is not only a salutary effect of law's pursuit of the common good. Furthermore, human law is particularly suited to training us in the virtues of legal justice and obedience, each of which bear a distinctive relationship to the other moral virtues. This argument will draw on Aquinas' distinct standards for ruler's and non-ruling citizen's virtue.

To answer the second question, I will consider how law can contribute to four key components of growth in virtue: the rational grasp of the object of the act, the desire for the object, the repetition of acts, and the grasp of both the act's relation to further ends and one's life as a whole. It is at this point that I will draw on recent Thomistic scholarship on habit formation to argue that human law can make a constructive contribution to poising us to develop the virtues. To conclude, I will offer one amendment to this most recent point. Given that virtuous habits depend not only on proper external formation, but also on the agent's movements of intellect and will, I want to suggest that law, as an external influence, is best suited to developing a certain type of inclination, namely, a disposition, in us. With proper first-person reflection, powers qualified by dispositions can eventually become qualified by habits. Ultimately, this is an argument for a "positive pedagogy" of the law that still recognizes that virtue depends heavily on how the agent reflects on her own action.¹¹

It should be mentioned that illuminating accounts of human-made law's positive pedagogy have already been offered from scholars such as Mary Keys and Cathleen Kaveny.¹² Keys, for example, offers an account of positive law's pedagogical force that takes its starting points from Aquinas' description of the influence of the Old Law, which Keys says can illustrate, "the positive pedagogy [Aquinas] predicates of every good law".¹³ She proceeds to name the law's ability to remedy moral ignorance, establish habituation, expand our repertoire of virtuous acts, and give our actions a relation to our wider society, thus enabling us to flourish as social creatures.¹⁴ Agreeing with much in Keys and Kaveny, my own account seeks to distinguish itself

¹¹ I borrow this phrase "positive pedagogy" from Mary Keys' chapter, which she offers to characterize law's constructive formation in virtue that contrasts with the "negative pedagogy" of the law described by George: M. Keys, *Aquinas, Aristotle, and the Promise of the Common Good* (Cambridge: Cambridge University Press, 2006).

¹² C. Kaveny, *Law's Virtues*; Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 203-225.

¹³ Keys, 'Aquinas's Two Pedagogies', 211.

¹⁴ Keys, 'Aquinas's Two Pedagogies', 211-213.

by its distinctive approach, namely, by offering an enumeration of key components of growth in virtue and considering how law touches on each aspect of such growth. In doing so, my account aims to center the complex process of growth in virtue and highlight the role of law in that process.

Before beginning my arguments, two disclaimers should be noted: I recognize the unfortunate and widespread problem of unjust laws that not only disadvantage those whom they govern but also foster the opposite of virtue, namely, vice. Though identifying such laws, elaborating upon their malformative influence, and proposing means to combat them is not my project, such an exploration would be timely and invaluable.

Additionally, this project does not claim that each and every law *prima facie* offers a statement about a kind of action an individual can perform. Here I acknowledge a criticism the Christian ethicist David van Drunen offers of those who debate the purpose of law using what van Drunen considers a narrow set of options, namely, a perfectionist purpose of cultivating virtue or a protectionist purpose of avoiding harm. In an attempt to expand our thinking about law's purposes, van Drunen writes, "For one thing, many laws arguably have purposes other than protecting from wrong or promoting virtue; laws regulating state-administered goods and services (such as infrastructure, education, or health care) are prominent examples. Thus, the perfectionist/protectionist debate can likely only be one part of a larger discussion about the purpose of law".¹⁵ Van Drunen makes a legitimate point about the contents of the law.

One could respond to van Drunen by arguing that laws regulating such goods and services could still have a remote, but real, impact on our action and habits. Recently, Christian ethicists have explored more deeply how moral agency, including virtue, is shaped by "social structures," that is, networks of relationships found in domains of society such as education and healthcare.¹⁶ Laws about the education system, for example, can structure the roles of teacher, administrator, and student in ways that do influence the actions of individuals who adopt those roles. Still, one still has to make clear how such laws can offer what I have called "remote" formation in virtue. This article will not delve into that topic, but its relevance should be noted for the question of law's impact on virtue.

¹⁵ D. VanDrunen, "The Protectionist Purpose of Law: A Moral Case from the Biblical Covenant with Noah", in: *Journal of the Society of Christian Ethics* 35-2 (2015), 101-102.

¹⁶ For examples of this kind of scholarship, please see D. Daly, *The Structures of Virtue and Vice* (Washington, DC: Georgetown University Press, 2021); D. Finn, ed., *Distant Markets, Distant Harms: Economic Complicity & Christian Ethics* (Oxford: Oxford University Press, 2014); D. Finn, ed., *Moral Agency within Social Structures and Culture: A Primer on Critical Realism for Christian Ethics* (Washington, DC: Georgetown University Press, 2020)

1. Individual Virtue and the End of Law: The Common Good

To consider the first question—whether virtue is the end of or an effect of law—I want to consider the relation between the common good and individual virtue. In the first question on the treatise on law, Aquinas identifies the common good as the final end or purpose of law.¹⁷ In q. 92, he responds affirmatively to the question, whether it is an “effect” (*effectus*) of law to make its observers good, that is, virtuous? Naturally, one could ask whether an individual’s virtue is constitutive of the common good, or whether the common good merely promotes the individual’s virtue, but only serves an instrumental role with respect to its cultivation. If individual virtue is constitutive of the common good in some way, then we are licensed to say that law’s final end includes the virtue of the individual citizen. However, if it is the case that the common good only serves as a means to facilitate individual virtue, we cannot make this claim. What is at stake in the answer is determining whether law provides more immediate or remote training in moral virtue.

1.1 John Finnis on Law and the Common Good: The Early Position

The nature of the common good, whether it is intrinsic or instrumental to human virtue, and thus happiness, became a lively point of debate ever since the legal philosopher John Finnis argued that the common good was “instrumental” to individual human flourishing. In his 1998 work, *Aquinas: Moral, Political, and Legal Theory*, Finnis argued that Aquinas does not present political society as a good that is pursued for its own sake and one that satisfies a natural inclination.¹⁸ Political society or civil community is created from the interactions people have with one another, that is, through external acts of justice, rather than internal acts of other moral virtues.¹⁹ Human law and government aims to regulate such external acts, and the goal of such regulation is a just and peaceful external order, which satisfies the conditions individuals need for pursuing authentic society and cultivating virtue in other kinds of social groups, for example, family life and religious communities.²⁰ In this way, political society is an “instrumental” good.²¹ At this stage in his thinking, Finnis viewed law primarily as a coercive force made and enforced by those with authority to do so, rather than an instrument for the cultivation of virtue.²² He did concede that human law ought to inculcate some virtues since, “it will only work well as a guarantor of justice and peace if its subjects internalize its norms and requirements

¹⁷ *STh* I-II, q. 90 a. 1.

¹⁸ John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 245.

¹⁹ Finnis, *Aquinas*, 224, interpreting Aquinas, *STh* I-II, q. 100 a. 2.

²⁰ Finnis, *Aquinas*, 245.

²¹ Finnis, *Aquinas*, 247, 252.

²² Finnis, *Aquinas*, 251.

and—more important—adopt its purpose of promoting and preserving justice”.²³ Yet, fostering virtue here is treated as a means to the end of the common good of justice and peace, rather than a constitutive element of that end.²⁴ The law does not expect citizens to “be or become persons of all-around virtue”, but only that, “they respect and uphold justice and peace”.²⁵ In Finnis’ writings, the phrase “all-round virtue” refers not only to moral virtues as oriented to the common good by legal justice, but also to moral virtues insofar as they serve the individual’s good.²⁶ Though Finnis did acknowledge a common good that includes the virtue of individuals and families, he said that the “specifically political common good”, the public good, which is the responsibility of the government and law, is the more limited, “instrumental” common good.²⁷

1.2 Finnis’ Interlocutors and Later Position

As noted previously, a number of scholars have since registered their disagreements against Finnis’ position. We will briefly summarize the objections of Lawrence Dewan, John Goyette, and Michael Pakaluk.

Dewan disputes Finnis’ interpretation of *STh* I-II, q. 96 a. 2, and q. 100 a. 9, to argue that Aquinas does not set principled, but rather prudential, limits on law’s capacity to cultivate virtue.²⁸ He also argues that Aquinas’ account of legal justice supports the idea that there is a natural inclination to life in a complete community.²⁹ Additionally, when commenting on a question on political prudence, Dewan determines that the communities to which legal justice and political prudence pertain are *political* communities.³⁰ Dewan also contests Finnis’ interpretation of *Summa Contra Gentiles* III n. 80, that virtue and faith are “private goods” enjoyed only by the individual, rather than common goods to be cultivated by the community.³¹

²³ Finnis, *Aquinas*, 232.

²⁴ Finnis, *Aquinas*, 232.

²⁵ Finnis, *Aquinas*, 251.

²⁶ Finnis, *Aquinas*, 226-227: “As the public good, the elements of the specifically political common good are not all-round virtue but goods (and virtues) which are intrinsically interpersonal, other-directed {*ad alterum*}, person to person {*hominum ad invicem*}: justice and peace.” See 233 for a reaffirmation of the same distinction between “all-round virtue” and outward facing “justice and peace.” See also 235, “Thus there is an important sense in which the common good of the political community is all-inclusive, nothing short of the *beatitudo* of its members and the fulfilment of their families. This all-inclusive common good of the state includes the all-round virtue of every member of the state”. The *beatitudo* of individuals would include not only virtues that orient individuals to one another but also those that orient them well towards themselves, namely, temperance, courage, and prudence.

²⁷ Finnis, *Aquinas*, 235-239.

²⁸ L. Dewan, ‘St. Thomas, John Finnis, and the Political Good’, in: *The Thomist* 64-3 (2000), p. 350, 357.

²⁹ Dewan, ‘St. Thomas’, 350-353.

³⁰ Dewan, ‘St. Thomas’, 353-357.

³¹ Dewan, ‘St. Thomas’, 362-364.

Like Dewan, John Goyette also begins a detailed critique of Finnis starting with the latter's interpretation of the text. Goyette contests Finnis' interpretation of *STh* I-II, q. 90 a. 2 to argue that, for Aquinas, "law does not merely look to the ultimate end in some vague or indeterminate way, as Finnis suggests, but it is of the very nature of law to be directed or ordered toward the ultimate end".³² In this passage, Goyette interprets Aquinas to be arguing not only that happiness is the ultimate end of law, but also that it is an end that can only be attained by participating in the political community.³³ Against Finnis' view of law as primarily an instrument of coercion, Goyette counters with Aquinas' definition of law, stating, "Coercive power is not included in the very definition of law, but is a kind of per se property belonging to the person with the authority to make law".³⁴

Goyette makes two interpretative moves that will be analyzed later in this paper. First, he argues that "legal justice, the moral virtue that orders a man toward the political common good, is complete or all-around virtue" which "not only perfects external action but also rectifies or perfects the interior operations of the will".³⁵ Secondly, he argues that the intention of the lawgiver has the force of law, writing:³⁶

Although the law does not prohibit every act of vice or prescribe every act of virtue by an obligation of precept, the very end intended by the legislator has the power to oblige a man to avoid vicious actions and pursue those virtuous actions that are required by the common good. This is because, as Aquinas notes, the very ordination toward the common good is *law to the maximum degree*.

These two interpretations amount to the position that the practice of all-around virtue is legally obligatory.

Finally, Goyette appeals to Aquinas' distinction between intrinsic and extrinsic common goods to make the claim that, in concession to Finnis, Aquinas does at times identify the common good with peace; however, this peace is an intrinsic common good that is ordained to the extrinsic common good, understood as, "that for the sake of which the whole is ordered by the one who rules or governs the community".³⁷ The latter is identified with virtue. Therefore, peace is for the sake of virtue.³⁸

Finally, Michael Pakaluk offers his own critique of Finnis. He challenges the latter's notion that a family is part of a political society akin to an autonomous state within a federal government and asks why, if the individual is the real subject or

³² J. Goyette, 'On the Transcendence of the Political Common Good; Aquinas versus the New Natural Law Theory', in: *National Catholic Bioethics Quarterly* 13-1 (Spring 2013), 140.

³³ Goyette, 'Transcendence', 140.

³⁴ Goyette, 'Transcendence', 142.

³⁵ Goyette, 'Transcendence', 146.

³⁶ Goyette, 'Transcendence', 151.

³⁷ Goyette, 'Transcendence', 152-153.

³⁸ Goyette, 'Transcendence', 152-155.

recipient of happiness, we could not consider the family as a means to that end, as Finnis considers political society to be.³⁹ Pakaluk further challenges Finnis' interpretations of "peace" and "concord" as excluding virtue, and argues that "the more natural reading" of Aquinas' writings on peace (and concord, which is not distinguished from peace) would recognize that these concepts are, "ambiguous [notions], which, however, naturally [imply] movement toward an ideal" of civic friendship and even harmony of persons in affections and impulses.⁴⁰ Finally, Pakaluk unites Aquinas' statement that the law can command even that which it does not command immediately, with the identification of happiness as law's final cause, to argue that there can be an extension of law's authority to nearly all an individual's actions.⁴¹

Though not in explicit response to these criticisms, Finnis himself has altered his position in more recent years. In 2011, at a meeting of the Pontifical Academy of St. Thomas Aquinas, Finnis noted that, "The specifically political common good (public good) is not a tool or quasi-tool (like a *servus*). Nor is it any more a means to the good of individuals or families than it is the end of individuals and families".⁴² The concept of being no more of a means than an end requires careful interpretation. It seems we can at least say that the specifically political common good is not solely a means, and that it can in fact be, to some extent, constitutive of the flourishing of individuals and families. This is certainly a development of Finnis' earlier views.

In the Postscript to the 2011 second edition of *Natural Law & Natural Rights*, Finnis stated that his earlier "discussion of the common good is too resolute in giving primacy" to the sense of the common good as the "set of conditions for the attainment of individual and common objectives" which, "makes the common good (at least seem) *instrumental*".⁴³ To rebalance our notion of this good, he reiterated the sense of the common good that, "consists in the all-inclusive and intrinsically desirable flourishing of that community (and those communities) as such", though he also restated his point that securing this good is not the task of government and law.⁴⁴

Perhaps his most decisive critique of his own position comes in a set of responses Finnis offered towards the end of *Reason, Morality, and Law*. There, Finnis said that the term "instrumental" is not a good descriptor for political governance, given that such governance, "cannot be done well, or even adequately, without both a measure of pervasive political friendship and a correct and widely held conception of, and willing favour for, the all-inclusive common good of the political community

³⁹ M. Pakaluk, 'Is the Common Good of Political Society Limited and Instrumental?', in: *The Review of Metaphysics* 55-1 (2001), 61-65.

⁴⁰ Pakaluk, 'Is the Common Good of Political Society Limited and Instrumental?', 66-75.

⁴¹ Pakaluk, 'Is the Common Good of Political Society Limited and Instrumental?', 73-74.

⁴² J. Finnis, 'Social Virtues and the Common Good', in: *The Truth About God, and its Relevance for a Good Life in Society: The Proceedings of the XI Plenary Session of the Pontifical Academy of St. Thomas Aquinas* (Vatican City: Pontifical Academy of St. Thomas Aquinas, 2011), 105-106.

⁴³ J. Finnis, *Natural Law & Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011), 459.

⁴⁴ Finnis, *Natural Law & Natural Rights*, 459.

(including those aspects of the all-inclusive common good that fall outside the coercive jurisdiction of state government and law because not elements of the public, specifically political good)".⁴⁵ Here, Finnis further minimized the distinction between the "specifically political common good" and the all-inclusive sense of the common good, which involves the flourishing of members. He also underscored a qualification he had already proposed in his earlier work, namely, that the law's ability to restore justice "by 'private law' compensation and restitution and by 'public law' retribution, seems to be *an aspect of the basic human good of *societas* or *philia**".⁴⁶ This means that one part of the "specifically political common good" is "no mere means, but an intrinsically valuable object for the relevant state action".⁴⁷

Thus, between Finnis' emendation of his earlier position and the numerous critiques of his view, we can say that the reigning view at present is that the common good is not "instrumental" in the sense of merely facilitating the individual good, that is, virtue. Rather, the common good does encompass individual virtue to some extent. However, the arguments of Finnis' opponents, who have argued for what I am calling this reigning view, ought to be examined as well. I will first identify what I take to be two shortcomings in the arguments of Finnis' critics before moving on to what I will argue is a justifiable development of the current consensus that individual virtue should be considered as part of a society's common good.

1.3 Critiques of Goyette and Pakaluk and the Virtue of Legal Justice

First, in an attempt both to argue that the aim of the law surpasses a discrete set of virtuous and vicious acts, and to identify the common good with "all-round virtue", Goyette and Pakaluk argue that the intention of the lawgiver—the common good itself and what can be ordained to it—possesses the authority of law. Recall that in Finnis' writings, the phrase "all-round virtue" refers not only to those moral virtues as oriented to the common good by legal justice, but also those moral virtues insofar as they serve the individual's good. To be clear, Pakaluk suggests the suitability of this conclusion, while Goyette argues for it forcefully.⁴⁸ Yet both rely on Aquinas' statement that the lawgiver aims to have all his subjects perform acts of virtue from

⁴⁵ Finnis, 'Reflections and Responses', in: R.P. George, J. Keown (eds.), *Reason, Morality, and Law*, (Oxford: Oxford University Press, 2013), 514.

⁴⁶ Finnis, 'Reflections and Responses', 514, quoting Finnis, *Aquinas*, 245 & 247.

⁴⁷ Finnis, 'Reflections and Responses', 514.

⁴⁸ Recall Goyette's statement that "the very ordination toward the common good is law to the maximum degree" (151). See Pakaluk, 'Is the Common Good of Political Society Limited and Instrumental?', especially 73-75. Pakaluk's language is a little more tentative than Goyette's. For his argument, Pakaluk relies on the passage where Aquinas says that "There is no virtue whose act is not ordainable to the common good, as stated above, either mediately or immediately" (*STh* I-II q. 96 a. 3 ad 3). Then, through a series of rhetorical questions, Pakaluk suggests the plausibility of citizens "reasonably [regarding] all action that is indirectly regulated by law as being under the authority of law" (74). Given mention of the extension of law's *authority*, I argue that this places Pakaluk's position closer to the more demanding position of Goyette, rather than that of Dewan.

the possession of a virtuous habit, even though the promulgated law itself does not dictate that acts of virtue proceed from a habit.⁴⁹ Ultimately, both scholars treat acts of virtue beyond what are specified by promulgated precepts of law as not only desired but also obligated by law.

Despite the plausibility of some of Goyette's and Pakaluk's suggestions, we should be wary of granting the common good itself the authority of law, given that this position neglects two of law's four causes. That is, such a view neglects both the need for a law to be promulgated, the material cause of law, as well as the need for the law to be formulated by appropriate authorities, who are either the whole community or its leader. Such formulation constitutes law's efficient cause.⁵⁰ If Aquinas truly thought that the ordination to the common good was sufficient to constitute a law, the other core elements of law, e.g., formulation by proper authorities and promulgation, would become oddly irrelevant.

As for the second shortcoming, we ought to take a closer look at Goyette's and Pakaluk's identification of legal justice, the virtue that orients us well to the common good, with "all-round virtue" in Finnis' sense of the term.⁵¹ Goyette and Pakaluk are not wrong that Aquinas identifies two senses of legal justice, one a specific virtue with its own object, i.e., the common good, and the other a "general" virtue, general in the sense that this virtue directs acts of the other virtues to serve its own object.⁵² Both scholars opt for the second sense; however, a closer look at the virtue of legal justice as compared to the virtues it directs enables us to see how Aquinas does ultimately distinguish between legal justice and the other moral virtues.

In one meticulous study of the virtue, Dominic Farrell describes Aquinas' position in the *Commentary on the Nicomachean Ethics*, and in the *Summa*, as follows.⁵³

Legal justice is identical to the other virtues in terms of its substance (*secundum substantiam*) but differs essentially (*secundum rationem*). It is identical in terms of its substance because any act of legal justice is, considered materially, the act of some other virtue. One person may refrain from adultery out of respect of the law; another person may do so out of chastity. Each act is the same substantially but differs from the other formally (*secundum rationem*). The object

⁴⁹ *STh* I-II, q. 96 a. 3 ad 2.

⁵⁰ *STh* I-II, q. 90 a. 3, 4; J. Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law* (New York: Cambridge University Press, 2014), 11-12.

⁵¹ Goyette, 'Transcendence', 146, 150; Pakaluk, 'Is the Common Good of Political Society Limited and Instrumental?', 74-75. By contrast, Dewan does not make this mistake. When writing about legal justice, he says, "even though all the virtues fall under general justice, they need not be identified with it, because such effects are not identifiable with the universal cause." L. Dewan, 'St. Thomas, John Finnis, and the Political Good', 352. Dewan's treatment of legal justice is intended to show that, given legal justice is identified as a virtue for Aquinas, we must have a natural inclination to what is ultimately life in *political* society.

⁵² *STh*, II-II, q. 58, a. 6.

⁵³ D. Farrell, 'Wanting the Common Good: Aquinas on General Justice', in: *The Review of Metaphysics* 71 (March 2018), 530-531. Farrell is relying on Aquinas, *STh* I-II, q. 60 a. 3 ad 2, and II-II, q. 79 a. 2 ad 1; *Scriptum* II, d. 27 q. un. a. 2 ad 4; III, d. 9 q. 1 a. 1 q. 2; *De veritate* q. 28 a.1 resp.

of the first act (being chaste for the common good) is formally different from that of the latter (being chaste). Since we require a specialized *habitus* to determine us to perform an act whose object is formally different from others, a special virtue, legal justice, is required to perform acts for the common good. What makes legal justice a virtue in its own right, and distinguishes it formally from other virtues, is its proper object: the common good.

This careful comparison of legal justice and the virtues it directs can help us to see why it is so easy to equate legal justice with the moral virtues, but also why the former does stand as a distinct virtue. The law does practice us in acts of moral virtue, but such acts have the object of the common good, which is a distinct object from an individual's personal good.

Though Farrell distinguishes legal justice from other virtues, he does recognize the relationship among these virtues. He notes that legal justice, "requires obedience to the commands of legislators, commitment to the good of one's country, and, on a religious level, adhesion to God".⁵⁴ These are acts that belong to other virtues, "obedience, piety, and holiness, respectively".⁵⁵ Farrell is not the only one to associate legal justice with obedience.⁵⁶ Moreover, his observation of legal justice's relation to the virtue of obedience is worth analyzing for the conclusions it can reveal.

1.4 The Virtue of Obedience and Expectations of Virtue for Rulers and Citizens

Obedience is a part of the virtue of justice that consists in respecting the commands of a superior.⁵⁷ Insofar as other acts of virtue come under a precept, "obedience is said to ingraft and protect all virtues (*obedientia omnes virtutes menti inserit et custodit*)".⁵⁸ Aquinas makes mention of it in a passage we would do well to consider, since it relates to the topic of individual virtue and the common good. In the treatise on law, when asking whether law can make human beings good, Aquinas treats the objection that some people act well with respect to the common good, but, "behave ill in things

⁵⁴ Farrell, 'Wanting the Common Good', 531.

⁵⁵ Farrell, 'Wanting the Common Good', 531-2.

⁵⁶ See also J.A. Cuddeback, 'Yves R. Simon and Aquinas on Willing the Common Good', in: C.M. Cullen, J.A. Clair (eds.): *Maritain and America* (Washington D.C.: American Maritain Association, 2009), 67. Cuddeback specifically observes, "In obedience, a person's actions and pursuits are given form and direction by the concrete demands of the common good, as determined by authority. And the disposition to obey authority is a necessary expression of the person's willing of the common good, just as surely as the dictates of authority are an expression of the authority's willing of the common good".

⁵⁷ *STh* II-II, q. 104 a. 2.

⁵⁸ *STh* II-II, q. 104 a. 3 ad 2. Aquinas does go on to say that it does not follow that obedience takes precedence over all other virtues absolutely, both because "one may nevertheless perform that act of virtue without considering the aspect of precept," and because one may develop a virtue by infusion of grace and virtues, without any act of obedience to a precept to facilitate the development of a virtue.

regarding themselves”.⁵⁹ Therefore, the objector argues, “it is not the business of the law to make men good”. Aquinas responds,

Hence it is impossible for the common good of the State to be secured unless the citizens are virtuous: at least those whose business it is to rule, although it is enough for the good of the community if the other citizens are virtuous enough to obey the commands of their rulers. Hence the Philosopher says in the *Politics* that, ‘the virtue of a ruler is the same as that of a good man, but the virtue of the citizen is not the same as that of a good man.’⁶⁰

It is curious that this passage goes practically unattended in the debate over the common good, because one can argue that it is highly germane to our topic of the relationship between the common good and virtue.⁶¹ A defensible reading of this passage, I would argue, is that the common good is secured when those who possess different roles in society possess the virtues proper to their roles. While this position might sound quite similar to the positions of Dewan, Goyette, and Pakaluk, what makes this position different is that it takes into account the distinct standards for virtue that Aquinas holds to rulers and non-ruling citizens. A plausible interpretation of Aquinas’ statement here is that citizens need to at least be able to perform acts of obedience in order that the common good may be secured. They need to be “virtuous enough” (*intantum virtuosì*) that is, at some point along the long road to virtue, and at least not hurtling down the road to vice, so to speak.

What this particular passage brings us to consider is the fact that Aquinas holds rulers and non-ruling citizens to different standards of virtue. In fact, a perusal of his other texts reveals that this distinction is reinforced across his works. We will look at Aquinas’ *Commentary on the Politics* before turning to the *Summa*. First though, some brief contextual remarks are in order before analyzing specific passages.

As is apparent from the conclusion of the quotation above, Aquinas does not invent this distinction but receives it from Aristotle, who himself believes that the virtue of a citizen is relative to the regime, or type of government, to which the citizen adhered. That is to say, different regimes require different virtues from ruling and non-ruling citizens. Paraphrasing the text of *Politics*, Book III Lecture 6, Aquinas provides an Aristotelian definition of regime as “the order of mastery in the city,” and distinguishes regimes based on whether they have one, several, or many rulers. Aristotle mentions good versions of these regimes as ones in which rulers govern for the common good, e.g., monarchy, aristocracy, and polity, while tyranny, oligarchy, and democracy are corruptions of those regimes, in which rulers govern for their private good. This condition of regime-dependent virtue is due to the fact that

⁵⁹ *STh* I-II q. 92 a. 1 obj. 3.

⁶⁰ *STh* I-II q. 92 a. 1 ad 3.

⁶¹ Finnis does mention *STh* I-II, q. 92 a. 1 ad 3 in the seventh chapter of his work that I focus on here, but does not elaborate on the distinction between the virtues of the ruler and the citizen as I do here. Rather, he invokes this distinction to fortify his position that Aquinas is not interested in considering whether the law aims to train people in all round virtue. See Finnis, *Aquinas*, 234, 238.

different regimes require citizens to perform different functions. At the start of Book III Lecture 3 in *Politics*, Aristotle had characterized virtue as performing well one's role within the regime.⁶² Thus, a citizen of a given regime will be virtuous insofar as he performs well the functions incumbent upon him by the distinctive regime under which he lives. Such virtue can include different ways of sharing ruling responsibilities as well as being a good subject.⁶³

In *Politics* Book III Lecture 3, Aristotle makes a distinction between the virtue proper to a ruler and that proper to a non-ruling citizen. In a discussion of the comparative virtues of the good man and the good citizen, Aristotle himself says that prudence is the only virtue proper to a ruler, since, "it would seem that all other virtues must equally belong to ruler and subject".⁶⁴ Meanwhile, "true opinion," which is explicitly distinguished from prudence, is the virtue proper to subjects. Interestingly, in his *Commentary on the Politics* Book III Lecture 3, Aquinas modifies Aristotle's distinction between ruler and non-ruler virtues, choosing instead to say that "true opinion" is in fact a share in prudence. Aquinas argues that rulers are expected to possess prudence, the virtue "which rules and governs", while, "subordinates participate in something of prudence, namely, when they have a true opinion about acting through which they can govern themselves in their proper acts—following the government of the prince".⁶⁵ In the wider context of this remark, Aquinas has derived from Aristotle the argument that a citizen possesses the virtue of the ruler insofar as the citizen governs himself, but not insofar as he is ruled and not governing. Additionally, when commenting on the concluding remarks of Book III Lecture 4 regarding the virtue of a good citizen in different regimes Aquinas notes that the expectations for citizens' virtues depend upon whether or not they might be called upon to rule. Aquinas states, "Whence, if one who is a prince or who is able to be is taken up as a citizen, his virtue is the same as that of a good man. If, however, someone imperfect is taken up as a citizen, who is not able to be a prince, the virtue of the good citizen and of the good man will not be the same, as is clear from what has already been said".⁶⁶ Aquinas sustains, with some modification, Aristotle's distinction in virtues among rulers and non-ruling citizens. For more information about the particular differences in virtues between these two groups, we can turn to the *Summa*.

In the *Summa*, the distinction between the virtues of citizens and rulers is reinforced in several places. In the treatise of law, we encounter the ideal of the lawgiver as a wise figure, taking into account the various capacities of the citizens, including their moral weaknesses, and careful not to place upon their shoulders

⁶² Aristotle, *The Politics*, Book III Lecture 3. "If the state cannot be entirely composed of good men, and yet each citizen is expected to do his own business well, and must therefore have virtue, still inasmuch as all the citizens cannot be alike, the virtue of the citizen and of the good man cannot coincide".

⁶³ Aristotle, *The Politics*, Book III Lecture 6.

⁶⁴ *In Pol.*, c. 3, l. 2.

⁶⁵ *In Pol.*, c. 3, l. 2.

⁶⁶ *In Pol.*, c. 3, l. 4.

demands that are too heavy.⁶⁷ The lawgiver appears to be an almost fatherly figure, a person of great virtue overseeing the moral growth of those in his care. In *STh* II-II questions on prudence, Aquinas argues that, because a ruler is tasked with the work of “a special and perfect kind of governance,” given that he must govern, “not only himself but also the perfect community of a city or kingdom”, it is imperative that the ruler cultivate “prudence in its special and most perfect sense”.⁶⁸ In the subsequent article, Aquinas compares the prudence of the ruler and non-ruling citizen by suggesting that the two types of the virtues bear a “mastercraft” to “handicraft” relationship to one another.⁶⁹ This metaphor suggests that the citizens’ prudence in some way serves the prudence of the ruler, perhaps by directing citizens to offer obedience to the commands of the ruler.⁷⁰ Later, Aquinas indicates that the same relationship holds between the legal justice of the ruler and non-ruling citizen as well.⁷¹ Hence, it is fair to say Aquinas expects rulers, but not non-ruling citizens, to have the virtues of legal justice and political prudence in their most perfect forms.

To my knowledge, these texts about the distinct expectations of virtue for rulers and non-ruling citizens do not receive any attention in this debate over the common good; yet I would argue they are relevant, since Aquinas invokes this distinction in discussion of the conditions for a healthy common good as we saw earlier (*STh* I-II, q. 92 a.1 *ad* 3). If we take these remarks into account, then we are led to the following position: the extent to which the common good is comprised of individual virtue depends upon the type of regime and the expectations of virtue within the regime. As we have seen in Aquinas, different regimes entail different expectations for citizens’ virtue.

Minimally, Aquinas’ remarks support the view that the common good demands acts of the virtue of obedience from citizens who are not ruling. Again, citizens need to be “virtuous enough”. Furthermore, repeated practice of the law should gradually build some disposition to the virtue of legal justice. Both of these virtues, obedience and legal justice, as we have explored, have close and distinctive relationships to the other moral virtues, encouraging their exercise, even as they are not identical to them, on account of their own unique objects. I believe these points help us to see how observance of the law poises us to develop many virtues, even as it does not command the acquisition of virtuous habits. Against both an early Finnis position, which claims that the common good is only instrumental to individual good, and that of Pakaluk and Goyette, I argue that we in fact have to attend to regime-specific standards for virtue in order to know to what extent individual virtue is part of the common good.

⁶⁷ *STh* I-II, q. 96 a. 2.

⁶⁸ *STh* II-II q. 50 a. 1.

⁶⁹ *STh* II-II q. 50 a. 2 *ad* 2.

⁷⁰ *STh* II-II q. 50 a. 2 *ad* 2.

⁷¹ *STh* II-II q. 58 a. 6.

1.5 Conclusion

On the whole, scholarly arguments weigh against the view that the common good is “instrumental” to individual virtue in the way Finnis conceived it in his earlier thought. In democratic societies like ours, where citizens do share ruling responsibilities with officials to some extent, it is reasonable to expect that the virtues of the good citizen are the virtues of the good man.⁷² However, even in societies in which citizens are expected primarily to be obedient, but could never share, or can only minimally share, in ruling responsibilities, the common good still requires acts of virtue. Ultimately, some measure of individual virtue seems necessary for the common good of any society, regardless of regime, even if it is only a practice of performing acts of obedience, which does not necessarily arise from a habit. If we reintroduce the theme of law at this juncture, we can say that, given that the common good does include individual virtue, and law aims at the common good, law also aims at individuals’ virtue.

By now, it should be easier to see why law is a proper tool for growth in virtue. At this point, we have looked at law’s capacity to cultivate virtue from the side of the nature of law, asking if virtue is a component of law’s final end. Now, I want to turn to the other side, so to speak, the side of virtue and its cultivation, to consider how law can contribute to the growth of virtuous habits. This leads us to answer the second question of this article with an account of how laws can play a constructive role in fostering virtue.

2. Poising for Virtue

2.1 Four Key Components of Growth in Virtue

To show how law touches on each aspect of growth in virtue, we first need to offer a brief description of growth in virtue. I will offer one composed of four components. To do so, I will draw primarily on two recent works, William Mattison’s *Growing in Virtue: Aquinas on Habit* and Angela Knobel’s *Aquinas and the Infused Moral Virtues*. A good place to begin is with Knobel’s observation that, “though we are not naturally virtuous . . . we do naturally possess an aptitudo for virtue”.⁷³ “We” in this context refers to all human beings, such that we can say that this aptitude is species-wide. This aptitude includes the possession of principles that are “the first natural and speculative principles: our natural habitual knowledge of the first principles of demonstration and of the principles of natural law,” the latter of which is identified with synderesis.⁷⁴ Knobel is clear both to identify this habitual knowledge as the

⁷² See *STh* I-II q. 95 a. 4 and q. 105 a. 1 for Aquinas’ descriptions of democratic regimes as regimes in which rulers can be chosen from among the people and the people have the right to choose their own rulers.

⁷³ Knobel, *Aquinas and the Infused Moral Virtues*, 18

⁷⁴ Knobel, *Aquinas and the Infused Moral Virtues*, 21

“semina” or seeds of virtue and to distinguish these seeds from inclinations towards underdetermined ends that we possess as part of our nature.⁷⁵ Yet, neither these ends nor the seeds direct us to sufficiently specific ends that we could pursue in action. To act, we need our habit-amenable powers to be determined towards more particular ends with proper habits.

Beyond these species-wide principles that aid us in the specification of our action, we as individuals also possess “natural temperaments,” which are inclinations to act in particular ways that enable us to act with some consistency, though not a high degree of it. Such inclinations Aquinas calls “dispositions.” Good “dispositions” are semi-stable inclinations to perform virtuous actions, in which the ends we pursue are specified not by rational apprehension and appetite but by our senses.⁷⁶ This type of inclination falls short of the stability, that is, consistency of action, of a proper habit.

Dispositions can be caused by nature, as we see with those that constitute our natural temperament. They can also be caused by “customs” or “accustomization,” that is, “the process of formation through repeated activity”.⁷⁷ Yet, with the repetition of properly human actions, habit-amenable powers of the soul become qualified not by semi-stable inclinations, but by more stable inclinations to act, that is, habits. With a habit, the ends we pursue are specified by our rational powers rather than our sensory powers, as is the case with dispositions. What constitutes properly human acts? William Mattison writes, “Properly human habits are caused by repeated acts that are properly human, that is, when the agent grasps the end with reason and intends it with the will”.⁷⁸ This indicates that the repetition of *any* sort of act does not suffice to achieve a habit; rather, a habit is achieved by a repetition of acts whose “intensities,” to use Aquinas’ language, are in proportion to the intensity of the habit.⁷⁹ A habit requires that we intellectually grasp not only the “object” of the habit (also known as a “proximate end”), that is, the characteristic kind of action associated with it, but also the habit’s “end,” that is, the point of the habit (a further “end” as compared with the more proximate “end” that is the object).⁸⁰ We also must desire the object and end of the habit with our wills.⁸¹

Finally, as Mattison says, if a person possesses a habit, rather than a disposition, he will understand the end of a habit in relation to “further ends the habit serves” and

⁷⁵ Knobel, *Aquinas and the Infused Moral Virtues*, 19

⁷⁶ Mattison, *Growing in Virtue*, 29-36.

⁷⁷ Mattison, *Growing in Virtue*, 52

⁷⁸ Mattison, *Growing in Virtue*, 66.

⁷⁹ *STh* I-II, q. 51 a. 3; q. 52 a. 3.

⁸⁰ Briefly, how do we come to learn what the objects or proximate end of virtues are? Jean Porter emphasizes the importance of offering children paradigms of virtue, that is, “typical or noteworthy instances of kinds of action” which exemplify a given object of a virtue. The point extends to anyone learning to grow in a particular virtue: we need examples of acts of virtue that we can imitate as part of the learning process. See Porter, *Nature as Reason*, 182, 195-203.

⁸¹ Mattison, *Growing in Virtue*, 62-68; Porter, *Nature as Reason*, 182, 195-202.

even more distant ends.⁸² In other words, as Porter writes, such a person will grasp “the point” and value of paradigms of behavior, seeing these kinds of behavior not only as admirable and worthy of imitation, but also, contributing something to the further end of a good life overall.⁸³

Hence, the growth in virtue can be identified with four components: a rational apprehension of the object of a habit, a rational appetite or desire for the object, the repetition of acts that emerge from rational perception of and desire for the object, and the ability to see the relation between the object of the act and further ends related to it. To this end, we should ask four questions: does law help us intellectually grasp the object of a virtuous habit? Can law help us desire it? Can law encourage the repetition of acts whereby we understand the object with the intellect and desire it with the will? Finally, can law help us grasp the object or proximate end of a habit in relation to further ends the habit serves?

2.2 Law's Provision of the Key Components

First, does law give us a rational grasp of the object of the habit, and if so, how does it do this? I argue that law does offer us this grasp.⁸⁴ Recall that a law is an ordinance of reason, a rational judgment about what is necessary for the common good. Our laws make different statements, e.g., prohibitions, commands, permissions, punishments, to name a few, regarding kinds of actions, and these kinds of action can constitute “paradigmatic acts of virtues” or simply “paradigms of virtue.” This is a technical term within virtue ethics to refer to quintessential instances of the acts that instantiate the objects of virtues.⁸⁵

Let's think through an example. Take Aquinas's view, which we can still share today, that human law ought to prohibit murder, theft, and similar acts that, left unchecked, would tear society apart.⁸⁶ These acts count as acts of injury to one's

⁸² Mattison, *Growing in Virtue*, 67. Mattison writes that, “the person grasps and intends not only the habit's end but also further ends the habit serves. The person also grasps the end in relation to other ends according to their relative importance”.

⁸³ Porter, *Nature as Reason*, 198-201.

⁸⁴ This insight is inspired by the following passage from Porter's *Justice as a Virtue*, where Porter is dismantling the false dichotomy between ideals of virtue and moral laws or rules. She writes, “Moral rules are correlated with generic kinds of actions that constitute the object of the relevant acts, in such a way that we cannot grasp the rules without some concrete comprehension of the kinds of actions in question. Similarly, a habit which is a disposition oriented toward activity, is defined by reference to the kind of action that it characteristically generates, which Aquinas identifies as its object (I-II 54.2).” J. Porter, *Justice as a Virtue*, 40-41. I specify this point to human law, which, in the natural law framework, is a type of moral law. I think the crucial difference between what Porter says and what I say is that, given the way human laws are specified to particular acts, human laws do not identify *objects* of virtues but rather paradigmatic acts of virtue.

⁸⁵ J. Porter, *Nature as Reason*, 182.

⁸⁶ *STh* I-II, q. 96 a.2

neighbor, acts of the vice opposed to commutative justice.⁸⁷ The object of commutative justice is “to render to the other what is due,” where the exchange is between individuals, rather than the individual and community, as is the case with distributive justice.⁸⁸ By committing acts of murder, theft, or similarly destructive acts, we instantiate an act that is opposed to the virtue of commutative justice. By avoiding these kinds of acts, we avoid acts that instantiate the vice of injustice.

What I want to suggest is that law serves the cultivation of virtue by identifying paradigmatic acts of certain kinds of virtues. While such paradigmatic acts are not the objects of virtue themselves, to use Jean Porter’s words, they “represent typical or noteworthy instances of kinds of actions exemplifying the proper object” of the act. Given that laws are formulated around acts more concretely formulated than the objects of virtue, such as “giving to another his due,” it is best to say that human laws identify, not the objects of virtues, but rather paradigms of them. Yet, if we reflect on what ideal might be instantiated across our laws prohibiting murder and theft, it is possible that we can arrive at a rational grasp of the object of the virtue of justice. That is, we can recognize that murder and theft take from another what is due to them (e.g. right to life or property) and this “due” is the object of justice. Thus, good laws can help us to gain a rational grasp of the objects of different virtuous habits by identifying paradigmatic instances of acts that seek those objects. Those who reflect on legal prohibitions can discern the objects of virtues and vices communicated through them.

As to the second question, can law encourage a desire, that is, a rational appetite, for the object of an act and subsequently a habit? In one way, Aquinas knew, and we know from our own lives, that by repeating a behavior over and over again, we can shape our attitudes, including our desires, regarding the action in question.⁸⁹ Thus, insofar as law guides us to avoid or perform certain external acts repeatedly, it can begin to shape our interior attitudes towards certain kinds of action.

Yet laws have an impact on our desires in another way as well. For instance, laws can incite emotions and telegraph moral judgments about the value of different kinds of acts, which can affect whether we think the object of the act is good and thus ought to be pursued. Aquinas is aware that laws of all kinds provoke emotional reactions. Human law can provoke fear of punishment and, if it lays excessive burdens on our shoulders, can incite contempt and frustration, leading to acts of rebellion.⁹⁰ The passions of fear, anger, and hatred, Aquinas would say, are responses to particular evils and goods, and yet, through intentional reflection on those emotions and the varying circumstances in which law prompts them, we can discern what good or bad objects, considered more generically, we were responding to in those instances.⁹¹ At this point, we begin to formulate concepts that can serve as objects of

⁸⁷ *STh* II-II q. 64 a. 5 ad 1 and q. 66 a. 3.

⁸⁸ *STh* II-II q. 58 a. 1 and q. 61 a.1.

⁸⁹ *STh* I-II, q. 51 a. 3.

⁹⁰ *STh* I-II, q. 92 a. 1 ad 2 & q. 96 a. 3 ad 2.

⁹¹ Porter, *Justice as a Virtue*, 225-227.

our rational appetite, the will. This reflection is by no means guaranteed by the law; rather, it is a process we have to undertake ourselves; still, law's impact on our emotions offers the data, so to speak, for such reflection.

Let us also briefly consider findings from contemporary scholarship on law's impact on "attitudes" as distinct from "behaviors". Scholars working at the intersection of law and psychology have found that knowing that a kind of action is legal or illegal has been shown to have some influence on "[shaping] the moral cognitions" of individuals, that is, their assessments of acts as moral or immoral.⁹² Law is also shown to have some power to inform people's moral assessment of acts when it is considered to express a wider group's moral code.⁹³ Finally, these scholars also hold that law can change the "social meaning" or reputation of a behavior, such as taking time off from work to care for children or wearing a seatbelt.⁹⁴ To be fair, the fact that law has been shown to influence whether we judge an act to be good or bad does not amount to giving us a desire to perform a certain kind of act. Yet, I would argue that this impact provides a starting point for the development of such a desire.

Our third question is whether law can encourage us to perform properly human acts *repeatedly*. I would argue here that law does at least invite the repetition of acts, insofar as we can't help but "bump into" the law on a daily basis, whether we are driving on the road, interacting with colleagues, or checking out at the store. Human law cannot compel us to act with certain thoughts or intentions; yet, it does present us with opportunities over and over again to perform acts that seek the objects of virtues, and this is a step towards possessing a virtuous habit. Mary Keys observes this point when she highlights the ability of laws to "expand the scope and variety of the agent's activities conducing to the virtues in question and provide more or less frequent reminders of their importance".⁹⁵

Our fourth and final question is, does law help us grasp not only the object of an act and habit, but also the further ends of the habit, and those ends in relation to other ends? One can recognize that law offers instruction in this regard as well. Note again what Porter writes about the necessity of human-made law even in a sinless society. She states,

In short, without access to a legal framework, men and women within a sinless, but large-scale community would at best function at the level of good children: they

⁹² J. Nadler, K. Bilz, 'Law, Psychology, and Morality', in: D.M. Bartels et al. (eds.), *Moral Judgment and Decision Making* (San Diego, CA: Elsevier Academic Press, 2009), 111. I am using a distinction in the literature here between attitudes and behaviors. I am assuming desires are a component of "attitudes." This distinction strikes me as particularly relevant to my question, since at this point in my argument I am focusing on desires as distinguished from actions. See also, J. Nadler, K. Bilz, 'Law, Moral Attitudes, and Behavioral Change', in: E. Zamir, D. Teichman (eds.), *The Oxford Handbook of Behavioral Economics and the Law* (Oxford: Oxford University Press, 2014), 241–267.

⁹³ Nadler, Bilz, 'Law, Psychology, and Morality', 111–112.

⁹⁴ Nadler, Bilz, 'Law, Psychology, and Morality', 115–117; Nadler, Bilz, 'Law, Moral Attitudes, and Behavioral Change', 250–252.

⁹⁵ Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 211.

would be conspicuously deficient with respect to the proper perfection of social life. They would lack the critical foundation of all genuinely virtuous activity, namely, a rational understanding of the relevant aims and the overall point of one's actions, and correspondingly an intelligent appreciation and enjoyment of these as genuinely good.⁹⁶

Further elaboration of Porter's work can clarify the connection between law's orientation to the common good and individual virtue, which can help answer our fourth and final question. As mentioned before, we can plausibly conceive of the law as offering us a portrait of the many facets of the common good, from road safety to education to taxes, and everything in between. We know that ideally, law is not directed just to my benefit or to yours, but to the good of the commons. Yet, even as law is meant to achieve the common good, we rarely think of ourselves as explicitly, "pursuing the common good".⁹⁷ It is more likely that when we act, we have in mind what we are doing, that is, the immediate end or goal of our act, and maybe one further goal. Regarding these last two points, Thomist scholar J. Budziszewski asks, "Does St. Thomas think that whenever anyone acts, he does so with the motive of advancing the common good (or at least not undermining it)? No, but motive is not the same thing as purpose. *Just insofar as he is a member of the community*, the citizen's acts are properly regarded from the view of the community's shared purpose, the flourishing of their partnership in a good life, because his own good and the good of the community are intertwined. This is what he rationally seeks, even as it is not what he actually seeks".⁹⁸ In other words, we may not, and likely are not, thinking explicitly of our act's contribution to the common good when we do the act, even as it does make such a contribution. Yet, I want to suggest that the presence of law—as something that governs our actions, but seeks an end beyond ourselves—invites us to recognize and also name explicitly how our interactions with others do in fact serve the further purpose of the common good. We are already in the habit of articulating the further ends of our action. We do this kind of mental description when we say to ourselves, for example, I am "helping a friend," when I am, more precisely, mowing her lawn. When we consider what we are doing as an act of law observance, we have the chance to make the connection between the objects and ends of our actions, and the common good, which is law's end. Insofar as we do this, we take on that far-ranging perspective, crucial for an actual virtuous habit, that begins to glimpse the unity of our actions in a single end.

2.3 A Concluding Point: Law and the Cultivation of Dispositions

In this article, we have examined two ways in which human-made law can properly be recognized as a teacher of an individual's moral virtue: both because it takes such

⁹⁶ J. Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids: Eerdmans, 2010), 233.

⁹⁷ Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law*, 353.

⁹⁸ Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law*, 38.

virtue as a part of its final end, and because it cultivates critical components of growth in virtue. In conclusion, I want to add a final point to this consideration of law's contribution to virtuous habits. From brief observation of our surrounding society, it is obvious that compliance with our laws performed unreflectively, even with laws widely regarded as just, do not guarantee virtuous habits. Rather, engagement with the law *has the capacity* to foster key components of virtue, to bring us all the way "to the line" of possessing a virtue. I have spoken of law "providing starting points" for virtuous desire and "offering opportunities" to repeat acts of virtue. Aquinas states that obedience to the laws of a political authority can guide what we do with our bodies, though obedience in will is reserved for God alone.⁹⁹ We live under a legal regime that moves us to repeated activity and thereby accustoms us to certain actions. Taking all these points into consideration, I would suggest that it is most accurate to conclude that the type of inclination to act that law can engender is a disposition rather than a habit. To recall, a disposition is a semi-stable inclination to act caused by repeated activity.

If it is true that law is able to cultivate dispositions, we can begin to see what is left to be achieved in order for our powers to be qualified not by dispositions, but by real habits of virtue. To have our powers qualified by habits, we do need to make the transition from merely grasping the ends of our actions sensorily to grasping them rationally. This transition ought to take the form of trying to understand not only the larger picture of the common good within which our actions have a place, but also the relation of our law-abiding acts to our lives as a whole.

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⁹⁹ *STh* II-II, q. 105 a. 5.