# The Distinctive Common Good

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**Abstract:** This paper defends the traditional distinctive notion of the common good against the claim that it is normatively redundant on the aggregative conception. The first two sections of the paper outline the different candidate conceptions of the common good and the normative role of the common good within natural law theories. The paper then considers some difficulties faced by the instrumental and aggregative conceptions, before developing an Aristotelian account of the distinctive conception of the common good and demonstrating its normative significance for a natural law account of political and legal authority.

One characteristic feature of natural law theories of politics and jurisprudence is their appeal to the common good to ground normative claims about law, authority, and obligation. Adherents of natural law theory have nonetheless offered divergent accounts of the common good, which have been helpfully categorized by Mark C. Murphy into the instrumental, aggregative, and distinctive conceptions. In this paper I defend the traditional distinctive notion of the common good against the claim that it is normatively redundant on the aggregative conception.<sup>2</sup> After outlining the candidate conceptions in section 1, in section 2 I consider the normative point of the common good within natural law theories in order to better evaluate the candidate conceptions. This leads to the formulation of two constraints on the natural law common good, namely that it should be capable of (1) grounding a theory of the authority of law and (2) providing a criterion for an assessment of reasonable and defective laws. Section 3 then discusses some difficulties faced by the instrumental and aggregative conceptions, particularly in relation to the satisfaction of the first of these constraints. In section 4 I develop an Aristotelian account of the distinctive conception and demonstrate its normative significance for a natural law account of political and legal authority.

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<sup>1</sup>Mark C. Murphy, "The Common Good," *Review of Metaphysics* 59, no. 1 (2005): 133–64; Mark C. Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press, 2006), 61–90.

<sup>2</sup>Murphy, "The Common Good," 154–57.

#### 1. The Three Candidate Conceptions

Although the common good plays an important role in a range of contemporary positions in political and legal philosophy, it has an especially privileged normative function in natural law theories of politics and jurisprudence influenced by Aquinas.<sup>3</sup> Aquinas understands the common good as an analogical concept applicable not only to political communities, but also to the universal good of God.<sup>4</sup> The common good is thus a concept that cannot be restricted to the political and legal domains. But even if we restrict our attention to the political and legal domains, contemporary natural law theorists, such as John Finnis and Murphy, have debated whether the common good is better understood as instrumental, aggregative, or distinctive.<sup>5</sup>

The *instrumental* conception of the common good regards it as "a set of conditions which enables members of a community to attain for themselves reasonable objectives, or to realize reasonably for themselves the value(s), for the sake of which they have reason to collaborate with each other (positively and/or negatively) in a community." On the instrumental conception defended by Finnis, the political common good is subordinate to the realization of basic values or goods such as knowledge, friendship, health, play, and so on at the level of individuals and families. The political common good thus does not itself instantiate a basic good, but is rather instrumental to the realization of such goods. Practical reasoning about the common good reveals a wide range of projects, orientations, and commitments with respect to the basic goods, none of which can be regarded as definitively superior to the others. It is this incommensurability that establishes what Finnis refers to as

<sup>3</sup>For the role of the common good within a liberal framework, see John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1991), 219: "the common good I think of as certain general conditions that are in an appropriate sense equally to everyone's advantage." For the common good in recent civic republican political thought see Philip N. Pettit, "The Common Good," in *Justice and Democracy: Essays for Brian Barry*, ed. Keith Dowding, Robert E. Goodin, and Carole Pateman (Cambridge: Cambridge University Press, 2004), 150–69. According to Pettit, the common good "cannot plausibly refer to people's common net interests but only to the common interest that people have as members of the public."

<sup>4</sup>Aquinas's wide-ranging use of *bonum commune* and closely related terms is comprehensively set out in M. S. Kempshall, *The Common Good in Late Medieval Thought* (Oxford: Oxford University Press, 1999), 76–129.

<sup>5</sup>The threefold classification derives from Murphy. See "The Common Good" and *Natural Law in Jurisprudence and Politics*.

<sup>6</sup>John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011), 155. This conception is influenced by Germain Grisez, *The Way of the Lord Jesus*, vol. 2, *Leading A Christian Life* (Quincy, IL: Franciscan, 1993), 850 and John XXIII, *Mater et Magistra*, §65.

<sup>7</sup>Finnis, Natural Law and Natural Rights, 85–90. See also John Finnis, Aquinas: Moral, Political and Legal Theory (Oxford: Oxford University Press, 1998), 82, 97–98.

coordination problems, which reflect not only the diversity of human projects but also disputes about the most effective means for individuals to realize the basic goods. Finnis gives as an example the rival interests of environmentalists and farmers in relation to river pollution to demonstrate the role of the law in providing authoritative and binding solutions to resolve coordination problems arising out of competing projects and interests. The farmer in this case is confronted with a law on river pollution that goes against his economic self-interest. Yet the farmer also has reason to believe that the law provides him with benefits (protection of property, subsidies, etc.) that could not be realized other than through an authoritative legal system, and that such benefits contribute to integral human fulfilment more generally.

It is important to note that Finnis's focus upon the instrumental role of the political common good relative to the realization of more fundamental basic goods at the level of individuals and families does not preclude a recognition of genuinely communal goods. Finnis argues that we have strong, though defeasible, moral reasons to aid others in the pursuit of the basic goods and acknowledges the relevance to practical deliberation of a "complete" political community such as the nation-state. In recent work, for example, Finnis states that the common good of the nation is "an intrinsically desirable object for the service of everyone whose *patria*, country, and people it is" and that the coordinated pursuit of the instrumental political common good can instantiate the good of friendship. <sup>11</sup> It is, moreover, Finnis suggests, difficult to think of political community without "some more or less shared objective or, more precisely, some shared conception of the point of

<sup>8</sup>This sense of a coordination problem is to be distinguished from the narrower sense of coordination problem found in game theory, which Finnis regards as constrained by an "emaciated ... instrumental rationality" (John Finnis, "The Authority of Law in the Predicament of Contemporary Social Theory," *Notre Dame Journal of Legal Ethics and Public Policy* 1, no. 1 [1984]: 115–37).

<sup>9</sup>Finnis, "The Authority of Law," 133–37.

<sup>10</sup>For defense of an instrumental interpretation of Aquinas on the common good, see John Finnis, "Is Natural Law Theory Compatible with Limited Government?," in *Natural Law, Liberalism and Morality*, ed. R. P. George (Oxford: Oxford University Press, 1996), 1–26; John Finnis, "Public Good: The Specifically Political Common Good in Aquinas," in *Natural Law and Moral Inquiry*, ed. R. P. George (Washington, DC: Georgetown University Press, 1998), 174–210. For critique of this interpretation, see Michael Pakaluk, "Is the Common Good of Political Society Limited and Instrumental?," *Review of Metaphysics* 55, no. 1 (2001): 57–94. Aquinas (e.g., at ST I-II q. 90, a. 3, ad 2 and *Sententia Ethic*. X 14 nn. 13–18) endorses the Aristotelian teaching (*Pol*. 1280b33–35; 1281a1–4) that a complete political community is oriented by the goal of a self-sufficient life of flourishing and virtue and not simply a partnership established for the sake of living together. The question is whether this is consistent with the claim that the role of government and law is limited and instrumental.

<sup>11</sup>John Finnis, "Reflections and Responses," in *Reason, Morality, and Law,* ed. John Keown and Robert P. George (Oxford: Oxford University Press, 2013), 520.

continuing cooperation."<sup>12</sup> There are accordingly noninstrumental aspects to the common good evident in Finnis's work and his advocacy of the instrumental common good is perhaps better understood as pointing to the normative priority of law's role in allowing individuals to realize basic goods than as a wholesale rejection of the aggregative and distinctive approaches.

The *aggregative* common good "consists in the realisation of some set of individual intrinsic goods, characteristically the goods of all (and only) those persons that are members of the political community in question." This conception, which has been developed and defended by Murphy, assumes that the state of affairs in which an agent, A, is flourishing is "a fundamental reason for political action within A's political community." If the state of affairs in which an individual A is flourishing provides a decisive reason for political action within A's community, then the state of affairs in which A and another individual, B, are flourishing is an even more decisive reason for action. One generates the normative ideal of the aggregative common good by carrying out this process of inclusion to its limit, including all of the goods of all of the members of a political community. As a result, the common good "aggregatively conceived is that state of affairs in which all of the members of a political community are fully flourishing."

On the aggregative conception it is ultimately the good of each and every individual that provides the normative reason-giving force of the common good. The core of the aggregative conception is thus the claim that "an individual's good provides *all* members of the political community with a reason for action." It is by appeal to this claim—as I demonstrate in section 3—that Murphy disarms the objection that the aggregative conception is not really a natural law conception at all because it is insufficiently common. The claim also forms the basis for Murphy's contention that the instrumental account of law's authority implicitly depends upon the aggregative conception insofar as it appeals to the overall flourishing of citizens in community. <sup>17</sup>

<sup>&</sup>lt;sup>12</sup>Finnis, *Natural Law and Natural Rights*, 153. Finnis states, however, that we should not think of a political community as having a single "aim or determinable sets of aims" (ibid., 155). This reflects his views regarding the variety of human projects and commitments, and the lack of a single, objective hierarchy of value among the goods.

<sup>&</sup>lt;sup>13</sup>Murphy, "The Common Good," 136.

<sup>&</sup>lt;sup>14</sup>Ibid., 137.

<sup>&</sup>lt;sup>15</sup>Ibid.

<sup>&</sup>lt;sup>16</sup>Ibid., 138. Italics mine.

<sup>&</sup>lt;sup>17</sup>Ibid., 142. In addition to his claim about the normative dependence of the instrumental conception on the aggregative conception, Murphy also notes that Finnis's prior commitment to the need for a "principled rationale" for limited government (inclusive of antipaternalism and subsidiarity) appears to motivate his advocacy of the instrumentalist conception. This is problematic, Murphy alleges, insofar as "the attractiveness of the antipaternalist and subsidiarity principles should be explicated in

Although Murphy is skeptical of the capacity of the natural law common good to ground an obligation to obey the law without supplementation from consent theory, he regards the aggregated goods of the citizens of a political community as the normative core of an account of law's justified authority.<sup>18</sup>

The distinctive common good is characterized by Murphy as "the obtaining of some state of affairs that is literally the good of the community as a whole." This formulation is influenced by advocates of a distinctive position, including Ralph McInerney and Louis Dupré, who have emphasized that the common good simultaneously perfects each individual of the community and the whole community.<sup>20</sup> By contrast with the instrumental and aggregative conceptions, the distinctive common good involves an explicit appeal to the good of the community as a whole in a manner irreducible to the basic goods of discrete individuals. Although not an ultimate end in an unqualified sense, the political common good on the distinctive conception thus derives its normative force "as a direct consequence of the priority of the whole over the parts."21 This priority of the whole over the parts can certainly be understood in a normative sense as referring to the shared end or goal of a community that promotes the personal goods of its members.<sup>22</sup> The distinctive common good also refers, however, to a state of affairs of just and peaceful relations between the citizens of a political community that is an integral part of the well-being of each of those citizens. In this sense, the distinctive common good is not only instrumental to human wellbeing, but also a component of it. The distinctive account accordingly differs from the aggregative account insofar as "it is not an addition or multiplication of individual, private goods, but a distinct kind of good to be pursued and enjoyed together by people living in community."23

terms of the good; we should not have to pare down the theory of the good to generate an argument against paternalism and for subsidiarity" (ibid., 145). The two objections to Finnis's position are thus related insofar as Murphy claims that it is necessary to consider the good of all persons in community—and hence the aggregative common good—in order to determine the normative justification of limited government.

<sup>&</sup>lt;sup>18</sup>Murphy, Natural Law in Jurisprudence and Politics, 114.

<sup>&</sup>lt;sup>19</sup>Murphy, "The Common Good," 136.

<sup>&</sup>lt;sup>20</sup>See Louis Dupré, "The Common Good and the Open Society," *Review of Politics* 55, no. 4 (1993): 687–712; Ralph McInerney, "The Primacy of the Common Good," in *Art and Prudence: Studies in the Thought of Jacques Maritain* (Notre Dame, IN: University of Notre Dame Press, 1988), 77–92.

<sup>&</sup>lt;sup>21</sup>Yves R. Simon, *The Tradition of Natural Law: A Philosopher's Reflections* (New York: Fordham University Press, 1965), 105.

<sup>&</sup>lt;sup>22</sup>Clarke E. Cochran, "Yves R. Simon and 'The Common Good': A Note on the Concept," *Ethics* 88, no. 3 (1978): 233–35.

<sup>&</sup>lt;sup>23</sup>Ibid., 232.

The distinctive conception reflects the classical teaching of Aguinas that the common good of a political community is a kind of unity that is distinguishable from a mere aggregate of individual goods.<sup>24</sup> As I will demonstrate in further detail in section 4, a commitment to the distinctive common good is nevertheless not to be understood as entailing that the political community is an organic whole or substance. It is rather a structured unity that "derives from the ordering of different individuals towards the goal that they have in common."25 It is Aquinas's commitment to the notion of a political community as a unity of order that explains his characterization of the common good in terms of the justice and peace of a well-ordered polity.<sup>26</sup> Justice refers to the preservation of a certain form of equality or a proper relation among persons.<sup>27</sup> Peace is both the proper ordering of citizens and the absence among them of strife and discord.<sup>28</sup> Justice and peace are conditions of the community considered as a whole; a just and well-ordered community is an articulated unity that is in good condition. This identifies justice and peace as goods that are common in the robust sense that they belong to the community itself. Aquinas's formulations suggest a unitary good of community irreducible to the flourishing of individuals.

Murphy's threefold classification could be taken to suggest that the candidate conceptions of the common good just outlined are mutually exclusive: it is necessary for the natural law theorist to pick one conception and uphold and defend this against the other rival conceptions.<sup>29</sup> A more plausible interpretation, however, is that the three conceptions represent different

<sup>&</sup>lt;sup>24</sup>ST I-II q. 72, a. 4; q. 93, a. 1; q. 95, a. 4; q. 96, a. 4; q. 97, a. 4; II-II, q. 109, a. 3; q. 114, a. 2; q. 129, a. 6; *De Regno* I, 1; *Sententia Ethic*. I, lect. 1; IX, lect. 10; *Sententia Polit*. 1, lect. 1. See also E. L. Fortin, "The New Rights Theory and the Natural Law," *Review of Politics* 44, no. 4 (1982): 590–612 and Pakaluk, "Is the Common Good of Political Society Limited and Instrumental?," 86.

<sup>&</sup>lt;sup>25</sup>Kempshall, The Common Good in Late Medieval Thought, 100.

<sup>&</sup>lt;sup>26</sup>The Thomistic characterization of the *bonum commune* in terms of justice is in turn indebted to the rediscovery of Aristotle's political and ethical thought, particularly the concept of the common advantage (*to koinēi sumpheron*). On the reception and interpretation of Aristotle's political thought in the thirteenth century see Conor Martin, "Some Medieval Commentaries on Aristotle's Politics," *History* 36 (1955): 29–44 and Jean Dunbabin, "The Reception and Interpretation of Aristotle's *Politics,*" in *Cambridge History of Later Medieval Philosophy*, ed. Norman Kretzmann, Anthony Kenny, and Jan Pinborg (Cambridge: Cambridge University Press, 1982), 723–38.

<sup>&</sup>lt;sup>27</sup>ST II-II q. 57, a. 1.

<sup>&</sup>lt;sup>28</sup>ST II-II q. 29, a. 1.

<sup>&</sup>lt;sup>29</sup>The manner in which Murphy formulates the three candidate conceptions leaves open the possibility that the conceptions are reconcilable, despite his firm advocacy of the aggregative conception. Murphy's discussion of the instrumental conception, for example, seems to entail that this conception is normatively dependent upon the aggregative conception, rather than precluded by it. See Murphy, "The Common Good," 139–47.

dimensions of the political common good. While different theorists may certainly emphasize one conception at the expense of others, even giving it explanatory or normative priority, this should not be taken to entail that they are denying the (perhaps qualified) applicability of the other conceptions. The attractiveness of this interpretation is clear when we consider the purpose and explanatory role of the common good within natural law accounts of politics and jurisprudence.

### 2. Constraints on a Natural Law Conception of the Common Good

As Murphy has argued, the two most obvious constraints on a natural law conception of the common good are that it must be sufficiently *common* and sufficiently *good*. The constraint of *commonness* sets a condition on properly *shared* aims of political deliberation and action.<sup>30</sup> An account of the common good consistent with the natural law tradition influenced by Aquinas must not be conceived so broadly that it includes Hobbesian-style theories which acknowledge the importance of, for example, social stability and peace, but regard the obtaining of such states of affairs as a wholly agent-relative end.<sup>31</sup> The constraint of *goodness* sets a condition on the goodmaking characteristics—the normative desirability—of the common good. The natural law common good satisfies the constraint of goodness insofar as it provides *reasons* for action, serving as an end for political deliberation and guiding the acceptance of its outcomes.<sup>32</sup>

Insofar as the common good provides *reasons* for action, serving as an end for political deliberation and guiding the acceptance of its outcomes, it has a purposive aspect that is captured, perhaps obscurely, in Aquinas's statement that common good is rightly said to be common end.<sup>33</sup> The political common good does not simply refer to states of affairs in a descriptive sense in natural law accounts, but also serves as a normative reason and final cause in the Aristotelian sense. The need to keep in view the normativity of the common good—its status as a reason for action—becomes evident in the attempt to distinguish the natural law position from alternative political theories. Murphy's commonness and goodness conditions can certainly help to frame a contrast between the natural law conception of the common good and thinner liberal or civic republican conceptions. One might argue, for example, that Rawls's liberal conception of "justice as fairness" fails to satisfy the commonness constraint because of the agent-relative orientation of the "conditions to everyone's advantage" it advocates.<sup>34</sup>

<sup>&</sup>lt;sup>30</sup>Murphy, "The Common Good," 134–35.

<sup>31</sup> Ibid.

<sup>&</sup>lt;sup>32</sup>Ibid.

<sup>&</sup>lt;sup>33</sup>ST I-II q. 90, a. 3.

<sup>&</sup>lt;sup>34</sup>John Rawls, A Theory of Justice, 217.

Similarly, it could be argued that civic republican accounts which lack a developed theory of substantive human goods fail to satisfy the goodness constraint.<sup>35</sup> This approach appears less promising, however, as a way of distinguishing the natural law account from utilitarian accounts. In addition, the goodness and commonness constraints do not—without further elaboration—clearly articulate the normative point and explanatory function of the natural law common good. It is therefore helpful to examine the purpose and explanatory role of the common good within natural law accounts of politics and law in order to bring into sharper relief the distinguishing features of the natural law position.

Two traditional normative functions of the common good within natural law theories of politics and law are (1) to provide the foundation for an account of political authority and obligation and (2) to serve as a criterion for an assessment of the reasonableness or defectiveness of laws.

An example of the common good serving as the normative foundation for an account of political authority and obligation is found in Finnis's arguments for a generic and presumptive obligation to obey the law. As set out above, Finnis argues that the common good, considered instrumentally, is a necessary condition for individuals to realize basic goods. Finnis's account of practical reasonableness entails that the attempt to realize these basic goods is a morally obligatory goal for individuals. Insofar as the common good is a necessary condition for realizing a morally obligatory goal, it is itself morally obligatory. Furthermore, on the assumption that the law is the most effective instrument of achieving the common good, primarily because of its capacity to resolve coordination problems, then this moral obligatoriness extends to presumptive and generic law-abidingness.

The *explanatory role* that the common good plays in Finnis's account of political authority and obligation is instructive. Although Finnis does not regard the common good as an ultimate reason or intrinsic good, it performs the normative role of a reason for action that sets the conditions under which authority is legitimate (effectiveness in resolving coordination problems serving the basic goods) and laws are morally obligatory (obedience to law supports a more fundamental moral obligation). Although additional premises are

<sup>35</sup>Mary M. Keys runs a persuasive natural law argument against Michael Sandel's civic republican critique of liberalism along these lines. See Mary M. Keys, *Aquinas, Aristotle and the Promise of the Common Good* (Cambridge: Cambridge University Press, 2006), 41–48.

<sup>36</sup>This summary draws in particular on Finnis, "The Authority of Law," 115–37. See also George Duke, "Finnis on the Authority of Law and the Common Good," *Legal Theory* 19, no. 1 (2013): 44–62. An obligation to obey the law is *generic* if it is considered in relation to each law taken simply as an instance of law. An obligation is *presumptive* if in some cases it may be outweighed by countervailing moral considerations.

<sup>37</sup>For critique of the assumption see Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: Oxford University Press, 1994), 341–54.

needed to differentiate Finnis's natural law position from rival positions such as utilitarianism, including the requirements of practical reasonableness and the incommensurability of the basic goods, the common good fulfills the indispensable normative role of grounding claims about authority and obligation.<sup>38</sup>

A further example of the role of the common good in grounding a natural law account of political authority and obligation is found in the work of Yves Simon.<sup>39</sup> For Simon, authority serves three primary functions in unifying human action towards the common good. 40 In the first instance, authority directs the proper ordering of human goods in the light of human failings, including selfishness and ignorance. Second, political authority would be necessary even if humans were not selfish and ignorant, insofar as there is frequently more than one course of action that could serve as a means to the realization of the common good. Third, in the absence of unanimity, authority directs both the intention of particular ends and the choice of means for a political community.<sup>41</sup> All three functions of authority ultimately derive their normative justification from the need to promote the common good in order to realize flourishing within human communities. In sum, according to Simon, the common good is the normative ideal that justifies the role of authority in providing unity to the deliberation and action of a political community.

The second explanatory role of the common good identified above is to serve as a criterion for an assessment of the reasonableness or defectiveness of positive laws. *Lex iniusta non est lex*—an unjust law is not a law—is indeed often regarded as the core commitment of natural law jurisprudence. <sup>42</sup> Contemporary natural law theorists such as Finnis and Murphy have sought

<sup>38</sup>On the requirements of practical reasonableness see Finnis, *Natural Law and Natural Rights*, 100–133. On the incommensurability of the basic goods and the ramifications of this for consequentialism in particular see Finnis, *Natural Law and Natural Rights*, 114–17, 225, 422–23 and John Finnis, *Fundamentals of Ethics* (Washington, DC: Georgetown University Press, 1983), 86–90.

<sup>39</sup>See, in particular, Yves R. Simon, *Philosophy of Democratic Government* (Chicago: University of Chicago Press, 1951); Yves R. Simon, *A General Theory of Authority* (Westport, CT: Greenwood, 1962) and Simon, *The Tradition of Natural Law*. A clear and concise overview of Simon's account of the relationship between authority and the common good is found in William A. Frank, "Authority as Nurse of Freedom and the Common Good," *Faith and Reason* 16 (1990): 371–86. See also William A. Frank, "Authority and the Common Good in Democratic Governance," *Review of Metaphysics* 60 (2007): 813–32.

<sup>40</sup>Simon, *Philosophy of Democratic Government*, 1–71; Simon, *General Theory of Authority*, 23–80; and Cochran, "Yves R. Simon and 'The Common Good,'" 232.

<sup>&</sup>lt;sup>41</sup>Simon, Philosophy of Democratic Government, 1–71.

<sup>&</sup>lt;sup>42</sup>As Norman Kretzmann has demonstrated, the dictum is not *directly* attributable to either Augustine or Aquinas. See Norman Kretzmann, "Lex Iniusta Non Est Lex: Laws on Trial in Aquinas' Court of Conscience," *American Journal of Jurisprudence* 33, no. 1

to avoid the counterintuitive implications of interpreting this dictum to mean that unjust laws are necessarily legally invalid, while continuing to uphold traditional natural law connections between law, justice, and practical reasonableness. The basic claim is that although there can be, and are in fact, immoral positive laws, such laws are not central instances of law or are defective as law. 44

The normative dependence of such arguments on the common good is perhaps most clearly seen in the political and legal thought of Aristotle and Aquinas. Aristotle's identification of the common advantage with justice (Pol. 1279a18 and 1282b17–18) explains the central normative role it plays in his theory of constitutions (politeiai) and law. What differentiates correct from deviant constitutions for Aristotle is their conformity with the common advantage (Pol. 1279a17-21; cf. Aquinas, Sententia Politic. 3, 1.6 n2). If a constitution serves the rulers or sectional interests, rather than the good of the community as a whole, then it is defective. Given the normative dependence of laws upon constitutions for Aristotle (Pol. 1274b37), the common advantage thus plays the central normative role in the assessment of the correctness or defectiveness of laws by transitivity. Aquinas's famous definition of law from the treatise on law in Summa Theologiae (1265–1274)—that law is an ordinance of reason for the common good (rationis ordinatio ad bonum commune) made by the person who has care of the community and promulgated-explicitly identifies the essence of law in terms of the common good as end. 45 Once more, the implication is that laws that are not enacted for the common good are defective instances of their kind.

Indeed, it seems that recourse to the common good is necessary to make good on Murphy's recent attempt to define the core natural law jurisprudential thesis as the proposition that any instance of law is either a rational standard for conduct or defective. He was natural law thesis" ultimately rests on the view that law has a distinctive function or purpose. Identifying this distinctive function as the provision of rational guides to conduct is arguably unpersuasive without further argument, insofar as there are a range of nonpolitical and nonlegal rules that can and do perform similar functions

<sup>(1988): 100–101</sup> and Mark C. Murphy, "Natural Law Jurisprudence," *Legal Theory* 9, no. 4 (2003): 244–46.

<sup>&</sup>lt;sup>43</sup>See, in particular, Finnis, *Natural Law and Natural Rights*, 23–55; Murphy, "Natural Law Jurisprudence," 241–67; Murphy, "Natural Law Theory," in *The Blackwell Guide to the Philosophy of Law*, ed. Martin P. Golding and William A. Edmundson (Malden, MA: Blackwell, 2005), 15–28.

<sup>&</sup>lt;sup>44</sup>John Finnis, "The Truth in Legal Positivism," in *Collected Essays*, vol. 4 (Oxford: Oxford University Press, 2011), 185 and Murphy, "Natural Law Theory."

<sup>&</sup>lt;sup>45</sup>ST I-II q. 90, a. 4.

<sup>&</sup>lt;sup>46</sup>Murphy, "Natural Law Theory," 23.

(think of the laws of cricket).<sup>47</sup> If the defining feature of law is understood in terms of the rational guidance of conduct in light of the common good of a political community, however, this objection loses its force. For the rules of cricket clearly do not aim to guide conduct for the common good of a political community in any meaningful sense.

On the traditional natural law view, the common good is the normative reason that explains the purpose and function of law. As a consequence, it is in relation to the aim of serving the common good that the reasonableness of particular laws is to be assessed. The common good thus forms part of law's identity conditions on the traditional view, insofar as it is by understanding the function of law—the good that it serves—that we are able to understand what law is. In Aristotelian-Thomistic metaphysics, final causes feature prominently in explanations of what it is to be an instance of a particular kind. Insofar as things act in conformity with their nature, they derive their proper actions and ends in conformity with the law written into their nature. <sup>48</sup> This entails that the end, or purpose, of a kind of thing is constitutive of the identity conditions of that kind of thing. The common good, this analysis suggests, has an indispensable role to play in any natural law attempt to specify the conditions for central and defective cases of law.

## 3. The Instrumental and Aggregative Common Good

At the conclusion of section 1 I suggested that it is unnecessary for the natural law theorist to hold one conception of the common good to the exclusion of the others. Murphy's three conceptions can in fact be understood as representing different dimensions of the common good, rather than irreconcilable alternatives. In the first instance, the instrumental and aggregative conceptions can be understood as responses to different concerns. The instrumental conception answers the question whether the common good is a basic good or a means to more fundamental basic goods. The focus of the aggregative conception, by contrast, is on the question of who or what is ultimately served by the common good: the community as a whole or individuals. More generally, there appear no obvious obstacles to reconciliation of the three conceptions. If there is a distinctive aspect to the common good, for example, then this does not preclude the common good also possessing an instrumental aspect (insofar as the common good is not only a distinctive good, but also

<sup>&</sup>lt;sup>47</sup>Brian Leiter, "Why Legal Positivism (Again)?" (Public Law and Legal Theory Working Paper No. 442, University of Chicago, Sept. 2013), 6–7.

<sup>&</sup>lt;sup>48</sup>ST I-II q. 91, a. 2. More generally, Aquinas takes over Aristotle's doctrine of four "causes": efficient, formal, material, and final. See, for example, ST II-II q. 27, a. 3. See further Michael Zuckert, "The Fullness of Being: Thomas Aquinas and the Modern Critique of Natural Law," *Review of Politics* 69 (2007): 27–47.

<sup>&</sup>lt;sup>49</sup>I am grateful to an anonymous reviewer for this point.

serves to assist individuals in attaining basic goods) and an aggregative aspect (insofar as the common good serves both the community as a whole and the good of each and every individual). This suggests that the natural law theorist should focus upon the normative role of the different conceptions, rather than the search for the single true conception. In what follows, I argue that while there is no reason to deny the important normative roles of the instrumental and aggregative conceptions, the distinctive conception has an important, yet frequently overlooked, normative role to play in grounding a natural law account of the authority of law.

Murphy's argument that the instrumental conception requires support from a more normatively robust aggregative account of the common good to ground natural law claims about authority and obligation is instructive in this context.<sup>50</sup> Insofar as the political common good is instrumental to the realization of individual basic goods, our reasons to promote it can seemingly be understood in agent-relative terms: the reason I have to promote the common good is that it promotes my good, the reason you have is that it promotes your good, and so on. 51 As a result, the instrumental common good understood as a set of conditions instrumental to the attainment of individual goods—has an ambiguous status as a genuinely shared good. The capacity of the instrumental common good to meet the goodness constraint is also problematic, Murphy suggests. On Finnis's instrumental account, although it is a principle of practical reasonableness that agents should promote the common good of their communities, the common good itself is instrumental to basic goods. 52 As Murphy points out, on a natural law account of practical reasoning instrumental goods alone cannot serve as ends.<sup>53</sup> The instrumental common good thus seems to lack the necessary good-making characteristics to ground a normative account of legal authority.

Finnis's response to the charge that there is no reason to single out the law as privileged for the resolution of coordination problems arguably also demonstrates the need to supplement the instrumental common good with a more normatively robust conception. As part of an argument against the existence of a presumptive and generic obligation to obey the law, Joseph Raz points to voluntary or private schemes of cooperation and incentive-based systems which could potentially serve the same instrumental role as governmental law in terms of allowing individuals to realize their personal objectives. Finnis argues convincingly in response that the law makes available an authoritative framework of public rules that encompasses the full range of human projects and commitments. The law is a privileged instrument for

<sup>&</sup>lt;sup>50</sup>Murphy, "The Common Good," 142–43. See also Duke, "Finnis on the Authority of Law and the Common Good," 44–62.

<sup>&</sup>lt;sup>51</sup>Murphy, Natural Law in Jurisprudence and Politics, 68.

<sup>&</sup>lt;sup>52</sup>Finnis, Natural Law and Natural Rights, 125.

<sup>&</sup>lt;sup>53</sup>Murphy, Natural Law in Jurisprudence and Politics, 67–68.

<sup>&</sup>lt;sup>54</sup>Raz, Ethics in the Public Domain, 341–54.

coordination insofar as its features facilitate a (transparently) just distribution of benefits and burdens in the community.<sup>55</sup> In addition, the great variety of goods to be pursued and the even greater variety of means to pursue them implies that some sort of authority (or authoritative decision-making procedure) is necessary even among virtuous agents.<sup>56</sup> Philosophical anarchist arguments against a *pro tanto* obligation to obey the law thus underestimate the role of the law as a "seamless web" that links persons and transactions between them in a way that goes beyond the content of any particular law.<sup>57</sup>

Finnis's response to philosophical anarchist objections against a *pro tanto* obligation to obey the law is convincing, yet seems to depend on a more robust conception of the common good than an instrumental conception can provide. For it would seem difficult to provide an adequate explanation of Finnis's appeal to the full range of human projects and commitments, and the just distribution of benefits and burdens in a community, within a narrowly instrumental framework. Finnis is surely correct to say that reasonable and just laws play a pivotal role in allowing human projects and commitments to be attained. Yet whether a particular law is reasonable or not depends at least in part on its contribution to the just ordering of a political community. In a similar way, an assessment of whether there is a just distribution of benefits and burdens is only fully intelligible when carried out in relation to the community taken as a whole. The "seamless web" argument thus seems to rely implicitly upon notions of justice and the good order of the community that are not captured by a narrowly instrumental conception.

It is on the basis of similar considerations that Murphy alleges that the instrumental conception is in the last instance parasitic on the aggregative conception. Ultimately, Murphy claims, "it is the overall flourishing of citizens in community that provides the normative force of the common good instrumentally conceived." Insofar as basic goods at the level of individuals provide all the relevant reason-giving force to the instrumental common good, the aggregative conception is doing all the important normative work. This line of objection is plausible with respect to the instrumental conception deriving its normative force from elsewhere. It is doubtful, however, whether the aggregative conception is itself capable of doing all the important normative work required of the common good without support from the more traditional distinctive conception.

The aggregative conception seems to fare better than the instrumental conception with the commonness constraint owing to its emphasis upon the universality of human flourishing as a goal for each and every member of a

<sup>&</sup>lt;sup>55</sup>Finnis, "The Authority of Law," 120.

<sup>&</sup>lt;sup>56</sup>Ibid., 133–137 and Simon, *Philosophy of Democratic Government*, 1–71.

<sup>&</sup>lt;sup>57</sup>Finnis, "The Authority of Law," 120.

<sup>&</sup>lt;sup>58</sup>Murphy, "The Common Good," 143.

<sup>&</sup>lt;sup>59</sup>Ibid., 142.

political community. Murphy differentiates the aggregative account of the common good from a purely agent-relative good as follows. Under a minimal Hobbesian conception of the common good an agent A, when asked why that good is worth pursuing, will answer that it serves A's own good. B will answer that is serves B's own good. By contrast, if "reasonable agents" are asked why the aggregative common good is worth pursuing then "A will answer that it serve's A's good and B's good and C's good (etc.), B that it serves A's good and B's good and C's good (etc.) and so forth." Murphy thus seeks to rebut the objection that the aggregative common good is too individualistic to meet the commonness constraint by appealing to a first person perspective that incorporates the good of other members of a community.

There is an aggregative component to the common good and it would be facile to criticize the aggregative conception merely on the grounds that it is individualistic. Murphy, like most natural law theorists, regards social goods such as friendship and community as basic goods. 61 This allows him to incorporate irreducibly social goods within the aggregative conception to the extent that these "are aspects of the fulfilment of individual persons." 62 Murphy argues in addition that practical reasonableness frequently provides reasons for an agent to favor the flourishing of other agents, presumably in circumstances where personal flourishing must be sacrificed for the sake of the flourishing of other agents. According to Murphy, the status of practical reasonableness as a basic good entails that "the state in which an agent acts reasonably with respect to others is an instance of a basic good, something that makes that agent well off."63 From a practical perspective, moreover, justice can be understood as a manifestation of practical reasonableness in the dealings of an agent with other agents. Insofar as justice "can be broken down into the proper response by one agent to another," its "value can be captured by the aggregative conception of the common good."64 The objection that the aggregative conception allows an individual to prioritize their flourishing at the expense of another agent can thus be countered as follows: human flourishing depends upon the realization of the good of practical reasonableness, which in turn involves attentiveness to the good of other agents.

Although Murphy's characterization of justice as the proper response by one agent to another is cogent, it is also one-sided. On the traditional Aristotelian and Thomistic conception, justice is not simply a virtue of many individuals, but also identifiable with the common advantage, understood as both the correct ordering of relations between persons and the

<sup>&</sup>lt;sup>60</sup>Murphy, Natural Law in Jurisprudence and Politics, 65.

<sup>&</sup>lt;sup>61</sup>Mark C. Murphy, *Natural Law and Practical Rationality* (Cambridge: Cambridge University Press, 2001), 96–138.

<sup>&</sup>lt;sup>62</sup>Murphy, "The Common Good," 150.

<sup>&</sup>lt;sup>63</sup>Ibid., 155. Cf. Finnis, Natural Law and Natural Rights, 100–133.

<sup>&</sup>lt;sup>64</sup>Murphy, "The Common Good," 155.

good order of the community as a whole.<sup>65</sup> The reference to the ordering of social relations and the good of the whole community in this conception is not explicable solely by reference to the response of individual agents to other agents. It incorporates reference to a well-ordered state of affairs that allows individuals to flourish and is a constituent part of their well-being. This suggests, as I will now demonstrate, that Murphy's position also requires supplementation from dimensions of the common good that are best captured by the distinctive conception. More generally, as I will demonstrate in the final section, the distinctive common good of a well-ordered political community has an indispensable role to play in an adequate natural law account of justified political and legal authority.

#### 4. The Distinctive Common Good

The distinctive common good was defined in section 1 as the normative ideal of a state of affairs which is the good condition of the community as a whole. This definition appeals to the traditional Thomistic identification of the common good with justice (the proper ordering of social relations) and peace (the absence of strife and discord). Aquinas notes in this context that law which is for the common good directs individual citizens to be virtuous to the extent necessary to ensure that justice and peace are maintained.<sup>66</sup> Implicit in this statement is an acknowledgment that the common good may require a prioritization of justice and peace, considered as good conditions of the whole community, over particular instantiations of individual good. In this final section I draw on Aristotle to argue that a distinctive conception of the common good which refers to the good condition of the community as a whole is not redundant on the instrumental or aggregative accounts from a normative perspective, despite the fact that the political common good ultimately serves human ends. Recognition of the good condition of the community as a whole as an integral part of human flourishing, I contend, is necessary to explain how the common good can take normative priority over individual goods. The distinctive conception of the common good thus has a substantive nonredundant role to play in a natural law justification of political and legal authority.

Any defense of the distinctive common good must first come to terms with Murphy's argument that the distinctive conception is redundant on the aggregative conception from both a normative and a practical perspective.<sup>67</sup> Murphy's critique of the distinctive common good does not deny the intelligibility of ascribing irreducible social goodness to certain states of affairs. It is certainly possible for an association or team, Murphy admits, to be in a

 $<sup>^{65}</sup>$ See in particular Pol. 1279a18 and 1282b17–18 and ST II-II q. 57, a. 1.

<sup>&</sup>lt;sup>66</sup>ST I-II, q. 96, a. 3.

<sup>&</sup>lt;sup>67</sup>Murphy, "The Common Good," 153–57.

good condition: a university, for example, with good facilities, competent faculty and highly motivated students will be in a better condition than a university in which the opposite circumstances obtain.<sup>68</sup> What Murphy wants to argue is that claims about what perfects or completes an association are not of "fundamental practical importance." The reason he offers for this claim is that the sense in which certain states of affairs can be good for a community as a whole are ultimately reducible ("explicable wholly") by reference to the basic goods of individuals prioritized by the aggregative conception.<sup>69</sup>

It is important to be clear on the kind of reduction advocated by Murphy at this point. His claim is that, although there are irreducible social goods, the normative pull of such goods—their relevance to practical deliberation—derives from the more basic goods that are given priority on the aggregative conception. As suggested in section 3, this reasoning leads Murphy to suggest that the normative pull of justice derives from the more basic good of practical reasonableness or excellence in agency. Although justice as a state of affairs is an irreducible social good, the "way that justice should focus as a goal in political deliberation" is by reference to the good of each individual in responding in a practically reasonable way to the good of other individuals. <sup>70</sup>

The implications of Murphy's reductive strategy can be seen by considering its capacity to deal with two Aristotelian theses that might be thought to support a distinctive conception of the common good: that political activity is an inherent good and that friendship can be extended to the political domain by analogy. An argument, along broadly Aristotelian and civic republican lines, that political activity is an intrinsic good and necessary for full human flourishing can be accommodated by Murphy's reductive strategy simply by pointing to the status of that activity as an intrinsic good for each and every citizen. 71 Similar reasoning applies to Aristotle's suggestive statements on the analogical extension of relations of personal friendship to the polis (politikē philia) (EE VII 9–10; NE 1167b2–4). In nondefective or central instantiations of friendship, I am someone's friend if I feel genuine goodwill towards them on the basis of some virtuous quality they possess and if both of us are known to each other to reciprocate these feelings (NE 1156a1-5). The extension of this model to the political domain appears strained in a modern context and Aristotle in any case clearly characterizes politikē philia as a form of friendship based on utility (EE 1242a7). Even if civic friendship does instantiate a reciprocal concern that is a shared or common good for those who participate in a political community, however, this would not in itself disprove the normative priority of the aggregative

<sup>&</sup>lt;sup>68</sup>Ibid., 153.

<sup>&</sup>lt;sup>69</sup>Ibid., 154.

<sup>70</sup>Ibid.

<sup>&</sup>lt;sup>71</sup>Aristotle, *Politics* 1252b27–30 and 1280a31–34. See also Terence Irwin, "The Good of Political Activity," in *Aristoteles' "Politik": Akten des XI. Symposium Aristotelicum*, ed. G. Patzig (Göttingen: Vandenhoeck & Ruprecht, 1990), 73–98.

common good.  $^{72}$  For, once again, political friendship may be considered a basic good for each and every citizen, and hence understood in terms of the practically reasonable interactions of individuals, rather than as a distinctive good.  $^{73}$ 

Murphy's reductive argument thus requires the defender of the distinctive conception to demonstrate that the normative pull of the distinctive common good operates on a different level from the basic goods. It must be demonstrated, in other words, that the distinctive common good, as a state of affairs attributable to the community and hence irreducible to the good of each and every individual, has a practically significant role to play in an explanation of human well-being. The main apparent obstacle to such an approach is the plausibility of Murphy's claim that it is ultimately the good of persons that makes the distinctive common good an objective and state of affairs worth promoting. Fortunately, as I will now demonstrate, it is possible to acknowledge that it is *ultimately* the good of persons that makes the distinctive common good of political association worth promoting, while also upholding the thesis that the distinctive common good has an important normative role to play within natural law accounts of political and legal authority.

Before I defend this thesis, it is important to note explicitly that there is no reason, in principle, to assert that a state of affairs or normative objective must be redundant *simply because* it serves a more ultimate end. As Finnis has argued with respect to both Aristotle's *phronēsis* and Aquinas's *prudentia*, every end, save the most ultimate, is also a means relative to more ultimate ends. Assuming, for example, an Aristotelian point of view in which *eudaimonia* is the ultimate human end, it makes little sense to conclude that subordinate ends, such as health (*EE* 1261b18–21), are of no normative significance at all. This would be to conflate the claim that a state of affairs or goal serves a more ultimate end with the claim that it is normatively redundant. From the point of view of an ultimate end, such as *eudaimonia*, health may be a subordinate good, but it also possesses normative significance insofar as it forms a constitutive part of the human good. Indeed, to deny the normative significance of a state of affairs such as health on the basis that it is not an ultimate end is to deny, implausibly, that it is a good which we have reason to promote.

<sup>&</sup>lt;sup>72</sup>John Finnis, "Aquinas' Moral, Political and Legal Philosophy," *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/aquinas-moral-political/, last accessed 30 June 2015.

<sup>&</sup>lt;sup>73</sup>For a robust interpretation of Aristotelian *politikē philia* see John M. Cooper, "Political Animals and Civic Friendship," in *Reason and Emotion: Essays on Ancient Moral Psychology and Ethical Theory* (Princeton: Princeton University Press, 1999), 356–77.

<sup>&</sup>lt;sup>74</sup>See John Finnis, "Action's Most Ultimate End," in *Collected Essays*, vol. 4 (Oxford: Oxford University Press, 2011), 173–86 and Terence Irwin, *The Development of Ethics: A Historical and Critical Study*, vol. 1 (Oxford: Oxford University Press, 2007), 175–76.

There is accordingly no necessary inconsistency in claiming that the distinctive common good ultimately serves the good of individuals while also ascribing to it genuine normative significance.

My claim then is that although the ultimate normative significance of the common good derives from its role in the promotion of human flourishing, the normative import of the common good is not exhausted by its instrumental or aggregative roles. The good condition of the whole community has normative significance insofar as a just and peaceful political community is a constituent of human well-being. A just and peaceful political community not only provides circumstances of order in which practical reasoning about the human good can best occur, but itself forms part of human well-being and thus cannot be reduced to necessary conditions for flourishing or an aggregate of such flourishing. It is because the good condition of the whole is an integral part of the well-being of each citizen, and not simply a means to its attainment, that the promotion of the good of the political community can potentially take priority over individual goods in circumstances of conflict and emergency.

These claims can best be developed by reference to Aristotle's conception of the common advantage (to koinēi sumpheron). The common advantage features in Aristotle's explanation of the claim that humans are by nature political animals (Pol. 1278b19–23), serves as the main criterion for classifying correct and deviant constitutions (politeiai) (Pol. 1279a17–29), and is identified at two key points with justice in the universal sense (Pol. 1279a18 and 1282b17–18). An analysis of these wide-ranging uses of the concept of the common advantage points to its role as a motivational reason for individuals to participate in political community insofar as it promotes their well-being. Even apart from their desire to live together as political animals, Aristotle suggests, human beings would still have a strong incentive to join together and constitute a political community. This is because the polis provides advantages or benefits that accrue to each (hekastōi) and every member (Pol. 1278b19–23; cf. NE 1160a9–13). The motivational aspect of the common advantage is suggestive of its instrumental and aggregative

<sup>&</sup>lt;sup>75</sup>Aristotle's identification of the common advantage with the political good of justice refers to "universal justice." Aristotle characterizes "universal" justice as concerned with the lawful, in contrast to "particular" justice, which concerns questions of equality and is divided into distributive and corrective forms (*NE* 1129b25–1130a13). See also Fred D. Miller, *Nature, Justice, and Rights in Aristotle's "Politics"* (Oxford: Oxford University Press, 1995), 194.

<sup>&</sup>lt;sup>76</sup>I assume an "inclusive" interpretation of Aristotelian citizenship, according to which all the members (citizens) of the political community should partake in the good life. See Miller, *Nature, Justice, and Rights in Aristotle's "Politics,"* 219, for defense of an inclusive approach to citizenship and *eudaimonia*. Of course Aristotle's approach to citizenship is also regrettably exclusive in the sense that women, slaves, resident aliens, etc. are not considered members of the polis. On this point see Julia

normative roles.<sup>77</sup> The common advantage also sustains interpretation, however, as the well-ordered state of affairs of a just political community. In this latter aspect, Aristotle points to an understanding of justice that extends beyond the practically reasonable interaction between individuals to a distinctive good that is a constituent part of each citizen's flourishing.<sup>78</sup> For Aristotle the end of the polis, as the most authoritative of associations (*koinōnia*), is not only the flourishing (*eudaimonia*) of all members of the association (*Pol*. 1252b27–30 and *NE* 1094b5–11), but the flourishing of the polis as a whole (*Pol*. 1323b30–36).<sup>79</sup> In stating that the members of a polis can only flourish if the polis itself is flourishing Aristotle suggests that the ultimate normative force of the common advantage is found in its promotion of individual flourishing, but also that there is a distinctive good of a well-ordered and just community which forms a constituent part of the flourishing of each individual.

This distinctive aspect of the common advantage is evident in Aristotle's appeal to the just ordering of a political community through good law (eunomia) (Pol. 1294a3–7 and 1326a29–31). The just ordering of a community through law is a state of affairs attributable to the polis and also a component part of the well-being of each citizen who lives in that community (Pol. 1323b30–36). It is in his account of constitutions (politeiai) that Aristotle makes this commitment explicit. Aristotle regards the constitution of a polis as its formal cause, as "a particular ordering [taxis] of the inhabitants of the

Annas, "Aristotle on Human Nature and Political Virtue," Review of Metaphysics 49, no. 4 (1996): 731–53.

<sup>&</sup>lt;sup>77</sup>See Donald Morrison, "The Common Good," in *The Cambridge Companion to Aristotle's "Politics*," ed. Marguerite Deslauriers and Pierre Destrée (Cambridge: Cambridge University Press, 2013), 176–98.

<sup>&</sup>lt;sup>78</sup>My argument in what follows assumes that the (undoubtedly genuine and significant) differences between the classical polis and modern political associations such as the nation-state do not undermine the relevance of an Aristotelian conception of the common good to contemporary political communities. For defense of this assumption see Thomas W. Smith, "Aristotle on the Conditions for and Limits of the Common Good," *American Political Science Review* 93, no. 3 (1999): 625–36 and Keys, *Aquinas, Aristotle and the Promise of the Common Good.* A difficulty in this vicinity for any natural law account of the common good, particularly in the context of the expansion of international law and contemporary debates about global justice, is whether it can justify a commitment to the particularity requirement, i.e., that an agent has a particular obligation to obey the laws established in their own political community. See Leslie Green, *The Authority of the State* (Oxford: Oxford University Press, 1990), 227–28 and A. J. Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), 30–35. For a cautious natural law response, based upon Aristotelian assumptions, see Murphy, *Natural Law in Jurisprudence and Politics*, 171–76.

<sup>&</sup>lt;sup>79</sup>See also the excellent discussion in V. Bradley Lewis, "Aristotle, the Common Good, and Us," *Proceedings of the American Catholic Philosophical Association* 87 (2014): 69–88.

polis" (*Pol.* 1274b32–41). A just polis—a polis in good condition because governed by fair and reasonable law—is one that is best able to realize the purpose, or final cause, for which it was established, namely, the *eudaimonia* of each citizen and the whole community. This goal the lawgiver or ruler (efficient cause) seeks to promote by a just ordering of relations (formal cause) between citizens (material cause). Those with authority in a political community exercise that authority correctly insofar as they reason with practical wisdom about what is to be done.

Aristotle insists that the virtue of *phronēsis* cannot be developed outside of political activity and ruling (*Pol.* 1277b). This claim reflects the inseparability of practical rationality and justice on the Aristotelian conception. And it is the status of the political community as the locus of rationality and justice—as the privileged form of human association with respect to the human good—that explains its integral role in human well-being. Justice in this sense is not reducible to the practically reasonable interaction of individuals, but incorporates reference to the good condition or order of a community that is governed by practically reasonable laws directed towards the human good in all its manifestations. It also extends beyond the common good of friendship. The distinctive good of a political community, that is to say, does not simply describe the reciprocated affection that individuals have towards each other, but refers to a practically reasonable and just ordering of the community that is constitutive of the flourishing of each.

Thus, although the ultimate normative significance of a flourishing polis for Aristotle is found in its capacity to contribute to human well-being, there is also a sense in which, from a normative perspective, the polis is prior to the individual (see *Pol.* 1252b28 and 1253a31–33). A complete community that is well-ordered and self-sufficient (*Pol.* 1252b26–1253a18) can be regarded as possessing normative priority over the members of the community in the sense that the full realization of human nature requires participation in a polis. As Aquinas notes in his commentary on the *Politics*, the whole is prior to the parts in the rank of nature and perfection (*ordine scilicet naturae* 

<sup>&</sup>lt;sup>80</sup>Fred D. Miller, "Aristotle's Political Theory," *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/aristotle-politics/, last accessed 10 January 2015.

<sup>&</sup>lt;sup>81</sup>See Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988), 103–45.

<sup>&</sup>lt;sup>82</sup>Ibid., 141.

<sup>&</sup>lt;sup>83</sup>See Miller, *Nature, Justice, and Rights*, 56 on this point: "the priority claim rests on the principle of community that individuals can realise their potential only if they are subject to the authority of the *polis*.... The *polis* is a whole in the sense of a community: its natural end is a common good in which the individual members directly participate." See also David Keyt, "Three Basic Theorems in Aristotle's Politics," in *A Companion to Aristotle's "Politics*," ed. David Keyt and Fred D. Miller Jr. (Malden, MA: Blackwell, 1991), 118–41.

et perfectionis).<sup>84</sup> This is what justifies Aristotle's analogy with the human body: just as the parts of a body cannot fulfill their function except as parts of a human being, an individual cannot be self-sufficient and virtuous without participation in political community.<sup>85</sup> The polis is accordingly not prior by nature to the individual in an organicist sense, but in the normative sense that it is perfective of human capacities (*Pol.* 1252b28 and 1253a31–33).<sup>86</sup>

If justice may be regarded as the good ordering of a polis (*Pol.* 1253a31–39), then a just polis is one in which a state of affairs obtains that is the good of the whole community. A polis, on the Aristotelian conception, is not a mere aggregate of persons gathered together to serve basic needs, but a unity of order directed towards the good life (*Pol.* 1328b15–19). The final cause of human flourishing provides a principle for the arrangement of the political association so that the parts contribute to the flourishing of the whole, considered as a nonorganic unity of order. Individuals form together into a political association because it provides the conditions for them to flourish individually and in common. Yet the end for which members of a political community associate also establishes a distinctive good of the polis which is more than a set of instrumental conditions or an aggregate of individual flourishing (cf. *Pol.* 1276b7–8, 1291a24–28). A political community that instantiates justice and peace is a distinctive good of practical life and a component part of the well-being of all the citizens who participate in that community.

These Aristotelian arguments for the role of the common good in promoting human flourishing demonstrate why it is necessary to recognize a distinctive conception of the common good. The distinctive conception is not redundant on the aggregative conception because the overall flourishing of a political community is not simply instrumental to individual flourishing, or an aggregate of such flourishing, but also a distinctive good that is a component part of human well-being. The instrumental and aggregative conceptions thus do not fully capture the sense in which irreducible social goods such as justice and peace play a significant normative and practical role in human affairs. Attentiveness to the distinctive good of political community, I will now suggest in closing the paper, can significantly strengthen contemporary natural law attempts to justify the normativity of political and legal authority through an appeal to the common good.

<sup>&</sup>lt;sup>84</sup>Sententia Politic., lib. 1 l. 1 n. 30. At Categories 14b4–8 Aristotle explicitly acknowledges this "evaluative" sense of priority. See also *Metaphysics* 999a13–14.

<sup>&</sup>lt;sup>85</sup>Sententia Politic., lib. 1 l. 1 n. 31. Accordingly, Aristotle's term *proteron* has the sense of more valuable or important, rather than referring to priority in temporality. See further supporting arguments for this claim in Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002), 265. At *Sententia Politic.*, lib. 1 l. 1 n. 31 Aquinas notes that the whole is not prior to the parts in the order of coming to be.

<sup>&</sup>lt;sup>86</sup>See Miller, "Naturalism," 330–31 and C. D. C. Reeve, "The Naturalness of the Polis in Aristotle," in *A Companion to Aristotle*, ed. G. Anagnostopoulos (Oxford: Wiley-Blackwell, 2009), 517.

Finnis's instrumental account of authority proposes that political governance, when structured by law, provides a uniquely fair and impartial way of ordering the lives of agents and prepolitical communities such that citizens can be confident that the burdens they are asked to bear are reasonably balanced against the burdens fellow citizens have at other times been asked to bear, and against the benefits they have received and will continue to receive.<sup>87</sup> The above defense of the distinctive position, however, suggests that this line of reasoning is more convincing when supported by an explicit recognition of the distinctive conception of the common good as a wellordered state of affairs integral to human flourishing. In particular, the thesis that the distinctive good of a well-ordered political community under the rule of law is a component part of human well-being offers strong support for Finnis's "seamless web" argument. Citizens cannot "pick and choose" which laws to obey if they are to maintain a community that is in good condition. Authoritative solutions to coordination problems and a just distribution of benefits and burdens can be understood to rest in part on the ideal of a well-ordered state of affairs that is practically significant insofar as a well-ordered community is a constituent of the human good.

It is instructive in this respect that thinner conceptions of the common good tend not to emphasize the most obvious example of virtuous activity directed towards the good of community: a soldier risking, and potentially losing, their life in battle. In the *Rhetoric*, Aristotle considers military service as exemplary in his discussion of laws stipulating what one ought to do for the sake of the community (1373b19–24). The political common good, as the classical tradition of natural law political thought was well aware, is the most compelling normative reason for the weighty demand that individuals subordinate their own flourishing to the well-being of the community. In the simplest possible terms, if a political association provides for the realization of possibilities of human flourishing that would not be possible outside of that association, and is a constituent part of each member's well-being, then this may require in some circumstances that I sacrifice my immediate interests, and even individual flourishing, in order to maintain the association. Without

<sup>&</sup>lt;sup>87</sup>Finnis, "The Authority of Law," 115–37.

<sup>&</sup>lt;sup>88</sup>This passage is best read in conjunction with Aristotle's claim that it is the virtuous person who acts most courageously and nobly in dangerous situations because they have more to lose (*NE* 1117b10–15).

<sup>&</sup>lt;sup>89</sup>My discussion here allows for a distinction between material goods and personal goods. On the basis of such a distinction, it is possible to argue that while an individual may justifiably be required to sacrifice material goods such as health, income, and occupation for the common good, personal goods such as rationality, moral integrity, virtue, and relation to God are not subject to the same obligations of sacrifice. See Jacques Maritain, *The Person and the Common Good*, trans. John J. Fitzgerald (New York: Scribner's, 1947) and Cochran, "Yves R. Simon and 'The Common Good," 233.

recognition of this aspect of the common good it is difficult to see how there could be any decisive reason for a member of a political association to defend their community against external threats or even to submit to a law that promotes the overall good of the community, but is at odds with an aspect of an individual's flourishing. It is doubtful, however, whether the normative import of this demand for sacrifice can be explicated solely by reference to the instrumental and aggregative conceptions. The intelligibility of personal sacrifice for the common good in fact seems to presuppose that there is a good of community that extends beyond particular individual goods. <sup>90</sup>

Murphy acknowledges in this context that the aggregative common good cannot ground a presumptive and generic obligation to obey the law—and by implication sacrifice for the common good-without supplementation from consent theory.<sup>91</sup> Undoubtedly the universality of the aggregative common good mitigates the concern that individuals will pursue their own good (e.g., by breaking the law) at the expense of others. If a person A can secure their flourishing only by undermining the flourishing of persons B, C, ..., n, then it does not follow on an aggregative account that A has a final normative reason to pursue their own flourishing at the expense of B, C, ..., n. All practically reasonable agents must, on the aggregative conception, consider the reasons they have to promote the flourishing of all members of a political community. This is nonetheless insufficient to ground an adequate account of the authority of law. Murphy's universality requirement that every practically reasonable agent has a reason to promote the flourishing of all other members of a political community does not have the normative resources to generate a presumptive and generic obligation to obey the law without appeal to voluntary acts of obedience. Once the nonredundant normative role of the distinctive common good is acknowledged, however, then the promotion of the good condition of the community as a whole can provide additional normative support for political and legal obligations. Agents have reasons to promote not only the flourishing of each and every individual member of a political community, but also the good order of the whole community, insofar as membership of a just political community is a component of their well-being.

<sup>90</sup>Pakaluk captures this point in his account of homesteaders who, faced with an external threat, form an association for the defense of their property ("Is the Common Good of Political Society Limited and Instrumental?," 88–94). It is not difficult to imagine a situation in which one of the homesteaders was called away from the defense of their own property, when it was under threat, to occupy a position that had more strategic importance from the point of view of defending the homesteads as a whole. To abandon this aspect of the common good—with its attendant sacrifice in terms of individual self-interest—is to abandon the traditional notion of the common good altogether.

<sup>&</sup>lt;sup>91</sup>Murphy, Natural Law in Jurisprudence and Politics, 168–76.

Murphy's claim that the distinctive common good does not exercise any normative pull because it is redundant on the aggregative conception rests on the plausible view that it is ultimately the flourishing of individuals that is of primary practical importance. Yet the discussion of Aristotle's conception of the polis as a unity of order reveals that, insofar as the flourishing of a community and justice are not only instrumental, but also constitutive conditions of individual flourishing, then the normative significance of the flourishing of a political community as a whole is far from redundant. While Aristotle's account of the common advantage suggests that the eudaimonia of the citizens of a polis is the ultimate normative reason, this goal is only achievable insofar as a state of affairs obtains that is the good of the community as a whole and which in turn forms a part of each individual's well-being. The integral role of the flourishing of the whole political association in human well-being establishes that the distinctive common good has an indispensable normative role to play in justifying the authority of law as a source of unity and order in political communities.