

NATURAL LAW AND HUMAN FREEDOM: AMERICAN AND CATHOLIC TRADITIONS

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ABSTRACT

This article compares American and Catholic schools of natural law, using an intellectual framework that identifies “minimal” and “maximal” goals of natural law. I argue that the two schools have a complex relation because they agree that natural law is a standard of justice above the positive law that is built into nature and human nature by the Creator. But the American tradition, as understood by leading figures such as the American Founders, Abraham Lincoln, and M. L. King, Jr., grows out of the natural rights principles of the Declaration of Independence and represents a “minimalist” version of natural law, while the Catholic tradition grows out of Thomas Aquinas and his successors and represents a “maximalist” version of natural law, understood as the perfection of man’s rational and social nature through virtue and the common good. Despite these differences, the two schools are not always opposed to each other and often overlap, since the American approach encourages perfectionist virtues in cultural practices, and contemporary Catholic teaching incorporates the rights and dignity of the human person into natural law. The problem that I uncover in comparing the two schools is that neither school expresses clearly the relation between the minimal floor of natural rights and the higher ends which rights are intended to serve, which creates the impression of an easy harmony between the two traditions without overcoming distrust of each other’s intentions. My hope in writing this article is to encourage better understanding among American and Catholic proponents of natural law by clarifying their views of justice, freedom, and moral perfection.

For many centuries, natural law was recognized as a type of unwritten higher law that spells out universal truths about justice and the moral order of society based on a rational analysis of nature and human nature. In American

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history, natural law has played a major role in great national debates—in justifying the rights of Americans during the Revolution and the framing of the U.S. Constitution, in the battles over slavery and preserving the Union, and in the struggles over civil rights and civil disobedience during the 1960s. In recent years, however, appeals to higher law rarely mention “natural law,” as if it were an antiquated idea or an alien religious concept injected into modern politics. This concern is heightened by the fact that Roman Catholics are the main ones who still appeal to natural law, especially in areas of economic justice, family values, and the right to life. One could say that invoking natural law in American politics was once a source of inspiration and idealism but now is a matter of suspicion and confusion.

In order to address some of these concerns, I would like to discuss two traditions of natural law, the American and the Catholic, and to compare them. The comparison will be based on an intellectual framework developed by Leo Strauss and Robert George that distinguishes between “minimal” and “maximal” goals of natural law. Strauss uses the distinction in interpreting Aristotle’s idea of natural right as a standard above legal justice that is objective but changeable, allowing either minimal or maximal goals depending on the circumstances: “The flooring and the ceiling, the minimum condition and the maximum possibility of political society, are natural [according to Aristotle] and do not in any way depend on (positive) law.”¹ In similar fashion, Robert George discusses public morality in America and defends a version of natural law that allows for the civil rights of a liberal society as well as the perfectionism of classical virtue, summed up in the phrase “pluralistic perfectionism.”²

Using this interpretative framework, I will analyze the similarities and differences between American and Catholic schools of natural law. My thesis is that the two have a complex relation because both see natural law as an ideal of justice that stands above the positive law and is built into nature and human nature by the Creator. But the American tradition grows out of the Declaration of Independence and represents a “minimalist” version of natural law, understood as natural rights, while the Catholic tradition grows out of the teachings of Thomas Aquinas and represents a “maximalist” version of natural law, understood as the perfection of man’s rational and social nature through virtue and the common good.

Despite these differences, I shall argue, the two traditions are not always opposed and often overlap, since the American approach allows and even encourages perfectionist virtues to flourish in cultural practices, while contemporary Catholic teaching aims at expanding Thomistic natural law to include the rights and dignity of the human person. The fundamental problem that I uncover in comparing the two schools is that neither school expresses clearly and openly the relation between the minimal floor of natural rights and the higher goods which rights are intended to serve, creating the impression of an easy harmony between the two traditions without overcoming distrust of

1. LEO STRAUSS, *On Natural Law*, in *STUDIES IN PLATONIC POLITICAL PHILOSOPHY* 137, 140 (1983).

2. ROBERT P. GEORGE, *MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY* 190 (1993).

each other's intentions. In presenting this analysis, I do not attempt to prove the ultimate truth of one school of natural law over the other; my aim is to encourage better understanding by clarifying their views of freedom, justice, and moral perfection.

I. AMERICAN NATURAL LAW: NATURAL RIGHTS MINIMALISM AND CULTURAL MAXIMALISM

A. *The Founders' View*

For Americans, the most familiar statement of natural law is the Declaration of Independence, drafted by Thomas Jefferson in 1776 at the behest of the Second Continental Congress. It justifies the American Revolution by appealing to a higher moral law called "the Laws of Nature and of Nature's God" that is proclaimed in the words:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.³

These famous lines assert universal truths about justice derived from the natural order of the universe and the nature of man that are evident to human reason without the aid of divine revelation, even though they are put into nature by God as the creator of the world. The central moral claim is that all human beings are created equal in the sense of having certain rights—life, liberty, and the pursuit of happiness—that are "unalienable" because they cannot be given away entirely and exist independently of government. The secondary principle is "the consent of the governed," meaning the God-given natural rights are best secured by a political authority based on the expressed will of the people. When any authority systematically violates the natural rights or the consent of the people, a revolution may be justified, if "prudence" indicates that it is wise to rebel in the given circumstances.⁴ By citing a "long train of abuses," the Declaration seeks to justify the separation of the American colonies from the British Empire and the establishment of a new form of government.

The Declaration, of course, is not a philosophical treatise, so a full explanation of its principles is not presented in the text and must be added or inferred. The underlying assumptions are that "Nature's God" (also called "the Creator" and "Divine Providence") has made the universe a rational and a moral order with precepts which human beings are capable of recognizing and obeying, using their reason and freedom in the exercise of self-government. They are also created as individuals with natural passions for self-preservation ("life"), personal liberty ("liberty"), and other goods like property that enable them to enjoy "their Safety and Happiness."⁵ Because the Creator has endowed

3. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

4. *See id.*

5. *Id.*

all people with these rational abilities and natural inclinations, they are by nature free and equal and, therefore, born without subordination to superior powers—either to kings, as claimed by divine-right kingship, or to the social hierarchy of a hereditary aristocracy, or to the racial hierarchies claimed by slave owners. Hence, the state is an artificial social contract—a human agreement to entrust political rulers with certain powers to protect their natural rights and to replace rulers if the trust is broken.⁶

As a statement of natural law, the Declaration of Independence not only justifies rebellion against the British Crown and Parliament; it also provides the higher-law background of the written constitution. As we know from history, it took about eleven years after the Declaration for the Framers of the U.S. Constitution to figure out by practical experience what form of government was best suited to protect their God-given natural rights. Their answer was a federal republic, in which the powers of the central government are shared with the several States and divided among three branches. The legitimacy of the American constitutional republic rests, therefore, not only on its ratification by the people but also on its harmony with natural law. As Madison said in *The Federalist Papers*, the new constitution is justified by “the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim.”⁷ Thus, the American constitutional system ultimately rests on a natural law doctrine about the moral order of the universe and man’s proper place in it, which assures citizens that the cosmos is not meaningless (as modern existentialists assert) and that striving for justice is not irrational or absurd.⁸

As many scholars have noted, the Declaration’s natural law doctrine arose from several sources. Jefferson said it was “an expression of the American mind . . . [found] in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &c.”⁹ While most

6. For a summary of the philosophical premises of the Declaration from a Lockean perspective, see MICHAEL P. ZUCKERT, *THE NATURAL RIGHTS REPUBLIC: STUDIES IN THE FOUNDATION OF THE AMERICAN POLITICAL TRADITION* 13–89 (Thomas S. Engeman ed., 1996).

7. *THE FEDERALIST* NO. 43 (James Madison). This is also Alexander Hamilton’s view in *The Farmer Refuted*: “The sacred rights of mankind . . . are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.” ALEXANDER HAMILTON, *THE FARMER REFUTED* 38 (New York, James Rivington 1775) (emphasis omitted). Hamilton urges “the study of the law of nature . . . [in] Grotius, Puffendorf [sic], Locke, Montesquieu, and Burlamaqui,” as well as Blackstone’s defense of natural law. *Id.* at 5–6.

8. The extent to which written provisions of the U.S. Constitution, such as the Bill of Rights, embody pre-existing natural rights or are merely “civil” rights is discussed by Diarmuid F. O’Sannlain, *The Natural Law in the American Tradition*, 79 *FORDHAM L. REV.* 1513, 1513–28 (2011). Similarly, the case for using natural law in constitutional interpretation is argued by Hadley Arkes, *The Natural Law Challenge*, 36 *HARV. J.L. & PUB. POL’Y* 961, 961–975 (2013).

9. 12 THOMAS JEFFERSON, *Letter to Henry Lee (May 8, 1825)*, in *THE WORKS OF THOMAS JEFFERSON* 408–09 (Paul Leicester Ford ed., 1905). For analysis of the several sources, see Michael P. Zuckert, *Founder of the Natural Rights Republic*, in *THOMAS JEFFERSON AND THE POLITICS OF NATURE* 11 (Thomas S. Engeman ed., 2000); Jean Yarbrough, *Thomas Jefferson and Republicanism*, in *THOMAS JEFFERSON AND THE POLITICS OF NATURE*, *supra*, at 59–75; Garrett

American Founders agreed that natural law meant God-given natural rights in the service of “safety and happiness,” they were not entirely agreed on what that meant. Jefferson cites the classical philosophers Aristotle and Cicero as influences along with modern philosophers John Locke and Algernon Sidney. These ancient and modern philosophers hold different views of natural law, even though they share premises about the rational order of nature. The Declaration’s main principles are an enhanced version of Locke’s natural rights to life, liberty, and property that adds the pursuit of happiness. Though broader than Locke’s teaching, the addition is still a minimalist doctrine, because it supports a limited view of government as the protector of persons and property from arbitrary power and of a private sphere of freedom where people can pursue happiness as they see fit, without being molded to pursue virtue over vice or to adhere to a particular religious orthodoxy. By contrast, classical thinkers like Aristotle and Cicero defined natural law in maximalist ways as a theory of virtue and the common good—understood as the excellence or perfection of man’s nature as a rational and social animal in a political community. As a theory of virtue, classical natural law requires the state to develop the mind and character of citizens, cultivating well-ordered souls and giving priority to civic duties over individual rights. In citing Algernon Sidney as a source, Jefferson adds complexity, since Sidney is similar to Locke in asserting that man is naturally free to consent to government and that “liberty . . . [is] the gift of God and nature.”¹⁰ But Sidney also appeals to classical standards of justice: “If the publick safety be provided, liberty and propriety secured, justice administered, virtue encouraged, vice suppressed, and the true interests of the nation advanced, the ends of government are accomplished.”¹¹

Despite these different standards, the Declaration teaches that legitimate government is defined mainly by the protection of inalienable rights, and it does not require promoting virtue or perfection in citizens as Aristotle, Cicero, and, later, Aquinas argued. Of course, the Declaration recommends “prudence,” and it appeals to the “protection of Divine Providence” and to the “sacred honor” of the signers; but it does not insist that prudence, piety, and honorable character are requirements of legitimate government. Those virtues are presented as means for securing natural rights which will assure people of their “safety and happiness.”¹² What is complex about the American Founders is that they were fully aware of the classical and Christian ideals of virtue and perfection and encouraged them in numerous ways. They spoke repeatedly about “republican virtue” in the citizen body—meaning self-sacrifice for the common good as reflected in military service, patriotic duty, and heroic deeds. They also promoted traditional social obligations regarding family, religion, and

Ward Sheldon, *Eclectic Synthesis: Jesus, Aristotle, and Locke*, in THOMAS JEFFERSON AND THE POLITICS OF NATURE, *supra*, at 81. For non-Lockean themes, see Walter Nicgorski, *The Significance of the Non-Lockean Heritage of the Declaration of Independence*, 21 AM. J. JURIS. 156 (1976).

10. ALGERNON SIDNEY, DISCOURSES CONCERNING GOVERNMENT ch. I, § 17; ch. III, § 33 (Thomas G. West ed., Liberty Fund 1996) (1698).

11. *Id.* at ch. III, § 21.

12. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

community. Nevertheless, the American Founders expressed a minimalist theory of natural law in the Declaration of Independence that emphasized the egalitarian ideal of inalienable natural rights.¹³ They also omitted perfectionist views of virtue from the written U.S. Constitution, even while acknowledging in the *Federalist Papers* that the constitutional checks and balances protecting rights and liberties would not work without civic virtue and practical wisdom in its leaders. The American Founders sought a limited role for the federal government, leaving character formation mainly to the cultural and religious traditions of Western civilization, to the experience of civic and military affairs, or to the educational institutions of churches, colleges, and local communities. As Thomas West points out, the Founders equated legitimate government with two principles—the consent of the people and the securing of natural rights—even though they were deeply concerned about public morality. The implication, however, is that they viewed these duties and social norms as the “moral conditions” of freedom rather than the end or purpose of freedom.¹⁴

It is also important to note that other American Founders had more robust views of natural law than Jefferson and Madison but still held minimalist views of government. Such was the case of James Wilson, the influential lawyer from Pennsylvania, who asserted that the first precept of natural law is not the right of preservation and property but God’s “paternal command—Let man pursue his own perfection and happiness.”¹⁵ Wilson argued that God made human beings with a nature suited to perfection, and he went beyond Locke’s individual natural rights by including moral sense, sociability, and sympathy in his understanding of natural law.¹⁶ He also included social virtues and the

13. On the Founders’ struggles over minimal and maximal claims of philosophy, religion, and education, see THOMAS L. PANGLE, *THE SPIRIT OF MODERN REPUBLICANISM: THE MORAL VISION OF THE AMERICAN FOUNDERS AND THE PHILOSOPHY OF LOCKE* 74–75 (1988). For different views of rights and duties, see generally Richard Primus, *An Introduction to the Nature of American Rights*, in *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND*, 15–24 (Barry Alan Shain ed., 2007); James H. Hutson, *The Emergence of the Modern Concept of a Right in America: The Contribution of Michel Villey*, in *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND*, *supra*, at 25–65; John Phillip Reid, *The Authority of Rights at the American Founding*, in *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND*, *supra*, at 67–109; Barry Alan Shain, *Rights Natural and Civil in the Declaration of Independence*, in *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND*, *supra*, at 110–62. For a contemporary reading emphasizing the egalitarianism of the Declaration as the basis of agency for all citizens, while downplaying God as Creator and natural rights as limitations on government, see DANIELLE ALLEN, *OUR DECLARATION: A READING OF THE DECLARATION OF INDEPENDENCE IN DEFENSE OF EQUALITY* 118, 182, 268–69 (2014).

14. See generally THOMAS G. WEST, *THE POLITICAL THEORY OF THE AMERICAN FOUNDING: NATURAL RIGHTS, PUBLIC POLICY, AND THE MORAL CONDITIONS OF FREEDOM* (2017) (arguing that the Founders saw “natural law” as a corrective to “natural rights,” requiring civic duties and social obligations but only as a means for maintaining a regime of natural rights). A similar argument is made by Philip A. Hamburger, *Natural Rights, Natural Law, and American Constitutions*, 102 *YALE L.J.* 907, 954 (1993), which notes that “natural law tended to be a theoretical explanation of limitations on natural rights” in order to make rights suitable for written constitutions.

15. 1 JAMES WILSON, *Of the Law of Nature*, in *COLLECTED WORKS OF JAMES WILSON* 503 (Kermit L. Hall & Mark David Hall eds., 2007).

16. See *id.* at 522–23.

wisdom of the English common law in his understanding of social obligations, especially in marriage and family life; and he spoke repeatedly of attaining happiness through nobility of character and the progress of the human mind. At times, Wilson even endorsed maximalist views of God-given natural law and positive law: “The laws, which God has given to us, are strictly agreeable to our nature; they are adjusted with infallible correctness to our perfection and happiness. On those [positive laws], which we make for ourselves, the same characters . . . ought to be impressed.”¹⁷ Despite these strong perfectionist claims, Wilson asserted that “the natural rights of the individual” and the consent of the sovereign people are the only standards for legitimate government rather than the perfection of man in higher civilization.¹⁸ Wilson also rejected Edmund Burke’s view that exercising freedom responsibly required people to overcome nature and to live in civil society shaped by ancient customs. And Wilson criticized the English constitution for its foundation on convention and parliamentary sovereignty rather than on natural rights.¹⁹ These conflicting statements by Wilson are hard to reconcile, and I can make sense of them only by speculating that Wilson seeks the best of both worlds. On the one hand, he argues for minimalism as the standard for natural law (citing the natural rights to “life, liberty, character, and property”) and for positive law (in the U.S. Constitution as well as “municipal law”). On the other hand, Wilson holds maximalist standards for American culture, which he hoped would emerge from a free society properly educated and would produce a virtuous, enlightened, and mostly Christian civilization directed to happiness and perfection.²⁰

In sum, the American Founders’ views on natural law are puzzling because they failed to clarify the crucial issue of whether freedom is an end in itself or a means to something higher—whether the natural rights of the Declaration and the liberties protected by the U.S. Constitution were choice-

17. 1 JAMES WILSON, *Of Man, as an Individual*, in COLLECTED WORKS OF JAMES WILSON, *supra* note 15, at 587. Wilson also uses the classification of laws into five kinds that indicates the influence of Richard Hooker and, through Hooker, Aquinas. Wilson lists: “law eternal” (God’s law for all created beings); “law celestial” (for angels and spirits); “laws of nature” (for irrational and inanimate creatures); “natural law” (for rational creatures with moral sense); “revealed law” (for man through Holy Scripture); “human law” (for political societies, called “municipal law,” and among nations, “the law of nations”). 1 JAMES WILSON, *Of the General Principles of Law and Obligation*, in COLLECTED WORKS OF JAMES WILSON, *supra* note 15, at 497–99.

18. WILSON, *Of the General Principles of Law and Obligation*, *supra* note 17, at 490.

19. 2 JAMES WILSON, *Of the Natural Rights of Individuals*, in COLLECTED WORKS OF JAMES WILSON 1056–63 (Kermit L. Hall & Mark David Hall eds., 2007).

20. Many scholars miss Wilson’s internal tensions between his modern-natural-rights side derived from Locke and the Scottish Enlightenment and his perfectionist and common law side derived from Richard Hooker and Sir Edward Coke. See Eduardo A. Velásquez, *Rethinking America’s Modernity: Natural Law, Natural Rights and the Character of James Wilson’s Liberal Republicanism*, 29 POLITY 193 (1996) (portraying Wilson as a purely modern natural rights thinker). James R. Zink, *The Language of Liberty and Law: James Wilson on America’s Written Constitution*, 103 AM. POL. SCI. REV. 442 (2009), modifies the view of Wilson as a purely natural rights thinker by showing his concern for civic virtue attained by habitual obedience to the written U.S. Constitution, but Zink omits Wilson’s beliefs in God, perfection through virtue, and Hooker’s classification of laws. A more balanced view is given by MARK DAVID HALL, *THE POLITICAL AND LEGAL PHILOSOPHY OF JAMES WILSON 1742–1798* (1997).

worthy for their own sake (meaning intrinsically noble and just, however they might be used), or if those rights and freedoms were means to higher ends like the perfection of mind and character, happiness through virtue and piety, and the progress of civilization to a higher stage. Perhaps the best explanation for this ambiguity is that the American Founders hoped to inspire the nation and the world to embrace the universal cause of freedom by seeking a minimal consensus about God-given natural rights, which they thought were rational propositions derived from our common humanity, while displaying caution about trusting the state, especially the national government, with the maximal task of making men virtuous and civilized. This approach is a departure from classical and scholastic natural law, as we shall see, and it creates tensions with Catholic natural law.

B. *Lincoln's Cosmic and Divine Justice*

The ambiguity about the ultimate aims of freedom is a recurring pattern in American natural law, as the example of Abraham Lincoln also reveals. Lincoln's political thought has many interpreters, but none would deny the centrality of the Declaration to his principles, since he stated explicitly: "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence."²¹ The challenge lies in understanding how Lincoln applied the Declaration's natural law ideals to the ends and means of statesmanship: Was Lincoln's primary goal the minimal one of preserving the Union in its physical existence, or was it more than that—ending slavery by reasserting the Declaration's "sacred principle" of equality as the basis of the Republic? If the latter, did he regard ending slavery as a matter of justice for its own sake, as a military necessity, or merely as a means for defending free labor and advancing his own political ambition? And even if recovering the Declaration's principles were paramount, why did this goal matter so much—was it a command of cosmic and divine justice? I will try to answer these questions by clarifying Lincoln's minimal and maximal goals, as they emerge from three objectives: (1) perpetuating the Republic by preserving the Union; (2) re-founding the Republic on the Declaration's principles; and (3) vindicating the dignity of man in the eyes of God and the world, a type of secular redemption.

The first objective is apparent in Lincoln's many references to the duty of preserving the Republic begun by the American Founders. In the early Lyceum Address (1838), Lincoln discusses the "perpetuation of our political institutions"²² and the challenge of continuing the work of the Founders on behalf of civil and religious liberty. He praises them for beginning the "experiment" in republican government as a test of "a proposition which had hitherto been considered . . . no better, than problematical; namely, *the capability of a people to govern themselves*."²³ Their task was significant

21. ABRAHAM LINCOLN, *Speech at Independence Hall, Philadelphia, Pennsylvania* (Feb. 22, 1861), in *THE PORTABLE ABRAHAM LINCOLN* 225 (Andrew Delbanco ed., 2009).

22. ABRAHAM LINCOLN, *Address to the Young Men's Lyceum of Springfield, Illinois* (Jan. 27, 1838), in *THE PORTABLE ABRAHAM LINCOLN*, *supra* note 21, at 20.

23. *Id.* at 23.

because history showed the depressing spectacle of most human beings living under emperors, kings, tribal chieftains, or military dictators on the assumption that the people lacked the wisdom, virtue, and moral responsibility to govern themselves, dooming them to live as children or slaves in need of masters to keep them in line. The Founders were aware of the historic challenge and were successful in beginning the experiment. But later generations had the task of preserving it amidst new dangers, which Lincoln identifies as the “mobocratic spirit” of lawless behavior and the demagogic spirit of tyrants with ambitions for glory, like Caesar, Alexander, and Napoleon.²⁴ Lincoln’s early solution was two-fold: (1) inculcating a “political religion”²⁵ which teaches reverence for the Constitution (making the positive law more fundamental in preserving order than the Declaration of Independence); and (2) inculcating self-restraint based on “the solid quarry of sober reason” and “sound morality.”²⁶ These civic virtues would support the “proud fabric of freedom” for the new generation that Lincoln imagined (rather poetically) would please Washington “during his long sleep” in the afterlife.²⁷

The goal of perpetuating the Republic was emphasized throughout Lincoln’s career with even greater vigor as the dangers mounted. In his Message to Congress in Special Session (1861), Lincoln summarized the stakes of the coming civil war:

It presents to the whole family of man, the question, whether a constitutional republic, or a democracy—a government of the people, by the same people—can, or cannot, maintain its territorial integrity, against its own domestic foes . . . [who might] thus practically put an end to free government upon the earth. It forces us to ask: “Is there, in all republics, this inherent, and fatal weakness . . . [to] be too strong for the liberties of its own people, or too weak to maintain its own existence?”²⁸

At the end of the speech, Lincoln rephrases the challenge: “Our popular government has often been called an experiment” in which the people have been successful in “*establishing*” and “*administering*”; but they still need to prove they can be successful in “*maintenance* . . . [and] demonstrate to the world, that those who can fairly carry on an election, can also suppress a rebellion—[proving] that ballots are the rightful . . . successors of bullets.”²⁹ This is also the grand theme of the Gettysburg Address (1863), which invokes the American Founders’ ideals of liberty and equality and praises the soldiers of the Civil War

24. *Id.* at 21, 24.

25. *Id.* at 22.

26. *Id.* at 25–26.

27. *Id.* at 26. In referring to the historic test of the Founders to vindicate popular self-government, Lincoln echoes Hamilton in THE FEDERALIST NO. 1 (Alexander Hamilton) on whether “the people of this country . . . are capable . . . of establishing good government from reflection and choice, or are forever destined to depend for their political constitutions on accident and force . . . [that adds] the inducements of philanthropy to those of patriotism.”

28. ABRAHAM LINCOLN, *Message to Congress in Special Session* (July 4, 1861), in THE PORTABLE ABRAHAM LINCOLN, *supra* note 21, at 244 (emphasis omitted).

29. *Id.* at 254.

for consecrating the cause with their blood, so that “this nation under God” can prove that government by the people “shall not perish from the earth.”³⁰ In these speeches, Lincoln articulates his life-long goal of preserving, perpetuating, and maintaining the Republic begun by the Founders, thereby proving that self-government is possible without succumbing to anarchy or tyranny. The second point to consider, however, is that this goal contains a crucial ambiguity. Does “maintaining” the Republic suggest only a minimal goal, namely, the physical survival of the Union through lawful and constitutional means, or does it suggest something more difficult, namely, preserving the American republic in a way that it is worthy of survival? This is a higher standard than physical survival and might actually conflict with the minimal goal by dividing the nation and inviting civil war—which would mean, ironically, “saving” the Republic by “destroying” the Republic, and then rebuilding it. This higher and more dangerous aim also elevates the Republic’s foundation above the positive law of the Constitution to the natural law of the Declaration and might require imposing natural law by force on the Southern slave states if they would not accept it voluntarily. Thus, a crucial distinction exists between Lincoln’s earlier and later goals—between those of the Lyceum Address in 1838 and those of the Peoria Address of 1854—that reflect a movement by Lincoln from “Constitution worship” to “Declaration worship,” as it were. Henceforth, Lincoln says in Peoria: “Let us re-adopt the Declaration of Independence . . . [so] we shall not only have saved the Union; but . . . so saved it, as to make [it] . . . forever worthy of the saving . . . [for which] free happy people, the world over, shall . . . call us blessed.”³¹ Of course, by elevating the standard, Lincoln increases the difficulties of statesmanship because it means putting the Declaration above the Constitution (without ignoring the Constitution) and requiring the whole nation to recognize the principles of natural law.

The Peoria Address is thus a “turning point,” where Lincoln makes the case that the natural law principle of equal rights may not be self-evident, as Jefferson had claimed, although it is present in a “love of justice” and “the abundance of man’s heart,” telling people that slavery is wrong.³² Though frequently suppressed by selfishness and lust for domination, it is embedded in human nature as an awareness of the dignity of all people, so that one’s “sense of justice and human sympathy continually tell [us] that the poor negro has some natural right to himself . . . [and one cannot] deny the humanity of the slave.”³³ Hence, “the proposition that each man should do precisely as he pleases with all which is exclusively his own lies at the foundation of the sense of justice.”³⁴ It tells us that “the doctrine of self-government is . . . absolutely and eternally

30. ABRAHAM LINCOLN, *Address at Gettysburg, Pennsylvania* (Nov. 19, 1863), in THE PORTABLE ABRAHAM LINCOLN, *supra* note 21, at 323–24.

31. ABRAHAM LINCOLN, *Speech on the Kansas-Nebraska Act at Peoria, Illinois* (Oct. 16, 1854), in THE PORTABLE ABRAHAM LINCOLN, *supra* note 21, at 74.

32. This is the thesis of LEWIS E. LEHRMAN, *LINCOLN AT PEORIA: THE TURNING POINT*, 101–52 (2008). It builds upon the insights of HARRY V. JAFFA, *A NEW BIRTH OF FREEDOM: ABRAHAM LINCOLN AND THE COMING OF THE CIVIL WAR* 240, 326–38 (2000).

33. LINCOLN, *supra* note 31, at 62.

34. *Id.*

right . . . that ‘all men are created equal’ . . . [and] no man is good enough to govern another man without that other’s consent . . . [as o]ur Declaration of Independence says.”³⁵ Lincoln’s view is that equal justice is somehow natural, or instilled in the human heart, teaching people that the dignity inherent in all human beings includes the right and ability to determine what is best for themselves in “all which is exclusively [their] own.”³⁶ The central dilemma for Lincoln became the balancing of these different goals—preserving the Republic as a physical Union through constitutional means (as much as possible) vs. ending slavery by putting the Declaration’s natural law above positive law and imposing it on the South. What sometimes looks like inconsistency in Lincoln’s statesmanship is the difficulty of balancing these minimal and maximal aims.

The third point that logically arises is the ultimate question of why this matters—why re-founding the Republic on natural law is justified, especially in light of the terrible sacrifices of the Civil War. The most compelling explanation, put forward by Allen Guelzo and Joseph Fornieri, is that Lincoln came to realize that his goal of perpetuating the Republic in a way that is worthy of the Declaration caused so much suffering that he felt the need to believe in cosmic and divine justice: Only because Divine Providence supports the cause of freedom in America could Lincoln believe that “the world will forever applaud, and God must forever bless” these efforts.³⁷ Interestingly, the most explicit elaboration of Lincoln’s political faith is not his famous Second Inaugural Address (explaining Almighty God’s judgment on the Civil War) but a lesser-known speech at Lewiston, Illinois during the Lincoln-Douglas debates (August 17, 1858). After praising the American Founders for composing the Declaration, Lincoln says:

This was their majestic interpretation of the economy of the Universe. This was their lofty, and wise, and noble understanding of *the justice of the Creator to His creatures* . . . to *all* His creatures, to the whole great family of man. In their enlightened belief, nothing *stamped with the Divine image and likeness* was sent into the world to be trodden on, and degraded, and imbruted [sic] by its fellows. They grasped not only the whole race of man then living, but . . . established these great self-evident truths, that when in the distant future some man . . . should set up the doctrine that none but rich men, or none but white men, were entitled to life, liberty, and the pursuit of happiness, their posterity might look up again to the Declaration of Independence and take courage to renew the battle which their fathers began—so that truth, and justice, and mercy, and *all the humane and Christian virtues* might not be extinguished from the land . . .³⁸

35. *Id.* at 62–63 (emphasis omitted).

36. *Id.* at 62.

37. ABRAHAM LINCOLN, *Annual Message to Congress* (Dec. 1, 1862), in THE PORTABLE ABRAHAM LINCOLN, *supra* note 21, at 299.

38. 2 ABRAHAM LINCOLN, *Speech at Lewistown, Illinois*, (Aug. 17, 1858), in THE COLLECTED WORKS OF ABRAHAM LINCOLN 546–47 (Roy P. Basler ed., 1953) (emphasis added).

Lincoln further entreats his audience to ignore his political ambitions for office but “come back to the truths that are in the Declaration of Independence . . . [and] heed these sacred principles.”³⁹ This speech, though often overlooked, is Lincoln’s most elaborate and most religious justification for these sacred principles. It grounds them in cosmic and divine justice—understood as the “economy of the Universe” and “the justice of the Creator to his creatures,” which suggests that God allows evil so that good may come out of it by teaching the world to respect all human beings made in “the Divine image and likeness,” possessing inherent dignity and rights that should not be violated by domineering men with ambitions to rule based on race, class, or raw power.⁴⁰ Yet, as Guelzo points out, Lincoln was not an explicit Christian by profession of faith in Jesus Christ; but he seemingly adhered to a political faith derived from Christian ideals that could be called “Calvinist deism” or providential deism. His faith arose from the question of cosmic justice that tormented him, creating hope for secular redemption that made him the “redeemer president,” in Walt Whitman’s phrase, who sought to save mankind from tyranny through God-given natural law.⁴¹ Lincoln’s principles were thus a product of reasoned faith in the providential Creator and Judge who made the American experiment in self-government a test for all mankind: If it were successful, it would vindicate the dignity of man and prove that the cosmos is a divinely created moral order and not an indifferent place (ruled by blind fate) or a tragic world (where justice is doomed to fail) or an absurd universe (a world without meaning, a tale told by an idiot).

Yet, herein lies the ambiguity of American natural law: Lincoln’s rhetoric is lofty in appealing to the cosmic justice of the “judgments of the Lord”⁴² and to the “better angels of our nature,”⁴³ but his expectations for government are essentially minimalist. He thinks that the Declaration’s ideals of equality and liberty serve the natural right to do whatever people wish in “all that is exclusively [their] own.”⁴⁴ This minimalist goal, attained at the cost of tremendous suffering and requiring the heroic statesmanship of Lincoln, assumes that whatever people decide about their fate is fine, as long as everyone participates equally, because the purpose of freedom is not determined, and individuals should be left alone in private economic life to do as they please, as long as everyone has an equal chance to succeed. At the same time, paradoxically, these minimal requirements contain an implicit maximal goal—namely, the secular redemption of humanity and the perfection of man in the eyes of God, understood as a near-supernatural ideal that inspired Lincoln’s

39. *Id.*

40. For a deep and insightful analysis of this speech, see JOSEPH R. FORNIERI, ABRAHAM LINCOLN: PHILOSOPHER STATESMAN 42–54 (2014), and JOSEPH R. FORNIERI, ABRAHAM LINCOLN’S POLITICAL FAITH 140–64 (2003).

41. See ALLEN C. GUELZO, ABRAHAM LINCOLN: REDEEMER PRESIDENT 447–63 (1999).

42. ABRAHAM LINCOLN, *Second Inaugural Address* (Mar. 4, 1865), in THE PORTABLE ABRAHAM LINCOLN, *supra* note 21, at 349.

43. ABRAHAM LINCOLN, *First Inaugural Address* (Mar. 4, 1861), in THE PORTABLE ABRAHAM LINCOLN, *supra* note 21, at 235.

44. LINCOLN, *supra* note 31, at 62.

astonishing references to America as “his almost chosen people”⁴⁵ and “the last best, hope of earth.”⁴⁶

C. Martin Luther King’s Christian Natural Law

After Jefferson and Lincoln, a third important figure in American natural law is Dr. Martin Luther King, Jr., who developed the idea of non-violent civil disobedience from Christian natural law. In assessing his contribution, one must remember that King was a Baptist minister who led a political and social movement, not an official representative of the American government; so both his religious faith and his unofficial position allowed him to develop natural law in a way that was more explicitly Christian than the theories of Jefferson and Lincoln (who mention God as the creator of the cosmos and the providential supporter of natural law and justice, but avoid references to Jesus Christ). As a minister and trained theologian, King based his ideal of Christian natural law on the biblical God, as revealed to the Hebrew prophets Amos and Daniel, and embodied in the suffering savior, Jesus Christ, and his Christian followers—mixing somewhat loosely the divine law of Scripture with the natural law of reason expressed by Socrates and Jefferson. King’s speeches and writings combine in complex fashion the natural rights of the Declaration of Independence, the human law of the Constitution, American Protestant “covenantal theology,” the moral philosophy of Christian personalism, and insights from religious thinkers such as St. Paul, St. Augustine, St. Thomas Aquinas, Martin Buber, Gandhi, Reinhold Niebuhr, Paul Tillich, and Walter Rauschenbusch. The result is a theory of non-violent resistance to unjust laws through appeals to active Christian love guided by “higher moral law.” The difficulty in interpreting King is to sort out the elements of his eclectic mixture and to distinguish, if possible, divine law from natural law. This is not easy to do, since divine law and natural law overlap in King’s eyes, and the duties of charity and justice are mutually related. These issues can be clarified by comparing King’s speech on *The Power of Nonviolence* (1957), which appeals to a cosmic divine law, with his *Letter from Birmingham Jail* (1963), which emphasizes natural law and human law.

In *The Power of Nonviolence*, King seeks to explain the role of Christian love—*agape*—in resisting injustice by distinguishing it from other kinds of love.⁴⁷ In a section reminiscent of C. S. Lewis’s essay *The Four Loves*, King analyzes different words for “love” in the Greek language: *eros* (defined as “aesthetic love” or “a sort of romantic love with all its beauty”); *philia* (reciprocal love between friends); and *agape* (sacrificial love based on redemptive good will for all men, regardless of whether they are beautiful or

45. Abraham Lincoln, *Address to the New Jersey State Senate* (Feb. 21, 1861), <https://www.abrahamlincolnonline.org/lincoln/speeches/trenton1.htm> [https://perma.cc/9XY7-B5RS] (last visited Apr. 9, 2026).

46. LINCOLN, *supra* note 37, at 299.

47. MARTIN LUTHER KING, JR., *The Power of Nonviolence*, address at University of California, Berkeley (June 4, 1957), in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 12–15 (James Melvin Washington ed., 1991).

likeable, but who are loveable because God loves them).⁴⁸ Of the several kinds of love, only *agape* love is suitable for struggles against injustice because it inspires the correct spirit of resistance against evil systems; it rejects passive acceptance of evil while avoiding the violence and hatred that often accompany battles against oppression. In King's words, the goal of *agape* love is "a beloved community" in which the "end is redemption," and citizens are united by both charity and justice.⁴⁹ It is also a "victory for democracy," so the beloved community is based on the political ideal of equal participation as well as Christian love. The goal is to "build a great nation where all men live together as brothers and respect the dignity and worth of all human personality."⁵⁰

Although the Christian inspiration of this speech is evident, King's discussion of non-violent resistance inspired by *agape* love refers only indirectly to divine law. Instead, King speaks about a sense of cosmic justice that can be embraced by both Christians and non-Christians who support the cause—a reference to the moral order of the universe that resembles the Declaration's idea of "Nature's God" as well as Lincoln's "economy of the Universe" and the "eternal law" of Thomas Aquinas (which King mentions explicitly in the "Letter from Birmingham Jail"). King's rhetorical pitch in this speech on non-violence is to people "who do not believe in a personal God but . . . believe somehow that the universe is on the side of justice," feeling "somehow that as we struggled, we had cosmic companionship."⁵¹ In addition to citing these broad notions of quasi-divine cosmic justice, King refers to a mixture of religious and political figures who were considered "maladjusted" in their day for opposing entrenched injustice (though not all adhered to non-violence): the Hebrew prophet Amos, who cried out "Let justice roll down like waters"; Abraham Lincoln, who believed this nation could not exist half slave and half free; Jefferson, whom King portrays rather generously as rejecting psychological acquiescence to slavery by proclaiming "All men are created equal"; and Jesus of Nazareth, who dreamed of the fatherhood of God and the brotherhood of man. The central claim of this speech is that Christian charity or *agape* love is a cosmic moral force inherently tied to egalitarian and democratic justice that all people can embrace as a higher law ideal.

In the *Letter from Birmingham Jail*, King formulates these ideals in the more precise language of law, borrowed explicitly from Thomas Aquinas's classification of laws into four kinds (eternal law, natural law, divine law, and human law), while adding a modern democratic dimension taken from Jefferson and Lincoln. King also borrows language from the modern Jewish philosopher Martin Buber, who speaks broadly of moral law in terms of "the human person" and "uplifting personality"—terms derived from the moral philosophy of

48. *Id.* at 13. Interestingly, King mentions only three kinds of love and omits the fourth described by C. S. Lewis, *storge* (love as affection for one's family and loyalty to one's country). This omission may reflect King's aversion to the exclusive nature of patriotism, which Lewis did not share. See C. S. LEWIS, THE FOUR LOVES §§ 2–3 (1960) (giving a balanced assessment of patriotism).

49. KING, *supra* note 47, at 12.

50. *Id.* at 14.

51. *Id.* at 13–14.

“personalism” that shaped King’s theology.⁵² In a crucial passage, King uses Aquinas’s classification of laws to distinguish just and unjust laws:

A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. *To put it in the terms of St. Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law.* Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the human soul and damages the personality[.] . . . giv[ing] the segregator a false sense of superiority, and the segregated a false sense of inferiority. To use the words of Martin Buber, the great Jewish philosopher, segregation substitutes an “I-it” relationship for the “I-thou” relationship and ends up *relegating persons to the status of things*.⁵³

King’s argument is that a just law must be in harmony with the higher moral law, which he initially identifies as the law of God, or divine law, and then as natural law and eternal law. He then explains the higher moral law by using a conceptual scheme from Martin Buber’s famous book, *I and Thou*, which distinguishes two types of relation: an “I-Thou” and an “I-It” relation. King applies this distinction to politics by saying it corresponds to the difference between treating human beings as “persons” (an I-Thou relation) as opposed treating them as “things” (an I-It relation).⁵⁴ The difference lies in attitudes to human dignity—in respecting the human person. A just law is one which requires people to obey the divine law of love and to promote the rights and dignity of persons in a way that “uplifts human personality.”⁵⁵ By contrast, an unjust law, such as segregation, denies the dignity of others and treats them like things or “nobodies,” distorting the soul and damaging the personality with false notions of inferiority and superiority. Overall, King forges a unique American blend of ideals that reaches back to the Bible, Aquinas, and the American Founders:

One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values of our Judeo-Christian heritage, and thusly, carrying our whole nation back to those great wells of democracy which were dug deep

52. For a definitive account of the influence of “personalism” on King’s conception of God, social justice, and the beloved community, see RUFUS BURROW, JR., *GOD AND HUMAN DIGNITY: THE PERSONALISM, ETHICS, AND THEOLOGY OF MARTIN LUTHER KING, JR.*, 83–87, 155–201 (2006). Surprisingly, Burrow emphasizes the influence of personalist philosophers Edgar S. Brightman and Borden P. Bowne, whose works King studied at Boston University, while omitting Martin Buber, whom King cites explicitly in this letter.

53. MARTIN LUTHER KING, JR., *Letter from Birmingham City Jail (1963)*, in *TESTAMENT OF HOPE*, *supra* note 47, at 293–94 (emphasis added).

54. MARTIN BUBER, *I AND THOU* 112–22 (Walter Kaufmann trans., 1970). Buber’s distinction between treating people as “persons” vs. treating people as “things” echoes Immanuel Kant’s second formulation of the categorical imperative.

55. KING, *supra* note 53, at 293.

by the Founding Fathers in their formulation of the Constitution and the Declaration of Independence.⁵⁶

King's argument shows that human law should be in harmony with the standards of higher law—divine law, eternal law, and natural law—while giving higher law a democratic content that requires equal rights for all children of God. What is unclear is precisely where the natural law of equal justice begins and ends in relation to the divine law of love and the eternal law of God's cosmic justice. It appears that natural law is most directly connected to politics, but King's natural law is actually a kind of mixture of religious, philosophical, and political principles that could be characterized as a Christianized version of American natural law: It combines Jefferson's and Lincoln's God-given natural rights with Aquinas's natural law based on eternal law and includes the Judeo-Christian moral law of loving one's neighbors as "children of God" and as human persons. Because of this mixture, King's conception of natural law as universal human rights has an end beyond itself that is more explicitly stated than the natural law of his predecessors—namely, the creation of a "beloved community," a kind of theocracy of love where norms of charity and justice are blended with equality and freedom.⁵⁷

II. CATHOLIC NATURAL LAW

A. *The Prudent Perfectionism of Thomas Aquinas*

It may seem odd, at first glance, to compare American natural law thinkers with Catholic natural law scholars, since the authority for Catholic natural law has been Thomas Aquinas (1225–1274), who lived centuries ago and whose followers had no direct influence on the American Founders and very little on later figures (the reference by M. L. King, Jr., to Aquinas is highly unusual, since most Americans derived natural law ideas from English, Protestant, Greco-Roman, and Enlightenment sources). It was not until John Courtney Murray wrote his influential book, *We Hold These Truths: Catholic Reflections on the American Proposition*, that a thematic encounter of the Catholic and American traditions was published with optimism about their harmony.⁵⁸ Nevertheless, any comparison of the two traditions must begin with Aquinas in order to determine if Catholic natural law might be consistent or inconsistent with American natural law.

56. *Id.* at 302.

57. According to Rufus Burrow, King took the term "beloved community" from Josiah Royce and gave it a more down-to-earth meaning. See Burrow, *supra* note 52, at 161. James M. Patterson argues in *RELIGION IN THE PUBLIC SQUARE: SHEEN, KING, FALWELL*, 66, 72–86 (2019), that King developed the beloved community from American Puritan covenantal theology and Methodist personalism.

58. John Courtney Murray, S.J., famously claimed that "Catholic participation in the American consensus" has been congenial because its principles of "natural law . . . approve themselves to the Catholic intelligence." See JOHN COURTNEY MURRAY, S.J., *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION* 41, 109–23, 295–336 (1960). Yet Murray's account of natural law, drawn from Aquinas and the rights of the human person, does not show that it is identical with the Declaration's view. See *id.*

On the surface, one could argue that Aquinas's ideas are actually not so remote from the American approach, since Aquinas shares (as MLK pointed out) many of the foundational premises of American natural law—that God is the creator of the natural universe as a rational order and the maker of human beings as rational creatures with intelligence and free-will; that God is the author of a natural moral law built into human nature and imprinted on the minds or hearts of man; that positive law should conform to natural law in order to establish a just society and provide grounds for loyalty and obedience to the regime.⁵⁹ Probing a bit further, however, one can see important differences in the content and application of the two schools of natural law. As noted above, the American school grows out of the Declaration of Independence with its emphasis on natural rights and the consent of the governed and supports a constitutional order of limited democratic government with a high degree of personal freedom, while the Catholic school grows out the Thomistic-Aristotelian idea of perfecting man's nature as a rational and social animal through the exercise of virtue and supports a constitutional order of mixed monarchy or hierarchical government that admits freedom and equality conditionally as means to those ends. Such points reflect similarities and differences between modern liberalism and the classical-medieval schools of political thought, schools which share natural law foundations but diverge on content and applications.

These preliminary comparisons need further refinement, however, because both schools have minimal and maximal aims. As noted above, the American view is minimalist in emphasizing natural rights and freedom in a democratic society, but the natural law teachings of Jefferson, Lincoln, and M. L. King, Jr., include notions of how freedom should be used; and they inspire an idealistic view of politics that is maximalist in a new way by seeking secular redemption. Blending realism and idealism, American natural law lowers the requirements of the positive law to the minimal necessities of protecting rights, but it simultaneously raises the expectations of politics overall by instilling people with hopes and dreams of vindicating the dignity of man in the eyes of God and redeeming the world by spreading democracy, elevating the downtrodden, and ending the historic oppression of man by man. By contrast, Aquinas has a higher view of natural law that goes beyond freedom and equality in seeking the maximalist goal of perfecting man's nature through regimes of virtue directed to the common good; but Aquinas holds a lower view of politics overall by treating the temporal common good as a prudent activity that serves the limited end of earthly happiness, without pretending that the state aims at secular redemption or saving humanity in the eyes of God since redemption is not the job of the state. Paradoxically, the proponents of American natural law pursue minimalism with an idealism that resembles

59. Jaffa makes similar observations in *A NEW BIRTH OF FREEDOM*, *supra* note 32, at 509 n.84: "[T]he perspective of the Declaration is in agreement with Thomas Aquinas's conception of natural law as the rational creature's participation in the eternal law, the law by which God governs the universe . . . when it speaks of 'the supreme judge of the world' and of 'the protection of divine Providence.'"

religious zeal, while Aquinas and his followers pursue the maximal aim of virtue without pretensions of secular or heavenly redemption through politics.

My central thesis about Aquinas, therefore, is that he is a maximalist who nevertheless has a much lower view of politics than Jefferson, Lincoln, and M. L. King, Jr. This is a somewhat surprising claim, since Aquinas is generally regarded as an “optimist” in Christian political theory compared to St. Augustine, whose “pessimistic” view of original sin treats the state mainly in negative terms as the policeman who keeps in check man’s fallen nature and aims at little more than “the tranquility of order” (*tranquillitas ordinis*).⁶⁰ By contrast, Aquinas incorporates Aristotelian notions of man’s political and rational nature, making justice, virtue, and civic friendship the higher aims of politics along with peace and security as elements of the temporal common good. While this approach is more optimistic than Augustine’s, Aquinas agrees with Augustine’s distinction between the city of God and the city of man (the heavenly and earthly cities) and with the Gospel’s distinction between the duties to God and to Caesar, expressed in his day as the spiritual and temporal realms. While both realms derived their ultimate authority from God, Aquinas could infer that the state is distinct from the Church and the ends of politics are secondary compared to religion.

This distinction of powers into different institutional forms points to Aquinas’s most important contribution to Christian political philosophy—the classification of laws into four different kinds with different jurisdictions and functions. First, there is “eternal law,” which is God’s blueprint for the entire order of creation, directing all created beings to their proper ends and participating in all subordinate laws. Second, there is divine law, which God revealed through the prophets and evangelists, as recorded in Scripture, directing human beings to their supernatural end, eternal happiness in the world to come. The divine law is subdivided into the Old Law of Moses (the 613 commands of the Torah) and the New Law of Jesus, consisting of the two great commands of charity or love—love of God and love of neighbor—which guide the spiritual authority as taught by the Church. Third is the natural law, which is the participation of human beings in God’s plan for rational creatures, directing them to earthly happiness through reason and by natural inclinations to their natural ends in the political community and to natural knowledge of God. The primary political lesson of Aquinas’s natural law is for the state to seek the temporal common goods of preservation and rational perfection through the moral virtues of courage, moderation, justice, and prudence. Fourth is human law—man-made constitutions, customs, and statute laws—which are intended to be applications of the natural law by statesmen in order to achieve the greatest possible good in the concrete circumstances of the political world.⁶¹

The momentous implication of Aquinas’s classification of laws is that the Two Powers—the spiritual and temporal orders, or, in institutional form, the Church and state—have different laws guiding them to their respective ends: Divine law directs spiritual authority to eternal salvation under the Church, while temporal authority is guided by natural law applied through human or civil

60. ST. AUGUSTINE, CITY OF GOD ch. 19, §§ 13–17.

61. See THOMAS AQUINAS, SUMMA THEOLOGÆ I-II, q. 91–96 (on the classes of law).

law, aiming at the political common good, which is also the natural good of man, under the direction of the state. Although God is the supreme source of all authority, the two realms have distinct functions, which rules out theocratic unification and means that civil law is derived from the natural law by practical reason.

In fleshing out the precepts of natural law in a famous passage in the *Summa Theologiae*, Aquinas lists the three basic goods to which human beings are directed by natural inclinations: (1) self-preservation, (2) procreation by male-female sexual union and the rearing of children, (3) rational perfection by living in a political community and seeking to know the truth about God.⁶² These natural ends and inclinations define human nature for Aquinas. They tell us the way man “is” and the way he “ought” to be in his nature; they imply that a human being is not a static substance but a set of dynamic tendencies or potentialities seeking to be actualized in the highest good.⁶³ The point of natural law is to guide human beings to actualize their potential in all three levels of being—physical, biological, and rational—that constitute a hierarchy of natural goods. Their potential is realized by flourishing in well-ordered families and by living securely and justly in political communities, which include shaping characters to virtue and directing minds to knowledge of the first cause in God. If natural law is obeyed, it brings people to fulfillment in an active political and intellectual life, while also pointing to the supernatural end of eternal happiness. Aquinas’s complete teaching on law, therefore, is that God’s eternal law provides for complete happiness by a division of functions, where divine law is applied by spiritual powers and natural law is applied by temporal powers. Thus, the state is limited, according to Aquinas, not by a private sphere of rights, but by the natural goods that set modest goals for politics. Although he says that “all virtuous acts belong to the natural law,” the state does not impose divine law or make claims of messianic redemption, nor is it responsible for saving souls (that is the job of the Church).⁶⁴ However, the state’s mission is higher than protecting rights to life, liberty, and property, because the aim of politics is to fulfill the biological and rational nature of man and to promote the common good over private rights. Aquinas’s natural law is more robust in caring for the souls and bodies of citizens than the liberal democratic vision of American natural law, but it is still a limited view of politics concerned with the natural ends of earthly happiness.

Furthermore, Aquinas advises rulers to have realistic expectations and to go slowly in pursuing those ends, taking into account human imperfections

62. *Id.* at I-II, q. 94, art. 2.

63. See ANTHONY J. LISSKA, *AQUINAS’S THEORY OF NATURAL LAW: AN ANALYTIC RECONSTRUCTION* 125 (1996), where Lisska describes Aquinas’s natural law as resting on a “dispositional theory of [essences as] natural kind[s].” This interpretation of Aquinas’s view of human nature seems most accurate to me because it is faithful to the text and preserves Aristotle’s dynamic view of nature as the actualization of potentialities, compared to other interpretations which emphasize self-evident goods of practical reason independently of natural tendencies to the ends that constitute the human good; see also DOUGLAS KRIES, *THE PROBLEM OF NATURAL LAW* 127–28 (2007), which supports Lisska’s interpretation.

64. AQUINAS, *supra* note 61, at I-II, q. 94, art. 3; q. 100, art. 2.

when framing human laws. The supreme virtue of politics is not justice but prudence, which means seeking to achieve the greatest possible good in the given circumstances by respecting the irrational and fallen nature of man and the secondary nature of politics. Reflecting this prudent approach, Aquinas says that

the purpose of human law is to lead men to virtue not suddenly but gradually . . . [so as] not to lay on the multitude of imperfect men the burdens of those who are already virtuous . . . [H]uman law does not prescribe all acts of virtue but only those that are ordained for the common good of justice and peace.⁶⁵

The essence of Aquinas's natural law teaching is to seek perfection in the imperfect world of politics with full awareness of limiting circumstances. It is a moral vision of politics that is different from liberalism, on the one side, and from theocracy, totalitarianism, or utopianism, on the other side. Some call it "communitarian" (reflecting the emphasis on the common good over individualism) and others "corporatism" (reflecting the corporate nature of the common good), but I think the most appropriate label is "prudent perfectionism"—the quest for a secure and virtuous society in a limited constitution under God.⁶⁶

If we turn briefly to concrete applications, we can see how Aquinas's prudent perfectionism informs his views on the best form of government, the best economic system, the right ordering of marriage and family, just war, and the law of nations.

Concerning the best form of government, Aquinas argues that a variety of regimes can be legitimate as long as they realize the temporal common good; but the best choice is a limited kingship or constitutional mixed monarchy. The preference for monarchy is based partly on the argument that the ideal ruler is a wise and virtuous king who cares for the common good of all the people and provides the greatest "unity in peace."⁶⁷ But Aquinas is fully aware that the best regime easily turns into the worst regime—that kingship easily turns into tyranny. Hence, legal and institutional restraints on royal power are needed to prevent tyranny, and this is best achieved in a mixed constitution combining all three of the legitimate forms of government—monarchy, aristocracy, and democracy. The mixture balances and moderates the three elements; it combines wisdom and virtue in the king with the good counsel of an aristocratic

65. *Id.* at I-II, q. 96, arts. 2–3.

66. See JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* (1998), which gives a comprehensive interpretation of Aquinas's political theory but takes it too far in the direction of modern liberalism, especially chapter five, entitled, "Towards Human Rights," and chapter seven, where Finnis says Aquinas's political teaching on the limited role of the state is "not readily distinguishable from . . . John Stuart Mill's *On Liberty*," *id.* at 228.

67. See Thomas AQUINAS, *DE REGNO AD REGEM CYPRI* I, ch. 3, para. 17 ("The chief concern of the ruler of a multitude, therefore, is to procure unity in peace (*pacis unitatem procuret*)"); *id.* at I, ch. 16, para. 118 (explaining that the first duty of a ruler is that "the multitude be established in unity of peace (*ut multitudo in unitate pace constitutur*)"). Compare this with the treatment of unity as relates to peace in the *SUMMA THEOLOGICÆ*, *supra* note 61, at II-II, q. 29, art. 1 (defining peace as the "tranquility of order" following a citation to St. Augustine) and I-II, q. 105, art. 1 (subordinating unity and peace to the common good of "peace and justice").

body of senators and democratic participation in assemblies that give the people a stake in society. This fulfills the ends of preservation and moral virtue articulated by natural law—combining security and rational perfection as the main aims of the common good.⁶⁸ In proposing a mixed monarchy that prevents any single element from becoming tyrannical, Aquinas sounds like a medieval proponent of the historic English constitution that gradually evolved into a sharing of power among three elements: monarchy in the Crown, aristocracy in the House of Lords, and democracy in the House of Commons or Parliament. This interpretation, proposed by the Catholic historian Lord Acton, credits Aquinas with “the earliest exposition of the Whig theory of revolution” and influenced others to label Aquinas “the first Catholic Whig”—a champion of ordered liberty and a forerunner of the English constitutional monarchy.⁶⁹

In economics, Aquinas’s natural law theory is applied with a similar kind of prudence in favor of an economic system that mixes elements of contemporary capitalism and communitarianism. The ownership of property is justified by God’s grant of “natural dominion” to rational creatures over material things, but the allocation of property is a decision of human law following the “best use” of property for the common good. This usually requires a mixed system of private ownership and public sharing of surplus wealth, especially to help the poor—a combination of free enterprise for businesses to pursue “moderate profits” and to make loans for capital investments, while also restricting usury as the unjust use of money. Aquinas’s natural law economics gives legal protections to private property and encourages a healthy business climate, but private property must serve the common good of all classes of people in a just and harmonious society.⁷⁰ And teachers of natural law must always keep in mind the highest obligation of divine law, which transcends politics and calls for a renunciation of worldly goods—including voluntary or evangelical poverty for a saintly minority as a reminder of the Gospel message about the purest expression of Christian charity.

While Aquinas’s views on politics and economics are clearly prudential, his views on religious liberty and church-state relations are harder to characterize. Aquinas does not defend a natural right of conscience, but he does distinguish the roles of church and state; and he says that the positive laws of the state apply natural law using practical reason rather than divine law and are normally limited to temporal affairs.⁷¹ However, church and state are not completely separate because the state’s natural law authority is ultimately derived from God; and the Church is higher than the state and can intervene in politics in certain cases for spiritual matters. On the one hand, this seems to leave the question of an established Church to prudential judgment, since a king

68. AQUINAS, *supra* note 61, at I-II, q. 96, art. 3; q. 105, art. 1.

69. See John Emerich Edward Dalberg-Acton, *The History of Freedom in Christianity*, in *ESSAYS IN THE HISTORY OF LIBERTY* 29 (J. Rufus Fears ed., 1985); see also Michael Novak, *The Return of the Catholic Whig*, *FIRST THINGS*, Mar. 1990, at 38, 38–42; see also Friedrich A. Hayek, *THE CONSTITUTION OF LIBERTY* 457 n.4 (1960) (describing St. Thomas Aquinas as “the first Whig”).

70. AQUINAS, *supra* note 61, at II-II, q. 66, arts. 1–2; q. 78, arts. 1–2.

71. See *id.* at I-II, q. 91, 95.

does not have to be a Christian king to be legitimate (since Christ recognized Caesar as a legitimate emperor). On the other hand, the popes and bishops of the Church can require the king to protect orthodoxy by punishing Christian heretics or apostates when they endanger the faith of Christian believers. Yet, no coercion should be used against non-Christians, such as Jews or Muslims, to make them believe, even as prisoners of war, since “unbelievers who have never received the faith are by no means to be compelled to the faith . . . because to believe depends on the will.”⁷² This is prudential toleration with exceptions for punishments of Christian apostates, rather than a natural right of conscience; it favors a complex set of policies suited to a limited monarchy under God with distinct roles for church and state that recognizes the primacy of the spiritual.

Natural law also provides guidance for the temporal common good in the ordering of family life and marriage. The best family structure, according to Aquinas, is derived from the biological and rational nature of human beings. It indicates that authority in the family should be paternal but consensual in respecting the rational wills of male and female, meaning Aquinas opposes arranged marriages without the consent of both partners, even for servants and children. Marriage is the consensual union of male and female for the special common good of the family, consisting of the procreation and rearing of children and the faithful love of spouses. Procreation through male-female sexual union is the natural purpose of the sexual organs according to the teleology of the natural law, and other uses of sexual organs are unnatural in varying degrees.⁷³ Interestingly, Aquinas thinks that polygamy is not against the primary principles of natural law consisting of the good of procreation and raising children, but its tendency to provoke jealousy among wives is against the secondary principles of natural law promoting the harmony of spouses in faithful marital love. In discussing these matters, Aquinas does not spell out how much the natural law precepts on marriage and family life should be codified into civil law, leaving it to legislators to determine how these precepts should be enforced in different circumstances: Natural law supplies the maximal standards, and prudence decides how minimally or maximally they should be applied in practice.

In the areas of foreign policy and international law, Aquinas uses natural law along with the “law of nations” (*jus gentium*) for determining just and useful relations among nations.⁷⁴ He argues that the natural law principle of preserving the good of life justifies lawful self-defense and just war.⁷⁵ Hence, Aquinas rejects the strictly nonviolent approach of Christian pacifists like M. L. King, Jr. He defends the proportionate use of force in self-defense for private citizens against criminals. And he elaborates a theory of just war for lawful heads of state in order to protect their people from harm and to redress “injuries” by punishing unjust aggressors. Natural law also influences norms of international

72. *Id.* at II-II, q. 10, art. 8; q. 11, art. 3.

73. *Id.* at II-II, q. 154, art. 12 (“[T]he principles of reason are those things that are according to nature [Hence, in] unnatural vices man transgresses that which has been determined by nature [concerning sexuality] . . .”).

74. *See id.* at I-II, q. 95, art. 4.

75. *See id.* at II-II, q. 40.

order based on the law of nations, which, for Aquinas, includes custom and some universal principles of reason. But the law of nations, or *jus gentium*, consists mostly of useful conventions for conducting diplomacy, war and peace (including the treatment of prisoners of war), and business among nations. Aquinas's *jus gentium* is a type of "common law among nations" that bears little resemblance to today's international law with its abstract moral norms of justice, such as universal human rights; nor does Aquinas's law of nations aspire to world government, as does Dante's *De Monarchia* (1312).⁷⁶ For Aquinas, sovereign nations consisting of regional kingdoms or medium-sized republics, rather than empires, are the best arrangements for the temporal common good of different peoples. He apparently thought that the Christian divine law of universal love required a universal Church but not a universal political institution, such as the Holy Roman Empire; nor did he defend a universal state as the political or military arm of the universal Church as a requirement of the law of nations. His vision of the international arena consisted of regional kingdoms ruled by constitutional monarchs and limited by customary practices of the law of nations, the prudent realism of just war theory, and the moral guidance of the universal Church.

This sketch gives us a sense of the political views of the most influential teacher of Catholic natural law. Overall, Thomistic natural law is based on a conception of human nature that starts with the lower goods of preservation and procreation that human beings share with other physical beings and biological creatures. These minimal goods are reflected in the American view of natural law as the natural rights of life, personal liberty, and the pursuit of happiness in so far as happiness is equated with security of persons and property leading to stable economic and family life. But Aquinas goes beyond the minimal view of physical and biological goods to the maximal view by adding, in ascending order, a set of goods which people should seek in order to fulfill their rational souls—understood as well-ordered souls in which the higher, rational parts rule over the lower, irrational parts (meaning, the "irascible" and "concupiscible" passions of immoderate anger and immoderate pleasure).⁷⁷ This argument about balancing the lower and higher goods brings a whole different character to the temporal common good than is found in the American approach: Aquinas recognizes freedom or liberty as part of man's rational nature, but he keeps the ends of action in mind (especially the last end) which direct freedom to the highest goods, including the quest for knowledge of God that provides a link from natural law to divine law—from reason to the mysteries of spiritual life. Hence, Aquinas endorses rights of property and conscience as conditional goods rather than abstract principles, and he rejects the private sphere of personal freedom Lincoln affirms by saying everyone has "a natural right to himself" and "should do precisely as he pleases in all that is exclusively his own."⁷⁸ For

76. DANTE ALIGHIERI, *THE DE MONARCHIA* 5 (Aurelia Henry trans., 1904) (1312) ("Temporal Monarchy, called also the Empire, we define as a single Principality extending over all peoples in time . . .").

77. AQUINAS, *supra* note 61, at I-11, q. 94, art. 2 ("All inclinations of any parts of human nature, e.g., of the concupiscible and irascible parts, in so far as they are ruled by reason, belong to the natural law . . .").

78. LINCOLN, *supra* note 31, at 61–62.

Thomas Aquinas, freedom must serve ends beyond itself that constitute the fulfillment of man's rational and social nature; yet, he is under no illusion that the temporal common good aims at achieving the kingdom of God or secular redemption.

B. Developments in Catholic Natural Law: The Rights and Duties of the Human Person

Though conceived in the thirteenth century, Thomistic natural law influenced Catholic teachings for many centuries afterwards. In the sixteenth century, the Spanish neo-Scholastics Vitoria and Suarez developed new dimensions of Catholic natural law; they defended a political right of self-government by native peoples in response to the Spanish conquest of the American Indians and in opposition to the English doctrine of the divine right of kings. Later, dramatic events like the French Revolution and new currents in modern philosophy and science brought challenges to original Thomism. In the nineteenth century, Pope Leo XIII called for a revival of Thomism that preserved elements of traditional natural law, while incorporating the natural rights of property in response to socialism and defending the right of industrial workers to a just wage and trade unions. In the twentieth century, Catholic scholars such as Jacques Maritain and John Courtney Murray sought to reconcile Catholic natural law with democracy and human rights, influencing the Second Vatican Council (1962–1965), which embraced religious liberty as a human right and constitutional democracy for the first time in church history. Major papal encyclicals by John XXIII and John Paul II developed these ideas further, and they are reflected in the official teaching of the *Catechism of the Catholic Church*.⁷⁹ In the philosophy of law, Catholic scholars such as John Finnis have reexamined Aquinas in an attempt to show that Thomistic natural law begins with self-evident intrinsic goods that contain the seeds of human rights.⁸⁰ All of these developments added new features to Catholic natural law in modern times. While it is difficult to generalize, I will argue that modern Catholic natural law has retained the notion of the temporal common good but reshapes it in terms of the dominant school of Catholic moral philosophy today, "Catholic personalism."⁸¹

Like other forms of personalism, Catholic personalism takes its name from the "human person" and "the dignity of the human person." It builds upon important elements of Aquinas's teachings, while introducing subtle new ideas about human nature and politics. As we saw, traditional Thomistic

79. CATECHISM OF THE CATHOLIC CHURCH pt. 3, § 1, ch. 2, arts. 1–3, ¶¶ 1877–1948 (Libreria Editrice Vaticana trans.) (the chapter comprised of these paragraphs is titled "The Human Community" and subdivided into "The Person and Society," "Participation in Social Life," and "Social Justice").

80. See, e.g., FINNIS, *supra* note 66.

81. Another label is "Thomistic personalism," which has been developed by major figures such as Emmanuel Mounier, Jacques Maritain, John Courtney Murray, Etienne Gilson, Robert Spaemann, Karol Wojtyla, W. Norris Clarke, and Heinrich Rommen. A useful summary of the school can be found in Thomas D. Williams, *What Is Thomistic Personalism?*, 7 ALPHA OMEGA 163 (2004).

anthropology viewed man as a created being with a nature that is physical, biological, rational, social, and spiritual. In the traditional view, man is a type of substance with different features—a rational nature with intellect and free will that is inclined to virtue but flawed by a propensity to sin, a social nature directed to family life and political community, and a spiritual “nature” made in the image of God with an eternal destiny and a capacity for charity or love. While retaining many of these features, Catholic personalism adds new dimensions to the understanding of humanity—a greater appreciation of the irreplaceable uniqueness of every human being in the cosmic order; a greater awareness of man as a moral agent or “acting person”; a greater emphasis on man as a “subject” with subjective consciousness; a deeper sense of the inner workings of spiritual life (“interiority”); and a greater emphasis on the divine image in man as the source of self-giving love and the gift of human life. In addition to such features, Catholic personalism brings a moral teaching about the inviolable dignity of the person, who must be respected as an end in himself, possessing inherent rights as a person made in the image of God and as a rational agent, with duties to God and obligations to others.⁸² Obviously, these insights have implications for natural law, including a dissatisfaction with the very term “human nature,” which is better expressed by “human person” in discussing humanity because “nature” tends to be seen as biological reductionism in the modern world. Under the influence of personalism, natural law principles are formulated with greater moral absolutism and less room for prudence in applications, linking the dignity of the human person with the active promotion of human rights in a liberal democratic society and international law that goes beyond Aquinas and his neo-Scholastic followers.⁸³ Its novelty lies in combining minimalist notions of human rights with maximalist notions of duty and perfection, presenting both principles of justice as intrinsically right rather than as judgments of prudence without abandoning the realism of the Catholic just war tradition.

We saw elements of Christian and Jewish personalism in Martin Luther King, Jr.’s version of American natural law as the equal rights and dignity of “all children of God,” and there are some striking similarities with Catholic moral teachings. But the specifically Catholic version of personalism goes further in claiming that the rights of the human person are accompanied by set of social obligations and virtues of mind and character that traditional Thomism had always insisted upon and that is now re-formulated in modern terms as “integral human development” or “the whole truth about man.” Hence, contemporary Catholic natural law understands the dignity of the human person to include human rights along with duties to seek the higher goods that freedom

82. These features of personalism may be found in numerous works, such as EMMANUEL MOUNIER, *PERSONALISM* (1950); JACQUES MARITAIN, *THE PERSON AND THE COMMON GOOD* (1946); KAROL WOJTYLA, *THE ACTING PERSON* (Andrzej Potocki trans., 1969); KAROL WOJTYLA, *THE PERSON: SUBJECT AND COMMUNITY* (Theresa Sandok trans., 1993); DAVID WALSH, *POLITICS OF THE PERSON AS THE POLITICS OF BEING* (2015).

83. For an analysis of Catholic personalism that explores the role of Kantian ethical idealism, see Robert P. Kraynak, *The Influence of Kant on Christian Theology: A Debate About Human Dignity and Christian Personalism*, 7 J. MKTS. & MORALITY 517 (2004).

must serve in order to be legitimate. This means human rights have a dual purpose: (1) the minimal goal of protecting the dignity of individuals from being crushed by tyranny, especially in the age of totalitarianism, and (2) the maximal purpose of providing the opportunity to promote the God-given natural ends of man—namely, the natural law understanding of the family as a union of male and female open to children as a gift, with protections for the unborn child; the common good of society with regulated capitalism and a strong emphasis on social justice for the poor and marginalized; the duty to use religious liberty to seek the truth about God and to publicly teach the truth without coercively imposing it on others; and the duty to seek an international order that serves the whole human race in a peaceful and just world (permitting just war by independent nations, while promoting international institutions, such as the United Nations). The goal of modern Catholic natural law, one might say, is to defend minimal and maximal requirements of justice that include both the rights of the person to freedom, as well as the duties of the human person that direct nations and the international order to a substantive view of virtue and the common good.⁸⁴

This teaching is an ambitious redefinition and expansion of Catholic natural law that covers a huge range of subjects. In order to get a concrete sense of how it might work in practice, we can turn to one of the most influential Catholic personalists of recent times, the late Pope, and now Saint, John Paul II (pontificate from 1978–2005), who wrote that “the guiding principle of . . . all of the Church’s social doctrine is a *correct view of the human person* and of his unique value.”⁸⁵ John Paul II provides an overview of applied natural law in a statement written in 1997 for the American ambassador to the Vatican on the American Founders’ idea of freedom:

The Founding Fathers of the United States asserted their claim to freedom and independence on the basis of certain “self-evident” *truths about the human person . . . discerned in human nature, built into it by “nature’s God.”* Thus they meant to bring into being . . . a great experiment in what George Washington called “ordered liberty[.]” . . . in which men and women would enjoy equality of rights and opportunities in the pursuit of happiness and in service to the common good. Reading the founding documents of the United States, one has to be impressed by the concept of freedom they enshrine: *a freedom designed to enable people to fulfill their duties and responsibilities towards the family and towards the common good of the community. Their authors clearly understood that there could be no true freedom without moral responsibility and accountability, and no happiness without respect and support for the*

84. For a document aimed at combining old and new elements, see INT’L THEOLOGICAL COMM’N, *THE SEARCH FOR UNIVERSAL ETHICS: A NEW LOOK AT NATURAL LAW* ¶ 7 (2009). It combines “the dignity of the human person” with “authentic human growth” (a diluted word for virtue) directed by the universal natural law. *Id.*

85. POPE JOHN PAUL II, *CENTESIMUS ANNUS* ¶ 11 (1991), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centessimus-annus.html [<https://perma.cc/UB2P-X5TR>].

natural units or groupings through which people exist, develop and seek *the higher purposes of life in concert with others* It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, . . . [leading to] a kind of banishment of God from civil society. . . . The credibility of the United States will depend more and more on its promotion of a genuine *culture of life* . . . *in which the weakest and most vulnerable are welcomed and protected*.⁸⁶

In this statement, one can see an interpretation of the rights and duties of the human person under the rubric of “ordered liberty”—a term taken from the Anglo-American common law tradition which John Paul II reshapes in accordance with Catholic natural law and personalism. He sees the American founding based on certain “self-evident truths about the human person” that combine the American idea of God-given natural rights in the Declaration of Independence with the Catholic idea of the natural ends for which man is designed by the Creator. The natural ends are the duties toward the family and the common good, the cultivation of a “culture of life” for the weak and unborn, the “higher purposes of life in concert with others” that reflect the moral and religious beliefs of citizens expressed in public life and cultural practices. John Paul II concludes these remarks with a prayer, echoing Lincoln, that America “will experience a new birth of freedom, a freedom grounded in truth and ordered to goodness.”

In other writings, John Paul II ties this notion of freedom ordered to goodness with a view of natural law that respects the rights and freedoms of persons while serving the “whole truth about man.”⁸⁷ This view has important implications for evaluating democracy as a form of government. It implies that democracy is not an end in itself whose formal processes of elections and legislation can be accepted uncritically—as automatically just or moral simply because they follow certain legal procedures. While sincerely appreciating the benefits of democracy compared to the totalitarian regimes of communism and fascism under which he suffered, John Paul II also offers a sober assessment of democratic government:

Democracy cannot be idolized to the point of making it a substitute for morality Its “moral” value is not automatic, but depends on conformity to the moral law to which it . . . must be subject [T]he value of democracy stands or falls with the values

86. Pope John Paul II, *Address to H. E. Mrs. Corinne (Lindy) Clairborne Boggs, New Ambassador of the USA to the Holy See (Dec. 16, 1997)*, https://www.vatican.va/content/john-paul-ii/en/speeches/1997/december/documents/hf_jp-ii_spe_19971216_ambassador-usa.html [https://perma.cc/JGU3-E47X] (emphasis added).

87. POPE JOHN PAUL II, *REDEMPTOR HOMINIS* 12 (1979), http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis.html (“[A]void every kind of illusory freedom . . . that fails to enter into the whole truth about man and the world.”); see also Kenneth L. Grasso, *Saving Modernity from Itself: John Paul II on Human Dignity, ‘the Whole Truth About Man,’ and the Modern Quest for Freedom*, in *IN DEFENSE OF HUMAN DIGNITY: ESSAYS FOR OUR TIMES* 207 (Robert P. Kraynak & Glenn Tinder eds., 2003).

which it embodies . . . such as *the dignity of every human person, respect for inviolable and inalienable human rights, and the adoption of the “common good” as the end and criterion regulating political life . . .* The basis of these values cannot be provisional and changeable “majority” opinions, but only *the acknowledgment of an objective moral law which, as the “natural law” written in the human heart, is the obligatory point of reference for the civil law itself.*⁸⁸

The striking feature of this statement is the forthright way it describes democracy as a conditional good: The moral value of democracy depends on the ends which it serves, and its legitimacy is measured by an objective moral law that stands above and outside of majority opinion and positive law. Despite these cautionary remarks, John Paul II actually intends to strengthen democracy by making it clear that democracy cannot be justified by moral relativism—by the claim that nothing is objectively true, suggesting that democracy is best because it allows people to define reality as they wish. Democracy has legitimacy only when its civil laws are grounded in objective moral truth, expressed as a higher moral law that people know as the natural law:

Nowadays there is a tendency to claim that agnosticism and sceptical relativism are the philosophy and the basic attitude which correspond to democratic forms of political life. Those who are convinced that they know the truth . . . are considered unreliable from a democratic point of view, since they do not accept that truth is determined by the majority, or that it is subject to . . . different political trends. It must be observed in this regard that if there is no ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power . . . [for] a democracy without values easily turns into open or thinly disguised totalitarianism.⁸⁹

Coming from the former head of the Catholic Church, such statements sometimes frighten people because they sound like moral authoritarianism. And yet the view expressed by John Paul II on democracy and human rights resembles those made about American natural law by Jefferson, Lincoln, and M. L. King, Jr., during their moments of crisis when they opposed unjust laws and rejected the notion that the slavery could be defended under the rubric of popular sovereignty or racial segregation under the claim of states’ rights. Like American natural law proponents, John Paul II places the value of liberal democracy in the context of natural law in order to support it as much as possible and to go beyond the minimal view by elevating democratic freedom to the maximalist view of the highest good for man. His brand of Catholic personalism reformulates natural law to include elements of Thomism and modern liberalism—combining human rights and perfectionism—with the intention of strengthening protections for life and property from arbitrary power as well as

88. POPE JOHN PAUL II, EVANGELIUM VITAE ¶ 70 (1995), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html [<https://perma.cc/KC2H-WZBT>] (emphasis added).

89. POPE JOHN PAUL II, *supra* note 85, ¶ 46.

promoting virtue and human perfection that leads to temporal happiness and points toward eternal happiness.⁹⁰ One could say that modern Catholic natural law, as expressed by John Paul II, seeks greater moral absolutism for both the minimum and the maximum requirements of justice in order to secure and elevate the exercise of freedom.

III. CONCLUSION: THE PURPOSE OF HUMAN FREEDOM

The primary claim of natural law is that an objective standard of justice exists above the positive law that is based on human nature and the natural order of creation to which positive law must conform in order to be morally binding. On this crucial point, the American and Catholic natural law traditions are in fundamental agreement. One might also observe that Jefferson, Lincoln, and M. L. King, Jr., spoke about these matters with the same degree of moral certainty as Catholic theologians, which surprises people since Catholics are often suspected of dogmatic certainty in promoting intolerant moral authoritarianism or theocracy, whereas other proponents of higher law are not seen as threatening the democratic order. Yet, Lincoln went to war over the claims of natural law, while his opponent Stephen A. Douglas sought to avoid civil war by rejecting natural law and arguing for “popular sovereignty” as a “live and let live” tolerance of local majorities on the issue of slavery.⁹¹ M. L. King, Jr., also confuses people, since he spoke for civil and human rights that could appeal to everyone, but he grounded them in a version of Christian natural law that injected religion into American politics as few have done since the Great Awakenings, calling for a beloved community that could almost be called a “theocracy of love.” All versions of natural law, in other words, bring claims of objective morality and moral certitude into politics that some people find threatening to democracy and freedom even though natural law has been a foundation from the beginning of modern democracy.

While American and Catholic proponents agree about the existence of an objective moral order called natural law, they disagree about the fundamental question of whether natural law supports freedom as an end in itself or whether freedom must serve higher ends beyond itself to be legitimate. In comparing their teachings, I have tried to show how complicated it is to characterize the different schools since all versions partake of minimal and maximal aims and are ambiguous about the purpose of freedom. The root of the problem, I believe, is the paradox that everyone thinks very highly of freedom or liberty and believes it has intrinsic value; but no one really believes that freedom is an end in itself and that one can be utterly indifferent about how rights are used by citizens of a liberal democracy. At some point, everyone cares about the

90. This reformulation of natural law is articulated by John Paul II, combining several elements: Thomistic notions of natural inclinations, Kantian imperatives to respect persons as ends, and the unity of the biological, rational, and divine image in the human person. See POPE JOHN PAUL II, *THE SPLENDOR OF TRUTH* ¶¶ 46–52 (1993), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html [<https://perma.cc/ZS8Q-APXJ>].

91. See ABRAHAM LINCOLN, *First Lincoln-Douglas Debate, Ottawa, Illinois* (Aug. 21, 1858), in *THE PORTABLE ABRAHAM LINCOLN*, *supra* note 21, at 130–72.

outcomes of freedom, meaning the ends, purpose, or *telos* of freedom; and people will either admit those ends explicitly or they will promote them implicitly and demand conformity through public education, social institutions, and public opinion.

Of course, those who have suffered from the terror of real tyranny will often embrace freedom with such relief that they just want to be left alone and to leave others alone as well. But even in these cases, one can argue that the implicit end or purpose of freedom is physical security and relief from suffering. There are also principled libertarians who profess belief in individual liberty as an absolute value, regardless of how people use it, because government has no right to tell people how to live and individuals should be responsible for themselves. But libertarians are most often classical liberals, influenced by John Locke, Adam Smith, J. S. Mill, or Milton Friedman, for whom the implicit assumptions are that freedom will be pursued for material well-being as the true human good achieved through capitalism and middle-class lifestyles; or they might be Kantian liberals for whom the implicit good is rational autonomy and human dignity. Regarding the American Founders, I would venture to say that their love of freedom and their memorable phrase “the pursuit of happiness” were inspired by lofty notions of the ends of life—not only material prosperity and property rights, but public service and military life as a patriotic duty, religious freedom for (mostly) Christian worship and piety, stable family life, scientific progress, cultivation of the liberal arts, and the secular redemption of mankind through the dignity of republican self-government. Yet, the Founders defended a minimalist view of natural law as natural rights and of positive law as the protection of rights because they feared the power of centralized government and they expected the inherited culture of Western civilization to fill in the blanks with substantive goods that would define the right use of happiness. They expected people to act freely in accordance with the noble aims of classical and Christian culture or English traditions of decency, honor, and common law or the rationality of the Enlightenment and middle-class property holders. In other words, when freedom is defended as a natural right that seems like an end in itself, one should look at the surrounding culture to see how people expect freedom to be used. The dominant culture gives implicit answers to questions about the end or purpose of freedom and its justification. That is why the “culture wars” are so disturbing for Americans: They are conflicts about how freedom should be used, which is supposed to be left to private individuals and associations without having the ends imposed; yet the debates inevitably become passionate public and legal contests over ultimate values (for example, whether a secular or religious culture should predominate).

Catholic natural law, by contrast, has always stated frankly that the most important question about freedom is the end for which freedom is used—above all, “the last end,” which Thomas Aquinas emphasizes in discussing human action, because the last end is always implicit in the first step of the acting person.⁹² Catholic natural law brings out this point by articulating the ends for

92. AQUINAS, *supra* note 61, at I-II, q. 1, art. 1 (“Although the end be last in the order of execution, yet it is first in the order of the agent’s intention.”); *id.* at I-II, q. 1, art. 2 (“[T]he first of

which human beings are created and which constitute true happiness. Aquinas respects freedom as part of man's rational nature; it is the power to choose what is good and to reject what is bad according to an objective hierarchy of goods, starting with preservation and procreation and pointing toward the higher goods of virtue or rational and spiritual perfection. Modern Catholic natural law obscures this point somewhat, since it is more positive than Aquinas about defending freedom or liberty in its political and social forms. Like everyone, Catholics learned from the painful experiences of the religious wars of the seventeenth century and the totalitarian ideologies of the twentieth century the importance of establishing a floor of protections for human rights; they came to insist that minimum standards of human dignity must be respected so that people are not violated by totalitarian systems of government or revivals of theocracy or dehumanizing technologies. That is why modern Catholic natural law has a view of the human person which requires religious truth to be freely received and propagated in order to be authentic and mature. But modern Catholic natural law pairs the defense of natural and human rights with continuous reminders of the duty to seek the perfection of man's rational, social, and spiritual nature, so freedom will not be arbitrary but properly directed to the true human good: Its guiding principle is "freedom-for-the-good."⁹³ This approach leaves Catholic teaching with the dilemma that the truth must be freely accepted and not coerced, but freedom exists for the sake of truth and cannot live without it. In the order of priorities, "the whole truth about man" takes precedence over freedom.⁹⁴

As a result of this dilemma, Americans have been distrustful of Catholic natural law, even in its modern forms, because it seems to say that freedom is both an unconditional good (an absolute floor or minimum) and a conditional good (a means to higher ends). American citizens will be wary of a Church that affirms freedom and rights while steering them toward specific ends of life that may restrict freedom in accordance with natural law and divine law—largely through education, culture, preaching, and voluntary institutions but not excluding the positive law of the state and judicial decisions regarding abortion, marriage, and social justice. And American intellectuals will be distrustful of Catholic legal scholars who defend constitutional doctrines that aim at "integralism" by uniting church and state through law or administrative agencies.⁹⁵ Conversely, Catholics will be critical of the American view of

all causes is the final cause."); *id.* at I-II, q. 1, art. 6 ("[E]very beginning of perfection is ordained to complete perfection, which is achieved through the last end").

93. See Walter Kasper, *THE CHRISTIAN UNDERSTANDING OF FREEDOM AND THE HISTORY OF FREEDOM IN THE MODERN ERA* 25 (1988); see also POPE BENEDICT XVI, *CARITAS IN VERITATE* ¶ 73 (2009), https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html [<https://perma.cc/4RXA-AMK6>] ("[H]uman freedom is intrinsically linked with these higher values . . . [of] charity and placed at the service of truth, of the good, and of natural and supernatural fraternity."); see also *id.* ¶ 68 ("Our freedom is profoundly shaped by our being, and by its limits . . . a freedom that is not merely arbitrary . . . [but guided by] the natural moral law which God has written on our hearts.").

94. See Grasso, *supra* note 87.

95. See the controversy about Adrian Vermeule, the Harvard Law School professor and Catholic convert, who defends "common good constitutionalism"—a type of "integralism" that

freedom because it seems too open-ended, or too close to moral relativism, in allowing any lifestyle to flourish under the presumption of an absolute right to the “pursuit of happiness” regardless of the expressions of personal identity or claims of personal autonomy.

In the last analysis, then, the two visions of natural law, American and Catholic, will never be in complete harmony with each other, despite some shared premises. In the American tradition, freedom will be viewed as an unconditional good with minimalist requirements, as its proponents remain largely silent about its implicit maximal goals while denying that a free society imposes a specific view of the good life on its citizens. In the Catholic tradition, freedom will be viewed somewhat ambiguously today, as both an absolute minimum good that protects human rights and as a mere means that must be directed to maximalist ends, explicitly stated in ways that often clash with democratic culture. As a result of these differing views of freedom and its purposes, the two traditions will be prone to misunderstandings—to wishful thinking about an easy harmony of views, without ever overcoming an underlying distrust of each other’s intentions. At best, the two schools can coexist in fruitful tension when the claims are clarified as I have attempted to do in this essay; but one must be honest in acknowledging that the heirs of Thomas Aquinas and the heirs of Thomas Jefferson will never be in perfect agreement about the means and ends of natural law.

unites church and state in order to impose moral goodness through positive law and that subordinates constitutional law to natural and divine law. Adrian Vermeule, *Beyond Originalism*, ATLANTIC (Mar. 31, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/common-good-constitutionalism/609037/> [https://perma.cc/C6MH-RLA3]; see also ADRIAN VERMEULE, COMMON GOOD CONSTITUTIONALISM: RECOVERING THE CLASSICAL LEGAL TRADITION (2022).