

## The Consensus View's Two Principles of Political Authority: Pauline and Transmission

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Near the middle of the twentieth century one finds a widespread consensus among Catholic political philosophers and theologians with respect to the Church's teaching on the means through which the *right* to govern is acquired by political authority. There are two principles at the center of this consensus. First, God is taken to be the source of all authority, including the power to bind the conscience—that is, the power to impose obligations by precept and command that are normative for human beings. Second, political authority specifically is understood to be given by God to the people as a whole, and the people are held to transfer the same to the respective political offices or institutions, though in rare cases of direct democracy they retain and exercise this power themselves. When I write of the *consensus view*, therefore, I will be referring to the two principles taken together as an account of the origin of and justification for the authority of rulers and the correlative obligations of the ruled.<sup>1</sup> In *Scholasticism and Politics* Jacques Maritain (1940) identifies the consensus view's first principle as the 'Pauline principle': "This idea in the Christian tradition is classically expressed by the Pauline principle that all authority derives from God as from its primordial source" (p. 104). The second principle of the consensus view was generally referred to as the *transmission theory*. The two principles are inseparable for supporters of the consensus view, even though it is more common to find references only to the latter—that is, the transmission principle or the *transmission theory*. Maritain's reference to the first principle—the

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<sup>1</sup> The principles are glanced at in Antony Black's *Political Thought in Europe 1250-1450* (1992). Black mentions both principles without identifying them as such or explaining their inter-relatedness: "Kings derived their authority from God...And kings were at the same time said to derive their authority from the people—the political community, however structured. This was a mysterious as much as a constitutional belief: as the constitutional monarchist Sir John Fortescue put it, 'from the people there breaks forth a kingdom, which is a mystic body governed by one man as head'" (137). Twentieth century defenders of the consensus view do not restrict its application to constitutional or other types of monarchy, but the core ideas remain the same.

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Pauline principle—is a helpful reminder, however, that the consensus view consists of two principles *and* that the second principle is dependent on the first. Absent the origin of authority in God, there would be no authority in the people to be transferred, and the fact that political power regularly binds individuals to perform or refrain from performing specific acts would be based solely on its coercive force. Put simply, political authority would be a matter of might rather than right.

The consensus view was widely held in the first half of the twentieth century among Catholic philosophers and theologians, and the figures who supported some version of it constitute an impressive list of mid-century Thomists, including Heinrich Rommen (1945), Wilfrid Parsons (1939, 1940a, 1940b, 1941),<sup>2</sup> Yves R. Simon (1940, 1966, 1968, 1980), Charles N. R. McCoy(1989), and, of course, Jacques Maritain. Strikingly, today many of those who are interested in the political philosophy of Aquinas and the natural law tradition more generally are silent about the consensus view.<sup>3</sup> Mark Murphy

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<sup>2</sup> See also “St. Thomas Aquinas and Popular Sovereignty,” *Thought: Fordham University Quarterly* 16 (September 1941): 473-92. In this article Parsons helpfully reminds us that democratic government is but one species and cannot be substituted for the genus of good—that is, legitimate—forms of government. Legitimacy requires “a rule that is for the common good, is representative of the people, and is derived for the ruler immediately from the community itself” (474). Democracy adds to these three elements of the genus of good government the manner or mode of exercise—rule by the people—as a specific difference. It is a mistake to confuse democracy with the legitimacy of political authority.

<sup>3</sup> Robert Pasnau and Christopher Shields usefully describe the “eclectic” nature of Aquinas’ ethical theory—“It is, all at once, a virtue theory and a natural law theory, with divine commands playing a role as well. It combines deontological and consequentialist aspects and in addition has a strong teleological component”—but one might read their introduction to the thought of Aquinas without realizing that he had anything whatsoever to say about politics (2004, p. 217). Much the same can be said of Rebecca Konyndyk DeYoung, Colleen McCluskey, and Christina Van Dyke’s *Aquinas’s Ethics/Metaphysical Foundations, Moral Theory, and Theological Context* (2009). Paul E. Sigmund’s “Law and Politics” survey essay manages to link Aquinas’ political theory to that of Aristotle, but is silent on the consensus view [(1993, pp. 217-31); the essay was reprinted more recently in *Thomas Aquinas: Contemporary Philosophical Perspectives*, ed. Brian Davies (Oxford

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(2009), for example, in *Natural Law in Jurisprudence and Politics*, makes no reference to either of its principles, despite offering what he describes as a natural law defence of political authority that is indebted to the work of Aquinas. Similarly, no mention is made of the principle in D. E. Luscombe's (1982) survey article, "The state of nature and the origin of the state" in *The Cambridge History of Later Medieval Philosophy*. In Jean Porter's (2010) *Ministers of the Law*, what she calls the "Pauline view" is described as "inadequate" because "it was difficult or impossible on this account to generate criteria on the basis of which to distinguish between legitimate and illegitimate uses of authoritative power" (pp. 46-7). Unfortunately, her version of the Pauline view seems deeply confused. She characterizes it thus: "At the beginning of the scholastic period, many Christians, scholars and lay men and women alike, would have affirmed the Pauline view that human authority rests on a kind of divine authorization, conferred for the purpose of restraining the effects of sin" (p. 47). Insofar as the Pauline principle identifies God as the source of the power to bind the consciences of others, it seems unnecessary to speak of a "kind of divine authorization," and the confusion of the Pauline principle with Augustine's view

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University Press, 2002), pp. 325-37]. Michael Baur's "Law and Natural Law" at least touches on the Aristotelian naturalism of Aquinas' theory, specifically the close connection between authority and the common good, but remains silent on political authority's foundation in Paul's letter [in *The Oxford Handbook of Aquinas*, eds. Brian Davies and Eleonore Stump (2012, pp. 238-54). Thomas S. Hibbs takes pains to reduce any potential role of authority by tracing the normativity or obligatoriness of precepts to their intelligibility, rather than to their promulgation by authority [*Virtue's Splendor/Wisdom, Prudence, and the Human Good* (2001, p. 73). Of course, Hibbs is correct to emphasize the intelligibility of normative prescriptions, but between two equally intelligible commands (say, drive on the right or the left-hand side of the road) what determines the law for a given community must be the authority responsible for that community. How does a person or institution come to hold the right, in such cases, to make such decisive determinations? That is what is at issue for Aquinas in tracing the origins of political authority back to the Creator of human nature, a nature that is understandable in part through the normal operation of human reason—that is, the use of reason unaided by revelation.

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that political authority is exercised for the restraining of human sinfulness only serves to obscure matters more.<sup>4</sup>

In stark contrast to those who simply neglect the Pauline and transmission principles, John Finnis (1980) has openly rejected the latter:

Consent, transmission, contract, custom—none of these is needed to constitute the state of affairs which (presumptively) justifies someone in claiming and others in acknowledging his authority to settle co-ordination problems for a whole community by creating authoritative rules or issuing authoritative orders and determinations. (pp. 248-9)

Transmission is only one in a list of attempted justifications of political authority that Finnis dismisses, but it attracts, as other members in the list do not, a direct refutation from Finnis.<sup>5</sup> Part of his objection amounts to his belief that the

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<sup>4</sup> Augustine's views are clearly summed up in the following: "the state...is an external order; the peace that it maintains is external peace—the absence, or at least the diminution, of overt violence. The state is also a coercive order, maintained by the use of force and relying on the fear of pain as its major sanction for compliance to its commands. It has no weapons by which it can mold the thoughts, desires, and wills of its citizens; nor is it really concerned to exert such influence. It does not seek to make men truly good or virtuous... the state is a non-natural, remedial institution... it is a consequence of the Fall. It is both a punishment for sin and a remedy for man's sinful condition; without it anarchy would reign, and self-centered, avaricious, power-hungry, lustful men would destroy one another in a fierce struggle for self-aggrandizement" (Deane, 1963, p. 117). Alasdair MacIntyre's claim that there is something "radically new" in Augustine's theology is essentially right: "Augustine of course was interpreting the scriptures in his accounts of human sinfulness and redemption, but his elucidation of them is distinctive in that he is able to give an account of Paul's doctrine in *Romans*, for example, using a vocabulary of a kind which was not available to Paul himself" (1988, p. 157). Porter's reading Augustine's political theology into Paul is one way of understanding Paul's texts, but it is very different from that of the consensus view.

<sup>5</sup> Finnis is not alone among contemporaries who challenge the transmission principle. John Hittinger objects that the "Thomistic warrant for [the transmission principle] is quite slim" (2002, p.

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philosophers who advocated the ‘Pauline principle’ were guilty of legalism. Lawyers naturally consider the original right of possession in any transaction where present rights of possession are in doubt. The transmission theorist similarly looks for some original right that is later transferred to another, but for Finnis no such original right can be discovered because none exists. That doesn’t matter much to political authority because, Finnis argues, its grounding lies elsewhere: political authority is grounded in and justified by the need for a solution to coordination problems that are unavoidable in any social group, including political communities.

What has happened? In order to answer this question in a provisional way I return to Maritain’s exposition of the ‘Pauline principle’ in *Scholasticism and Politics* and other works. I use Maritain’s works as a starting point to flesh out an account of the two principles of the consensus view, but I devote priority in the

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40). As he points out, the principle depends crucially on remarks made by Aquinas in the *Summa Theologiae*’s “Treatise on Law” (I-II 90, 3). He concedes that Maritain and Simon, in relation to whose work Hittinger takes up the principle, “are following the lead of the great Thomistic commentators Cajetan, Bellarmine, and Suarez all of whom use this text.” For Hittinger, however, neither the text in Aquinas, which he describes as an “ambiguous passage” (though he never explains what is ambiguous about it, nor does he acknowledge that this is not the only passage used to establish the transmission principle). Hittinger’s discussion is focused on the defense of liberal democracy in the works of Simon and Maritain, and he can be faulted for conflating a defense of democratic philosophy with a defense of democratic practice. Maritain and Simon both defend the former, but neither is committed to the universal and exclusive validity of the latter. It is worth noting in this regard that a democratic philosophy can and should inform other forms or modes of practice, including monarchy and aristocracy. This failure, I believe, accounts for the further mistakenness in Hittinger in identifying “consent through election” as a primary means of transmission. Voting is not a sufficient indicator of voluntary acceptance of a state (that is rarely if ever what elections are about), and, even if it were, conceptualizing transmission in terms of consenting to being governed runs the risk of making the theory indistinguishable from standard consent theories of political authority, but in such accounts authority isn’t derived from God but rather from the voluntary acts of human beings who choose to live together. Besides, if it were the case that consent of the governed is the only acceptable means of transmission, then the transmission theory would be exclusively tied to democratic practice, and it would be very difficult to link the same back to Aquinas. I do think, however, that on occasion Maritain and Simon are not sufficiently clear about their distinction between democratic philosophy and democratic practice.

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first part of the paper to evidence for the consensus view in the works of Aquinas since all of its defenders were committed to its fidelity to Aquinas and the natural law tradition of political philosophy. I also examine in greater detail Finnis' critique of the theory, which requires some exposition of his own version of the natural law's defense of political authority. I take this up in the second part of the paper. The goal of the paper is to determine whether or not the two principles of the consensus view ought to be recovered as a viable component in a Thomist justification of political authority, as both the figures who gave the theory its first exposition in the early modern period—Bellarmine and Suarez—and those in the first half of the twentieth century conceived it to be.

### **1. The Consensus View**

In this part of the paper I lay out some of the evidence for the two principles of the consensus view. I start with and return to Maritain, but my focus will be on the available textual evidence in Aquinas. My aim is threefold: first, I want to describe the two principles in somewhat greater detail; second, since the consensus view has fallen into neglect, I want to point to explicit evidence for it in Aquinas as well as later thinkers in the natural law tradition who endorsed the consensus view; and, third, since the chief reason for seeking to recover the consensus view would be its truthfulness and adequacy as an account of political authority from the natural law tradition, I need to provide a sufficient account of the view so as to enable me to respond to its most vocal critic among contemporary natural law thinkers.

Supporters of the consensus view take as their starting points not only a natural law conception of political morality, but also an eternal law framework within which the natural law finds its ground and justification. Maritain's reference to the Pauline principle in *Scholasticism and Politics* is only one of several similar references. In *Man and the State*, for example, Maritain (1951) connects the "majesty" of political authority with the fact that the authority

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represents the people, which representation is justified in terms of the Pauline principle: “since it represents the people, the civil power holds its authority, through the people, from the Primary Cause of Nature and of human society. St. Paul teaches that ‘there is no authority that is not from God’” (p. 131).<sup>6</sup> In *Ransoming the Time*, Maritain (1972a) writes: “Saint Paul requires those under authority to obey those above. For him it is a duty of man’s conscience to have respect for legitimate authority, because all legitimate authority has its primary source in God, Author of nature” (p. 201). Several key features of the Pauline principle are enunciated by Maritain: (1) political obligation is binding in conscience—it is a moral duty of subjects; (2) God is the source of such an obligation inasmuch as God is the source of authority itself; and (3) it is because God is the creator (“Author” and “Primary Cause”) of human nature that such a nature requires political authority and that God is the source thereof—that is, the act of creation gives to human beings a particular set of inclinations that can only be realized fully within the types of community that require political authority, and the same act of creation gives to God the power to bind the consciences of rational creatures.

At the heart of Aquinas’ natural law theory in the *Summa Theologiae* lay the same set of claims. Maritain attributes both the Pauline and transmission principles to Aquinas: “In the political order . . . , the organs of government are then regarded . . . as having the source of their authority in God. . . Once the organs are designated, authority resides in them . . . whose personification and vicar they are: *vices gerens multitudinis*, as St. Thomas puts it” (1996, p. 278). It is possible, however, to conceive of natural law theory as independent of the

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<sup>6</sup> This should be kept in mind in reading later passages of the work, like the following: “the foundation of the Church as a society was accomplished from above downwards, but political society originates from below upwards. In other words, authority in the Church comes down from above, but authority in political society rises from below; and whereas the Pope in the Church is the Vicar of Christ, the rulers in political society are the vicars of the people” (184-5). The authority transferred from the people to their political rulers, however, comes ultimately from God: Maritain’s point is merely that this same authority, an authority that is vested in the people by God, is transferred by the people.

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findings of natural or philosophical theology. Finnis (1980) appears to have taken just such a stance in *Natural Law and Natural Rights*: “Part II of this book offers a rather elaborate sketch of a theory of natural law without needing to advert to the question of God’s existence or nature or will” (p. 49).<sup>7</sup> Similarly, in his *Aquinas*, despite the potential “suspicion that Aquinas assimilates the government of free people too closely to the ordering of physical and biological nature,” Finnis asserts that “when developing his ideas more philosophically and without the pressure to make use of every traditional theological form of speech, Aquinas strongly insists that law is something addressed by one mind and will to others—by one freely choosing person *to other freely choosing persons*.” As such, this “firmly relegates” the eternal law to a “non-focal” meaning of law in Aquinas in contradistinction to the “central case of law” which is “an appeal to the mind, the choice, the moral strength {*virtus*}, and love of those subject to the law” (p. 49).<sup>8</sup>

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<sup>7</sup> It would be unfair not to mention that Part III of the book takes up the relations of nature, reason, and God, but it isn’t clear from what is said there that Finnis retracts his earlier claim. In his contribution to the “Founders of Modern Political and Social Thought” series, *Aquinas/Moral, Political, and Legal Theory*, Finnis again reserves his reflections on the place of God in the Thomistic system until the final part of the book. There Finnis seems to set up a dichotomy based on the audiences of Aquinas’ works. On the one hand, in writing for theological students, Aquinas is said to be “willing to speak of an ‘eternal law’” (2004, p. 307). On the other hand, “when developing his ideas more philosophically and without the pressure to make use of every traditional theological form of speech, Aquinas strongly insists that law is something addressed by one mind and will to others—by one freely choosing person *to other freely choosing persons*. This does not contradict the idea of an eternal law governing even subrational creatures, but it firmly relegates that idea to an extended, non-focal sense of ‘law’. The central case of law is an appeal to the mind, the choice, the moral strength {*virtus*}, and the love of those subject to the law.”

<sup>8</sup> In his *Aquinas/Moral, Political, and Legal Theory*, Finnis again reserves his reflections on the place of God in the Thomistic system until the final part of the book. There Finnis seems to set up a dichotomy based on the audiences of Aquinas’ works. On the one hand, in writing for theological students, Aquinas is said to be “willing to speak of an ‘eternal law’” (2004, p. 307). On the other hand, as suggested by the passage quoted, when Aquinas writes for what appears a more philosophical audience—at least this is how I am interpreting the ambiguous claim about the

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Finnis' position is difficult to square with central claims of Aquinas' natural law theory, however. To begin with, Aquinas argues that in any sequence of causes, the effect depends more on the first cause than on subsequent causes. This general claim is made prior to the particular assertion that reason is a rule of human action only insofar as it is informed by and conformed to the eternal law: "It is therefore evident that the goodness of the human will depends on the eternal law much more than on human reason" (*ST I-II 19, 4*). Two questions later Aquinas will refer to this argument as the authority in the *sed contra* of the first article in order to establish that "the goodness of a human action depends principally on the Eternal law" (21, 1*sc*).<sup>9</sup> The priority of eternal reason to human reason is a commonplace of Aquinas' moral theory: "there are two rules of the human will: one is proximate and homogeneous, viz. the human reason; the other is the first rule, viz. the eternal law, which is God's reason" (*I-II 71, 6*). It is unclear to me, therefore, how the focal meaning of law can be human law.

Human laws have the power to bind the consciences of those subject to them from their connection to the eternal law (*ST I-II 96, 4*). Aquinas states in terms of an exceptionless disjunction that all laws are either just or unjust. All just laws are said to derive from the eternal law.<sup>10</sup> As "a dictate of practical

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pressure Aquinas felt to use all forms of theological discourse in some cases but not others—he shifts the focus away from a theological ground for natural law.

<sup>9</sup> Aquinas goes on to argue in the body of the article that, given the dependence of the ordering of an agent to an end on a rule or measure, in human action "the proximate rule is the human reason, while the supreme rule is the Eternal Law." The rightness and wrongness of human actions are ultimately determined by conformity with the eternal law.

<sup>10</sup> In *I-II 96, 4* Aquinas cites as his scriptural warrant for this claim another key commonplace, though this one comes from the Old Testament *Book of Proverbs*: "By me kings reign" (8:15). In the *sed contra* to 93, 3 Aquinas again refers to this textual warrant to support the claim that *all* laws derive from the eternal law. The body of the article makes the dependency explicit, again drawing on the efficacy within sequential causation: "the law denotes a kind of plan directing acts towards an end. Now wherever there are movers ordained to one another, the power of the second mover must needs be derived from the power of the first mover... Wherefore we observe the same in all those who govern, so that the plan of government is derived by secondary governors from the governor in chief; thus the plan of what is to be done in a state flows from the king's command to his inferior administrators... Since then the eternal law is the plan of government in the Chief

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reason emanating from the ruler who governs a perfect community,” the *ideas* in the “Divine Reason”—which governs “the whole community of the universe”—provide the source and model for natural and human law (*ST I-II 91, 1*). Indeed, all law derives from and receives its power to bind from the Eternal Law. Eternal law governs the whole universe; the natural law governs human conduct in general, but it requires greater specificity to apply to human interaction in social groups, and that specificity is given in human “positive” law (*ST I-II 99, 3ad2*). Against Finnis, therefore, I follow Alasdair MacIntyre (1988), who contends that “perfected obedience to the natural law requires the virtue of justice in full measure,” which must include religious practice—since religion is a moral virtue affiliated with the virtue of justice. Affiliation does not mean subordination: for Aquinas religion is the most important of the moral virtues—that is, it ranks higher in his estimation of the moral virtues than each of the cardinal virtues because its act is nearer to the end of all of the moral virtues (*ST II-II 81, 1*).<sup>11</sup> How could one possess the virtue of religion, a requirement of the natural law, without believing in God? MacIntyre concludes that one cannot: “It is then important to my interpretation of Aquinas’ positions that I understand his positions on practical knowledge and practical reasoning, let alone those on justice, as always presupposing the type of rational knowledge of God exemplified in the conclusions of the *Prima Pars*” (p. 188).<sup>12</sup>

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Governor, all the plans of government in the inferior governors must be derived from the eternal law. But these plans of inferior governors are all other laws besides the eternal law.”

<sup>11</sup> The *sed contra* of the article provides insight into the interconnectedness of law and virtue in Aquinas’ thought as well as the source of both in God: “The precepts pertaining to religion are given precedence as being of greatest importance. Now the order of precepts is proportionate to the order of virtues, since the precepts of the Law prescribe acts of virtue.”

<sup>12</sup> *WJWR*, p. 188. MacIntyre is equally explicit about his commitments to the philosophical theology of Aquinas as central the latter’s moral and political philosophy in his later works as well: “Modern Catholic protagonists of theories of natural law have sometimes claimed that we can fully understand and obey the natural law without any knowledge of God. But according to Aquinas all the moral precepts of the Old Law, the Mosaic Law summed up in the Ten Commandments, belong to the natural law, including those which command us as to how we are to regard God and comport

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The same privileging of the eternal law provides an occasion for Maritain to add what might be called a *legitimacy condition* to political obligation: the obligation to obey is circumscribed by principles of justice that must be independent of political authority. The principles of justice must be independent of political authority to avoid circularity: otherwise all law would be just merely because a respective authority laid claim to their being so. For Maritain (1972b), as for Aquinas, the relevant principles of justice are derived from the eternal law: “[Aquinas] held that laws are only truly law because they are just, and that they are binding in conscience only if they are just. A real justice, not a feigned one, is the foundation for authority in law. . . . If we shatter this basic order, which links things human to the divine stabilities of the universe, even the strongest empirical defenses of the social order will remain vain” (p. 37). The dependence of all law on the eternal law provides the objective, exterior measure required of human laws—that is, laws that require the violation of an eternal or natural law are unreasonable and as such lose their power to bind in conscience (I-II 96, 4).

Maritain’s remarks immediately preceding the naming of the Pauline principle in *Scholasticism and Politics* connect the principle to Aquinas’ political naturalism. The reason for making the connection has to do with the order of discovery. It is with the necessity of political association for the flourishing of human beings that we begin the study of the origin and source of political authority because it is with this that we are most familiar. Maritain argues:

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ourselves in relation to Him. A knowledge of God is, on Aquinas’s view, available to us from the outset of our moral enquiry and plays a crucial part in progress in that enquiry. And it would be very surprising if this were not so: the unifying framework within which our understanding of ourselves, of each other, and of our shared environment progresses is on in which that understanding, by tracing the sequences of final, formal, efficient, and material causality, always refers us back to a unified first cause from which flows all that is good and all that is true in what we encounter. So in articulating the natural law itself we understand the peculiar character of our own directedness, and in understanding the natural law better we move initially from what is evident to any plain person’s unclouded moral apprehension to what is evident only or at least much more clearly to the *sapientes*, those whom Aquinas saw as masters of the master-craft(I-II 100, 1), and to what supernatural revelation discloses” (1990, p. 141).

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If in the cosmos, a nature, such as human nature, can only be preserved and developed in a state of culture, and if the state of culture necessarily entails a certain condition—the relation of authority among men—this relation is demanded by natural law. (p. 103)

The argument consists of two conditionals: *if p then q, if q then r*. The two conditionals appeal directly to the naturalist justification of political obligation that Aquinas adopted from Aristotle. The first conditional—the dependence conditional—asserts that human development (specifically, human flourishing) is dependent on participation and membership in a political community. Maritain's "state of culture" may be misleading if it is thought that such culture is possible outside or independently of political organization. If it is understood as synonymous with political community (or at least dependent thereon) inasmuch as the type of perfection that rational beings are capable of requires the existence of a culture that can only be developed out of and nourished within a political community, the ambiguity can be avoided.<sup>13</sup> The second conditional is not expressly stated by Aristotle. One might argue that the first implies the second: if political community is a necessary condition of human flourishing, then, assuming that human flourishing itself is the good for human beings, whatever is necessary for political community is also necessary for human flourishing. Such

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<sup>13</sup> There remain at least two potential objections to the dependence conditional: (1) it can be argued that human beings do not have a nature—the anti-essentialist objection; or (2) that even if such a nature exists and can be identified as such, it can be argued that there is no dependence of this nature on political community. This is not the place to address these objections, but the first will apply to any teleological eudaemonist ethic and the second to every naturalist defence of political authority. Each objection, therefore, threatens the foundations of the tradition of political naturalism because both entail a rejection of the starting points of that tradition. It is not surprising that early modern political philosophers sought to replace at least one of these starting points: inasmuch as the state of nature device in Locke's contract theory, for example, presupposes the possibility of pre-political human culture it sets itself in direct opposition to the dependence condition.

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at least is the logical structure used by Aquinas explicitly in defending the second precept of charity—that is, love of neighbour—in the *Summa Contra Gentiles*: “Besides, since ‘man is naturally a social animal’, he needs to be helped by other men in order to attain his own end. This is most fittingly accomplished by mutual love which obtains among men. Therefore, by the law of God which directs men to their ultimate end, mutual love is prescribed for us” (SCG 3, II, c. 117.4).<sup>14</sup> Just as political authority is said to be required by the natural law, so mutual love is defended as required “by the law of God” because it is necessary to successful political cooperation.

Maritain’s double-conditional also echoes one of the clearest statements of Aquinas’ naturalism in the *Summa Theologiae*. Authority would have existed in the state of innocence, Aquinas asserts in the *prima pars* “because man is naturally a social being, and so in the state of innocence he would have led a social life. Now a social life cannot exist among a number of people unless under the presidency of one to look after the common good; for many, as such, seek many things, whereas one attends only to one” (96, 4). As we will see, Finnis himself makes much of this claim by Aquinas. For Maritain (1940), what matters is that the grounding in the natural law of authority points inevitably to the source of that law and its grounding in human nature. Maritain points to a “twofold meaning” in this grounding (p. 104). First, “hierarchical differentiations”—that is, the relationship of ruler and ruled, of authority and obedience—are required by the very nature of social life. Second, given the natural equality of all humans as members of the same species, the general right to govern others requires a special justification; indeed, it is possible “only if nature itself is considered, not as a simple collection of phenomena, but as the work and the created participation of a supreme ordinating Law, ‘justified in

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<sup>14</sup> In the *Summa Theologiae*, Aquinas will use a similar strategy for the inclusion of justice in the moral order of human action. If human beings were not political by nature, then human actions would need only conform to the dictates of reason and of God; but, because human beings must live together in communities to flourish, their actions must also conform to the dictates of shared living, including the virtue of justice and, we can add from the passage in the *SCG* the demands of love (ST I-II 72, 4).

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itself” because identical with the absolute Good” (p. 104-5). The justification of the right to govern, therefore, presupposes the existence of the eternal law and eternal reason—that is, it presupposes that all authority comes from God whose reason is the source of the eternal law.

### **1.1 The Pauline principle**

The Pauline principle holds that political authority or the right to direct and command is derived from and has its origin in the Creator, as “supreme ordinating Law.” Aquinas not only held that human government was derived from the divine, but also that it should imitate its source (*ST* II-II 10, 11). Not surprisingly, the most complete statement of the Pauline principle in Aquinas comes in his commentary on *Romans* 13:1-7, though it is surprising that this text is not regularly cited by most of the mid-twentieth century defenders of the consensus view. The fact is that it is one of the two principal New Testament sources that Aquinas prefers to cite when discussing political authority and the duty to obey.<sup>15</sup> The first two verses from Paul’s letter express the core of the principle: “Let every soul be subject to the higher powers. For there is no power except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur condemnation.” It is in his commentary on these verses that Aquinas articulates clearly his own commitment to the Pauline principle. According to Aquinas, Paul is addressing early Christians who believed “that they should not be subject to earthly powers on account of the freedom they received from Christ” (Aquinas, 2012, §1017). On the contrary, Paul admonishes the community to believe that, during this life, subjection to authority is owed by all,

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<sup>15</sup> The second text is *Hebrews* 13:17. In comparison, another commonplace text, *1 Peter* 2:18, Aquinas only refers to once in the *Summa Theologiae*, and only 3 other times in his entire corpus in each case in a scriptural commentary.

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in Aquinas' words, "according to the order of justice."<sup>16</sup> Aquinas goes so far as to argue that Paul avails himself of the indefinite expression, *higher powers*, in order to claim that obedience is owed to "the sublimity of their office" rather than the person in office, which means that subjection extends even to those that are wicked rulers (§1018). With this "admonition" to the early Christians in mind, Aquinas proceeds to explain how the remainder of these early verses establish that subjection to political authorities is both virtuous and necessary (§1020).

To establish that subjection is virtuous, Aquinas advances two arguments. First, he provides Paul's simple assertion that all power is from God with syllogistic support via the following premises: (i) when something is predicated of God and creatures it must come to creatures from God, and (ii) power is predicated of God and human beings. From these premises Aquinas concludes that "all human power is from God" (§1021). Then he considers an objection to the assertion that power originates from God by referring to *Hosea*: "They made kings, but not through me." In response, he distinguishes three facets of power: its origin, acquisition, and use. Having already established that its origin is God, Aquinas simply cites another scriptural authority to this effect. Texts like the one from *Hosea* must be understood to refer not to the origin of authority, about which Aquinas no longer entertains any doubts. Instead, the referent of such texts must be either the acquisition of power or its use. In both of these cases it is possible for one to claim that the power does not come from God. On the one hand, when the person who acquires power does so illegitimately, through "perverse desire" for example, we can claim that the power is not from God. Similarly, it is possible to disclaim that power is from God when the person using power violates "the precepts of divine justice" (§1022). Only the just acquisition and use of power can be said to come from God in a certain way of speaking, but speaking strictly about its origin all human power is caused by God.

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<sup>16</sup> "*secundum iustitiae ordinem*"

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Aquinas takes that conclusion as the first premise of the second argument to prove that subjection is virtuous. To it he adds another to the effect that what is from God is well-ordered. Together these are taken to prove that “the order whereby the lower are subjected to the higher powers is from God” (§1025). Resistance to such authority constitutes resistance to the “divine order” of things, which is “contrary to the good of virtue.” Subjection to authority is consistent with the divine order and required by the origin of political authority. This also means, however, that all such power is subordinate to and at the service of divine authority (§1028 & 1034).

It would be something of an understatement to say that there is ample evidence elsewhere in Aquinas' *corpus* for the Pauline principle. It is evident in early and later works. In the *Commentary on the Sentences*, Book II, Distinction 44, Question 2, Article 2, Aquinas not only cites *Romans* 13:2 in the *sed contra*, but also draws more fully on the text in articulating his defense of the political obligations of subjects to authority:

I respond by saying that, as has been said, obedience looks to the obligation of observing in the command which is served. However, this duty is caused by the order of precedence which possesses constraining force, not only temporally but also spiritually as a matter of conscience, as the Apostle says. Insofar as the order of precedence derives from God, as the Apostle indicates in the same place. And thus, insofar as what comes from God, the Christian is required to obey such people, but not insofar as the precedence is not from God. (Malloy, 1985, pp. 161-64)<sup>17</sup>

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<sup>17</sup> On three occasions in the text I have substituted “precedence” for Malloy’s preferred “sovereignty” as a translation of *prelatio*. One reason for doing so is to indicate that though it is used throughout the *Sentence* commentary, *prelatio* is less common in relation to political authority

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What follows closely anticipates the arguments laid out in the commentary on *Romans*. He indicates, for example, that we can speak of power failing to come from God whenever its acquisition or use fails to meet certain conditions. On improper acquisition Aquinas includes two categories: the worth of the person holding office and the manner through which they came to power (i.e. violently). Only the latter releases one from an obligation to obey. The former does not because worth does not prevent one from properly acquiring office,<sup>18</sup> and so the fact that even unworthy individuals exercise authority does not excuse subjects from their obligation to authority because “its form is always from God, and this creates the duty of obedience, the subjects are thus required to obey such superiors, though they may be unworthy.” Both of the conditions related to misuse excuse: (1) rulers who command what is “contrary to that for which the sovereignty is established, as if it commands an act of sin contrary to virtue” and (2) rulers who exceed the limits of their proper jurisdiction may be disobeyed.

To return to the question on human law in the *Summa*, for a moment, Aquinas undertakes to respond to an objection that human law cannot bind in conscience because “an inferior power has no jurisdiction in a court of higher power” (*ST I-II 96, 4 obj. 1*). But what could be higher than the divine that governs the consciences of human beings? In his response Aquinas cites *Romans* 13:1-2. Indeed the entire argument is little more than a restatement of claims that he had made in the *Romans* commentary: since “all human power is from God” those who resist authority that is exercised within its proper jurisdiction are culpable in their conscience of violating the order of God (*ST I-II 96, 4ad1*). An objection to the right to appeal cites the *Romans* text as support for its position:

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later works. Another is that it avoids some of the connotations that have accrued to sovereignty in the early modern period.

<sup>18</sup> The point is not that Aquinas believes unworthy individuals are indistinguishable from worthy ones. The point is narrower: even unworthy individuals can come to power through the appropriate procedures, even when these procedures are normally effective in rooting out the incompetent or immoral. Aquinas, of course, no doubt has monarchical succession in mind, and so it is even easier to see that unworthy individuals could come to office through accepted means such as primogeniture.

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given that we are enjoined to submit to authority, appealing judgments constitute a form of sin by undermining the authority of the judge. Against this position, Aquinas defends the right to appeal wherever “the lower authority departs from the authority of the higher” (*ST II-II 69, 3ad1*). Aquinas has in mind cases where judicial authority is exercised in bad faith, resulting in the unjust oppression of those who find themselves before such a judge. But at *ST II-II 69, 4*, Aquinas uses the Pauline principle in the *sed contra* to argue against resistance to capital punishment where the sentence is *justly* arrived at. Self-preservation does not trump obedience to political authority. And, in the discussion of disobedience as a vice, the Pauline principle is invoked against “disobedience to the commands of a superior” insofar as resisting lawful authority is equivalent to resisting the order of God (*ST II-II 105, 1*).

One finds an even more informative use of the principle in the fifth of six articles devoted to the virtue of obedience. In this article, Aquinas argues that political authority is not unlimited: the obligation to obey does not extend to commands made by a superior that violate Divine commands. My interest in this article, however, is not with its key point but with the manner in which Aquinas clarifies the obligatory force of the Pauline principle. To do so, he likens the “necessity of justice”—through which one is bound simply to Divine commands and in a limited way to the commands of a political superior—to “natural necessity” (*ST II-II 104, 5*). In the normal course of events, natural things are moved by their movers. The normal course can be thwarted, however, in two ways: (i) it can be prevented by a stronger mover; or (ii) there can be that in the thing moved that is not wholly determinable by the mover. These limits on natural necessity have analogues in the necessity of justice: (i) Aquinas rehearses an ascending series of superiors with God at its apex such that each subordinate command is circumscribed by that which is higher up until one reaches the apex; and (ii) even though human subjects are obligated to obey the commands of their political superiors, these commands do not extend to the internal acts of a human being, only the commands of God do so. God’s authority is unique in this way

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because it is not only mover but cause: “it is possible for something to move a natural thing, without being the cause of the thing moved, yet that alone, which is in some way the cause of a thing’s nature can cause a natural movement in that thing” (*ST I-II 9, 6*). Aquinas gives as an example of this premise the tossing of a stone into the air. By such an action the stone is moved, but the movement is not natural to the stone. Only the *cause* of the stone’s nature can move it in a natural way. The same holds for the wills of human beings, the cause of which is God.<sup>19</sup> If political authority were not derived from divine authority, its ability to move human beings by commanding them would amount to violence in the sense that the movement would be opposed to the natural movement of the will. For that movement to be natural it must be derived from its cause. That it is so derived is the claim of the Pauline principle. Political authority stems from and seeks to return people to God, but its scope is necessarily narrower than and its force necessarily inferior to that of divine authority from which it is derived: “inferiors are not subject to their superiors in all things, but only in certain things and in a particular way, in respect of which the superior stands between God and his subjects” (*ST II-II 104, 5ad1*).

### **1.2 The transmission principle**

Having set out some of the evidence for the Pauline principle, I turn to the second principle of the consensus view, the transmission principle. Granted that Aquinas traces the source of all authority to God, does he also share the view that the transmission of this power is mediated through the people to those in positions of authority? I wish to provide some context for the principle before turning to the textual evidence.

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<sup>19</sup> Aquinas provides two reasons for believing that “the cause of the will can be none other than God”: (1) as a power of the rational soul the will is caused by God inasmuch as the rational soul is and (2) because “a particular cause does not give a universal inclination,” and because the will is inclined to the universal good it must be caused by that which is universal in essence rather than by participation but only God is universal in essence.

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In the late nineteenth century two subordinate principles of political authority competed for supremacy in Catholic political philosophy. For both the source of political authority and the correlative obligations of citizens to obey the laws was God—that is, both take as the appropriate starting point the Pauline principle.<sup>20</sup> The differences between the two principles hinge on the manner in which the power of binding the consciences of human beings passed from the Creator to one or several members of the human community. One principle argued that the transfer of authority was unmediated, which meant that specific political authorities could trace their power directly to God. God transferred the authority directly to the person or persons in power, as designated by the people. On this principle, the people only act as an “instrumental cause” of authority (McCoy, 1989, p. 50). This principle arose in the nineteenth century in response to the fragmentation of political communities that was blamed on the contract models of political society that had developed in the seventeenth and eighteenth centuries. It was feared that the contractual model would lead to further disintegration, and the French revolution was no doubt an important catalyst for this way of thinking. Known as the designation principle, it was much newer than the transmission principle which is usually traced back to Aquinas. Proponents of the older principle hold that political authority is received by the person or persons in authority in a mediated manner. The idea is that authority is given by God to the whole people of a political community, who in turn transfer or transmit the authority in question to a political leader or group of leaders. It is in and through this effort of transmission that the people, not individual citizens,

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<sup>20</sup> Note that both theories accepted that the differentiation of regime types—that is, into monarchies, aristocracies, democracies, and so on—was a separate and subordinate issue. Each of the principles sought to justify the foundation of political authority; neither was necessarily concerned with the mode of its functioning. This point is important because even if the people were to exercise some form of direct democracy, such that no distinct governing personnel were identifiable, an account of the authority of the majority to bind the consciences of all members of the community to its dictates would still be required.

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can be understood to be the direct cause of political authority. Of course they remain secondary to the primary cause of political authority.

Consider in the light of this the following texts from Aquinas. Both texts come from the “Treatise on Law” in the *Summa*. Let me begin with the second. Question Ninety-seven deals with changing laws, about which Aquinas is sensibly cautious given the potential threat to regular obedience. In Article Three, Aquinas addresses the issue of whether or not custom can acquire the force of law. He will argue that it can, and in doing so faces the following objection. Making law belongs to the person or persons charged with the governance of the community; such individuals act in making laws in a public capacity; but custom is made through the repeated acts of individuals in their private capacity as subjects or citizens. In response, Aquinas distinguishes between two conditions of people: they may be free citizens capable of making laws or they may not be so situated as to make their own laws. It is not entirely clear what condition of people Aquinas has in mind in the first instance, though given his preference, articulated elsewhere,<sup>21</sup> for a mixed regime, I assume he has in mind some shared power arrangement whereby the citizens of a given jurisdiction are empowered to make laws even though they also have a prince who both makes and enforces laws. Despite the difficulties with understanding the context, it is relatively clear that in such a situation the people would be acting in a public capacity inasmuch as their customs would only take on the force of law where the “whole people” participated in the observance, not just any individual. For the second group, although they are not capable of acting in such a public capacity, their customs can also take on the force of law only if they are “tolerated by those to whom it belongs to make laws for that people: because by the very fact that they tolerate it they seem to approve of that which is introduced by custom.”

Recall that the transmission principle holds that the people are real, though secondary, causes of political authority. Advocates of the principle see in Aquinas’ defence of customary law an articulation of the principle. In the first

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<sup>21</sup> See ST I-II 105, 1. See also James M. Blythe (1986) and Mark R. MacGuigan (1957).

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instance, on my reading, we have a situation that is relatively close to a direct democracy, and in such a situation the source of authority still calls for some explanation. It is explained, I think, by the essential possession by the whole people of the right of government. This is equally true in the second case where authority is exercised by a distinct governing personnel.<sup>22</sup>

The second passage comes earlier in the “Treatise on Law” in Article Three of the First Question on law. The First question treats law in general, and it concludes by picking out four essential features of law: that it be of reason, for the common good, made by someone in authority, and made available to the people. In the Third Article Aquinas argues that law must be made by someone in authority. The argument begins with the claim that the purpose of law is to direct others to the common good, and Aquinas argues that this directive or ordering capacity “belongs either to the whole people, or to someone who is the [vicar] of the whole people” (*ST* I-II 90, 3). Given the generality of the law and the necessary freedom of those members of a political community who can be considered citizens, laws must only be given to “the people” (I-II 98, *6ad2*). What constitutes “the people”?

These passages from the *Summa* do not adequately characterize “the people,” and in Aquinas’ political theology “the people” are never afforded an exhaustive treatment. Yet there are helpful signs in the relevant texts. For example, the very generality of law, which is a condition of law as opposed to the particular judgments of individual rational agents, requires that it is applicable only to a social group of sufficient magnitude and only as a whole: “A law should not be given save to the people, since it is a general precept” (I-II 98,

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<sup>22</sup> The locution may appear odd, but it preserves a key distinction. Although all authority comes from God and is justified in light of the eternal and natural laws, the choice of the form of government is left open to human choice—that is, the consensus view, including Aquinas, leaves open the possibility that different regime-types will be better suited for different peoples and even for the same peoples at different times in their history. There is sometimes a tendency to conflate the transmission principle with direct democracy, but that isn’t required by the principle and clearly is not a preferred option for Aquinas.

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6ad2). On two different occasions, moreover, Aquinas avails himself of Augustine's re-conceptualization of the Ciceronian definition of the *people* in the *City of God*: "the people . . . is an assemblage associated by a common acknowledgment of right and by a community of interests" (Augustine, 2000, 19.21). Aquinas' reflections on the Augustinian definition come from his *Commentary on Hebrews* and the *Summa Theologiae*, respectively: (1) "When therefore they consent to the right of divine law, such that they are useful to each other and tend unto God, then there is a people of God" (§406) and (2) "it is of the essence of a people that the mutual relations of the citizens be ordered by just laws" (*ST* I-II 105, 2).<sup>23</sup> In both instances, what is essential to the formation of "a people" for Aquinas is that they conform themselves to the laws, whether the laws of a religious or a political community. Surely conformity to the laws is only a necessary condition for defining a people. As a result of their conformity, they will have several features in common despite the intrinsic diversity of the members of the community, and their common features are just those attributes that can be shared or communicated with each other in friendship, which can only exist among rational beings (*ST* I 20, 2ad3). Indeed, human law has as its "principal intention" the production of friendship among citizens (I-II 99, 2).<sup>24</sup> Friendship is necessary for flourishing in this life, even for the flourishing of contemplatives (I-II 4, 8). The members of a political community will be encouraged by the laws to develop the types of virtuous characters that enable them to befriend each other, "since every law aims at establishing friendship,"

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<sup>23</sup> In the second passage I have substituted "people" for the translation's "nation" as closer to the meaning of Aquinas' *populi*.

<sup>24</sup> The Old Law had the same intention: "all the precepts of the Law, chiefly those concerning our neighbor, seem to aim at the end that men should love one another," and it is to further this end that the Law permitted a guest to eat the fruit of a neighbour's orchard—so long as nothing was taken away (the eating had to be done onsite, as it were)—because such a policy "strengthens friendship and accustoms men to give things to one another" (I-II 105, 2ad1). Again, given that the Law aimed to have members of a political community ready to assist one another—"a very great incentive to friendship"—it also provided incentives to encourage lending and discourage burdensome debt recovery practices.

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either between members of the community or between the same and God (I-II 99, 1ad2). Theirs will be a common set of goods whose realization depends on their on-going participation in practices that instantiate the relevant goods. In more perfected communities, citizens will have made the transition from merely dealing with each other in terms of legal obligations to moral obligations, including those of friendship.<sup>25</sup> It is from within such communities that the transmission occurs.

Let me return to the transmission principle itself. In *Man and the State*, Maritain argues that there is a need to “sharpen the philosophical concepts” that we use to understand the origin of authority, and he has at least one of these two passages from Aquinas in mind (p. 133). What Maritain seeks to clarify is the concept of *vicariousness*. He distinguishes between two manners in which one may be said to give something to another. The following text from Aquinas’ *An Apology for Religious Orders* points toward the distinction that Maritain wishes to make:

The proposition, that what a man gives away he does not still possess, does not hold good in things spiritual. These are communicated, not like physical things, by the transference of some dominion over them, but rather by an emanation of an effect from its cause. When one man communicates knowledge to another he does not, on this account, deprive himself of this knowledge; for it remains in his power. In the same way, he that confers some power

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<sup>25</sup> “The Philosopher does not deny that friendship is a virtue... For we might say that it is a moral virtue about works done in respect of another person, but under a different aspect from justice. For justice is about works done in respect of another person, under the aspect of the legal due {*debiti legalis*}, whereas friendship considers the aspect of a friendly and moral duty {*debiti amicabilem et moralis*}” (II-II 23, 3ad1). For further examples of this distinction between the legally and morally obligatory in relation to political life, see Aquinas’ remarks on gratitude (II-II 106, 5), revenge (II-II 108, 2ad1), and liberality (II-II 118, 3ad2).

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upon another, does not, by so doing, deprive himself of that power. (p. 135)

On the one hand, we can speak of giving to another in a material manner, such that the giver relinquishes possession of a material thing at the same time that the receiver takes possession. Take as an example the act of giving a friend one hundred dollars. In this sense there is a real separation of the thing from the giver. At the end of the transaction, the friend has, as the giver does not, the money. On the other hand, we can speak of giving to another in a *vicarious* manner. In such giving the giver retains possession of the “moral or spiritual quality” that is given to the receiver. To explain this second type of giving Maritain appeals to the notion of participation: the receiver participates in the “moral or spiritual quality” that is given, but the gift remains with the giver as belonging to his or her essence. The example he gives makes the point much more effectively: the student participates in the knowledge that belongs to the teacher essentially by right of tuition, and yet in providing this gift of knowledge to the student the teacher does not lose the same.

Applied to the principle of transmission, Maritain (1951) holds that the concept of vicariousness provides a fuller account of the transfer of authority from the people as cause in two senses: “The first relates to the fact that in investing rulers with authority the people lose in no way possession of their basic right to self-government. The second relates to the fact that the representatives of the people are not mere instruments, but rulers invested with real authority, or right to command” (p. 134). The distinction aims to avoid two errors. It would be an error to treat the transmission of authority as a material transmission, as in the case of giving a friend money, because this would treat the transmission as final. If nothing else, such a conception runs into problems with future generations who were not party to the original transmission. How is it that the present generation could consign the rights of future generations in such a manner? It would equally be an error to treat the transmission in a way that the authority transferred was only exercised in an instrumental fashion at the

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discretion of the people. This would really amount to no exercise of authority whatsoever: the person or persons in authority would not be directing others but being directed by them. Their authority would be that of a proxy.<sup>26</sup> To return to the example of the student, should the student him or herself become a teacher, insofar as his teaching was restricted to what he had received as a student, he will “teach as a vicar, or image of [their] teacher” without his teacher having lost his or her essential knowledge (p. 135). The people retain their right despite the transmission of authority, but they are not themselves the teacher—political authority is not to be conceived along utilitarian lines as merely instrumental to the desire-satisfaction of atomized individuals. It is the people as a whole who transfer their right, and political authority takes on the responsibility of directing members of the people to the common good of the community that they share. The transmission principle cannot be reduced to the consent of individual members of society.

Unfortunately, Aquinas never explores the problem of transmission with anything like the fullness of scope that it demands. Nevertheless, he does deal with a relevantly similar concern that might, I argue, shed further light on the transmission of authority. I have in mind his treatment of the transmission of original sin to the descendants of Adam. Aquinas claims that the transmission itself is a matter of faith, and so it cannot be rejected. His problem is to offer a reasonable explanation in the face of contending possibilities: whereas some argue that sin is transmitted through the rational soul, others hold that it is through the body that the sin is passed on to future generations. Even though both views are reasonable explanations for the transmission of defects in general, Aquinas rejects both views because neither is capable of accounting for the “guilt” that attaches to the transmission of original sin: “granted that the rational soul were transmitted, from the very fact that the stain on the child’s soul is not in its will, it would cease to be a guilty stain binding its subject to punishment”

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<sup>26</sup> Simon objects to this “cab-driver” theory of political authority effectively in *Philosophy of Democratic Government* (1966), pp. 146-54.

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(*ST I-II 81, 1*). Aquinas wants an account that attaches blame to future generations for something that they themselves are not directly guilty of insofar as they appear not to be responsible for the actions of a predecessor. Even though any given human person, from time  $t_2$  through  $t_n$ , did not will or will not have willed what was willed by Adam at  $t_1$ , original sin requires that blame attach to each. Aquinas' solution runs as follows: taken individually no single person can be held responsible for the sin of their first parent, but since all future generations make up one body, a universal community of humanity, with obligations that stretch backward and forward in time, individuals can be held responsible for original sin *as parts of that whole*. Aquinas draws an analogy between the parts of the body and the intention of the agent: the hand that commits murder is not held guilty *as part* but is held guilty of the act *as part of the whole*. Aquinas himself makes the extension of his analogy to the political community: "even as in civil matters, all who are members of one community are reputed as one body, and the whole community as one man" (*ST I-II 81, 1*).

I want to extend the argument to what I take to be an analogous situation in the political sphere with respect to the transmission principle. If the transmission principle were reducible to several acts of consent by members of a political community, there would be no problem with accounting for how authority is transferred, though there would be real difficulties disambiguating the consensus view from consent theories in the social contract tradition. Essential to consent theories of political obligation are the transactions undertaken by individual members of the state.<sup>27</sup> Given the obvious privileging of individualism, voluntariness, and autonomy in such accounts, it is easy enough to account for their appeal: "Voluntarists claim that our political obligations can arise only from our voluntary choices to subject ourselves to the political authority of

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<sup>27</sup> For a complete exposition of consent theory, see the following works by A. John Simmons, *Moral Principles and Political Obligations* (1979), especially chapters 3-4; *On the edge of anarchy/Locke, Consent, and the Limits of Society* (1993); *Justification and Legitimacy* (2001), essays 1-8; *Political Philosophy* (2008), chapter 3; and, with Christopher Heath Wellman, *Is there a duty to obey the law?* (2005), chapters 5-8.

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others or to participate in the ongoing cooperative schemes of political life” (Simmons, 2001, p. 66). Voluntarists start from a position in which human persons are free and equal in an imagined condition (think Locke’s ‘state of nature’) of pre-political association. In the case of naturalized citizens, there is even solid evidence for such acts of self-obligation, though these can only account for a very limited number of the citizens of a state, and so such theories face extension problems. How is it that *all* are obligated if only some have assumed such obligations voluntarily? Alternative mechanisms must be found, such as the Lockean notion of tacit consent. Even that notion, however, faces an inability to account for the obligations of future generations.

Despite its shortcomings, modern consent accounts of political obligation presuppose that the only valid way in which an individual can be bound to obey the commands of authority is through their own act of consent. Whenever the transmission principle is construed in such a way as to be consistent with such accounts, it will not only fall afoul of the objections to consent theory, but also fail to represent Aquinas’ account of political authority. Aquinas is not a consent theorist. The duty to obey does not derive from an individual act of consent, and there is no need to interpret the transmission principle to entail a consent theory.

Maritain often speaks of consent in relation to the transmission of authority, but he is usually careful to insist that it is the consent of the *whole people* that he has in mind. However, I part company with him in the use of consent in place of transmission because of its connotations. Consider a few such cases:

The leaders of the people receive this right from the creative and conservative principle of nature through the channels of nature itself, that is, through the consent or will of the people or of the body of the community, through which authority always passes before being invested in the leaders. (2011, p. 30)

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What has been gained for the secular conscience...is the conviction that authority, or the right to exercise power, is held by the rulers of the earthly community only because the common consent has been manifested in them and because they have received their trust from the people. (2011, p. 31)

[T]he organs of government are then regarded...as having the source of their authority in God...yet as not taking on even by participation a sacred character. Once the organs are designated, authority resides in them, but in virtue of a certain *consensus*, of a free and vital determination made by the people, whose personification and vicar they are... This consent itself must be understood in various senses. It can be formulated or unformulated. In the system of hereditary monarchy, it is once for all given for an indeterminate future, both as to the form of the regime and the eventual holders of power. In the democratic regime, it is once for all given for an indeterminate future as regards the form of the regime, but it is periodically renewable as regards the holders of power. (1996, p. 278)

Although it derives from it by a long progress of degradation which goes from Althusius and Grotius to Rousseau, this myth of the contract is quite different from the *consensus* which the ancients allowed to have been at the beginning of human societies... The Rousseauist contract has its first cause in the deliberate will of man, not in nature, and it gives birth to a product of human art. (1970, p. 133)

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In each of the passages cited, Maritain returns to the themes of naturalism and the divine origin of political authority; in each case he refers consent to the *whole people*, though in case (c) the whole people refers both to an original moment when a democracy is founded and to the on-going exercise of democratic participation through suffrage. The latter comes very close, I think, to reducing transmission to so many individual acts, unless we assume that majoritarianism is equivalent to the whole people. I see no reason for taking this to be the case in the thought of Aquinas, and I find the supposition difficult to understand on its own. If transmission is conceived of as consent, the search for adequate evidence of consent may prove interminable and will likely prove unsuccessful. If transmission, by contrast, is conceived of in a manner analogous to the passage of original sin from generation to generation, this search becomes otiose. It is safer, therefore, to construe transmission in Aquinas (and in Maritain too) as not requiring a specific voluntary act even though future generations are bound by the act of a previous whole people in founding the state they reside in, keeping in mind that the transmission is a vicarious one from a people who itself is the recipient of such power.

Since political obligations follow from a teleological-eudaimonist structure of human nature, Aristotelian naturalism in which nature with its final ends is given by the Creator, and the Pauline principle, they are decidedly non-voluntary and general. The duty to obey, therefore, is best understood in a manner analogous to Aquinas' account of original sin. It requires no recourse to mechanisms like tacit consent; rather, as parts of political community whose existence is extended over multiple generations, individuals are understood to have transmitted the authority placed in the whole people by God *as a single body* to successive governments or rulers. No specific individual person has transmitted this authority for two reasons: first, it is not theirs to transmit as individuals, and, second, since they are not to be thought of as individuals in relation to the political community but *as parts of the whole*, they have transmitted authority and continue to transmit authority just as future generations

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of subjects are recipients of the blame attached to original sin without having acted as individuals in the commission of the sinful act at time  $t_1$ .

### **2. Finnis' Rejection of the Consensus View**

In *Natural Law and Natural Rights*, John Finnis' analysis of political authority is rooted in a reconstruction of Aristotle's examination of communities in the *Politics*, from conjugal to political. Marriage and friendships are, according to Finnis' analysis, types of community that are integral to the well-being of individuals. Each type of community enables its members to share in common projects, to which or through which their own life-plans are dedicated or realized. Smaller communities satisfy specific tasks or functions, and any attempt by larger communities to appropriate these will violate what Finnis calls the principle of subsidiarity. Political community is distinguished from smaller communities primarily in terms of completeness: "an all-round association in which would be co-ordinated the initiatives and activities of individuals, of families, and of the vast network of intermediate associations" (1980, p. 147).<sup>28</sup> Although more complete, the larger community is constrained by the principle of subsidiarity in such a way that it should not seek to replace smaller communities. Instead, it has as one of its principal tasks or functions the coordination of individual interests and the tasks performed by the smaller, incomplete communities out of which it is composed. Despite his indebtedness to Aristotle's analysis, Finnis faults Aristotle for making "a premature generalization from incomplete empirical data" (p. 148)—the premature generalization in question is the identification of the Greek *polis* as the most complete form of community. Finnis believes the descriptor 'completeness' is as appropriate to, if not more so,

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<sup>28</sup> Finnis' allegedly Aristotelian-inspired conception of the political community sounds much more modern and individualist than one might expect: "The point of this all-round association would be to secure the whole ensemble of material and other conditions including forms of collaboration, that tend to favour, facilitate, and foster the realization by each individual of his or her personal development" (p. 147).

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the modern “territorial state” characteristic of the contemporary international system.

Finnis also believes that the claims made by states to completeness can be extended to one of the more important social institutions of modern states, the legal system. References to “law” or “the law” normally signify—Finnis speaks of this marking the “central case” of their application—the same complete community as the modern state. The completeness of the legal system is measurable by its scope, supremacy, and comprehensiveness. Legal systems claim to be seamless in the sense of encompassing all aspects of life within their jurisdiction; they also claim to be “the supreme authority for their respective community;” and they tend to flesh themselves out by co-opting rules from smaller associations (p. 148).

The self-image of the legal system has its “foundation, from the viewpoint of practical reasonableness, in the requirement that the activities of individuals, families, and specialized associations be co-ordinated” (p. 149). Let me elaborate on what Finnis means by the “viewpoint of practical reasonableness”. Finnis is a new natural law theorist who grounds his normative theory—moral, political, and legal—in a conception of the natural law. Finnis’ particular conception denies the traditional assumption of natural law theory, which holds that normative requirements are derived from human nature. For Finnis the primary precept of the natural law is underived. It provides a grounding for what he describes as a list of primary goods that are irreducible and incommensurable. These goods are the constitutive components of individual flourishing, though different individuals in different times and places will have different, and one must assume, opposed ordinal rankings of the goods that will constitute their specific flourishing condition. The political and legal systems function in a largely instrumental fashion, providing individuals with the material resources and economic and political stability necessary for the pursuit of the primary goods.

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Given the instrumental role attributed to the state and its legal system, it makes sense to attribute to the law the role of coordinating the various activities of associations and individuals within a state. Finnis claims that the need for the law to fulfil this function “derives partly from the requirements of impartiality between persons, and of impartiality as between the basic values and openness to all of them” (p. 149). Finnis is less clear about the justification of the coordinative function that he attributes to the legal system than I would like. One wants to know, for example, what makes the law particularly well-suited to meet the requirements of impartiality, whether between persons or basic values. It may be that Finnis merely means to indicate that the rule of law—the law’s application to all equally—by definition makes it an ideal candidate to satisfy these requirements, though that would seem more overtly true of impartiality between persons than between basic goods; and yet, even if the law is by definition particularly well-suited to meet these requirements, that will not justify the presupposition that the state and its legal system are primarily, if not exclusively, instrumental.

However, the instrumental character of the state seems to be a precondition not only for the requirements of impartiality but also for the coordinative requirement. A full defense of the coordinative function of the law will require a prior defense, therefore, of the instrumental character of political community. Finally, the very notion of derivation is left underdetermined. From the facts that all human beings are mortal and that Socrates is a human being, I can derive the conclusion that Socrates is mortal. What is the connection between the need for impartiality between or normative openness to the basic goods and the need for coordination. I might claim that the various activities of individuals and groups in a specified territory must be coordinated to avoid the inefficient duplication of services. Having made that claim, I am not, however, in a position to conclude that there must be some overarching authority created in order to ensure such coordination. It might be possible for the individuals and agencies to voluntarily coordinate their activities, independently of an authoritative agency. Where self-regulation is impossible, it might still be

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possible for the individuals and agencies to organize matters in a way that authority rotated among the members of the community without the further need for a distinctly political organization of their activity. Of course, Finnis does claim that the coordinative function of the political community is only “partly” derived in this manner.

Finnis does have a fuller account of the “need and justification” of authority in political communities. There are obvious causes of the need for authority in a complete community—including, “the stupidity and incompetence of its members, their infirmity of purpose and want of devotion to the group, their selfishness and malice, their readiness to exploit and to ‘free ride’”—but these accidental causes are not what Finnis has in mind, though he is aware that in most communities these will be good reasons for having political authority. He seeks to answer the following question instead: “In a community free from these vices, would authority be needed, or justified?” (p. 231). The aim is to provide an essential, as opposed to an accidental, justification of political authority. Notice that in the cases of some weakness, the authority is only a substitute for the failed capacity at issue. In a community where such incapacities were absent, the justification of authority that depends on them would also be absent. Finnis has something more permanent in mind, though what precisely he is after will be harder to discover than one might expect.

Finnis suggests that wisdom—the perfection of the intellectual powers— itself can bring it about that the political community needs authority: “the greater the intelligence and skill of a group’s members, and the greater their commitment and dedication to common purposes and common good, the *more* authority and regulation may be required, to enable that group to achieve its common purpose, common good” (p. 231). I do not see why a greater degree of intelligence among the governed would call for *more* authority than in cases where stupidity was the norm, but Finnis’ case doesn’t rest on this claim and I think it best to ignore it. The principal idea for Finnis is that intelligence will increase the number of truly good options faced by a particular community, but

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the fact that there are several *equally good options* for the community as a whole to pursue requires some decision-making procedure to ensure that some *one* decision be made. Finnis then examines the following two scenarios:

S<sub>1</sub>: A community must decide between two options, a good one, *G*, and a bad one, *B*; assuming that everyone in the community is intelligent, they will unanimously choose *G*, and there will be no need for an authority.

S<sub>2</sub>: The same community, composed of intelligent citizens, must choose between several good options {*G*<sub>1</sub>, *G*<sub>2</sub>, *G*<sub>3</sub>...*G*<sub>10</sub>}; since all of the options are, all things considered, equally good, though mutually exclusive alternatives, the community must devise some means of arriving at a decision. Unanimity is unavailable to them, but not as a result of any deficiency of any of the members. They are all intelligent citizens. There is also no deficiency in any of the goods: each good is a genuine good, but, by hypothesis, only one good from the series can be chosen. Each of the members of the community could defend one or several of the alternatives, but not because of any shortcoming or deficiency in either the members of the community or the series of goods from which they are required to choose. In such a situation, authority has the role of providing a mechanism by means of which a determination is reached.

These scenarios exhaust the possible alternatives open to communities faced with making decisions that involve coordinating the activities and interests of several groups and individuals. For the most part, unanimity is not a real option because in most cases, and this would be especially true of a community with an

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intelligent citizenry, the options available involve “reasonable, and appropriate solutions, none of which, however, would amount to a solution unless adopted to the exclusion of the other solutions available, reasonable, and appropriate for that problem” (p. 232). In the absence of unanimity, and assuming that there are really only two alternatives, then there is a need for political authority. This need is not contingent on any deficiency, either in the means between which a choice must be made or in the members responsible for making the choice.

What are the central objections to Finnis’ coordination account of political authority? I want to suggest that, apart from internal shortcomings, Finnis’ theory takes for granted, but is insufficiently inarticulate about its dependence on, a fairly robust or thick conception of Aristotelian naturalism, despite the fact that Finnis denies that political authority derives from human nature. That is to say, there would be no need for the coordination of social groups if human beings did not have an inclination that predisposed them to live in social groups. Finnis can deny the prior existence of such a disposition, opting for something like the state of nature, where coordination substitutes for the more chaotic social relations that obtain therein; but in that case, his account of political authority will move in the direction of consent theory, because persons in the uncoordinated state of nature will have to choose to depart therefrom once they are persuaded of the benefits of doing so.

In contrast to Finnis, Aquinas takes the fact that it is natural to human beings to live in social groups as a necessary starting point for his hybrid account of political authority. What the two principles of the consensus view add to that starting point is an account of the origin of the natural tendency or inclination that human beings have to live in social groups. Looking to the origin of that nature directs the argument toward a Creator of nature. This is, of course, the starting point for the Pauline principle; the transmission principle accounts for the existence of the right in political rulers, a right that is initially in and remains with the whole people.

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### **2.1 Finnis' Rejection of "Transmission" in *NLNR***

Finnis is silent on the Pauline principle in *Natural Law and Natural Rights*, but he has something to say about the second principle of the consensus view, the transmission principle. As has been mentioned, unlike those contemporary authors who simply neglect the consensus view, Finnis explicitly argues against the transmission principle. He dismisses the principal texts used in support of the transmission principle—that is, *ST* I-II 90, 3 and 97, *3ad3*—as “ambiguous and unsatisfactory remarks of Aquinas” (p. 257). Since these are primary texts on which the transmission principle is defended, it is unfortunate that Finnis does not provide his reasons for believing them to be ambiguous and unsatisfactory. I have pointed out that I too find the discussion of custom somewhat difficult to contextualize, but it doesn't seem to me to be so difficult as to be unclear in its leading idea that authority rests with the people. With the second passage, it would have been very helpful to have Finnis address Maritain's useful clarification of the concept of vicariousness, but Finnis doesn't mention this as far as I can tell.

Instead, the heart of his criticism takes up an argument proposed by Bellarmine and widely cited among defenders of the consensus view. Finnis treats Bellarmine's argument as an example of “theories of governmental legitimacy and political obligation which tacitly assume that the present authority of particular rulers must rest on some prior authority (of custom; or of the community over itself, granted away to the ruler by transmission or alienation...)” (p. 247). Such theories correctly, Finnis continues, hold that “*all* the members of a community are entitled in justice to a certain concern and respect” (pp. 247-8). While in a vague way this is true, it is clearly *not* one of the central premises of the transmission principle, which, recall, takes as its starting point the Pauline principle, and then argues that the authority that human beings exercise over one another is caused by the transmission of the authority that is predicated of the community as a whole. There is no mention in Aquinas or other

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defenders of the consensus view of “concern and respect” as a central premise in the justification of political obligation.

Here is Finnis’ reconstruction of Bellarmine’s argument: “Natural reasonableness requires that there be governmental authority; But natural reasonableness does not identify any particular man or class as the bearer of governmental authority; Therefore natural reasonableness requires that the bearer of governmental authority be the multitude, the whole community itself” (p. 248). I shall argue below that this is a serious misrepresentation of Bellarmine and of the transmission principle as a whole. For now, however, let me rehearse Finnis’ criticism of the syllogism that he attributes to Bellarmine, since he not only describes Bellarmine’s version as “helpfully clear” but also as revelatory of “the fallacy in his theory, and in all such ‘transmission’ theories” (p. 248). Where does Bellarmine’s fallacy lie? There is nothing wrong, according to Finnis, with either of the two premises. The suggestion is that they are both true, but that they do not support the conclusion, which is “intrinsically implausible.” As a term of art I shall call this the “absence thesis”: in the absence of a particular ruler or rulers (the second premise of Finnis’ reconstruction), authority must fall to the people as a whole. Aquinas certainly does not hold the absence thesis, but there are only two key occasions in the work of Aquinas where he seems to claim simply that political authority belongs to the people. Does Bellarmine? He *does* but it does not have the impact on his argument that Finnis seems to think it does.

The first premise, without much wrenching, can be construed as wholly consistent with Finnis’ own account of the origin of political authority. Natural reasonableness requires the existence of governmental authority in order to identify a means of coordinating human activity. Equally, though not necessary to Finnis’ theory, the second premise is not opposed to that theory: Finnis doesn’t propose that the need for a solution to coordination problems helps to identify specific rulers, merely the need for the same.

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To understand Finnis' reasoning, therefore, we should keep in mind his defence of political authority as *the* solution to coordination problems in social and political orders. What Finnis argues is that the transmission principle, as he has presented it, violates this justification for political authority. If political authority derives exclusively from the need, as the only alternative to unanimity (recall that the two scenarios,  $S_1$  and  $S_2$ , were exhaustive), and in light of the rarity of achieving unanimity, for the "solution of practical co-ordination problems which involve or concern everyone in the community," then to say that authority is caused by the community is to assume either that "there is no authority in this community" or "it amounts to saying something else, by way of a confusing legal fiction or ideological manner of speaking, about the location of authority in *some* communities" (p. 248). In the first alternative, the solution of coordination problems will depend on either unanimity or force. In the second alternative, Finnis asks us to imagine that the problem will be solved by pretending that the participation of individuals in such imagined communities will be exercising authority through choosing the person or persons in whom it should be placed. The problem with this latter alternative is, according to Finnis, that for voters in the minority, the casting of a vote is not really an exercise of authority. I assume that he means that exercises of authority are only those that carry the day. To some extent, I want simply to argue that Finnis has put the cart before the horse. Keep in mind that he accepts both premises that he attributes to the transmission principle. The first premise, recall, required further justification—at least in the version that we find in Aquinas and the defenders of the consensus view. That further justification leads one to the cause of nature. The solution of coordination problems is wholly unnecessary in a world where human nature is not governed by the ordinating Law of God. Finnis simply takes sociability for granted as a dictate of "natural reasonableness" as if that did not in itself, apart from providing it with a source, reduce to an ideological way of speaking.

But there is a much more significant set of problems with Finnis' critique. The chief problem is that it simply gets the transmission principle wrong. I

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realize that this is a bold statement, but anyone with even a limited familiarity with the consensus view would have to conclude the same, however uncomfortable it might make one feel in doing so. There are at least two reasons for believing that Finnis has fundamentally misstated the transmission principle. To begin with, in the syllogism he attributes to Bellarmine, as a representative defender of the consensus view, the premise that “natural reasonableness” is silent on the issue of who should rule. There is a sense in which this is true. All advocates of the consensus view would agree that the transmission principle does not concern who governs. But none of them, to my knowledge, use this as a premise in their defense of the position. The fact is that they explicitly exclude from consideration any and all talk of a distinct governing personnel *because* they are all convinced that this is a subordinate issue to and distinct concern from the foundation of authority itself. Indeed, it is precisely here that human art enters into political statesmanship. The consensus view treats the form of government as morally indifferent, and so it leaves that open to the prudential judgement of the people. What the consensus view seeks to establish is the origin and justification of political authority.

Given that defenders of the consensus view agree in excluding concern with specific regime types from their arguments, Finnis' attribution of such a premise to the transmission theory is perplexing. He has not only set up a straw person argument, but has done so by attributing to his opponents a premise to which they are in unanimous opposition. In addition, in Finnis' reconstruction he makes no mention of the Pauline principle. On my reading of the consensus view, however, the Pauline principle must be taken to be the first premise. In this case one might excuse Finnis because, as I have argued above, too often the consensus view is inarticulate in this regard, though Maritain stands out as an important exception. Still, I assume that some of the inarticulacy results from the fact that the defenders of the consensus view took for granted their shared starting point. On my reconstruction of the consensus view, the Aristotelian

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premise about human nature and its need for political community leads back to the Pauline principle.

I have charged Finnis with misstating the consensus view, and so I want to conclude this section by referring directly to the arguments of Bellarmine in its defense. It was Bellarmine's construction that Finnis faulted with arriving at a faulty conclusion from premises that Finnis was ready to accept. What is unclear, however, is that these *are* Bellarmine's premises. In his *On Laymen or Secular People*, Bellarmine has his sights set not only on the justification of political authority but also that of holy war. With respect to the former, he positions himself as a defender of the naturalism of political authority against Protestant reformers who conceived of political authority as dependent on God's grace. As might be expected, Bellarmine regularly returns to the Pauline text to support his view that authority has a lawful ground (2012, p. 10). What is essential to point out, however, is that Bellarmine does not offer just one justification. He argues in a variety of modes. For example, he begins by arguing from final causality: "political authority is so natural and necessary to humankind that it cannot be removed without destroying nature itself. In fact, by nature man is a social animal...[and so, unlike nonhuman animals] he absolutely cannot live by himself" (p. 18). Bellarmine proceeds to list the ways in which authority is necessitated by nature: food, shelter, clothing, defense, and education. Drawing directly on the *Politics*, he goes on to list speech as itself requiring human linguistic communities. Chief among the functions of authority so conceived will be directing subjects to the common good: "if human nature requires a social life, certainly it also requires a government and a ruler, as it is impossible that a multitude can last long unless there is somebody to hold it together and be in charge of the common good (p. 19). Human government is not only necessary but lawful—it is not to be conceived as a punishment for human sinfulness (p. 19).

It is only when Bellarmine turns from arguments connected to Aristotelian naturalism, that he introduces the Pauline principle explicitly, and without the Pauline principle there would be no authority from above to be transmitted, a

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fact that Finnis remains silent about. Having treated of the origin and lawfulness of political authority from the point of view of final causality, Bellarmine turns to consider efficient causality: “as it is certain that political authority comes from God, from Whom nothing proceeds but the good and the lawful,” political authority must itself be good (p. 21). What reason or reasons does Bellarmine offer as evidence in support of this conclusion? He begins by making two crucial clarifications. First, he takes for granted that authority must be derived from human nature (his argument from final causality), and so he simply acknowledges, in a manner wholly unavailable to Aristotle, that God, as the source of that nature, is also the source of authority insofar as it is God who gives to each thing its nature. It is at this point in the argument, incidentally, that Bellarmine claims that he is only accounting for political authority in general, and as such is not required to reflect on particular forms of rule, such as monarchy, aristocracy and so forth. Second, Bellarmine rejects consent as an adequate ground for political authority: “this authority is of natural law, as it does not depend upon men’s consent. In fact, whether or not they want to, men must be ruled by somebody unless they want humankind to perish, which is against the inclination of nature” (p. 21). Bellarmine again recalls the Pauline text—this time claiming that the derivation of the natural law from the eternal is what was intended by the Apostle (p. 22).

At this stage in his argument, Bellarmine *does* introduce what I earlier called the “absence thesis.” Bellarmine writes: “this authority immediately resides in the entire multitude as its subject because this authority is of divine law. But divine law did not give this authority to any particular man; therefore it gave it to all” (p. 22). Let me add two observations before I return to the absence thesis. Bellarmine offers two other reasons for accepting that authority is given by the eternal law to the people as a whole, and so, even if Finnis were successful in dismissing the absence thesis, it would not suffice as a critique of the consensus view as presented by Bellarmine. On the one hand, Bellarmine argues from natural equality: outside of positive law all human beings are

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created equal, and so there is no reason to think that any particular person or group of persons should rule. On the other hand, the political community is a perfect community, and, as such, it must have the power to defend itself from demise. This is the type of power exercised by political authority through internal policing and national defense (p. 22).

Finnis objects to the absence thesis that it would require the people to transmit their authority, but such a collective action can only occur through unanimity or authoritative coordination. In that case, the need for coordination precedes any alleged transmission, rendering it unnecessary in fact because coordination would be the only solution to transmission. I have already argued that Finnis' coordination account itself runs up against a priority objection: some account of the need for social and political life must be presupposed by Finnis in order for there to be a need for coordination. With respect to his remarks on Bellarmine, I think they assume a consent framework: the absence thesis is objectionable because it creates the either unanimity or coordination disjunct. If the people as a whole transmit their authority to the political authority, then it avoids the dilemma to which Finnis objects. And there is good reason for thinking that Bellarmine is uninterested in consent. He explicitly asserts that the people must transfer their authority as a matter of the law of nature: "the commonwealth is obliged to transfer it to one or a few" (p. 22). Consent does have a role to play, but where one would expect it: at the level of the *ius gentium*. The choice of a specific regime, which is not of the natural law, falls under the type of positive law known as the law of nations (p. 22). It is at this level that "human deliberation and decision" play a role, but that is true of positive law more generally in its distinction from natural law. This helps to explain the assumption of legitimacy by conquerors: conquered peoples who eventually accept the rule of particular regimes, Bellarmine gives the example of the unjust occupation of Gaul by the Franks, can be said to have consented to the rule. Yet this is a principle not of natural law but of the law of nations (p. 25).

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### **2.2 Finnis' Rejection of Both Principles of the Consensus View in Aquinas**

In *Natural Law and Natural Rights*, Finnis need not have tackled the Pauline principle, since the work was not intended as an exegetical account of the political and social theory of Aquinas. Indeed, in a limited way, Finnis attempted to steer his argument more in the direction of an Aristotelian account than one drawn from Aquinas' natural law theory. However, in his *Aquinas* Finnis firmly grounds his theory in the work of Aquinas. He not only returns to the transmission principle, which he again rejects, but also takes up the Pauline principle, though this fares little better.

Finnis complains that "Aquinas' position is clearer in its articulation than it is substance," when it comes to the account of political authority's legislative power. It is at this juncture that Finnis glances at *ST* I-II 97, 3ad3, the text in which Aquinas considers the power of the people to establish laws through custom. This is one of the texts used by advocates of the transmission principle to demonstrate its derivation from the works of Aquinas. If Aquinas is unclear in terms of the substance in this instance—and I don't see that he is—he is clear enough elsewhere about the legislative authority that persons or institutions that have care for the community hold: "Whoever are subject to a king, are bound to observe his law which he makes for all in general" (I-II 98, 5ad1).

Finnis' discussion of the two principles of the consensus view in this work comes during his discussion of what he takes to be Aquinas' defense of limited government. Finnis argues that the right allowed by Aquinas of subjects to disobey their rulers entails limited government (p. 258). While this sounds right, it risks overstating Aquinas' permission: individual prescriptions can be rejected, but that doesn't void the authority that made them, and, more importantly, insofar as they are dictates of authority the authority itself still carries some weight even in non-binding (because unjust) laws. I mention the context because it helps shed light on Finnis' overall presentation of Aquinas. Finnis will, for example, speak of an "implicit social contract" in spelling out Aquinas' political

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theory (p. 261), and, more surprisingly, of the duty owed to political authority as one “strictly speaking, [owed] to the rulers themselves but rather to, if anyone, their fellow citizens” (p. 264). In fact this is the point of saying that political authority has care of the community: “To extend this idea of representation into an idea that authority must, or should, have been transmitted by some procedure of transference (however implicit or tacit) from the people to their representative(s) is to miss the point of the construction, and to convert it into a fiction or a sometimes inappropriate requirement for just government” (p. 264). So much for the transmission theory. Finnis simply repeats the claim that the transmission principle leads to an unacceptable dilemma (pp. 264-65). I have already suggested why this argument is unconvincing. But there are further risks associated with Finnis’ appropriation. He continues, “if the people have the right to make provisions regarding their king or other presiding ruler, they can properly curb or wholly remove the authority” (p. 265). How does such a picture avoid being reduced to a consent account? Does not Finnis make the so-called “implicit social contract” that he detects in Aquinas almost the equivalent of full-blown social contract, wherein governments are limited by provisions intended to protect the parties to the original agreement?

## **Conclusion**

As a further sign of the displacement of the consensus view on the origin of political authority, a recent collection of essays dedicated to Aquinas’ commentary on Paul’s letter to the Romans not only lacks a contribution on chapter 13, despite the significance for Aquinas of that chapter, but also lacks any mention of political authority and obligation in the index of the work. Indeed, in one essay where chapter 13 is mentioned, the author, John Boyle, whose essay is devoted to showing how the arguments of the *Summa* can be taken to illuminate those of the commentary, goes out of his way to displace, downplay, and minimize the important interpenetration of the texts in this one case:

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At the same time, the division of the text imposes its own constraints on the interpretation of the text, as can be seen in St. Thomas's interpretation of the first ten verses of chapter 13, which have been the subject of much deliberation on the relation of the Christian to the political order. While that relation is part of St. Thomas's consideration, it is not at the heart of it. The issue is the virtue of justice lived in relation both to superiors and to fellow men. The unity of the division stipulates the higher context of this justice, namely, the perfection of man, a perfection here horizontally situated in relation to man's holiness and purity. The relation to the political order is thus rendered secondary, or perhaps better, reconfigured in relation to the spiritual perfection of man in grace. (Boyle, 2012, p. 79)

To say that political authority is not "at the heart of" this passage or that it is "rendered secondary" or "reconfigured" is simply to ignore the role played by the passage throughout Aquinas' *corpus*. For Aquinas, political authority is an *integral* part of the "higher context" of any conception of justice, despite the discomfort that this appears to cause contemporary scholars. Human perfection is hierarchically situated in such a way that political authority is itself an indispensable component. As I have shown, Aquinas takes *Romans* 13: 1-2 as the principal New Testament support not only for the correlation of political authority and political obligation, but also for the realization of the human good. It *is* the foundation upon which he builds his account of human government insofar as the morally obligatory character of the political authority derives from and depends upon the Creator of human nature. Aquinas marries his Aristotelian naturalism—his theory that authority is, as it were, built-in to human nature inasmuch as human flourishing depends upon political community—to the

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supernatural cause of that nature, and in doing so regularly avails himself of the Pauline text as support for this hybrid account of political authority.

Aquinas' interpretation of and reliance on the Pauline principle, along with the concomitant transmission principle, in his account of political authority has a remarkable pedigree. In *Diuturnum*, Leo XIII refers directly to the Pauline principle as being at the center of a proper understanding of political authority, and he traces its development through Augustine, St. John Chrysostom, St. Gregory the Great, and Aquinas (§10). Even though he speaks against the prevailing opinions, which "reject, with more boldness than formerly, every restraint of authority," Leo defends the necessity of political authority as susceptible of rational and religious demonstration, especially against the dominance of the social contract tradition:

Those who believe civil society to have risen from the free consent of men, looking for the origin of its authority from the same source, say that each individual has given up something of his right, and that voluntarily every person has put himself into the power of the one man in whose person the whole of those rights has been centred. But it is a great error not to see, what is manifest, that men, as they are not a nomad race, have been created, without their own free will, for a natural community of life. It is plain, moreover, that the pact which they allege is openly a falsehood and a fiction, and that it has no authority to confer on political power such great force, dignity, and firmness as the safety of the State and the common good of the citizens require. Then only will the government have all those ornaments and guarantees, when it is understood to emanate from God as its august and most sacred source. (§12)

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On the one hand, there is a clear appeal to Aristotelian naturalism, which is repeated elsewhere in the encyclical: “nature... wills that man should live in a civil society; and this is clearly shown both by the faculty of language... and by numerous innate desires of the mind... which men isolated cannot procure, but which they can procure when joined and associated with others” (§11). To do so, however, there must exist “one to govern the wills of individuals, in such a way as to make, as it were, one will out of many, and to impel them rightly and orderly to the common good.” On the other hand, there is an equally clear appeal to the Pauline principle: “no man has in himself or of himself the power of constraining the free will of others by fetters of authority of this kind. This power resides solely in God, the Creator and Legislator of all things; and it is necessary that those who exercise it should do it as having received it from God.”<sup>29</sup> Of course, it would be easy to object that Leo XIII, as one who called for a return to the works of Aquinas, was himself responsible for the consensus view’s agreement on these key principles. It would be more important, therefore, to cite a more contemporary authority to suggest where Catholic political thought stands today in relation to the consensus view. I can think of no better authority than the *Catechism* for this purpose: “Every human community needs an authority to govern it. The foundation of such authority lies in human nature. It is necessary for the unity of the state” and “The authority required by the moral order derives from God” (1997, §§1898-99).<sup>30</sup> The Thomistic synthesis of

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<sup>29</sup> Leo refers to the key Pauline passage from *Romans* twice (§9 & §14).

<sup>30</sup> The warrant for the principle is, not surprisingly, the Pauline text which is quoted immediately after the passage cited above and is itself the sole authority quoted in the summary at §1918. Aristotelian naturalism and the Pauline principle also inform the discussion of the political community in *Gaudium et Spes* (1988, §§ 73-75). These themes are repeated again more recently in the *Compendium of the Social Doctrine of the Church*, which includes an unmistakable reference also to the transmission principle of the consensus view: “In various forms, the people transfers the exercise of sovereignty to those whom it freely elects as its representatives, but it preserves the prerogative to assert this sovereignty in evaluating the work of those charged with governing and also in replacing them when they do not fulfil their functions satisfactorily” (§395).

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Aristotelian naturalism with the two principles of the consensus view continue to guide the teachings of the Church on the foundation of political authority.

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