

Voting, Intrinsic Evil, and Commensuration

Kevin L. Flannery, S.J.*

Abstract: The author considers arguments in M. Cathleen Kaveny's book *Law's Virtues: Fostering autonomy and solidarity in American society*, concerning intrinsically evil acts and the commensuration (or ranking) of legal and political issues. He agrees with Kaveny that the fact that, for instance, abortion is an intrinsic evil does not on its own allow one to characterize the associated legal or political issue as more important in voting. But he argues also that Kaveny fails to take into account the fact that Thomas Aquinas's concept of being morally evil in species extends much wider than what she identifies as the intrinsically evil. He argues that Aquinas's understanding of how practical reason functions within the virtue of prudence allows him to order issues without falling into proportionalism or consequentialism.

Keywords: Political Ethics, Aquinas, Voting, Commensurability, Intrinsic Evil

I. Introduction

The expression "intrinsic evil" is sometimes employed by pundits and public figures in arguing that certain legal and political issues, such as abortion and "gay marriage," ought to be regarded by those casting votes in legislatures or in public elections as more important than others. Beginning in the late 1960s, a number of scholars opposed to the blanket condemnation of abortion and homosexual acts argued that there are no such things as intrinsically evil acts and that acts receive their moral characterization with respect to the proportion of good or evil they effect or promise to effect.¹ That line of argumentation—often referred to as proportionalism—rather died out in the 1990s.² It has been replaced

* Ordinary Professor of the History of Ancient Philosophy, Pontificia Universitas Gregoriana. Email: flannery@unigre.it.

¹ The main figure in this regard is probably John F. Dedek: see his "Moral Absolutes in the Predecessors of St. Thomas," *Theological Studies* 38 (1977): 654-80; "Premarital Sex: the Theological Argument from Peter Lombard to Durand," *Theological Studies* 41 (1980): 643-67; and "Intrinsically evil acts: An historical study of the mind of St. Thomas," *The Thomist* 43 (1979): 385-413. See also, for instance, Charles E. Curran, ed. *Absolutes in Moral Theology?* (Washington, DC/Cleveland: Corpus Books, 1968) and, in particular, the chapter therein by John C. Milhaven, "Moral Absolutes and Thomas Aquinas," 154-85; see also Josef Fuchs, "Absoluteness of Moral Terms," *Gregorianum* 52 (1971): 415-58; James Murtagh, "Intrinsic Evil: An Examination of This Concept and Its Place in Current Discussions on Absolute Moral Norms" (Dissertation, Pontificia Universitas Gregoriana, Facultas Theologiae, 1973).

² The proportionalist arguments were ably criticized by a number of authors during the 1980s and early 1990s. See Patrick Lee, "Permanence of the Ten Commandments: St. Thomas and his modern commentators," *Theological Studies* 42 (1981): 422-43; Servais Pinckaers, *Ce qu'on ne peut jamais*

recently, however, by another line, put forward most prominently by M. Cathleen Kaveny, who maintains that intrinsic evils do exist, but that the term “intrinsic evil” is unhelpful in the legal and political sphere since (1) there are many actions that are not intrinsically evil but which ought to be strenuously opposed—and subject by law to punishment—and (2) there are intrinsically evil actions that ought perhaps to be discouraged but not punished by law. According to Kaveny, the act of “a man who burns down his own building for the insurance money, foreseeing but not intending that his employee, a single mother, will die in the blaze” is not intrinsically evil and yet such an act ought to be punished severely by law. On the other hand, she says, things such as masturbation, homosexual acts, and contraception, although intrinsically evil, ought not to be punished by law.³ According to this line of argumentation, therefore, calling certain practices intrinsically evil contributes little of intellectual significance to the discussion and, accordingly, little of genuine use in giving counsel to voters.

Professor Kaveny also objects to a presupposition of the above mentioned pro-life and pro-traditional family proponents. She objects, that is, to the claim to be able to *rank* such issues as more important than others. She maintains that in the practical sphere any such ranking is illegitimate since goods—including political goods—are incommensurable. To rank them in the way done by certain spokesmen is to fall into a sort of proportionalism or consequentialism.⁴ She

faire: La question des actes intrinsèquement mauvais, histoire et discussion (Fribourg / Paris: Éditions Universitaires / Éditions du CERF, 1986); William E. May, *Moral Absolutes: Catholic Tradition, Current Trends, and the Truth*. The Père Marquette Lecture in Theology, 1989 (Milwaukee, WI: Marquette University Press, 1989); John Finnis, *Moral Absolutes: Tradition, Revision and Truth* (Washington, DC: Catholic University of America Press, 1991). Decisive, however, for the disappearance of proportionalist arguments was John Paul II's encyclical letter of 1993 *Veritatis splendor*. See especially the rejection of proportionalism at §§75-76.

³ Cathleen M. Kaveny, *Law's Virtues: Fostering Autonomy and Solidarity in American Society* (Washington, DC: Georgetown University Press, 2012), 226-27. Other related publications by Kaveny include “Appropriation of Evil: Cooperation's Mirror Image,” *Theological Studies* 61 (2000): 280-313; “Intrinsic Evil and Political Responsibility: Is the Concept of Intrinsic Evil Helpful to the Catholic Voter?,” *America* (27 October 2008), 15-19; “Intrinsic Evil and Political Responsibility: Is the Concept of Intrinsic Evil Helpful to the Catholic Voter?,” in *Voting and Holiness: Catholic Perspectives on Political Participation*, ed. Nicholas P. Cafardi (New York/ Mahwah, NJ: Paulist Press, 2012), 126-34. Putting forward ideas very similar to Kaveny's is Julie Hanlon Rubio, “Moral Cooperation with Evil and Social Ethics,” *Journal of the Society of Christian Ethics* 31 (2011): 103-22. See also Thomas Kopfensteiner, “The Man with a Ladder: Politicians, Voters and the Principle of Cooperation,” *America* (1 November 2004), 9-11.

⁴ Kaveny criticizes John Paul II's characterizing as intrinsically evil Vatican II's list of “infamies”; the list includes abortion, euthanasia, “arbitrary imprisonment,” and “disgraceful working conditions”. (See the Vatican II document *Gaudium et spes*, §27; the term translated “infamies” is *probra*.) Kaveny writes: “It was Pope John Paul II who introduced the term ‘intrinsically evil’ to categorize the items on the list without explicitly noting the terminological shift or taking stock of its implications. In my view, his choice is both ironic and troubling. A central purpose of *Veritatis splendor* is to defend the tradition's moral tripartite analysis of human acts in terms of objects, ends, and circumstances rather than more holistic or consequentialist approaches. By suggesting that Vatican II's list of ‘infamies’ are intrinsically evil acts, Pope John Paul II not only cast his own painstaking account of the proper moral analysis into confusion, he also opened the door again to the very consequentialism and proportionalism he previously rejected. As the terms ‘infamies’ and ‘disgraces’ suggest, the practices identified by *Gaudium et spes* are great evils, but they are not all intrinsic evils. By gathering them all under the label ‘intrinsic evil,’ *Veritatis splendor* ironically reintroduced the idea that the magnitude of the evil is all that matters.” *Law's Virtues*, 235-36. Attending to the “magnitude” of an

prefers rather to attend to “action items” as such. “If we treat issues properly as action items,” she says, “we see that they are not all commensurable in a way that permits a unified ranking.”⁵ Proportional ranking, she argues, cannot be imposed on the individual voter in a popular election, who is, therefore, morally free to cast his vote while attending to particular issues and, especially, to the perceived moral character and abilities of the candidates on a particular ballot. Rather than following spokesmen who characterize issues such as abortion as of primary importance, voters should vote for candidates who demonstrate “competence,” “character,” “collaboration,” and (the proper) “connections.”⁶

The present essay is largely a criticism of these arguments. In section II, it argues that Kaveny’s association of the *intrinsic malum* with Thomas Aquinas’s acts that are evil by virtue of their objects (or evil *ex genere*) is correct as far as it goes but fails to take into account a factor that helps to resolve a number of the other issues she identifies. Thomas’s account of why such acts are evil is just one facet of a more general account that looks to whether an act is compatible with or repugnant to reason (practical reason). In section III, the essay considers one of these other issues identified by Kaveny, that is, commensuration and/or ranking; it considers it as it would be—and, to some extent, is—understood by Aristotle and Thomas, especially in their shared understanding of prudence, the virtue that presides over the realm of practical reason. In section IV, the essay discusses Kaveny’s idea that more local considerations (“action items”) take precedence over more general ones. In section V, it returns, in conclusion, to the ethics of voting.

II. Intrinsic Evil and Thomas Aquinas

Kaveny presents her understanding of the *intrinsic malum* as Thomistic. This itself is interesting since a very strong current within the proportionalist camp held that that concept cannot be found in Thomas Aquinas.⁷ It is certainly true that the expression *intrinsic malum* (or its derivatives) does not appear in his works: the closest he comes are expressions such as *per se malum* and *malum secundum se*.⁸ And

evil, according to Kaveny, is precisely to give it proportionally more weight than other evils; and this is to fall into the type of analysis that John Paul II rejects in *Veritatis splendor*.

⁵ Kaveny, *Law’s Virtues*, 10. Kaveny also speaks (disparagingly) of the attempt to arrive at a “Total Moral Monstrosity Quotient” (*ibid.*, 244).

⁶ *Ibid.*, 199.

⁷ The main figure in this regard is, again, probably Dedek: see his “Moral Absolutes in the Predecessors of St. Thomas”; “Premarital Sex: the Theological Argument from Peter Lombard to Durand”; and “Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas.” Kaveny cites Dedek, but her take on the issue is quite different from his. Dedek concludes one of his articles on this matter—which deals with the evolution of Aquinas’s doctrine during the first half-century after his death—with the following words: “This is the doctrine on intrinsically evil acts commonly found in nineteenth and early twentieth-century textbooks of Catholic moral theology: certain material actions are so intrinsically disordered in their natures that not even God can allow them. It is the doctrine, not of St. Thomas Aquinas, but of the fourteenth century *anti*-Thomist, Durand of St. Pourçain” (emphasis mine). “Intrinsically Evil Acts: the Emergence of a Doctrine,” *Recherches de théologie ancienne et médiévale* 50 (1983): 226.

⁸ See, for instance, *Summa Theologiae* (hereafter *ST*) 1-2.103.4 ad 3 (“fornicatio autem prohibetur tanquam per se malum”); Thomas Aquinas. *Super Evangelium S. Ioannis lectura*, 6th ed., ed. R. Cai,

it is possible to identify significant differences between how Thomas uses such expressions and the *intrinsece malum* as understood by many of his successors. Kaveny, however, downplays these complications and in effect maintains—what was strongly contested by many, if not most, proportionalists—that, when the tradition speaks of intrinsically evil acts, it is using a Thomistic concept.⁹

Kaveny closely associates intrinsically evil acts with the acts that Thomas calls “evil *ex genere*.” In *Summa theologiae* (ST) 1-2.18.2, Thomas asks whether a human action has its goodness or badness from its object, that is, from the object of the “exterior act,” which would be the act considered on its own, before one considers any other circumstance having a bearing upon its moral character.¹⁰ As he says in that article, “the first evil in moral actions is that which is from the object, as in, ‘to take what belongs to another’” (ST 1-2.18.2c).¹¹ But, in next two articles of the same question, he says that badness (or goodness) of an act might also come from a circumstance or from its end.¹² For example, the act of having intercourse with one’s wife is good *ex genere*, but if the act is performed in a church—“in a church” being a morally relevant circumstance of place—it becomes a bad act: an act of sacrilege. And the act of giving alms is also good *ex genere*; but if the end for which it is done is vainglory, it becomes a bad (a vainglorious) act.

(Turin/Rome: Marietti, 1972), 19.1 (“affligere autem innocentem, et praecipue Dei filium, est maxime per se malum”); Thomas Aquinas, *Scriptum super libros Sententiarum Magistri Petri Lombardi Episcopi Parisiensis*, ed Pierre Mandonnet & Maria Fabianus Moos, (Paris: Lethielleux, 1929-47), 4.9.1.3.3 ad 3. (“Nullum enim peccatum dicitur malum per se nisi propter corruptionem alicujus circumstantiae”); ST 2-2.110.3c (“illud quod est secundum se malum ex genere, nullo modo potest esse bonum et licitum”); Thomas Aquinas, *Sententia libri Ethicorum, Opera Omnia*, Vol. 47 (Rome: Commissio Leonina, 1969), 4.16.1 (“circa id quod est secundum se malum et non potest habere rationem boni, non est virtus et vitium”).

⁹ See Kaveny, *Law’s Virtues*, 219-25. At the beginning of this section, she writes: “The term ‘intrinsic evil’ does not have its roots in the expansive imagery of the Church’s prophetic witness but rather in the tightly focused analysis of its moral casuistry. It is not a rhetorical flourish; instead, it is a highly technical term of Catholic moral theology with roots in scripture as well as in the action theory of St. Thomas Aquinas” (220). In the note here appended (note 3), she cites ST 1-2.6-21 (Thomas’s treatise on human action). In the same note she also writes: “Aquinas himself did not use the term ‘intrinsic evil’ (*intrinsece malum*) in developing his action theory; however, he provided the framework within which the term would be developed by later moralists” (*Law’s Virtues*, 237). In notes 5 and 6 (238), she cites ST 1-2.18.2-4.

¹⁰ In ST 1-2.18.6, Thomas also calls the end of the interior act of the will an object. But, since he speaks here in ST 1-2.18.2 (ad 2) of the object as the “*materia circa quam*” and in ST 1-2.18.6 of the object of the exterior act, as distinct from the object of the interior act, as “*id autem circa quod est actio exterior*,” he would seem to be speaking in ST 1-2.18.2 only of the object of the exterior act. Stephen Brock has pointed out to me that Thomas is not adverse to speaking of the end in close connection with the “*materia circa quam*”: see Thomas Aquinas, *Scriptum super libros Sententiarum Magistri Petri Lombardi Episcopi Parisiensis*, 1.48.1.2 & 2.36.1.5 ad 4; see also ST 1-2.19.1 ad 3, 72.3 ad 2 and 73.3 ad 1. It seems to me, however, that, given its immediate context, in ST 1-2.18.2 Thomas is referring to the object of the exterior act.

¹¹ On Thomas’s understanding of the object of a human act as terminus of an intended action, see Kevin L. Flannery, “Thomas Aquinas and the New Natural Law Theory on the object of the human act,” *National Catholic Bioethics Quarterly* 13 (2013): 81-84. Cf. Kaveny, *Law’s Virtues*, 221-22.

¹² The end is also, strictly speaking, a circumstance, for it adds a characterization to that provided by the object. On the “circumstances,” see Kevin L. Flannery, *Action and Character According to Aristotle: The Logic of the Moral Life* (Washington, DC: Catholic University of America Press, 2013), ch. 4.

Kaveny subscribes to this way of analyzing human acts, associating intrinsically evil acts with acts that are evil on account of their objects. Doing so, however, ultimately undermines her larger argument. Ironically, this happens because she does something similar to (although not identical with) what she accuses various others of doing: that is, she exaggerates the importance *in Thomas* of what she understands as the *intrinsece malum*. In the sentence coming immediately after the remark quoted just above about the “first evil in moral actions” being from the object, Thomas says that this first evil “is called ‘evil in its genus’ [*ex genere*], ‘genus’ being understood here as ‘species’ in the same way that we call the whole human species the human genus.”¹³ In other words, to say that an act is evil because of its object is to say that it is of an evil species: it is an evil type of act. But one can say—and Thomas does say—that *any* evil action (whether evil by virtue of its object or a morally relevant circumstance or its end) has an evil species. In *ST* 1-2.18.6, which asks whether an action has its species as good or bad from the end, Thomas says that an end is in fact an object (that is, of the interior act) and as such it gives species to the act of which it is the end. And in *ST* 1-2.18.10 he says that a circumstance that has a bearing upon the reasonability of the act can become “the principal condition of the object determining the species of an act.”¹⁴

Thomas does single out the former way of having a species (that is, from the object of the exterior act) as, in a certain sense, basic: he compares it to a man’s having a species (that is, his being a human being) as opposed to his having certain accidents, such as black or white.¹⁵ But he also says that, in another sense, “no act is indifferent *in its species*, for there is no object of a human act which cannot be ordered either to the good or to the bad by an end or a circumstance.”¹⁶ Thomas models his analysis of the human act upon the Aristotelian treatment of biological entities, whereby an animal’s species is quite distinct from its accidents. But he is well aware that acts are unlike animals in as much as circumstances (which are in a certain—fairly contrived—sense accidents) can also

¹³ “Et dicitur malum ex genere, genere pro specie accepto, eo modo loquendi quo dicimus humanum genus totam humanam speciem” (*ST* 1-2.18.2c).

¹⁴ The word “determining” modifies the word “object” (“... potest [circumstantia] iterum accipi a ratione ordinante ut principalis conditio *obiecti determinantis* speciem actus”—*ST* 1-2.18.10c). The corpus, however, concludes in the following manner: “Consequently to steal from a holy place adds a special repugnance to the order of reason. And thus place, which was first considered as a circumstance, is now considered as the principal condition, repugnant to reason, of the object. And in this way, whenever some circumstance has a special relation to reason, either for or against, it is necessary that the *circumstance* give species to the moral act, whether good or bad” (*ST* 1-2.18.10c). For a very detailed account of the way in which circumstances might give species to sins, see Thomas Aquinas, *Quaestiones disputatae de malo*, in *Opera Omnia*, Vol. 23 (Rome/Paris: Commissio Leonina/Librairie Philosophique J. Vrin, 1982), 2.6.

¹⁵ “Alio modo potest [aliquem actum] dici indifferens ex sua specie, quia non habet ex sua specie quod sit bonus vel malus. Unde per aliquid aliud potest fieri bonus vel malus. Sicut homo non habet ex sua specie quod sit albus vel niger, nec tamen habet ex sua specie quod non sit albus aut niger, potest enim albedo vel nigredo supervenire homini aliunde quam a principii specie” (*ST* 1-2.18.9 ad 1).

¹⁶ “Sed tamen isto modo nullus actus ex sua specie est indifferens, non enim est aliquod obiectum humani actus, quod non possit ordinari vel ad bonum vel ad malum, per finem vel circumstantiam” (*ST* 1-2.18.9 ad 1).

give species to acts themselves.¹⁷ There is no evil act that is not an evil act of a particular type or species, and that species might come from either the object, a circumstance, or the end.

So, in analyzing an action with a view to saying where its evil comes from, we look first to the object, which gives species to the exterior act. If that object is such that the act goes contrary to reason, as when the person with whom a man has intercourse is the wife of another, we already know that the act is an evil one. Given that the object (the woman, qua sexual partner) is not the man's own (and that he knows this), such an act of intercourse is always and in every case evil: it is, we can certainly say, intrinsically evil.¹⁸ But so also is an act of intercourse with one's wife, if it is performed in church; or an act of offering alms, if it is done for vainglory. Given these specifications—"specifications," that is, in the literal sense of "species-making" features—these acts too are intrinsically evil.

How then does this Thomistic understanding of the intrinsically evil bear upon Kaveny's larger argument, that is, her criticism of those who denounce abortion, the legalization of "gay marriage," and euthanasia, as intrinsically evil? The answer to this question becomes more apparent in the *Quaestiones disputatae de malo* (*De malo*) 2.6, where Thomas explains how circumstances are involved in *any* sin's reception of species. We learn in this article that an act's being sinful comes down ultimately to its incompatibility with reason. It is true, as Kaveny says, that Thomas's category of acts that are evil *ex genere*, which she identifies with the intrinsically evil acts, include some acts that ought not to be of primary concern to politicians and political counselors. But, once one sees that an act's being good or evil depends upon its compatibility with reason, one begins to realize that Thomas has other intellectual means of declaring that certain evils are more weighty—more dangerous to the body politic—than others.

In *De malo* 2.6, which is Thomas's most detailed account of the way in which even a circumstance can give species to a sin,¹⁹ he remarks:

Since a moral act is a voluntary act proceeding from reason, it is necessary that a moral act have species according to something considered in the object that is related to reason. And so . . . , if this thing is in accord with reason, the act will be good with respect to its species; if, however, it is discordant with reason, it will be bad with respect to its species (*De malo* 2.6c).²⁰

¹⁷ See *ST* 1-2.18.10c; see also 18.3 ad 1 & 2 and 18.5. (None of this is to deny, however, that some sins are related to their species in an especially close manner. Thomas speaks in this regard of "special sins": see, for instance, *ST* 2-2.43.3.)

¹⁸ Thomas says at that "negative precepts oblige always and at every moment" ("Et ideo praecepta negativa obligant semper et ad semper"—*ST* 2-2.33.2c]. He refers to *Ethica Nicomachea* 2.6.1107a8-17, where Aristotle says that adultery, theft, and murder are always (*aei*) and simply (*haplōs*) wrong. (Henceforth, the abbreviation *EN* stands for *Ethica Nicomachea*.)

¹⁹ The first line of the article reads: "Sixthly it is asked whether a circumstance might give species to a sin or might alter the species transferring it into another kind of sin" ("Sexto queritur utrum circumstantia det speciem peccato aut variet ipsam transferendo in aliud genus peccati").

²⁰ "[C]um actus moralis sit actus qui est a ratione procedens voluntarius, oportet quod actus moralis speciem habeat secundum aliquid in obiecto consideratum quod ordinem habeat ad rationem. Et sic praecedenti quaestione dictum est, quod si sit conveniens rationi, erit actus bonus secundum speciem, si autem sit discordans a ratione, secundum speciem malus erit" (*De malo*, 2.6 ll.115-22) Thomas makes a back-reference here ("praecedenti quaestione") to 2.5 in the same work.

Later in this same argument, referring back to this passage (and also to the previous article), Thomas says:

It has already been stated that something pertains per se to a moral act according as it is in accordance with or repugnant to reason. If, therefore, the circumstance added brings in no special repugnance with respect to reason, it does not give species to the act: for instance, to use something that is white adds nothing that pertains to reason and thus 'white' does not constitute the species of the moral act. But to use something 'that belongs to another' does add something that pertains to reason and thus it does constitute the species of the moral act (*De malo* 2.6c).²¹

We see here that even that feature that makes an act of taking something an act of theft and therefore evil *ex genere* can be called a circumstance. So, without diminishing the primary role of the object of the exterior act in the analysis of any human act, it is apparent that the more fundamental issue is whether an act, given all its features, is "in accordance with or repugnant to reason." On that basis, as we shall see, one can indeed say that legal and political issues such as abortion, euthanasia, and "gay marriage" are more important than others. In a sense, for Thomas, any sin is intrinsically evil. It belongs to a species of sin, and any member of a species possesses the form that puts it into its species as its essence.²² But there are some species of sin that threaten the structure of society—and morality—itsself.

III. Prudential Ranking

That brings us obviously to Kaveny's argument that the ranking of issues by certain individuals, their saying, for instance, that the abortion issue is of greater weight than others, erroneously presupposes that the issues ranked are "commensurable." As seen above, according to Kaveny, this amounts to "opening the door to" consequentialism or proportionalism.²³

But is it true that such ranking presupposes that the things so ranked are commensurable? In order to answer this question, it is necessary to understand,

²¹ [I]am autem dictum est quod ad actum morale aliquid per se pertinet secundum quod comparatur ad rationem ut conueniens et repugnans. Si igitur circumstantia addita nullam specialem repugnantiam ad rationem importet, non dat speciem actui, puta uti re alba nichil addit ad rationem pertinens: unde album non constituit speciem actus moralis; set uti re aliena addit aliquid ad rationem pertinens: unde constituit speciem actus moralis" (*De malo*, 2.6 ll.218-27).

²² The question whether to every sin there corresponds an *act* of the same species as the sin is, as Thomas acknowledges, a difficult one. See *De malo* 2.1, which has to do with sins of omission. In that article he says both that "strictly speaking, there can be a sin for which an act that is of the essence of the sin is not required" ("... per se loquendo, potest esse aliquod peccatum ad quod non requiritur aliquis actus, qui sit de essentia peccati...") and that "for an omission, therefore, to be a sin, required is that the omission be caused by a voluntary act" ("Ad hoc ergo quod omissio sit peccatum, requiritur quod omissio causetur ex aliquo actu voluntario"). Also, it can happen that a single act might involve plural sins. At 4.38.2.2.2 of the commentary on the *Sentences*, Thomas speaks of one who fornicates for profit. This act, he says, "is determined to the species of luxury because of its object but to the species of avarice because of its end. There are not here, however, two sins but one 'double sin' since the act is one" ("... determinatur enim ad speciem luxurie ex objecto, sed ad speciem avaritiae ex fine; non tamen sunt ibi duo peccata, sed unum peccatum duplex, cum sit unus actus").

²³ On commensuration, see Kevin L. Flannery, *Acts Amid Precepts: The Aristotelian Logical Structure of Thomas Aquinas's Moral Theory* (Washington, DC: Catholic University of America Press, 2001), 84-108.

first of all, what it means for something to be commensurably greater or less than another. It means that, with respect to a single objective unit of measure, in the one case there is more of that one unit, in the other less. Saying that one light bulb is stronger—emits more light—than another presupposes that the two bulbs are commensurable with respect to a unit of measure. The standard scientific unit for light bulbs is the lumen; but even pre-scientific comparisons of this sort presuppose an objective unit of measure. Someone who has never heard of a lumen and who says, “This bulb is brighter than that,” presupposes nonetheless that one can quantify light in an objective way. The measure of the truth of his statement is wholly outside of himself. What he says is true if the one bulb does in fact emit more light; it is false if it does not.

Practical reason—and, in particular, the ordering of legal and political issues—does not operate in quite that fashion. When a person employs practical reason in ordering issues, the measure is, in a sense, outside of him; but, in another sense, it is within. He makes judgments about what issues are more important than other issues for the common good—and these are, indeed, judgments made with respect to factors outside of himself; but the ranking itself is borne of his will, which is inseparable from the intellect with which he judges that certain issues are more important than others. In other words, ranking of this sort has also to do with a person’s character *as* politically prudent. When a person’s statement that this bulb is brighter than that bulb is called into question, that doubt can be resolved by measuring the light emitted with respect to the lumen. When a doubt is raised about a person’s statement that this issue is of greater significance than that, we ask whether the person making the statement has the virtue of prudence or not, for only a prudent person reliably speaks the truth in such matters.

Thomas treats of this matter in *ST* 1-2.64.3, where he asks whether the intellectual virtues are to be found “in the mean,” that is, at the midway point between two extremes, which he also identifies as the good sought by whatever virtue. He considers the two major intellectual virtues: wisdom, the virtue of speculative or theoretical reason, and prudence, the virtue of practical reason. The good of any intellectual virtue, he says, is “the true,” although the way in which truth bears upon these two virtues differs: “in the case of speculative virtue, it is the true simply speaking . . . in the case of practical virtue, it is the true according to conformity to right appetite.”²⁴

Thomas goes on to acknowledge that in either speculative or practical truth, “the mean is understood as a conformity to the thing,”²⁵ that is, as conformity to the way things stand in the world; and so, in either case, truth is something *measured*: measured by the way that things are. But the fact that practical truth concerns also appetite entails that in this case “the true” must be understood, in addition, as “regulator and measure”; prudence is, therefore, of that mean which

²⁴ “Bonum autem virtutis intellectualis est verum, speculativae quidem virtutis, verum absolute, ut in *EN* 6 dicitur; practicae autem virtutis, verum secundum conformitatem ad appetitum rectum” (*ST* 1-2.64.3c). Thomas’s reference refers here is to *EN* 6.2.1139a26-31. See also Aristotle’s definition of moral virtue as “a habit, originating in choice, lying in a mean with respect to us, this being determined by reason and as the prudent man defines it” (*EN* 2.6.1106b36-1107a2).

²⁵ “. . . accipitur medium per conformitatem ad rem . . .” (*ST* 1-2.64.3c).

is the good of the moral virtues, “that which regulates and measures.”²⁶ When a practically wise or prudent person orders things, saying, for instance, that one issue is more important than another, the truth of this ordering depends not just on the way that things stand in the world (as the statement that one bulb is brighter than another depends on the number of lumens emitted); it depends also on whether that person is morally virtuous—and this concerns both his affect and his intellect: his will.

Prudence, says Aristotle, “comes to eye of the soul not without virtue,” and so, “it is not possible to be prudent without being good” (*EN* 6.12.1144a28-b1). Since prudence, as possessed by one who is prudent, is both measure and measured, it not a wholly private affair. The prudent man’s individual character has been shaped by his experiential understanding of ethical principles.²⁷ He has been—and continues to be—“teachable” (*docilis*): responsive to the prudent persons who have gone before him, from whom, at least indirectly, he comes to know ethical principles. This is what it means for him to be virtuous: to “have an eye for” what ought to be done . . . and not done.²⁸

Thomas speaks also (and frequently) of prudence as the ability to order things correctly with respect to man’s ultimate end.²⁹ Following Aristotle, he associates this ability in a particular way with public life and with governance: what we might call “the larger picture.” Prudence, says Thomas, “is in the reason. To rule, however, and to govern are properly of reason; and so any individual, in as much as he participates in ruling and governing, to that extent it is proper that he have reason and prudence.”³⁰ Those who give good advice regarding the larger picture are prudent in this political sense.³¹

²⁶ “But with respect to appetite, [the true of the practical intellectual virtue] has the character of regulator and measure. And so the same mean—that is, rectitude of reason—which is of moral virtue, is also the mean of prudence itself, but this mean is of prudence as of that which regulates and measures; of moral virtue, on the other hand, it is of that which is measured and regulated” (*ST* 1-2.64.3c). The Latin runs as follows: “Sed respectu appetitus, [verum virtutis intellectualis practicae] habet rationem regulae et mensurae. Unde idem medium, quod est virtutis moralis, etiam est ipsius prudentiae, scilicet rectitudo rationis, sed prudentiae quidem est istud medium ut regulantis et mensurantis; virtutis autem moralis, ut mensuratae et regulatae.”

²⁷ At *EN* 6.8.1142a11-20, Aristotle connects this with the fact that a young person can become a mathematician but not practically wise: *phronimos*. He must have knowledge of “ethical principles from experience” (1142a19).

²⁸ See *ST* 2-2.49.3, where Thomas quotes *EN* 6.11.1143b11-14, in which Aristotle says that “we ought to attend to the undemonstrated sayings and opinions of experienced and older people or of people of practical wisdom not less than to demonstrations; for because experience has given them an eye (*omma*) they see aright” (Revised Oxford Translation). At *EN* 5.4.1132a22, Aristotle speaks of a judge as an instance of “ensouled justice.” See also *EN* 6.12.1144a28-b1.

²⁹ “Prudentiae autem proprium est, secundum philosophum in *EN* 6 ordinare alia in finem; sive respectu sui ipsius, sicut dicitur homo prudens, qui bene ordinat actus suos ad finem vitae suae; sive respectu aliorum sibi subiectorum in familia vel civitate vel regno . . .” (*ST* 1.22.1c); “Quia cum prudentium sit bene consilium, oportet quod eubulia simpliciter sit rectitudo consilii in ordine ad illum finem, circa quem veram aestimationem habet prudentia simpliciter dicta; et hic est finis communis totius humanae vitae” (in *EN* 6.8.17 [1233]). See also, e.g., Thomas Aquinas. *Quaestiones disputatae de veritate*: *QQ.1-7*, in *Opera Omnia*, Vo. 22.1 1 fasc. 2 (Rome: Commissio Leonina, 1970), 1.5c.

³⁰ *ST* 2-2.47.12c; see also *EN* 6.5.1140b4-11..

³¹ See Thomas Aquinas, *Scriptum super libros Sententiarum Magistri Petri Lombardi Episcopi Parisiensis*, 3.33.3.1.4c (in particular where, speaking of types of prudence, he says: “. . . unam

Kaveny appears to take account of at least part of what Thomas says about the prudent man. As we have seen, she maintains that voters should attend to the character and political competence of the candidates on a ballot.³² But this raises a number of questions. Why ought voters not attend to the same things in those who give counsel regarding how to vote? If candidates rank issues—as they certainly do—why can counselors not do so as well? And, granted that such ranking is acceptable as such, ought not diverse rankings be judged with respect to how well they conform to the moral law, as informing prudence? Finally, is it prudent to be in favor, either as a candidate or a counselor, of the legalization of abortion, euthanasia, or “gay marriage”? Both candidates and counselors must have an “eye” for justice and virtue. And voter must have an eye for those who have such an eye.³³

IV. The Larger and the Local Picture

Occasionally Kaveny suggests that the ordering of incommensurable issues by those whose counsels she counsels others not to follow is too abstract and so ignores (as we have seen) “action items.” At one point she writes as follows:

If we treat issues properly as action items, we see that they are not all commensurable in a way that permits a unified ranking. Some issues, such as abortion and euthanasia, are important because they go to fundamental questions about who counts as an equally protectable member of the society. Other issues, such as the economic crisis of 2008, are urgent because they threaten the ability of people to provide basic needs for themselves and their families and because they further impair the lives of the vulnerable, including children and the elderly. In deliberating about how to cast their ballots, therefore, voters need to be mindful of the different ways in which issues can be important to the common good.³⁴

We see here again Kaveny’s insistence that issues cannot be ranked in the way that the counselors she criticizes rank them. She acknowledges that some issues “go to fundamental questions,” but the possible urgency of other issues would impede counselors—and also politicians such as legislators—from ranking them higher.

Nowhere in Thomas’s writings does he address the question of whether issue-ranking is legitimate, for public democratic elections were unheard of in his day;³⁵ but he does in a number of places discuss situations in which there is a difference

quae regi civitatis competit, cujus est bonum commune totius multitudinis conjectare, et haec dicitur regnativa, quae est experientia ejus quod est gubernare multitudinem innocue, vel legis positiva, ut in 6 *EN* dicitur. Alia est quae competit cuilibet de civitate, secundum quod ad bonum commune ordinatur; et haec politica dicitur, nomen commune retinens”).

³² See Kaveny, *Law’s Virtues*, 199.

³³ See above, note 28.

³⁴ Kaveny, *Law’s Virtues*, 10. Later on, speaking analogously of the same distinction between abstract considerations and “action items,” she remarks: “Maintaining the foundation of a house is important—indeed, fundamental—to the well-being of the entire building. At the same time, if the roof is leaking, or lightning has set it afire, those problems must be addressed first” (*ibid.*, 203-4; see also 210).

³⁵ Legislatures were also rare. Thomas does, however, speak about the responsibilities of electors in limited elections, such as the election of an abbot; see below.

between what the moral law says at a universal level and what it says at the corresponding more local level (or what Kaveny would call the level of “action items”). Upon first consideration, what Thomas says in this regard appears to support Kaveny’s position that local issues are just as important as more universal ones. In fact, however, his remarks help us rather to identify the framework from within which the questions she raises can be answered in a way quite different from the way that she answers them.

Question 69 of the *Secunda secundae* of the *Summa theologiae* is one of five questions (67 to 71) having to do with injustices possibly occurring within a legal—even courtroom—context; in particular, it has to do with sins against justice possibly committed by a defendant. Thomas does not doubt, of course, that such sins can be committed; but he is also aware that even a guilty person might perform acts that make sense morally at a—that is, his—local level and that do not entirely coincide with the more universal concerns of justice itself. We shall look primarily at two of *ST* 2-2.69’s four articles: article 2, on whether an accused person might defend himself by means of calumny, and article 4, on whether someone who is condemned to death might defend himself.

In article 2, Thomas rejects the thesis, defended in the objections, that one might calumniously defend oneself, for to lie, he maintains, is per se evil and therefore excluded.³⁶ But if the defendant, although guilty, simply fails to tell the whole truth, he is exercising prudence, which is “praiseworthy,” says Thomas, provided he says all that is required of him by law. What is praiseworthy about this testimony is that it proceeds as prudence by definition does proceed, by ordering means to an end. It proceeds, that is, “through avenues that are both licit and adapted to the end intended,” that end being the freedom or other goods to be attained by avoiding punishment.³⁷

And so it is licit for a guilty man to defend himself by concealing truth that he is not bound to confess, through certain suitable means, by, for instance, not responding to questions to which he is not bound to respond. This is not to defend himself calumniously but, rather, prudently to evade punishment.³⁸

There can be little doubt that the good sought by the judge who interrogates the accused is that the guilty man be punished for his crime; and the genuine good sought by the defendant is quite the opposite.³⁹ And so we have a situation not

³⁶ Thomas holds that some lies, although per se evil, are merely venial sins; but what he says in the previous article (*ST* 2-2.69.1 ad 2) entails that, in itself, calumny is not a venial sin.

³⁷ “Ad id autem quod licitum est potest aliquis procedere vel per vias licitas et fini intento accommodas, quod pertinet ad prudentiam, vel per aliquas vias illicitas et proposito fini incongruas, quod pertinet ad astutiam, quae exercetur per fraudem et dolum, ut ex supradictis patet. Quorum primum est laudabile; secundum vero vitiosum” (*ST* 2-2.69.2c).

³⁸ “Sic igitur reo qui accusatur licet se defendere veritatem occultando quam confiteri non tenetur, per aliquos convenientes modos, puta quod non respondeat ad quae respondere non tenetur. Hoc autem non est calumniose se defendere, sed magis prudenter evader” (*ST* 2-2.69.2c).

³⁹ There is a similar argument in *ST* 1-2.19.10, which asks whether, in order to be good, it is necessary for the will to be conformed to the divine will with respect to the thing willed. By “the thing willed” (the *volitum*), he means the object of the will: what the person immediately wills in a particular situation. Thomas’s answer is that it is not necessary that the will be univocally conformed to the divine will. “Something can be considered by reason in various ways,” he says; “thus, from one

unlike what Kaveny sees when a voter is more interested in providing for his family than in opposing abortion. But there is more to be said about the situation described in *ST* 2-2.69.2. There can be no doubt that in Thomas's mind the universal concern—that justice be served—is primary and overriding, for the good that the judge seeks is not punishment per se but punishment in accordance with law. Provided that everything *is* done according to law, it would indeed be better if the defendant were punished. The “larger picture” ranks higher than the more local one.

As already mentioned, in *ST* 2-2.69.4 Thomas considers whether a man condemned to death might defend himself. The first two objections maintain that he might: the first argues that it is natural so to defend oneself; the second that, according to Scripture,⁴⁰ it is lawful to flee in order to escape death. In his response, Thomas expresses substantial agreement with these objections, although he puts limits on what they would allow. His answer to the second objection runs as follows:

No one is condemned in such a way that he brings death upon himself rather than that he suffer death. And so he is not bound to do that from which death follows, which includes remaining in the place from which he would be led to death. He is bound, however, not to resist the agent [of the law] so that he might not suffer what it is just that he should suffer. Similarly, if someone is condemned to die by starvation, he does not sin if he consumes food brought secretly to him, for not to consume it would be to kill himself.⁴¹

In the body of the article Thomas explains why it would be unjust for the condemned man physically to resist being brought to his execution: since those who would restrain him act justly, any such resistance must therefore be unjust. But it is legitimate for him to escape, if he can do so without violent resistance to the law; it would also be legitimate for him to consume food, although this

point of view, it is good, from another, not good.” And so one person, who is obliged to take a more general view of things, might see some act as good, while another, who is not so obliged and has more local concerns, sees the same thing as bad. “For example, a judge has a good will when he wills the killing of a thief because it is just; but the will of another—the will of, for example, the thief's wife or his son, who does not will that he be killed—is also good, in as much as according to nature a killing is an evil.” This sort of position is also set out in Thomas Aquinas, *Scriptum super libros Sententiarum Magistri Petri Lombardi Episcopi Parisiensis*, 1.48.4 and Thomas Aquinas, *Quaestiones disputatae de veritate: QQ.21-29*, in *Opera Omnia*, Vol. 22.3 fasc. 1 (Rome: Commissio Leonina, 1973), 23.8. On any killing as, according to nature, evil, see Thomas Aquinas, *Commentum in quatuor libros Sententiarum Magistri Petri Lombardi*, 4.36.1.1 ad 2. (Note that the fourth volume of the more recent Mandonnet edition of the *Sentences* commentary finishes with distinction 22.) See also Kevin L. Flannery, “Moral taxonomy and moral absolutes,” In *Wisdom's Apprentice: Thomistic Essays in Honor of Lawrence Dewan, O.P.*, ed. by Peter A. Kwasniewski (Washington, DC: Catholic University of America Press, 2007), 245-54.

⁴⁰ Ecclesiasticus (or the Wisdom of Sirach) 9.18: “Longe abesto ab homine potestatem habente occidendi et non suspicaberis timorem mortis” (Vulgate = Revised Standard Version, 9.13: “Keep far from a man who has the power to kill, and you will not be worried by the fear of death”).

⁴¹ “Ad secundum dicendum quod nullus ita condemnatur quod ipse sibi inferat mortem, sed quod ipse mortem patiat. Et ideo non tenetur facere id unde mors sequatur, quod est manere in loco unde ducatur ad mortem. Tenetur tamen non resistere agenti, quin patiat quod iustum est eum pati. Sicut etiam si aliquis sit condemnatus ut fame moriatur, non peccat si cibum sibi occulte ministratum sumat, quia non sumere esset seipsum occidere” (*ST* 2-2.69.4 ad 2).

impedes the realization of the just sentence. Indeed, the condemned man is *obliged* to impede it in this latter way since to do otherwise would be to kill himself.

One notes here that the local level obligation goes clean contrary to the higher level just judgment. And yet this does not mean that there is here no ordering. In the first place, it is stated that no one can be obliged to kill himself: that would be per se evil in the most straightforward sense—a violation of the natural law, not to mention eternal law. Also, the coercion exercised by the one who brings the condemned man to his death is licit because it is integral to the larger concerns that touch all the individuals in the example (defendant, judge, and agent of the law): face-to-face with *that* overriding set of concerns, the prisoner's praiseworthy desire to escape is praiseworthy impeded by an agent of the law, precisely because the latter *is* an agent of the law. Finally, as Thomas says in the above quotation, when the guilty man is successfully brought to his execution, he suffers "what it is just that he should suffer."

Aristotle speaks about the relationship between the good sought by the individual and the common good in a very carefully worded remark in the introductory section of the *Nicomachean Ethics*. The end of politics, he says,

must be the human good. For even if the end is the same for one person and for a city (*polis*), the end of the city seems in any case to be greater and more perfect both to achieve and to preserve; for although to the one person it is an object of love (*agapēton*), to the people or the cities it is something more noble and more godlike (*EN* 1.2.1094b7-10).

Aristotle does not shy away here from the idea that the individual's good *is* good. He even maintains that it is the very good sought by the larger political entity. (When justice recognizes the rights of an accused—even his right to evade an otherwise justly imposed punishment—it is recognizing itself: the more universal good.) But the individual good, even as such, in the appropriate circumstances gives way, in the prudential estimation of justice, to the larger, more universal good.⁴²

Thomas accepts this approach without reservation. While in *ST* 2-2.47.10 explaining the nature of prudence, he recalls that Aristotle says in the sixth book of the *Ethics* that

some have maintained that prudence does not extend itself to the common good, but only to the good of the individual. They maintain this because they estimate (*existimabant*) that a man need not seek other than his own good. But this estimation (*aestimatio*) is repugnant to charity, which "seeks not her own" (1 Corinthians 13,5). And so the Apostle says of himself (1 Corinthians 10,33): "... not seeking that which is to my benefit but to the benefit of the many, that they may be saved." It is repugnant also to right reason, which judges that the common good is better than the good of the individual.⁴³

⁴² On account of this overriding of one exercise of prudence by another, Thomas speaks of two types of prudence: *ST* 2-2.47.11.

⁴³ "Respondeo dicendum quod, sicut Philosophus dicit, in *EN* 6, quidam posuerunt quod prudentia non se extendit ad bonum commune, sed solum ad bonum proprium. Et hoc ideo quia

Throughout the practical sphere the criterion of correctness is reason; and reason that considers more universal factors—factors that have a bearing upon the common good—has more weight or authority than that which considers more local factors. Unless at the local level there is present a factor that truly—that is, according to reason—outweighs factors pertaining to the common good, reason itself says that the more universal counsel that is in accordance with prudence should be followed.⁴⁴

V. Voting

We come back, finally, to voting. It was mentioned above that Thomas does not speak about public elections. But he does speak occasionally about elections in ecclesial contexts. Of primary consideration in such contexts is again the common good: the common good of a monastery, for instance, or of a diocese. In *ST* 2-2.63.2, he asks whether “preference of persons [*personarum acceptio*] has a place in the dispensation of things spiritual.” His answer is that, if the preference given is disproportionate to the person’s worthiness [*dignitas*], it is a sin; otherwise, it is not.

He then distinguishes two ways in which someone’s worthiness might be suitable to the task of governing:

One way would be simply speaking and with respect to worthiness itself: and so conceived, of greater worthiness is he who more abounds in the spiritual gifts of grace. Another way would be with respect to the common good, for it happens sometimes that he who is less holy and less knowledgeable is better able to contribute to the common good, on account of his power or secular activity or something of that sort.

And since dispensations of things spiritual are more principally [*principalius*] ordered to the common benefit (according to 1 Corinthians 12,7, “The manifestation of the Spirit is given to each for the benefit”), it follows that sometimes in the dispensation of spiritual things those who are simply speaking less good are preferred to their betters,

existimabant quod non oportet hominem quaerere nisi bonum proprium. Sed haec aestimatio repugnat caritati, quae ‘non quaerit quae sua sunt,’ ut dicitur 1 Cor. 13. Unde et Apostolus de seipso dicit, 1 Cor. 10, ‘non quaerens quod mihi utile sit, sed quod multis, ut salvi fiant.’ Repugnat etiam rationi rectae, quae hoc iudicat, quod bonum commune sit melius quam bonum unius” (*ST* 2-2.47.10). (The use of the terms *existimabant* and *aestimatio* indicate that at issue here is an exercise of practical reason.) See also *ST* 2-2.31.3 ad 2.

⁴⁴ See also Thomas’s comment on *EN* 1.2.1094b7-10 (i.e., the passage quoted just above): “Then, when he says, ‘For even if the end is the same . . .,’ he shows that political science is the most important science on account of its proper end. It is clear that any cause, in so far as it is more powerful, to that extent its effect extends itself to more things. Thus, the good, which has the nature of a final cause, in so far as it is more powerful, extends itself to more things. And so, if the good is the same for one man and for the whole state, it appears to be much better and more perfect to undertake—that is, to procure and preserve, that is, to conserve—that which is the good of the whole state rather than that which is the good of one man. For it pertains certainly to the love which ought to exist among men that a man seek and conserve the good of even one man alone. But it is much better and more divine that this be exhibited for a whole people and for states. Or, to make the point somewhat differently, it is desirable (*amabile*) that this be exhibited to one state alone, but it is much more divine that it be exhibited for a whole people within which are contained many states” [Thomas Aquinas, *Sententia libri Ethicorum*, 1.2.168-85 [30)].

without preference of persons, just as also God sometimes concedes graces granted gratuitously on those who are less good.⁴⁵

Like some of the remarks considered previously, this one would seem to give wind to Kaveny's sails, for Thomas again seems to be saying that a less universal consideration can take precedence. But, also again, the wind suddenly dies down when it becomes apparent that in either case it is the common good (or the common benefit) that enjoys precedence. There is an ordering in this case also: not an ordering based on a commensurate quantity of any sort, so that here an elector *could* conceivably choose either candidate; but neither is the choice without a reasonable measure. As Aristotle says at *EN* 1.2.1094b7-10 (and as we have just seen), that measure is the common good, which is a single thing, whether viewed from the universal or a more local perspective—provided that, coming from the local perspective, justice is not violated.

Similarly, in his response to the article's third objection, Thomas speaks about "the conscience of the elector." He says, first of all, that it must always be allowed that in an election a good rather than the best candidate might be elected legitimately, for otherwise every election could be fraudulent. In other words, given that a person has been elected, even if he was not the best candidate, he is legitimately elected (provided that no act was committed that would render the election, qua election, fraudulent). Practical reason, to which realm elections belong, demands as much since, as we have seen, its measure is (at least partially) in the characters of the electors. Within this context, then, an elector is bound in conscience to choose the best person "either simply speaking or with respect to the common good." For, if the situation is one in which there is a candidate who is better simply speaking and the elector chooses another, he must do so for a *reason*. If that reason, says Thomas, "pertains to the job to be undertaken, in this respect the one who is chosen will be the more suitable; if, however, that which is considered the reason [for the choice] does not pertain to the job to be undertaken, manifestly there will be preference of persons."⁴⁶

The question comes down, in other words, to the moral character of the elector. If he genuinely does make his choice with the common good as his reason for choosing, he is acting prudently and morally. If the common good is not his

⁴⁵ "Uno modo, simpliciter et secundum se, et sic maioris dignitatis est ille qui magis abundat in spiritualibus gratiae donis. Alio modo, per comparationem ad bonum commune, contingit enim quandoque quod ille qui est minus sanctus et minus sciens, potest maius conferre ad bonum commune, propter potentiam vel industriam saecularem, vel propter aliquid huiusmodi. Et quia dispensationes spiritualium principalis ordinantur ad utilitatem communem, secundum illud 1 ad Cor. 12, unicuique datur manifestatio spiritus ad utilitatem; ideo quandoque absque acceptione personarum in dispensatione spiritualium illi qui sunt simpliciter minus boni, melioribus praeferuntur, sicut etiam et Deus gratias gratis datas quandoque concedit minus bonis" (*ST* 2-2.63.2).

⁴⁶ "Ad tertium dicendum quod quantum ad hoc quod electio impugnari non possit in foro iudiciali, sufficit eligere bonum, nec oportet eligere meliorem, quia sic omnis electio posset habere calumniam. Sed quantum ad conscientiam eligentis, necesse est eligere meliorem vel simpliciter, vel in comparatione ad bonum commune. Quia si potest haberi aliquis magis idoneus erga aliquam dignitatem et alius praeferatur, oportet quod hoc sit propter aliquam causam. Quae quidem si pertineat ad negotium, quantum ad hoc erit ille qui eligitur magis idoneus. Si vero non pertineat ad negotium id quod consideratur ut causa, erit manifeste acceptio personae" (*ST* 2-2.63.2 ad 3).

reason for choosing, then he has acted immorally by giving preference to something other than the common good.

Thomas also speaks about the priority of the common good in the context of law and justice more generally—and here we can draw a connection with contemporary issues such as abortion and “gay marriage.” In a well-known article, he considers the question whether all vices ought to be prohibited by law. His answer is that, no, the law ought not to prohibit

all the vices, from which the virtuous abstain, but only the more serious, from which it is possible for the major part of the populace to abstain—and chiefly (*praecipue*) those which cause harm to others and without the prohibition of which human society could not be conserved; and so prohibited by human law are murder and theft and such things.⁴⁷

We see here Thomas’s characteristic ordering of moral considerations with respect to the common good. Some vices—which may be of crucial importance for the salvation of individual souls—are less immediately worrisome with respect to the common good. Prohibiting these vices by law, he says, harms the common good since, when less virtuous men find themselves unable to obey the law, they break out into worse evils yet.⁴⁸ But there are other vices, the *failure* to prohibit which *also* harms the common good. These are vices—evil acts—that vitiate the very structure of morality itself: “murder and theft and such things.” As we saw above, for Thomas, in a way, any sin is an intrinsic evil; but some such attack the structure of society directly and so are more serious. These are they.

Thomas certainly considered the killing of a fetus possessed of a rational soul murder.⁴⁹ We now know that even the earliest embryo is so possessed.⁵⁰ Not only does the legal acceptance of murder of any type introduce a harmful incoherence into the body politic: it assaults the very essence of human society, which is only both human and society in so far as it recognizes human beings as members (*socii*)

⁴⁷ “Et ideo lege humana non prohibentur omnia vitia, a quibus virtuosi abstinere; sed solum graviora, a quibus possibile est maiorem partem multitudinis abstinere; et praecipue quae sunt in nocumentum aliorum, sine quorum prohibitione societas humana conservari non posset, sicut prohibentur lege humana homicidia et furta et huiusmodi” (*ST* 1-2.96.2). There is a similar passage at *ST* 2-2.69.2 ad 1.

⁴⁸ “Alioquin imperfecti, huiusmodi praecepta ferre non valentes, in deteriora mala prorumperent” (*ST* 1-2.96.2 ad 2).

⁴⁹ See Thomas’s commentary on 1 Timothy, where he glosses the words ‘filios procreare’ in verse 5.14 in the following manner: “*Filios procreare*, et non eos occulte occidere per abortum” (Thomas Aquinas, “Super primam Epistolam ad Timotheum lectura,” in *Super Epistolas S. Pauli lectura*, v.2, 8th ed., ed. R. Cai (Turin/Rome: Marietti, 1953), 5.2 §208. See also the commentary on the Book of Job, where he writes: “Considerandum est autem quod in vulva aliqui moriuntur ante infusionem animae rationalis quae sola immortalis est, et quantum ad hoc dicit, ‘Aut sicut abortivum absconditum non subsisterem’: ab huiusmodi enim abortivis fetibus nihil perpetuum remanet; aliqui vero moriuntur post infusionem animae rationalis, qui quidem post mortem subsistunt secundum animam sed lucem huius mundi non vident” (Thomas Aquinas. *Expositio super Iob ad litteram*, in *Opera Omnia*, vol. 28 (Rome: Commissio Leonina, 1965), 3.392-400.

⁵⁰ Thomas thought that the early embryo did not yet have a human soul and so he would not have considered the earliest terminating of a pregnancy the taking of a life. Had he known, however, what we know about the early embryo, he would have regarded even such early “terminations” as murder. See Maureen L. Condit and Kevin L. Flannery. “A Contemporary Aristotelian Embryology.” *Nova et Vetera (English)* 12 (2014): 495-508.

of itself. Regarding “gay marriage,” had Thomas ever considered the possibility that it might receive statutory recognition, he would certainly have regarded also that as inimical to the conservation of human society.

Society can be likened to a ship—as good an analogy as any—and one can imagine that the ship is run on democratic principles: those on board cast votes regarding how food and medicine shall be distributed and how the ship shall be maintained. One can imagine also a couple in the ship as it crosses the ocean genuinely worried about the health of their children. One politically inclined individual on board is more likely to enact a measure that will benefit the children’s health. If the couple, with the children in mind, lend their political support to this individual, they do no wrong. Like the above-mentioned defendant—not guilty, however, but in similar straits—they act prudently, in a local sense. The end they seek and the means they choose to achieve that end are good. But it would be gravely imprudent of them characteristically to ignore the well founded warnings, expressed by other politically inclined individuals on board, that failure to repair faults in the ship’s bulkheads and hull will inevitably make all such local concerns moot points. These latter individuals are prudent in the more universal sense; the couple do well, when they can reasonably do so, to follow their counsel.⁵¹

⁵¹ I thank Fr. Stephen Brock for some typically perceptive and precise comments on an earlier version of this essay.