

Title: The Common Good as a Fundamental Concept of the Natural Law Tradition. A Contribution to Natural Law Theory

Abstract:

In recent years, there has been a growing interest in the notoriously elusive concept of the common good across a variety of contexts. This renewed attention has undoubtedly been fueled by pressing social challenges, such as the epidemic of loneliness, the sense of meaninglessness in life, and the frustration stemming from the fact that isolated individuals can hardly fulfill their aspirations. The individualism of modern societies encourages a search for what is common or shared; philosophers have thus been led to reconsider the importance of community in general and of the political community in particular. The renaissance of metaphysics within Anglo-American analytical philosophy has also provided new tools for a more adequate understanding of the concept of community. Moreover, in contemporary constitutional theory, a significant alternative has emerged in recent years—associated with Harvard legal theorist Adrian Vermeule—which explicitly seeks to build upon the idea of the common good.

It is reasonable to connect these intellectual efforts with the natural law tradition, in which the concept of the common good has always played a central role. This tradition conceives of law as a set of rules grounded in reason and oriented toward the realization of the common good. The fundamental purpose of law is thus to direct society toward that good. The challenges of our time, together with recent theoretical developments, compel us to reconsider what this concept—architectural within one of the most important legal traditions—truly signifies. The task of this work will therefore be to reconstruct the concept through an analysis of selected debates in which the idea of the common good has once again assumed a prominent place. These debates unfold both within the natural law tradition itself and in exchanges between natural law theorists and their contemporary critics.

The aim of this monograph is to provide a vivid account of the concept of the common good and to illuminate the differences that emerge in discussions of fundamental issues in practical philosophy. The first part examines current debates in legal theory concerning concepts such as constitutionalism and human dignity, showing how the idea of the common good is reemerging from the obscurity in which it has long been confined. The second part seeks to clarify this concept through a critical analysis of several debates among natural law scholars. The final part demonstrates the relevance of the common good to the debates between natural law theorists and their opponents, with particular attention to polemics with liberals and, given its specific significance in the present context, with utilitarians.

The first chapter is devoted to one of the guiding principles of constitutional democracy—constitutionalism. After outlining the main approaches in contemporary constitutionalism—legal, political, and democratic constitutionalism—it turns to a new variant, namely common good constitutionalism, which explicitly invites a deeper engagement with the central concept of the natural law tradition. This concept, generally understood as the flourishing of a well-ordered political community, runs like a red thread throughout the entire book. The second chapter addresses another concept at the very foundations of postwar constitutionalism—human dignity. Its central thesis is that the postwar conception of dignity was developed by personalist philosophers and jurists, whose approach must be contrasted with the liberal conception of dignity that predominates today. Many of these personalist thinkers drew upon

the long tradition of natural law, in which the common good occupies a central role. The chapter therefore demonstrates the close relationship between human dignity and the common good.

The third chapter begins with a section devoted to the concept of the common good as interpreted by various natural law scholars. It introduces the classic debates on the common good that took place in the 1940s and 1950s, in which figures such as Charles De Koninck and Yves Simon played a particularly prominent role. Through De Koninck's analysis, the discussion reaches the metaphysical foundations of the common good, which are then further developed in the second part of the chapter through reflections situated within the domain of practical philosophy. This part demonstrates that the common good is essentially tied to common action, through which a community among persons is constituted, with the ultimate aim of achieving the common good.

The fourth and fifth chapters examine the disputes over the common good among key contemporary natural law thinkers. The fourth chapter analyses the most influential natural law school of recent decades, namely the so-called new natural law theory, associated primarily with the Oxford legal theorist John Finnis. Within this debate, different conceptions of the common good are distinguished—liberal minimalist, Finnis's instrumentalist, and robust—with the latter defended in several stages. The fifth chapter focuses on the conception of the common good advanced by one of the most important moral philosophers of our time, Alasdair MacIntyre. Certain problematic aspects of his account are identified, leading to the conclusion that his criticism of the modern state is overstated and that it therefore remains meaningful today to reflect on the common good of the political community.

The final chapter of the second part engages with both earlier and more recent debates. In light of the resurgence of totalitarian regimes, it revisits the classic critique of the totalitarian understanding of the common good, arguing that it is inappropriate to speak of a genuine common good in such regimes. What they advance are rather counterfeit forms of the common good. Jacques Maritain's mid-twentieth-century personalist response is likewise subjected to critique, which in turn leads to an attempt to formulate a synthetic account of the conceptualization of the common good. As a preliminary step, an excursion is made into the understanding of the concept of the good in classical metaphysics, which is subsequently linked with contemporary analytical philosophy influenced by metaphysics and the philosophy of action. Drawing on a recent study by the German philosopher Katharina Nieswandt, the argument is advanced that the personal good of the members of a political community and the common good of that community are mutually dependent. This necessitates an examination of the concept of political community and a critique of the account of the common good found in Melissa Moschella, author of the most recent study of the common good from the perspective of the new natural law theory. The chapter concludes with a summary of the findings on the common good in contrast to privatist and collectivist alternatives, ending with reflections on the possibility of upholding a substantive conception of the common good in modern societies.

The third part of the book addresses the intellectual conflicts between the natural law tradition and its more influential contemporary opponents. Chapter 7 summarizes the fundamental differences between the liberal and natural law traditions of moral enquiry, particularly with respect to their conceptions of social order and freedom. The importance of this chapter is

evident: since many regard freedom as the supreme value, it is crucial to understand the different ways in which it can be interpreted. Divergent conceptions of freedom are found not only among legal and political theorists, but also among constitutional judges, who often seek to advance their preferred understanding of freedom. The chapter therefore examines these various conceptions and shows how classical natural law thinkers connect freedom with participation in the common good. Chapter 8 provides a polemic with the most influential current version of liberalism—so-called public reason liberalism. In this version, the principle of public justification occupies a central place; the chapter therefore discusses its different formulations among liberal theorists and subjects them to critique. It culminates in an analysis of the fundamental structural differences between liberal and natural law traditions of moral enquiry, differences which once again hinge upon the distinct roles accorded to the common good.

The following two chapters are devoted to the polemic with a variant of utilitarianism—namely, pragmatic utilitarianism, which has been particularly prominent in the Czech context. The discussion focuses on its theoretical assumptions, especially the reductionist concept of the good, which renders utilitarianism a revisionist approach to moral practice. The classic critique of consequentialism by G. E. M. Anscombe is also revisited, leading to an outline of how human actions are evaluated within the natural law tradition. The subsequent chapter continues the polemic with pragmatic utilitarianism, emphasizing the key role of justice in natural law theory—justice being the virtue that guides us toward the common good—an emphasis with significant implications for understanding the very phenomenon of the juridical. This discussion proceeds with a reconstruction of the foundations of the so-called classical juridical realism, an approach to law that is currently experiencing a certain renaissance of interest. In the twentieth century, it was associated above all with two major legal philosophers, Michel Villey and Javier Hervada, whose concept of juridicity is here systematized and partially developed in dialogue with contemporary authors. The purpose of the virtue of justice, which directs us toward the common good, is to ensure that certain things in the juridical sense (i.e., juridical goods) are actually possessed by those to whom they belong and are respected by others. Various views within classical juridical realism on the phenomenon of natural rights are also outlined and related to the central concept of this work, namely the common good.

Religious freedom has traditionally been regarded as a paradigmatic natural right, and it is taken up in the final chapter. Today, however, it has become the subject of culture wars, with some legal theorists contending that there is no sufficient reason to single out religion for special legal protection. This chapter seeks to refute such claims and concludes that religious communities should be respected and protected, provided they do not act contrary to public order, and that the state should moreover cooperate with them in activities that realize various forms of the common good. The analysis of these contemporary debates shows that the common good remains an important normative ideal and underscores the urgency of striving for a deeper understanding of it. Taken as a whole, the monograph demonstrates that the concept of the common good is not an obsolete relic of classical thought but rather an enduring and indispensable normative ideal. By critically engaging with both the natural law tradition and its principal opponents, the work seeks to clarify the meaning and continuing relevance of the common good for contemporary legal and political theory.