

Jason Morgan

## The State, Law, Religion, and Justice in Cicero’s *The Republic* and *The Laws*: An Aristotelian-Thomistic Interpretation

Marcus Tullius Cicero (106–43 B.C.) was a Roman statesman and orator who lost his life during the power struggle between Julius Caesar and Marc Antony and the subsequent civil war among Pompey, Octavian, and the Senate. He is perhaps most remembered today as a master of Latin prose—few Latin learners have not encountered passages from Cicero in their advanced textbooks. But Cicero was also a philosopher, and his work on the natural law and comparative constitutional and political philosophy is still a touchstone for scholars who think about the proper role of law and politics in communities, cities, and empires. Cicero’s uprightness of character prevented him from the cynical political maneuvering that might have secured him fame, wealth, and high position under the new Roman dispensation. Like Socrates, Cicero proved too good to take part in the politics of the state that he loved. But, also like Socrates, Cicero’s death was a testimony to the immortality of his ideas. Cicero’s writings have long outlived the glory that was Rome.

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Jason Morgan — Reitaku University, Chiba, Japan  
e-mail: morgan.jason.michael@gmail.com • ORCID: no data

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Although Cicero is today regarded as among the most Roman of Roman men of letters, those who have not studied his works may be surprised to learn that Cicero was educated largely in Greece. A fluent Greek speaker, Cicero was erudite in Greek philosophy, history, and literature and frequently looked to Greece for guidance and context when thinking about his own Roman state. However, Cicero was most heavily influenced by Plato and in his writings often appeals to Plato for help in understanding the vicissitudes of Roman politics and the meaning of Roman history and philosophy. In particular, Plato's *Republic* was a seminal work for Cicero, and in his own *Republic* Cicero develops many of Plato's themes, modifying them for a Roman setting.

While Cicero was of course familiar with Aristotle,<sup>1</sup> he did not have the benefit of the Thomistic reading of Aristotle found in St. Thomas Aquinas's *Commentaries* on various Aristotelian works. When read in light of Aristotle and St. Thomas's subsequent interpretation and re-evaluation of the Stagiran philosopher, several areas of inconsistency or incompleteness can be seen in the philosophy of Cicero. In this paper, I attempt an Aristotelian-Thomistic reading of Cicero's *The Republic* and *The Laws*, focusing in particular on justice, religion, natural law, and the role of the state in the pursuit of virtue and the exercise of civic responsibility.

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In Book Five of the *Nicomachean Ethics*, Aristotle explains justice as "that habit by which men are disposed to just works, and by which they actually perform and will just deeds."<sup>2</sup> St. Thomas expands

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<sup>1</sup> See, for example, Cicero, *The Republic* and *The Laws*, trans. Niall Rudd, introduction and notes by Jonathan Powell and Niall Rudd (Oxford: Oxford University Press, 1998), 155.

<sup>2</sup> Cited after: Thomas Aquinas, *Commentary on the Nicomachean Ethics*, trans. C. I. Litzinger, O.P. (Chicago: Henry Regnery Company, 1964), bk. 5, lect. 1. Available online—see the section *References* for details.

on this definition in his *Commentary on the Nicomachean Ethics*, showing how Aristotle divided justice into particular justice and legal justice, all the while grounding justice in the just man who performs just acts:

885. After the Philosopher has finished the consideration of the moral virtues dealing with the passions, he now begins to consider the virtue of justice dealing with actions. . . . Concerning justice he proposes for consideration three differences existing between justice and the previously mentioned virtues.

886. The first difference is touched upon when he says that we must aim it such operations as are done by justice and injustice. The virtues and vices discussed before (649–884) are concerned with the passions, for there we consider in what way a man may be internally influenced by reason of the passions; but we do not consider what is externally done, except as something secondary, inasmuch as external operations originate from internal passions. However, in treating justice and injustice we direct our principal attention to what a man does externally; how he is influenced internally we consider only as a by-product, namely, according as he is helped or hindered in the operation. The second difference is touched upon when he says “what is the mean of justice and the just action,” i.e., the object of justice. In the virtues previously treated we took the mean of reason and not of the thing. But in justice the mean of the thing is used, as will be determined later (932–977). The third difference is touched upon when he says “and between what extremes the just action is the mean.” Each of the afore-mentioned virtues is a mean between two vices, but justice is not a mean between two vices, as will be clear afterwards (993–994).

888. . . . He says in the beginning that all seem to contend that justice is the sort of habit that brings about three effects in man. The first is an inclination to a work of justice in accord with which a man is said to be disposed to just works. The second is a just action. The third is that a man wants to perform just operations. We must say the same about injustice, namely, that it is a habit by which men are disposed to unjust deeds and by which they do and will unjust actions. For that reason we must presup-

pose these things about justice as apparently typical in such matters.<sup>3</sup>

St. Thomas emphasizes here that justice is just whenever it is done, and that it is just men who do what is just, in a way giving form to justice.

Like Aristotle, Cicero also strongly embeds justice in practice. On the one hand, justice as something one does, and not something about which one merely theorizes, comports broadly with the Aristotelian and Thomistic notions of justice. For example, in Book One of *The Republic*, Cicero writes:

It is not enough to possess moral excellence [*virtus*] as a kind of skill, unless you put it into practice. You can have a skill simply by knowing *how* to practise it, even if you never do; whereas moral excellence is entirely a matter of practice.<sup>4</sup>

Elsewhere, Cicero uses the example of magistrates as those without whom the state could have no existence, because magistrates do what is just.

Magistrates, then, are a necessity. Without their good sense and close attention there can be no state. In fact the whole management of a country depends on the apportionment of their functions. Not only must their authority be clearly delimited; the same applies also to the citizens' duty to obey them. A man who exercises power effectively will at some stage have to obey others, and one who quietly executes orders shows that he deserves, eventually, to wield power himself. . . . Our friend Plato held that citizens who oppose the magistrates are descended from the Titans, who themselves opposed the gods.<sup>5</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> Cicero, *The Republic* and *The Laws*, 5.

<sup>5</sup> *Ibid.*, 151. Note that "magistrates" could have many meanings: consul, dictator, magister equitum, censor, praetor, aedile, quaestor, tribune of the plebs, and so forth; see *ibid.*, 171–173. See *ibid.*, 216 (endnote) for citing Plato's *Laws*, 3.701c.

Further, as Aristotle writes in Book Five, Chapter Five of the *Nicomachean Ethics*, justice is a kind of proportion, a mean:

[A] just action is a mean between doing what is unjust and suffering what is unjust. To be unjust is to have too much, to be injured is to have too little. . . . Justice is also a habit by which the just man is said to operate by choosing what is just and to distribute both to himself in relation to his neighbor and to one man in relation to another. He does not act in such a way that he bestows more desirable things on himself and less desirable things on his neighbor, and on the contrary less hurtful things on himself than on his neighbor, but he distributes equally according to proportion. Likewise, he observes a rule regarding one man in relation to another. On the other hand injustice is a habit operative of what is unjust. This takes place by excess and defect of useful or hurtful things contrary to what is proportional. Hence injustice is called excess and defect because it brings about excess and defect, the unjust man assigning himself an excess of what is simply useful and a deficiency of what is harmful. In a similar way he attributes both an excess and a deficiency to others. But this too is contrary to what is proportional in whatever way it takes place.<sup>6</sup>

Doing what is just means doing what is proportional, finding and following a mean.

Cicero, too, deployed the notions of the mean and proportion, but in a slightly different way. While Cicero saw justice as a mean, he tended to index it to the condition of the state. For example, in Book One of *The Laws*, Cicero, speaking as Marcus, says:

My whole thesis aims to bring stability to states, steadiness to cities, and well-being to communities. . . . As for those who go in for self-indulgence and are slaves of their own bodies—people who measure everything that they should seek and avoid in life by the yardstick of pleasure and pain—even if they are right . . .

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<sup>6</sup> Cited after: Aquinas, *Commentary on the Nicomachean Ethics*, bk. 5, lect. 10.

let us ask them to keep away for a little while from any participation in public life, an area of which they know nothing and have never wished to know anything.<sup>7</sup>

Cicero, too, then, understands the orderliness and stability of the state as in some way an index of the internal orderliness and virtue of its citizens, with the best being the measure and the sensualist many the measure to avoid.<sup>8</sup>

Given all this, at first glance Cicero's notion of virtue would seem to be largely in keeping with that of Aristotle and St. Thomas. For example, as Jonathan Powell and Niall Rudd point out in the endnote to this passage, Cicero's idea of justice is essentially a Peripatetic reaction to the Platonic (by way of Socrates) and Stoic idea that virtue need not be deployed in order to qualify as virtue.

Cicero here touches on a question that was much discussed in ancient ethics; Socrates in Plato's dialogues constantly draws the analogy between moral virtues and practical skills or branches of knowledge (such as medicine or carpentry), and the Stoics, taking over the Socratic principle that virtue is a kind of knowledge, maintained that the truly wise and virtuous man was good at everything, including politics, regardless of whether he ever put his knowledge into practice. Cicero here maintains the common-sense (and Peripatetic) view that only the practical display of virtue qualifies a person to be called morally excellent.<sup>9</sup>

There are, however, important differences between Cicero and Aristotle and St. Thomas when it comes to their respective conceptions of justice. Perhaps the most glaring difference is that, for Cicero, one's state, or country, was indispensable to the working-out of justice. One simply could not effect justice without belonging to a political commu-

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<sup>7</sup> Cicero, *The Republic* and *The Laws*, 110.

<sup>8</sup> See also *ibid.*, 57–58 (*The Republic*, Book Two), for a treatment of “the ideal statesman,” whom Cicero posits as a kind of maximum of greatness of the state.

<sup>9</sup> *Ibid.*, 175.

nity. The continuation of the Cicero quote above takes up this theme. Immediately after saying that justice is a matter of doing, and not just thinking, Cicero adds the important qualification that justice must be done in a political context.

[W]hereas moral excellence is entirely a matter of practice. Its most important field of practice, moreover, is in the government of a state, and in the achievement (in reality, not just in words) of those things which our friends in their shady nooks make such a noise about. For nothing is laid down by philosophers—nothing right and honourable at any rate—which has not been brought into being and established by those who have drawn up laws for states.<sup>10</sup>

This largely parallels Plato's conception of justice. In *The Republic*, clearly a model for Cicero's own work by the same title, Plato continually connects justice with the *polis*, or city-state (or, as below, "city").

Plato's method involves the provocative idea that justice in the city (*polis*) is the same thing as justice in the individual, just "writ large." There are good reasons to worry about that assumption . . . But in Plato's sociology of the city, there are three classes engaged in a kind of division of labor. There is a guardian class which rules, a class of "auxiliaries" that provide the force behind the ruling, and the class of merchants that produce to satisfy the needs and desires of the city. Similarly, the psyche of the individual has three parts: a reasoning part to rule, a "spirited" part to support the rule of reason, and an appetitive part. Plato finds justice in the city to consist in each part "having and doing its own," and since the smaller is just like the larger, justice in the individual consists in each part of the psyche doing its own

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<sup>10</sup> *Ibid.*, 4.

work. (This grounds the idea, later enshrined by Justinian, that justice is “giving every man his due;” . . .).<sup>11</sup>

But this is not all. For, not only does Cicero insist that justice be carried out in the context of states, he further argues that the state and its laws are the principles of justice, derived from the laws themselves and the men who have thought about and crafted them.<sup>12</sup> As Cicero lays it out:

Where does devotion come from? Who gave us our religious observances? What is the source of law, either the law of nations or this civil law of ours? From where did justice, good faith, and fair dealing come? Or decency, restraint, the fear of disgrace, and the desire of praise and honour? Or fortitude in hardship and danger? Why, from those men who have taken these values, already shaped by teaching, and either established them in custom or confirmed them in law. In fact Xenocrates, one of the most illustrious philosophers, when asked what his pupils got from him, is said to have answered “to do of their own free will what they are compelled to do by law”. So then, the statesman<sup>13</sup> who, by official authority and legal sanctions obliges everyone to do what barely a handful can be induced to do by philosophy lectures, must take precedence over the teachers who theorize about such matters. For what philosophy lecture is so fine that it deserves to be set above the public law and customs of a well-ordered state?<sup>14</sup>

Aristotle, by contrast, while acknowledging the importance—indeed even the centrality—of the state for justice, does not restrict justice to a function of the existence of the state. St. Thomas follows Aris-

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<sup>11</sup> Mark LeBar and Michael Slote, “Justice as a Virtue,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Spring 2016 Edition). Available online—see the section *References* for details.

<sup>12</sup> Cicero contradicts himself on this point in his discussion of natural law, a point to which I shall turn in a later section of this paper.

<sup>13</sup> See Cicero, *The Republic* and *The Laws*, 176 (endnote): *Civis* is “used by Cicero in the sense of *optimus civis* or *rector rei publicae*.”

<sup>14</sup> *Ibid.*, 4.

totle here and significantly expands upon The Philosopher's original insights, thus widening the gap between the Greek and Christian philosophers, on the one hand, and the Roman philosopher, on the other hand.

This difference seems to be partly a question of different conceptions of object and scale. On the question of object, Nicholas Austin's chapter on rational virtue in Aristotle and St. Thomas can help understand how the two philosophers differ from Cicero. Austin writes:

In Aquinas's ordering [of virtue, in which Aquinas critiques the schema of St. Augustine], each of virtue's causes can be understood only in relation to the others. For the sake of exposition it is necessary to treat them individually in the hope that it will be meaningful to deal with parts that, finally, make sense only in terms of the whole.

The formal cause is what makes something what it is. *Forma dat speciem*: the form specifies (I.II 18.2). Aquinas states, then, "The formal cause of virtue, as also of anything, is taken from its genus and difference, when it is said [in the Augustinian definition, that virtue is] 'a good quality'. For virtue's genus is *quality*, and its difference is *good*. It would, however, be a more fitting definition if quality were replaced by *habit*, which is the proximate genus (55.4c, emphasis added)."<sup>15</sup> Thus the characterization of virtue as a good habit . . . is incorporated into the causal account as providing virtue's formal cause. It is important to remember, then, that "good" in the definition of virtue refers to the moral or rational good (*bonum rationis*) (55.4 ad 2). Virtue's most formal element is the moral goodness that lies in its conformity with human agency's rule and measure—that is, divine and human reason.

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<sup>15</sup> See Nicholas Austin, *Aquinas on Virtue: A Causal Reading* (Washington, D.C.: Georgetown University Press, 2017), 125 (Chapter Seven, "Rational Virtue," endnote 1): "55.4c: 'Causa namque formalis virtutis, sicut et cuiuslibet rei, accipitur ex eius genere et differentia, cum dicitur qualitas bona, genus enim virtutis qualitas est, differentia autem bonum. Esset tamen convenientior definitio, si loco qualitatis habitus poneretur, qui est genus propinquum'."

Aquinas conceives of this formal cause of virtue in at least two distinct ways: as object and as exemplar. Since a virtue is a disposition or habit, it is good insofar as it is directed toward a good human action and object.<sup>16</sup>

In many ways, Cicero, especially in *The Republic*, seems to posit the state, Rome, as the object of virtue, the reason why man is good. The state both nurtures man and provides him with an identity and a home, and also is the ideal toward which he should order his actions. But for Aristotle and St. Thomas, the state is at best the indirect object. The state can never be the end goal of human action, because this would be to displace man's true end, which is happiness (which St. Thomas, having the benefit of the Incarnation to which to refer, is able to define much more clearly than was Aristotle).

In terms of the object of justice, it may be useful here to consider another, further point by Austin, citing Martha Nussbaum and Christine Swanton, that virtue has a "field." For the Cicero of *The Republic* in particular, Rome is the universe of the just and decent man, the language of his virtue, as it were. Patriotism as the principle of virtue is an early Ciceronian theme, and the recognition of an ideal of Rome, despite the many flaws of the republic, is one of the key motifs of Cicero's pre-*Laws* oeuvre. On Nussbaum's and Swanton's explications of "spheres" and "fields," respectively, in the context of virtue, Austin writes:

[D]ifferent levels of formality and materiality inhere in the object. It helps to begin with a virtue's material object, or "matter-about-which" (*materia circa quam*): "The *matter-about-which* is the object of a virtue. This could not be placed in the above definition, since it is through the object that a virtue is fixed to a species, whereas here we are supplying the definition of virtue in

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<sup>16</sup> *Ibid.*, 109–110.

general” (55.4c).<sup>17</sup> To what does this phrase, “matter-about-which,” refer?

Martha Nussbaum notes that Aristotle defines virtues by identifying “spheres of life” in which we may do well or badly. A virtue is a state that disposes us to choose and respond well in some sphere of experience. Similarly, Christine Swanton talks of a virtue’s “field”: “The *field* of a virtue consists of those items which are the sphere(s) of concern of the virtue, and to which the agent should respond in line with the virtue’s demands. These items may be within the agent, for example, the bodily pleasures which are the focus of temperance, or outside the agent, for example, human beings, property, money, or honors.” The corresponding term in Aquinas is not “sphere of life” or “field” but rather the “matter-about-which” a virtue disposes a person (55. 4c). It is what the virtue is about.<sup>18</sup>

For Cicero, the state is very much the “field,” “sphere,” or “matter-about-which” one exercises virtue, the “sphere of experience” in which we may do well by responding to virtue. Throughout his text, Cicero returns to the idea of justice as a kind of boon of the political arrangement—or, more properly put, as a blessing of the state, a way of returning to the state the favor of belonging. Cicero is highly critical of the Greek states, which tended to cast into exile, he laments, its leading men: “Miltiades, the conqueror and tamer of the Persians” and “Themistocles, [who] freed [his] country” both forced into exile because of “the caprice and cruelty of Athens toward her greatest citizens.”<sup>19</sup> While the same evil tendency is creeping into Roman political life, Cic-

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<sup>17</sup> See *ibid.*, 125 (endnote 5): “55.4c: ‘Materia autem circa quam est obiectum virtutis; quod non potuit in praedicta definitio poni, eo quod per obiectum determinatur virtus ad speciem; hic autem assignatur definitio virtutis in communi.’”

<sup>18</sup> *Ibid.*, 111, citing Martha C. Nussbaum, “Non-Relative Virtues: An Aristotelian Approach,” in *Moral Relativism: A Reader*, ed. Paul K. Moser and Thomas L. Carson (New York: Oxford University Press, 2001), 202–203, and Christine Swanton, *Virtue Ethics: A Pluralistic View* (New York: Oxford University Press, 2003), 20.

<sup>19</sup> Cicero, *The Republic* and *The Laws*, 5.

ero laments, his own bitter experience of having been wrongly forced into exile was more than made up for by a mutual oath “swor[n] in a public assembly that the state had been saved by [his] actions.” “[Even if I had never been recalled from exile],” Cicero says, “that would have given me ample compensation for the worry and distress caused by all the wrongs I suffered.”<sup>20</sup>

The scale of Ciceronian justice also differs from that of justice for St. Thomas and Aristotle. For Cicero’s model philosopher, Plato, as well as for Aristotle, the *polis* was a city-state in which men interested in civic affairs could become broadly and fully engaged in the running of the polity. The *polis* was of course larger than a village or a local community, but it was also much smaller than a country. By contrast, Cicero’s “Rome” was a vast empire, stretching thousands of miles from east to west and north to south. It encompassed a staggering range of ethnic groups, religions, languages, customs, traditions, and loyalties. It would have been impossible to recreate the Platonic or Aristotelian civic ideal in imperial Rome. And even if Cicero were to artificially limit “Rome” to the city proper, this would still not solve the problem of scale. For, of course, “Rome” the city and “Rome” the empire were not separable by Cicero’s time. Imperial politics and civic politics flowed as one stream. When Cicero attempts to posit the state as the “sphere” or “field” of virtue, he gets lost in a welter of considerations and compromises that have little or nothing to do with Rome the kingdom or Rome the republic, Rome the inheritance from Romulus and Remus, Tarquinius and the early kings. When Gaius Gracchus (154–121 B.C.) argued for extending Roman citizenship to Latin allies, the entire concept of “Rome” was changed and Plato’s and Aristotle’s civic philosophy could not be applied without substantial, perhaps even transforma-

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<sup>20</sup> *Ibid.*, 5–6. By “saving” the state, Cicero is referring to his suppression of the Catilinarian conspiracy, a plot against Cicero when he was co-consul. See *ibid.*, 176.

tive, modifications. In other words, justice in Athens and justice in Rome were, by Cicero's own formula, different things.

Cicero, seemingly aware of this problem, attempts to resolve the contradiction by positing a kind of dual citizenship, a "two countries" approach that he saw as helping to extend loyalty to one's natal region—the kind of citizenship that would have been familiar to Aristotle and Plato—out to "Rome" as an expanding political arrangement, a kind of citizenship that would cancel out much of the notions of justice as found in the earlier Greek philosophers. As Cicero writes in Book Two of *The Laws*:

Marcus [Cicero]: . . . This is the actual country where I, and my brother here, were born. Yes, we come from a very old local family; we are associated with the place by religious and ancestral ties; and there are many traces of our forebears in the district. . . . There's something deep in my heart and soul which gives me, perhaps, a special affection for the spot. As you will recall, that entirely sensible man<sup>21</sup> is said to have refused immortality so that he might see Ithaca once again.

Atticus: That's a good reason, I think, for being fond of the place and coming here in preference to anywhere else. I myself have now become more attached . . . to the whole locality in which you were born and bred. For we are in some way moved by places associated with those whom we love and respect. Why even in my beloved Athens I do not enjoy the splendid buildings and the superb works of ancient art as much as the recollection of those outstanding men—where they each used to live and sit and conduct their discussions. I even gaze at their tombs with reverence. So from now on I shall think more kindly of this place because you were born here. . . . But what did you mean by saying a few moments ago that this place, by which I assume you mean Arpinum, is your actual country? Have you *two* countries? Surely

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<sup>21</sup> See *ibid.*, 206 (endnote): "Ulysses, who refused the immortality offered by Calypso so that he might return home" (Odyssey, 1. 55–9, 5. 135–6).

we all have just one? Or can it be that the country of Cato, that fount of wisdom, was not Rome but Tusculum?<sup>22</sup>

Marcus: Yes, I maintain that he and all people from small towns have two countries, one by nature and the other by citizenship. By being born in Tusculum Cato was admitted to Roman citizenship. So he was a Tusculan by birth and a Roman by citizenship. One of his countries was local, the other legal. Your Attic friends, before Theseus ordered them all to leave the countryside and move into the city (or the *astu*, as it is called) belonged both to their own towns and to Attica. In the same way we think of our country both as our place of birth and as the one which admitted us to citizenship. But the one which takes its name from the state as a whole should have first place in our affections. That is the country for which we should be willing to die, to which we should devote ourselves heart and soul, and on whose altar we should dedicate and consecrate all that is ours. Yet the one which gave us birth is dear to us in a way not very different from that which took us in. And so I shall always insist that this is my country, even though the other is greater and includes this within it.

Atticus: So our friend Pompey the Great was right when, during his defence of Ampius (which he shared with you) he stated in court, in my hearing, that our country owed an enormous debt of gratitude to this town, in that her two saviours<sup>23</sup> had come from it. So I think I am now persuaded that this place which gave you birth is also your mother-country.<sup>24</sup>

There is an additional component of justice for Cicero that does not comport well with Aristotle or St. Thomas. In particular, Cicero seems to include a utilitarian calculus in his state-based idea of justice, boasting in his text of having sacrificed himself so that the greater number of people could be safe.

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<sup>22</sup> See *ibid.*, 206 (endnote): “*Tusculum*: 15 miles (24 km.) south-east of Rome, 2,000 feet (nearly 610 m.) above sea level; a fashionable resort where several important Romans (including Cicero) had villas.”

<sup>23</sup> See *ibid.*, 206 (endnote): “. . . *her two saviours*: Marius and Cicero.”

<sup>24</sup> *Ibid.*, 121–123.

My misfortunes brought more gain than pain, less vexation than glory; and the joy I derived from being missed by the good was greater than anguish I suffered from the glee of the wicked. . . . If some dreadful calamity had overtaken the people as a whole, I could have suffered, not any special misfortune, but the same misfortune as everyone else. Yet, being the sort of man I was, I did not hesitate to brave the wildest storms and almost the very thunderbolts to protect my countrymen, and, by risking my own life, to win peace and security for the rest. For our country did not give us life and nurture unconditionally, without expecting to receive in return, as it were, some maintenance from us; nor did it engage simply to serve our convenience, providing a safe haven for our leisure and a quiet place for our relaxation. No, it reserved the right to appropriate for its own purpose the largest and most numerous portions of our loyalty, ability, and sagacity, leaving to us for our private use only what might be surplus to its needs.<sup>25</sup>

Such utilitarian conceptions are much more readily available under a state-directed justice. The expediencies of the state, and the state as a standing, quasi-metaphysical collective, easily lead man to a kind of natural fascism, a proclivity toward confusing the collective noun for the common good. In many ways, Cicero unfortunately typifies, in several passages of even his greatest works of political philosophy, this tendency toward conflating the state with a principle of justice, or with a vehicle or object of justice.

But Cicero can also see that, in the final analysis, the state cannot possibly be a stand-in for a principle of justice. There must be something beyond utilitarian reckoning. A further distinction beyond natal village and wider citizenship, namely, one between regal and political power as found in the work of St. Thomas Aquinas, may help us to bring Cicero's arguments back into the Aristotelian-Thomistic exegesis of justice and the state in Cicero's *The Laws* and *The Republic*.

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<sup>25</sup> *Ibid.*, 5–6.

In a 1986 consideration of St. Thomas's reading of Aristotle on the "mixed constitution" (of which Cicero was an advocate in both *The Laws* and *The Republic*), intellectual historian James M. Blythe sees St. Thomas as having grappled with the same problem as Cicero in trying to understand the political writings of Aristotle in terms of the much bigger polity of Rome:

When we consider mixed constitutions, we normally think of mixtures of monarchy, aristocracy, and democracy. This way of thinking occurs also in Thomas, but before discussing it we need to consider another way of classifying regimes which is equally important in his work—the distinction between regal, political, and despotic rule. Aristotle characterized governmental power in several ways, of which the two most important were the six-fold classification of polities (monarchy, aristocracy, polity, tyranny, oligarchy, and democracy) and the four types of rule (regal, political, despotic, and economic). . . . Aristotle rejects the theory that a household and a city differ only by the number of subjects.<sup>26</sup>

St. Thomas refers the problem back to the question of the soul, in particular seeking to clarify how disparate groups of men in polities come together to achieve a common goal. This common goal is, for St. Thomas, *communio*, or the common good. The question then becomes whether Cicero's imperial Rome, even when modulated by his interpellation of the concept of dual citizenship in natal village and larger polity, qualifies for consideration under the Aristotelian or Thomistic understanding.

Aristotle states baldly that unlike the soul, which rules despotically over the body, the intellect rules desire by a political and regal principate. Aquinas attempts to clarify this:

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<sup>26</sup> James M. Blythe, "The Mixed Constitution and the Distinction between Regal and Political Power in the Work of Thomas Aquinas," *Journal of the History of Ideas* 47, no. 4 (October–December 1986): 549.

“Political and regal principate applies to free men whence they can contradict in some things, and similarly sometimes desire does not follow reason. This diversity results from the fact that the body cannot be moved except by the soul, and therefore it is totally subject to it, but the desire can be moved not only by reason, but even by the sense, and it is not totally subject to reason.”<sup>27</sup>

If both political and regal rule are over free men and both allow contradiction to some extent and the rule of one element permanently, then what is the distinction? Why is the rule of reason over desire both political and regal? One explanation suggests itself. “Political” has one of two meanings: either it is a general term for the human government of free men (in which sense all the six non-despotic forms are political), or it is the type of rule distinguished from regal rule by its relation to law. Thomas is aware of these two meanings; in fact both Aristotle and Thomas introduce the passage under discussion with the comment that both political and despotic rule can be found in the human animal.<sup>28</sup> . . . [But] neither eligibility of a large number of citizens to rule through alternation nor the term of office of the rulers is the essential element of the distinction between political and regal rule, for in both cases political rule exists in a monarchical environment with an unchanging monarch. Political and regal are modes of rule that are not necessarily related to the extent of popular participation, the number of rulers, or the size of the community. These are functions of the actual institutions, which are secondary considerations. Aquinas interprets these terms analogically: regal rule is like that of a king who rules absolutely, political rule like that of a polity in which a king rules according

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<sup>27</sup> See *ibid.*, 552 (footnote 20): “*LP*, I.3.64: ‘. . . principatu politico et regali qui est ad liberos, unde possunt in aliquibus contradicere et similiter appetitus aliquando non sequitur rationem. Et huiusmodi diversitatis ratio est, quia corpus non potest moveri nisi ab anima, et ideo totaliter subiicitur ei; sed appetitus potest moveri non solum a ratione, sed etiam a sensu, et ideo non totaliter subiicitur ratione’.”

<sup>28</sup> See *ibid.*, 552 (footnote 21): “*LP*, I.3.64: ‘Possumus enim in animali quod est homo, considerare duplicem principatum ad partes eius: scilicet despoticum quo dominus principatur servis, et politicum quo rector civitatis principatur liberis’.”

to laws established by the whole community. Aristotle's six-fold schema . . . is simply the list of forms in which the modes of rule can be exercised in a city. . . . Thomas is forced to this abstraction. Aristotle sees things in the light of the Greek polity with wide participation; Aquinas must preserve the terminology but assimilate it to the medieval kingdom.<sup>29</sup>

Justice, then, has a different sort of transcendence for Cicero than it does for Aristotle and St. Thomas. For Cicero, the state is the leveler and exceeeder of debts, the entity capable of overriding wrongs suffered on its behalf and of supplementing, and then going beyond, whatever losses may have been incurred along the way. The state is the ground of equity, in other words, the fabric on which justice is embroidered. In a final appeal to the example of the Greeks, Cicero says that:

“The Seven Wise Men” in almost every case played a central role in political life. Nor, indeed, is there any occupation which brings human excellence closer to divine power than founding new states and preserving those already founded.<sup>30</sup>

There is another way in which Cicero allows his idea of justice to yield to conditions and equivocations which Aristotle and St. Thomas do not permit. One of the most striking examples comes from religion, a subject on which Cicero offers a variety of views. In Book Two of *The Laws*, for example, Cicero gives a long list of religious functions and their connection to statecraft—such as the augurs (of whom Cicero, speaking as Marcus, was one) and oracles who had extraordinary veto and counsel powers. After several pages of rules about the allowed sizes of tombs and the regulations concerning burials and cremations, along with a host of other guidelines for the integration of religion and the state, Cicero (speaking now as Atticus) offers the rather startling

<sup>29</sup> *Ibid.*, 551–553.

<sup>30</sup> Cicero, *The Republic* and *The Laws*, 8. As to “The Seven Wise Men,” Cicero probably means: Thales, Pittacus, Bias, Solon, Cleobulus, Periander, and Chilon (see *ibid.*, 176).

observation that the Roman laws “conform to nature.”<sup>31</sup> Cicero seems to be saying here that the state is virtually coterminous with nature, as the religious observances and offices he lists are proffered as the ideal and the laws are held to be most perfect when they conform to the state’s contours most closely.

This seeming piety is in marked contrast to Cicero’s earlier pronouncements in *The Republic*. To be sure, *The Republic* was written before the Roman civil war, so Cicero surely changed his views after the war on many of the things of which he treated in *The Republic*. And yet, the frankly-stated cynicism on religious matters takes the reader aback. For, in his groundwork for a preliminary defense of monarchy in *The Republic*, Book One, Cicero (speaking as Scipio) appears to begin with an appeal to Jove, “acknowledged by everyone, learned and unlearned alike, to be the sole king of all gods and men.”<sup>32</sup> But immediately thereafter, when Scipio’s interlocutor, Laelius, asks Scipio why he chooses to begin his discourse with an appeal to the chief of the gods, Scipio offers the following reply:

Why do you think? The reason’s obvious. One answer is that rulers of states have, for reasons of practical expediency, promoted the belief that there is one king in heaven who, in Homer’s words, “shakes the whole of Olympus with his nod” [*Iliad*, I. 530, fn. 183]; and that he should be regarded as king and father of all.<sup>33</sup>

Scipio then turns to a defense of monarchy, arguing that, like the gods, kings are servants of the state, put into office, as it were, by the weight of necessity, tradition, and authority in order to keep order among the masses and ensure the state’s continued existence.

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<sup>31</sup> *Ibid.*, 147.

<sup>32</sup> *Ibid.*, 25.

<sup>33</sup> *Ibid.*, 26.

But this view on religion is sharply at odds with the view of justice to be found in Aristotle and St. Thomas Aquinas. St. Thomas, for his part, did not argue that a state should be a theocracy, and he took care to allow for wide leeway in permitting certain vices lest, by attempting to stamp them out entirely, wicked men be driven into even more destructive behavior, their natures being not suited for the exercise of virtue which the law, in its didactic function, should encourage. As St. Thomas writes in the *Summa Theologiae*, in response to the question “Whether it belongs to the human law to repress all vices?,”

I answer that . . . the same thing is not possible to one who has not a virtuous habit, as is possible to one who has. Thus the same is not possible to a child as to a full-grown man: for which reason the law for children is not the same as for adults, since many things are permitted to children, which in an adult are punished by law or at any rate are open to blame. In like manner many things are permissible to men not perfect in virtue, which would be intolerable in a virtuous man.

Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus human law prohibits murder, theft and such-like.<sup>34</sup>

There is a tension here with Cicero, however, because while St. Thomas is clear on *communio*, Cicero vacillates among different scopes of the common good. Is the common good one’s hometown, or Rome as a republic, or Rome as an empire, or even, under Cicero’s natural law

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<sup>34</sup> Thomas Aquinas, *Summa Theologiae*, I–II, q. 96, a. 2, resp. Available online—see the section *References* for details. Cf. *A Summa of the Summa: The Essential Philosophical Passages of St. Thomas Aquinas’ Summa Theologica. Edited and Explained for Beginners*, ed. Peter Kreeft (San Francisco, Calif.: Ignatius Press, 1990), 525–526.

formulation, the entire world, all human beings regardless of birth or citizenship?

A passage by political scientist Mary M. Keys focusing on the next question from the *Summa*, “On the Power of Human Law,” brings this tension to the surface:

Law broadly understood, as a general societal norm, plays a key role as a common guide or rule of action in the political sphere. Aquinas frequently stresses that law in its proper sense is made only for a “people” (cf. *ST* I-II 101, 3) or “community” (*ST* I-II 96, 1). “Human law should be framed for the community rather than for the individual,” Thomas writes, because “[w]hatever is for an end should be proportionate to that end. Now the end of law is the common good, because, as Isidore says (*Etymologies* V.21), *law should be framed, not for any private benefit, but for the common benefit of the citizens*. Hence human laws should be proportionate to the common good” (*ST* I-II 96, 1). . . . Aquinas thus maintains that it is of the very essence of genuine law to be “always something directed to the common good” (*ST* I-II 90, 2). Thomas’s response here merits quoting in its entirety, with a view to explicating his later claim that even basically good people need law’s “help.”

“As stated previously (*ST* I-II 90, 1), the law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end; and the last end of human life is bliss or happiness. Consequently, law must regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect [i.e., complete or self-sufficient with regard to its proper ends] community, it is necessary that law properly regard the relation [*ordinem*] to universal happiness. Wherefore the Philosopher, in [his] definition of legal

matters, mentions both happiness and political community. He says in the fifth book of the *Ethics* (NE 5.1) that “we call those legal matters just, which are adapted to produce and preserve happiness and its parts for the political community,” since the city [*civitas*] is a perfect community, as he says in the first book of the *Politics*” (ST I-II 90, 2; cf. also ad 1 and 2).

In other words, the person considering how to live well and flourish is not an isolated individual in search of highly abstract answers, but is rather a member of various societies, especially of a family and civic community.<sup>35</sup> In the latter capacity he or she must often look to civil or “human” law for concrete answers regarding how to act, so as to foster the common good under ordinary circumstances (cf. *On Kingship* book one, chapter III, par. 106).<sup>36</sup>

But there is a substantial difference between St. Thomas’s teaching on the law here and Cicero’s. When St. Thomas speaks of “happiness” he is thinking of the concatenation of earthly and beatific joy. “Now the first principle in practical matters, which are the object of the practical reason, is the last end; and the last end of human life is bliss or happiness.” St. Thomas is expanding Aristotle’s “happiness principle” from the *Nicomachean Ethics* by extending it to the beatific vision, the Christian belief that the blessed will look forever on the face of God. While St. Thomas’s highly sophisticated political science allows for a

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<sup>35</sup> See Mary M. Keys, “Aquinas’s Two Pedagogies: A Reconsideration of the Relation between Law and Moral Virtue,” *American Journal of Political Science* 45, no. 3 (July 2001): 524 (footnote 20): “In arguing that the virtue of prudence comprises not only personal but also social and political dimensions, Aquinas writes: ‘He that seeks the common good of the multitude, seeks in consequence his own good, for two reasons. The first is because the individual good is impossible without the common good of the family and the city or kingdom. Hence Valerius Maximum says of the ancient Romans that *they would rather be poor in a rich empire than rich in a poor empire*. Secondly, because since a man is a part of a home and a city, he must consider what is good for him by being prudent about the good of the many. For the good disposition of parts depends on their relation to the whole . . .’ (ST II-II 47, 10, and 2).”

<sup>36</sup> *Ibid.*, 524.

kind of Husserlian bracketing of the beatific vision in analyzing the role of law in a given state, God could never be forgotten or removed from the equation, for without God human society, and human life, would be meaningless.

For Cicero, however, the gods are an adjunct to the state, which alone appears to have an eternal existence. Indeed, in many places, Cicero is ambiguous, at best, about the gods and the state, whether they have any separate existence at all. For example, in *The Laws*, Book One, Cicero writes, “Because good character and good reputation look alike, those who receive public honours are regarded as blessed, and the obscure are objects of pity.”<sup>37</sup> Even when more forceful in his endorsement of the theistic view, Cicero grounds the gods in the state. The beatific vision is almost, for Cicero, the gods looking upon the good order of the state. For example, in Book Two of *The Laws*, during an extensive discussion of religious ritual, Atticus asks Marcus (Cicero) about the office of the augur, upon whose proclamations and findings the entire operation of Rome depended.

Atticus: But in your college there is a serious disagreement between Marcellus and Appius, both excellent augurs. . . . One contends that auspices were invented to serve the practical purposes of the state; the other believes that your art can, as it were, predict the future. Tell me, what do you think about that question?

Marcus: What do I think? Well, I think that divination, which the Greeks call *mantike*, exists, and that the particular area which has to do with birds and other signs comes within the scope of our art. For if we grant that the gods exist, that the world is ruled by their will, that they also care for the welfare of mankind, and are able to show us signs of future events, I don’t see why I should deny the existence of divination. The assumptions I have made are true; so the conclusion that I want follows from them, and is, indeed, necessary. Furthermore, our country, like every kingdom,

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<sup>37</sup> Cicero, *The Republic* and *The Laws*, 107–108.

every community, and every nation, is full of numerous instances in which many an augur's prediction has come true, despite all the odds. . . . Nor would our own Romulus have founded the city by means of augury, nor would the name of Attus Navius have survived so long and so vigorously in people's memory, had not all these men uttered many predictions which were surprisingly confirmed by events. Yet there is no doubt that the art and skill have now vanished as the result of age and neglect. So I do not agree with the man who denies that this skill ever existed in our college, nor with the one who thinks it is still alive today. Among our ancestors it had, I think, a dual function, i.e. it occasionally played a role in times of national crisis, but most often it influenced practical decisions.<sup>38</sup>

Cicero here has a state-centric, utilitarian view of the deities. It is almost as though the religious polarity is reversed and the gods exist for the sake of man.

For St. Thomas, of course, the situation is the opposite. The law is not propped up by the puppetry of the non-existent gods. Rather, the law flows, albeit through several cataracts, from God's nature down into the regulation of the affairs of men. This is seen most readily in St. Thomas's treatment of law, which comes at the end of the *Summa Theologiae*, I-II, questions 90 through 97. In laying out a natural law, divine law, eternal law, and variety of human law or positive law, St. Thomas firmly places man in a subordinate position to God, with man's order echoing and participating in God's eternal plan.

In other places, too, Cicero confesses that he sees religion as little more than the ancillary to the state's prerogatives. If anything, whereas for Aristotle the well-being of the state and the happiness of individual citizens was premised upon the pursuit of virtue by the singular man, and whereas for St. Thomas the beatific vision was the end goal of human life and the state was mainly, in a Pauline sense, a way

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<sup>38</sup> *Ibid.*, 135.

to constrain man in his baser impulses, for Cicero the state was even greater than civilization and religion, being the very vehicle for “taming the barbarian” and inducting him into civilized commerce and discourse.

In Book Two of *The Republic*, Cicero (writing as Scipio) relates:

[Numa] Pompilius [a Sabine brought in on the Senate’s recommendation to be king of Rome] . . . extended the scope of the auspices, adding two augurs to the original number; and he appointed five priests from among the leading citizens to take charge of the various religious rituals. He introduced the laws [*leges regiae*] which we still have in our records, and by turning their attention to religious ceremonies he tempered those ardent spirits which were accustomed to, and eager for, continual warfare. In addition, he created flamens, Salii,<sup>39</sup> and vestal virgins, and organized most scrupulously every aspect of religious life. It was Numa’s wish that, while religious observances themselves should be minute and complicated, the equipment should be very simple. He devised many rituals which had to be learned by heart and adhered to, but they did not involve any expense. In this way he directed more attention to religious duties but removed the cost. . . . [By the time Numa died after a thirty-nine year reign,] he had established on a firm basis those two factors which, above all others, ensure that states will last, namely religion and humane behaviour.<sup>40</sup>

There are, however, some key tensions within Cicero’s thought on this score, especially when read in the context of Aristotle and St. Thomas Aquinas. For example, over against Cicero’s argument that the state is the arbiter and ground of justice and even the indirect object of religious ritual (standing to receive the boons from the gods in hopes of

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<sup>39</sup> See *ibid.*, 188 (endnote): “[A] highly aristocratic religious fraternity responsible for certain rituals connected with Mars, including ceremonial war-dances, whence the name (*salire* = to jump or dance).”

<sup>40</sup> *Ibid.*, 43.

which supplication was carried out, or simply the benefits of good order that were to flow from religious rites even if the gods themselves were elided as superfluous to the state-centric calculation that Cicero advances in certain passages of *The Republic*), there is his other argument that man is the measure of statecraft, with kings, when good, qualifying as a kind of qualitative maximum, not of the state, but of mankind.

Cicero is most explicit on this point in Book Three of *The Republic*, “The abilities and achievements of man.” While many leaves are missing from the original of Book Three, there is more than enough remaining to see Cicero’s argument clearly. As the translator summarizes, “Cicero affirms [in Book Three] that in spite of man’s physical weakness, his fears and moral failings, he, unlike other animals, has deep within him the divine fire of rational intelligence.”<sup>41</sup>

To be sure, here too Cicero is at pains to show that the highest achievement for a man is to be of service to the state. Putting one’s theoretical studies into practice in statecraft is better than attaining to wisdom through study alone. “Even though some people think that a life passed quietly in the study of the highest arts is happier,” Cicero avers, “there can be no doubt that the statesman’s life is more admirable and more illustrious. . . . In the nature of things it requires practical wisdom of the very highest order to devise a form of government that will last.”<sup>42</sup>

And yet, after this passage Cicero, as a foil, puts into the mouth of Philus a speech which argues for the utility of justice. In other words, Cicero is really saying that justice goes beyond the state, has some kind of life outside of its application in politics and law. In response to Philus’s utilitarian arguments, Cicero has Laelius rebut in favor of justice. Laelius responds:

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<sup>41</sup> *Ibid.*, 60 (translator’s note).

<sup>42</sup> *Ibid.*, 61.

Law in the proper sense is right reason in harmony with nature. It is spread through the whole human community, unchanging and eternal, calling people to their duty by its commands and deterring them from wrong-doing by its prohibitions. . . . This law cannot be countermanded, nor can it be in any way amended, nor can it be totally rescinded. We cannot be exempted from this law by any decree of the Senate or the people; nor do we need anyone else to expound or explain it. There will not be one such law in Rome and another in Athens, one now and another in the future, but all peoples at all times will be embraced by a single and eternal and unchangeable law; and there will be, as it were, one lord and master of us all—the god who is the author, proposer, and interpreter of that law. Whoever refuses to obey it will be turning his back on himself. Because he has denied his nature as a human being he will face the gravest penalties for this alone, even if he succeeds in avoiding all the other things that are regarded as punishments.<sup>43</sup>

When Cicero, through Laelius, writes in this passage that, “When it [i.e., law in the proper sense] addresses a good man, its commands and prohibitions are never in vain; but those same commands and prohibitions have no effect on the wicked,”<sup>44</sup> he is in accord with Aristotle, who sees the vicious man as beyond the reach of prudence and justice:

Most evil people know they are evil, so they can never find total self-satisfaction. They tend increasingly to loathe themselves the more they discover that they are wicked. They commit gruesome crimes, for which people hate them, and often commit suicide out of self-loathing. They tend not to pursue speculative kinds of knowing, but instead turn outwards to communicate with others in evil words and works, partly out of a desire to forget their prior evil words and works. They find nothing in themselves worth loving, and so cannot love others in a healthy way. The evil

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<sup>43</sup> *Ibid.*, 68–69.

<sup>44</sup> *Ibid.*

man's soul draws him in opposite directions. He is rent with conflicting drives and dissatisfactions.<sup>45</sup>

But Cicero's passage cited above seems to contradict what he has posited in many other places throughout both *The Republic* and *The Laws*. On the one hand, the state would seem to be the culmination of justice, the fabric of righteousness for the virtuous man. Without the state, the good man is lost in a vacuum, having no substance on which to practice and perfect his virtuous habits.<sup>46</sup> But, on the other hand, in Book Three of *The Republic*, at the heart of his argument, Cicero sets up another kind of law, a higher, transcendent law that stands apart from the state and even seems to wield a veto power of any unjust laws that the state might try to enforce.

Indeed, in the next passage Cicero goes even further, arguing that the state must strive for immortality, but strongly implying that the state's immortality is conditional on its conforming to the higher law of which Cicero has just spoken:

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<sup>45</sup> I owe this remark to Peter A. Redpath who discussed this topic during his course "The Good, the Bad, the Beautiful, and the Ugly," delivered at Holy Apostles College and Seminary in Cromwell, Conn., USA, in 2018.

<sup>46</sup> Cicero agrees with Aristotle that virtue is a habit, formed through practice and maintained through thoughtful repetition. Cf., for example, Cicero, *The Republic* and *The Laws*, 108. However, he states his case negatively instead of positively: "What I call 'justice' comes from nature, but . . . the corruption brought by bad habits is so great that it extinguishes, so to speak, the sparks given by nature and allows the corresponding vices to spring up and flourish. If human beings believed in their hearts what is in fact the case, namely that, in the poet's words, 'nothing human is alien to them', then justice would be respected equally by all. For those who have been endowed by nature with reason have also been endowed with right reason, and hence with law, which is right reason in commanding and forbidding; but if with law, then with justice too. But reason has been bestowed on everybody; therefore the same applies to justice. And Socrates was right to curse the man who first separated self-interest from justice; for that, he complained, was the source of everything pernicious." For the Socratic "curse," see *ibid.*, 202 (endnote): "[A]ccording to Clement of Alexandria (second century AD), Cleanthes said in his work on *Pleasure*, Book 2, that Socrates uttered this curse (*Stromateis* 2.131)."

In the case of states, death, which seems to rescue individuals from punishment, is itself a punishment. For a state should be organized in such a way as to last for ever. And so the death of a state is never natural, as it is with a person, for whom death is not only inevitable but also frequently desirable. Again, when a state is destroyed, eliminated, and blotted out, it is rather as if (to compare small with great) this whole world were to collapse and pass away.<sup>47</sup>

To be sure, this passage is taken from St. Augustine's *De Civitate Dei*, 22.6, in which St. Augustine claims to be citing Laelius's words (i.e., Cicero's) in *The Republic*.<sup>48</sup> It is possible that St. Augustine modified or invented the passage in order to bolster his argument in *De Civitate Dei*, a book which St. Augustine wrote in order to refute the charge that Rome's having converted to Christianity was the reason that it fell to invading armies and was sacked.

And yet, in subsequent passages in the Ciceronian original, and so not obtained via (possibly corrupted) recreation in *De Civitate Dei* or the works of other authors, Cicero seems to assume the operation of a justice beyond the reach of the state, bringing about the downfall of those who transgress the codes of right conduct which lay outside the power of the state to amend. For example, again in Book Three Cicero discusses Tiberius Gracchus, who, although upright in terms of his behavior with Roman citizens, "ignored the rights which had been guaranteed by treaty to the allies and to those with Latin status."<sup>49</sup> This presents an existential danger to Rome, Cicero argues:

If that kind of lawless behaviour becomes more widespread and drags our empire away from justice into violence, so that people who up to now have willingly accepted our authority are kept loyal by terror, then, even if we in our generation have been rea-

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<sup>47</sup> Cicero, *The Republic* and *The Laws*, 69.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, 71.

sonably alert to this danger, I am still worried about our descendants, and about the survival of our empire—an empire which could remain permanent if people continued to live by our forefathers' principles and values.<sup>50</sup>

One wonders how Cicero can reconcile the apparent contradictions on display here. If the state has the power to manipulate the population through the cynical deployment of religious-themed ruses, and if the state is the site for manifesting justice on the part of individual citizens and is furthermore the justification for righteousness among a given people, then how can the state also be subject to a higher justice, a higher law? How can a state at once be sovereign and contingent, supreme and yet subjugated to codes of justice that go well beyond the state's prerogatives?

It may be suggested that Cicero is setting up a distinction between the citizen and the individual, the private person and the public man. But he explicitly dismisses this notion throughout both *The Republic* and *The Laws*. For example, in Book Four of *The Republic* Cicero, discussing Greek customs, says of Greece:

Consider now how wisely provision has been made for that partnership of citizens in a happy and honourable life. For that is the primary purpose of forming a community, and that must be achieved for human beings by the state, partly through its institutions and partly through its laws.<sup>51</sup>

There is no mention here of the state having to look beyond itself in establishing a proper code of conduct or hewing to a law that shifts the balance of the state and places it under the control of other powers.

Cicero (speaking as Scipio) is even more explicit in Book Five of *The Republic*, wherein he considers the role of the statesman in bringing about the “happy and honourable life” which is praised in the con-

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, 76.

sideration of Greek customs in Book Four. “The statesman,” Cicero writes,

develops this sense [i.e., of “dread . . . of justified rebuke which nature has imparted to man”] by making use of public opinion, and completes it with the aid of education and social training. So in the end citizens are deterred from crime by moral scruples as much as by fear. . . . For the purposes of life and its practical conduct a system has been devised, consisting of legal marriages, legitimate children, and sacred shrines belonging to the domestic gods of Roman families, so that everyone may enjoy both public and private benefits. The good life is impossible without a good state; and there is no greater blessing than a well-ordered state. . . . The aim of a ship’s captain is a successful voyage; a doctor’s, health; a general’s, victory. So the aim of our ideal statesman is the citizens’ happy life—that is, a life secure in wealth, rich in resources, abundant in renown, and honourable in its moral character.<sup>52</sup>

Later, in the “Dream of Scipio” section of Book Six of *The Republic*, Scipio, Cicero’s avatar, lays out a theory of mind as an eternal, unmoved mover, but then instantly immanentizes it by admonishing all to “employ [the mind] in the best kinds of activity. Now the best concerns are for the safety of one’s own country.”<sup>53</sup>

This tension between state and natural law, which Cicero explicitly says goes beyond the state, is of course explored at great length in both Aristotle and St. Thomas. In St. Thomas’s commentary on Book 10 of the *Nicomachean Ethics*, in which Aristotle treats of equity, St. Thomas writes:

1086. At “Therefore, when” [ii, z] he infers the necessity for directing legal justice. He says that when the law proposes something in a universal way, and the observance is not beneficial in a

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<sup>52</sup> *Ibid.*, 83.

<sup>53</sup> *Ibid.*, 93.

special instance, reason rightly dictates that a person should correct what is deficient in the law. Where the legislator evidently left indeterminate a particular case (in which the law falls short) he is at fault, i.e., he proposed a defective proposition in speaking absolutely or universally. The reason is that even the legislator himself, had he been present where such a case happened, would have determined in this way and the correction would have been made. Moreover, had he foreseen this from the beginning he would have put it in the law. But he could not comprehend all particulars; in a certain city it was decreed under penalty of death that strangers were not to climb the walls of the city for fear they would usurp the civil government. But during an enemy invasion some strangers by climbing the walls defended the city from the invaders. They do not deserve to be punished by death; it would be against the natural law to reward benefactors with punishment. Therefore in this case legal justice must be directed by natural justice.<sup>54</sup>

In Book One of *The Laws*, Cicero takes up these Aristotelian-Thomistic themes, positing that the nature of law and the nature of man are the same. Cicero, speaking now as Marcus, says that law is the best subject for bringing out

what nature has bestowed on man, how many excellent things the human mind contains, what task we were born and brought into the light to address and accomplish, what sort of factor unites human beings and what natural fellowship exists between them. . . . These matters must all be clarified before the source of law and just can be identified.<sup>55</sup>

This pronouncement, which echoes much of Aristotle's teachings on the subject while anticipating the commentaries and developments of St. Thomas Aquinas some twelve centuries later, is at odds with Cicero's overt statism in *The Republic*. Perhaps his bitter political disap-

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<sup>54</sup> Aquinas, *Commentary on the Nicomachean Ethics*, bk. 10, lect. 16.

<sup>55</sup> Cicero, *The Republic* and *The Laws*, 102.

pointments had changed Cicero's mind on the subject of law and the state, prompting him, like St. Augustine would after the fall of Rome, to seek something more lasting than the constitution of governments by mortal men. In any event, Cicero's reversal here is surprising.

Cicero is aware of the surprise he is engendering. In the same Book One of *The Laws*, Cicero, in response to Marcus's argument in favor of the unity of mankind and the identity of the law with human nature, has one of Marcus's interlocutors, Titus Pomponius Atticus, express his shock over this speech, which, as Atticus rightly intuits, is tantamount to rendering contingent the positive law of the Romans—the same law, of the same state, that Cicero argued in *The Republic* was the origin and platform of human happiness, the necessary condition for human flourishing, and the ground and expression of justice. “Does this mean,” Atticus asks Marcus, “that you consider the science of law to be derived, not from the praetor's edict (as most authorities hold today), nor from the Twelve Tables (as our forefathers believed), but from the deepest recesses of philosophy?”<sup>56</sup>

Marcus replies that Atticus is correct in his assumption:

That's right, Pomponius. For in this discussion, we are not asking how to frame legally binding conditions or how to answer this and that question for our clients. Let's suppose such problems are important, as indeed they are. They have been handled by many distinguished men in the past . . . But in our present analysis we have to encompass the entire issue of universal justice and law; what we call civil law will be confined to a small, narrow, corner

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<sup>56</sup> *Ibid.* See also *ibid.*, 200 (endnote): “*the praetor's edict*: Each year, when the chief legal magistrate took office, he published an edict, setting out the principles of which he intended to administer justice. His successor would take over the edict, making whatever changes and additions were necessary. Thus a body of law grew up, supporting or complementing the code of civil law. *the Twelve Tables*: c. 450 a Committee of Ten had codified Roman civil and criminal law in the Twelve Tables.”

of it. We must clarify the *nature* of justice, and that has to be deduced from the nature of man.<sup>57</sup>

Quintus then exclaims that Marcus is right to trace law and human nature back to the source, pointing out that “those who present civil law in a different way are presenting modes of litigation rather than justice.” Marcus corrects him: “Not so, Quintus. Ignorance rather than knowledge of the law leads to litigation.”<sup>58</sup>

There follows an inversion of Cicero’s earlier pronouncements on the state and the nature of law:

When that reason [i.e., law as the highest reason as defined by the most learned men] is fully formed and completed in the human mind, it, too, is law. . . . The origin of justice must be derived from law. For law is a force of nature, the intelligence and reason of a wise man, and the criterion of justice and injustice. . . . The word “law” . . . lays down in writing what it wishes to enjoin or forbid . . . [but] that’s what the man in the street calls law. . . . [I]n establishing what justice is let us take as our point of departure that highest law which came into being countless centuries before any law was written down or any state was even founded. . . . For these reasons I shall look to nature for the origins of justice. She must be our constant guide as our discussion unfolds.<sup>59</sup>

Here, Cicero seems to counter much of what he has said before. The Roman state is rendered transparent and the natural law is allowed to shine forth with no refraction by the prerogatives of politics or political particularity.

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<sup>57</sup> *Ibid.*, 102–103.

<sup>58</sup> *Ibid.*, 103.

<sup>59</sup> *Ibid.*, 103–104.

In all, the portrait Cicero presents of himself in *The Laws* and *The Republic* is of a patriotic man whose state has proven to be less than he had expected—a man striving to come to terms with the collapse of what had seemed to him a solid and eternal paradigm. Perhaps Aristotle, who was also disappointed politically (and professionally) and St. Thomas, who lived after the traumatic collapse of the Roman Empire and during the transnational, spiritual rule of the Church, had the advantage of perspective. But they also had the additional advantage of principle. For Cicero, Platonic philosophy proved incapable of providing the principles necessary to guide the consideration of things like the state, justice, natural law, and religion. The writings of Aristotle and St. Thomas Aquinas show that Cicero erred in hewing too closely to the state, and in not locating man’s animating principle and true end sufficiently beyond the horizons of politics.



**The State, Law, Religion, and Justice in Cicero’s *The Republic* and *The Laws*:  
An Aristotelian-Thomistic Interpretation**

SUMMARY

The writings of Marcus Tullius Cicero are often referred to by natural law theorists. But how do various points of Cicero’s philosophy of law—and of religion, justice, and the state—compare with similar themes from Aristotle and St. Thomas Aquinas? In this paper, I suggest a Thomistic-Aristotelian reading of Cicero as a way to contextualize and supplement the Roman philosopher’s work with more robust insights from Aristotle and St. Thomas, and especially from Aristotle as interpreted by St. Thomas in the later light of the Incarnation. I also show that Cicero’s natural law philosophy is inconsistent when taken on its own terms. Therefore, Cicero’s natural law philosophy—as well as his philosophy of religion, justice, and the state—should be subjected to a more critical examination by natural law scholars today.

KEYWORDS

Cicero, natural law, St. Thomas Aquinas, Roman philosophy, statecraft, polis, Aristotle, religion, justice.

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