

Neutral Frameworks, the Rule of Law and the Common Good

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I: INTRODUCTION

Central to the dominant version of contemporary liberal political theory is the conviction that government should be neutral toward any particular understanding of the good life, and should not try to impose any particular view of the good life on its citizens. According to this understanding of political community, the only legitimate end of government is to establish fair rules and procedures—a “neutral framework” as it is typically characterized—whereby citizens can pursue their own understanding of what is good and desirable without impeding others from doing the same.¹ The rule of law is thus understood to be

¹ Thus Michael Sandel, one of our most astute analysts of contemporary liberalism, writes: “The political philosophy by which we live is a certain version of liberal theory. Its central idea is that government should be neutral toward the moral and religious views its citizens espouse. Since people disagree about the best way to live, government should not affirm in law any particular vision of the good life. Instead, it should provide a framework of rights that respects persons as free and independent selves, capable of choosing their own values and ends. Since this liberalism asserts the priority of fair procedures over particular ends, the public life it informs might be called the procedural republic.” See *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, Massachusetts: Harvard University Press, 1996), p. 4, and *passim*. Sandel is thinking most especially of John Rawls, but I believe that the notion of the procedural republic describes, with some careful qualification, Michael Oakeshott's notion of civil association, notwithstanding the fact that Oakeshott takes care to distinguish his view from Rawls' commitment to the fair distribution of goods by the political community. See Michael Oakeshott, “The Rule of Law” in *On History and Other Essays* (Totowa, New Jersey: Barnes and Noble, 1983), p. 156. Oakeshott rejects the redistributionist impulse that informs regnant styles of liberal politics, as well as the notion that individuals possess inherent or natural rights. Where he is like many other liberals is in his preference for viewing civil community as a framework of rules indifferent to any particular substantive goods. For

facilitative only and not formative, the state to be like an umpire rather than a tutelary agent for the inculcation of virtue or the establishment of an overarching common good.

The neutrality principle putatively marks a conception of political association that squares most closely with human freedom. By conceiving of political community as a neutral framework of rules and procedures, contemporary liberal theorists attempt to protect individuals from being conscripted to the pursuit of goods *they* do not choose as goods, or which they do not wish to privilege over other goods. Certainly any robust conception of the common good does not fit very well with this neutralist conception. And indeed most liberal theorists do not make the common good thematic in their writings; the common good appears only in passing and then recedes from view. A notable exception to this view is the British political philosopher Michael Oakeshott. Oakeshott has provided one of the most provocative discussions of the common good by any recent theorist, notwithstanding his severe and uncompromising criticism of the common good as applicable to political association. He offers a defense of the principle that political community must be neutral to any conception of the common good that is more nuanced than most versions of the principle. His challenge deserves to be thoughtfully confronted and evaluated. In the next section of the paper, I set out Oakeshott's critique of the (political) common good, placing it within the context of his distinction between civil and enterprise association. In the next section, I continue this conversation by setting against Oakeshott's account of political community and the common good that of the Thomist philosopher Yves R. Simon. I shall argue that while Simon is sensitive to some of Oakeshott's concerns, he insists nonetheless on retaining the common good as a concept necessary for an adequate understanding of political association. There is a measure of truth in the neutralist principle, but it is obscured by rejecting the idea of the common good outright. And therefore much of liberal theorists' defense of liberty as a precious good for human beings living together in political community cannot be sustained. I will contend that by working out the vocabulary and assembling many perceptive distinctions bearing on the meaning of the common good, Simon's account points the way toward a more nuanced view of political association than contemporary liberalism is able to muster. Finally, I will address the issue of communion, in

other representative formulations of the neutrality principle, see—in addition to Rawls' *A Theory of Justice* (Cambridge, Massachusetts: Harvard University Press, 1971) and *Political Liberalism* (New York: Columbia University Press, 1993)—Bruce Ackerman, *Social Justice in the Liberal State* (New Haven, Connecticut: Yale University Press, 1980), and Ronald Dworkin, "Liberalism" in *A Matter of Principle* (Cambridge, Massachusetts: Harvard University Press, 1985).

the sense in which Simon employs the term, as central to the notion of the common good, by attending to certain problems it presents arising from the character of modern political communities in the current world situation.

II: OAKESHOTT ON CIVIL ASSOCIATION VS. ENTERPRISE ASSOCIATION

The main thrust of Michael Oakeshott's understanding of the common good can be stated bluntly: there is no common good to pursue in political community. This does not mean that the term is of no use whatsoever, since Oakeshott does say that certain subpolitical associations typically pursue a common good. These latter kinds of association Oakeshott calls enterprise associations, in which individuals come together in order to pursue some common purpose.² Examples of enterprise association include a factory, an army, a fire station, a development corporation, and a religious community.³ However these may differ from one another according to their diversity of purposes, they all have the same constitution as a distinctive kind of association: a unifying *raison d'être* exemplified by an end pursued in common. Enterprise association is essentially purposive in character. Its members join in a common, coordinated effort to produce a determinate product (e.g., bassoons), service (e.g., the extinguishing of fires), or outcome (e.g., the praise of God and the salvation of one's soul).

Further, enterprise association is essentially a voluntary mode of relationship. One chooses to associate himself with others in the pursuit of *this* common purpose rather than *that* one; his membership status is not that of a conscript, nor is it "natural" or ineluctable (like family membership). If at any future time he wishes to dissociate himself from an enterprise, he can do so merely by the initiative of his own choice. That is, he can decide that he no longer wishes to pursue the common good of the enterprise association to which he has attached himself. Perhaps he no longer sees its purpose as worthy of pursuit, no longer appreciates it as a good for him. Or perhaps he disagrees with the way the association is pursuing its common good. So long as one chooses to remain a

² "In respect of being seekers and therefore providers of satisfactions, agents may be related in the joint pursuit of some imagined and wished-for common satisfaction. I will call this 'enterprise association,' because it is relationship in terms of the pursuit of some common purpose, some substantive condition of things to be jointly procured, or some common interest to be continuously satisfied." Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975), p. 114. Oakeshott's theory of the common good—or, more precisely, his critique of the common good as applied to *political* association—is presented in its most sustained and comprehensive terms in the long second part of this work, "On the Civil Condition."

³ See *On Human Conduct*, pp. 114, 117, 119, 129.

member of an enterprise, however, one is committed to support the “managerial decisions” by which the common good is being pursued. As members of an enterprise, one must be prepared to place one’s energies and talents at the disposal of this common pursuit and subordinate any contrary desires and judgments one might have as to how best to manage it. Should this subordination become too discrepant with one’s sense of what the genuine good requires, one can always disengage oneself from the enterprise simply by electing to do so.

Because the enterprise relationship is so pervasive an instrument for conducting human transactions, Oakeshott observes, many have thought that the political relationship must be understood as an enterprise. But this is, he maintains, a misidentification, a kind of category mistake. There is another mode of association distinct from that which pursues a common purpose, and this Oakeshott terms civil association. Civil associates are not enterprisers, they are “*cives*,” citizens. They are related not by the voluntary choice to pursue jointly some specific, determinate end, but by a more general set of prescriptions that condition conduct but do not specify it. Civil associates are said to be united by the practice of civility, or, what for Oakeshott is the same thing, by the rule of law. The rule of law is a formal structure that enables men who are otherwise strangers to one another and bound by no ulterior common purpose to live together in peace.

More precisely, law comprises an ensemble of rules that prescribe limiting conditions for action but do not command any substantive performances. Properly understood, laws “do not enjoin, prohibit, or warrant substantive actions or utterances; they cannot tell agents what to do or say” but instead “prescribe *norms* of conduct; that is, abstract considerations proper to be subscribed to in chosen performances.”⁴ Civil association is thus to be understood as a formal relationship, in two important senses. First, the rules of conduct in civil association are systematized into a formal scheme, or “*lex*” as Oakeshott often calls it. The rule of law does not put before us a miscellany of rules unrelated to one another, but a coherent *system* of prescriptions and proscriptions. Second, legal rules are in force always: they are “standing rules” of conduct that are not exhausted by being followed on any particular occasion. In this respect they differ from commands, which direct a specific agent to do or not do a specific action. As civil associates we are always under the obligation, for example, to conform our conduct to the requirements of civil or just conduct.

The formal character of the rule of law means that it is applicable to the whole range of human conduct. It is comprehensive. Here again civil association contrasts sharply with enterprise association. The latter also makes use of rules

⁴ *Ibid.*, 126; see also “The Rule of Law,” pp. 128-130, 134.

and practices, but these apply only to the range of human activity that is harnessed to the pursuit of a specific, determinate end. Civil association under the rule of law regulates the pursuit of particular, substantive ends but does not prescribe or promote any particular ends themselves. Civil association thus provides to men who “in all other respects are total strangers to one another” conditions which facilitate their pursuit of self-chosen enterprises with a minimum of conflict and frustration.⁵

To those who would insist that civil association must somehow embrace a common good, or else prove to be unintelligible as a mode of *association*, Oakeshott replies that it is singularly difficult (if not simply impossible) to identify a common purpose that is unique to civil association. People can certainly pursue the common good, say, of prosperity, or devotion to a set of religious beliefs, or public health (Oakeshott gives the example of a sewage system). All of these goods are on his analysis, however, enterprise goods. They are substantive, discrete, noncomprehensive, and “terminable.” As such they cannot serve to identify *civil* association as a distinctive mode of relationship. “What is being identified is a development corporation, a business concern . . . or a religious community and we are left wondering why any of these should be called *civil* association.”⁶ Nor do peace, security, or moral virtue serve to identify a civil common good, because they are not substantive goods. “Nonsubstantive” means, for Oakeshott, a formal, standing condition or rule that is not “exhausted” on the occasion of its use; substantive goods are not only specific and determinate, they are goods that are exhausted on the occasion of their achievement. The purpose of firefighters is to put out a fire. When this is achieved, the activity of firefighting on this occasion terminates. Extinguishing fires is an occasional activity. Likewise, conducting a war, producing bassoons, and conducting a religious service. To be sure, such pursuits do involve repeatable engagements—there is always another fire to be put out—but they are terminable as regards any particular instance. In contrast, nonsubstantive goods involve ongoing engagements for which there is no closure. Consequently, they constitute a matrix within which goods that are determinate and terminable—including the common goods of enterprisers—can be more securely sought and enjoyed.

Oakeshott acknowledges that political community *can* be organized so as to commit its members to the pursuit of a substantive common good. But then what is established is a kind of hybrid mode of association: an enterprise association masquerading as civil association, which is to say not civil association properly understood. The subterfuge is not benign, in Oakeshott’s judgment, because political entities are compulsory modes of association. One does not

⁵ See “The Rule of Law,” p. 136.

⁶ *On Human Conduct*, p. 119.

become a member by choice, nor can one dissociate oneself merely by choice. Whereas membership in enterprise association is voluntary, in civil association it is not. Hence, in civil association understood as an enterprise, members may find themselves conscripted to the promotion of a common good they do not share, have not chosen as fulfilling to them.

In addition to the conceptual difficulty just discussed, there is another and deeper reason why Oakeshott eschews the pertinence of the common good to civil association. This objection reaches to a more profound discomfort with the idea that there is an overarching purpose that is obligatory for citizens, and it helps bring to light the persuasiveness the neutrality principle has for many liberals. At the same time, it helps make clear why toleration is so entrenched as a liberal virtue. Succinctly stated, Oakeshott's argument is this: human conduct is ineluctably free in a way that nothing else is, and that to require participation in and promotion of a civil common good grievously attenuates this freedom. As such it does damage to persons in their very humanity. Only if civil association stands clear of any commitment to a substantive common good can it furnish the freedom that is essential to allowing *human* conduct to occur. How is this the case?

Oakeshott's contention is not just that humans possess the faculty of choice. Rather, he emphasizes that human conduct is free not simply because it is the outcome of a choice among alternative courses of action, but more fundamentally because it is the outcome of intelligence and understanding. Human conduct is not like a wave crashing on the shore, an electron moving from shell to shell, a gas expanding, or an organic body metabolizing and developing to maturity. Human conduct emerges out of "reflective consciousness" whereby an agent appraises his situation and ascribes to it a meaning. As Oakeshott sees it, an agent's situation is what he believes it to be, rightly or wrongly, accurately or mistakenly, or it is not *his* situation. In a crucial formulation, Oakeshott goes on to claim that "misunderstandings are themselves understandings."⁷ We will have occasion to return to this pivotal claim in a moment.

In coming to an understanding of a situation, one is said to "disclose" or "enact" oneself. One reveals who one is as a unique individual, as this human agent and not another. How one understands a situation reveals and expresses who one is. Now, individuals tend, not always but frequently enough, to understand things differently. Another's understanding of an individual's situation can be imposed on the individual in question, and the latter can be made to conduct himself in light of another's understanding. But then the understanding imposed would be alien, and its imposition would, Oakeshott

⁷ *Ibid.*, p. 38.

maintains, compromise his status as a human agent. The person would not be choosing and acting in light of *his* understanding of his circumstances. This is the situation men find themselves in when civil association is organized as an enterprise. Absent is the opportunity to insulate oneself from having one's understanding (and *a fortiori* one's actions) placed at the disposal of others—the insulating liberty that is always available in voluntary enterprise association. Some are inevitably made to accept an understanding of a situation that is not their own and to align their actions with this alien understanding. For these reasons, Oakeshott avers that civil association understood as the corporate pursuit of a substantive common good destroys the link between understanding and conduct that Oakeshott thinks is essential to human agency.

Civil association on Oakeshott's version of liberalism recommends itself, then, as the one mode of human association that preserves the freedom of individuals to pursue goods (both individual and common) that reflect their own understanding of their life situations. Its very neutrality as regards any substantive, corporate purposes or values constitutes the condition requisite for men to make a life for themselves on their own terms, in comity with others embarked on the same kind of enterprise.

III: SIMON ON POLITICAL ASSOCIATION AND THE COMMON GOOD

I want now to turn to the account of polity and the common good presented by Yves R. Simon. In many ways, this account is quite different from that of Oakeshott. Simon stands within the tradition of commitment to the notion of the common good as the proper end of political association. Unlike Oakeshott, Simon speaks easily the language of the common good, of ends and purposes for the polity. Yet I want also to suggest that certain features of their thought overlap. I also wish to argue that the importance of this overlap is best understood in Simon's common good terminology, and not in Oakeshott's more astringent vocabulary of civil association.

Simon maintains that "every community is relative to a good to be sought and enjoyed in common." Civil community exists for the sake of "goods situated beyond individual achievement." Simon accepts Aristotle's dictum that "the common good is greater and more divine than the private good," and his account is worked out under the guidance of this principle.⁸ We now turn to an examination of the elements of the common good.

⁸ Yves R. Simon, *A General Theory of Authority* (Notre Dame, Indiana: University of Notre Dame Press, 1980), pp. 26, 28-29, 31-32. The reference to Aristotle is to *Nichomachean Ethics* I, 2; 1094b7.

A. COMMUNITY AND COMMUNION

In the communal mode of association a common purpose is pursued by the members through the mutual coordination of their action. This is the most obvious difference between mere partnership and a community. A partnership is essentially a contractual relationship. A banker, say, lends a businessman capital, which the latter uses to generate a profit out of which he repays the loan. Although both the banker and the businessman aim to make money, neither coordinates his actions with the other's in order to achieve some singular, mutual end. To be sure, the two men must take some account of each other's actions in order for their transaction to be successful. This coordination, however, is for the sake of achieving each party's own individual purpose and not for any common outcome. "These two men do not make up a community. What they call their 'common interest' is in fact a sum of private interests that happen to be interdependent."⁹

But there is another important feature of communities that partnerships lack, viz., the experience of "communion." Relative to one another, Simon says, partners dwell in solitude. In the course of doing what is required to fulfill the terms of their agreement, the banker and the merchant each goes his separate way: the one manages his capital while the other markets his product. Members of a community, however, not only share a common end, they also participate in communion. "The most important part of community life," Simon says, "takes place in the heart of man."¹⁰ By the term "communion" Simon draws attention to something in addition to the sharing of common external goods of political life — goods such as roads, public health, security of persons and possessions. Central to the notion of the common good is the capacity to participate in "immanent actions of knowledge and desire," to enjoy "a common life of desire and action."¹¹ It is mutual awareness of each other as communicants in a common effort that makes up "the most profound part of social reality." "Communion implies, in addition to immanent acts relative to the same object, my knowing

⁹ *A General Theory of Authority*, p. 30. Of course, the banker will desire the success of the businessman's project, inasmuch as the former seeks the repayment of the loan. But if the project fails and the businessman nonetheless repays the loan from other sources of income, the banker achieves the goal he has pursued. Rather than a common outcome, their partnership eventuates a sum of outcomes, each of which is traceable to one or the other partner, but not to both together.

¹⁰ Yves R. Simon, *The Tradition of Natural Law*, ed. Vukan Kuic (New York: Fordham University Press, 1965), p. 96.

¹¹ Yves R. Simon, *Philosophy of Democratic Government* (Chicago: University of Chicago Press, 1951), pp. 64, 49.

that the others know and desire the same object and want it to be effected by the action of our community.”¹²

Communion thus involves the recognition that others desire what I desire together with the desire to bring this about not as the result merely of the sum of our actions but precisely as the result of our common action. What is finally produced by this unity *in* — and not just a unity *of* — desire is the feeling of solidarity and oneness. Simon remarks that prisoners working on a common project, but in isolation from (i.e., in ignorance of) one another, do not experience communion. They thus do not share in a common good strictly speaking.¹³

B. “A GOOD STATE OF HUMAN AFFAIRS”

The common good must also be distinguished from the collaboration of many in order to produce some external work or product, e.g., one of Egypt’s pyramids, even if the work can be thought of as a good. Though brought about by joint activity, the enjoyment of such goods, instead of being distributed universally, is limited only to one or a few. Such goods remain private and individual, not common. Although the notion of the common good has sometimes been invoked to characterize these joint projects, “the common good conceived as a work of art and a thing external to man is merely a corruption of the genuine common good.”¹⁴ For a good to be common it must be distributed to all the members of the community. And it cannot be if it is *merely* a product, a “public work.”

The proper way to characterize the common good, Simon says, is as “a good

¹² *Ibid.*, p. 65. See the parallel passage in *The Tradition of Natural Law*: “When men are aware of their unity in knowing and loving or hating, we speak with entire propriety of their communing in acts of cognition and love or hatred. Here are immanent actions which, because of the awareness of unity, assume a social character. Clearly, these communions are the most genuine and the most profound of all social facts, and the good condition of these communions, the good condition of whatever pertains to acting together in these immanent actions, is *the deepest and the most precious part of the common good*” (pp. 95-95, emphasis added). It is instructive to note that Simon’s understanding of this dimension of the common good echoes a pivotal passage in Plato’s *Republic*, Bk. V, where Socrates argues that the greatest good for a city is “what binds it together and makes it one, and the greatest evil is what splits it and makes it many.” The unity of the city consists in “the community [*koinōnia*] of pleasure and pain” such that “when one of [the city’s] citizens suffers anything at all, either good or bad, such a city will most of all say that the affected part is its own, and will share in the joy or the pain” (462a-d). See *The Republic of Plato*, trans. Allan Bloom (New York: Basic Books, 1968).

¹³ See *Philosophy of Democratic Government*, p. 65.

¹⁴ *A General Theory of Authority*, p. 27.

state of human affairs,” or “the excellent condition of the human community.”¹⁵ In what does this state or condition consist? And why cannot an individual, or perhaps a small group of individuals, establish such a state of affairs? Why must this be a *political* or *civil* achievement? Simon singles out two respects in which individuals left to themselves are deficient. These deficiencies are remedied by membership in communities, and especially in civil community. In brief, civil community—and, it would seem, it alone—furnishes individuals with the common goods of what Simon calls plenitude and duration. We will examine each in turn.

First, an individual can exercise only a limited number of the full range of human capacities. The achievements even of geniuses such as Leonardo da Vinci fall short of exhibiting the totality of human “virtualities.” To accomplish anything requires one to renounce certain other engagements; to do *this* means one must forego doing *that*. To do something well especially seems to require that one narrow one’s range of concentration and the deployment of one’s talents. The full range of human goods lies beyond the scope of any single individual’s achievement. The limitations of individual achievement frustrate “the desire for totality which belongs to rational nature.”¹⁶ Whereas a rational nature desires *all* goods, all satisfactions which are proper to human flourishing, only in civil community are these individual constraints transcended, for only here can the full range of human excellences be present. What an individual cannot originate on his own he can participate in as having been originated by another. I might not have the talent or leisure to produce sublime music myself, but I can listen to Glenn Gould play Bach. This amplification of human excellences Simon calls “plenitude.”¹⁷ The full ensemble of such goods can be approached only in a community extensive enough to sustain their achievement and organized in such a way as to make them available to all. This constitutes a strong argument for the involvement of political community with common goods that are unavailable to subpolitical associations.

Second, civil community offers a much greater degree of compensation for the perishable character of individual achievements by serving as a kind of repository within which they are secured against ephemerality. The “virtual immortal life” of civil community extends the durability of individual accomplishments and “compensates for the brevity of individual existence.”¹⁸ Particular accomplishments fan out within the community and endure far beyond

¹⁵ *Ibid.*, 77; see *The Tradition of Natural Law*, p. 92.

¹⁶ *A General Theory of Authority*, p. 28.

¹⁷ *Ibid.*, p. 29.

¹⁸ *Ibid.*, p. 28.

the occasion of their appearance. The more our accomplishments register with others the more permanent they become. Whereas Simon acknowledges that communities less comprehensive than civil community can to some degree establish the good of durability—he mentions the family in particular—his point is that the civil community provides the most extensive structures of durability available to human beings.¹⁹

Plenitude and duration represent common goods inasmuch as they are in principle “accessible to all men at all times” — provided that the polity is organized to facilitate such distribution and appropriation. This requires a fairly extensive set of liberties: at a minimum, certain liberties of association, mobility, speech, and access to education, the maintenance of which falls under the authority of civil rule. Such goods are not to be thought of as particular, external public works. They comprise a condition, a “good state of human affairs.”²⁰ It is fair to say that Oakeshott neglects to thematize both of these features of political community, and this omission prevents him from appreciating the unique sorts of goods that only political community can provide. To the extent that Simon emphasizes that such goods are conditioning goods, and constitute the *form* of the political community, his view and Oakeshott’s overlap. But in contrast to Oakeshott, and convincingly in my view, such conditions do in fact constitute a *good*. Here Simon is more perceptive and far-reaching in his analysis than is Oakeshott.

The common good appears in many and diverse situations, and it is well to bear this in mind when one is trying to fix the meaning of the term. Knowledge and family conviviality *are* common goods. Other examples of common goods could be multiplied. But these examples should be kept distinct from the notion of the *civil*, or *political*, common good. Knowledge is indeed a common good, yet it can be enjoyed by a solitary individual; it does not require the presence of a community of participants for its realization.²¹ The civil common good, however, does require the cooperation of many. It is a good that is not merely produced by a community, it is enjoyed only by individuals *as members of* community. Further, the civil common good is more comprehensive than the common good of familial sociability and of many other common goods. Indeed,

¹⁹ See *The Tradition of Natural Law*, p. 89, fn.

²⁰ *Ibid.*

²¹ Knowledge does seem to require some degree of communal, or cooperative, action for its production and availability for enjoyment—at least, but not only, because language and speech are necessary for the sharability of knowledge, and these are not achievements of individuals but of communities. My point here is only that the appropriation of knowledge can include occasions in which a solitary individual depends upon, but does not cooperate with, others.

the political common good is the most comprehensive common good, for it furnishes the conditions whereby not just members of a particular family can enjoy being together, but whereby all members of the polity can live together in a humanly fulfilling way—that is, in what Simon felicitously calls a good state of human affairs.

IV: ASSESSMENT—REINSTATING THE COMMON GOOD

In the final part of my remarks I want to provide a critique and evaluation of these two accounts of common good and political association. Rather than take up each thinker in turn, I propose to engage them in a dialectical interplay that aims at a proposal for reinstating the notion of the common good that is distinguished from (as Simon terms it) its counterfeit expressions.

First, I suggest that, *pace* Oakeshott, civil association under the putatively neutral conditions afforded by the rule of law in fact epitomizes a *common* good. That is, unless civil associates even in the Oakeshottian sense see this neutral political community as desirable, and therefore as a good, what reason will they have to cooperate in its furtherance? Absent the image of the common good standing before their minds, what motive will they have to preserve and transmit its virtues to succeeding generations? For virtues it surely inculcates, unless law-abiding conduct as a self-embraced understanding and self-chosen commitment does not mark an excellent state of affairs. To repeat, why would one be moved to educate future generations in their obligations? Further, this is surely a common good even in Oakeshott's sense of a nonsubstantive good that is not exhausted on the occasions of its engagement. We engage the rule of law, the practice of civility and the demands of citizenship continuously. These are not determinate, specific goods that might or might not be pursued and, when achieved, let drop in order to take up the pursuit of other goods. They are rather more like what Aristotle calls *eudaimonia*, a kind of good-of-all-goods, or the ultimate good that stands behind or informs (i.e., in-forms) all other goods. All cooperate to bring about this good and all benefit from it at all times. It is like the air we breathe. For Oakeshott to reject absolutely talk of the common good obscures this fact, unnecessarily so in my judgment. As part of our civic discourse, we require the notion of the common good in this sense to motivate individuals to sustain civil association as a good for them. The notion of the civil common good is not, as Oakeshott maintains, dispensable to our understanding of life as citizens dwelling together.

What I have just argued is another way of making Simon's point about the civil common good being, in its most pregnant and essential sense, a condition, a good state of human affairs. This is to my mind perhaps the most insightful

feature of Simon's account. In this sense, the political common good is the overarching condition of law—in Oakeshott's vocabulary, civility—that enables human beings to flourish in a manner that both harmonizes and facilitates the perfection of their nature: we are ineluctably social beings who require, and not just tolerate, a life lived with and among others. Particular goods are capable of being pursued within a framework of a common good that stands always available to enable their pursuit. Participation in this enabling framework is itself a good which we everywhere and always internalize so long as it remains present and secure. So Oakeshott has in effect put before us an image of the political common good *malgré lui*.

Seen against this background understanding of the common good, other goods which might appear to be simply coincident with the political common good in its most essential sense now are appreciated as not simply the same as *the* common good. That is, material goods such as public health, a scheme of public transportation, institutions of public communication, even constabulary forces and fire protection, and so on, are best understood as lower-level political common goods. They stand at the threshold of the common good in its higher and more elevated sense. As threshold common goods they are, first, plural and so cannot be considered in the strictest sense as *the* common good; and second, they support the daily intercourse of members of the polity in their face-to-face encounters. However, these goods are not continuously drawn upon by all. If I am not traveling I am not now using the public highway system. I am not always using the sewage system, or calling on firefighters. Not at every moment am I using the sewage system or other components of public health. Nor do I cooperate with others in the maintenance of these public goods except in a qualified sense. I might support these systems with my taxes, but this is an indirect sort of cooperation. Most of us do not pool our *activity* in order to construct any of these public goods; to the extent that they involve what Simon calls social communion they are certainly at a remove from our sharing in the activity of being a citizen. Sharing in the good constituted by our public highways, for example, we typically remain separate individuals. Perhaps we should simply say these are more illuminatingly called public rather than common goods.²²

²² Some of our more discerning theorists of the common good make the point emphatically. John Haldane for example maintains that “the public good does not equal the common good.” Haldane is concerned to point out the lack of a coherent notion of the common good in Rawls' political conception of justice as a neutral regulating order, on grounds that “the idea of citizens as free and equal persons remains individualistic: the good of citizens that results from participation in an order regulated by the political conception of justice is a private one.” See “The Individual, the State, and the Common Good,” *Social Philosophy and Policy* 3 (Winter 1996), p. 73. While appreciating the point Haldane wishes

Be that as it may, I have called them threshold common goods because they do provide an entrance into the enjoyment of the common good as a good *condition* of human affairs.

V: COMMUNION AND ITS PROBLEMS

As we have seen, Simon argues that the highest and most essential achievement of the political common good is the communion experienced by its citizens. It is, he says, “*the deepest and most precious part of the common good.*”²³ In this respect, the common good can be appreciated as something more than a merely material achievement, however important the latter may be for satisfying the exigencies of human living. Communion elevates and ennobles those who participate in it. The ideal of communion helps account for the intensity of attraction the notion of the common good seems perennially able to attract. For it is in immanent communion that individuals transcend their isolation and become one with each other. That many are moved by the “inconsolable coldness of modernity”²⁴ to yearn for the communing aspect of the common good is indisputable.

The notion of communion as a vital aspect of the common good marks a deep chasm between Simon and Oakeshott. For Oakeshott, the civil relationship consists in no more than a “watery fidelity” and he is deeply suspicious of the desire to find the “warmth of solidarity” in civil community.²⁵ The bonds of love and affection, he argues, are proper affections to seek, but this is most properly done in the interactions between friends and lovers, not in that between citizens. Part of the reason Oakeshott is hostile to the quest for communion at the level of political community is that, in his estimation, it represents a

to make—that mere neutrality toward all goods cannot be a sharable good—I think he may overstate his case. Sheer neutrality might well not be understandable as a good, but the sort of neutrality for which Oakeshott is contending is, I have argued, the neutrality exhibited by a rule of law that socializes all in its obligations and privileges. But acting civilly in this way seems pretty clearly to be a shared and communicated good. We share in this good every time we encounter a neighbor, and further, we share and communicate it to each other. The point about public goods not being equivalent to the common good as such, however, is well put, and for the reason Haldane states: they are publicly available and used in public, but used by individuals for their own purposes. A public park is thus a public, not a common, good. But the civil conviviality I share with others there before me as fellow citizens—this is an instantiation of the common good.

²³ *The Tradition of Natural Law*, p. 96.

²⁴ Benjamin Barber, *The Conquest of Politics: Liberal Philosophy in Democratic Times* (Princeton, New Jersey: Princeton University Press, 1988), p. 179.

²⁵ *On Human Conduct*, p. 276.

collectivizing tendency: it intimates a desire to see one's fellows as "comrades" rather than as fellow citizens. But there is another reason as well, and this has to do with the evidently close connection between communion and warfare. That is, communion seems most evident when men are joined together in common battle with an enemy who threatens the existence of their community.

The model of a state understood as association in terms of a substantive purpose and of its apparatus of ruling has always been sought and found in the image of a state bent upon conquest or of a city besieged: the common vocabulary of purposive "rule" is military. . . . [T]he condition of almost continuous warfare in modern times has familiarized Europe with the spectacle of states significantly, if intermittently, transformed into enterprise associations; and this has been the chief nourishment of the belief that a state is properly to be undersold in these terms.²⁶

It is instructive that when Simon turns his attention to those occasions in which communion is typically experienced by citizens of a polity, he instances things such as "military parades, inaugurations, national funerals, the daily raising of the flag in the schoolyards of the United States."²⁷ The ultimate connection with the sacrifices of soldiers in battle is manifest. As J. Glenn Gray has observed, in his classic study of the experience of warfare, war teaches us that "[s]ome extreme experience—mortal danger or the threat of destruction—is necessary to bring us fully together with our comrades."²⁸ Engaged in common action in face of death, men experience a liberating enlargement of the self, a sense of belonging to or with others: "With the boundaries of the self expanded, they sense a kinship never known before. Their 'I' passes insensibly into a 'we,' 'my' becomes 'our,' and the individual fate loses its central importance."²⁹ This communion establishes a kind of immortality for the individual who dies in battle insofar as he lives on in the men to whom he has been united and who he has helped to survive.

If all this is so, then it presents a curious picture of communion. For it suggests that it is only insofar as men have experience of war that they will have experience of and appreciation for communion. Long periods of peace will tend to attenuate the experience of communion in generations who have known only peace. But if communion is essential to the full experience of the common good, then a

²⁶ *Ibid.*, p. 274.

²⁷ *Philosophy of Democratic Government*, p. 66.

²⁸ J. Glenn Gray, *The Warriors: Reflections on Men in Battle* (New York: Harper Torchbooks, 1970), p. 45.

²⁹ *Ibid.*, p. 47.

world full of liberal democracies will over time seem to forfeit this essential experience. Participation in the good of citizenship, engagement in the practice of civility and law-abidingness, might well seem a tepid substitute for the solidarity present in great common tasks such as the defense of one's community against mortal peril. And if this is so, then we must face the question of whether the deepest wellsprings of communion are available to citizens inhabiting a world of modern democracies, where warfare tends to be quite rare. The mundane, prosaic tasks of commerce and daily sociability do not seem to call forth the intense sort of solidarity which, Simon argues, lies at the heart of the common good.

Add to this anomaly the fact that in the United States we live in such a large, expansive, and diverse country and one might begin to doubt whether such a polity can sustain the conditions requisite for a robust instantiation of the common good along the line Simon has so eloquently laid out for us. What common enterprises, short of warfare, can citizens of a large modern nation-state undertake sufficient to call forth feelings of solidarity? If political community as a neutral framework is too thin an image of the common good, perhaps the image of the common good as communal solidarity is too intermittently realizable under contemporary conditions. To the extent that a country is successful in steering clear of war, its citizens will have scant opportunity to undertake common enterprises in which they know themselves to be joined together in a great and ennobling purpose.

VI: CONCLUSION

Notwithstanding the difficulties associated with the experience of communion in our current circumstances, the notion that political community must forego *all* talk of the common good, as Oakeshott would have it, is unpersuasive. In the foregoing sections of this paper I have tried to offer reasons why this is the case. Whatever we feel constrained to say about the modern prospects for solidarity, I have argued that the neutrality conception fails to capture the genuine character of the civil condition. This is what Oakeshott should have seen, on his own terms, but does not. Simon does see it, and he provides the most revealing terms and distinctions with which to appreciate the insight. Talk of neutrality, while having some degree of relevance, at least to modern polities, is a sort of distant second-best discourse for understanding political community. When distinguished from its infelicitous formulations, reinstating the concept of the common good is a more powerful, discerning way of coming to that understanding. For then we appreciate that the political common good, in its innermost essence, is not a material, external achievement, but a spiritual,

immanent one. It resides, as Simon says, in the heart of man, even if what does reside there is less powerful than it once tended to be.³⁰

³⁰ I wish to thank my colleagues John F. X. Knasas, Thomas Russman, O.F.M. Cap., Edward Houser, and Michael Liccione for criticism and comments on earlier presentations and drafts of this paper, which helped me to clarify my thoughts and formulations on these matters. For what is asserted herein, however, they bear no responsibility.