

# Private Rights and the Common Good in Late Scholastic Thought

## SUMMARY KEYWORDS

aquinas, virtue, government, common, property, justice, aristotle, person, people, rights, society, theory, private, jurists, individual, act, modern, true, founders, 19th century

## SPEAKERS

Natália da Silva Perez, James Gordley, Paolo Astorri

### **Natália da Silva Perez** 00:21

Hi, my name is Natália da Silva Perez, and you are listening to the Privacy Studies Podcast. Today, I am honored to have my colleague Paolo Astorri, my co-host, to introduce a lecture by Professor James Gordley of Tulane University in New Orleans. Thank you for joining me, Paolo.

### **Paolo Astorri** 00:39

Thank you so much. It is a great pleasure for me to be here.

### **Natália da Silva Perez** 00:43

Tell us about James Gordley

### **Paolo Astorri** 00:44

James Gordley. He is an expert in comparative and contract law. He is the author of the book, philosophical origins of the mother of mother contract doctrine with Oxford University Press. He is also the overall foundation of private law property toward conflict unjust enrichment. And, and it's also the author of the jurors critical history. James Godley has made a big contribution to the reshaping of the history of private law abroad, so much attention to the role that theology and philosophy played in the history of law. It's such a great pleasure to be here, and it's a great, great event for us.

### **Natália da Silva Perez** 01:24

Thank you so much. Now, let's listen to James godly

### **James Gordley** 01:28

premise as much modern political thought is that there's an inherent tension between the private rights of citizens and the public good of society. Some modern writers can't imagine how it could be otherwise. And that is a point to whichever return whatsoever, the two were thought to be in harmony. They were in harmony, I believe in the work of blade scholastics. Indeed, I believe that one can find that harmony throughout the work of their school. I disagree then with scholars who would like to read modern ideas of quote subjective rights backward into the light scholastics your colleague, Annabel

bread, I regret she isn't here today. But she's shown it's a mistake to do so. But I also disagree with some scholars who have influenced me a great deal. In his work. I admire one of those Quentin Skinner, who was one of the first to recognize the importance of the work of the late scholastics. He saw it as the progenitor of modern liberalism. I don't think it was the progenitor of modern liberalism. Modern liberalism is different. It disrupted the harmony between private right, and the common good. It was characteristic of the late scholastics. I would not describe their work as laying the foundations of modern political thought. I would describe it as an alternative to modern political thought and perhaps the only alternative that would be able to restore this last harmony. The other from whom I've learned a great deal is Annabel Brett, she sees growth nuanced change in context, where I see continuity, particularly between the work at the Dominican founders of the school, Francesca, Victoria, and Dominica Soto. Perhaps she's asking what makes these two philosophers different. I'm asking what makes them alike. Perhaps she's doing the historians job of putting things into context, where they take on life and flesh. And I'm doing a philosophers job of abstracting from that context and trying to ask what they had in common. At any rate, I believe they have the same ideas about private right and public good, and share these ideas with a Jesuit successors, Louis de Molina, and Leonard alexius. To build on their work. We both agree that there were Mavericks whose views were fundamentally different. She leaves quite correctly that Vasquez was one of these Mavericks. I would also name Francesco Suarez. So let me describe them what I think were the common views. First, a private right, and then a public good and then I'll describe how the two fit together. So let's take private, right, most European languages, but not in English, the word that we would translate as law. When we say for example, the natural law the law of England, the law of contract, is the same as the word we translate as right as when we say the right to own property, the right to vote. The word is us in Latin, wha that he thought? Were non English speakers want to be clear about which meaning they me haven't aligned. They use objective right? For the first meaning, and subjective right for the second Roman jurist use the word us right in this second sentence, to meet the right of a person to have something or do something. When they did. It was nearly always to describe a particular us a particular right For example, we could have a variety rights in the land. In the lamp another person would could have the right to walk across it. The USM Blondie, drive animals across us again de waterflow across us aqueducts. The burn lion stone on us Kalki Skullcandy. A person with the use of rock had a right to use and take produce from land. It was a US losers with 10 d fU, nd a debt was a US deputy creditor how to use credit at Aquinas, on whom the late scholastic space so much of their work rarely use the word us in a second sense. When discussing the harms done to another, he's asked whether one person was allowed to possess something as his own. by discussing property as whether someone is allowed to possess something as its own discussing murder he asked whether one person is allowed to kill another. So he was using the term lytchett if you'll allow me to switch from classical to ecclesiastical pronunciation legend is allowed. I use the word thing race when he described restitute SEO restitute. Seo he said appears to be nothing else and to reinstate someone in the possession or ownership of each thing. This race in canon law restitutio was a prerequisite for forgiveness. One who had committed a sin by harming another could be not be forgiven without restitution that is without giving it back. kana cited a passage in which St. Ambrose it said that if a person sins by taking away another thing, quote, the sin is not forgiven unless restitutio is made of the thing the race that was taken away. In the 12th century, that passage was included in the decree a compilation of sources authority for credit to authoritative for Christians, that was Tria scripted made supposedly by gration gration use the same latin word. He said, quote, penance is not done, even though there's a race is not restored. And now we come to the origin of the

term us to mean what we would call subjective right? race was an awkward term to describe that which was to be restored. When Aquinas mechanics spoke of a race, they were not merely referring to the loss of a physical thing. They were referring to the loss of honor or reputation, or anything else that belonged to a person. So in Vitoria discussed restitutio, in his commentary on Aquinas, he proposed using the term write us a write us is nothing other he said, then what one is allowed, allowed to do, or what the lex the law allows, we say Indeed, I do not have the right to do this. And we mean, it is not allowed for me to do it. I said I'm using my right means it is allowed. Soto said that us in one sense means lacks law as when we say your cibula use canonica. That is what we would call objective Rector a lot today. in another sense, he said it's a legitimate power. Somebody exercises over a thing or person. Bless yes defined right. And that sense is a legitimate power violation which constitutes an injury. Molina said that right as, quote, faculty are power to something a man has ordered the use of something by one's own right. Now there's a new type of terminology and some modern scholars have interpreted as a shift from the medieval to the modern concept concept of subjective rights. as Brian Tierney shown and I has shown I think he was spot on for the late scholastics. The change was a more adequate way to express what Aquinas and the candidates had said, using a different word. And I think I've shown that the quote tyranny. Victoria's problem was that he could not discuss restitute to adequately without considering the concept of USS is subjective right. The definition he taken from Aquinas did not include that concept. One source of error is that since the 19th century, people have become accustomed to the idea an idea of subjective rights that was foreign to the late scholastics. So as soon as they see them using us to mean what we call subjective rights, they assume that they must have meant the same thing. It became common in the 19th century to define rights in terms of the will of the right owner owner. Romani will con the right to property, and the owner may do as he chooses with his own and exclude others from using a promise for is the expression of the will of one party to a contract. A contract is the expression of the will of both in the 19th century, Reverend a lot about this and the 19th century and in my view, quite independently of the influence of cod, both Anglo American and continental jurists defined rights in a similar way, property was defined in terms of the will of the owner, contract was defined in terms of the will of the parties toward or dilek was defined in terms of interference with another's right and others right was defined in terms of will, juris look back today on the 19th century as an age of will theories. This idea of ride has been discredited among modern jurists, because it cannot explain the limits, but the law puts the exercise of private rights. For example, sometimes, the owner does not have the right to do as He wills with its property. In times of necessity, a person in urgent need, can use it against as well. contract is not always enforced the will of the parties. A harsh, unconscionable bargain will not be enforced. Contemporary jurists have rejected the will theories because they can't explain those cases, that contemporary jurists have not found a theory that can do so. For some time now, I have urging I've been urging my colleagues in law schools to look at the work of the late scholastics. The right of another use property and time of urgent need had been recognized by the medieval canon lawyers. Aquinas followed by lesseps Soto Molina and for that matter by Hugo grotius, explained the property is not an absolute right. In principle by nature in the beginning, all things are held in common property is instituted to avoid the difficulties of common ownership, which had been pointed out by Aristotle. If all things weren't common, there would be quarrels, people are working a lot would get no more than people who work little. So, to avoid these disadvantages are things are private property is established, things are divided up. According to Aquinas, however, notwithstanding quote, the division of things, man's needs have to be met remedied by these very things. Therefore, if the need was, quote, manifested, urgent, then quote, it is lawful for a

man to meet his own need, by means of another's property. Less Yes, so no, Molina, for that matter. grotius all agreed. According to the interpretation of medieval canon lawyers, excuse me, medieval civil lawyers. The price agreed on by the contracting parties had to be not greater or lesser than the just price by more than one half. If it was Roman law gave a remedy for what the medieval is called. Bless you enormous. Aquinas explained that when a price is unjust, the contract violates connotative. Justice as Aristotle had described it, complicated justice requires that neither party being rich at the others expense, according to Aquinas restitutio is an act of cognitive justice. He added that for pragmatic reasons, the law limits the remedies to more than the deviations of no more than one half. Soto Molina lessees agreed, so, for that matter to grotius. Now, of course, all of them Aquinas the late scholastics and grotius, recognize them out or could exercise his rights as he chose. And then the contracting parties could exchange what the crumbs Nevertheless, the limits of the rights were determined by Justice and this is the difference the limits in the rights were determined by Justice, by the reasons it was just for the person own property. Ah, sorry, there was a telephone and contract with the parties could agree upon was limited by the equality that connotative justice requires an exchange, the novelty of the modern idea of rights, the idea of caught the idea of the 19th century jurists, the innovation was not to introduce the concept of will it was to leave out the considerations of justice, anchored in the social order that once defined and therefore limited these rights. So private right. Now let's talk about public good. Here again, the late scholastic strona Aquinas, who had run on Aristotle, in detail, your theory is different, and much of that detail has been accurately traced by intellectual historians. Ah, Nevertheless, their theories have three common features which set them apart from modern political theory. And I'd like to describe those three common features. First, a human being lives in community because, as Aquinas said, paraphrasing Aristotle, a human being is a political and social animal. A human being must do so to flourish as a human being. The purpose of community is to promote, as so far as possible. The flourishing of that since the happiness of each of its members put it another way to promote the common good. People form society Vittoria said because, quote, as Aristotle is shown on the politics, man is naturally a social, being social and civic. Through nature, Soto said, human beings have a quote Faculty of conserving themselves. Ah, both as to their temporal welfare and their spiritual prosperity. men could not well exercise this faculty dispersed, therefore they have an instinct to live together, so that each can be a help to the other. According to bilena unless he is situated in a community of many families, he could not be instructed and imbued with the skills that can the mores befitting a free and honest man, and so he could not develop friendship, and the other virtues. According to grotius. The source of the social order is man's impelling desire for society. Because human beings can only flourish by living in society, their choice to do so is voluntary. Let's be careful when we use the volunteer set word voluntary. choices of human beings, as distinguished from the choices of animals are voluntary because they depend upon reasoning the will, a person understands the value of the and is pursuing. And he hasn't, he does so he pursues it because it's worthwhile. He has an inborn knowledge of the ends that are ultimately worth pursuing. If he's to flourish as a human being. They are according to Aquinas, the first principles of action known without demonstration. They're applied to the situation before and by practical reason prudencio promises. Aquinas use the term Cinta rhesus to mean the way in which these first principles are known, and also the way in which they're applied, for which you'd also use the term conscience. Now looking forward, the working of conscience was described in a very similar way in the 16th and 17th century by Protestant authors by Anglicans such as Robert Burton, and Richard carpenter, and Robert Sanderson by Lutherans such as Friedrich Baldwin, and Johannes oars by Calvinists, such as Your Highness, Andreas vandermeulen,

and Puritans such as William Ames. This is one of the things that they all could agree on. Sometimes practical reason leads to a single conclusion as to how we should act. We know that we should not do evil to others, we conclude that we must not kill them. Sometimes practical reason leads to a variety of conclusions. There are a variety of good ways in which we could act. So to choose one requires what Aquinas called a *determine nacio* a selection of which good action should be taken. The choice of a human being to be in community to live in the community is voluntary. In the first sense, a human being must live in a community to flourish as a human being necessary in this sense, it is still voluntary, is the one choice he can make if he's to live as a human being. And we do not save it people acting voluntarily with he do good others rather than evil, even though they must do so if they deliver good live. Contrast, there's no one right choice as to what government the community should have. So the choice has to be made by somebody, it must be made by the community, which forum to adopt, it is a determined *azio* regarding which way to pursue the common good. They may Institute any of the legitimate forms of government that Aristotle described, monarchy, the rule of one aristocracy, the rule of the best and wisest democracy, the role of the multitude, many. They may institute a mixed form of government. All of these forms of government are consistent with the common good. The community may make its choice by agreement or by custom, it may do so by majority vote. Vittoria said it would be sufficient quote, if the greater part agrees. Molina said it would be enough if the greater part of the Republic sense because the alternative would be to require the consent of all What she said in a multitude where it happens. That was the second point of agreement, community must choose. The third point of agreement was that when it came to government becomes subversive of the ends for which it's constituted, the people have the right to resist. Aristotle had said the defining feature of the bad forms of tyranny, oligarchy. The perverted form of democracy, was that the rulers pursued their own interests, not the common good. According to Aquinas, those who disobeyed a tyrant were not guilty of sedition, because the timer did not pursue the common good. According to Victoria, the Thailand's tyrants laws were not binding. According to Soto, a tyrant could have his kingship lawfully taken away by the Republic. According to Molina, if a king fell into tyranny, or attempted to do that, which in no way benefit of the Republic, it would be the same as if the throne fell vacant, the entire right, the entire power of the Republic would devolve on the republic itself, that a previous Italian had to constitute a government that can constitute a new king, choosing whoever it wished, or last that wish to limit his power, or it could choose whatever kind of regime will nevertheless, once the people Institute any of these forms of government, they cannot alter it, it will, if they choose a band to be ruled by a king, they cannot take back his power unless he becomes a tyrant. Otherwise, as Molina said, the rule of Kings would not be a monarchy, it would be a democracy because the people could always overrule them. grotius warned that quote, no, a wise person fails to see how many evils would arise, if it were permissible for the people to resist their rulers, if they made bad choices. Nevertheless, the people may resist their rulers. If in the beginning, laws were made to limit their power, and they transgress these laws, or if the sovereign power is held by the king only in part, in part by the people in the Senate, if so, force can be used to keep the king within the scope of his powers grotius. Now, let me describe what I might do if this were a longer lecture. If this were a longer lecture, I would speak about the later fortunes of these three core ideas. And a lecture I gave at the Max Planck Institute in Hamburg, I discussed Calvinists writers such as Theodore beza, Theodore Calvin successor, Geneva, and the author of the anonymous very influential track off track did a concert Serrano's. In my lecture, I showed that despite the differences, they subscribe to the same core ideas as the late scholastics. they relied on Aristotle and Aquinas, according to Quentin Skinner, quote, we may say with very little exaggeration,

the main foundations of the Calvinist theory of revolution contained in these tracks were in fact constructed entirely by the Catholic adversaries, and he means the late scholastics. I'm not sure. In my lecture, I suggested there could have been parallel evolution. You could begin with the principles of Aristotle, and arrived at these three conclusions. And I said the same Oh, John Paul had an English author who was wrote in exile at George Buchanan, a Scotsman. It's not so hard to imagine how they could begin with Aristotle, and arrive at the same conclusions independently. Be that as, as I have already noted, there was another Protestant author who agreed with these three ideas, and that was Hugo Grotius. Else elsewhere, I've explained why I disagree with Richard Hooker with Saad Rhodius as leading a revolt against Aristotelian philosophy, I don't think that's true. From what I've already said, however, we can see the Charles Tanner was mistaken to describe him as the CO architect of equivalent Rodian Locky in theory, and that theory according to Taylor, each party to the contract can be fully competent, the social contract can be a fully competent human being outside of society, a fully competent human being outside of society. And the reason that people contract is quote, nearly for mutual benefit in providing security and fostering exchange and prosperity. Now Grotius did not believe either of those propositions. Again, if this were a longer lecture, I would discuss the views of the wig riders who oppose the Stuart kings of England, Algernon Sidney James two rail successes in the next century. JOHN Trenchard and Thomas Gordon. They maintain the government is established by the people to, quote serve the public advantage, quote, the profit of the government, quote the public good, quote, the good of those who are under it. A ruler who does not govern for that and the friends of his own is a tyrant and can be resisted or overthrown. They understood the common good, in much the same way as the late scholastics. People need society to live well to acquire and exercise the virtues that living well entailed. You're a virtuous person, you need society, to develop those virtues and the virtues themselves contribute to the society. So the ends of instituting the Commonwealth Tyrrel said, either the people might more safely and with more leisurely live after the laws of nature of virtue, according to Sydney, liberty, it produces virtue, great virtue, according to Gordon, quote, every private man upon Earth has a concern and the government is his virtue, his property and his security depend on it. And we're all these are best preserved and advanced the government is best. These principles according to Sydney, for those as Aristotle, as well as, quote, the school man, by whom he means the late scholastics. The outlier was John Locke, he did not believe government was formed for the common good of all, but for the preservation of each person's property, a term property, which you use to include whatever belongs to a person. If this were a longer lecture, I would try to show that he never developed the theory that Taylor and many others attributed to him. His treatises on government, he never said a person can be a fully competent human being outside of society. He never adopted a coherent account of human nature that explains what a fully competent human being might look like. In his essay concerning human understanding, he developed three different inconsistent accounts of human choice, none of which fits with his political theory, and one of which is remarkably Aristotelian. According to Locke, to attain their true Felicity, people must make choices that, quote, lie in the way to their main end, and make a real part of what is their greatest good, quote, we should take pains to suit the relish of our minds to the true, intrinsic good or evil that is in things, quote, the highest perfection of our intellectual nature lies in a careful and constant pursuit of true and solid happiness. necessity of pursuing true happiness is the foundation of liberty. And that is how I believe that phrase, life, liberty and the pursuit of happiness made its way up it indirectly under the Likert type American Declaration of Independence. So why they ended Locke say that government is formed for the preservation of property property. put it bluntly, I think he was writing a policy piece, he was trying to show that the actions of the

Stewart's were not merely violations of the English Constitution, which is all that his fellow Whigs claimed they were blocked was tried to show that they were violations of limits that had to be observed by every legitimate government. The Stewart's infringement on the powers of Parliament and the common law courts to make an interpret laws violated two principles, which all governments must observe if property is to be safely protected, or to be safety protected, there must be, quote, an established settled known law and, quote, unknown and different judge can't be royal prerogative. Moreover, since the government was entered into to protect property, the government cannot take property through taxation without the consent of the people. Now, that's because they come into society with property, it's not because Locke held a democratic theory of government. Locke said that when the people Institute Garand, the people may place the power in the hands of one person or a few persons, or they may retain it themselves, or they may institute a mixed form of government. Regardless, no taxation without representation because government established to protect property. Quinn Skinner was one of the first to have noted the importance of the late scholastics and the development of political thought. As your colleague Annabel Brad has noted, he regarded their work as a step towards the natural law theory and a theory of popular sovereignty, which would culminate eventually in John Locke's two treatises of government, that's not her theory, that's Quentin Skinner. If I am right, the work of the late scholastics was the culmination of an Aristotelian tradition. There was later popularized by Grotius, and in a simpler four five form accepted by the leading Whigs, except for Locke, who did not believe in the modern political theory usually ascribed to him. So, one should speak of popularization and disintegration rather than progression. If my modern political thought, what means philosophical liberalism, I don't think one will find it before the 19th century, and a search of ancestors, the 19th century liberals who read their theory backward into John Locke. I've talked about private, right, I've talked about the common good. Now I'd like to talk about the relationship between the two. Aquinas also use the word *ius* to mean virtue with the object of the virtue of justice, or justice, let's not confuse this idea. With objective right? He's not now talking about the US matter ballet, the US should be like he's talking about *ius* as the object that which is promoted or sought by the virtue of your state, your justice. Aristotle had distinguished two kinds of justice, there's general justice, quote, he directs man immediately to the common good. And this particular justice, which directs man in his relation to other individuals, the opposite of general justice is the common good, the well being of everyone in society. Aristotle said, the form of government is best in which every man, whoever he is, can act best and live happily. Speaking of general justice, he said, we call acts just attend to produce and preserve happiness. That's components for the political society, particular justice for Aristotle, and Aquinas is of two kinds, distributive and connotative. The object of connotative justice, is to ensure that one citizen does not deprive the other another of what belongs to him. As we have seen, Aquinas described *restitutio* as an act of justice. Although I use the word *ius* to refer to what belongs to another, late scholastic substituted the term *ius*. Thus, we have the *ius* that is the object of general justice, the common good, and the object could commutated justice just to safeguard *ius*, meaning a right that belongs to a particular person, a private right, a subjective right. Aristotle described general justice is prior to every other virtue. Justice, in this sense, is not part of virtue of virtue entire unquote. This form of justice is complete virtue, not absolutely but in relation to our neighbor, unquote. Aquinas explained that the good of any virtue, whether that virtue directs man in relation to himself, or in relation to others, can be referred to the common good to which general justice directs. So that all acts of virtue can pertain to general justice insofar as it directs man to become common good. If that is true of all actions, and all virtues, it must be true a particular justice. So we reach what sounds like a strange conclusion.

The preservation and exercise of us in the sense of private right, is itself directed to us. We object to general justice, which is the common good of all. Bless, he has thought that Aristotle and Aquinas must be wrong. No doubt, he said, to wish and procure good at the Republic, is a special reason why an act is good, laudable, which is not among the functions of the other virtues. But he said, it is probable that the virtue here cannot be distinguished from that a Protoss which is love of country, or Republic, the republic in which we live. Or more probably, he said, the virtue in question is obedience, a virtue he connected with overseer foncier deference to those in authority, a sounder possession, and one more faithful to the tradition is that every virtue promotes the end of society by promoting the well being of any of its members. The reason it's at the end of society is the well being of its members. According to Aristotle, a state exists for the sake of a good life for the sake of happiness and a sense of human flourishing. Consequently, every virtue that contributes to the happiness of a member contributes to the happiness of the state. Aquinas explained that quote, all who are included in the community stands in relation to the community is part still the whole virtue is directed to the good of the individual member of the community, and hence the good of apart temperance and fortitude, direct man in relation to himself particular justice in relation to other individuals. Yeah, the perfection of the part, perfects the whole, whatever it is good part can be directed to the good of the whole. Consequently, the good of any virtue, whether that virtue directs man in relation to itself, or in relation to other individuals can be referred to the common good to which general justice directs, so that the acts of all virtues pertain to general justice insofar as it directs man to the common good. Lena explained that according to the mind of Aristotle, General justice is the act of all virtue. General justice is the act of any virtue whatsoever, not as it is itself, and so far as an order to the common good of the multitude of which the one who exercises the virtue is a part cashton said in his commentary on Aquinas, because general justice commands the other virtues, for example, temperance and fortitude, and orders their act to the common good. Justice which commands general justice is said to be in the virtue of commands, the virtue commanded. To say that the common good is the ultimate act of any virtue does not mean that to act virtuously, you have to have this end continually in mind. Nor does it mean that an act is not virtuous at all, unless it's performed for the sake of this ultimate end. It is to say that it without this, it is in perfectly virtuous, coordinated catches on the relationship of general justice to the other virtues is similar to that of charity to the other virtues. They are attributed to charity because operates by means of the other virtues. General justice directs a person who is highest natural end is and is to fulfill his human potential to the greatest extent. And he does so by how living and contributing and a society in which all members are fulfilling their own potential. Consequently, for Aristotle, there is no higher moral virtue than general justice. This form of justice, he said, is often thought to be the greatest of virtues, neither the evening or the morning star and so wonderful. As Christians, catatan and Aquinas believe that human beings have not only a natural but a supernatural end, to know and love God. Charity, the love of God directs all virtues and actions towards the supernatural and as Justice directs them to one's natural and the natural and his quote generically good, even if it is not, quote perfectly good, unless directed to this further end by charity. Aquinas said, Grace does not destroy nature perfected. Similarly, the virtues that not general justice directs to one's natural, temperance, courage, particular justice, are generically good, but not perfectly. So if they are not performed for the sake of this ultimate natural and a society that is good for all illustrate a carpenter might work to support his family. In doing so he exercises the virtues of domestic prudence, and care for members of his household. his employer might pay him adjust wage, and he might do a good job and return each of them as exercise in the virtue of comments 80 of justice, you might find his work worthwhile, because he knows that the house he's



building will provide shelter and beauty, which other people will enjoy. That's a higher end still. Ah, but he may be doing all of these things because he wishes to live in and to contribute to a society which is good for himself and all of its members. If so that all the other ants and all the virtues that he exercises in pursuing these ends belong to this ultimate end. In pursuing them he pursues the public good, but ultimate and is not only at harmony, but these private ends. Without it, they would be in complete. Now, I said at the outset that some modern writers find this harmony. difficult to understand. I would like to illustrate just how difficult to find by talking about the founders of the American Republic, and a puzzle about the meaning of the common good that historians have been unable to resolve. For a long time, it was thought that the views of the founders of the American Republic are like those lock that locks of us were like those of 19th century liberals. The controversy began with gold Wooden wood who has a brilliant story showed the importance of the idea of the common good to the founders. He said, quote, no phrase except Liberty was invoked more often by the revolutionaries than the, quote, public good to make quoting now from from wood, to make the people's welfare the public good, the exclusive end of government became for the Americans, as one general put it the pole star is quoting Horatio gates, it became the central tenet of weak faith, or shared on handily by Hamilton and Payne at opposite ends of the Whig spectrum. But by any American bitterly opposed to a system which held that, quote, the part is greater than the whole, or that are, some individuals ought to be considered, even to the destruction of the community which to which they, which they compose. According to Thomas Jefferson, this is the one point on which he agreed with his adversary, John Adams, despite their differences in the presidential elections of 1800. During the controversy, what are Jefferson tried to modify Adams wife, Abigail by writing her a letter, and he said, quote, both of our political parties, at least the honest portions of the Greek conscience, the anxious and the same on logic, the public good, they differ sexually and what they deem to be the best means of protecting or promoting the public good. I suggested earlier that Locke was not a progenitor of modern liberalism. These ideas seem to clash with Locke. But Locke did believe that government was constituted to secure private property not to secure the common good. And that does seem to clash with the views of the founders, the founders red lock, but it's very hard to show that they were influenced by that specific lock and idea. Lock in nearly always, when they sign lock, it's along with the other Whigs, who did not share this idea. Or it is for the principle of no taxation without representation. And they don't cite lots of reasons for believing that. The puzzle for modern historians as well the founders may not have embraced a lockean theory with the sole purpose of the state is to protect private right? They clearly did believe the state should protect private right. For many historians, the idea that the end of government is to promote the common good, seems to contradict the idea that the object of government is to protect the rights of citizens, the stories of called the first idea classical Republican, and the second liberal, and they agree that they think that the founders held both. And according to Lawrence Badlands banning a very eminent historian, the two ideas are logically inconsistent, quote, the two philosophies begin with different assumptions about human nature, and develop a variety of different ideas. Stephen Lawrence warned that the classic classical republican idea, the common good, is, quote, life threatening, because it cuts the historical grounds of legitimacy of constitutional politics. by denying that liberalism was an essential ideological component of the founding doctrine. Pinter asked how could is a stupid thinker is John Adams, entertain so obvious a contradiction, our basic values, as in his pronouncement, and a single paragraph that, quote, each individual of a society has a right to be protected in the enjoyment of life, liberty and property, quote, and government has instituted for the common good, not for the profit, honor or private interest of any one man, family or class. Some have said that the founders held

seemingly incompatible views because they were pluralistic thinkers or because they thought was complex or because they had creatively combined two incompatible ideas in some unspecified way that their predecessors have overlooked. I think a better suggestion is that modern historians see a problem where the founders did not because the founder, his views were not incompatible. Part of the problem is that modern historians identify the protection of rights with later liberal ideas of rights. Another is that they misconceived the classical idea of the public or common good. Wood would note it correctly, that the common interest was not as we might today, think of it simply a song or consensus of the particular interests that make up the community would conclude, however, that for the Republican patriots of 1776, the common wheel was an all encompassing a transcended object with a unique moral worth. Made private consideration fade into insignificance. He said, quote, ideally, republicanism, obliterated the individual and quote, those remarks illustrate the tendency of modern writers to take one of two extreme views of the relationship and private, right and public good. Either the society is an aggregate of particular interests, or it is a transcendent and obliterating the individual. Having recognized that Americans in the 18th century did not believe the first alternatives. One concluded they really believed in the second and supporting quoted such passages as these and let me quote, the passages that were persuasive to him. Quote, true liberty is, quote, natural Liberty restrained in such manner as to remind society, one great family, where everyone must consult his neighbors happiness, as well as its own Republic, each individual gives up all private interest that is not consistent with the general good. The interest of the whole body, maybe signing a contemporary preacher because some God Samuel Adams, quote, a citizen owes everything to the Commonwealth. He quotes Benjamin Rush, every man in that Republic is public property, his time his talents, his youth, his manhood, his old age, name or his life belonged to his country. These passages puzzled batting batting noted correctly, quote, The revolutionary thinkers seldom hope that individuals would not pursue their own self interests. The vigorous and vigilant defense of one's own liberties, was widely thought to be a necessary characteristic of the citizen of a republic, a contribution of his virtue to the public. That in concluded that the passes I just quoted to you from Wood must be a typical, what I think was closer to the truth when he said that for the 18th century American quote, what was good for the whole community was ultimately good for its parts. John Adams said that, quote, all divides lots of rich, will agree that the happiness of society is the end of government, and happiness to the individual, to the end of man. And this principle, it follows that the government of which communicates happiness to the greatest number of persons, the greatest degree, is best. Yeah, this idea about the relationship between common good and the happiness of each citizen is the one we've traced back to Aristotle and Aquinas. By understanding this idea, we can understand why there's no contradiction between the passages would quoted, and a belief in the value of asserting one's private rights and acting for one's own good. Samuel Adams said, quote, a citizen owes everything to the Commonwealth does only as a member of society, can you live a truly human life? Russia, is Thai talents, its youth, his manhood, his old age near more, his life while belong to the country. True, if he uses his time and talents Well, in youth manhood in old age, he will promote not only his well being, but the welfare of his country. But that does not mean his ends as an individual human being are reduced to significance. Whether this is good if society isn't and that transcends the good of individuals. Then it was the anonymous Protestant minister quoted by Wood who said that in a republic, each individual gives up all private interest that is not consistent with the general good, and the interest of the whole body. John Adams explained what it means for each citizen to give up all private interest that is not consistent with the general good. Those who assert their rights out of an interest that is not consistent with the public. Let me start again, excuse me. Those who

assert their rights out of a, quote, resentment of injury, and indignation against wrong a love of virtue of veneration for virtue, and understanding, seeing and feeling. The difference between true and false right and wrong virtue advice, are defending the liberty that society should protect the sentiments, he said, are rooted in human nature. In contrast, a person who seeks unjust advantages, extravagant, unconstitutional monuments, he is motivated by quote, excessive ambition and venality. These are the unhappy imperfections of human nature, which will in spite of all human precautions creep into government must never relax. Sir attention, resolution, you keep them out. What he's saying is that a citizen who asserts his rights contributes to society, and one who seeks more, is entitled to undermines it. The first is acting out of a sense of right and wrong rooted in human nature. The second is acting against that sense. There's a harmony between asserting one's true rights and the common good. I mentioned earlier, that my fellow jurists who were unable to explain the limits of private rights would do well to look at the work of the late scholastics. I can say the same about my fellow citizens in this country who see a conflict between egoistically defined private rights and the public interest, which they think can be pursued only the expensive private rights and which are paramount would obliterate the individual. They would be well advised to read with the founders of Republicans to say and understand it, to look at the Aristotelian tradition that culminated in the work of the late scholastics. Americans on the political ride might then stop defining private rights egoistically Americans on the political left might see that the way in which most of us will contribute to the public good is by exercising our own private rights. Thank you.

**Natália da Silva Perez** 51:27

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