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Civil Disobedience: What Would Thomas Aquinas Do?

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In April of 1963 from a jail cell in Birmingham, Alabama, Martin Luther King Jr. famously wrote a letter that states, “We who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive” (73). King was jailed for leading a demonstration in Birmingham, disregarding a state circuit court-filed injunction against protests. The demonstration itself served as a nonviolent direct action in response to the racial injustice occurring in Birmingham. King wrote that the demonstrators “would present our very bodies as a means of laying our case before the conscience of the local and the national community” (66). In his letter, King sought to respond to those who criticized his methods of fighting racism and oppression; he justifies the use of civil disobedience by citing the words of historical figures, condensing a relevant argument by Thomas Aquinas down to a sentence: “To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law” (70). If a reader does not have a background in Aquinas, this sentence might read as philosophically technical and perhaps even as meaningless. However, Aquinas’ theory fully justifies King’s actions, and provides a strong moral foundation for civil disobedience.

This essay seeks to critically consider the justification for and application of civil disobedience through a Thomistic lens; that is, I will use Thomas Aquinas’ work to evaluate whether our modern concept of civil disobedience is justified and when such action is just. It is my intent to identify the set of conditions under which Aquinas would support civil disobedience. Namely, I will posit that Aquinas would support such action under the conditions that the action purposefully adheres to natural law for the sake of a higher morality, and that it is a nonviolent act with a direct relationship to the aspect of the law that is unjust. Ultimately, I will claim that based on Aquinas’ established theory of law, an individual is in fact *morally obligated* to engage in civil disobedience. The paper has five parts. In section one I will examine the concept of civil disobedience as described by several contemporary philosophers. These descriptions will provide the foundation for my usage of the term “civil disobedience” as I move forward. In the second section I will present Aquinas’ theory of law and give a detailed account of the aspects of his theory that are relevant to my argument for obligatory civil disobedience. In section three I will consider how Aquinas’ work aligns with a modern conception of civil disobedience and how it can be seen as historical groundwork for such a concept. How do we know when to enact civil disobedience? This section applies the framework for civil disobedience that I have noted in Aquinas’ work to two contemporary examples where there was perceived injustice. In the fourth section I will investigate the aims of modern civil disobedience, such as policy change and pure action. The fifth and final section will consider a real-world argument for obligatory civil disobedience made during the Nuremberg trials, and ultimately conclude whether Aquinas would have supported this argument.

Modern Civil Disobedience

Before we can ask whether Thomas Aquinas would support modern civil disobedience, we must define the act by considering its causes and consequences. What are the most significant aspects of civil disobedience? Two clear positions emerge, one fixating on the initial motivation for the act and the other on the concrete goals of the act. The term “civil disobedience” is also widely and often improperly applied. This is a sticking point in the debate of what actions can be considered civil disobedience: should the term be defined by its common use, or should the term only be used when a situation satisfies a strict definition?

For this reason, I will rely on the near consensus of several philosophers to establish my functional definition of civil disobedience. Political philosopher Rex Martin defines civil disobedience as “the deliberate and public violation of the command of an authorized and accepted political superior on the ground that this decree is unjust, immoral, unconstitutional, contrary to good public policy, etc.” (126). Similarly, moral and political philosopher John Rawls defines civil disobedience as “a public, nonviolent, conscientious yet political act, contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (320). These definitions can be used jointly to define civil disobedience as an act that is a deliberate violation of a standard. The deliberate nature of the act seems to be a necessary condition. Lawyer Earl F. Morris excludes one of the most historically famous examples cited as civil disobedience for this reason: he claims that Rosa Parks’ refusal to give up her bus seat for a white man is not civil disobedience because she was not actively rejecting moral injustice, but because she was tired and her feet hurt (654). Purposeful action, then, is a necessary element.

Both definitions require that civil disobedience be public because private violation of the law is not always apparent to others and does not truly show moral conviction. Additionally, private violation of the law will likely spur no change. This is the point where the definitions diverge. While Martin posits why one would engage in civil disobedience in the first place, Rawls specifies an end goal to implement policy change. Martin’s rationale for civil disobedience is nearly lifted straight from Aquinas: the decree being violated is unjust, immoral, or unconstitutional. Interestingly, Martin also includes the aspect that a decree can be violated on the grounds of being contrary to good public policy. From these two definitions, I will adopt that civil disobedience is a deliberate, nonviolent act directly resisting or violating a legally sanctioned or enforced injustice.

Aquinas’ Theory of Law

Aquinas’ potential justification of civil disobedience is rooted in his theory of law. He maintains that there are four types of law: eternal, divine, natural, and human. The distinction between natural law and human law is where conflict arises and civil disobedience becomes

relevant. Eternal law is the unchanging moral law that Aquinas also holds is the law of God. Aquinas believes that “the received is in the receiver according to the mode of the receiver” (*On Human Nature* 136). That is, a being can only receive knowledge in a way and form that is suited to their own form of being. Therefore, humans cannot know God’s law as God does, given that humans and God are fundamentally different types of beings. Aquinas posits, “There are two ways in which a thing can be known,” either “in itself” or “in its effect” (*Summa Theologiae I-II Q. 93 A. 2*). Humans know eternal law in this second way. He states, “No one except the blessed in heaven . . . can know the eternal law as it is in itself. However, every rational creature knows the eternal law with respect to more or less what radiates from it” (*ST I-II Q. 93 A. 2*). By this, Aquinas means that humans cannot know eternal law in its essential form, but only through its derivatives and effects. This phenomenon is what gives rise to natural law, which is the rational human participation in eternal law; it is the law we arrive at via reason and adhere to on moral grounds. Yet neither of these laws are as readily apparent as human law created by the legislature, or divine law commanded by scripture or holy texts; they are not universal as eternal or natural law are. Indeed, it is obvious that there are different human laws and divine laws practiced and enforced around the world, as countries maintain their own governments and legal systems and religions feature differing holy texts. Human and divine laws are more accessible than eternal and natural law, as they are in all likelihood codified and therefore widely acknowledged.

While humans cannot know eternal law, natural law is supposedly our rational participation in eternal law. How are we to know natural law? Aquinas asserts, “The first precept of law is that good ought to be done and pursued and that evil ought to be avoided” (*ST I-II Q. 94 A. 2*). This provides the foundation for all other precepts, which are the “practical precepts” or the general rules by which we might govern our practical actions. Aquinas describes humans as rational living substances who have multiple inclinations, or tendencies to an end, that are logically incorporated into natural law. As beings, humans have an obligation to preserve that state of being, meaning there is an obligation to self-preservation. Humans also have animal inclinations, namely to reproduce, protect, and teach our offspring. As rational beings, humans have an “inclination toward knowing the truth about God and toward living in society” (*ST I-II Q. 94 A. 2*). Though numerous precepts seem unwieldy, Aquinas maintains that each of these inclinations are regulated by reason and therefore fall under the single precept of reason. Aquinas believes that the will is necessitated toward a single natural end: happiness. Unlike more modern ideologies, Aquinas does not believe that the happiness of the individual is competing with the happiness of the community (*ST II-II Q. 58 A. 5*). They should, in theory, be in harmony, because “while a part, as such, belongs to a whole, so that whatever is the good of a part can be directed to the good of the whole” (*ST II-II Q. 58 A. 5*). The common good should be good for the individual and vice versa. Natural law

can then be thought of in terms of the individual or the community.

Conflict appears when natural law and human law overlap, as they will interact in one of two ways. In an ideal scenario the two will comply: the human law will affirm what is morally just and expressed in the natural law. Otherwise, the two can fail to comply. Aquinas maintains that natural law is superior to human law as it is humankind's rational participation in God's law, which is the highest and most absolute authority—it is difficult to imagine the rationale explaining how the arbitrary rule of humans could surpass the moral obligations we have derived from God's law. Given this context, we can understand Aquinas' statement: "If in any point [human law] deflects from the law of nature, it is no longer a law but a perversion of law" (*ST I-II* Q. 95 A. 2). Aquinas does not intend to say that an unjust human law ceases to exist. Rather, he believes its authority is nullified. He writes, "Laws can be unjust . . . by being contrary to the *divine* good, as are tyrannical laws that induce men to idolatry or to do anything else that is contrary to divine law. It is not permissible to obey such laws in any way at all" (*ST I-II* Q. 96 A. 4). Natural law, as the human expression of eternal law, carries an analogous level of authority. One can logically infer that an unjust human law—one that violates natural law—is not only a law that it is morally permissible to ignore, but is a law that one is morally obligated to disobey.

Aquinas in the Twenty-First Century

Let us return briefly to our established definition of modern civil disobedience, which states that civil disobedience is deliberate, nonviolent, and resistant toward a legally sanctioned injustice. This definition immediately resonates with conclusions drawn from Aquinas' theory of law, as the proponents of both modern civil disobedience and Aquinas insist that an unjust law must not be obeyed. The arbitrary law of humans enforces this injustice, for both modes of thought, because choosing to disobey an unjust law necessarily puts the actor in direct conflict with the unjust law. Unfortunately, this does not clarify the situations in which civil disobedience should be applied or what the eventual goal of the action may be.

Aquinas states that an unjust law is not a binding law (*ST I-II* Q. 96 A. 4). The straightforward path, then, is to ignore or actively disobey unjust laws. What is unjust? Aquinas again clarifies that an unjust law is one that violates natural law. But natural law, unlike human law, is not written or so easily accessible. To what extent should humans trust their own rational powers? A modern disobedient should be able to articulate why a law is unjust before they act in a contrary manner, if for no other purpose than for their own defense in social and legal spheres. To justify this imperative, Aquinas would likely turn to his notions of "synderesis" and conscience. Aquinas believes that "There must be some permanent principle which has unwavering integrity, in reference to which all human

works are examined, so that that permanent principle will resist all evil and assent to all good" (*Questiones Disputatae de Veritate* Q. 16 A. 2). This is the role filled by Aquinas' notion of synderesis: it is the principle within us that is unfailingly inclined toward the good. The conscience, then, "is nothing but the application of knowledge [synderesis] to some special act" (*QVD* Q. 17 A. 2). Conscience can err in its application of synderesis, but synderesis itself does not err.

Though conscience is sometimes faulty, Aquinas maintains that conscience is "certainly binding" and necessitates one toward the good in concrete instances; however, synderesis directs one toward the good in a more abstract, universal way (*QVD* Q. 17 A. 3). This binding conscience only extends so far as knowledge informs it. Aquinas makes a point of saying that conscience cannot bind someone to precepts of which they are ignorant (*QVD* Q. 17 A. 3). The best method seems to be to return to Aquinas' inclinations; if a law violates any of these inclinations, it would appear that such a law contradicts natural law. Yet mistakes are not beyond us. This is another reason that civil disobedience should be public—if the disobedient is in fact violating a just law, the legal ramifications still apply.

A recent example of civil disobedience is the occupation of land by those protesting the Dakota Access Pipeline. The Standing Rock Sioux tribe—supported by other tribes, independent groups, and protestors—illegally occupied private land to halt the construction of a pipeline they claimed endangered environmental safety and violated their legal rights. The threat that a potential oil spill poses to the water supply in the area also threatens the health of individuals and the community. Many elements of modern civil disobedience and Aquinas as I have presented them are relevant here. The requirements for modern civil disobedience assumed in this essay seem entirely met: the protest was deliberate and nonviolent. Though the act of occupying land was not a strict contradiction to the injustice—for instance, if the unjust law was a permit allowing construction and the protestors had worked to deconstruct the pipeline during and after its construction—the occupation resisted the pursuit of the ends offered by the unjust law. The unjust legal allowance at Standing Rock does not mandate any kind of human action, but merely permits it. The protest does not seem to work counter the law itself, but rather against those who might take advantage of their new legal freedom to act unjustly. By Aquinas' account, is it permissible not only to engage in civil disobedience, but also to interfere with injustices committed by others? I think that our practical precepts to preserve ourselves and live in a community would require us to resist unjust actions by others if they harm our individual persons or the good of the community. The violation of the Sioux people's legal rights are undeniably important, but I think Aquinas would, based on natural law, support the civil disobedience for the sake of environmental rights. To compromise the water supply is to violate the precepts of law and reason. Physically endangering a community demands some form of resistance to the law that makes such a scenario possible, and it could

plausibly be argued that Aquinas would not condone a method as indirect as in the case at Standing Rock.

Another issue lies in an ideological conflict. Though Aquinas understood laws as benefiting both the community and the individual, our Western concept of liberalism may not always align the two. What if a law appears unjust to the individual but plausibly benefits the community? I imagine that Aquinas would have evaluated these on a case-by-case basis. Take for example a military draft. Is it moral to send individuals into a scenario where they may die if their country is benefiting from their potential sacrifice? Aquinas outlines three requirements for a “just” war. First, he requires that a sovereign gives authority to wage war. Second, those being attacked must be at fault in some way. Lastly, the war must be waged with pure aims, such as restoring peace or otherwise pursuing the good (*ST II-II Q. 40 A. 1*). If Aquinas’ conditions for just war are fulfilled, I imagine that Aquinas would support a draft and therefore would not consider the situation unjust or demanding of civil disobedience. This would align with his position maintaining that the individual acts as a part of the whole. Unfortunately, it is difficult to find scenarios that are so clear-cut in history. The United States utilized the draft during the Vietnam War, but it is doubtful that Aquinas would have found the conflict as a whole to fulfill his conditions for just war. In this instance, I imagine that Aquinas would have condoned civil disobedience.

The Consequences of Action and Inaction

The remaining question seems to be, to what end? What is the aim of civil disobedience, and what aim would Aquinas accept? Rawls includes in his definition that civil disobedience is “usually done with the aim of bringing about a change in the law or policies of the government” (320). With our modern perspective of civil disobedience, this does seem right. But is a change in policy resulting from civil disobedience a mandatory end that one must seek? Aquinas would not require this outcome, but he does require that change is a likely consequence of the action. He explains that human law can change for two reasons: by reason or by humans. With reason, the law will “gradually move from what is imperfect toward what is perfect,” and humans are justified in changing the law as their social and cultural situations shift (*ST I-II Q. 97 A. 1*). However, Aquinas also posits that the common welfare is damaged by the changing of human laws, so “human law should never be changed unless the damage done to the common welfare by the change is wholly compensated for in some way” (*ST I-II Q. 97 A. 2*).

Still, many accept the aim to make legal change as a part of the definition of civil disobedience. It does seem to follow that an unjust law should be changed so it can comply with natural law. However, if this end is accepted as a necessary condition, several additional points and questions must be considered. If legal change is the aim, it seems plausible that one

is morally obligated to go through every legal channel to change laws or policies. Would one be required to engage in civil disobedience while pursuing legal action? There is something odd about simultaneously adhering to the tedious legal system to change a law while disobeying another law enforced by the same system. If civil disobedience is done for the sake of adherence to natural law alone, the mere deliberate act of resistance would be enough. But if the aim is to change policy, more elements are required for success. Likely one would need many participants, high visibility, and support from figures with power. And if many aspects seem to fall short and the chance of successful policy change is slim, should the effort be abandoned? Presumably there is no scenario where one must either pursue both acts of resistance and policy change or neither. For this reason, I would argue that Aquinas would say no, the effort should not be abandoned. One must never comply with an unjust law, according to Aquinas (*ST I-II Q. 96 A. 4*). However, I believe Aquinas would urge that the disobedient abandon their attempt at policy change.

Of course, no discussion of civil disobedience would be complete without considering the consequences. Plainly stated, civil disobedience is breaking the law. Though the term is frequently used to include protests and dissent, both actions are legal and therefore not encompassed by civil disobedience as defined above. People who do feel morally compelled to commit civil disobedience must also be willing to bear the consequences. Perhaps the most immediate concern is that a peaceful act of civil disobedience will be met with violence from authorities; this has been the case in several instances throughout history, including during the Children's Crusade in Alabama in 1963 and at Standing Rock in North Dakota in 2016. There are also, of course, legal consequences. As Harold Pollack writes, "This [civil disobedience] isn't something to be done lightly . . . What are the possible consequences of having a criminal record?" ("Thinking About Committing Civil Disobedience"). This consideration surely must have crossed Aquinas' mind: individuals may have to sacrifice much in the name of civil disobedience. And beyond the individual the community must be considered, too. If a community is fragile and engages in civil disobedience to stand for rights they have been denied, what happens if most of the community is imprisoned? Here it almost seems that natural inclination for self-preservation would discourage community members from civil disobedience. To deliberately act in a way that endangers the community seems to contradict pursuit of the common good (*ST I-II Q. 94 A. 2*). But this would likely be an exceptional case, if it exists at all. Though there are many serious consequences of civil disobedience that every person must consider for themselves, generally speaking I believe Aquinas would have thought that the moral obligation outweighs the consequences, and that the act should be taken and the consequences accepted. Adherence to natural law is paramount (*ST I-II Q. 94 A. 2*). Even if the consequences are not accepted, the disobedient act should be performed. The words of Martin Luther King Jr. offer what I imagine is a sentiment like one that might have

been expressed by Aquinas: “I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law” (72).

A Historical Dilemma

Civil disobedience clearly has many facets, and it seems that in actual situations these elements can conflict. The International Military Tribunal, held from 1945 to 1949 in Nuremberg, Germany, tried individuals accused of war crimes during World War II. Interestingly, the more extreme formulation of Aquinas’ justification of civil disobedience was used by the prosecution: the accused may have been following orders, but *they had a moral obligation to disobey unjust commands*—that is, to engage in civil disobedience. The prosecution, problematically, asserted that these orders conflicted with international law; as Carl Cohen explains, “Many of the laws these persons were convicted of knowingly violating were not codified at the time the acts were perpetrated. In that sense the laws were *ex post facto* and unjustly applied” (199). This is an obvious legal problem, and for many it undermines the supposed justice served by the Tribunal. But would it be a problem for Aquinas? The argument of the prosecution would have likely suited Aquinas; Cohen summarizes it by saying, “Some things a man must not do, no matter who orders him to, or with what authority. And if he does do them he will be answerable, on this principle, not only to God or conscience but to courts of international law as well” (199). However, this fails to account for the consequences if one does not obey the corrupt order. Cohen himself responds to this, saying, “Taken as a moral justification only, the Nuremberg argument may ultimately prove his disobedience right—but it cannot protect him against the legal punishments his government or military superiors are likely to inflict upon him” (201).

Would Aquinas care about this coercive element of the heinous acts committed under the order of superior authority? It is plausible that Aquinas would have felt a certain measure of sympathy for those who were purely coerced, but the elicited act of the will was still one of resistance. Yet I believe Aquinas would have agreed with the prosecution, even without the presence of international laws, that those who simply “followed orders” had a moral obligation to defy their orders. Aquinas maintains that obeying natural law is essential (*ST I-II Q. 94 A. 2*). He does not indicate any exceptions. In such a devastating event, it is perhaps more clear than any other time that natural law must be heeded regardless of the cost.

Like many great philosophers, the thoughts of Aquinas are engaging; when invoked by a wordsmith such as Martin Luther King Jr., they are moving and inspiring. Civil disobedience and its call to obey a higher moral law have been the weapon of the people for centuries; yet civil disobedience hardly ever appears without creating philosophical or legal controversy.

In many instances, it is questionable whether Aquinas would support the action at all. The justification of civil disobedience requires a return to the foundation that Aquinas carefully laid to remind us of the assertions that lead us to the conditions of civil disobedience: that one disobeys an unjust law with intent, and does so peacefully and directly. Aquinas builds a theory of law deeply tied to moral reasoning; by trusting in the rational perception of eternal law, his theory asserts that it is morally required to disobey unjust human law.

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