Toward a Theory of Civil Disobedience

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RAGHAVAN N. IYER, a contemporary student of Gandhi, recently wrote:

Broadly, we might say that there are two familiar types of infuriating people. One is the moralist; the other is the legalist. The moralist is infuriating when he wants to raise every single issue, however local and specific, to the status of an eternal principle; the legalist is infuriating when he wants to reduce an important matter of moral principle involving basic human rights and human dignity to mere formalism or sheer expediency.¹

In recent years the most infuriating people have been found milling around the civil rights movement. On the one hand we see moral leaders standing up to be counted among the righteous on some highly questionable platforms, and on the other we see the whole movement condemned to die because it is "a disruptive element." Both of these attitudes speak of a profound and widespread ignorance of the nature and the role of civil disobedience. Numerous articles, editorials and books have done little to change this. Perhaps the reason for the continued confusion is that civil disobedience is a concept exceedingly hard to reconcile with one's day to day political and moral views.

Now that the spectacular has become routine, and we have had a chance to see many of the faces of contemporary civil disobedience, it is time to give the theoretical aspects a valid place within traditional political thought. For if we are to have any way to judge acceptable and non-acceptable forms of civil disobedience, it is absolutely imperative that we formulate a theory by which men can integrate the existence of civil disobedience into a traditional under-

standing of law and order, justice and authority, the rights of individuals and of governments. This paper is an initial attempt in that direction.

The task is difficult because—at the risk of being doubly infuriating—we must insist that civil disobedience is a legal and a moral problem, and must be treated as such. It is a legal problem because, while civil disobedience honors Law in general by openly breaking a law, civil law cannot so much as admit its right to existence without denying its own prerogative as the monopoly of coercive power. Civil disobedience is a moral problem because, while it appeals to justice and the dignity of man, if handled without law, civil disobedience becomes a matter of personal or collective passion and is socially disastrous. To handle civil disobedience without treating both aspects would make any theory myopic. Therefore, a valid theory must be based on some not strictly legal, not strictly moral foundation which includes them both.

Philosophy furnishes one such foundation, and perhaps the best. But even here, two precautions are necessary. First, we cannot treat civil disobedience in philosophical isolation. It must be handled within the context of law, justice, prudence, authority, the rights of individuals and the rights of government, because each of these is involved in any act of civil disobedience. Second, since this is the case, we cannot be completely eclectic in our understanding of concepts. We simply have to stay within a single, integrated system, because in discussing an activity that involves law, authority, justice and all the rest, we must realize their interlocking nature. What is said of one clearly has implications for the others. To discuss the law of Oliver Wendell Holmes within the context of a Hegelian State, for example, is as absurd as integrating Marxian justice with Hobbesian authority. One has to work within a single system. For working out a comprehensive theory of civil disobedience I have chosen the Thomistic philosophy of law.\footnote{Although ordinarily one does not feel obliged to defend his philosophical moorings, considering prevalent attitudes towards Thomism, perhaps a comment on the subject is opportune. First, I have chosen to use the Thomistic model not because of any basic commitment to the whole system, but because it seems the best available model to gain an integral understanding of civil disobedience. It is a philosophy of law which intrinsically involves justice, authority, the rights of citizens and the rights of government. At the same time, while beginning with eternal law, it does not deny the validity, even necessity of case-based, inductive human law. Far from it!}

On the other hand, when using such a model, we cannot cut the cloth to fit the frame. We must begin with civil disobedience as it actually is. Therefore, before putting the Thomistic model to work, we must attempt to formulate a clear notion of civil disobedience. This we shall do in two ways: first, by presenting an historical sketch of civil disobedience; and second, by analyzing it in its present form.

I.

Resistance to government is as old as government itself. An expressed theory of passive resistance in the name of something nobler is much more recent. Sophocles' Antigone is our first surviving reference to such a theory. Formulated
with primitive simplicity, it remains a classic statement of political philosophy.

Some authors have attempted to prove that Christ, or at least St. Paul, was an incipient theoretician of civil disobedience. While this is hardly tenable, it does appear that the early Christians often practiced passive disobedience to civil authorities. But only occasionally did they weave it into Christian theory. The clearest example is that of Lactantius, writing in 304 A.D. about constancy:

> Constancy is a virtue, not in order that we may resist those who injure [us] . . . but that, when [men] bid us act contrary to the Law of God and contrary to justice, we may be frightened away by no threats or punishments from preferring the bidding of God to the bidding of man.4

The idea lived on, though not always in a clearly articulated form, throughout the early history of Western civilization. In a world in which Church and State, the moral and legal authorities, were deeply intertwined, it is not surprising that religious heretics and dissenters were the major forces keeping the tradition of civil disobedience alive. Before the nearly absolute separation of Church and State, it was impossible to separate the concepts of treason, heresy, revolution, rebellion, schism and a host of other things. Since one of the essentials of civil disobedience has always been an appeal from the legal to the moral order, in a system where the two are confused, it is difficult for such a theory to develop. Such names as Wycliffe, Waldo, Hus and Wesley have to be mentioned in the history of the movement. Such sects as the Russian Dukhobors and Bezmolitovtsy have this in common with the more familiar Quakers, Shakers, Inspirationists and Mennonites. Unfortunately, even here the theories were poorly formulated; they relied too heavily on sectarian religious interpretations to have a wide following.5

After smoldering for centuries under the blanket of religious sentiment, modern theory flashed into the open with Henry David Thoreau's *On the Duty of Civil Disobedience* (1846). Thoreau, fresh from the breakdown of American puritanism, was the first modern man to speak of civil disobedience as an entity in its own right.

Civil disobedience became a political tool in the hands of Mahatma Gandhi in the first half of the twentieth century. An intellectual, mystic, and politician, Gandhi was, above all, the man who added the concept and demonstrated the power of Satyagraha, or soul-force, as a political weapon. Under his influence non-violence became an indelible mark of civil disobedience. It was also Gandhi who formulated the first adequately inclusive theory of civil disobedience.6

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6 Gandhi's major theoretical writings were in newspaper articles in *Young India* and *Harijan*. The best of these are published in English as Mohandas K. Gandhi, *Non-violent Resistance* (1962).
Finally, civil disobedience theory has been brought up to date in most dramatic fashion to all the world in the present Negro revolt in America. Emphasis has been on action, not theory, but the latter is not totally lacking. The Reverend Martin Luther King's Letter From a Birmingham Jail will be handed on as a classic of American literature.

Despite the contributions of Thoreau, Gandhi and King, there remains a remarkable gap in contemporary civil disobedience theory, namely its integration into a wider tradition of political thought. Perhaps one reason for this is the peculiar reluctance of American scholars to admit the possibility of an integrated philosophy of life. Another reason is the nature of civil disobedience itself, for it is above all a living, dynamic thing, interested in getting the job done, constantly testing new ideas and techniques and valuing theory only as a guide and a means. From the simple beginnings in ancient Greece to the modern American sit-ins, civil disobedience has undergone many changes and refinements. However, upon close examination it appears that a stable pattern has been sufficiently established to make generalizations valid. Even granting the difficulty of hitting a moving target, we need a definition of civil disobedience as a key to understanding and as a guide for action. Several articles have been written to synthesize historical contributions and contemporary Negro experiences into a realistic definition. The following paragraphs rely heavily, but not exclusively on these efforts.

II

First of all, civil disobedience is not rebellion. If political rebellion may be defined as "the unlawful overthrow [or attempted overthrow] of a government or ruler on the part of the governed for the purpose of substituting a new ruler or government," it is clearly beyond the intent of civil disobedients. This is obvious if one has followed the American demonstrations. The means used, sit-ins, marches, pickets, etc., are deliberately inadequate for the purpose; public authorities are (ideally) forewarned of the precise action to be taken and why it will be taken; no attempt is made to take over or seriously disrupt services essential to the community-at-large; there is no general rejection of the authority of the government. Disobedients readily, if not enthusiastically, submit to arrest and punishment by the legitimate authorities. As Professor Cohen has stated:

Rebellion seeks the overthrow of constituted authority, or at least repudiates that authority in some sphere; civil disobedience does neither. Of course civil disobedience may lead up to a revolutionary conspiracy (although that is

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7 Special acknowledgment must be given to the Journal of Philosophy, which devotes an issue to the topic of civil disobedience, 58 J. Philosophy no. 1.

8 Lewy, Resistance to Tyranny: Treason, Right or Duty?, 13 Western Political Quarterly 588 (1960).

9 When such disruptions have been threatened or have occurred, e.g., by the New York CORE faction on the opening day of the World's Fair, they have been denounced by responsible civil rights leaders.
highly unlikely in any healthy democracy), but the civil disobedient, as such, acts within the frame of established authority, not outside of it.10

Clearly, civil disobedience is not rebellion. At the same time, it is illegal, and this is its most obvious aspect. It is not just another illegal act in the same class as speeding, larceny or murder. It differs from these in two essential ways: (1) the illegal actions of civil disobedience are done openly in full sight of the authorities, and (2) the participants act with the intention of accepting the punishment resulting from their protest.

If civil disobedience is always illegal, it is also always a protest. The protest may be specific or general; it may be positive or negative. It may be for a fair voice in government or against a segregation law; for a fair-housing law or against an air raid regulation, and so forth. In any case, a law is broken as a protest against an unbearable situation and in the hope of changing that situation.

The essential parts of any protest are its motivation and goals. The motivation of civil disobedience is the dissonance caused by an alleged injustice, and the goal is justice. This brings up a highly controversial point: how does one justify civil disobedience? This seems to the writer to be the weakest point of contemporary theory, at least in the sense that there has been little systematic treatment of it. Historically, Antigone appealed to a higher law of nature, the early Christians appealed to the law of God, Thoreau appealed to his own conscience, Gandhi appealed to the Fatherhood of God and the brotherhood of man and Martin Luther King appeals primarily to the basic dignity of all men. Current feeling seems to be, “to each his own.” But in another sense, the appeal is not upward to a more noble reality, but outward to the sympathy of all citizens. For this reason one of the essentials of civil disobedience is publicity. Objects of the demonstrators’ ire are often chosen primarily for their propaganda value, not as being outrageously unjust in themselves.11 The hope is that enough people, or the right people, will reflect upon the situation, see the injustice the demonstrators point to, and apply sufficient pressure on the authorities to change the repugnant situation.

Non-violence is an essential of civil disobedience that all theorists since Gandhi have found indispensable. By itself, non-violence is a broader term than civil disobedience, and need not be illegal. Thus while non-violence need not be civil disobedience, civil disobedience must be non-violent. The most immediate reason for this is expediency. Violence is repugnant by nature, and in an appeal to the public’s sense of justice, it must be avoided at all costs. A more philosophical reason arises from the nature of the State. The raison d’etre of a State is to seek the common good, which at minimum means preserving law and order. Violence, even in the form of resistance to arrest, is a direct challenge


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to the State, and a form of rebellion. A State, like a person, has a right to self-defense. Although its means are ordinarily peaceful, it has the right to use force for this defense. If public officials see in civil disobedience a threat to their existence, force will not be long in coming. This, incidentally, is another argument for publicity. Taken by surprise, a police force may see a threat of violence where none is intended. Given a chance to put on their kid gloves for the TV cameras, the authorities move much more gently.

These seem to be the main elements of civil disobedience as it exists today, and the necessary starting point for an attempt at theory. Putting the elements together in a definition, we can say that civil disobedience is an illegal, but non-violent, public protest based on an appeal for justice. Our attempt to integrate the concept of civil disobedience into traditional political thought—in this case, using a Thomistic legal model—will be based on this existential definition.

III.

The doctrine of law is the key to Thomas’ treatment of politics, and it will be helpful to review it for our study of civil disobedience. Thomas begins to discuss law not by building up from individual cases to general norms, but from an overall understanding of the Cosmos. The first, overarching law is Eternal Law, which is “nothing other than the ideal of divine wisdom considered as directing all actions and movements.”12 By this it would seem that Thomas means nothing else than the rational ordering of the universe by God. The very definition of law—all law—comes from this understanding of Eternal Law. It is perhaps the most quoted of Thomistic concepts: “An Ordinance of reason for the common good promulgated by him who has the care of the community.”13

Eternal Law is divided into three classes: the laws governing the non-rational world; Divine Positive Law (revelation) governing the supra-rational world; and Natural Law, governing the rational world. Of these, the laws of the physical world, strictly speaking, have no distinct reality apart from the Eternal Law because they involve no rationality of their own, and law, by its very nature, is based in reason. Natural law is divided most conveniently into personal norms, custom and human positive law. Of these, again, only human positive law can be considered law in its own right distinct from natural law, for only this fits the definition as being promulgated and for the common good. (Custom is not promulgated and personal norms tend to personal perfection.) The Thomistic legal model may be diagramed as follows:

12 T. AQUINAS, SUMMA THEOLOGICA, I-II, q. 93, art. 1. In general, the quotations here follow the Dawson translation, although where the text warranted it, I have not hesitated to substitute my own translation. J. DAWSON, AQUINAS: SELECTED POLITICAL WRITINGS (D’Entrevès 1948).

13 Id., I-II, q. 90, art. 4. One might wonder at the advisability of using this “deductive” legal model for a modern problem. Because it allows the systematic, as opposed to eclectic, integration of positive laws into a moral order, I feel the present combination inductive-deductive approach is necessary.
It is important to realize that human law retains its nature as law only as long as it maintains its proper relationship to Eternal Law. Each degree of law is binding in a manner that fits its own proper being as derived from Eternal Law. All human dealings, indeed, everything in the world, is subject to Eternal Law without even the possibility of rejecting it. Divine Positive Law, or revelation, does not bind everyone, but only those to whom it has been revealed and given in faith. Natural law binds men insofar as they possess reason, for it is the glory of men that they can participate freely in the Divine Reason by freely controlling their own actions and those of others in conformity with Eternal Law.

Human law—the specification and clarification of natural law—binds insofar as it is in accord with reason, i.e., insofar as it is a just control of men's actions.

In a masterful statement St. Thomas says:

Saint Augustine says: . . . 'There is no law unless it be just.' So the validity of law depends upon its justice. But in human affairs a thing is said to be just when it accords a right with the rule of reason: and, . . . the first rule of reason is the natural law. Thus all humanly enacted laws are in accord with reason to the extent that they derive from the natural law. And if a human law is at variance in any particular with the natural law, it is no longer legal, but rather a corruption of law.

If we were to plot this on our Thomistic legal model, the model would look like this:

To understand the significance of law having only a limited power to command obedience, it will be profitable to analyze

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14 *Id.*, I-II, q. 93, art. 6, *Respondeo*.
15 This is clearly the import of I-II, q. 98, art. 5, although the question concerned in that article only involves the Old Law of the Jews.
16 *Summa Theologica*, I-II, q. 91, art. 3.
17 *Id.*, I-II, q. 95, art. 2.
more closely the elements of Aquinas' definition of law as "An ordinance of reason for the common good promulgated by him who has care of the community," as it applies to human love.

(a) Ordinance. Law (in the Latin, lex, from ligare, meaning to bind) is an ordinance or a rule and measure of acts because it binds one to act or refrain from acting within a specified limit. For Thomas, the unwritten limit in every written law is justice.

(b) Reason. When we speak of a law binding human acts, we must say that law is based in human reason, for reason sets the moral bounds of all human acts by measuring their justice. As is stated in the Summa,

now the first rule and measure of human acts is the reason, which is the first principle of human acts . . . since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher.18

Or, as Thomas stated more explicitly a few paragraphs later, "The force of law depends on the extent of its justice. Now in human affairs a thing is said to be just from being right according to the rule of reason."19

Involved here is the classic distinction between law based in reason and law based in the human will of the lawmaker. Throughout the history of law this has been controverted. Ulpian, in the second century, clearly stated the other position as "whatever pleases the Sovereign has the force of law," which, as I understand it, is essentially the position of present-day legal positivists.20 Thomas explicitly rejects law based only on will because of his tremendous respect for the reasoning power not only of the ruler, but of all men.

(c) Common Good. Law, in order to be just, must be directed primarily to the common good, not to individual or private satisfactions. According to the Scholastic doctor

Now laws are said to be just—from their end, when they are ordained to the common good—and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver—and from their form, when, to wit, burdens are laid on the subjects according to an equality of proportion and with a view to the common good.

. . . On the other hand, laws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above —either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory, or in respect of the author, as when a man makes a law that goes beyond the power committed to him; or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws.21

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18 Id., I-II, q. 90, art. 1.
19 Id., I-II, q. 95, art. 2.
20 For example, Bedeau, On Civil Disobedience, 48 J. PHILOSOPHY (1961). Obviously Ulpian did not have the last word on the topic. This is a basic problem in law and a key to Thomistic Legal Theory. For a further historical development, see T. Dairrt, NATURE OF LAW (1951).
21 SUMMA THEOLOGICA, I-II, q. 96, art. 4.
The notion of common good in Thomistic law needs emphasis, for this is precisely the goal of civil government, and Thomas distinguishes types of government by the means and extent to which they fulfill this function. As the means proper to government, law must aim to implement the common good which is best described as "universal well-being." As St. Thomas says

the last end of human life is bliss or well-being. . . . Consequently the law must needs regard principally the relationship to well-being. Moreover, since every part is ordained to the whole, as imperfect to perfect, and since one man is a part of the perfect community [i.e., the State], the law must needs regard properly the relationship to universal well-being.22

This relationship of law and the common good will be better understood when we come to a discussion of legal justice.

(d) Promulgation. A law must be promulgated in order that those to whom it will apply may obey it. This publication need not extend to everyone, nor is there any "sanctified" means by which it must be published. It does have to be available to everyone. Since this causes no present difficulty, we shall do no more than point out the very public nature of civil disobedience.

(e) Public Authority. St. Thomas does a very interesting thing in putting the power to make law in the hands of "him who has care of the community." Although we naturally assume that he means "civil government," this is not the case. He does not give the power exclusively to a King, to Parliament, or even to some vague "legitimate ruler." Nor, for obvious reasons, did he put the law-making power in the hands of each individual. His language indicates the complexity of the problem, as he gives the power to make law either to the whole people or to their representative—who is unspecified! In Thomas' words

A law, properly speaking, regards first and foremost the order to common good. Now to order anything to the common good belongs either to the whole people or to someone who is the representative of the whole people or to a public personage who has care of the whole people, since in all other matters the directing of anything to an end concerns him to whom the end belongs.23

This point is of great significance for an understanding of civil disobedience, and brings us back to the topic proper. A "public personage" can be tautologically defined as a "public authority" or "one who has care of the community." This authority belongs either to the whole people or to those who rule in their name. Aquinas' notion of public authority in no way limits it to a formal governmental structure. Nor does it deny the possibility that an authority may be established for a limited time or for a limited purpose, i.e., to judge a law or custom to be unjust and thus no longer binding.

One of the marks of Aquinas' wisdom—or good luck, if you prefer—is that he did not overstate his case for authority. Authority comes from God as a concomitant of natural law, for only thus

\[\text{id., I-II, q. 90, art. 2.}\]

\[\text{id., I-II, q. 90, art. 3.}\]
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can one man have the power to order another. Jacques Maritain explains Thomas' intention quite well:

If in the cosmos, a nature, such as human nature, can only be preserved and developed in a state of culture, and if the state of culture necessarily entails a certain condition—the relation of authority among men—this relation is demanded by natural law.24

Though authority comes from God, this does not mean that certain people are designated by a divine finger to rule. Authority is a necessary function of living in society, and the society itself, the people, have the right not only to designate who shall have the authority over them, but how they shall get that authority. Nowhere does Thomas explicitly discuss the means of transmitting authority from the people to the public authority. Therefore there is nothing within the Thomistic notion of authority itself which would forbid civil disobedients from appointing themselves a public authority in a limited area, then appealing to the people for approval. This is precisely what happens. Organized civil disobedients are not mere breakers of the law. Rather, in their act of disobedience they take on the character of public authority; they act as representatives of the people; they actually take on a law-judging function.25 They appeal to reason in the name of justice; they explicitly seek the common good; they take upon themselves the care of the community; and, they promulgate their goals and actions and in this very act seek a public mandate. In short, they do all that is required of a lawmaking body.

Therefore, as we earlier pointed out the practical difference between mere disobedience to the law and civil disobedience, so here we establish the philosophical difference. The former is a law-breaking activity of a private citizen; the latter is a law-making action of a representative of the community, in this case, the organization of civil disobedients.26

Although Thomas did not state how public authority can be legitimately attained, he did show how it could not be gained, and this establishes the philosoph-

25 At this point, it may be worth while to point out the relation of law-judging to law-making in the Thomistic model. On the one hand, since law is always for the public good, only a public authority can make a law. But for the same reason, only a public authority can judge the justness of a law. St. Thomas is very clear on this, "Now since it belongs to the same authority to interpret and to make a law, just as a law cannot be made safe by public authority, so neither can a judgment be pronounced except by public authority which extends over those who are subject to the community." SUMMA THEOLOGICA, I1-II, q. 60, art. 6. Is St. Thomas saying that public authority is its own judge—one from which there is no appeal? Two alternatives present themselves: (a) a private citizen may always judge that a law violates his conscience and not obey it, and (b) there can be an appeal from one public authority to another. This is precisely where civil-disobedients fit in.

26 For a further discussion of authority in Thomistic thought, the reader is referred to Y. SIMON, PHILOSOPHY OF DEMOCRATIC GOVERNMENT 158-60 (1951) and J. MARITAIN, MAN AND THE STATE (1963). The latter has a fascinating section on prophetic-shock minorities in a democratic state. His position is basically the same as that of this paper, although not applied specifically to the problem of civil disobedience.
ical basis for the non-violence of civil disobedience. In his *Commentary on the Sentences of Peter Lombard*, the Angelic Doctor writes

Authority may fail to derive from God for two reasons: either because of the way in which it has been obtained, or in consequence of the use which is made of it. There are two ways in which the first may occur. Either because of a defect in the person, who is unworthy, or because of some defect in the way itself by which power was acquired, if, for example, through violence, or simony or some other immoral method. . . . The second defect prevents the establishment of any just authority; for whoever possesses himself of power by violence does not truly become lord and master.27

Thus, not only is non-violence an expedient for civil disobedients, it is an absolute necessity for the moral value of their actions.

Turning now from law and authority, we must consider justice, the natural anchor of all human law.

IV.

Justice is the one limit on human law that includes all others. Justice falls into the category of habits. To give a proper definition, Thomas says that “[j]ustice is a habit whereby a man renders to each one his due.” Because it is a habit directing one to good actions it is a virtue. Justice is traditionally divided into particular and general (more commonly called “legal”) justice. This is an important breakdown for our purpose, and despite its length, Thomas’ statement deserves to be quoted in detail:

Justice directs man in his relations with other men. Now this may happen in two ways: first, as regards his relations with individuals; secondly, as regards his relations with others in general, insofar as a man who serves a community serves all those who are included in that community. Accordingly justice in its proper acceptance can be directed to another in both these senses. Now it is evident that all who are included in a community stand in relation to that community as parts to a whole; which 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. . . . It is in this sense that justice is called a general virtue. And since it belongs to the law to direct to the common good, it follows that justice which is in this way styled general, is called ‘legal justice’ because thereby man is in harmony with law which directs the acts of all the virtues to the common good.28

St. Thomas’ concept of general justice is not the genus justice, but rather one species of justice, the other being particular justice. (This latter may then be taken as a genus and given the species commutative and distributive justice.) Legal justice is itself a special habit or virtue. In another place Thomas wrote:

Because where there is a special consideration of the object in a general matter, there must necessarily be a special habit; from this it follows that legal justice itself is a determined virtue hav-

27 T. Aquinas, *Commentary on the Sentences of Peter Lombard* Bk. II, Dist. 44, q. 2, a. 2. (Dawson ed.) (emphasis added).

28 Summa Theologica, II-II, q. 58, art. 5.
ing its species from this it tends to the common good.\textsuperscript{29}

In short, legal justice is a specifically distinct virtue, since virtues are specified by their objects and the common good is an object specifically distinct from the objects of any other virtue.

The proper object of legal justice is the common good and the proper object of law is the common good. It is here that two concepts meet. Because legal justice is based in natural law, its horizon is not limited to that of human positive law, but extends beyond it. It is prior in time and nature to civil law, and in order to be valid, civil law must be in conformity with legal justice. An act of civil disobedience deals with legal justice, because it is the act of a public authority for the common good. It is a virtue and a proper and immediate act of legal justice, since its function is not merely to direct the acts of other virtues to the common good, but relates directly to it as its goal.

In a system in which a law must be just to bind the citizens, the question of who may judge the justness of a law becomes very important. Here is the point of greatest disagreement at the present time. Merely because a group claims to be a public authority, it does not ipso facto have a right to judge that a law is immoral. After establishing that judgment is necessary for justice, Thomas sets out three conditions for such a judgment to be valid:

Now three conditions are requisite for a judgment to be an act of justice: first, that it proceed from the inclination of justice; secondly, that it come from one who is in authority; thirdly, that it be pronounced according to the right ruling of prudence. If any one of these be lacking, the judgment will be faulty and unlawful.\textsuperscript{30}

These conditions may rightfully serve as norms to determine the right of civil disobedients to judge—and, in effect, force a change in—a certain law.

(a) Motivation. The correct motivation is not unduly difficult for an individual to reach, but extremely difficult for a large group. Revenge, anger, frustration or just the lust for excitement are far easier motivations to arouse, but totally immoral as a basis for civil disobedience. The group must be brought to a love for justice. This often requires a period of education and training, as Gandhi pointed out.

(b) Authority. Only a public authority has the right to make laws, and thus, to judge laws. Civil disobedients drive a narrow lane here; they claim enough authority to judge law, but not enough to be in general rebellion. The three major requirements they must meet are non-violence, the open appeal for public support, and accepting the sanction of the civil authority as a sign that they are not rebelling.

(c) Prudence. This is indeed the most difficult point of all. For what is one man's prudence is another man's cowardice. An unjust law, says St. Thomas, may bind—but only in an extrinsic sense—in order to avoid disturb-

\textsuperscript{29}T. Aquinas, \textit{In Decem Libros Ethicorum Aristotelis ad Nicomachum Expositio}, Lib. V, Lect. 2, no. 192 (Dawson ed.).

\textsuperscript{30}Summa Theologica, II-II, q. 60, art. 2.
ance or scandal.Obviously "disturbance" here cannot be taken in an absolute sense, for any group effort to change law will cause disturbance, even if it is done in a courtroom. What is meant is disturbance leading to violence or seriously disrupting the life of a community. It must be remembered that civil disobedience receives its legal sanction from an appeal for popular support. This is an unstable force, and in the face of "backlash" or an explosive hostility on the part of the majority, efforts at education might be a more effective approach in a given circumstance.

Scandal is a real danger to be considered. Here it might apply in that observers and bystanders, seeing a law being violated, would be led to break other laws without the high moral purpose of civil disobedience. More subtle would be the sowing of general disrespect for law among the populace. This is particularly a danger where civil disobedience is used too often. For this reason it would seem a matter of prudence to use civil disobedience only as a last resort—after more standard means to change unjust laws have been tried and failed. At the same time, we must distinguish scandal and shock. In a given situation the shock effect of civil disobedience might be a most moral stimulant to a lethargic public.

V.

To summarize briefly: civil disobedience is a legal and a moral problem. It must be studied as such to be adequately understood. The Thomistic philosophy of law is one framework for doing this. While depending on the actual history and practice of civil disobedience for its data, the model offers a clearly moral understanding of law within which to organize the data. Law is necessarily just in the peculiar sense of legal justice, or it is not law. This "justness" depends on the law's relation to reason and to the common good. Since only public authorities can ultimately make law or decide the justness of a law, civil disobedients take on the function of public authority in their very act of disobedience. At the same time, they do not take on this function in such a way or to such an extent as to be in rebellion.

As a moral act, civil disobedience is a virtue requiring the most pure motives, love of justice, and a delicate sense of prudence. If understood in all its glory, civil disobedience is a field on which Raghavan Iyer's moralist and legalist can combine to apply the loftiest of ideals to the most realistic of battlegrounds: the making and breaking of law.

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31 Id., II-II, q. 104, art. 6, ad 3 a.m.