CIVIL DISOBEEDIENCE IN
ST. THOMAS AQUINAS’ NATURAL LAW THEORY
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The purpose of this paper is to develop and explain ‘civil disobedience’ based on Aquinas’ natural law theory.

I. Opening statement

The central question is, ‘Is civil disobedience allowed in Aquinas’ natural law theory?’ If his theory allows civil disobedience, then it must also answer: (1) how does an individual decide that a law is unjust, (2) how does an individual make this decision concerning just versus unjust; and (3) what does the individual do about an unjust law? These questions and the central question will be answered in this paper. At the heart of the civil disobedience question in Aquinas’ natural law theory is the dismissive judgment

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3 New Shorter Oxford English Dictionary, 5th ed. (Oxford: Oxford University, 2002) CD-ROM. Dismissive is defined as, “Of the nature of or characterized by dismissal; tending to dismiss; suggesting unworthiness of any further consideration; disdainful.” As such, a dismissive judgment is a judgment of an object that is denied or dismissed as unworthy of any consideration.
4 St. Augustine, De libero arbitrio, I v 11, Kretzmann 8. Kretzmann points out that there is a problem between the quote from Augustine, “lex mihi esse non videtur, quae iusta non fuerit” and the ‘quote’ “Lex iniusta non est lex”, some philosophers attribute to Augustine and Aquinas. The later, “An unjust law is not a law,” is opposed to the former, “To me that which is not just does not seem to me to be a law.”
it a paradoxical judgment for Aquinas? Alternatively, is it a reasoned intellectual judgment for Aquinas? Finally, may humans disobey an unjust law? As the basis for my developing my critical analysis of this issue, I have chosen the argument from Norman Kretzmann’s article “Lex Iniusta Non Est Lex: Laws on Trial in Aquinas’ Court of Conscience.” Kretzmann’s article provides a very insightful analysis of the dismissive judgment issue. He analyzes and draws a valid conclusion on dismissive judgment and the central question of civil disobedience. Additionally, he provides an excellent analysis of Aquinas’ motives for supporting this doctrine. Finally, with a minor modification, Kretzmann’s argument provides an answer to the civil disobedience issue.

However, developing, examining, and answering the question of civil disobedience in Aquinas’ natural law theory is only the start. Does Aquinas’ account of civil disobedience hold up when explaining a modern civil disobedience case? To answer this, we will next examine a modern civil disobedience case in Aquinas’ court of conscience. Should an anti-abortion activist disobey the laws of the United States to protect “unborn” children? Does civil disobedience in Aquinas’ natural law theory pass muster on this ‘morally difficult case’?

\[d\] Kretzmann 7-19.
We will use the two verdicts developed from the discussion of the central question to inspect this ‘morally difficult case’. First, whether or not an ‘unjust law is no law’, as moral reasoning individuals, we must learn to weigh the cost of disobeying the law versus obeying the unjust law, i.e., obey by ‘turning the other cheek’ for the good of society. Second, an ‘unjust law is no law’, as creatures of a divine being, we must always be disobeyed, i.e., such ‘an unjust law is no law’ and we have no choice but to disobey the unjust law. Let us begin by developing and answering the central question, “Is civil disobedience allowed in Aquinas’ natural law theory?”

II. Developing, examining, and answering the central question

The desideratum for answering the central question of civil disobedience in Aquinas’ natural law theory is as follows. First, it is essential to the theory that we understand Thomist civil disobedience, i.e., whether the dismissive judgment, “an unjust law is not a law”, is commonsensical or paradoxical and how can it be used explain civil disobedience. We will begin by laying out the preliminary groundwork, the assumptions, basis for the argument, and the issue. Next, it is essential to the theory that we
understand Aquinas’ conception of law, in particular the relationship
of natural and human laws. We will summarize Aquinas’ four
classifications of law and the types to be used for this analysis.
Thirdly, it is essential to the theory that we understand the Thomist
view of dismissive judgment and its motives. This will sum up the
basis for an assessment of law, Aquinas’ assessment of law, and
assessment of law in the court of conscience, the agent intellect.

A. Laying the groundwork

Let us begin by outlining the preliminary assumptions, conditions
for civil disobedience, and the issue of how to determine the justice
of a law.

1. The preliminary assumptions

Kretzmann uses Aquinas’ system as a basis for his investigation.
The focus of the discussion is on disagreements between a moral
system and a legal system. As such, disagreements between
individuals over the moral assessment of laws (e.g., people arguing
over their individual assessments of a law as just or unjust) are to
be ignored. Kretzmann also writes that in a Thomist viewpoint,
there is a fundamental connection between moral philosophy and
Christian theology. As such, Aquinas’ legal system does not
separate morality from theology (i.e., the human beings in Aquinas’ society are Christians). Nevertheless, even with this linkage, a secularized version of Aquinas is still proper for developing, examining, and answering the question of civil disobedience.

2. The conditions for civil disobedience

Dismissive judgment (i.e., a disdainful judgment that dismisses thereby denying a premise or object) concerns whether a law is unjust. However, in this moral judgment, what information must a human being in a society need to determine justice? For Kretzmann, the following questions must be answered concerning a dismissive judgment of a law in terms of civil disobedience: ¹ 1) can

¹ Kretzmann 7. And Frederick Copleston S.J., Aquinas, (Baltimore: Penguin 1957) 219. "[We] can say with truth that Aquinas believed in a set of unalterable moral precepts. The question arises... whether [Aquinas’ moral] theory is compatible with the empirical fact that different people and different social groups [i.e., different religions] have divergent moral convictions [i.e., religious convictions].... [However, I make] the following relevant point, namely that differences in moral convictions do not themselves constitute a disproof of the theory.... For there might be an unchangeable moral law and at the same time varying degrees of insight into the content of this law" [i.e., reasoning humans in different social groups have just not ‘discovered’ the unalterable moral law].

² Joel Feinberg, “Civil Disobedience in the Modern World,” Philosophy of Law, Eds. Joel Feinberg and Hyman Gross, 5th ed. (Belmont: Wadsworth, 1995) 121-123. Although Kretzmann does not specifically deal with what constitutes ‘the act civil of disobedience’, which is also an important conclusion for a discussion of civil disobedience. ‘The act of civil disobedience’ as ‘lawbreaking’ against an unjust law can have distinct flavors. A Thomist ‘act of civil disobedience’ according to Feinberg’s article would be defined as “not to undermine authority but to protest its misuse.” Of the flavors in the article, Rawl’s approach to the ‘act of civil disobedience’ seems best in terms of Aquinas, as it requires the use of ‘reason’ to determine ‘the act of civil disobedience’. Since the use of reasoning to determine ‘the act of civil disobedience’ would seem to be a requirement for a Thomist theory. For Aquinas then, ‘the act of civil disobedience’ would be similar to John Rawl’s
an individual decide whether a law is unjust; 2) how can an individual make such a decision; and 3) what can or should the individual do about an unjust law. However, which kind of dismissive judgment should apply to the law and civil disobedience?

3. The dismissive judgment issue in Aquinas’ law

Every thing, being, or substance has inclusive conditions that determine its completion. Law is a thing for Aquinas. An inclusive condition, which could be either non-evaluative or evaluative, is a “condition” that a thing, being, or substance must have to be

“conscientious refusal” than “warfare against the state.” (Especially considering Aquinas’ ‘doctrine of the mean’ as well as ‘perversions of law’ as developed respectively in Summa Theologica, I-II. Q. 64 A. 1 Obj. 3. and Summa Theologica, I-II. Q. 92 A. 1 RObj. 3. Further, Aquinas does not seem to advocate armed revolt which would be far away from the ‘mean’.) The ‘act of civil disobedience’ requires four characteristics: (1) it must be public; (2) in must be nonviolent; (3) it must be either direct or indirect deliberate unlawfulness; and (4) it must be conscientiously aimed towards the ‘good of society’. Therefore, a reasoned ‘the act of civil disobedience’ as “conscientious refusal” seems to me in alignment with Thomist philosophy.

Kretzmann 9. Kretzmann’s paper is contingent on the plausibility of the notion of civil disobedience: its role, justification, and nature. Kretzmann deals thoroughly with the justification for civil disobedience. However, Kretzmann seems unaware in the article that he is facing a problem in the areas of the role and nature of civil disobedience; I feel that he has left his argument open to questioning in these two areas. In spite of this, for the purpose of this paper I feel that we can properly explain Aquinas and civil disobedience without specifically dealing with the distinctions concerning the role and nature of civil disobedience. It seems to me that for Aquinas, an entitlement for the ‘role of civil disobedience’ might be understood as both a ‘right’ and a ‘duty’ to disobey the unjust law, i.e., for unjust laws vis-à-vis ‘divine law’ there is a duty to civil disobedience and for unjust laws vis-à-vis ‘reasoning to the natural law’ there is a mere right to civil disobedience. Please note: The ‘nature’ or the act of civil disobedience was discussed in a previous footnote. Thank you to Dr. Corlett for pointing out this problem with Kretzmann’s article.

Kretzmann 7-8.
considered complete. Non-evaluative means that the thing simply has the condition (e.g., the leg of a chair is a non-evaluative condition of “chair-ness”). Evaluative conditions are abstracted by reason to determine whether the conditions for inclusion in the form of the thing have been met (e.g., “masterpiece” is an evaluative condition of “musical masterpiece”, because an evaluation must be made to determine inclusion).\(^1\)

There are two of the kinds of things: non-natural conventional kinds and natural conventional kinds.\(^2\) Of non-natural conventional kinds, their inclusive conditions are non-evaluative (e.g., for a \textit{Haiku poem} or \textit{soldier}, they simply need to meet the defining conditions). Of the natural conventional kinds, some are overtly and invariably evaluative. An example of this would be fine \textit{artwork} or \textit{gifted person} where an evaluation determines whether the condition is met for its inclusion. There are also natural conventional kinds that are not overtly or invariably evaluative. Evaluative conditions that are not overt involve implicit evaluative conditions and are linked with things that have a familiar human function. An illustration of this would be \textit{artwork} or \textit{anthropologist}.

For these kinds of things with non-overt evaluative conditions, the

\(^1\) Kretzmann 8.
\(^2\) Kretzmann 8.
non-evaluative conditions must be met before applying the evaluative (i.e., “He is no general,” makes sense only if “A bad general is not really a general, despite the fact that he holds the rank and commands an army”). Is it the natural conventional kind of things, with conditions that are both non-evaluative and evaluative, but not overtly or invariably evaluative, and has an important human function, which is the appropriate kind to apply dismissive judgment?\(^k\) It is here that Kretzmann’s argument has a problem interpreting Aquinas.

The problem with Kretzmann’s argument is, “How do you explain ‘without being overtly evaluative’ condition in Aquinas?”\(^l\) The etymology of ‘overt’ is the Latin word aperire—exposed to view or knowledge, open, evident, straightforward.\(^m\) Is Kretzmann correctly saying, “Without being exposed, evident and open to knowledge”? Is this not a contradiction of Aquinas’ writings? For Aquinas, humans possess a unique inclination towards reason.\(^n\) This

\(^k\) Kretzmann 9.
\(^l\) There is another problem, that of conscientia or synderesis? Which ‘conscience’ from Aquinas do you use? [Aquinas, Summa Theologica, I. Q. 79 A. 12 and I. Q. 79 A. 13. The Human Constitution, trans. Richard Regan, (Scranton: University of Scranton Press, 1997) 75-78.] While Kretzmann points out that he is aware that he is facing a problem in this area, I feel that he has left his argument open to question form this area as well. However, for the purpose of this paper I feel that we can properly explain Aquinas and civil disobedience without specifically dealing with this distinction.

\(^m\) The Shorter Oxford English Dictionary.

inclination is reasoning towards natural knowledge and knowledge
of the supernatural and ultimate goal of human existence. If
humans are inclined towards reason and knowledge, then how can
you evaluate a condition without exposing or opening it to
knowledge? Clearly, Aquinas would not agree with Kretzmann’s
definition, ‘without being overtly evaluative’; since being open and
exposed to knowledge is a condition of reasoning, the potential to
gain knowledge. Further, this definition is a contradiction of
evaluation, since to evaluate is to open or expose to knowledge. It
is also to make a thing, being, or substance evident through
reason. Clearly, this is a problem for Kretzmann’s argument.
Therefore, we restate in light of this, ‘It is the natural conventional
kind of things, with conditions that are both non-evaluative and
evaluative, but not invariably evaluative, and has an important
human function, which is the appropriate kind to apply dismissive
judgment.’

There is a sidebar to our analysis. Kretzmann points out that
various philosophers have confused Aquinas’ dismissive judgment
as a paradox. This attack on the dismissive judgment comes
mainly from the logical positivists and others opposed to natural
law. Philosophers like John Austin look on the issue of law and

Kretzmann 9.
justice as two distinct questions: ‘Does the law exist?’ and ‘Is the law just?’ From their perspectives, Aquinas’ dismissive judgment, ‘an unjust law is not a law’, does appear to be a paradox (i.e., like stating, “’statutes are not laws’ or ‘constitutional is not law’ is nonsensical”, since by definition they are laws). They feel that Aquinas’ dismissive judgment only deals with the first question (i.e., “does the law exist?”). However, as pointed out by Kretzmann, Aquinas does not think or look on dismissive judgment as an issue of existence. It is an issue of evaluative and non-evaluative inclusive conditions—is the law complete? Does it meet all of the conditions to be a law?

B. Summarizing Aquinas’ law

With this preliminary foundation, let us next turn to a summary of Aquinas’ laws, in particular the linkage between natural law and human law.
1. *Aquinas classifies the types of law.*

For Aquinas, there are four types of law: eternal, natural, human, and divine. Eternal law or God’s intellect is the basis for the other three types. The principles of morality, physics, and mathematics are part of the eternal law. However, humans can know eternal law only incompletely and with uncertainty. It is through the natural law that humans can participate in the eternal law. Natural law is in the form of innate principles of rational action. Natural law can only be explained on a very limited basis via participation in eternal law (i.e., man cannot know the eternal law, although he shows the potential or inclination towards the supernatural and ultimate goal of human existence). Human law is the legislation of humans for their governance and natural direction of humans towards the common good. To be rational, human law depends on the principles of natural law as derived by reason. Divine law is the revealed elements of the eternal law. The Scriptures reveals the eternal law to humans to guide them towards the supernatural and ultimate goal of human existence. Since a legal system operates in human society and human law governs human society, we next focus our analysis on Aquinas’ natural and human law and their connective nature.

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Kretzmann 10-11.
To incline towards the natural law is human nature, the inclination of human beings to actualize the essential potentials of their nature. Humans can recognize as good or bad the objects of their inclinations. The natural law’s innate precepts are reasoned as corresponding from these natural recognitions of the objects of our inclinations. As such, human action and direction are found in practical reason.

The first principle of practical reason is that it is inclined toward action, what is good. “Since every agent acts for an end, which has the nature of a good..., The good is that which all things seek after. Therefore, the first precept of law is this: What is good is to be done and promoted.” There is a connection between the order of precepts and natural inclinations toward the natural good. Human beings have three natural inclinations. First, as with other substances, they have an inclination towards preservation. Second, as with other animals, they are inclined towards reproduction. Lastly, and unique to humans, they have an inclination to reason toward the supernatural and ultimate goal of human existence and

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97 Kretzmann 11.
the common good of society." However, humans can know the supernatural and ultimate goal of human existence only incompletely and with uncertainty. Nevertheless, the “precepts of natural law are innate in us.”\textsuperscript{v} In addition, Kretzmann points out that for Aquinas, there is an “essential connection between natural law and conscience.”\textsuperscript{w} In Aquinas, “Conscience is said to be a law of our intellect because as it is a habit [dispositional state–Kretzmann] containing the precepts of natural law, which are the first principles of human actions”\textsuperscript{x} or moral rules.\textsuperscript{y}

Inasmuch as human law depends on the precepts of natural law, it would seem that human laws are merely derivations of moral rules. However, this is not the case. For Aquinas, merely deriving something from the precepts of natural law (i.e., moral rules) does not constitute a sufficient condition for its inclusion in human law.\textsuperscript{z}

Kretzmann says that the completeness of Aquinas’ human law requires both evaluative (moral) and non-evaluative (formal)
inclusive conditions. Finally, it is with reason that humans evaluate an inclusive condition that is derived from the natural law.

C. Answering the central question

The groundwork and structure of Aquinas’ legal system is behind us. Let us now proceed to the argument for the assessment of human law via dismissive judgment in the court of conscience.

1. The basis for the assessment of laws

From reading Aquinas’ works on natural and human law, Kretzmann deduces that Aquinas’ definition of law has seven inclusion conditions. These conditions provide the basis for the assessment of the justness of a law for Aquinas. The inclusive conditions of law are that they are: (A) a directive of reason, (B) aimed at the common good, (C) promulgated by the government, (D) pertaining to a complete community, (E) leading people to or restraining them from certain actions, (F) have coercive power, and (G) intended to be obeyed. It is from Kretzmann’s list of conditions that we continue our assessment of how Aquinas evaluates laws.aa

Of the conditions, (A) and (B) are evaluative (or moral) conditions and (C)–(G) are non-evaluative (or formal and non-

aa Kretzmann 10-11.
moral) conditions. Aquinas makes it clear that conditions (A) and (B) only come into play to determine the essence of a law, if the formal conditions (C)-(G) have been fulfilled.\textsuperscript{ab} For example, the board of directors of a fraternity may make rules that fulfill conditions (A)-(C) and (E)-(G), but because a fraternity is an incomplete community (i.e., it lacks political sovereignty) the rules do not fulfill condition (D). Such a rule or law would not even officially start as rule. “In failing to meet one of the formal conditions, those... rules fail to count as laws even technically.”\textsuperscript{ac}

For Aquinas, law is an extension of moral rules. Further, morals rules are derived by way of reasoning from natural law. Kretzmann also writes that for Aquinas both (A) and (B) are evaluative moral conditions. The justness of a law is implicit in its rational basis, i.e., condition (A). Additionally, the justness of a law is implicit in its directing a person’s actions towards the common good, i.e., condition (B). As such, a law not fulfilling either (A) and/or (B) would be unjust despite the fact that fulfills conditions (C)-(G).\textsuperscript{ad}

Therefore is would seem clear that it is in conditions (A) and (B) that dismissive judgment of a law as \textit{unjust} is clearly relevant.\textsuperscript{ae}
2. The assessment of Aquinas’ laws

The assessment of an actual law is not implicit. However, it is also not an explicit assessment or possible dismissive judgment; for Aquinas, the assessment and dismissal of a law requires action by the intellect through reason. Kretzmann gives us two examples: a ‘tyrannical’ law and ‘violent’ law. In the first case, he quotes Aquinas, “A tyrannical law, through not being according to reason, is not a law, absolutely speaking, but rather a perversion of law.”

For example, a tyrannical law that does not fulfill condition (A) and only marginally condition (B) would be unjust despite the fact that it fulfills conditions (C)-(G) (e.g., a tyrannical law is not a just law because it is contrary to reason and aims for the perverted good of the tyrant, despite the fact in fulfills conditions (C)-(G)). Finally, in the second case, he quotes Aquinas, “Human law has the nature of law insofar as it partakes of right reason [emphasis Ed.]. But insofar as it deviates from reason, it is called an unjust law and has the nature, not of law, but of violence.” Again, as in the example above, a ‘violent’ law that does not fulfill condition (A) would be

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unjust despite fulfilling the other conditions (B)-(G).\textsuperscript{ah} Therefore, for Aquinas the assessment or dismissal of a law as unjust always requires an act of reason (i.e., reasoning from inclusive conditions that are both non-evaluative and evaluative, but not invariably evaluative) to judge its completeness.

3. The court of conscience

From the argument on the definition and assessment of law, it is clear that human laws may be “unjust-I”\textsuperscript{ai} by being contrary to the common good of society, i.e., the law is either ‘tyrannical’ or ‘violent’.\textsuperscript{aj} Since human law is derived by reasoning from the natural law,\textsuperscript{ak} the end of human law is the natural inclination toward the good. In addition, Kretzmann notes a second way a law may be “unjust-II” is by being contrary or opposed to divine law. This is explicit with the Christian theological nature of Aquinas’ moral system. No law is just that is contrary to God’s divine law. It is within these two verdicts, “unjust-I” and “unjust-II”, that we can answer the justice of a law in terms of civil obedience. But,\textsuperscript{ah}

\textsuperscript{ah} Again, note the similarity here between these two examples and in the example of evaluative inclusive conditions in section II. A. 3. of this paper.

\textsuperscript{ai} Kretzmann 14. I am using Kretzmann’s notation of “unjust-I” and “unjust-II.”

\textsuperscript{aj} Kretzmann 14.

\textsuperscript{ak} Aquinas, \textit{Summa Theologica}, I-II. Q. 95 A. 2, Hyman and Walsh, 537-538.

For Aquinas every human law is derived from natural law. He proves this as follows: (1) if a human law is just, then it is valid; (2) reason is based in the natural law; (3) justice can only be determined by reason from natural law; and (4) therefore, since reasoning from the natural law determines justice, human law is just, if and only if it is derived by reason from the natural law.
how do we reach the verdict?

The verdict is determined in the ‘court of conscience’. Aquinas says, “Laws framed by man are either just or unjust. If they be just, they have the power of binding in the conscience.” Moreover, the ‘court of conscience’ is an act of reasoning. Again, humans are rational beings. “For conscience, according to the very nature of the word, implies the relation of knowledge to something: for conscience may be resolved into *cum alio scientia*. ...Wherefore, from this explanation of the name, it is clear that conscience is an act.” Additionally, the ‘court of conscience’ is not an interest of a community action, but an interest of the individual, i.e., how an individual should act. It is through reason’s acting in the ‘court of conscience’ that determines a dismissive judgment and an individual’s obligation to follow the law.

As stated in the preliminary groundwork, the following questions must be answered concerning a dismissive judgment of a law in terms of civil disobedience: (1) can an individual decide whether a law is unjust; (2) how can an individual make such a decision; and

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Aquinas, *Summa Theologica*, I-II. Q. 96 A. 4, Baumgarth and Regan, 70.

Aquinas, *Summa Theologica*, I. Q. 79 A. 13, Baumgarth and Regan, 3. In fact, Aquinas goes on to say that, conscience “denominates” or names the act, in this case it names the act of an individual reasoning by way of scientific deduction.
(3) what can or should the individual do about an unjust law.\textsuperscript{an} It is clear that for Aquinas that the answer to question (1) will always be yes. Individuals can decide by reasoning in the ‘court of conscience’.

Of the later verdict, an “unjust-II” type, Aquinas says, “laws may be unjust through being opposed to the divine good; such are the laws of tyrants inducing to idolatry or to anything else contrary to the divine law, and laws of this kind must in nowise be observed.”\textsuperscript{ao}

Any law that is contrary to divine law is inherently unjust. Answering question (2), an individual by reading the Scriptures can decide if a law is a ‘perversion’ and therefore unjust. As for question (3), it is clear that “laws that are contrary to the commandments of God, which is beyond the scope of [human] power. Wherefore in such matters the human law should not be obeyed.”\textsuperscript{ap} Therefore, in regards this type of verdict, it is clear that civil disobedience is not only permissible; it is an obligation of the individual. Therefore, clearly the dismissive judgment can apply in this case.\textsuperscript{aq}

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\textsuperscript{an} Kretzmann 9. \\
\textsuperscript{ao} Aquinas, \textit{Summa Theologica}, I-II. Q. 96 A. 4, Baumgarth and Regan, 70. \\
\textsuperscript{ap} Aquinas, \textit{Summa Theologica}, I-II. Q. 96 A. 4 RObj. 2, Baumgarth and Regan, 71. \\
\textsuperscript{aq} Kretzmann 16.
\end{flushright}
Of the former verdict, an “unjust-I” type, the answer is not as clear-cut. To answer question (2), an individual by reasoning well in a scientific manner could make a ‘reasonable’ decision if a law is unjust (particularly if it is either a ‘tyrannical’ or a ‘violent’ law). The problem would be the usual “unavoidable empirical difficulty” with the likelihood of a subjective error. However, in answering question (3), there is a caveat to disobedience. Aquinas posits that when a law is reasoned to be unjust, an individual is not obligated to obey the law; however, an individual might be obligated to obey a law after all—“for the sake of avoiding a scandal or disruption, for which a person should give up his right” (i.e., the application of the Christian ‘turn the other cheek’ doctrine). Aquinas seems to say that when confronted by an “unjust-I” law, the individual must weigh the potential harm of resisting the law against the potential harm the unjust law may cause if left unchallenged. Therefore, in the answer to (3), it is unclear whether civil disobedience is an absolute permissible obligation of the individual.

Therefore, the verdicts or answers to the central question, “Is civil disobedience allowed in Aquinas’ natural law theory?” is Yes for

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152 Kretzmann 16.
153 Aquinas, Summa Theologica, I-II. Q. 96 A. 4, Baumgarth and Regan, 70.
154 Kretzmann 16-17.
“unjust-II” and Yes for “unjust-I”, but maybe we as reasoning individuals should not disobey the civil law.

III. Passing muster on a ‘morally difficult case’

Does Aquinas’ civil disobedience hold up when explaining a modern civil disobedience in a ‘morally difficult case’? To answer this we will examine the abortion issue, which is a ‘morally difficult case’. We will use two arguments from *Roe v. Wade*, 410 U.S. 113 (1973) to inspect this issue. Next, we will hear a reply from Aquinas using the two developed verdicts from the court of conscience.

A. The abortion arguments

There are two arguments that will be examined concerning the abortion issue. One concerns the fetus as only a ‘potential human’. The second concerns the fetus as not being an ‘actual human’. Each of these two arguments played central roles in the U.S. Supreme Court’s ruling in *Roe v. Wade*, 410 U.S. 113 (1973).^a^
While the two arguments appear similar, to see their dissimilarity let us examine each argument.

1. A fetus is only a ‘potential human’

An abortion activist would say that we have no obligation, or right, to protect a fetus as if it were a ‘potential human’. The basic argument boils down to “Potential possession of [‘commonsense personhood’] confers not a right, but only a claim, to life.”

Because a fetus cannot exist outside the mother it is “extremely difficult to believe… that a zygote one day after conception is the sort of being that can have any rights at all, much less the whole armory of ‘human rights’ including ‘the right to life’.” For example, it is a logical error to say that a child with his or her crayons as a potential artist is not on that account an actual artist. Therefore, the fetus, with only a potential for ‘commonsense personhood’, has only a claim to life whereas, the mother, with actual ‘commonsense personhood’, has

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"Editor’s Note: The author explained earlier in the essay that he will use the letter c as an abbreviation for the collection of characteristics (consciousness, self-concept, rationality, etc.), whatever may be, that are necessary and jointly sufficient for ‘commonsense personhood’.” I will replace the c with [‘commonsense personhood’].

personhood’, has an actual right, not a claim, to life. It then follows
that the mother in possession of actual ‘commonsense personhood’
with all of its rights has the right to decide.

2. A fetus is not an ‘actual human’

An abortion activist might also say that we have no obligation to
protect a fetus as if it were an ‘actual human’. The argument states
that “all and only those creatures who actually possess
[‘commonsense personhood’] are moral persons [i.e., ‘actual
humans’] …whatever species or category they may happen to
belong to.”\textsuperscript{ay} Therefore, the “status of the fetus as a moral person
[is] straightforward: Since the fetus does not actually possess those
characteristics [of ‘commonsense personhood’] that we earlier listed
as necessary and sufficient for possessing right to life, the fetus
does not possess that right.”\textsuperscript{az} As such, abortion does not violate
the fetus’ right to life, since the fetus does not possess a right to
life. Therefore, the fetus, not being ‘actually human’, has only a
claim to life and the mother, being ‘actually human’, has an actual

\textsuperscript{ay} Feinberg, “Potentiality, Development, and Rights,” 148. It is important to
note that the ‘actual-possession’ criterion would imply that small infants are
not moral persons. The whole issue of infanticide of a physically normal small
infant becomes a very real possibility; since the small infant is not in actual
possession of ‘all’ the criteria of ‘commonsense personhood’.

\textsuperscript{az} Feinberg, “Potentiality, Development, and Rights,” 149.
right, not a claim, to life. It then follows that the mother, being an ‘actual human’ with all of its rights, has the right to decide.

B. The replies from Aquinas’ court of conscience

Aquinas can reply to these two arguments concerning the abortion issue. Aquinas could reply to both arguments in terms of an “unjust-II” verdict. However, to understand Aquinas’ civil disobedience, we will examine the first argument that the fetus, as only a ‘potential human’, is an “unjust-II” verdict. Next, we will examine the second argument that the fetus, as not being an ‘actual human’, is an “unjust-I” verdict. Let us proceed to examine each reply by answering questions (1), (2), and (3) concerning dismissive judgment and civil disobedience.

1. A reply to a fetus is only a ‘potential human’

The reply from Aquinas in terms of an “unjust-II” is that abortion violates the divine law. Aquinas says that a reasoning human intellect can know that “the form coming upon the matter makes the matter itself actually exist, as the soul does to the body.”

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\[ba\] I believe, in fact, that Aquinas would respond to both arguments for abortion with a verdict that abortion violates divine law. Nevertheless, to understand fully Aquinas’ civil disobedience, it is prudent to examine the abortion argument with both verdicts.

During reproduction, the man deposits the form or soul upon the matter provided by the mother, and the fetus exists. Therefore, the answer to question (1) is that a fetus cannot be merely a ‘potential human’ since it is both soul and matter; thereby it is a ‘human’. The Bible, which is divine law, tells man, “Thou shall not kill.” For that reason, we answer question (2) that abortion, which kills the fetus, is a ‘perversion’ and therefore unjust law. It follows for question (3), “laws that are contrary to the commandments of God... should not be obeyed.” Clearly, Aquinas’ reply to the argument that a fetus is only a ‘potential human’ would be that the law is unjust (in terms of “unjust-II”) and that civil disobedience is not only permissible; it is an obligation.

\[\text{Aquinas, On Spiritual Creatures, A. 1, 475. “For it is clear that what belongs to a thing by virtue of the thing itself is inseparable from it. But being belongs to a form, which is an act, by virtue of itself. And thus, matter acquires actual being according as it acquires form; while it is corrupted so far as the form is separated from it.”} \]

\[\text{Aquinas, Summa Theologica, I. Q. 75 A. 6, Hyman and Walsh, 501. “Moreover we may take a sign of this from the fact that everything naturally aspires to being after its own manner.” For example, the seed of a plant has the form or soul of the completed plant. The seed aspires to become the plant after its manner. “And for this reason, living things need to have a power of the soul that brings them to their requisite size.” (Aquinas, Summa Theologica, I. Q. 78 A. 2, RObj. 3, Regan, 50.) If you destroy the seed, then you destroy the future plant. In the sense of form and matter, a fetus is to a human as a seed is to a plant.} \]

\[\text{Exodus, Chapter XX, Verse 13.} \]

\[\text{Aquinas, Summa Theologica, I-II. Q. 96 A. 4, RObj. 2, Baumgarth and Regan, 71.} \]

\[\text{Kretzmann 16.} \]
2. A reply to a fetus is not an ‘actual human’

The reply from Aquinas in terms of an “unjust-I” is that abortion violates the natural law principle; society’s common good is man’s end of happiness. Reproduction is a part of man’s end. For Aquinas, “the power of generation [reproduction] is the ultimate and most important and most perfect of these three powers [of the vegetative soul], as the De Anima says, (Aristotle, De Anima II, 4. 416b23-25) for it belongs to something perfect ‘to produce something just like itself.’ (Aristotle, De Anima II, 4. 415a26-b7).” Consequently, the answer to question (1) is that a fetus is an ‘actual human’; since “we do not imply in the creature a potentiality to non-being” and a fetus is a subsistent creature produced by humans as a perfect end to a part of its being, it is thereby an ‘actual human’.

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bh Aquinas, Summa Theologica, I-II. Q. 90 A. 2, Baumgarth and Regan, 14. For Aquinas, “the last end of human life is bliss or happiness.... Consequently, the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole as imperfect to perfect, and since a single man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness.”

bj Aquinas, Summa Theologica, I. Q. 78 A. 2, Regan, 14.

Aquinas, On Spiritual Creatures, A. 1, 474-475. “but as potency which is always accompanied by its act.” Further “matter is being in potency and becomes actual being through the coming of the form, which serves as the cause of existence in its regard.” Additionally, as stated above, for Aquinas the soul coming upon the matter creates the being.


bl Aquinas, Summa Theologica, I. Q. 75 A. 6, Hyman and Walsh, 501.

bm Aquinas, Summa Theologica, I. Q. 75 A. 6, Hyman and Walsh, 501. See also Aquinas, Summa Theologica, I. Q. 78 A. 2, RObj. 3, Regan, 50.
question (2) is abortion is an unjust law since it is contrary to the ends of man, happiness, and the ends of society, the common good. In terms of the common good, the answer for question (3) is problematic. As stated above, Aquinas wrote that an individual might be obligated to obey an unjust law after all—“for the sake of avoiding a scandal or disruption.” When confronting by an “unjust-I” law, for Aquinas, the individual must weigh the potential harm of resisting the law against the potential harm the unjust law may cause if left unchallenged. Here are I feel two examples. First, in the case of a deformed fetus, could the act of abortion be deemed for the common good of society and merciful for the fetus? Secondly, in times of famine or pestilence, could the act of abortion be deemed for the common good of society and merciful for the fetus? It is therefore, unclear in answering question (3) whether

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\[\text{Aquinas, Summa Theologica, I-II. Q. 90 A. 2, Baumgarth and Regan, 14.}\]

“Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work must needs be devoid of the nature of law, save insofar as it is ordered to the common good.” That is a law devoid of the nature of law is unjust.

\[\text{Aquinas, Summa Theologica, I-II. Q. 90 A. 2, Baumgarth and Regan, 14.}\]

“Now the first principle in practical matters, which are the object of the practical reason, is the last end, and the last end of human life is bliss or happiness, as stated above. Consequently, the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole as imperfect to perfect, and since a single man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness.”

\[\text{Kretzmann 16-17.}\]
civil disobedience would be a permissible obligation or right of the individual.

Therefore, the replies to the verdicts or answers explaining a modern civil disobedience in a ‘morally difficult case’ (the abortion issue) for Aquinas are Yes for “unjust-II” with an obligation to disobey and Yes for “unjust-I”, but maybe we as reasoning individuals should not disobey an unjust law for the good of society.

IV. Summing up Aquinas’ civil disobedience

The purpose of this paper was to develop and explain ‘civil disobedience’ based on Aquinas’ natural law theory. First, we developed and answered the central question, ‘Is civil disobedience allowed in Aquinas’ natural law theory?’ We modified the dismissive judgment argument on from Norman Kretzmann’s article “Lex Iniusta Non Est Lex: Laws on Trial in Aquinas’ Court of Conscience” as the basis for answering this central question. What we found was that the verdict or answer to the central question is ‘Yes for “unjust-II” and Yes for “unjust-I”, but maybe we as reasoning individuals should not act on the verdict for “unjust-I”.

Secondly, we explored whether civil disobedience in Aquinas’ natural law theory passes musters on a ‘morally difficult case.’ To
answer this, we examined the abortion issue. We listed and examined to two arguments for abortion from *Roe v. Wade*, 410 U.S. 113 (1973). We then examined replies from Aquinas’ court of conscience. We found that Aquinas’ replies to both arguments were that abortion is an “unjust” law; per se, for a rational human being civil disobedience is both an obligation in one verdict and perhaps an optional right in the other verdict.\(^{bs}\)

**V. Closing statement**

The logic of Aquinas’ replies to the arguments in the abortion issue are sound within the historical time span and scope of Aquinas’ moral and metaphysical philosophy. However, for a ‘morally difficult case’ such as abortion, I see real difficulties facing a modern day Thomist. Primarily, modern biology and biological anthropology would raise some very difficult metaphysical problems for Aquinas’ philosophy to answer. Aquinas’ role of semen in reproduction is brought directly into doubt.\(^{bt}\) Many other problems would face a modern day Thomist. Therefore, because of the advances and knowledge posited by modern science, I would have a hard time being a Thomist; nevertheless, even today Aquinas’

\(^{bs}\) The distinction between obligation and right was not developed in this paper.

\(^{bt}\) Aquinas, *Summa Theologica*, I. Q. 118 A. 2, Regan, 199.
philosophy still presents very powerful arguments and explanations of man and his role in the world.\textsuperscript{bu}
These works provided the basis for the critical analysis.


These works provided the basis for the argument and the rebuttal from Aquinas.


These works provided the general understanding of Aquinas.


