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CIVIC AMITY AND CIVIL PROTEST: CATHOLIC THEOLOGICAL REFLECTIONS ON CIVIL DISOBEDIENCE

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- An AIDS advocacy group disrupts a governor's state of the state address, one of several disturbances orchestrated to draw attention to the group's legislative agenda.
- Religious groups gather for an annual demonstration against nuclear testing at the Nevada Test Site. After sharing a liturgy, organizers arrange for volunteers "to do civil disobedience" by trespassing on government property.
- Pro-life activists engage in a weekly sit-in at a local abortion clinic, one of a number in the region, in which they will block access to the clinic. They are accompanied by a bishop who has served a sentence for a previous act of civil disobedience.
- Sanctuary workers carry out a weekly run to bring Central American political refugees to asylum in United States churches. Before crossing the Mexican-U.S. border, they ask the Latinos to sign statements that they are seeking political asylum in the U.S.

I. INTRODUCTION

Routine Civil Disobedience: Moral Objections

Each of these four actions counts as an act of civil disobedience. Each entails the breaking of an ordinance or law (disturbing the peace, trespass, blocking public access, assisting illegal entry, respectively) in protest of a perceived legal injustice. What also characterizes them is that they are repeated acts. Each stands as one in a series of acts of disobedience in protest of civil law and public policy. Each constitutes a step in a pattern of defiance of public authority, undertaken to prod officials into changing a morally offensive law or policy. For some, AIDS activists in the ACT-UP mode, for example, disruptive and defiant civil disobedience is the preferred mode of protest in the face of unresponsive political processes.

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Some commentators regard such disobedience as both obligatory and virtuous.¹ The contractarian tradition, which underlies much of American democratic practice, for example, asserts the fundamental right of individuals to submit only to authorities they themselves have constituted, and to rebel against those officials who violate their essential rights.² On the contractarian view, argues Michael Walzer, dissent is an indispensable part of democratic government.³ Just as Jefferson believed that the tree of liberty needed to be watered every quarter century by the blood of revolution, so liberal contract theorists hold that dissent is an integral element in democratic self-government.⁴ On the whole, contemporary liberal political theory tends to be skeptical of political obligation and assertive of the rights of disobedients.

For many others, however, especially those in the mainline Christian traditions,⁵ the defiance of disobedients is justified by the gravity of the injustice of the law they are protesting. Some would hold, like Thomas Aquinas, that "if a law is at variance in any particular with the natural law, it is no longer legal, but rather a corruption of law."⁶ The Christian's primary obligation belongs to God, and only secondarily to human law and political authorities. Accordingly, opposition to an unjust law is justified after a careful consideration of the good and evil involved in opposing governmental authorities.⁷

1. On the citizen's duty to disobey, see M. WALZER, *OBLIGATIONS: ESSAYS ON DISOBEDIENCE, WAR, CITIZENSHIP* 16-23 (1970) [hereinafter WALZER].

2. *Id.* at 9-10, 18, 49-50.

3. *Id.* at 10-14, 57-58, 68-69.

4. The eminent Catholic theologian of church and state, John Courtney Murray, seemed to hold a similar view on the articulation of natural law and the American constitutional consensus. See J. MURRAY, *WE HOLD THESE TRUTHS: REFLECTIONS ON THE AMERICAN PROPOSITION* 82 (1960).

5. See generally D. STEVICK, *CIVIL DISOBEDIENCE AND THE CHRISTIAN* 39-77 (1969).

6. T. AQUINAS, *SUMMA THEOLOGIAE* 1a, 2ae, 95.2 [hereinafter AQUINAS].

7. In the natural law tradition, as I understand it, opposition to unjust laws, the overthrow of governments, and even the assassination of tyrants were permitted, but, to my knowledge, they were never regarded as obligatory. This lack of stringency was due (1) to the requirement of a judgment of proportion with respect to the common good before such action would be fully justified, and (2) to a general respect for human sociality and political institutions.

The contingent character of such judgments precluded speaking a priori about obligations to oppose unjust laws. Judgments of a duties to act against established authority depended on an examination of circumstances. Doubtless, the theory was also limited by underdevelopment of ideas of

Some natural-law thinkers would even argue that disobedience is a necessary resort of dissenting citizens. Legal philosopher Michael Perry, for example, goes much further than most natural-law theorists, arguing that "[d]isobedience to law, including resistance to coercive law, is an alternative that remains for the subjects of law when moral discourse runs out."⁸ Many, including Perry, join Ted Honderich in supporting even violent acts of protest.⁹ Finally, among Christian activists, there are political apocalypses, like Jacques Ellul and Daniel Berrigan, who see nonviolent "resistance" as the ordinary Christian response to state-supported evil.¹⁰

By contrast, many public officials and traditionalist political theorists object to such repetitive or routine disobedience because it can undermine respect for authority and erode the civil amity on which political life depends. While they regard disobedience as an extreme recourse, they judge routine disobedience to be problematic because it reveals an unwillingness to engage in civil discourse and a despair of cooperative political solutions. They surmise that the confrontationalism evident in routine civil disobedience stimulates social and political antagonism, and they note that "cd" often results in violence. Like the late Justice Abe Fortas, they perceive civil disobedience as a threat to law and order.¹¹ In company with the U.S. Commission on Civil Disorders, they regard acts of civil disobedience as incentives to violence.¹²

B. *Roman Catholic Position*

In the matter of political obligation, natural law justifications of civil disobedience notwithstanding, Roman Catholic practice has tended to the traditionalist side of the argument. It affirms that membership in civil society and in the polity antecede the deliberate choices of contracting individuals and that people "owe" the state obedience and respect. The grounds of this obligation may vary — the divine origin of

citizenship and individual rights which evolved in the Enlightenment in the wake of the English, American and French revolutions.

8. M. PERRY, *MORALITY, POLITICS AND LAW: A BICENTENNIAL ESSAY* 113 (1989).

9. See T. HONDERICH, *VIOLENCE FOR EQUALITY: INQUIRIES IN POLITICAL PHILOSOPHY* (1989).

10. See *infra* note 60.

11. See A. FORTAS, *CONCERNING DISSENT AND CIVIL DISOBEDIENCE* (1968).

12. See REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 204-05 (1968).

authority, gratitude for benefits received, the common good, among others — but the weight of political obligation is clear.¹³ The ordinary duty of citizens is to obey the law and to use and respect legal political processes. Appreciative of the positive value of human sociality, including political life, Catholicism finds the erosion of respect for authority and the depreciation of political community in routine civil disobedience morally problematic to a degree that the liberal political tradition does not.¹⁴ A sometimes controverted censure of liberal contractarianism by Pope Paul VI in the Apostolic Letter OCTAGESIMA ADVENIENS makes the point:

[The Christian may not] adhere to the liberal ideology which believes it exalts individual freedom by withdrawing it from every limitation, by stimulating it through exclusive seeking of interest and power, and by considering social solidarities as more or less automatic consequences of individual initiatives, not as an aim and a major criterion of the value of the social organization.¹⁵

Thus, even Pope Paul, the twentieth century's most liberal pope, was highly critical of the individualist assumptions of liberal political theory. In particular, he challenged the notion that social institutions are only the outcome of individual decisions. The premise of this Catholic criticism of liberal individualism, then, is that social institutions, including political ones, require both respect and active support. Above all, the Catholic perspective on political life requires that all actors consider the impact of one's demands and actions on the good of all in the society.¹⁶

13. See AQUINAS, *supra* note 6, at 1a, 2ae, 101-04.

14. For the human sociality in Roman Catholic thought, particularly the Thomist synthesis, see T. GILBY, BETWEEN COMMUNITY AND SOCIETY: A PHILOSOPHY AND THEOLOGY OF THE STATE 165-307 (1953).

An outstanding illustration of this motif in contemporary Roman Catholic social teaching may be found in Vatican II's *Gaudium et Spes*, paras. 23-32, in THE DOCUMENTS OF VATICAN II 222-32 (W. Abbott ed. 1966).

15. *Octagesima Adveniens* in THE GOSPEL OF PEACE AND JUSTICE: CATHOLIC SOCIAL TEACHING SINCE POPE JOHN 498 (J. Gremillion ed. 1976). Pope Paul reminded Christian political activists in the West that, like Marxism, "the liberal political ideology calls for careful discernment," because of an "erroneous affirmation of the autonomy of the individual in his activity, his motivation, and the exercise of his liberty." *Id.* at 501. The evenhanded critique of western liberalism as well as Marxism has been continued by Pope John Paul leading to outraged protests of "moral equivalence" of the faults of West and East from opponents of Catholic social teaching. See SOLLICITUDO REI SOCIALIS (On Social Concern 1987).

16. On the general understanding of political life in Official Catholic Social Teaching, see *Gaudium et Spes*, *supra* note 14, at paras. 73-75.

While the Catholic tradition has denounced the unrestrained individualism of the liberal tradition, it has also affirmed the rights of conscience and urged engagement in political struggles for justice. Indeed, Catholic social teaching assigns conscience a primacy which is religious. The Second Vatican Council made the dignity of the human person the center of its message to humanity and situated this dignity in moral conscience. The Council's Pastoral Constitution declared: "Conscience is the most secret core and sanctuary of a man [sic]. There he is alone with God, whose voice echoes in his depths. . . [C]onscience reveals the law which is fulfilled by love of God and neighbor."¹⁷ Following this understanding of conscience, the Council, in a departure from precedent, explicitly requested legal protections for conscientious objectors to military service. But the rights of conscience, one ought to note, are firmly rooted in a higher law justification. Acts of conscience, in Catholic theology, are not lonely deeds of defiance but rather an assertion of moral principles binding on all. "Conscience," the Constitution reads, "reveals the law which is fulfilled in love of God and neighbor."¹⁸

1. A Theological Elenchus

Unhappily, the amalgam in Catholic thought of the rights of conscience with a solidaristic understanding of political life makes for sterile ambiguity.¹⁹ On the one hand, church officials and political protesters can act independently of one another. The hierarchy does not suffer embarrassment at the "indiscretion" of faith-inspired activists, and the protesters do

17. *Gaudium et Spes*, *supra* note 14, at para. 16. On human dignity, see *id.* paras. 210-22.

18. See *Pacem in Terris*, in *GOSPEL OF PEACE AND JUSTICE*, *supra* note 15, at paras. 4-7. This encyclical also clearly reveals the cooperative sociology implicit in Catholic social teaching. See, e.g., *id.* at 208.

19. Theoretical as well as practical ambiguity about civil disobedience must be distinguished from the greater clarity and conceptual integration to be found about the rights of the "person." Personhood is the concept which has permitted Catholic theologians and ecclesial officials to accept notions of democracy and human rights at the same time they retained more solidaristic understanding of the human society and political life. First articulated by the French "personalist" school of Emmanuel Mounier, the notion that the person abides in community found expression in the Christian political philosophy of Jacques Maritain. See J. MARITAIN, *PERSON AND THE COMMON GOOD* (J.J. Fitzgerald trans. 1962). For an English-language parallel, see J. MACMURRAY, *THE FORM OF THE PERSONAL* (1957). Pope John XXIII defined the common good of society in terms of the promotion and defense of the rights of persons. See *Pacem in Terris* (1963), in *GOSPEL OF PEACE AND JUSTICE* *supra* note 15, at paras. 26-33.

not have to have to cope with the inconveniences and trials of accountability to the official church. On the other hand, disobedients are deprived of the richer moral praxis which might emerge from dialogue with the broader faith community, and the avoidance of controversy deprives the church itself of moral growth and taints pastoral authority with the charge of irrelevance. The freedom of action such ambivalence allows both church officials and religious activists is offset by the resulting neglect of serious moral reflection on varieties of nonviolent direct action, including civil disobedience. Theologically, the test is to provide a theory of political life which permits active dissent of unjust laws and policies consistent with the Catholic emphasis on human sociality and the goodness of political life. One possibility would be to construct an argument on the basis of Catholic teaching on human rights, as it has evolved since *Pacem in Terris*, but that is not the route I shall follow, because it brings us right back to the central issue of the tension between personal rights and sociality. Instead, I shall argue from an empirical base, that developments in civil protest make possible forms of active dissent compatible with Catholic social theology as articulated in recent Catholic social teaching.

C. *A Look Ahead*

Accordingly, in the pages which follow I would like to examine the morality of routine civil disobedience in light of the double tradition found in Roman Catholicism, on the one hand, the affirmation of political obligation to a pre-existing society and, on the other, the defense of the rights of conscience. I will do this by (1) surveying in quick strokes the historical development of theological teaching on political authority and individual responsibility, and (2) suggesting how some recent practice of civil disobedience by American Christians not only meets standard suspicions of civil disobedience, but also exhibits features which allow for the articulation of a Catholic theology of civil dissent suited to the main tenets of official Catholic political theology. I shall propose that *ritual* forms of disobedience have created conditions in which protest can be conducted in the spirit of *civic amity*, and that *civil initiative* provides a model for protest which satisfies the expectations of Catholic political theology for cooperative participation in politics.

II THE CHRISTIAN ORIGINS OF CIVIL DISOBEDIENCE AND POLITICAL OBLIGATION²⁰

Civil disobedience, as we know it, was unknown through most of western history. There was rebellion, heresy, revolution, resistance, dissent. But civil disobedience, understood as the deliberate breaking of the law for the sake of altering statutes or public policy, is a nineteenth century development. It may be attributed to Henry David Thoreau whose *Civil Disobedience* was published in 1849, shortly after the Mexican War. Accordingly, tracing Christian attitudes toward civil disobedience is a matter of tracing a remote ancestry in terms of general attitudes toward public authority and dissent. As it turns out, the long history of the limitation of the state power is intertwined with the vindications of rights of believers and of the church as a whole, and only later of individual political dissidents. Locke's contractarian arguments for the liberties of the propertied class in the seventeenth century were anticipated and influenced by the repeated struggle of religious believers for immunity from government repression in earlier times.²¹ Indeed, in the United States in the late eighteenth and early nineteenth century, the early struggle for political equality was waged as a defense of minority faiths, like the Baptists, Quakers, and Catholics, against the established Protestant churches and repressive democratic majorities in older states such as Massachusetts and Virginia. But the religious origins of political liberty ought not be confused with its more recent expressions like civil disobedience. For the traditional Christian attitude toward political authority, though it underwent many changes, is a complex notion which differs radically from the easy opposition of individual conscience and political authority associated with the commonsense politics of the United States today. The difficulty goes back to some of the earliest strands of Christian thinking on politics in the New Testament.

A. *New Testament and Early Christianity*

As philosophical discussions of civil disobedience tend to begin with the trial and death of Socrates, so Christian theolog-

20. For a brief, analytic, historical treatment of theological views on civil disobedience, see "Civil Disobedience," in WESTMINSTER DICTIONARY OF CHRISTIAN ETHICS (J. Childress & J. Macquarrie ed. 1986). See also DICTIONARY OF CATHOLIC SOCIAL THOUGHT, (J. Dwyer ed. *forthcoming*).

21. See generally I A. STOKES, CHURCH AND STATE IN THE UNITED STATES 112-33 (1950).

ical discussions begin with trial and death of Jesus.²² In the synoptic gospels, when the Roman procurator, Pontius Pilate, attempts to interrogate him, Jesus simply remains silent. In John's gospel, however, the evangelist re-works the trial scene, embellishing it with an exchange between Jesus and Pilate, which set both the pattern for Christians' later acceptance of political authority and the standard for non-resistance to evil which inspired three centuries of martyrs.

In the Johannine account, Jesus appears before the Procurator twice. In the first appearance,²³ they spar over the charge that Jesus is "King of the Jews." Finally, Jesus responds, "Mine is not a kingdom of this world." Then, spurred by Pilate's irony, Jesus confesses "Yes, I am a king. I was born for this; I came into the world for this: to bear witness to the truth; and all who are on the side of truth listen to my voice." In this way, John's Jesus parries Pilate's cynical irony with paradox.

In the second encounter,²⁴ after Jesus has been scourged and mocked by Pilate's guards, the Roman asks Jesus, "Are you refusing to speak to me? Surely you know I have the power to release you and I have the power to crucify you?" Jesus answers, "You would have no power over me if it had not been given from above" Both encounters establish a complex relation between political realism and religious actuality. Jesus rejects any direct political role for himself, accepting only a prophetic responsibility for the Truth, just as he professes to a kingship "not of this world." Thus, while there is a denial of outright political involvement, there is likewise an assertion of independent religious authority.

The same kind of division of spheres is evident in one of the most influential New Testament "political texts," namely, the controversy saying about Caesar's coin: "Give to Caesar what belongs to Caesar, and to God what belongs to God."²⁵ Thus, there are two parallel sets of duties, one political, the

22. For a full discussion of Socratic politics and the debate which has surrounded it, see R. KRAUT, *SOCRATES AND THE STATE* (1984).

23. *John* 18:28-40.

24. *John* 19:8-16.

25. *Matthew* 22:21. See also the related story of the Temple Tax, *Matthew* 17:24-27. While the authority involved by our definition would be religious rather than strictly political, the admonition is the same: comply with the demand. In the case of the Temple Tax, however, the question of an exemption for Jesus' followers is posed. Nonetheless, Jesus supports payment of the tax for fear that the tax collectors would be offended. Accordingly, even where the new order established by Jesus is recognized, and disciples might plead immunity, they are urged to conform to the usual practice.

other religious. In this division of demands, early Christians found justification for submission to political authority. It is easy to understand why the Gelasian doctrine of "the two swords," i.e., distinct spiritual and temporal powers, would seem so plausible to medieval Christians. Not only were there unambiguous texts to prove the point, but Jesus' very own death warranted obedience to the temporal power. If such obedience were inappropriate, then the manner at least of his death was inexplicable.

Jesus' second meeting with Pilate offers an even stronger argument for obedience to authority, namely, the divine source of all authority. The generative argument for authority, i.e., the notion that those charged with maintaining political order receive their power from the Source of All Order, would become a recurrent one in Christianity, appearing in Augustine, Aquinas, Luther, Calvin, and Barth. The earliest Christian author, Saint Paul, employed the generative argument to rein in enthusiasts who believed they were not obliged to pay taxes. "You must all obey the governing authorities," he writes. "Since all government comes from God, the civil authorities were appointed by God, and so anyone who resists authority is rebelling against God's decision. . . ." ²⁶ In the same text, Paul, like other thinkers, multiplies reasons for political allegiance, naming the common good, the maintenance of security, and the witness of conscience. Such multiplication of arguments seems to suggest that even for the earliest Christians the generative argument that authority "comes from God" was not sufficient in itself to convince those who believed that the resurrected Christ had initiated a new era in history that political obedience was demanded of them.

Despite the Christian recognition of political authority, ruling groups tended to regard Christians' independence in religious matters as a political risk. In all the gospel accounts, Jews and Romans alike respond to Jesus as a political actor. Thus, the imputation that he seeks to be "King of the Jews." The charge is a political one; and the capital sentence imposed on Jesus is the penalty for treason. For more than three centuries, the church would endeavor to be recognized as a *religio licita* under Roman law. In the absence of such official recognition, practicing Christianity made one a subversive. Even early Christian apologetics was as much an effort to win official approval as a recognized sect as it was an attempt to convince potential converts of the plausibility of Christian faith. As a

26. *Romans* 13:1-2.

result, when the church finally won legal recognition, the autonomy that she would claim from the state would be a limited one, related essentially to religious practice rather than to conscientious action across the board. Ironically, however, once Christianity became the official religion of the empire, this liberty was one it would deny to others, or at least to dissident Christian sects.

Christians devising a response to political injustice had to contend with an image of Jesus "led like a lamb to the slaughter." Church and polity held a paradoxical relationship; Christ and culture in paradox.²⁷ Christians were in the world, but not of it. They might offer their outward obedience to the state, but inwardly they belonged to God. The way to martyrdom was set not only by Roman persecution, but by the practice of non-resistance in the imitation of Jesus. He had taught his followers "to turn the other cheek,"²⁸ and the manner of his death had vindicated his teaching. Accordingly, they too would accept persecution, torture and death at the hands of the Roman authorities.

On balance, the earliest Christian attitude toward political obligation consisted in acquiescence to public authorities. Among orthodox Christians, at least, there was no outright disobedience, except in matters of religion, when the martyrs would accept imprisonment, torture and death for the sake of their faith. For outright dissent, one must look to what would later be called heretical groups, like the Donatists in North Africa and the Monophysites in Egypt.²⁹ Among these provincial enthusiasts, religious dissent mixed with political rebellion. Some fringe groups took heart from the example of the Macca-bees, the first century B.C. Jewish resisters. Others, like the Montanists, among them the great North African Tertullian, drew on apocalyptic imagery of a final cosmic battle to motivate their adherents, contributing to the long association between apocalyptic propaganda and political rebellion.³⁰ But for orthodox Christianity, acquiescence to law was the rule as long as government required nothing contrary to faith.

27. See generally H.R. NIEBUHR, *CHRIST AND CULTURE* (1956).

28. *Matthew* 5:39.

29. See W. FREND, *THE DONATIST CHURCH: A MOVEMENT OF PROTEST IN ROMAN NORTH AFRICA* (1962); W. FREND, *THE RISE OF THE MONOPHYSITE MOVEMENT* (1972).

30. On the connection between Christian apocalypticism and political dissent, see *VISION OF THE END: APOCALYPTIC TRADITIONS IN THE MIDDLE AGES* (B. McGinn ed. 1979).

The first political disobedience on the part of orthodox Christians seems to have come in the Christian empire when "soldier saints," like Martin of Tours, refused to fight in battle out of Christian commitment.³¹ But unlike martyrdom, the "conscientious objection" of Christian soldiers to killing in wartime did not set a perduring model for others. On the contrary, in the East the theocratic propaganda of Eusebius set the standard, and in the West, Augustine's coercive state theology established the norm. For both fathers of the church, the power of the magistrate came from God, and private soldiers, save in matters of faith, were required to obey. For Augustine, even the magistrate's unjust commands did not warrant disobedience. In an opinion scandalous to modern readers, Augustine taught that obedience to authority exculpated the war crimes of the private soldier.³² Martin of Tours' pacifism did set the pattern for another group within the western church, however, namely, the monks. Through the succeeding centuries, monasticism directed the energies of religious dissenters, committed to a more radical reading of the gospel, into approved channels.³³

With the evolution of western monasticism, the pattern of Christian dissent for the first millennium was set in what I term the Early Christian Paradigm. That paradigm required obedience to political authority, except where public officials challenged the religious autonomy of the church, with more radical Christians routed into monastic life.

B. *Natural Law and the Right of Resistance: Contributions of Medieval Catholicism and the Reformation*

The Christian Middle Ages brought important changes in attitudes toward dissent. The twelfth and thirteenth century

31. On Martin of Tours and the soldier saints, see L. CUNNINGHAM, *THE CATHOLIC HERITAGE* 65-84 (1983).

32. For Augustine's view on military obedience, see *WAR AND CHRISTIAN ETHICS* 65 (A. Holmes ed. 1975). Holmes reproduces a selection from the *CONTRA FAUSTUM* in which the saint writes, "Since, therefore, a righteous man, serving [the power of God] may be under an ungodly king, may do the duty belonging to his position in the state in fighting by the order of the sovereign . . . it may be an unrighteous command on the part of the king, while the soldier is innocent, because his position makes obedience a duty . . ." *Id.*

33. On monastic pacifism, see R. MUSTO, *THE CATHOLIC PEACE TRADITION* (1989). Cunningham, *supra* note 31, points out how even the tradition of Christian soldier (*miles Christi*) was thoroughly colored by pacifist attitudes, as evident in Saint Francis, and in Joan of Arc, who refused to bear arms.

witnessed an efflorescence of social movements. In quick succession, all sorts of new institutions appeared: free cities, universities, corporations, craftsmen's guilds, and orders of wandering friars.³⁴ Government adopted a variety of forms: monarchy, aristocracy, oligarchy, republicanism, and mixed regimes. Powersharing was commonplace, and constitutionalism made its first appearance. Especially in the Church, there was turmoil, with conciliarism (the idea that the most authoritative ecclesial body is a universal council) emerging by the fifteenth century as an influential doctrine. In this ferment, numerous lay movements arose, mixing religious and political goals, and political philosophers, like Marsilius of Padua, argued for the independence of the state from the Church, an especially pressing problem in the Italian peninsula.³⁵ Thus, the High Middle Ages are rich with ideas and precedents which would have an indirect bearing on the rise of civil disobedience in more recent times.³⁶

The most significant development of this period for the emergence of civil disobedience in our own time was the evolution of natural law as a system of ideas for thinking about moral obligation. Natural law was a commonplace of classical thought which the Fathers of the Church adopted from the Stoics. Originally employed in apologetic contexts to show non-believers that Christians shared many of their views on morality, it eventually became the bedrock of Christian moral teaching, defining the conduct demanded of all Christians. By contrast, theologians interpreted gospel injunctions to nonviolence, poverty, celibacy, etc., to be "counsels of perfection" that applied chiefly to those who aspired to greater holiness.

According to Thomas Aquinas, natural law was a human sharing in the eternal law by which God governed the cosmos.³⁷ For Aquinas, law was "a root metaphor" for interpreting reality.³⁸ All human law had to conform to the measure of reason. Human law, as he saw it, was an extension of natural law, and so any legal enactment contrary to the natural law

34. See I G. DE LAGARDE, *LA NAISSANCE DE L'ESPRIT LAIQUE AU DECLIN DU MOYEN AGE* (1934-46) [hereinafter LAGARDE].

35. See 2 LAGARDE, *supra* note 34.

36. On the medieval and scholastic contributions to modern political thought, including the limitations of political authority and the right to rebellion, see Q. SKINNER, *FOUNDATIONS OF MODERN POLITICAL THOUGHT* (1972); 3 G. LAGARDE, *supra* note 34.

37. See AQUINAS, *supra* note 6, at 1a, 2ae, 91.1-3.

38. On the development of the legal metaphor, see H. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983).

would be invalid insofar as it contravened the prior moral order.³⁹ The notion that a "higher moral law" justifies disregard for legal enactments was to have an important influence on later notions of rebellion and dissent. Even in cultures like our own where "natural law" is not widely accepted, "higher law" justifications appear time and again as a means of explaining conscientious violation of existing law. In recent years, for example, both Operation Rescue and Sanctuary workers as well as the defendants in the Iran-Contra scandal have utilized it in their defense. The distance which Aquinas's theory of natural law established between the natural and human law serves, in any case, as a basis for criticism of and dissent from contested government policies (as well as assessment of the claims of dissenters).

With respect to the possibility of disobedience of law, the Thomist conception of natural law departed in a significant way from the precedent set by Augustine. Thomas prepared the way for the modern idea, confirmed at Nuremberg and for Catholics at Vatican II, that obedience may not excuse people from personal responsibility and complicity in immoral acts and policies.⁴⁰ Augustine held a personalistic understanding of law and government in which the reasonableness of the law was subordinate to the power or authority of the lawgiver.⁴¹ As the author of the moral law, God created order by imposing his will on creatures. Thomas, by contrast, held a more impersonal understanding of law, in which the authority of law rested on its rationality, a quality all intelligent beings could grasp. In the area of morality, at least, the appropriate divine attributes were the convertible attributes of goodness and rationality. God imposes the moral law because it is good, and it is good because it is rational, tending toward the flourishing of his creatures. Accordingly, disobedience becomes conceivable when government acts contrary to the good of the governed.

The import of Aquinas' view of illegitimate power becomes clearest in his acceptance of the right of rebellion. Tyrants may be overthrown, Thomas argues, because they act

39. See AQUINAS, *supra* note 6, at 1a, 2ae, 96.4.

40. See AQUINAS, *supra* note 6, at 1a, 2ae, 90.4; *Gaudium et Spes*, *supra* note 14, at para. 79. The latter reads: "[A]ctions which deliberately conflict with these same [universal moral] principles, as well as orders commanding such actions, are criminal. Blind obedience cannot excuse those who yield to them. . . . The courage of those who openly and fearlessly resist men who issue such commands merits supreme commendation."

41. For Augustine's personalistic understanding of legal authority, see THE CONFESSIONS OF SAINT AUGUSTINE 87-88 (J. Ryan trans. 1962).

for their own private interests or those of their faction, and not for the common good.⁴² Popular uprisings, he reasoned, are permissible to re-establish governments which will serve the common good. This natural-law doctrine of political authority constituted a sharp break from earlier Christian thinking, not only in recognizing a right to rebellion and resistance to unjust rulers, but also in setting limits to the sacrifices in suffering injustice that people may be asked to make in the name of public order. Over against the peace and order of Augustinian political theology, Aquinas would weigh justice and reason.⁴³ The need for law and order would not always outweigh the people's yearning for justice. Under some circumstances, rebellion could be risked to remedy grave and enduring injustices. Under this theory, moreover, government was not merely subject to popular will, but to a rational standard of justice, creating a scheme of moral accountability for those holding political power.

For Augustine, the end of government was "peace," the control of disorder in a sinful world; for Thomas, it was the "common good" of society. To be sure, the Thomist synthesis lists peace as one of the constitutive elements of the common good, since many goods cannot be enjoyed without social order. But peace is insufficient in itself to be an end of society, and when order is imposed at the price of justice, people must consider whether the sacrifice is justified. Making such judgments is the proper work of human reason. Aquinas himself did not go much farther than justification of rebellion for the sake of the common good. Later generations of theologians would elaborate casuistries for judging whether the use of force, including tyrannicide and just rebellion, was justified.⁴⁴ Thomas, however, had established the precedent for legitimate rebellion and constructed the framework in which later arguments would take place.⁴⁵ In essence, it is the same logic which

42. AQUINAS, *supra* note 6, at 2a, 2ae, at 42.2.

43. On the balance of peace and justice in Christian thinking, see D. HOLLENBACH, *NUCLEAR ETHICS: THE CHRISTIAN MORAL ARGUMENT* 16-24 (1982).

44. See, e.g., F. SUAREZ, *A DEFENSE OF THE CATHOLIC AND APOSTOLIC FAITH*, in 2 *SELECTIONS FROM THREE WORKS OF FRANCISCO SUÁREZ*, S.J. 705-25 (1944).

45. *Id.* Following Aquinas, Christian theories of resistance to unjust authority frequently took the form of discussions of tyrannicide. See, e.g., F. SUAREZ, *ON CHARITY*, Disputation 13, Section VIII, *reprinted in WAR AND CHRISTIAN ETHICS*, *supra* note 32, at 223-25.

twentieth century Christian ethicists have employed to analyze civil disobedience.⁴⁶

In the second stage of Christian history, the Medieval Natural Law Paradigm, firmer foundations were laid for the conscientious objection. (1) Support for civil law was conditioned by its conformity with moral principles. (2) The end of government was expanded to include the common good, a balance of peace with justice and other public goods. (3) Natural law affirmed the right of citizens en masse to rebel against tyrannical regimes. (4) Legitimate rebellion required citizens' conscientious judgment as to the relative weight of suffering an unjust peace against winning justice by dint of force.

While theologians in later centuries elaborated on the principles for justified uprisings and sometimes propagandized in favor of particular political movements, church officials would hardly ever apply them unambiguously in the cause of dissident or rebellious citizens.⁴⁷ Particularly, after the Enlightenment, the natural law theory of political dissent remained a doctrine for exceptional times, and so failed to take hold as an operative element in a theory of political authority.⁴⁸

For its part, the Reformation contributed little to the refinement of this debate. In fact, the Lutheran reformation supported unquestioned allegiance to political authority.⁴⁹ Calvin, himself a lawyer, did not provide as wide a field for contesting authorities as the Scholastic tradition had. He returned to the ancient criterion of threat to faith as the single grounds for rebellion. But the tradition of resistance among Calvinists and the tract *Contra Tyrannos* provided inspiration for active dissent in England and France, giving rise in the period after the

46. See J. CHILDRESS, CIVIL DISOBEDIENCE 165-242 (1971); Adams, *Civil Disobedience: Its Occasions and Limits*, in POLITICAL AND LEGAL OBLIGATION 293-331 (R. Pennock & J. Chapman ed. 1960).

47. Typical is Paul VI's much controverted statement about "situations whose injustice cries to heaven." *Populorum Progressio*, in THE GOSPEL OF PEACE AND JUSTICE, *supra* note 15, at paras. 30-31. The weight of the passage falls against revolution, but does seem to allow for an exception where "manifest, longstanding tyranny . . . would do great damage to fundamental personal rights and dangerous harm to the common good . . ." *Id.*

48. The conclusion that the natural-law theory of political dissent was practically inoperative is perhaps an overstatement based on post-Enlightenment church policy. In the reaction to the French Revolution, the Roman Catholic church tended to take a conservative position in support of existing regimes and against revolutionary movements. In the sixteenth and seventeenth centuries, however, theologians' teaching on tyrannicide was a cause of political pressure being placed on certain elements of the church.

49. On political theologies in the Reformation, see SKINNER *supra* note 36; S. WOLIN, POLITICS AND VISION 141-94 (1960).

Wars of Religion to secularized notions of the rights of the governed. Likewise, Calvin's proposal that lesser magistrates be empowered to oust oppressive rulers contributed both to notions of divided power and to the right of revolution. Thus, through English Puritanism, the Reformed Tradition, though theocratic in origin, wound up contributing to belief in the rights of individuals and to the rise of parliamentary democracy in England.

C. *Democratic Participation and the Rights of Conscience*

The emergence of civil disobedience as a component of democratic practice is a direct contribution of republican politics and secularized conscience rather than of the major Christian churches. Some Protestant denominations, particularly Methodism, whose doctrine of sanctification propelled its adherents into social reform movements such as abolitionism, the temperance movement, and women's suffrage, and dissenting sects, like the Quakers, contributed to the evolution of the politics of protest. As schools of conscience, however, the Christian churches indirectly prepared people for civil disobedience, but the preparation had to do more with the substantive motivations for dissent rather than with the endorsement of civil disobedience as a practice. Christian churches contributed to the anti-slavery movement, the temperance campaigns, the civil rights struggle and the peace movement for reasons of morality and religious conviction. The style of their opposition, however, was shaped by democratic politics rather than by theological views of political obligation. Thus, the immediate origins of civil disobedience, in contrast to conscientious objection, rests with democratic practice rather than with religious conviction.⁵⁰

D. *Twentieth Century Catholicism*

For its part, Roman Catholicism, first traumatized by the fall of the ancient regime and later by the loss of the Papal States, directly contributed little, if anything, to these developments. During the nineteenth and early twentieth centuries, when it did not resort to persecution, the hierarchy held Catholic liberals in suspicion. Changes appeared only in World War

50. There is another aspect of American Christianity which appears in connection with civil disobedience in the U.S., namely, frontier or evangelical revivalism. The emotional catharsis some find in civil disobedience as a test of one's moral righteousness appears to have parallels with frontier religion which merit further investigation.

II with the Vatican's quiet support of the Allies against Nazism and its post-war opposition to international Communism.⁵¹ The first full-scale acceptance of democratic politics and human rights came in 1963 with Pope John XXIII's *Pacem in Terris*, which accepted for the first time liberal understandings of human rights.⁵² Vatican II's approval of pacifism and defense of conscientious objection may be cited as the first development in modern Catholic social teaching opening the way to nonviolent action against unjust laws.⁵³ Motivated particularly by defenses of complicity in war crimes and crimes against humanity during World War II which appealed to obedience to authority, the Council explicitly rejected "blind obedience" to policies transgressing fundamental moral laws.⁵⁴ As a result, in Catholic as well as Protestant and secular circles, the moral offenses of World War II led to an increased sense of individual responsibility to uphold moral principles in the face of unjust authorities.

Meanwhile, when civil disturbances raised questions about the legitimacy of civil disobedience as a form of political protest, it was to the natural law tradition and associated notions of just war that even Protestant theologians first turned in attempting to explicate ethical schema for assessing the practice of civil disobedience. In his landmark study,⁵⁵ James Childress, for example, presents natural law, though not uncritically, as a primary paradigm of a critical form of political obligation.⁵⁶ James Luther Adams, for another, utilized just

51. See A. RHODES, *THE POWER OF ROME IN THE TWENTIETH CENTURY: THE VATICAN IN THE AGE OF LIBERAL DEMOCRACIES, 1870-1922* (1983); A. RHODES, *THE VATICAN IN THE AGE OF THE DICTATORS, 1922-1945* (1974).

52. *Pacem in Terris*, in *GOSPEL OF PEACE AND JUSTICE* *supra* note 15, at 201-41.

53. On nonviolence and conscientious objection, see *Gaudium et Spes*, *supra* note 14, at paras. 78-79.

54. *Id.* at para. 79.

55. J. CHILDRESS, *supra* note 46.

56. *Id.* at 50-73. While he claims at certain points to share positivist sentiments, Childress's own "pluralist" theological justification of political obligation seems to me to be compatible with the main lines of a natural law theory of obligation. His distinctive contribution lies in his consideration of the grounds for obligation in a "relatively just constitutional democracy."

Childress's principal objection to natural law theories appears to be that they conflate the justice or injustice of certain laws with their validity or invalidity. What Childress seems to miss in this regard is the weight of proportional judgment natural law theories require to establish a duty to rebel or disobey. Since a duty to disobedience is contingent on prudential judgments as to the effect of disobedience on the common good, the validity or invalidity may not be established simply by the disparity of an enactment

war theory to articulate the conditions and limits of civil disobedience.⁵⁷

Thus, the twentieth century witnessed renewed appeals to natural-law frameworks for the justification and normative assessment of civil disobedience. This Twentieth Century Paradigm returned to natural law with two distinctive developments: (1) a heightened appreciation for individual responsibility and the rights of conscience, and (2) the adaptation and refinement of traditional just-war principles as they apply to civil protest.⁵⁸ At the same time, the Vietnam War and anti-nuclear protests prompted a recurrence of apocalyptic thinking on the part of the so-called "Catholic Left" and other protest groups.⁵⁹

Ethical and political apocalypticism, whether religious or secular, is distinguished by an urgent need to resist offensive government policies and a pervasive suspicion of public authority as an agent of widespread evil.⁶⁰ On balance, one must admit that in the period since the Vietnam War the style of civil disobedience in the United States has moved more and more in the direction of the apocalyptic and away from the

of positive law with natural law. The common good, being a formal principle, seems to function very much in the same way that Childress intends his pluralist political ethics to function, that is, to make the judgement of the invalidity or inapplicability of unjust law rest on multiple moral considerations.

Finally, a very important oversight on Childress's part concerns the solidaristic nature of Catholic theories of obligation. The conservative quality of Catholic natural law theory with respect to issues of political obligation derives, in part at least, from its understanding of the state as a primary manifestation of human sociality. Until the time of Pope John XXIII, this naturalistic grounding of political relationships tended to be traditionalist, emphasizing hierarchical connections between political authorities and citizens. While John XXIII and Vatican Council II re-worked official Catholic social teaching in a more democratic and egalitarian manner, the solidaristic character of the underlying theory remains. Political obligations are incumbent on persons simply as social beings in the same way that family ties are.

57. See Adams, *supra* note 46, at 301-11.

58. For an application of just-war norms to civil protest, see *Gaudium et Spes*, *supra* note 14, at para 79.

59. On the Catholic Left, see F. DU PLESSIX GRAY, *DIVINE DISOBEDIENCE: PROFILES IN CATHOLIC RADICALISM* 45-230 (1970). For contemporary discussion of the radical politics of the Berrigans, see W. VAN ETTEN CASEY & P. NOBILE, *THE BERRIGANS* (1971).

60. This radical politics is consistent with a conservative theocentric political theology. The Calvinist French sociologist and theologian Jacques Ellul, for example, articulated the doctrine of "resistance" taken up by Daniel Berrigan and the Catholic Left. See J. ELLUL, *THE POLITICAL ILLUSION* (K. Kellner trans. 1967).

restrained and deliberate form of the natural-law tradition on political morality. The radical environmentalist group Earth First and the AIDS advocacy group Act-up are primary examples of the apocalyptic approach to contemporary politics.

The ascendancy of the apocalyptic style of protest raises a number of ethical questions. While its aims and motivation may be moral, political apocalypticism fails to examine its own conduct from a moral point of view and its tolerance of emotive excess may often lead to grave injustices to others — to government officials, to the public, and even to “innocents.” But the dominance of apocalyptic theologies in the anti-war, anti-nuclear protests of the last three decades probably accounts for the lack of serious reflection on civil disobedience in Catholic moral theology. Since apocalyptic Catholic protesters perceive moral issues in stark black and white terms and are confident of their own righteousness, they have had no interest in dialogue with mainline moral theology or the official Catholic. The apocalypsts, unlike the conservative critics of Catholic social teaching, stood at the margins of Church life, while the morality of civil disobedience as a long-term political strategy never focused as an ethical issue.

III. ROUTINE CIVIL DISOBEDIENCE: SOME DISTINCTIONS

One can distinguish two types of repetitive disobedience. First, I would differentiate between *ritual* and *routine* disobedience. What I would describe as *ritual* disobedience consists in stylized protest in which civil disobedience (usually indirect) has a customary and regulated part. Ritual disobedience comes in both secular and religious forms. In the secular form, it may involve marching, picketing, speeches, and some act, usually trespass, leading to arrest. In recent years, it has been common for arrest to be pre-arranged with the police so that officials know in advance of the act, its timing, and the names of those who will break the law. In the religious context, the same elements are present with the addition of some liturgical and disciplinary features. An event may be staged on a feast-day, like the Desert Experience at the Nevada Test Site which convenes for Holy Week each year; the demonstration may be preceded by or concluded with a liturgy, like memorials for the Salvadoran martyrs; onlookers and other people may be invited to join in prayer or silent vigil with the protesters, as in many events sponsored on the eve of January 14, 1991, the UN deadline for Iraqi withdrawal from Kuwait; and so on. The repetition of

tightly organized events tends to produce gravity, discipline, and responsibility in the participants.

The solemnity, especially of religious protests, produces reflection and encourages respect for adversaries and police. Moreover, since the major actors know the general features, and even the particular details of ritual disobedience, protesters can register their opposition without arousing alarm in officials or the general public. It has become customary, for example, to inform police of what "action" will take place, who will "do cd," and at what point in the exercises they will take action. With this information, protest organizers even arrange arrest procedures with police.

Routine civil disobedience, by contrast, takes performance of illegal acts as the ordinary way in which dissent from government policy is expressed. It is assumed that when there is protest, right-thinking people will "do cd." Accordingly, routine disobedience can be random and unannounced, leading to more disruption and tension than would otherwise be the case. In some cases, practitioners spring "an action" on demonstrators to force decisions for disobedience in the heat of the moment. Routine civil disobedience also tends to be defiant of authority and so avoids cooperation with the police. Consequently, routine disobedience at the minimum risks a high degree of disruption and even violence. Routine civil disobedience, therefore, invites the traditional criticisms that civil disobedience promotes anarchy and disorder. Violent environmentalists, like Earth First, are an extreme example of the ethos of routine disobedience.

Fortunately, other developments in nonviolent protest offer the possibility for elaborating strategies of protest which meet the double Catholic demand for respect for political institutions and conscientious action on behalf of justice. One is the emergence of amicable styles of protest among Christian activists like the Nevada Test Site demonstrators. The other is the development of an alternative strategy to disobedience in the Sanctuary Movement, namely, "civil initiative." Each in its own way manages dissent in a way consistent with Catholic social teaching on the political exercise of conscience.

A. *The Evolution of Protest Toward Civic Amity*

The ritualization of civil disobedience — when protesters act openly, with gravity, discipline, and respect for the authorities — has altered the character of much repetitive disobedience. That is, as "cd" has become a regular part of political life

in the United States, it has become progressively less menacing for the police, for political authorities, and for the public at large. Indeed, frequent contact between activists and police leads to amicable relations. Longtime activists at the Nevada Test Site, for example, even socialize with security officials.⁶¹ That phenomenon is repeated in many other confrontations. Indeed, police and veteran protesters come to rely on one another to prevent random and even planned violence. When anti-apartheid demonstrations got out of hand at the University of California Berkeley a few years ago, police lamented that the actions had been perpetrated by newcomers who had no interest in communicating with them. In many other events, moreover, some police sympathize with the demonstrators, and so opportunity for tension and hostility are reduced. Sometimes "friendliness" can be a chosen strategy of popular protest. We have known for some time, for example, that Czech resistance to Soviet suppression of the 1968 Prague Spring succeeded in neutralizing Soviet forces for up to six months with tactics of fraternization. Accordingly, objections to "cd" on grounds that it debases civic amity seem far less salient in the 1990s than they were in the 1960s. In fact, as the police-activist friendship at the Test Site illustrates, regular acts of disobedience may lead to a friendship, which certainly meets the classic Christian idea of civic friendliness, though not the ancient Greek ideal of political friendship. That is to say, warm bonds of respect make it possible to entertain political differences and allows for mutual influence in rational, social and symbolic ways. Given the immense scale of our political institutions, face-to-face encounters which generate mutual respect may be a real gain in the direction of civic friendship.

B. *The Place of Civility*

Under the influence of Aquinas, Catholic political theology possesses greater confidence in the positive role of friendship and friendliness in political life than do other schools of philosophy and theology. While transmitting the ideal of political friendship associated with the early Greek city-states, Aristotle eventually despaired of its possibilities for the polis of his day. Sparta, he thought, possessed the requisite sense of friendship

61. On the Nevada Test Site, see M. AFFLECK, *THE HISTORY AND STRATEGY OF THE CAMPAIGN TO END NUCLEAR WEAPONS TESTING AT THE NEVADA TEST SITE, 1977-1990* (1990) (Typescript distributed by Nevada Desert Experience, P. O. Box 4487, Las Vegas, NV 89127-0487). My comments on friendships between protesters and security personnel are based on an interview with Affleck, February 11, 1991.

oriented to the common good of the community, but it held the wrong values. Elsewhere civic amity proved to be an impossible ideal. In the Athens of his day, he complained, each citizen "lives as he wishes, 'laying down the rules for his children and wife,' like a Cyclops."⁶² For there was less and less agreement on the common good, and especially on the virtuous life, as the end of politics. Indeed, Athens was not so different from the fragmented moral world of modernity so lamented by Alasdair MacIntyre and other Neo-Aristotelians.⁶³ Accordingly, Aristotle chose to praise virtuous friendship as a private good and an end-in-itself.⁶⁴ In Rome, friendship continued to be cultivated as a private value.⁶⁵ The Christians of the late empire, moreover, adapted this ideal to common pursuit of the spiritual life, and we have inherited their legacy in the unquestioned belief that the spiritual life requires leisured retirement from the world.⁶⁶ Protestant theology, with its emphasis on the gratuitous and self-sacrificial dimensions of Christian love, goes so far as to reject political friendship "as essentially pagan, an example of inordinate and idolatrous love."⁶⁷

Aquinas, however, drawing on Aristotle but also on the social experience of his own time, drew a different and more complex view which has influenced twentieth century Anglo-American political theology and official Catholic social teaching. European society in the thirteenth century was certainly not as complicated as our own, but it was far more heterogeneous than the ancient Greek polis. Schoolmen, like Thomas, were conscious of being city-dwellers and they valued the urbanity which facilitated interaction in a society of strangers.⁶⁸ This affability is perhaps better defined as "friendliness" than friendship as such, but it is a quality which is praiseworthy not only because it relieves tensions and stimulates mutual esteem, but also because it promotes the reciprocal respect necessary for citizens to work beyond their differences in concert for the

62. ARISTOTLE, *NICOMACHEAN ETHICS* 294 (1180a 25) (T. Irwin trans. 1985).

63. See P. WADDELL, *FRIENDSHIP* 47 (1989).

64. See *id.* at 46-49.

65. See G. MEILAENDER, *FRIENDSHIP: A STUDY IN THEOLOGICAL ETHICS* 78-87 (1981).

66. See R. RADER, *BREAKING BOUNDARIES: MALE/FEMALE FRIENDSHIP IN EARLY CHRISTIAN COMMUNITIES* (1983).

67. G. MEILAENDER, *supra* note 65, at 75.

68. See generally AQUINAS, *supra* note 6, at 1a, 19.1; 56.4; 1a, 2ae, 94.2; 2a, 2ae, 26.2.8.

common good.⁶⁹ Such friendliness, Aquinas proposed, was a dimension of justice.⁷⁰

Civic amity, understood as friendliness, however, is more than an amenity. It can also be an expression of Christian love or charity. "A purely worldly civility," writes Thomas Gilby, "may be considered apart from grace in the abstract, but should not be separated in the concrete . . . for charity is alien to nothing human, because it is the form, exemplar and end of all loves."⁷¹ On the analogy of faith, all forms of human sociality, including politics, are continuous at some level with divine love. Mere benevolence, even beneficence, according to Aquinas, do not provide a sufficient description of love even in human relations. The end of benevolence, Thomas reasons, is a mutual love (*mutua amatio*) or reciprocal in-dwelling (*communicatio*), which is realized in the communion with God in grace. All relationships have such communion as their end and participate in it in an appropriate degree.⁷² Such communion is not a possibility in political life because the essential business of politics is orchestrating the diverse activities of the disparate groups which compose a society. But, since the concern of politics is the common life, civility in its deepest sense will smooth the way to cooperative endeavors. Moreover, while there are limits to the good of politics, Catholic anthropology continues to hold that in political society human beings attain a *sui generis* development they cannot attain individually, in the family, or even in smaller social groups.⁷³ Seen from this perspective, in the civic arena political friendliness is the proper expression of Christian love.

After all, it is commonplace of politics that members of Congress, who have just attacked one another share jokes over dinner. Such affability is a natural necessity. Ordinarily we tend to regard such urbanity merely as a social lubricant. Making it a virtue requires that it be utilized positively as a way to facilitate conversation and cooperation, especially in conflict situations.

69. See T. GILBY, *supra* note 14, at 189-90.

70. AQUINAS, *supra* note 6, at 2a, 2ae, 114.2, *ad* 1.

71. T. GILBY, *supra* note 14, at 190-91.

72. *Id.* at 192-93.

73. The fullest expression of the belief in human sociality is found in *Gaudium et Spes*, *supra* note 14, at paras. 23-32, under the heading The Community of Mankind. More recently, it is expressed in John Paul II's reflections on human solidarity in *SOLLICITUDO REI SOCIALIS*, *supra* note 15, at paras. 39-40 (1987).

Even as a secular virtue, however, "friendliness" probably ranks rather low in most contemporary tables of the virtues. From the Renaissance through the nineteenth century, however, it was a highly esteemed quality. Saint Ignatius Loyola, for example, listed urbanity among the gifts he looked for in prospective Jesuits.⁷⁴ He valued such gifts because they facilitated the genuine communication which permitted religious conversion and moral growth.⁷⁵ A natural gift, it could become a Christian virtue in the service of apostolic witness.⁷⁶ One may argue in parallel fashion that insofar as civility, whether as a matter of simple politeness or as a deliberate tactic, fosters the conditions for communication in serious moral disputes, it can likewise be a true, Christian virtue. One may regard it as the positive side of the tolerance which is so essential to democratic social processes.

Tolerance as such arose as a secular virtue for civic life after the Wars of Religion. Today it has come to be positively valued by religious groups. Thinkers propose religious warrants by which to integrate tolerance into systems of religious ethics. John Murray Cuddihy, for example, has proposed that in a Christian context, at least, tolerance should spring from humility.⁷⁷ In parallel fashion, among Christians, civility springs from love of neighbor. This was the view held by the English Dominican, Thomas Gilby, and it seems to have been shared by the American Jesuit, John Courtney Murray.⁷⁸ The place of civility in the midst of protest, however, would seem to fit more closely with Loyola's notion that conversion emerges out of personal interchange. Protest and civil disobedience, which show respect for authorities and affably encourage a sharing of views, have a better chance of producing moral and

74. See I LOYOLA, *CONSTITUTIONS OF THE SOCIETY OF JESUS*, paras. 153-62 (G. Ganss ed. 1970).

75. Christiansen, *Experience and Virtue: Christian Moral Development in the Ignatian Tradition*, in *TO FALL IN LOVE WITH THE WORLD: IGNATIAN SPIRITUALITY FOR THE 1990s* (D. Christiansen ed., forthcoming).

76. Gilby points out time and again that Aquinas, unlike Augustine, was always able to appreciate the religious potentialities of natural tendencies, so that simple friendliness could become an aspect of charity. See T. GILBY, *supra* note 14, at 191-92. Loyola, once an austere penitent and ascetic, seemed to have learned from Aquinas this appreciation for natural goodness as a condition of Christian virtue. See J. O'Malley, *Some Distinctive Characteristics of Jesuit Spirituality in the Sixteenth Century*, in J. O'MALLEY, J. PADBERG, & V. O'KEEFE, *JESUIT SPIRITUALITY: A NOW AND FUTURE RESOURCE* 12-13 (1990).

77. See J. CUDDIHY, *NO OFFENSE: CIVIL RELIGION AND PROTESTANT TASTE* 203-07 (1978).

78. See J. MURRAY, *supra* note 4, at 5-24.

political change than disruptive, confrontational tactics. They realize the gospel injunction: "Do not be overcome by evil, but overcome evil with good."⁷⁹

Thus, when disobedients exercise the virtue of civility, ritual disobedience can intensify civic amity rather than diminish it. At a minimum, they ease the tensions inherent in protest. But they can do much more. When, over time, opponents seriously engage one another, they can become political friends in a significant sense. Their respectful engagement over serious differences of political morality may further lead to mutual awareness, moral growth and political change. In a sense, it promotes what Gandhi saw as Truth [*Sat*], a political resolution which entailed both a moral advance and a heightened sense of mutuality.⁸⁰

C. *Civil Initiative: Bringing Justice and Law Together*

A more recent variation on civil disobedience, organized by the Phoenix Sanctuary, goes by the title *civil initiative*.⁸¹ This form of civil protest goes to some lengths to work within legal limits and indeed to press authorities to comply to the fullest extent with the law. In shepherding refugees across the United States and Mexican border, for example, Sanctuary workers request the emigrants to sign statements to the effect that they are seeking political asylum, in order to refute government assertions that they are merely economic refugees. This adaptation changes the nature of protest by trying to avoid direct violation of the law, thus blunting the charge that the "initiative" undermines respect for law. It also puts pressure on authorities for their part to act within the law and forbear from utilizing extralegal means. In sum, ritual confrontation, including civil initiative, embodies modes of protest which positively address the chief objections customarily made of civil disobedience. It actually contributes to civic amity and respect for law.

While the American political tradition tends to exhibit greater respect for legalities than do other political cultures, respect for authority *per se* is not as well-rooted in this culture as in many others. The habit of political dissidence has thrived in liberal democracy precisely because of the double belief in citizens' autonomy and limited government under law. The result

79. *Romans* 12:21.

80. See E. ERIKSON, *GANDHI'S TRUTH: ON THE ORIGIN OF MILITANT NONVIOLENCE* 412, 433-34 (1970).

81. I am very grateful to Mr. Paul Crowley, S.J., Santa Clara University, for alerting me to this new conception of political dissent and resistance.

too often has been to promote disaffection with all political authorities and even flight from politics into private life. The Sanctuary Movement has offered a constructive church-based alternative to the dissensual politics of protest with the program of "civil initiative." It aims at transforming political dissent by challenging the individualist assumptions of most protest movements, their anti-authoritarian temper, and their tactics of disruptive acts.

According to Phoenix Sanctuary leader Jim Corbett, the Sanctuary Covenant is a self-consciously church-centered alternative to the tacit individualism of much religiously based civil disobedience. Corbett writes:

First, sanctuary cannot be reduced to or dismissed as a matter of individual conscience. . . . Second, the practice of sanctuary fuses concerns that are separate and even competing issues when relegated to the faith practice of individuals. Asking not "what can I do?" but "what can we do?" . . . Third, individuals can resist injustice, but only in community can we *do* justice.⁸²

Corbett concludes that the covenanted community "can make the difference between socially sterile gestures of individual protest and socially creative community breakthroughs toward a peacemaking way of life."⁸³ While Corbett is writing out of his own Quaker tradition, he sees the covenant model lived out in other communities as well, e.g. in American churches of various denominations committed to the sanctuary movement and in Latin American *comunidades de base* engaged in the defense of human rights.

Second, civilian initiative directly challenges the anti-authoritarian posture of much civil disobedience. The Sanctuary movement, according to Corbett, commits itself to upholding existing just laws in the face of deliberate maladministration by public officials and even more to upholding the international human rights accords which are binding on all governments. "Just as the legal order enforced by the state presupposes an underlying social order established by the communities that form the state, the evolution of the rule of law among nations," he contends, "depends on the prior development of an international social order rooted in local community practice."⁸⁴ Appealing to the Nuremberg principle of citizen responsibility, Corbett believes "a society's constituent

82. J. CORBETT, *THE SANCTUARY CHURCH* 11 (1986).

83. *Id.*

84. *Id.* at 14.

individuals and communities retain the primary responsibility for protecting human rights." Furthermore, the church, in his view, "occupies the crucial institutional place from which to incorporate into community practice international law that mandates civil initiative to maintain human rights in the face of government violations."⁸⁵ Of course, in the case of sanctuary, what was involved was not exclusively "frontier territories of codified law," but rather the biased and unjust execution of U.S. law. The movement, therefore, was committed to forcing the just administration of U.S. law on political asylum with legal as well as extralegal measures. Protection of persecuted refugees could not degenerate "into a kind of do-gooder vigilantism." "[R]esponsibility for protecting the persecuted must be balanced," Corbett urges, "by [our] accountability to the legal order."⁸⁶

While in extreme situations organized resistance to enforced injustice may be necessary, Corbett regards acts of resistance as a complement to civil initiative. Moreover, in addition to explicit profession of nonviolence in the performance of protest activities, Sanctuary opposes politicization of covenantal initiatives, rejects sectarianism on the part of activists, and repudiates the moral and religious apocalypticism which demonizes government as the Evil Empire.⁸⁷ In each of these discerning moves, church communities, according to Corbett's view of sanctuary, build barriers against the anti-nomianism which so often discredits dissident activities. It likewise preserves a space for genuinely Christian political action, where gospel love is able to proceed on its own terms, eschewing both cooptation by authority and compromise by ideology and moralism.

D. *Civil Initiative and Catholic Social Teaching*

On many points, civil initiative resembles the kind of political activity envisaged by recent Catholic social teaching. The Second Vatican Council praised "those who renounce the use of violence in the vindication of their rights"⁸⁸ In that brief formula, the Council not only praised nonviolence but nonviolent struggles for justice. Likewise in encouraging Cath-

85. *Id.* at 16.

86. *Id.* at 23. As criteria of accountability, Corbett lists: nonviolence, truthfulness, catholicity, dialogicality, germaneness, voluntariness, and community-centeredness. *Id.* at 23.

87. *Id.* at 23, 24-29.

88. *Gaudium et Spes*, *supra* note 14, para. 78.

olic political involvement, Pope Paul VI urged a discerning commitment to the gospel free of ideological antagonism and committed to the pursuit of cooperative rather than conflictual solutions.⁸⁹ Likewise, John Paul II, in his 1988 encyclical *Sollicitudo Rei Socialis*, encouraged nonviolent solidaristic actions on behalf of justice, particularly among the poor.⁹⁰

Even more than the civic amity generated over the history of religious protest movements, civil initiative suggests that within the churches at least a form of active civil dissent can be mounted which not only meets the objections of critics to the antinomianism latent in civil disobedience, but makes a contribution to the responsible administration of justice and the realization of a more just world through nonviolent action. From a Catholic theological perspective, with its paradoxical commitment, on the one hand, to politics and government as morally binding expressions of human sociality and, on the other, to the affirmation of the rights of conscience and the struggle for justice, civil initiative represents a way to advance the concept of civil protest in ways consistent with mainline Catholic political theology — though not with the apocalyptic views of the Catholic Left — and its predisposition to favor political cooperation over confrontation. It is worth noting that civil initiative also coincides with long-term activists' growing dissatisfaction with civil disobedience carried out on the model of expressive religious witness.⁹¹

Thus, we can add to the paradigms set out above a late twentieth century activist paradigm. In this model, there is commitment (1) to engage political adversaries and public officials in the spirit of civic amity, (2) to uphold the just administration of laws and international agreements, (3) to work for the transformation of unjust laws, and (4) to provide help for the victims of injustice primarily by legal, but in exceptional circumstances, by nonviolent extralegal means. It should be noted that this constitutes an extrapolation from the "higher law views" away from theoretical debate in the direction of a civic pragmatism which sees human rights and international law as serving in the place of the "natural law" constructs of the Middle Ages. In official Roman Catholic theology, this view is consonant with the Second Vatican Council's view of the

89. See *Octagesima Adveniens*, in GOSPEL OF PEACE AND JUSTICE, *supra* note 15, at paras. 2-3, 22-37, 46-51.

90. On nonviolence, see SOLLICITUDO REI SOCIALIS, *supra* note 15, at para. 45.

91. Affleck interview. See note 61.

defense of human rights as central to its mission as the sacrament of human unity.⁹²

E. *A Lexical Ordering*

Between civil initiative and civil disobedience which are both carried on in the spirit of civic amity, I would suggest that civil initiative is preferable. Given the emphases set by Catholic social teaching for political participation, civil initiative would hold priority even over amicable acts of disobedience. It exercises considerable respect for the law, using extralegal means only as an emergency measure, and demands accountability from officials for the just execution of the laws. Civil initiative attempts to act justly both through established legal channels and through surrogate community actions on behalf of victims of oppression. Even in extralegal activities, it embraces nonviolence and self-suffering. Finally, civil initiative itself presumes a constructive political disposition akin to civic amity. In the event that legal channels are exhausted, however, civic amity promotes a style in the conduct of civil disobedience consistent with Christian charity.

This preference may be formalized this way: in protest of unjust laws, or of the unjust administration of just laws,

- (1) the principles of Catholic social teaching tend to favor civil initiative over civil disobedience, but (2)
- should civil disobedience be required, it should be carried out in the spirit of civic amity.

Because it presumes civic amity is out of reach and does not make efforts to create conditions for amicable protest, *routine* civil disobedience would not appear to satisfy the conditions of the Catholic conception of political dissent I have tried to outline here.

F. *Summary*

Catholic social teaching has not had an articulated position on civil disobedience. Customarily its teaching has pulled in opposite directions, on the one hand, toward acquiescence to political authority and cooperation in politics, and, on the other, toward the rights of conscience and active commitment to justice. For the most part, American Catholic involvement

92. See *Gaudium et Spes*, *supra* note 14, at paras. 41-42; JUSTICE IN THE WORLD, in *GOSPEL OF PEACE AND JUSTICE*, *supra* note 15, at para. 6 ("Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel . . .").

in political protest has shared in an apocalyptic attitude which sides with the second of these tendencies to the neglect of the first. Furthermore, it has shunned moral evaluation of civil disobedience, sharing the common belief that the burden of proof lies with the government rather than with the protester. Developments in the experience and practice of civil disobedience in recent years have laid conditions which make possible a theory of civil protest in keeping with the traditional emphases of Catholic social theology on human sociality and the worth of political life. The growth of friendships between protesters and security personnel opens up possibilities for consideration of civic amity as a modern political virtue as well as an instrument of protest. In addition, civil initiative shows a systematic way for Christians to exercise their conscientious responsibilities in the face of structural injustice. In keeping with medieval Christian notions of civic friendliness and contemporary Catholic social teaching's profession of the communitarian character of the human vocation, civil initiative constitutes a political form of Christian love. On what might be called the analogy of love, which stands at the heart of Catholic social thought, civic amity and civil initiative, each in its own way, contribute to living out the law of love in the political community.