

**Aquinas on Law and Justice**  
**Conflict of Human Law and Justice in the Orderly Society**

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## ***Introduction***

Thomas Aquinas' *Summa Theologica* serves as a foundational text for the study of law and justice in the western tradition. Aquinas holds theology is a higher method of science than philosophy. The treatises comprising the *Summa* follow from this theological perspective. In the areas of law and justice, the analysis is neither entirely natural law theory nor relativism. Aquinas is best described as a virtue ethicist.

The *Summa Theologica* is essentially a treatise on human action whereby the rational creature, man, seeks return to the creator, God. It is through the human action that the rational creature is able to provide a potential return to the creator. This human action assumes free choice emanating from reason and will. The return to the creator serves as total happiness, or the end. This end is the object of the will and rational appetite.

Human action flows from principles of good action which are either internal or external. The internal describes human actions where man is moved by the self; the actions are the dominion of man. The external refers to the man being moved by something other than himself, such as an act of nature. However, the principal of the will which is inherent and governs human actions is that which is naturally desired. The naturally desired being the natural end, more specifically happiness. Therefore, Aquinas' virtue ethic requires rectitude of the will by means of virtue in order to achieve happiness.

Aquinas relates the extrinsic principle of law to the intrinsic principle of virtue. By studying Thomist natural law and human law relative to the virtue of justice, significant insight is gleaned in the understanding of law conflicting with justice in the orderly society.

In this paper, the Thomist concept of *law* is briefly discussed and analyzed. Special attention is afforded to *natural law* and *human law* as they are most relevant to temporal conflicts in law and justice. The Thomist understanding of *justice* is then explored. Related areas, including *right*, *commutative justice*, and *distributive justice*,

are detailed. Finally, the aforementioned principles are applied to the underlying question of whether the human law and justice may conflict in an orderly society.

### ***Law***

Saint Thomas Aquinas gives significant treatment to the topic of law, or *lex*. The functional definition of law being as follows:

Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for "lex" [law] is derived from "ligare" [to bind], because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (Q1:1, ad 3); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher. Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason. *Summa Theologica II-i, q. 90, a. 1*

Law serves as a principle extrinsic to the agent and involves reason. The reason, however, is not the reason of the agent. The concept of law is objective in nature. This differentiates the reasoning related to law from the related intrinsic principles of good actions, or virtues, which are subjective. Therefore, the reasoning involved in law is not prudence, the intrinsic good action, and first principle.

Thomas then defines law as "*an ordinance of reason for the common good, made by him who has care of the community, and promulgated.*"<sup>1</sup> As previously mentioned, law is reasoned as it originates from the first principal. The end of the reasoning is happiness for the common good. Law is then ordained chiefly for the common good, not the individual.<sup>2</sup> The law is relative to the universal happiness in the body politic. Lastly, it is promulgated by the community or one entrusted with the care of the community. This promulgation affects those subject to law by leading them to proper virtue as the law is corrective.<sup>3</sup> This promulgation is necessary for the law to

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1 Summa Theologica II-i, q. 90, a. 4

2 Summa Theologica II-i, q. 90, a. 2

3 Summa Theologica II-i, q. 92, a. 2

obtain its force.<sup>4</sup> If the law is not promulgated, then it is not a law. Similarly, if the law is not for the common good, it is not a law.

Law is then divided into four specific areas: *Eternal Law*, *Divine Law*, *Natural Law*, and *Human Law*.<sup>5</sup> The eternal law is God himself. Divine law is the law given through Sacred Scripture in the Old and New Testaments. Most relevant to this analysis are the natural law and the human law to be explored in greater detail.

### ***Natural Law***

The Thomist understanding of the natural law is distinct from the common jurisprudential understanding of "law of nature". Though Thomas believes the natural law dwells within the person, the source and purpose of the law is essential. The human being is viewed as provident within the world. As provident, the human participates in the eternal law. This imprint of natural law within the rational creature, given by the creator, is his participation in the eternal law.

Therefore, the natural law is based on a larger understanding of law; incorporated within the highest law, the eternal law which is God himself. This natural law, like all law, relates to reason. This is the natural light within the rational creature to discern right and wrong. This natural law relates to that which is ruled or measured by the human being and relates to the will. However, it is not an intrinsic human good or virtue to be cultivated by habit into disposition.<sup>6</sup> This natural law exists within the person and may not be diminished but may be grow through divine law or human law.

### ***Human Law***

The human law is not given by the creator to all men. The human law is particular determinations reasoned by the rational creature. The human law, unlike

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4 Summa Theologica II-i, q. 90, a. 4

5 Summa Theologica II-i, q. 91, a. 2

6 Summa Theologica II-i, q. 94, a. 1

natural law, divine law, and eternal law, is fallible and may err. It may be derived by nature by way of conclusion or by determination.

These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above (Q90:2-4). Wherefore Tully says in his Rhetoric that justice has its source in nature; thence certain things came into custom by reason of their utility; afterwards these things which emanated from nature and were approved by custom, were sanctioned by fear and reverence for the law. *Summa Theologica II-i, q. 90, a. 3*

Derivation by conclusion is a product of the rational process; whereas determinations are freely decided and also considered positive law. Ultimately, these determinations are attempts to interpret and apply the divine law.

The human law exists to allow for the orderly society. The good are subject to the law but not coerced to follow as they are properly disposed and habituated. Therefore, the law is coercive only to those without virtue as it serves to repress vice. Children, in particular, rely on the human law.<sup>7</sup> The human law serves to lead those with immature or flawed moral character to virtue.<sup>8</sup> It is corrective in nature and exists within a larger understanding of a civic education, or *padaiea*.

[M]an has a natural aptitude for virtue; but the perfection of virtue must be acquired by man by means of some kind of training. Thus we observe that man is helped by industry in his necessities, for instance, in food and clothing. Certain beginnings of these he has from nature, viz. his reason and his hands; but he has not the full complement, as other animals have, to whom nature has given sufficiency of clothing and food. Now it is difficult to see how man could suffice for himself in the matter of this training: since the perfection of virtue consists chiefly in withdrawing man from undue pleasures, to which above all man is inclined, and especially the young, who are more capable of being trained. Consequently a man needs to receive this training from another, whereby to arrive at the perfection of virtue. And as to those young people who are inclined to acts of virtue, by their good natural disposition, or by custom, or rather by the gift of God, paternal training suffices, which is by admonitions. *Summa Theologica II-i, q. 95, a. 1*

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<sup>7</sup> *Summa Theologica II-i, q. 95, a. 1*

<sup>8</sup> *Summa Theologica II-i, q. 95, a. 1*

The human law must be formed in proportion to the desired end.<sup>9</sup> The measure of the human law in determining proportionality is the divine law and natural law.<sup>10</sup> The end of human law is to *"be useful to man"* which is the common good.<sup>11</sup> Therefore, human law should be proportionate to the common good.<sup>12</sup> Aquinas' determination of form and measure in human law is borrowed from Saint Isidore.

Wherefore Isidore in determining the nature of law, lays down, at first, three conditions; viz. that it "foster religion," inasmuch as it is proportionate to the Divine law; that it be "helpful to discipline," inasmuch as it is proportionate to the nature law; and that it "further the common weal," inasmuch as it is proportionate to the utility of mankind. *Summa Theologica II-i, q. 95, a. 3*

More simply, three conditions exist for the human law. First, the human law *"is called virtuous because it fosters religion"*.<sup>13</sup> Thus, the law must be just in light of country custom, time, place, and helpful to discipline.<sup>14</sup> This requires proper application of the first principle – reason. Second, the human law *"depends on the ability of the agent"* as different disciplines are deserved by different agents and same burdens may cause injustice.<sup>15</sup> Third, the human law is *"ordained to the common good"* and requires *"clearness of expression"* through promulgation.<sup>16</sup> Moreover, the human law is to be derived from the law of nature, ordained to the common good, framed by those who govern the community, and directs human action.<sup>17</sup>

Aquinas believes human law is to be limited. The human law is not constructed to forbid all vices but only the most grievous vices from which the majority abstain.<sup>18</sup> Particular attention is required of vices which hurt others and hinder the simple maintenance of human society, such as murder and theft.<sup>19</sup>

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9 Summa Theologica II-i, q. 95, a. 3

10 Summa Theologica II-i, q. 95, a. 3

11 Summa Theologica II-i, q. 95, a. 3

12 Summa Theologica II-i, q. 96, a. 1

13 Summa Theologica II-i, q. 95, a. 3

14 Summa Theologica II-i, q. 95, a. 3

15 Summa Theologica II-i, q. 95, a. 3

16 Summa Theologica II-i, q. 95, a. 3

17 Summa Theologica II-i, q. 95, a. 4

18 Summa Theologica II-i, q. 96, a. 2

19 Summa Theologica II-i, q. 96, a. 2

Human law serves as an attempt of the lawgiver to promulgate law to foster collective justice for the common good. Justice is an intrinsic virtue according to Aquinas. A brief detailing of Thomist justice follows.

### ***Justice***

Justice, or *justitia*, is a cardinal virtue and defined by Aquinas as "*a habit whereby man renders to each one his due by a constant and perpetual will*".<sup>20</sup> Along with temperance, prudence, and fortitude, justice provides the complete structure of good works.<sup>21</sup> Like all virtue, justice is an intrinsic principle. A principle intrinsic to good action and, thereby, subjective. Justice, as a principle of good action, is then related to the will of the rational creature. The quality of justice adheres to the subject which is the will.

Law, as an extrinsic principle, relates to the intrinsic principle of justice. As human law emanates from reason to direct actions of the community, justice is implicated as "*it is proper to justice, as compared with the other virtues, to direct man in his relations with others: because it denotes a kind of equality, as its very name implies...for equality is in reference of one thing to some other.*"<sup>22</sup>

### ***Right***

The object of justice is the just, which places justice above other virtues.<sup>23</sup> The just is the same as the right, or *jus*.<sup>24</sup> Therefore, the right is the object of justice. Law is "*not the same as the right, but an expression of right.*"<sup>25</sup> Right, or just, depends on commensuration with another person.<sup>26</sup> Justice is only in one man towards another.<sup>27</sup>

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20 Summa Theologica II-i, q. 58, a. 1

21 Summa Theologica II-i, q. 58, a. 3

22 Summa Theologica II-i, q. 57, a. 1

23 Summa Theologica II-i, q. 57, a. 1

24 Summa Theologica II-i, q. 57, a. 1

25 Summa Theologica II-i, q. 57, a. 1

26 Summa Theologica II-i, q. 57, a. 4

27 Summa Theologica II-i, q. 58, a. 2

Now "*another*" has a twofold meaning.<sup>28</sup> First, it may represent something entirely distinct, such as two individual men with neither holding authority over the other. Second, it may represent something belonging in some way to something else, such as a son to his father.<sup>29</sup>

Justice, as right, takes two distinct forms. A thing can be adjusted to man by its nature which is termed the *natural right*.<sup>30</sup>

[T]he natural right or just is that which by its very nature is adjusted to or commensurate with another person. Now this may happen in two ways; first, according as it is considered absolutely: thus a male by its very nature is commensurate with the female to beget offspring by her, and a parent is commensurate with the offspring to nourish it. Secondly, a thing is naturally commensurate with another person, not according as it is considered absolutely, but according to something resultant from it, for instance the possession of property. *Summa Theologica II-i, q. 57, a. 3*

Or, a thing may be adjusted by agreement or common consent between private individuals, a private agreement, or between and among the whole community, a public agreement or *positive right*.<sup>31</sup>

### ***Commutative and Distributive Justice***

Aquinas further delineates two forms of justice – commutative and distributive.<sup>32</sup> Commutative justice is concerned with dealings between two persons.<sup>33</sup> Distributive justice relates to the order of the whole community in relation to each single person.<sup>34</sup> In distributive justice, the common goods are to be distributed by proportion.<sup>35</sup> Ultimately, "*the proper act of justice is nothing else than to render to each one his own.*"<sup>36</sup>

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28 Summa Theologica II-i, q. 57, a. 4

29 Summa Theologica II-i, q. 57, a. 4

30 Summa Theologica II-i, q. 57, a. 2

31 Summa Theologica II-i, q. 57, a. 2

32 Summa Theologica II-i, q. 61, a. 1

33 Summa Theologica II-i, q. 61, a. 1

34 Summa Theologica II-i, q. 61, a. 1

35 Summa Theologica II-i, q. 61, a. 1

36 Summa Theologica II-i, q. 58, a. 11



Though not entirely a modern problem, attention is warranted to this relationship between the human law, emanating from the natural law, and justice; specifically, instances of the human law conflicting with justice in an otherwise orderly society. A study of Saint Thomas Aquinas' treatment of the both the extrinsic principle of law and intrinsic virtue of justice provides thoughtful treatment of this issue in the modern world.

### ***Conflicts in Human Law and Justice***

Once a general understanding of the Aquinas' natural law, human law, and justice is gained, greater insight into his treatment of conflicts between law and justice are possible.

This area requires significant cross-referencing of the Treatise on Law and Treatise on Justice. To provide adequate structure to the analysis, this question of conflict is divided into the following areas: *Natural Law and Justice*; *Legal Justice*; *The Lawgiver*; and *The Lawyer*.

### ***Natural Law and Justice***

As discussed above, Aquinas holds "*all virtuous acts belong to the natural law*".<sup>37</sup> Instilled within man, as rational creature, is a natural inclination toward reason.<sup>38</sup> Further, this reason attempts to act according to virtue.<sup>39</sup> Therefore, "*all acts of virtue are prescribed by natural law: since each one's reason naturally dictates to him to act virtuously*".<sup>40</sup> However, all virtuous acts, as opposed to "*acts of virtue*", are not prescribed by the natural law but may simply have been reasoned by the rational creature as conducive to proper living.<sup>41</sup>

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37 Summa Theologica II-I, q. 94, a. 3

38 Summa Theologica II-I, q. 94, a. 3

39 Summa Theologica II-I, q. 94, a. 3

40 Summa Theologica II-I, q. 94, a. 3

41 Summa Theologica II-I, q. 94, a. 3

The natural law involves that in which man is inclined naturally, such as reason.<sup>42</sup> This reason is bifurcated into speculative reason and practical reason.<sup>43</sup> The speculative reason relates to the necessary things, like universal principles, and contains truth without fail.<sup>44</sup> The practical reason involves contingent matters and detail. These contingencies and detail result in more defects.<sup>45</sup> Therefore, in *"matters of action, truth or practical rectitude is not the same for all, as to matters of detail, but only as to general principles"*.<sup>46</sup> These *"matters of detail are conclusions involving the general principles"*.<sup>47</sup> However, in application the general principle may in some cases fail.

Aquinas attributes this failure to improper rectitude, certain obstacles, or knowledge *"since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature"*.<sup>48</sup> Aquinas relates this, by example to theft being accepted within a culture. *"Although it is expressly contrary to the natural law, [theft] was not considered wrong among the Germans, as Julius Caesar relates (De Bello Gall. vi)"*.<sup>49</sup> Therefore, the human law within the German society violated the natural law disallowing theft.

[T]here belong to the natural law, first, certain most general precepts, that are known to all; and secondly, certain secondary and more detailed precepts, which are, as it were, conclusions following closely from first principles. As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of concupiscence or some other passion, as stated above (77, 2). But as to the other, i.e., the secondary precepts, the natural law can be blotted out from the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions; or by vicious customs and corrupt habits, as among some men, theft, and even unnatural vices, as the Apostle states (Rm. i), were not esteemed sinful. *Summa Theologica II-i, q. 94, a. 6*

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42 Summa Theologica II-i, q. 94, a. 4

43 Summa Theologica II-i, q. 94, a. 4

44 Summa Theologica II-i, q. 94, a. 4

45 Summa Theologica II-i, q. 94, a. 4

46 Summa Theologica II-i, q. 94, a. 4

47 Summa Theologica II-i, q. 94, a. 4

48 Summa Theologica II-i, q. 94, a. 4

49 Summa Theologica II-i, q. 94, a. 4

Aquinas holds the natural law, even in the instance of the corrupt culture, cannot be entirely "*blotted out*". However, the natural law may be "*blotted out*" by custom or human law when failing to recognize the general principle in a specific action. Alternatively, the natural law may be absent in human law resulting from corrupt habits or vice.

If, however, a thing is contrary to natural right, the human will cannot make it just by decreeing that it is lawful. Thereby, human law cannot make theft or adultery just. "*Hence it is written (Isaiah 10:1): 'Woe to them that make wicked laws.'*"<sup>50</sup>

Therefore, it can be concluded that human law may conflict with justice in the orderly society as man has previously failed to satisfy natural law in development of human law and custom. Though the society suffers from the injustice, it may remain orderly.

### ***Legal Justice***

Aquinas recognizes all acts of virtue may relate to justice by benefiting the good of community. As law is the attempt of the rational creature to benefit the common good, Aquinas maintains consistency in justice and law as a specific virtue.

[A]cts of virtue can pertain to justice, in so far as it directs man to the common good. It is in this sense that justice is called a general virtue. And since it belongs to the law to direct to the common good, as stated above (I-II, 90, 2), it follows that the justice which is in this way styled general, is called "legal justice," because thereby man is in harmony with the law which directs the acts of all the virtues to the common good. *Summa Theologica II-i, q. 58, a. 5*

In keeping with Aristotle, Aquinas maintains this concept of legal justice stands "*foremost among all the moral virtues*".<sup>51</sup> As it is considered the most excellent of virtues by Aristotle and Aquinas, attainment of justice will not be common as excellence, or virtue, is not achieved by all men. Legal justice begs an opposite which is the failure of human law to exact justice.

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50 *Summa Theologica II-i, q. 57, a. 2*

51 *Summa Theologica II-i, q. 58, a. 12*

In considering the opposite of legal justice, Aquinas introduces the notion of illegal injustice.<sup>52</sup> This is held to be both a special vice and a general vice.<sup>53</sup> As the object is distinct, namely the common good, illegal injustice is a special vice. However, it is also a general vice since this contempt for the common good "*may lead to all kind of sin*".<sup>54</sup>

Therefore, it can again be determined that human law may conflict with justice in the orderly society as justice is the most excellent virtue, not attainable by all, and legal justice is a specific virtue with a contrary, namely illegal injustice.

### ***The Lawgiver***

A law is "*nothing else than a dictate of reason in the ruler by whom his subjects are governed*."<sup>55</sup> By considering the ruler, or lawgiver, further insight is gained into the question of human law conflicting with justice. The intention of the lawgiver is paramount to the virtue of the citizenry.

For if the intention of the lawgiver is fixed on true good, which is the common good regulated according to Divine justice, it follows that the effect of the law is to make men good simply. If, however, the intention of the lawgiver is fixed on that which is not simply good, but useful or pleasurable to himself, or in opposition to Divine justice; then the law does not make men good simply, but in respect to that particular government. In this way good is found even in things that are bad of themselves: thus a man is called a good robber, because he works in a way that is adapted to his end. *Summa Theologica II-i, q. 92, a. 1*

Also, the lawgiver must have the virtues of wisdom and prudence in first understanding the relationship of human law with eternal and divine law and executing this relationship. Further, in development of the human law, the lawgiver is likely to rely on subordinates. The lawgiver, and subordinates, must then have the necessary virtue and understanding of divine law and eternal law to develop human law.

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52 *Summa Theologica II-i, q. 51, a. 1*

53 *Summa Theologica II-i, q. 51, a. 1*

54 *Summa Theologica II-i, q. 51, a. 1*

55 *Summa Theologica II-i, q. 92, a. 1*

Since then the eternal law is the plan of government in the Chief Governor, all the plans of government in the inferior governors must be derived from the eternal law. But these plans of inferior governors are all other laws besides the eternal law. Therefore all laws, in so far as they partake of right reason, are derived from the eternal law. Hence Augustine says (De Lib. Arb. i, 6) that "in temporal law there is nothing just and lawful, but what man has drawn from the eternal law." *Summa Theologica II-i, q. 93, a. 3*

Ultimately, the human laws enacted by the lawgiver, through assistance of subordinates, are either just or unjust. If the laws are just, they *"have the power of binding in conscience, from the eternal law whence they are derived, according to Prov. 8:15: 'By Me kings reign, and lawgivers decree just things.'"*<sup>56</sup> Further, it is only laws which allocate proportional burdens which are *"just and binding in conscience, and are legal laws."*<sup>57</sup>

The lawgiver may enact unjust laws in two manners. First, by enacting law contrary to human good in respect to the end of the law or the scope of the law.<sup>58</sup> Aquinas considers these acts of violence rather than laws as *"a law that is not just, seems to be no law at all"*.<sup>59</sup> Second, laws opposed to the Divine law and Divine good are unjust and cannot be observed.<sup>60</sup>

In creating the human law, the lawgiver must recognize higher law derives from higher authority. If the higher law, such as eternal law, divine law, or natural law, conflicts with the human law, then the human law is not binding.

In this way, one who is simply subject to a law may not be a subject thereto in certain matters, in respect of which he is ruled by a higher law. *Summa Theologica II-i, q. 96, a. 5*

If the lawgiver requires the virtuous citizen to abide by human law contradictory to higher law, then the citizen is coerced. Coercion is contrary to the will.<sup>61</sup> As the will of the good citizen is in harmony with the law, the law is not binding if coercive to the virtuous citizen.

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56 *Summa Theologica II-i, q. 92, a. 4*

57 *Summa Theologica II-i, q. 92, a. 4*

58 *Summa Theologica II-i, q. 92, a. 4*

59 *Summa Theologica II-i, q. 92, a. 4*

60 *Summa Theologica II-i, q. 92, a. 4*

61 *Summa Theologica II-i, q. 92, a. 5*

As the lawgiver is attempting to enact human law, in keeping with higher law, for the common good according to proportion, discrepancies are unavoidable. Aquinas does not hold the human law to be without flaw or error. Human law may be conducive to the common good in most instances yet be hurtful in others.

Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. Wherefore if a case arises wherein the observance of that law would be hurtful to the general welfare, it should not be observed. *Summa Theologica II-i, q. 96, a. 6*

Aquinas also analyzes the need for changes in human law. The human law is not unalterable or infallible. Thus, the just change of human law is a possibility. Aquinas' recognizes law as a dictate of reason. Reason, like philosophy and speculative sciences, may be advanced. Therefore, this advancement in reason allows for changes and advancement in the human law from imperfect to perfect.<sup>62</sup> By such changes, lawgivers improve their institution and the common good.

Interestingly, Aquinas recognizes change in human law for another, less ideal, instance. In communities where citizens are virtuous, exhibiting moderation and responsibility and responsibility for common good, it is best for these citizens to be afforded the ability to select their own lawgivers. However, if these same people become corrupt and entrust scoundrels and criminals, then the right to self-representation is *"rightly forfeited to such people, and the choice devolves to a few good men."*<sup>63</sup>

Aquinas warns of change, however, recognizing the practical impact of abolishing custom. The human law is then never to be changed unless the common good is benefited to the extent of the harm done in changing custom, which is evident when the existing law is patently unjust or observance is harmful.<sup>64</sup>

Therefore, based on the imperfect nature of the lawgiver (and subordinates), the need and ability to change human laws, and the practical reality of law potentially

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62 Summa Theologica II-i, q. 97, a. 1

63 Summa Theologica II-i, q. 97, a. 1

64 Summa Theologica II-i, q. 97, a. 2

benefiting a majority and unjustly effecting a minority, it can be reasoned that human law can conflict with justice in the orderly society.

### ***The Lawyer***

The relationship, and potential culpability, of lawyers in supporting human law in conflict with justice is less discernable. Though lawyers do not know eternal law, as it is God in essence, every lawyer and other rational creature knows its reflection- the natural law.<sup>65</sup> As lawyers are educated in matters of law, it may be assumed that a greater knowledge of the natural law is held. Aquinas holds knowledge of law as "*something spiritual*".<sup>66</sup> It would, therefore, be consistent to believe human law, as advanced by lawyers through common law, would be more in keeping with natural law.

This assumes certain standards in legal education that may or may not be true in modern society. Questions arise regarding the legal training within the modern world which is properly described as secular. As many lawyers serve in positions of lawgiver, whether as advocate or through legislative or judicial seat, their ability to influence law is profound. Aquinas provides insight regarding the requirements of a lawyer when addressing disbarment of practitioners of law. He holds some are "*less competent to exercise it [the pleading in a case], such as persons of ill-repute and unbelievers*".<sup>67</sup> The proper theological disposition is assumed as a requirement for profession.

Aquinas levies an affirmative obligation on lawyers not to pervert justice in their advocacy role. The attorney sins grievously by defending a known, unjust cause and is bound in restitution for loss incurred by another based on his advocacy of the unjust.<sup>68</sup> Unlike other professions, the lawyer who accepts an unjust case unjustly injures another party; thereby abusing his art for evil end.<sup>69</sup>

Therefore, based on the role of lawyer in developing law as an advocate through common law and by sitting legislatively or judicially, it can be reasoned that unjust

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65 Summa Theologica II-I, q. 93, a. 2

66 Summa Theologica II-I, q. 71, a. 4

67 Summa Theologica II-I, q. 71, a. 2

68 Summa Theologica II-I, q. 71, a. 3

69 Summa Theologica II-I, q. 71, a. 3

lawyers participate, through an orderly society, in the development of human laws in conflict with justice.

### ***Conclusion***

As Augustine says (De Lib. Arb. i, 5) "that which is not just seems to be no law at all": wherefore the force of a law depends on the extent of its justice. Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature, as is clear from what has been stated above (91, 2, ad 2). Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law. *Summa Theologica II-i, q. 95, a. 2*

In conclusion, the human law may conflict with justice in the orderly society as a lawgiver may enact law which contradicts proportional justice. The authority of the human law is then in question as the force of law depends on the extent of justice. When human law conflicts with justice, the effect of the human law is then limited as it no longer binds the conscience of the citizenry. By not binding the conscience of the citizen, the society becomes less ordered. Therefore, there exists a critical point whereby the conflict in human law and justice is sufficient to destroy any definable order within the society.