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Civil disobedience as an expression of political obligation: a proposal

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Abstract

Regarding political obligations, the theory of fair play states that a person who benefits from the efforts of other participants in an advantageous cooperative scheme is responsible for bearing the burden of those efforts. Otherwise, the person would be violating their duty of fair play, that is, to reciprocate the benefits obtained. In this view, political obligations have a prima facie character, and this character enables justified disobedience against a particular law or action of the government. The most important and recognized methods are civil disobedience, protest, and conscientious objection. An approach that intersects legal and political philosophy is used in this work to examine the (dis)value of civil disobedience within the constitutional rule of law. Rather than being transgressive, civil disobedience is an essential mechanism for protecting fundamental human rights, especially for those groups excluded from the public sphere or unable to assert their rights effectively. Based on these considerations, we propose our thesis that civil disobedience can be seen as an expression of political obligation.

Keywords: civil disobedience, rule of law, fair play, political obligation

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I. Introduction

It is often said that the State constitutes a cooperative enterprise within which minimum conditions and essential services are provided so that each member can live their life in line with general well-being. It is also commonly stated that in terms of the operation of the State, participants have certain freedoms and duties or obligations toward other members and state institutions themselves. These obligations arise primarily, but not exclusively, because of the benefits gained within such an enterprise. One of the theories that align with this perspective in the realm of political obligation is that of *fair play*. The proposition is simple yet explanatory: if an individual who belongs to a beneficial cooperative scheme benefits from the efforts of other participants, this individual has the duty to bear the burden of efforts undertaken by the participants; otherwise, they would violate their duty of fair play, that is, to reciprocate the benefits received.

Developed by Hart (1955) and later by Rawls (1999), the fair play theory has been particularly explored by Klosko (2004, 2005, 2019), who has not only clarified and expanded this theory but has also addressed several criticisms of it within the academic community. In this development, the professor from the University of Virginia has focused, as the problem of political obligation demands, on the question of why citizens of a state must obey the law and its institutions. However, he has not paid much attention to the matter of disobedience,[1] which is not any random act of disobedience but one that might be justifiable, such as conscientious objection, protest, and civil disobedience.

Based on the principle of and specialized literature on fair play, this article examines civil disobedience within the ambit of law from this thematic perspective. The goal is to examine its (dis)value within the framework of a cooperative enterprise such as the constitutional rule of law. Civil disobedience, far from being a transgressive attitude, is an essential mechanism for the preservation of fundamental human rights for all citizens, especially for those social groups that are sidelined from the public sphere or those that cannot effectively assert their claims. Based on these considerations, the thesis proposes that—although it may sound paradoxical at first glance—civil disobedience constitutes an expression of one's political obligation.

The article is structured as follows: first, it will explain how the theory of fair play generates different forms of objection to the law; second, it will examine the characteristics of civil disobedience in greater detail. Third, its justification will be analyzed, followed by a discussion of its positive aspects within the rule of law and within specified conditions and limits. Finally, the proposed thesis will be explained.

II. Limits of the duty of obedience in the state cooperation scheme

Discussion of the scope of the duty of obedience naturally depends on the specific theory of political obligation adopted. If we start, as proposed in this article, from the fair play theory, it should first be noted that the duty to reciprocate the benefits obtained from a beneficial cooperation scheme is not an absolute duty. An absolute duty implies that citizens are never justified in disobeying the laws of the State under any circumstance. If this duty conflicts with other duties, it is never annulled because it has the greatest weight in the field of reasons for action (Wasserstrom, 1999, p. 19).

In truth, the duty of fair play has a prima facie character (Ross, 2007); in other words, it constitutes a pro tanto reason for action. Prima facie means that an action has the characteristic of becoming a duty proper when it is not outweighed by other duties annulling it (Ross, 2007, pp. 19-20). As the effectiveness of the duty depends on this condition, the prima facie quality suggests that we are only talking about an aspect that a moral situation presents at first glance and that may turn out to be illusory. Only some actions, according to Ross (2007, p. 21), are mandatorily prima facie, such as keeping a promise, not harming others, or promoting welfare.

Understanding the duty of fair play as a pro tanto reason is, in general terms, something very similar to the concept of a prima facie duty. However, there are some important differences. Prima facie duties seem to be reasonable at first glance but, considering all things, may not actually be—they tend to be duties, but strictly are not. In contrast, pro tanto reasons always have some weight in the balance of reasons for action (Kagan, 1989, p. 17). They are not, therefore, for mere appearance. In other words, these types of reasons are relevant when deciding how one should act and effectively contribute to the outcome. Furthermore, if a pro tanto reason contradicts other reasons, a genuine conflict arises in which the pro tanto reason may or may not be defeated; but in the case of no contradiction, the reason retains its force even if it is not the one ultimately determining the decision taken (Knowles, 2010, p. 16). In other words, that duty, while being annulled by another requirement, remains a true demand that maintains certain moral weight and has an influence (Simmons, 1979, p. 27).

Regardless of whether either of the abovementioned two terms is adopted for defining the fair play theory, it is understood that within the theory—this is what is really important to highlight—there would be room for justified disobedience or at least the possibility to consider that such justification exists. This theory of political obligation explains why citizens of a state must obey the laws and also contemplates the limitations to such a requirement. This is the subject matter of this study. Notably, to organize the exposition, one can conveniently state that in any cooperative scheme, such as the State, there are times when the law is disregarded despite demanding obedience from those it addresses. One does not have to be an expert to see how some citizens violate the legal norms of their community. Crossing a red light to save a few seconds of time, failing to pay taxes, or committing fraud for economic advantages are just a few of the many everyday examples we can find. Nino (2005) gives many examples of Argentina in his text A Country Outside the Law, which altogether cause much concern to any reader.

These examples, which fall under the category of simple disobedience, are all unjustifiable, at least prima facie. Through such actions, the law is violated, and the authority of the law is challenged in an effort to satisfy purely personal interests. In other words, the violators are free riders who, by evading the rules, achieve their goals solely for selfish reasons2. It is assumed, of course, that in such a case, the citizens have a duty to obey, but they infringe it. That is, those who do not cooperate within the cooperative scheme but still take advantage of the benefits derived from the efforts of others are duty-bound to cooperate; the problem is that they fail to comply without a weighty reason that justifies, in understandable terms, their own actions. These are actions totally rejected by society, which is why the violators try to remain hidden and away from public scrutiny. Because of this nature, they are not actions that fall under the limits and scope of the duty of obedience formulated by the fair play theory.

In fact, in terms of political and legal philosophy, individuals can assume different attitudes in contrast to what the law provides but with some degree of justification. These are other types of behaviors that do not simply involve taking advantage of the efforts of others by evading burdens and thus do not fall under the ambit of free riders (Moraro, 2019, p. 17). Particular examples include conscientious objection, protest, and civil disobedience. All these cases are various manifestations of what are called, according to Kaufmann (2006, p. 375), forms of "weak resistance," which must be differentiated from resistance in a strong sense: while the former includes actions that recognize the state authority as legitimate and oppose its actions or norms as arbitrary or unjust within a just or "almost just" cooperation scheme, the latter category encompasses actions that reject an illegitimate authority (such as a tyrannical state or other types of unjust schemes).

As anticipated in the Introduction, this study focuses on specifying the characteristics of civil disobedience and developing a thesis that posits that such practice falls within one's political obligation. This goal is intended to be achieved in the following sections. Before that, two important considerations are made about forms of weak resistance. First, the study assumes that the State relies on or needs moral justification within the law itself. Thus, it is thought that the State has a very important material component: it is ethical as it establishes what a society considers good, just, and correct. For example, the legal system of the Argentine state takes as its stance the realization of human rights and the essential values of people according to the standards set in the National Constitution and international treaties. This means that it has substantive values and principles at its core; it is not mere formality.

Certainly, unlike what happened with the legal state, the practice of law in the constitutional state, as Atienza (1998) explains, "supposes—or implies—not only formal values (linked to the idea of predictability), but also material values (related to notions of justice or truth) and political values (connected to the notion of acceptance)" (p. 47). Such a material substrate can prevent everything from passing, in the terms of Habermas (1997, pp. 70-71), for a kind of "authoritarian legalism" whose nature is expressed in the formula "the law is the law"—a legalism that, of course, "denies the human substance of the multivocal precisely when the rule of law feeds on that substance."

The law supporting a cooperative enterprise cannot be simply understood as a rational concept but must be nourished and guided by a material content of ethicality. The ultimate goal is the promotion of the human dignity of each individual in agreement with the promotion of the common good. In Fuller's (1969) conception of the rule of law, one of the most widely discussed in the literature, respect for this basic principle was noted as follows: "Any deviation from the principles of the internal morality of law is an insult to the dignity of men as responsible agents; [...] it expresses our indifference to his faculties of self-determination [...]; [and then] we no longer judge a man, we impose upon him" (pp. 162-163).

Second, and closely connected with the previous point, it can be said that it makes more sense to discuss forms of weak resistance in relation to state cooperative schemes whose form of political organization is democratic, one that is also effectively and legitimately established as such (and is not merely nominal). It is not denied that resistance can occur in other contexts. Nevertheless, the truth is that only in the democratic structure does the right to expression constitute a basic pillar; therefore, in addition to having robust support, that manifestations of political obligations that citizens resort to can have a moral as well as political impact as these obligations concern the community of citizens. Furthermore, it is important to highlight that as the exercise of forms of weak resistance constitutes a clear expression of the autonomy of the will, the best-known means that maintains a clear commitment to it is the democratic system (Gargarella, 2005, pp. 39-40). Democracy is most compatible with the concept of autonomy, so it finds solid support in this area (Barbarosh, 1996, p. 19).

III. Civil disobedience: a characterization

Civil disobedience is a modern expression whose use became frequent in political theory since Thoreau published his classic essay "Civil Disobedience" in 1849. Specialized literature has reflected on the problem, mainly since the second half of the 20th century. As a result, many proposals have sought to specify its characteristics; several are in agreement, while others are somewhat different3. Without delving too deeply into this thorny and complex issue, it is believed that the best way to chart a course toward the characterization of civil disobedience is to start from Rawls' proposal and interweave his ideas, whenever possible, with those of other renowned authors in contemporary political and legal philosophy. Thus, the first thing to note is that civil disobedience is a problem of conflicting duties: on the one hand, citizens have a duty to obey the law established through norm-creating bodies; on the other hand, this duty collides with other duties that are generally based on principles, values, or other reasons that the individual considers to be superior (Rawls, 2006, p. 331). The duty of obedience, which has a prima facie character or constitutes a pro tanto reason for action, loses its strength because the agent understands, based on a reflected stance and on principles of greater weight, that they must object what is established in such a mandate. In this somewhat agonistic scenario, the discussion revolves around determining to what extent and when the duty to submit to the authority of the law established by the majority within the cooperative scheme ceases to be mandatory.

According to Rawls (2006), civil disobedience is defined as "a public, non-violent, conscious, and political act, contrary to the law, usually committed to make a change in the law or in government programs" (p. 332).

As the author acknowledges, this proposal is not original but belongs to Bedau (1961). However, while recognizing his merit, it must be said that Rawls' originality lies in his elucidation of the proposal. Thus, the Harvard professor understands that such an act of resistance appeals to a sense of justice of most members of the State and indicates that according to the opinion of the disobeying person, the basic principles of social cooperation are not respected. It is, first, an act contrary to the law—usually unjust, illegitimate, or invalid—that can be deployed in two ways: the citizen objects to the law itself against which they are protesting (direct civil disobedience) or against other norms different from the one under dispute but whose breach underscores the situation of injustice (indirect civil disobedience). It is not, therefore, a revolutionary act in any way. The aim of civil disobedience is much more modest as it seeks to thwart specific laws rather than replace one government system with another (Martin, 1970, p. 125). Of course, there are acts of civil disobedience that can be revolutionary in the sense that there is a distinct before and after with respect to what was being done within the system itself, but this is clearly different from breaking the system.

The person who commits civil disobedience does so with the knowledge of what their conduct reflects or implies; therefore, it is a conscious act. In other words, there is deliberation in objecting the law or a "purpose of norm violation" (Habermas, 1997, p. 56), and this does not occur by accident but is a substantial aspect (Martin, 1970, p. 124). Indeed, precisely resisting the mandate of a law and knowing what one is doing is an inherent tactic of such a form of resistance. At this point, it is appropriate to clarify the reference to the issue of "conscience," linked not so much with understanding what one is doing but rather with the reasons for action. It is true that Thoreau refers to a motivation of disobedience based on the individual's conscience. Many authors also understand it in this way, as is the case, for example, with Bedau (1961, p. 659), who refers to moral convictions that the individual appeals to in order to object to the law. But care must be taken in thinking that one's conscience constitutes the basis that justifies the act of disobedience as this could lead to a purely subjective issue (the pure interiority of the human being) and grant any citizen the privilege to detach themselves at will from fulfilling their civic obligations (Power, 1972, p. 42). Actually, the justification clearly has greater substance and presents a movement that goes from the moral to the political aspect and is inserted in this field.

Disobedience is a political act in at least three aspects. First, because carrying out such a violation of the law is nothing other than replacing the government of the majority with the government of a minority: a transgression of the rules inherent to a democracy. Second, disobedience is political in terms of its purpose (Martin, p. 136). What it seeks is the change of bad laws, and this matter pertains to the political instance itself. Finally, as Rawls (2006, p. 333) explains, disobedience is supported by political principles, that is, principles of justice that regulate and inform the Constitution and the cooperative enterprise. Through it, one does not simply invoke a personal moral issue but the conception of justice that underlies the legal system and, therefore, asks the other members to reexamine whether it is appropriate to continue with the established rules. This point is very important because if the act were reduced to a mere moral issue, it could be argued that whoever practices it would make their judgments absolute: "They would not consider themselves subject to punishment, and the State could not justifiably punish them" (Martin, 1970, p. 135).

Civil disobedience is not conducted covertly but is made known to the community: it is, essentially, open and public (Bobbio, 1997, p. 116; Rawls, 2006, p. 333). Secrecy is a quality more akin to criminality (Arendt, 1972, p. 75). In contrast, in civil disobedience, the idea of the practitioner is to make a problem visible to the body of citizens in the manner of a political speech. This characteristic, which for Habermas (1997, p. 56) is a "symbolic characteristic," implies non-violence. By embracing a discourse based on serious and deep considerations, the possibility of resorting to violence toward other community members is eliminated. This nature of the act, of course, is associated with Gandhi, whose example was followed, among others, by Luther King (1964). Upon receiving the Nobel Prize, the latter said: "Non-violence is a powerful and just weapon; indeed, it is a unique weapon in history, which cuts without wounding and ennobles the man who wields it." Certainly, the issue of non-violence is clearly different from other forms of resistance (Power, 1972, p. 40).

Rawls also understands that disobedience is non-violent for another reason: it occurs within the limits of fidelity to the law, which is expressed in the public nature of the act and by accepting its legal consequences. As Dworkin (1984, p. 316) explains, the individual has a strong, reasoned, and well-founded belief that the law is on their side. It can be said that therein lies the civil character of disobedience: although it is a form of resistance, it strongly accepts the general legal system and the practitioner does not consider departing from the duties of citizenship but instead believes that the duties contribute to the improvement and strengthening of institutions (Bobbio, 1997, pp. 116-117). In addition, it is important for those using such a possibility to convince others in the public space to recognize that there is a price to pay when they decide to take a risk. Thus, accepting the (potential) punishment "strengthens the proof of the motivation for disobedience and effectively separates it from criminal disobedience" (Rivas, 1996, p. 188).

In addition to this legal aspect, and from an ethical and political angle, it can be said that meeting the requirement of non-violence is to show, as a disobedient citizen, proof of clear respect for others' fundamental human rights and to foster peaceful change within the rules of the democratic system (Power, 1972, p. 40). The issue of non-violence and drawing a line against it is very important for several reasons. While it is difficult to offer an answer, Martin (1970, p. 132) provides some ideas that can help clarify the matter. First, moving away from violence implies recognizing the rule of law and one of the main reasons for its existence. About the theories of the modern state, Hobbes (2007) and Locke (1980) explain this point clearly. Second, the sovereignty of the state lies largely in its capacity, on the one hand, to outlaw individual violence through law, and, on the other, to monopolize coercive force. Finally, a democratic state can claim to be sovereign in this sense. Thus, if these assertions are accepted, Martin (1970, p. 132) states that "it follows that the democrat qua democrat should not use violence, whatever its ultimate definition, against democratically created law-making institutions or in violation of democratic law." All this is true, but I think that it could also be added that democracy precisely implies replacing violence with the use of words, reason, and persuasion. Anyone who wants to establish a position in the public arena must do so using these tools and, if possible, channel it through designated institutions. Violence, clearly, is not one of the rules of the game.

IV. Justification and conditions of civil disobedience

Based on the foregoing, it can be said that the basis of civil disobedience is primarily a moral issue. People who disobey do so based on moral considerations or moral standards from which they determine the injustice of the law or government action they oppose. However, to say that civil disobedience is justified on this ground is only partly true as the question of the reasons supporting it transcends the sphere of personal considerations and also enters the dimension of politicization and legality. Rawls (2006) clearly states that it is "an act guided and justified by political principles, that is, by the principles of justice that regulate the constitution and generally social institutions" (p. 333). Furthermore, as discussed in the previous section, the very concept of civil disobedience has strong political valence. Therefore, any consideration of its justi-

fication cannot omit this fundamental aspect. In this line of thought, anyone who offers only a moral justification of civil disobedience will fall short. Such an aspect should not be missed in developing justification conditions. Having made this clarification, next is the development of the two identified dimensions (moral and political)4 or the "forums" before which the behavior must be justified (Rivas, 1996, p. 195).

Regarding the moral sphere, the issue of civil disobedience justification translates into the question of when there are substantial moral reasons to support disobedience. A distinction can be made here based on whether the focus is on the individual's moral considerations or the characteristics a law must have to be disobeyed. Both issues are closely linked but are different and perfectly distinguishable in analytical terms. Thus, in relation to the first, those who disobey can invoke the moral principles that their conscience requires them to respect and thereby object to a law that they consider, based on such a standard, unjust. In this sphere, if the individual fulfills the characteristics of the disobedient act (public, non-violent, political, faithful to the system, and accepting of the consequences) and truly proceeds according to their convictions, there would be no reason to doubt the legitimacy of their action. However, the problem is that this is a very subjective matter that citizens or an external observer can hardly judge. As a result, it would be necessary to have certain specific content in the law toward which the disobedience is directed to justify the action, both in moral and legal terms. This, as can easily be seen, is a more tangible issue than the mere morals of the individual or at least something that can be judged with some objectivity.

However, although this approach seems to clarify the path, other problems may arise. Indeed, beyond accepting that they are laws or decisions established in a democratic system, the expected content of this disobedience remains unclear among specialists. Thus, for example, Rawls (2006) restricts civil disobedience to "serious infringements of the first principle of justice, the principle of equal liberty, and to manifest violations of the second part of the second principle, the principle of fair equality of opportunity" (p. 338). Singer (1973, pp. 64 et seq.) considers that such a form of resistance is justified when the law violates inviolable rights, such as laws that challenge democratic principles: free speech, equality, and voting, among others. Based on Habermas' (1997) theory, "justified civil disobedience can only be justified in the eyes of the subject when the legal norms of a democratic State of Law are illegitimate" (p. 60). Finally, Raz (1985, pp. 335-336) asserts that within a liberal state, one's right to political activity is adequately protected and, therefore, such a right cannot justify, without falling into contradiction, a right to civil disobedience. Participation is only possible, then, via a lawful political act. However, the Oxford professor clarifies that this does not mean that disobedience is never justified; in situations where there are bad or perverse legal provisions, it may be "right" (in the sense of being approved by another person) to undertake such acts, but this, of course, is completely different from recognizing it as a right.

In determining what the law against which the act of disobedience is justified should affect, there is usually a reference to a sort of protected space of fundamental rights. This space admits no negotiation whatsoever that implies their disregard. Jurists and philosophers have used many expressions that, although presenting distinctive nuances, illustrate very well such a characteristic: Dworkin (1984) speaks of "political triumphs" (p. 37), Ferrajoli (2001) of the "sphere of the unspeakable" (p. 36), Bobbio (2003) of the "border territory" (p. 479), and Garzón Valdés (1989) of "forbidden ground" (p. 157). Here, it is important to note that according to such criteria, one could say that the law loses its mandatory force if it requires the violation of rights. Classical natural law summarizes the reason for this in the expression "an unjust law is not really a law" and, therefore, should not be obeyed. Thomas Aquinas (1998) synthesizes this legal theory in the following text:

...laws can be unjust in two ways. First, because they object to human good, by breaking any of the three stated conditions: either the purpose, as when a ruler imposes burdensome laws on subjects, not for the common good, but rather for his own interest and prestige; or the author, as when a ruler enacts a law exceeding the powers entrusted to him; or the form, as when burdens are imposed on citizens unevenly, even if for the common good. Such provisions are more akin to violence than law. For, as Saint Augustine says in I De lib. arb.: "A law, if not just, does not seem to be a law." Therefore, such laws are not binding in the forum of conscience, unless it is to avoid scandal or disorder, for this the citizen shall yield his right, according to that of Mt 5,40.41: "If anyone forces you to go one mile, go with them two miles; and if someone takes your cloak, hand over your coat as well." Second, laws can be unjust because they oppose the divine good... (ST, I-II, q. 96, a. 4c).

The Thomistic approach is valid as long as such statements are not taken to an extreme. Therefore, it should not be said that any positive legal norm that could be deemed unjust could be immediately disobeyed. In other words, the injustice of laws does not necessarily follow a duty of disobedience. Different

assumptions need to be distinguished: first, an unjust law that, given its severity, becomes unbearable to obey; second, an unjust law that orders serious harm upon others; and finally, an unjust law that, despite such a condition, would in principle require obedience.

Regarding the first assumption, it encompasses all those cases in which laws or the government acts seriously and clearly violates individuals' fundamental rights. If this happens, as Rawls often recognizes for example, the path of civil disobedience is enabled. The basis for such a statement is the human person, the axis and center of the legal order. No one would be obliged to tolerate extreme injustice that goes against their dignity and their most fundamental rights, without which it would be impossible to live one's life.

Regarding the second assumption, that is, in the case of unjust laws that directly or indirectly order serious harm upon other participants in the cooperative scheme, civil disobedience can be said to be justified. In this case, it is about respecting others as equals, that is, as discursive creatures endowed with dignity and holders of basic rights, and not supporting measures that go against them. Under the assurance of a law that orders to commit an injustice, whoever inflicts harm on his fellow man does not respect him as such. His duty as a citizen and as a moral agent is to resist. The path of civil disobedience is one of these privileged forms of resistance. A clear example of this type of situation is given by Thoreau's disobedience, who refused to pay taxes to a State that used them to wage an unjust war against Mexico and also maintain slavery.

Finally, the third assumption examines the justification of civil disobedience in politics. It concerns laws that, while unjust to some degree, participants would in principle be obliged to obey because their disobedience, under certain circumstances, could generate an even greater harm in the entire democratic cooperation scheme. Thus, consider a tax law imposing an inequitable fiscal burden on one or several taxpayers. If disobedience were to spread, it could disrupt the system with serious detriment to other participants. Therefore, in cases of this type, which are far from serious injustices of the first or second assumption, it is more doubtful to accept that an act of civil disobedience is justified. Nevertheless, those affected will have the possibility of pushing for the modification or repeal of the law through other means, leaving it up to them to make the decision and bear the responsibility to move toward forms of resistance that are tolerable in a democratic system.

Regarding the political dimension of justification, it is enough to point out that according to the characterization offered, civil disobedience would not pose a risk to the political community. Indeed, being a non-violent, public act, and one for which the disobedient is willing to accept punishment, the possibility of it becoming a threat to the established order is closed. Of course, there should still be additional limitations on such an exercise. In this sense, Rawls' proposition seems to be correct in that in addition to situations of serious injustices to invoke such resistance, there should be two more conditions. First, disobedience would be justified if it is used as a necessary recourse, that is, when the legal avenues offered by the State to the citizen have failed in defense of an essential right and leave no other alternative to present the claim. Certainly, the inoperability of the means available by the system itself legitimizes the exercise of such resistance; but this does not mean that they should not be taken into account, as otherwise, the value of the institutions and procedures designated for this purpose would be depreciated, and their presence would become merely nominal. Second, in the case that several minorities share the same or similar claims, a plan should be adopted to agglomerate the demands not only because many scattered claims can generate serious disorder but especially because the majority would not be able to accurately and clearly collect the claim (Rawls, 2006, p. 340).

The fact that civil disobedience poses no risk whatsoever to the established democratic order is demonstrated by the civic attitude that the disobedient must maintain. Their fidelity to the very system of the law being attacked is the greatest proof that the basic institutions of the state enterprise are indeed supported. Those who practice civil disobedience are not politically bad citizens. As seen below, they can even contribute to the improvement of the very cooperation scheme. This factor should be included within this political level of justification.

V. State as a work in progress

A problem exists in relation to weak forms of resistance within the constitutional rule of law state, which has been hinted at but needs to be addressed separately. The issue can be introduced with the following question: why is it necessary to resort to civil disobedience or even other forms of resistance if the Constitution already provides for forms and modalities of "legal resistance" in case of violations of principles of justice or basic and essential rights? Indeed, modern constitutions incorporate the constitutional review of ordinary laws by the judiciary as a fundamental mechanism for the protection of rights. Even more, if

society needs to incorporate new rights into the Constitution expressly, there is a special process to modify the text.

A first response that can be offered is one of the arguments that justify disobedience in political terms because the inoperability or failure of the legal avenues established by the system itself leaves no other alternative. However, this is a reason of a practical nature that can be further specified. Indeed, it is not only that sometimes legal means are not effective in safeguarding rights against their violation but also that there are occasions when citizens or certain social groups (such as cultural minorities) do not even have access to these means provided by law—access to justice is not always guaranteed to everyone. Furthermore, although claims are judicialized, legal processes can be so slow that they become useless mechanisms. Those who protest through civil disobedience usually do so because they lack other mechanisms to protect their rights and claim their satisfaction. Naturally, if we take the person and their rights seriously, this must be recognized as an urgent matter that deserves to be discussed after being made visible to the majority. It may be the case that such a claim, after examination, was not legitimate or did not have the significance that the disobedient truly attributed to it. This situation will work to their detriment. But when a positive response is obtained, as has often happened in history, civil disobedience clearly shows that it is a strategy for correcting abuses by the State through executive, legislative, or judicial action (Power, 1972, p. 47).

It is very important to insist that civil disobedience is an effective tactic against the injustice of a law or a government act but not against the law in its entirety. Indeed, it is remembered that someone who openly and deliberately violates the law through civil disobedience to preserve their essential rights remains committed to the spirit of the democratic Constitution. Resistance is a way of expressing a strong commitment to principles and values. Indeed, as a practical idea, the law indicates an end and a means. That end is peace; the means to achieve such a state is the struggle in its various manifestations. It is not about any struggle, of course, but the struggle against injustice. The struggle should not be considered a characteristic alien to the notion of law; it is rather an integral part of its existence, as Ihering (1993, p. 7) has stated. The practice of law contains issues of the strength of interests seeking to be heard and wanting to overcome oppression and injustice. That is why it can be said that those objecting to injustices do not act, in legal terms, in a rebellious, capricious, or unfounded manner. In a profound sense, if the one suffering an injustice were to refuse to act and not exercise some form of resistance, they would deny the very idea of law. Whenever essential rights are undermined, there is sufficient justification to reject the aggression, seek to enforce that right, and clarify the importance of its recognition in the social fabric.

To this first response, two more reasons must be added for why citizens might resort to civil disobedience despite having legal avenues available. The first of these lies in the fact that current democracies are imperfect. It is an enterprise under construction, aimed at preserving but also renewing the legitimate legal system. In this process, there is no possibility of achieving a perfect democracy in which the basic ideals of dignity, freedom, and equity are fully developed. However, such an impediment should not be an obstacle to the effort to promote constant upgradation of society (Marc Kellner, 1975, p. 906).

Regarding this idea that sees political organization as something in permanent configuration, Habermas (1997) says that "[a]ny self-assured democratic rule of law state considers civil disobedience a normal component of its political culture, precisely because it is necessary" (p. 54). It is clarified that civil disobedience "necessary" because disobedience can become one of the many engines driving improvement in democracy. In other words, it has the potential to produce directly or indirectly "healthy" changes within the system itself (Power, 1972, p. 44). Societies have a changing nature, and new claims of rights may emerge in the process of political–social transformation. Several rights enshrined in our Constitution and international human rights instruments were achievements derived from long struggles. The right to strike, for example, was considered illegal for a long time; however, workers pushed for it to become a right through resistance, and today, many constitutional texts recognize it as a fundamental right. In recent years, examples in our country include the recognition of same-sex marriage achieved by different social groups, as well as the reclaiming of rights by other minorities such as indigenous peoples.

In addition, there is the issue of democratic participation to consider. As Habermas (2010, pp. 169 and 172) points out, political decisions, exercising public power, and enacting laws are legitimate only as long as they are done through democratic deliberation in which people who are potentially affected can express their consent. There is no doubt that in today's extremely complex States, it is not possible for all citizens to unite and participate directly in all decision-making bodies (thus, the need for a parliament and government representatives). As Nino (1997) noted, representation is a "necessary evil." However, popular representatives are not always concerned with everyone's interests. Some voices are ignored. Thus, just as

citizens have the right for their opinions to be heard, civil disobedience stands as a legitimate vehicle for them to express their interests in the public sphere; it is a means to make effective the fundamental right to participate in the State of which they are a part. Of course, this refers to democratic participation from the informal realm, understanding by this the involvement in public affairs through means not established by law but which are nevertheless constitutionally protected. But precisely this, characterized by being an active force, is what marks a "living democracy": one not constituted merely by voters but by citizens who take responsibility and care for the state institution daily. Thus, considering the dissenting voices expressed through civil disobedience and tolerating such exercise is a sign that the system maintains its title as a defender of democratic values.

In light of this, it is clear that laws are not always adhered to even in a constitutional legal system. It is also permitted and legitimate for people to act in opposition to unjust laws or demand recognition of new rights that arise from the dynamics of societies and are rooted in man's fundamental human rights. As a means of preserving moral and social integrity amid the imperfection of democracies, existence of injustices, lack of representativeness, and ineffectiveness of legal means to protect and guarantee essential rights, civil disobedience is an appropriate strategy. A person's politics and morality are important. This kind of resistance is not to be viewed as a sign of abandoning the democratic order but rather as a legitimate form of political participation in the endless process of building democracy and in the recognition of all voices.

Civil disobedience as an expression of political obligation

If all of the abovementioned discussion is accepted, we can move forward based on solid grounds to formulate the thesis that civil disobedience constitutes an expression of political obligation. Justifying this statement requires several argumentative moves in addition to the considerations set out in the previous sections. The first is conceptual in nature. It is necessary to introduce the semantic density of the notion of political obligation. Indeed, the concept is dual in that it involves both submission to the authority of the law and participation in structuring the rules governing social life. In part of the literature—perhaps the majority—political obligation is considered in its passive dimension as a simple requirement to submit to the laws and institutions of the State. To illustrate this, Green (1941, p. 29), who appears to have been the first to coin the expression in his famous "Lectures on the Principles of Political Obligation" from 1879, understood political obligation as "both the obligation of the subject to the sovereign, of the citizen to the State, and the obligations of individuals to each other as imposed by a political superior."

This type of approach, naturally, has a certain fidelity to how the idea of "obligation" is commonly understood. Indeed, such a concept indicates a moral reason for action. To be more precise, following Hart (1955, p. 288 n. 7), it should be said that the concept of obligation points to a moral requirement that satisfies the following conditions: first, obligations can be voluntarily assumed or created; second, they are owed to certain people (the right holders); third, each obligation has a correlative right to demand its fulfillment; and fourth, they do not originate in the special character of the obligatory actions but in the nature of the relationships that exist between the parties. Of course, there is a difference in the concept of duty. While this also implies a moral requirement, it is associated with a specific position that an individual has in a human group (Brandt, 1964, p. 392), such as the position of a son in the family or a citizen in the political community. The role, office, or part someone plays in a human association establishes what is commonly known as "positional duties" (Klosko, 2004, p. 9) or "institutional duties" (Knowles, 2010, p. 8). In a more abstract sense, duties are not fixed on any particular position but apply to everyone: as Rawls (2006, p. 115) points out with the "natural duties," which include, among others, mutual aid and not harming others. Finally, duties differ from obligations in the way individuals undertake them. Sometimes, they are obtained from certain transactions, as happens with spouses' special duties from marriage. However, these duties differ from obligations in that their content is closely linked to the role assumed by the individual rather than the action that generates the marital relationship (Klosko, 2004, p. 9).

This distinction, while important to consider in the field of practical philosophy, is not necessary for a first approach to the problem of political obligation. Indeed, specialists use the expression "political obligation" in a general sense that encompasses both the idea of obligation and duty. Notably, all uses of the term essentially encompass a very narrow meaning that focuses on the reasons or motives for which a person is obliged to obey the laws of the State and its institutions, that is, in mere submission to state authority.

As a result of only adopting this approach, the concept of political obligation lacks the semantic richness that it actually has. Individuals plan their life within the State and coexist with its various social, legal, and political institutions. They maintain a special relationship with state organizations during this process (Johnson, 1974, p. 533-535; Singer, 1973, p. 5); a complex bond encompassing the moral reasons for justifying compliance with legal provisions, as well as the duty to support institutions (Horton, 2010, p. 11-13). Further, this is where the "political" nature of the obligation lies: it is not, therefore, the moral obligation of a mere individual, but the obligation of a citizen who is a member of a certain state organization or, rather, a political community. Indeed, as Polin (1971, p. 35) already pointed out, the concept of political obligation is extremely particular to the point that it is a sui generis obligation.

The concept takes on a special meaning depending on the form of political organization in which citizens are immersed. In the specific case of democratic States, the citizen/political community relationship does not only mean complying with the burden imposed on the members and remaining alien to everything else occurring in institutional life. On the contrary, it also includes the duty to participate in shaping the political scheme by intervening directly or indirectly. Thus, Johnson (1975, p. 26) explains that the concept of political obligation is a positive one, requiring more from State members than merely passive acquiescence in determining their duties.

The concept of political obligation does not mean mere submission to the law. It is shown by the fact that the citizen, in addition to having simple burdens, has very important responsibilities that constitute positive actions aimed at shaping the State, strengthening its institutions, and its legitimacy. For instance, this happens with the use of services and resources provided by the State, the duty to vote, to defend the Nation in times of crisis, and even to exercise resistance in the emergence of an illegitimate government. In these cases, citizens are not required to simply comply with the obligation as if it were the legal norm such as not crossing a red light while driving. In fact, these instances require strong political intervention and form the deepest meaning of the concept of political obligation. A democratic State in which all its citizens are merely passive subjects would resemble Michelangelo's David: a very beautiful sculpture, but inert and lifeless. Democracy entails obedience to the law and also undertakes the commitment to maintain and strengthen institutions through participation. Undoubtedly, being an active agent in shaping the state enterprise is crucial so that the meaning of the political body is not exhausted in a mere sum of individualities but in an ethically and ontologically higher instance.

The democratic State is a type of cooperative enterprise that is not a simple aggregate of participants or citizens. Within it are bonds between the members that make the entity valuable and worthy of preservation. In reality, the State is a mode of association that has an instrumental value that its members, or at least the vast majority, want to preserve. Through establishing norms, it seeks security and promotes cooperation, social harmony, and ultimately, peace. By virtue of this, there are good reasons to believe that citizens would wish to maintain the bonds or association in order to preserve valuable and even beneficial institutions.

Thus, citizens cannot be assumed to be in a relationship of "alienation" in the sense that the cooperative enterprise of which they are members is something that belongs to another or that they even view with indifference. On the contrary, in their moral and civic experience, they consider that they indeed have political relations with the state entity or feel that they are specially tied to such entity and are to support the institutions and obey its laws. In fact, those belonging to a State or a country refer to it as "our State" or "our country," which accounts for such a sense of belonging.

As Rawls (1995) would see it, the interpretation of political obligation defended here emphasizes the active aspect of participation as the hallmark of classical republicanism. Indeed, this represents "the view that if the citizens of a democratic society are to preserve their basic rights and freedoms, including the civil liberties that secure the freedoms of private life, they must also have enough 'political virtues' (as I have called them) and be willing to participate in public life" (p. 155). Thus, without solid and vigorous citizen participation in democratic politics, where there is a responsible commitment to the institutions, there is a risk that they fall under the control of a few. Thus, as Rawls (1995) explains, "the preservation of democratic liberties requires the active participation of citizens with the necessary political virtues to maintain a constitutional system" (p. 155).

VI. Conclusions

In fair or "almost fair" cooperation schemes, namely, those that are structured on the basis of principles of justice recognized by the members and fundamental human rights as well as effective democratic practices despite the fact that certain injustices exist, civil disobedience is a legitimate form of citizen participation, innovation, and claim against the majority's decisions. This study demonstrates that such a form of peaceful resistance rather than being a transgressive attitude constitutes under certain conditions a valid means of preserving basic human rights and achieving justice if applied under certain conditions. Civil disobedience can become an important citizen engine for the progressive transformation of laws, by communicating and making visible in the public forum injustices or demanding the vindication of new essential rights of the person. However, it is important to emphasize that this aspect of disobedience will only be recognized as positive if it entails the defense and protection of human rights within the framework of a constitutional and democratic state under the rule of law.

A cooperation scheme governed by such a form of political organization is not something that is established once and for all and that closes the possibility of change under a horizon of justice and higher ideals. The state enterprise is updated and must be perfected, adjusted to the changing reality of social life, and aspire to realize, to the greatest extent possible and in all areas of community life, dignity, equality, freedom, and equity. Civil disobedience has something to contribute to this process of constant upgradation. In the event that individuals or social groups are not heard or suffer injustices due to state acts or laws that violate their most elementary rights, they will have the right to exercise that form of weak resistance to present in the public arena a cause that must be socially and politically recognized and subject to discussion. It is then a form of citizen participation and public intervention in politics through channels that, in a true democracy that recognizes itself as such, demand a certain degree of tolerance.

No disrespect is intended by the statements made to the importance and value of effective citizen respect for democratic institutions and their authority. A good citizen in a democracy must adhere to the principle of democratic authority, recognizing that decisions are made by elected representatives and, ultimately, by a majority of votes according to established legal procedures. Obedience to such decisions is, therefore, a way of paying homage to that form of political organization. However, this is only partly so, since citizens are also qualified as good when, under the same rules and especially with responsible participation, the aim is to improve the democratic institution itself in light of the values and principles of justice on which it is based. By exercising civil disobedience in a serious, reflective, and justified manner, citizens demonstrate that quality that is supported by the very concept of political obligation in its active form.

VII. References

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