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## Justification of Civil Disobedience by Groups and Individuals

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JUSTIFICATION OF CIVIL DISOBEDIENCE  
BY GROUPS AND INDIVIDUALS

by  
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A Thesis Submitted to the Faculty of the Graduate School  
of Loyola University of Chicago in Partial Fulfillment  
of the Requirements for the Degree of  
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## VITA

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In September, 1976, he entered the novitiate of the Society of Jesus. In December, 1978, he became a vowed member of the Society of Jesus.

In September, 1979, he was granted an assistantship in philosophy at Loyola University of Chicago.

## INTRODUCTION

Civil disobedience has long been a topic of concern in the field of ethics. It has been justified and discredited by various opposing ethical theories. My purpose is to analyze the ways civil disobedience has been justified for individuals and apply these justifications to groups as moral agents. In doing so I hope to come to an understanding of the most effective reasons for justifying civil disobedience for groups and for individuals.

My concern in the second chapter is to describe civil disobedience according to the most commonly held definitions and to lay the groundwork for the discussion of justification. I will do this through defining civil disobedience and explaining the justification of civil disobedience and apply these concepts to the group.

In the third chapter I will analyze the three major theories used to bulwark the justification of civil disobedience and apply these to both groups and individuals. The reasons people give for their disobedience is usually that they are acting according to their consciences, or according to a higher law, or for the greater happiness of society. While these theories usually are applied to individuals I will apply

them to groups as well,

In the fourth chapter I will establish additional conditions by which an act of civil disobedience can be judged morally justifiable. These conditions are nonviolence in the form of the disobedience and acceptance of suffering by the morally sincere disobedient agent.

In Chapter V I show that the conditions and reasons for justification are applied differently to groups than to individuals, but that groups are still morally justified according to their nature and purposes.

I conclude with my own formulation of justifiable civil disobedience which is that civil disobedience is morally justified for groups and individuals in most cases provided that the disobedience is preceded by a truthful investigation of the situation, an attempt is made at solving the problem through legal means (if feasible), and it is conducted non-violently with the good of the opponent and entire community in mind. The individual disobedient should be willing to accept suffering as part of the process.

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Finally, while individual civil disobedience is praiseworthy if morally justified, group civil disobedience is often more effective and is equally justifiable.

## CHAPTER I

### MORAL RIGHTS AND OBLIGATIONS IN GROUP AND INDIVIDUAL CIVIL DISOBEDIENCE

Traditionally civil disobedience has been considered morally justifiable for individuals in specific situations. Civil disobedience is usually associated with the names of great individualists such as Thoreau, Tolstoy, and Gandhi. Yet most acts of civil disobedience have been planned, organized and carried out by groups. It is my project to discover a means to justify civil disobedience for groups as well as for individuals. To proceed it is helpful to define civil disobedience and explain its justification. Prior to investigating the most common theories used for justifying civil disobedience we will discuss the possibility of the justification of group civil disobedience.

#### Civil disobedience defined

The first step in coming to a greater understanding of how civil disobedience is justified for groups and individuals is to arrive at a common definition of civil disobedience. Civil disobedience is the conscious violation of a law or custom of society by a group or individual in order to achieve some good or eliminate some evil within society. It is usually a public action by which the group

or individual calls public attention to a specific injustice for the purpose of changing the law. Normally the act of civil disobedience is nonviolent, and the agent is willing to submit to punishment. Finally, self-interest is not the primary motive for disobeying the law.<sup>1</sup>

Different aspects of the definition of civil disobedience are disputed, as are the reasons given for the justification of civil disobedience. Prior to any attempt to unravel the ways civil disobedience is justified for groups and individuals some of the disputed points need clarification since they relate directly to the questions of justification. It should be kept in mind that civil disobedience is a practical tactic used by groups or individuals to change the law or to demonstrate a particular moral position.<sup>2</sup>

Firstly, civil disobedience is a conscious act. It is freely chosen by the group or the individual. The persons involved know they are violating the law and do so with purposeful intent.

Secondly, the act is either illegal or it violates a deeply-rooted social custom which has the force of a law. Much dispute has been made over whether or not an

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<sup>1</sup>W. T. Blackstone, "Civil Disobedience: Is it Justified?" Southern Journal of Philosophy, Summer and Fall (1970), 233.

<sup>2</sup>Blackstone, p.233.



act is illegal if it is justified by a higher court at a later point in time. Whether or not the purpose of the disobedience is to test the Constitutionality of a law or custom, at the moment of action the given law or custom must be actually violated.<sup>3</sup>

It can be argued that civil disobedience means only the violation of positive law.<sup>4</sup> Yet, customs which are so powerful as to have nearly the force of law are included because of the powerful effect they have on society and because of the impact disobedience to such a custom may have on society. For example, some segregationist policies of the South in the 1950's and 1960's were not always backed up by legal statutes, nonetheless they were so strongly engrained in the customs of the people that to violate them would mean challenging the entire Southern society.

Thirdly, the act of civil disobedience is usually public for it is often an appeal to the public for support and sympathy or for recognition of some grave injustice. However, not all civil disobedience need

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<sup>3</sup>Blackstone, p.236.

<sup>4</sup>Michael Bayles, "The Justifiability of Civil Disobedience" Review of Metaphysics, 24 (1970), 5.

be public.<sup>5</sup> In a totalitarian regime the value of achieving public sympathy or attention may be outweighed by other values, such as keeping a secret coalition active.

Fourthly, civil disobedience is usually carried out selectively; it seeks to reform a specific situation of perceived injustice rather than challenge the entire system.<sup>6</sup> There is much dispute regarding this point, especially in light of the Gandhian civil disobedience campaign in India which was put in effect to free that country from colonial rule by the British. Thus, civil disobedience has been used to overthrow an entire system.

Fifthly, civil disobedience is usually characterized by nonviolence.<sup>7</sup> There is some dispute regarding this point because of the coercive element which can be present in civil disobedience. However, nonviolent civil disobedience is usually easier to justify and often more effective in gaining popular support than violent disobedience. Suffice it to say that most civil disobedience is nonviolent. A closer look at the reasons behind its nonviolent character will be conducted in the fourth chapter.

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<sup>5</sup>Leslie MacFarlane, "Justifying Political Disobedience" Ethics 79 (1968), 46.

<sup>6</sup>Bayles, p. 4.

<sup>7</sup>Blackstone, p. 233.

Finally, the purpose can be either (a) to maintain personal moral integrity or (b) to change the laws or the customs of society.<sup>8</sup> The maintenance of personal moral integrity is usually present in cases of draft resistance or non-compliance with rules which violate a person's conscience or religion.

The purpose of changing the laws of society can arise from any number of motives and reasons. But the good intended by the agent is the good of the whole society as well as the good of the minority. Because civil disobedience is assumed to be directed to the common good, the agent does not act out of self gain primarily. One problem with this is that the desire to accomplish the goal is a personal desire. Thus, there seems to be self-interest in achieving even an altruistic goal. We shall take up the question of selfishness and self-interest again in our discussion of self-suffering as a criterion for morally justifiable civil disobedience.

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<sup>8</sup>Bayles, p.6.

## Justification of Civil Disobedience Explained

Having defined civil disobedience the next step is to discover what one means by a justification of civil disobedience. Generally, to say that a person's act is justified means (that) the person has a right to perform that act. A distinction can be made between a person being right and a person having a right. A person may be in the right when he does a certain action, but he may not have a right to do the action.<sup>9</sup> Or a person may have a right to a certain action, but he may be wrong in doing it. Our concern is with finding reasons for an agent who claims a right to disobedience. And following this what are the criteria, or standards, by which we can judge an act of civil disobedience to be justified or not?

The issue of rights also involves duties. There is little agreement regarding the extent rights involve duties. Generally, if one has a right to something, others have a duty not to prohibit the action of the agent.

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<sup>9</sup>John Rawls, "The Justification of Civil Disobedience" in Civil Disobedience: Theory and Practice, Ed. Hugo Bedau, p.254.

## Justifiability and Rights

Michael Bayles in "The Justifiability of Civil Disobedience" seeks to distinguish the concept of a right from justifiability. He recognizes that there cannot be a legal system which dispenses rights to disobey the law, for this would be self-contradictory. But one has a right to civil disobedience "in the sense that one has a legal right to what the law does not forbid and civil disobedience itself is not an illegal action in addition to the illegal action involved..."<sup>10</sup> This fact is recognized by most other writers on the subject. Thus a moral right rather than a legal right is most often claimed in cases of civil disobedience.

But Bayles goes on to distinguish three types of judgements regarding rights: 1) those of rightness or wrongness of specific actions or types of action (justifiability), 2) those concerning the character of man, and 3) those concerning what moral principles a society ought to adopt when there are a diversity of personal moral principles extant. Bayles puts the right of civil disobedience in this third category. For "to recognize a right to civil disobedience is to claim such conduct

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<sup>10</sup>Bayles, p. 8.

<sup>11</sup>Bayles, p. 8.

is always at least prima facie right (justifiable) and one has a prima facie duty to permit it." Bayles would want to deny that there is a prima facie right to civil disobedience.

People are persuaded to this moral principle of prima facie right by the sincerity of the civilly disobedient agent. But Bayles argues that the character of the person or group should be kept separate from the action; it cannot be allowed to outweigh all other considerations. While the feeling of moral compulsion on the part of the disobedient may be enough to allow for the justifiability of the disobedience, it is not enough to allow for his right to be civilly disobedient.

Bayles claims that there is a prima facie obligation to obey the laws, and the disobedient must show a prima facie obligation not to obey the laws in order for his act of disobedience to be justifiable.

There are several problems with Bayles' position regarding the justification of civil disobedience. Some clarifications would be helpful. What Bayles terms "justifiability" or moral correctness is equivalent to what Rawls would call "being in the right." What Bayles terms a "right to civil disobedience (which he denies) Rawls calls "having a right". There is a conceptual difference

between being justified and having a right.<sup>12</sup> Bayles clarifies the difference by stating that from the agent's perspective he is morally justified if he acts as he feels morally obligated to act, but from the observer's perspective that makes no difference. The right to commit civil disobedience must come from the interaction of the agent with the rest of society. To claim a right to civil disobedience is to claim that others have a duty to allow the agent to commit the act. Nonetheless it is justifiable to violate an immoral law (and even a moral law provided one is unable to violate the immoral law, but would have been justified in doing so.)

Given a moral system based on the primacy of individual rights, it might be possible to claim a prima facie right to civil disobedience. The same might hold for disobedience in totalitarian regimes. But a prima facie right to civil disobedience need not be claimed by the agent; in fact the process of discerning whether to disobey or not usually involves a deliberate weighing of conflicting duties to the law and to a higher moral principle. The end result may be that a person or a group has a right

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<sup>12</sup>In Bayles' distinction between justifiability and right to civil disobedience, he notes that "an instance or type of disobedient action may be judged right (justifiable) without recognizing a right to civil disobedience." (p.8) The distinction seems to be more between the particular instance vs. civil disobedience in general.

to disobey, i.e., they have a justified claim, but also have a stronger duty to obey.



## Rights vs. Duties

At first glance it seems that in a democracy a person has a duty to obey the law even if it offends his moral rights. This would hold for groups as moral agents or as legal entities in society as well as for individuals. While Bayles places an emphasis on the lack of moral right to disobey the law in general, Ronald Dworkin in Taking Rights Seriously<sup>13</sup> turns this around and puts the emphasis on a general moral duty to obey all the laws in a democracy as a duty to fellow citizens.

Yet this duty to fellow citizens is not an absolute duty, "because even a society that is in principle just may produce unjust laws and policies, and a man has duties other than his duties to the state." Two of these duties are to God and to conscience, "and if these conflict with his duty to the State, then he is entitled, in the end to do what he judges to be right." But then, "he must submit to the judgment and punishment that the State imposes in recognition of the fact that his duty to his fellow citizens was overwhelmed but not extinguished by his religious or moral obligations." Thus it is seen that for Dworkin the person in society has a duty to obey the law in general, but has a right to follow his conscience when it conflicts with that duty. Moreover, it is wicked

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<sup>13</sup>Ronald Dworkin, Taking Rights Seriously, Cambridge: University Press (1977), p. 185.

for the State to punish and forbid what it acknowledges its citizens have a right to, i.e., following their consciences.<sup>14</sup>

Blackstone, like Dworkin, finds the civil disobedient balancing the claims the State places on him with those of a different authority. "But the civil disobedient acknowledges the law and its claim to his obedience and respects the rights of others."<sup>15</sup> But the disobedient decides to override this claim on the basis of what he considers to be a higher moral obligation. Thus, justification for civil disobedience from the perspective of the disobedient depends on the more weighty duty, rather than a simple sense of the rightness or wrongness of a situation. The individual needs a normative ethical theory to justify his actions. For Blackstone the conclusion one makes on whether one is justified or not depends upon the ethics one adopts. The justification itself is established in the difficult process of balancing conflicting moral claims.

Leslie MacFarlane is much more precise in analyzing the nature of justification in reference to civil disobedience.

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<sup>14</sup>Dworkin, pp. 186-187.

<sup>15</sup>Blackstone, p.233.

Firstly, justification is concerned with explaining human behavior. It is usually rational, is substantial in form and open to objection because the conclusions drawn are never logically required from the premises. Justification is usually personal, requiring only sufficient and adequate reasons, and does not seek to convert others but to show that the reasons are sufficient for the agent. MacFarlane emphasizes the nature of the motives and the strength of conviction of the agents more than logical or factual strength of the argument. In contrast to Bayles' position, moral sincerity has more weight in deciding whether the agent is justified or not.<sup>16</sup>

Justification for an action in the political realm requires that the act be not merely non-harmful but "it must always result in some demonstrable expected public good." Moreover, the justification depends on the positions from which the judgment is made and on the underlying assumptions on which it is based.<sup>17</sup>

MacFarlane also recognizes the prima facie obligation to obey the rules of society, since people need society and society needs rules. And since civil

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<sup>16</sup>MacFarlane, pp. 25-27.

<sup>17</sup>MacFarlane, pp. 28, 30.

disobedience is an act of "direct defiance of the authority of the state," it needs to be justified. Yet on the other hand, "all political regimes need to justify their actions, for all political actions requires justification."<sup>18</sup>

A conditional ground for justifiable civil disobedience is the failure of the system to justify its actions. One has a duty to obey the rules of society enforced by the political structure, but if the rules or enforcement of the rules cannot be justified, then there is a strong likelihood that disobedience of the rules may be justified.

A right to perform a particular act of civil disobedience cannot be denied out of hand without a look at the purposes of the disobedients. What the disobedient seeks to establish is sufficient justification for a particular act of disobedience, not justification for total rejection of obligation to the State.<sup>19</sup> Yet, the disobedient should recognize the possibility of a positive duty to disobey rather than mere permissibility to disobey.

When the more general problem of the balance between the individual's and society's rights presents itself as a dilemma through a concrete act of disobedience,

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<sup>18</sup>MacFarlane, p. 32.

<sup>19</sup>MacFarlane, p. 33.

the individual faces the question of finding which norm is sufficient or necessary to justify the act of disobedience, to outweigh any conflicting norm. Finally, what the ultimate purpose is, the root value for which the action is done, is a question which the disobedient must answer for himself. The justification of disobedience depends on the nature of the act, the specific situation, and possibly the consequence of the act, as well as upon the intentions of the agent and the norm by which the agent judges to act.

To summarize, we have looked at justification and rights and duties from the perspective of the individual disobedient. For the State to accept civil disobedience as justifiable it must recognize the validity of higher moral principles and the right of the individual conscience to disobey a law it considers immoral. Generally it seems that all justifiable civil disobedience is justified by universally acceptable moral principles.

We have seen that while Bayles makes a distinction between the right to disobey and the justifiability of disobedience, MacFarlane treats the general theory of justification more broadly but claims that in certain cases there is not only a right to disobey but an obligation to disobey. A basic distinction made in arguments regarding civil disobedience is that between legal and

moral rights; most disobedients would claim a moral right to disobey. There is disagreement on whether a person is justified because he perceives the acceptance of legal punishment as one of his legal options rather than obeying a particular law. Finally, a distinction can be made between personal civil disobedience, which is considered a matter of conscience, and social civil disobedience, which is based on concern for a minority or for society as a whole. For example, an individual may refuse to register for the draft because his religious beliefs and code prohibit his placing himself in a position to kill. Another may violate the same law with the purpose of protesting the discrimination of an all-male conscription. As the intentions of the agents differ, so will their justifications differ.

Realizing that there are still problems in establishing what constitutes morally justifiable disobedience for the individual, nonetheless we have seen that civil disobedience can be justified for individuals given adequate moral reasons. But, can justification theories apply to group civil disobedience as well? Prior to investigating the three major theories used to justify disobedience it would be helpful to investigate the possibility of justifying group civil disobedience.

## Groups and Justification

While literature on civil disobedience includes group actions, the emphasis is most strongly given to the role of the individual conscience versus society. In the sense that it is individually that members of a civil disobedient group are legally brought to trial and that each person must make his or her own decision, this emphasis is understandable. Yet in terms of social civil disobedience (vs. personal civil disobedience) the role of the group is generally more evident than that of the individual.

Historically it is the group which is often credited with presenting powerful dissent in society. For example, the fame of Mahatma Gandhi is due primarily to the fact that he organized civil disobedients on a mass scale. The effectiveness of Martin Luther King, Jr., was revealed not so much in what he said but in the thousands that rallied and protested and carried on the mass civil disobedience campaigns for civil rights.

In most actions of social civil disobedience, i.e., those carried out to make some positive change in the laws or customs of society, it is the disobedient group which decides as a group what action to take, when, where, how, and for what purpose. For a group to accept the

decision of one person without sufficient individual reflection and input, as in the case of blind obedience, either indicates a great trust and knowledge of the leader or the possibility of coercion coupled with a lack of will in the group. This latter possibility in itself might indicate that the purpose and means of the act might not be wholly consistent with what the group as a whole desires. For example, if the end were a more democratic voting process for society, but the group as a whole were coerced or pressured into an illegal action by one of its members, then the process would be considered suspect.

The predominance of the philosophical support for the justification of civil disobedience is based on the right of the individual conscience. At the same time, the predominance of the opposition is based on the rejection of the tyranny of the individual conscience over the established order of society. To resolve this dispute three steps can be taken. Firstly, the traditional acceptance of the social nature of the individual can be clarified and enhanced, for in so far as he is communal to that extent is he responsible for society and can be given the right to oppose all that is harmful to society. But that which is harmful to society may be present in society through its laws and customs. Thus the individual through his communal nature and because of his social con-



cern may seek to preserve the social good through opposing specific laws.

Secondly, to avoid the hazard of the particularized consciousness, i.e., the moral conscience which perceives its rights and duties only in the light of personal desires, one might posit a communal consciousness. This communal consciousness is not merely unconscious but can be made explicit. Through this a person develops an awareness of others and of the needs of others.<sup>20</sup> Actions done by the individual for the good of the community are grounded in this awareness; thus it can provide at least partial justification for the actions of an individual, i.e., those actions done for the good of society. Although the individual with such a consciousness may be blamed for limited vision, one who acts from this communal consciousness cannot be accused of pure self-interest.

Thirdly, the tyranny of the individual conscience in civil disobedience may be overturned by turning to the group as the locus of civil disobedience. Even if the individual is social by nature and has a consciousness and moral concern for the good of society he may not be

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<sup>20</sup>Contemporary psychological theories support the view that there is growth in the moral consciousness of individuals. The individual grows in awareness of the needs of larger society and tries to find ways of meeting that need.

the most effective agent for social change. Also, although an individual may feel his disobedient act is morally justifiable, it may not be objectively justified given Bayles' distinction between the agent and the observer. For the time being let us leave the first two steps and elaborate on this third step of moving to group disobedience.

If a group is justified in civil disobedience, then it is seen as having rights and duties. For our purposes we will assume that a group can be considered a moral agent; a closer critique will come in Chapter V. If the group can be considered a moral agent, then it would seem that civil disobedience is justified for the group in the same way as it is for the individual moral agent.

Prior to assuming such a similarity in the justification for an individual and for a group, it would be good to take into account what is meant by a group. A group is more than a mere aggregate of individuals; it is at least a collection of individuals with a common purpose, governed by some common rules. Whenever group is mentioned here in the context of civil disobedience anything from a few people to a national organization is included, from formal legal corporations to informal block clubs, any organized subgroup within society. This

will be narrowed later.

There are certain advantages and disadvantages to judging as a unit a conglomeration of individuals with common rules and purposes. The disadvantages are: (a) individuals within the group may disagree with a given decision and yet be forced to accede, (b) the purposes of the individuals may be drastically different from the expressed purpose of the group as a whole, (c) the leader may dominate the group and force his decisions on the whole; thus, personal responsibility, obligation, right, and culpability may undergo changes or be compromised by the group's decision and action.<sup>21</sup> Furthermore, society as a whole may be more willing to recognize the justification of the individual conscience rather than that of the group.

The advantages are that a group avoids the arguments that the individual faces, e.g., ineffectiveness because of being one against many, lack of moral weight. The group can also share a wealth of knowledge, expertise, social connections, and communal spirit, which the individual alone cannot possible do. We shall investigate more thoroughly in Chapter V. the differences between group and individual civil disobedience. But first I would like to establish six possible ways in which group civil disobedience

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<sup>21</sup>MacFarlane, pp. 34-35

might be justified.

There are several ways in which civil disobedience can be justified for the group, some of which overlap the ways in which the individual is justified. First, if the group is considered as a collection of individuals, civil disobedience might be justified for the whole in so far as it is justified for each individual. Second, it might be justified according to the nature of the actions of the group.<sup>22</sup> Third, it might be justified according to the purpose of the group. Fourth, it might be justified according to the role the group plays in society, e.g., it might be more difficult to justify civil disobedience as enacted by the Senate than by the NAACP. Fifth, if the group is considered a moral agent civil disobedience is justified in exactly the same way as it is for individuals (at least analogously). Finally, group civil disobedience might be justified according to the nature of the group as the matrix between the individual and larger society. The group includes the sphere of operations in which the individual can become most social, i.e., aware of society's needs, and by which society becomes personalized. Society becomes concretized in the specific social relations of the members within the group and of the group with other groups and individuals.

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<sup>22</sup> MacFarlane, p. 30.

Having investigated the possibility of justification of group civil disobedience through discussing the nature of the group, the reasons for moving to the group as a locus of disobedience, and six possible ways of justifying the group, we can proceed to those theories by which individuals have sought to justify their disobedience. In this process, it will be shown how the theories might be applied to group justification.

The task in the following chapter is not to prove or disprove the justifiability of civil disobedience, but to investigate how standard justifications used to justify individual disobedience might be used to justify group disobedience.

## CHAPTER II

### THEORIES FROM NATURAL LAW, RATIONALISM AND RULE UTILITARIANISM

Three major theories which have been used to justify civil disobedience are Natural Law theory, Kantian Rationalism, and Rule Utilitarianism. The first two appeal to the right of conscience and establish a deontological normative framework with which the disobedient can determine whether or not his action is justified. The latter appeals to the consequences of the action, providing a teleological framework by which the disobedient can decide if his action is justifiable in terms of increasing the general happiness of society. In Thomas Aquinas, natural law starts from the nature of the divine will and the laws operating in the universe and moves to the rational interpretation of the natural law in civil law. In Immanuel Kant, the justification for any disobedience must be interpreted according to an over-ruling norm perceived as obligating the individual through a sense of duty. In John Stuart Mill, without a free will the problem of justifying civil disobedience becomes that of choosing among conflicting drives and desires in anticipation of a good result.

These systems raise special problems in that

they refer to the individual as moral agent, but we shall try to apply them to groups as well. One particular difficulty is applying the concept of individual conscience to the group. The individual may claim an act of disobedience is justified because of his duty to obey a higher law or to follow a universal and unconditional principle, or because of his desire to act for the greater happiness of society. Groups, although not specifically granted the right of conscience, will claim their actions are justified on similar grounds.<sup>23</sup> The theories are considered as justifying civil disobedience according to its generally accepted definition.

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<sup>23</sup>Groups are assumed to be moral agents in this section. Unless a distinction is being made between the individual and the group, the term agent will stand for both.

## Thomistic Justification of Civil Disobedience

The right of the individual conscience is often claimed as sufficient justification for civil disobedience. This right is often seen as being derived from the duty of the individual conscience to obey a higher law, especially God's law. Thomas Aquinas' theory of natural law lends itself well to this sort of justification, for it recognizes an obligation to disobey a civil law which violates the divine law. The application of this justification theory to groups as well as individuals could bear closer scrutiny.

For Aquinas, law is a dictate of practical reason directed to the common good, promulgated by an authority in the perfect community. The eternal law is the idea of the governance of the community of the universe by God. Natural law is the participation in the eternal law by creatures. Thus, it rules through the nature of the creature, i.e., through its inclinations and impulses. Since man is a rational creature, natural law rules man through his reason, i.e., is a dictate of reason. Moreover man's very reason is a law-giving reason; thus civil laws ought to conform to natural law. But any civil law which conflicts with natural law is not a law. The first principle of natural law in man is to act according to



reason. Now since our concern is practical reason rather than speculative, our concern is with the Good rather than with Being. The Good is the first concept of practical reason, for it is that to which practical reason is directed.

Aquinas' first proposition of practical reason is that all things seek after the good. Thus the first precept becomes "Good is to be done and pursued, and evil is to be avoided."<sup>24</sup> He states three classes of naturally known goods, i.e., natural inclinations: (1) self-preservation, (2) animal tendencies: sexual union, having offspring, education, and (3) the inclination to the good as the truth of God and the good of society. Thus far the person is not morally bound for these are not moral inclinations. But all the inclinations in the person belong to natural law in so far as they belong to reason.<sup>25</sup>

Our main concern with Aquinas' natural law theory has to do with the use of it to justify civil disobedience. Question 96, Article 4, concerns itself with the power of the human law, whether a human law binds a person in

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<sup>24</sup>Thomas Aquinas, Summa Theologica, (New York: Benziger Brothers, Inc., 1947), Vol. I, Pt. I-II, Q. 94, Art.2, p. 1009.

<sup>25</sup>The participation of a creature in the eternal law is natural law (Q. 91, II). We know the eternal law not in itself but in its effects., i.e., we participate in the knowledge of the truth. Natural law prescribes acts of virtue in general but not specifically.

conscience. In the main argument Aquinas states,

Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, according to Prov. viii.15: By Me Kings reign, and lawgivers decree just things. Now laws are said to be just, both from the end, when to wit, they are ordained to the common good, -- and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver, -- and from their form when, to wit, burdens are laid on the subjects, according to an equality<sup>26</sup> of proportion and with a view to the common good.

Aquinas compares the participations of an individual in the community to that of a part to a whole, thus the individual belongs to the community as the part does to the whole, thus if some loss is imposed upon the individual in order to save the community, the law which does this in proportionate manner is just, binding in conscience, and legal.

But if a law is either contrary to human good either by the end to which it is directed, e.g., personal benefit of the sovereign rather than the whole, or regarding the author of the law, e.g., one who forms a law beyond his power, or according to the form of the law, e.g., unequal share of the burden, then these are unjust laws. "The like are acts of violence rather than laws;" Aquinas quotes Augustine as saying the law which is not

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<sup>26</sup>Aquinas, Q. 96, Art. 4., p. 1019.

just seems to be no law at all. Thus these laws do not bind in conscience "except perhaps in order to avoid scandal or disturbance for which cause a man should yield his right..."<sup>27</sup> This last point is severely contested by modern practitioners of civil disobedience, for part of the method is often to create a disturbance.

The second case in which laws do not bind in conscience is that of those laws which are unjust "through being opposed to the divine good", e.g., laws of tyrants leading people into idolatry. These ought not be observed at all, because we ought to obey God rather than men.<sup>28</sup>

Thus Aquinas would justify civil disobedience based on the right and obligation of the individual conscience to disobey laws which are contrary to the human good through improper end, form or authorization (except when it causes scandal), and those laws which are contrary to divine law. The task of the individual now becomes that of judging or discerning the correspondence of the civil laws to the human good and the divine good. This can lead in two directions: (1) the problem of ascertaining what is meant by the human good, and (2) the epistemological problem of discerning what individual knowledge of violations of the human or divine good consists in. A further moral

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<sup>27</sup>Aquinas, p. 1020

<sup>28</sup>Aquinas, p. 1020

dilemma with regard to judgment is that of the individual civil disobedient judging if scandal or greater harm to the community will be had in disobeying the law, presuming the law is found to be unjust.

We cannot here deal with what the Good is, or in what knowledge of the Good consists of knowledge of Evil. Our problem at the moment is one of judgment. How is a right formulation of conscience possible for the individual so that he may be justified in being disobedient? If the individual decides to disobey the law after investigating the facts as thoroughly as possible, after coming to an understanding of the common good and the divine good and of what is required of himself, and then applies this knowledge to the law, and if he sees that the law does not measure up to the standard of justice demanded by the nature of the law, then the disobedient no longer perceives himself as obligated by the law. There is no duty for him to obey the law from the specific law itself. At this point the individual's dilemma is not conflicting duties but how to act upon the felt overriding duty, i.e., to law in general, to the higher law, natural law and divine law.

Granting that the individual is justified in disobeying the law according to the norms explicated by Aquinas, at the very least he has to demonstrate that his

action will not lead to a worse injustice than the law would. He does not have to demonstrate that there would be a substantial improvement in the lots of the majority of society, only that there would not be greater harm done. This places some burden of proof on the individual, but not so great as demanded by some opponents of this form of justification.<sup>29</sup> If there is a natural insight and an inclination to virtue in all of us, as well as the strength of reason which enables us to participate in eternal law, then the right of the individual conscience would seem to be bolstered. But Aquinas does not rely only on the moral insight or intuition of the individual; he also recognizes the communal nature of the individual, and that natural law is the same in all men in rectitude and knowledge, and that man is inclined to reason. But this is in reference to speculative reason. In practical reason truth and knowledge are not equally known by all nor the same for all. Natural law is the same for all, but the conclusions in specific cases may be different because of some obstacle, passion or evil habit.<sup>30</sup>

Thus, we see the primary role reason plays in

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<sup>29</sup>Carl Cohen, Civil Disobedience (New York: Columbia University Press, 1971), pp. 113-115.

<sup>30</sup>Aquinas, p. 1011.

determining the individual conscience. Law as an act of reason ought to be directed to the good, for that is that to which practical reason is directed. Civil law ought to be directed to the common good of the community, the end of which is universal happiness. But the general principles of natural law are not applied the same way universally "on account of the great variety of human affairs."<sup>31</sup> That is why we see a great variety of positive laws among different peoples. Yet human law is derived from natural law and ought to be ordered to the common good. How this common good is to be interpreted in specific cases is left open. That this openness is necessary shows a recognition of the possibility for a variety of interpretations of natural law by the framers of positive laws. That a variety of interpretations are possible comes from the existential situations in which nations and states find themselves. Moreover, it is recognized that natural law can be changed by addition, by Divine law and by human laws, and by subtraction in its secondary principles.<sup>32</sup> This last point refers to Aquinas' discussion of whether natural law is the same in all men, which he previously demonstrated was the case except in matters of detail and certain conclusions falsely made

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<sup>31</sup>Aquinas, p. 1015,

<sup>32</sup>Aquinas, p. 1011.

because of obstacles, passions and evil disposition.<sup>33</sup>

If the civil disobedient were suffering from some obstacle to understanding and truth, or if he were ruled by passion or an evil disposition, then he might reach a false conclusion that a specific law were unjust but this would still require a conscientious refusal to obey it.

It is for these very reasons that the right of the individual conscience as justified by natural law is so often rejected.<sup>34</sup> But it is also for this reason that the civil disobedient usually seeks to purify his motives, seek the truth of the situation and be open to other interpretations. Yet, he will nonetheless disobey in accordance with his conscience.

Opponents of the natural law justification for civil disobedience often point out that the sincerity of the individual while important may nonetheless be misguided.<sup>35</sup> Moreover, the ability of the individual to interpret the natural law in specific cases seems extraordinary, and this task should be left up to the courts or legislature. While the disobedient may resort to higher law from a desire for certainty, universality, and justice, what

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<sup>33</sup>Aquinas, p. 1011.

<sup>34</sup>Cohen, pp. 115-117.

<sup>35</sup>Aquinas allows for the possibility of mistaken conscience, but does not see it as an objective to his view. Summa, II Part I, Q. IX, Art.5; Q.1, 27.

results if often far from leading to the common good.<sup>36</sup> Finally, the higher law argument (natural law) justifies only direct civil disobedience, for to violate a just law in order to protest an unjust one as a tactical consideration seems not to be justified by natural law.

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<sup>36</sup>Cohen, Ibid, p. 118



## Groups and Justification by Natural Law

Given that individuals are justified in following their consciences even though they may be mistaken, and that they can disobey immoral laws or laws discovered to be unjust according to end, form, or authority, then it would seem that groups would be justified according to the same standards. The first, fifth, and sixth justifications established in the second chapter<sup>37</sup> can be used to compare the group to the individual. Civil disobedience is not justified at this point by the nature of the actions or purposes of the individual or group, but because of the law's own lack of justification. Thus, if each member of the group is justified in opposing the unjust law, then the whole group is justified in opposing the law.

If the group is considered to be a moral agent then it is justified in the same way as an individual. Let us assume the nearly ideal situation of a fairly cohesive dissident group, i.e., the individuals are like-minded and united in their cause. The group has a common purpose and acts through consensus. Just as the individual gathers facts, so too, the group gathers facts. Just as the individual weighs rights and duties, so too, the group

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<sup>37</sup>(Chapter II., p. 16.)

weighs rights and duties debating within itself. Just as the individual is able to decide that he has a right or a duty to disobey the law, so too can the group decide. Just as the individual knows the truth of natural law through evidence and can participate in eternal law through reason, similarly the group through its members is able to reason. (This is not to say that the group is a rational, sentient being; rather it is a moral agent because it has rights and responsibilities.)

The strength of the group as the matrix of operations of the individual and society is two-fold; (1) there is a sharing of evidence and reason by the individual within the group, (2) there is a shared experience of the common good of society at least on a small scale.

Through sharing evidence and reason, the members of the group can come to a fairly accurate understanding of why they oppose a certain law, whether it is unjustly formulated, promulgated by an unjust authority, designed according to an immoral end, or opposes God's law. Each individual has a different perspective, and if all perspectives are shared equally, it is possible to recognize common difficulties and disparateness of interpretations. While one perspective may be insufficient in determining whether or not a law is unjust and ought to be disobeyed, it is still possible to rely on several other perspectives

from other members of the group in order to shed light on the first. Although perspectives may differ completely at first glance, what is gained is the possibility of breaking down obstacles of ignorance or bad conscience.

A danger is that these obstacles can be reinforced depending on the motivation and degree of desire for truth in the group. A high willingness to admit the possibility of ignorance or wrongness coupled with an openness of interpretation is thus demanded as criterion for a group which claims to act as a moral conscience of society through disobedience of an established law. Unreflective dogmatism is rejected by the group. With such a criterion it is possible for the group to have a rightly formulated conscience and be included in a Thomistic justification for civil disobedience.

The second part of the group's strength is the shared experience of the common good. For Thomas, the law ought to be directed to the common good. But the disobedient group as a watch dog on the law is also concerned with the common good. But empirically an experience of some group is necessary for the individual to experience what is meant by the common good. Through providing individuals with an experience of the common good, even if it is only the welfare of the group, the group is justified in so far as it provides a moral atmos-

phere or locus of operation through which the individual can act for the common good and universal happiness. If the group is to be justified in acts of civil disobedience according to Thomistic standards, it must be directed, not only to its good, but also to the good of society as a whole.

## Justification through Kant's Categorical Imperative

A second means of justification used by disobedient agents to demonstrate the rightness of their actions is derived from Immanuel Kant's second formulation of the categorical imperative, the duty to respect people as ends in themselves. Many might think it strange that people would use Kant to justify disobedience since he so strongly recognizes the obligation of the individual to obey the law, not only the moral law but the laws of the state as well. In spite of the difficulties, people have attempted to justify their disobedience through his theory of duty. To understand these attempts we must first briefly review the Kantian project.

The aim of Kant's Grundlegung zur Metaphysik der Sitten<sup>38</sup> is not to prove rational morality; rather it is to find the principle of a rational morality, on a priori ground. Kant's concern is not immediately that of experiential moral dilemmas; rather it is with finding the rational ground of morality. Universalizability and non-contradiction become the two criteria for the fundamental moral principle. And with regard to the

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<sup>38</sup>Kant, Immanuel, Grundlegung zur Metaphysik der Sitten, (Hamburg: Kurt Weltzien K.G., 1965).

person, it is not necessarily the value that the person holds or the attitude of the person that is important, but rather the good will which acts from a sense of duty. This takes priority over the will that acts from love, affection, or other virtues.

Duty is the necessity of an action done from respect for law. But this law is not merely positive law; rather it is a command which is universal, i.e., it applies to every rational being. This moral law, as a categorical imperative, is single, unconditional, objective, formal (i.e. without content). Other moral principles are derivatives of this first moral principle.

Kant provides three major formulations of the categorical imperative: (1) "Always act on a maxim which you can will to become a universal law of nature;" (2) "Always act so that you treat humanity, whether in your own person or in another, as an end, and never merely as a means; (3) "Act always on a maxim by which the will considers itself as making universal law." Thus the most general formulation becomes "always act on the maxim which can at the same time be made a universal law."<sup>39</sup>

Before any of these formulations can be applied

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<sup>39</sup>Brendan, Liddell, Kant on the Foundation of Morality (Bloomington, Indiana University Press, 1970)pp. 140, 157, 165, 177.

to the specific case of civil disobedience it should be noted that the categorical imperative is not intended as a guide to specific duties; rather "it is a standard by which we judge whether or not what we propose to do is moral."<sup>40</sup> It has the negative function of measuring the intended action and the maxim on which the action is based by the standards of universality, objectivity, rationality, and humanity. It is always directed toward the dignity of the rational nature of man.<sup>41</sup>

In Warner Wick's introduction to Kant's The Metaphysics of Morals<sup>42</sup> he states that

"a moral community demands the utmost (but indefinite) effort to live up to the spirit of its constitution; and it strictly and definitely prohibits any will-full breach in the law, for that would subvert the condition of its existence."<sup>43</sup>

With such a statement one might think that there is no justification at all for civil disobedience given by the categorical imperative. At the very least the burden of proof is on the disobedient agent. But the categorical imperative to act on a maxim that you can at

<sup>40</sup>Liddell, p. 178.

<sup>41</sup>Liddell, p. 184.

<sup>42</sup>Kant, The Metaphysics of Morals, Ed. Warner Wick, Trans. James Ellington, (Indianapolis, Bobbs-Merrill, 1964).

<sup>43</sup>Kant, p. xvii.

the same time will to become a universal law cannot and should not be immediately applied to specific acts of disobedience, or to obedience for that matter. 'It is inaccurate to interpret the maxim as "disobey all laws which do not respect persons as ends" or "obey all laws unconditionally." Only a more general and overriding moral principle (not derived from experience) is sufficient as a categorical imperative.

The dilemma of applying a moral principle to concrete actions is best uncovered through an examination of the conflict of duties, Widerstreit der Pflichten, and the autonomy of the will. The civil disobedient must recognize his obligation, Verbindlichkeit, to obey the laws. But does this obligation arise from the right of the moral community to have the conditions for its existence undisturbed, or from a personal obligation to act from the fundamental moral principle merely because that is one's duty? The first case seems to be more a case of the hypothetical imperative, e.g., if you value the moral community, obey its laws. If so, it would not be sufficiently overriding as a moral norm. The second is more overriding, but is also more general and thus difficult to apply to specific cases.

Kant states that "no particular definite obligation follows from (the formal rules) except when indemonstrable material principles of practical knowledge



are connected with them.<sup>44</sup> It would seem that obligations to obey or obligations to disobey a particular law in a particular situation would require much more than merely a sense of duty based on a general formulation of the categorical imperative.

The civil disobedient agent might grant Kant's a priori formalism, but still want to give the moral law some content. This general content is usually given by disobedients to the second formulation of the categorical imperative as respect persons as ends, Kant himself sees that "our moral perfection and the happiness of others are ends which are also duties."<sup>45</sup>

The dilemma posed by the confusion of the interpretation of the law, the role of reason, and the imperative to respect persons as ends in themselves returns us to Kant's focus on the good will. Regarding the autonomy of the will Kant recognizes that choice is free to the extent that it is determined by reason. A person whose will is determined by reason will act according to the objective necessity of acting as determined by reason. Moreover, reason influences the imperfect will by acting

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<sup>44</sup>Immanuel Kant, Critique of Practical Reason, Trans. and Ed. Lewis White Beck (Chicago: University of Chicago Press, 1949) p. 283.

<sup>45</sup>Kant, Critique, p. 28.

as a restraint. An action is rational when a person acts from guiding principles, but the civil disobedient acts from guiding moral principles, therefore, even though his act defies positive law, it is nonetheless rational.<sup>46</sup>

Since human laws are prescriptive (versus laws of nature which are descriptive) then as commands they can be obeyed or disobeyed. But the will links compliance to the law with knowledge of the law. Might this not indicate that a person may decide to obey or disobey a given law provided he knows what the law is and is able to freely choose between obedience and disobedience? In civil disobedience, this is a conscious, rationally willed act, not merely based on whim, habit, feelings, or intuitions. These other factors may enter into a decision to disobey, but it is in the free will informed by reason that the person decides.<sup>47</sup>

Thus, the civil disobedient individual who wishes to justify his action on Kantian grounds must prove the rational basis for his decision. For

"if we are to avoid a purely subjective moral standard, then we must appeal to reason as the source

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<sup>46</sup>Liddell, p. 104, 106.

<sup>47</sup>Liddell, p. 105.

of moral goodness, not to any preconceived idea of the perfection of Human Nature or to Divine Command.<sup>48</sup>

Morality is a matter of inherent consistency of action, not a pursuit of some value object. But as we have seen the value of the human community as an end is also a duty.

Thus a rationally motivated civil disobedient action which has as its end the perfection and happiness of others might be construed as a duty. But it is a duty in conflict with the other duty to respect the law of the community as coming from the practical law as the efficient cause coming from rational beings.<sup>49</sup>

An investigation of Kant's Right of Revolution<sup>50</sup> may shed light on the dilemma caused by conflicting duties to the laws of the state and to the laws of reason of the autonomous will. Kant's interpretation of what his strict formalism requires allows only for the possibility of disobedience against a tyrant if he commands a person to do an immoral action. Even with this the person has to be willing to suffer the consequences.<sup>51</sup> In

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<sup>48</sup> Liddell, p. 5.

<sup>49</sup> Kant, Critique of Practical Reason, p. 31.

<sup>50</sup> Lewis White Beck, "Kant and the Right of Revolution," JHI, 32 (1971).

<sup>51</sup> Kant, Critique, p. 159

the conflict of duties between positive law of the state and "progress of mankind" the former takes precedence, for the latter "is a duty of imperfect obligation, is unenforceable, and leaves elbow-room for its realization."<sup>52</sup> The former is a duty of "strict or perfect obligation" and thus takes priority over the other.<sup>53</sup>

Finally, resistance to the government is justified "provided some constitutional provision is made...under which there can be a formal legal finding that the original contract has been broken by the monarch."<sup>54</sup> For if the legal contract is broken then the formal rule of law is challenged and must be restored. Beck in his article interprets Kant's position as allowing for passive disobedience, i.e., while a person might not be justified in actively breaking a law, it may be possible to justify a person not co-operating with a rule promulgated by a monarch who himself violates the law.

Given such a case of civil disobedience which does not seek to overthrow the government or sovereign,

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<sup>52</sup>Beck, p. 124.

<sup>53</sup>Beck, p. 124.

<sup>54</sup>Beck, pp. 411-422.

but merely seeks to reform the laws, it would seem that if the legislators or courts or ruler are not willing to listen to reason, i.e., if the laws are irrationally made or erratically enforced, then the disobedient would have sufficient reason (as a rational individual) to disobey them. This is granted that all legal means have been tried and found wanting. Indeed it shall be seen that at least for the rational individual, as in Gandhi's case, this is claimed by Kant's underlying philosophy.

## Groups and Kantian Justification

With the emphasis on reason, law, and the autonomous will, we have not given much room for justifying group civil disobedience according to Kantian principles. Several interpretations as to how to apply the categorical imperative to the groups are possible. Firstly, the group can be seen as a means of preserving the autonomy of the will of each of the individuals within society. Groups which are willing to act against positive laws as a means of keeping people moral and free can be justified using the second formula of the categorical imperative in order to preserve the third formula with regard to autonomy of the will. Secondly, the test of the individual moral will comes in the interaction of the individual and the community, but the locus for this interaction can be within various subgroups. A moral decision is made within a particular context even if it is guided by a universal principle. Thus, the group can be perceived as being the locus of the interaction of moral agents and, as such, is justified in so far as the agents are justified.

Finally, if the group is a moral agent then in a Kantian system of justification it must be considered a rational agent. As such it is considered to have an autonomous will. Once the a priori basis of the primary

moral principle governing the group's actions, the group can avoid the trap of subjective formalism by being able to act on the fundamental principle to respect persons as ends through giving specific content to the principle in the concrete interactions within the group itself. Moreover the group can formulate other particular principles deriving from the categorical imperative and act on them in society.

For the group may act from a sense of duty as a whole to the larger society and to the rational moral law. If the group is conscious of itself as acting on a maxim which can be a universal law and if it is rational, then like the individual, the group can feel a duty to disobey an irrational and inhumane law or custom. But the process of disobedience must not allow the group to treat individuals as means to its end.

Using the six ways a group may be justified discussed in the second chapter, we see that as applied to a Kantian justification of groups, the first and the sixth ways can be combined, and if the group is justified as a moral agent, then because it has a duty to follow the categorical imperative it is justified in the same way as individuals. Also the group may be justified according to its purpose to preserve the autonomy of individual will in society (the third way).

The a priori formalism of Kant's moral system is sufficient to provide the disobedients with a structure for their rational "sense" or moral duty, but it is insufficient to dictate what the content of that duty is in specific cases. While the formulation of the categorical imperative as respect persons as ends is a sufficient moral command for the disobedient agent to act upon, it does not necessarily preclude disobedient action in accordance with the perceived obligation to obey a rational moral command versus positive law. Normally disobedient agents who take the categorical imperative in the second form do recognize the establishment of the community of ends as an end in itself, and thereby act both from a sense of duty and from a sense of value.

Yet there are those disobedients who claim that to act from a sense of duty to a higher moral principle is insufficient, and purity of intention is an inadequate justification. Rather the empirical situation must be taken into account, and consequences are more important than good motives. To elucidate this position we turn to the utilitarian justification of civil disobedience.



## Justification through Utilitarianism

The most popular and perhaps most widely used theory of justification for civil disobedience stems from Utilitarianism. Civil disobedients generally have a great desire for the bettering of the conditions of society, for upholding the law as a means of insuring the greater happiness of the whole. Yet the law can be seen either as (1) hindering the positive development of society, or (2) keeping elements of society suppressed. Thus the greater happiness theory has been used to justify acts of disobedience with either or both of these two goals in mind.<sup>55</sup>

Let us discover what the commonly accepted understanding of John Stuarts Mill's utilitarian theory is and then see how it has been used to justify civil disobedience for individuals, and finally, see how it might be used to justify civil disobedience for groups.

Mill's search for the first principle of morality led him to the "summum bonum" as the greatest happiness for the majority. But this happiness is not merely lowly animal pleasures, but is found through the use of reason and an understanding of man's desires. The basic fact which

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<sup>55</sup>Cohen, pp. 120-128,

Mill discovered is that men do indeed desire happiness. The principle by which actions are governed in order to achieve this happiness is: do that action which produces the greatest happiness for the greatest number.<sup>56</sup>

For Mill happiness is constituted positively by pleasure and negatively by the absence of pain. But the pleasure which is sought is a higher pleasure, or ought to be, on the grounds that the majority of those who have experienced higher and lower pleasures say that the higher is better.

Furthermore, happiness is for the greatest number. The inclination to seek happiness for the greatest number rather than merely for oneself is found through education and the role of the conscience. The conscience is a mass of feelings which incline one to act in ways for the social good; it can be conditioned. A final point is that sacrifice for others is real and valuable.

While there are many problems with this theory from a Kantian perspective, i.e., that utilitarianism is teleological rather than deontological, that it involves a conditional "ought" or obligation rather than a categorical obligation, and that the ground of the obligation is not from reason but from social pressure, nonetheless it has certain advantages. The foremost advantage from

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<sup>56</sup>John Stuart Mill, Utilitarianism, Ed. H. B. Acton, (London: J. M. Dent, 1972), p. 11, 29.

the Kantian perspective is that if a disobedient acts from the utilitarian principle, he will seek the good of the whole community. A second advantage is that he will be willing to be judged by the consequences of the action, rather than his intentions alone.

While the individual justifies his civil disobedience from the utilitarian position three factors are involved: (a) some proof of the immorality of the law, (b) dependence on evidence from the situation (for justification), (c) the role of consequences of the disobedient action.

Since civil disobedience is usually directed towards changing a law or calling attention to some wrong in the community, the effectiveness of the disobedience can be measured by the law being changed or public opinion being turned in support of the disobedients. The emphasis of justification of civil disobedience on utilitarian grounds is on the factual content of the act in contrast to the Kantian moral form.<sup>57</sup> Negative and positive effects must be weighed, and the disobedients must have some way of anticipating the outcome. Again, this is in contrast to the Kantian justification from a given duty to disobey no matter what the consequences.

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<sup>57</sup>Cohen, Civil Disobedience, p. 124, 128.

Proof of immorality of the law cannot be on the grounds that it violates the categorical imperative or is in conflict with natural law or is against a person's particular moral system. It has to be shown to be having an actual negative effect on society or a portion of society. Some utilitarian disobedients will claim that it can be declared immoral if the law has no beneficial effects on society. That position is more difficult to defend, for with it these disobedients seek to justify their actions through some anticipated bettering of society with the possibility that society cannot bear the "improvement", e.g. National Socialists who perceive a pure society may use nonviolent civil disobedience to frighten away all "impure" elements of society. A larger problem is the distinction and connections of civil laws and morality. This cannot be avoided for disobedience is based on an understanding of the separateness yet connectedness of laws to a system of morals. The immorality of the law from a utilitarian position is found in the law's deprivation of society's greatest happiness.

Blackstone, while rejecting the adequacy of a justification of civil disobedience from utilitarian grounds, nonetheless notes that from a teleological perspective society in the long run can benefit from

civil disobedience, for --

"if legal change is ineffective and too slow, civil disobedience is a better, more effective means for social progress. In a democracy with civil disobedience, short range bad effects are offset by long range good effects of speeding up the 'democratic process of change.'"<sup>58</sup>

If the law is perceived as immoral on utilitarian grounds as well as natural law grounds or rational formalistic grounds, the individual conscience has a duty not to obey the law.<sup>59</sup>

One basis a utilitarian would use to justify civil disobedience is that of the likelihood of success. One ingredient necessary for the success of civil disobedience is a certain level of popular support.<sup>60</sup> But groups or individuals which justify their disobedience according to the general values of the society will find greater support among the people. Even if a law is being disobeyed the populace in general may be sympathetic to a disobedient agent who can persuade the crowd that his actions are based in the people's own value system.

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Eccentric individuals and groups which do not act from a value system similar to the ideals of the community will have less likelihood of success, and

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<sup>58</sup>Blackstone, p. 244.

<sup>59</sup>Bayles, p. 8.

<sup>60</sup>MacFarlane, p. 29.

thereby, find little justification through this aspect of utilitarianism. For example, disobedient acts by the Klu Klux Klan or the Nazis, in northern states at least, would be more difficult to justify in today's society. Or someone who disobeyed the law in order to bring about a monarchy would not have the popular support of people with democratic values.

## Groups and Utilitarian Justification

Utilitarianism can best be used to justify group civil disobedience through the actions of the group and through the group being a matrix of operations for the individual and society. As we have seen, the group which reflects the moral ideals of a society has a better chance of success than a radical fringe group, at least according to the utilitarian system. There is a good possibility that the group can find more support for its position than the individual, because of the breadth of interconnectedness the group has with the rest of society through its members, through its organizational structure and through an attunement to the operations of political society.

If civil disobedience is to be judged according to its success or likelihood of succeeding, then the role of the group in society is also important. If success is a reason to justify civil disobedience,<sup>61</sup> then a group whose role would gain it public sympathy or a greater likelihood of legal support and who would be generally effective in changing the law would be easy to justify. For example, a group of nuclear scientists protesting the building of a nuclear power plant because of inadequate safeguards would be more easily justified than a group of college students engaged in similar disobedience.

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<sup>61</sup>Bayles, p. 74.

Finally, the actions of the group contribute to the judgment concerning whether or not the disobedience is justified. One reason for including nonviolence as part of the definition of civil disobedience is because the nonviolent behavior of the protestors is more likely to win support than hooliganism or violence. Those concerned with being justified on utilitarian grounds are concerned with the tactics of the disobedience. In group disobedience this can be highly complicated process with questions asked regarding the best action directed toward with specific end, the behavior of the disobedient group, even regarding whether or not the group should resist arrest or not. The actions are also judged according to which will have more injurious or more beneficial effects on society.

To summarize, groups are justified through utilitarianism primarily by the degree of effectiveness of the disobedient act in increasing the general happiness of society. This involves collected empirical data which could be a complicated process. Groups would seem to be easier to justify than individuals according to this theory because groups generally have a stronger position in society in terms of publicity and support.

To summarize the three common theories of justification, each of them is used to justify individual disobedience but can be used to justify group disobedience.



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Natural law and a priori rationalism can justify the group if it is regarded as a moral agent. Utilitarian justification applied more to the nature of the actions of the group, its role in society, and its effectiveness as a matrix of between individuals and larger society. In so far as the appeal for justification is made according to the purposes of the group, the group which represents the ideals of seeking the greater happiness of society, the common good, the community of ends, and which demonstrates its concern through its public actions, will be more easily justified. Through the open and public operations of a group it can be seen whether or not it demonstrates a social conscience and operates out of concern for the common good by treating persons as ends in themselves and by seeking the greatest happiness of all.

### CHAPTER III

#### NECESSARY CONDITIONS FOR MORALLY JUSTIFIABLE CIVIL DISOBEDIENCE

In the last chapter we investigated forms of reasoning which might be used by agents to justify their civil disobedience. Certain reasons may be sufficient from the agent's point of view to justify an act of civil disobedience, but whether or not the disobedience is actually justified may be contested by an observer. According to the standard definition of civil disobedience, the action must be conscious, public, selective, an actual violation of a law or custom, nonviolent in character, and for the purpose of maintaining personal moral integrity or changing an unjust law. It must be proven that the law is unjust according either to its end, form, authority, or rationality. Proper legal channels must have been tried (if feasible) and found wanting. Finally, the act cannot be for selfish gain, and for an act to constitute civil disobedience it is generally assumed that the agent is willing to accept the consequences of his disobedience in the form of legal punishment.

The group (or individual) is not justified just because it is a moral agent or just because it has as its end the greater good of society. Not only must the end

be for the good of society (in social vs. personal civil disobedience), but the intentions of the disobedient agent and the form of the disobedient action must correspond to each other. From this will flow the end. (With MacFarlane and Gandhi and versus Bayles I hold that the moral integrity of the agent must be included in determining whether or not the disobedience is justified.)

Therefore, whether the agent justified his own act of civil disobedience using reasons from natural law, rationalism or rule utilitarianism, two key areas involved in the justification are: (1) the form of the disobedience, (2) the intentions of the agent. A necessary condition, all other things being equal, for morally justifiable civil disobedience according to the form of the action, is that of nonviolence. A condition by which we can judge the moral sincerity of the agent is that of his willingness to suffer the consequences of the action. If these conditions are fulfilled, then whether or not the agent is correct in disobeying the law, the agent is at least morally justified in his action qua civil disobedience.

From the second chapter we have seen that non-violence is included as a defining characteristic of civil disobedience. Although some claim that certain acts of civil disobedience are justified even though they might

be violent, we hope to show that generally the form of disobedience must be nonviolent in order for it to be justified for groups and individuals.

Civil disobedience is also justified according to the intentions of the individual, whether it is to preserve moral integrity or to better society by changing unjust laws. One way to determine the moral integrity of the individual is to determine to what extent he is willing to suffer as a consequence of his disobedience. (We shall see if this applies to groups as well.)

Thus, through the conditions of nonviolence and acceptance of suffering by the agent we hope to have two partial means of judging the justifiability of civil disobedience.

## Nonviolence

Nonviolence is a principle of active peaceful resistance of a wrong through converting the perpetrator of the wrong. Although nonviolence is part of the classic definition of disobedience, (indeed civil disobedience is often chosen as a tactic of dissent because it is nonviolent) nonetheless there are those who would justify violent civil disobedience. But the argument here is not whether or not violence is ever justified in opposing an unjust government; that is a separate question involving the right of revolution and the possibility of a just war. It would seem that if civil disobedience is seen as a tactic in war, and if the violence in war is justified, then violent civil disobedience would be justified on similar grounds. However, our concern is with justifying nonviolent civil disobedience as it is normally practiced by groups of individuals.

Violent civil disobedience is disallowed according to various theories. Bayles' argument is that given a hierarchy of goods, personal security is on or near the top, and to violate a higher good or a law preserving a higher good to preserve a lower good is unjustifiable; therefore, to do violence to a person is unjustifiable in civil disobedience.<sup>62</sup>

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<sup>62</sup>Bayles, p. 17.

Blackstone merely claims that violent behavior is contradictory to the "civility" of the disobedience.<sup>63</sup>

Cohen indicates that violent civil disobedience may be justifiable in some cases, but that from a practical viewpoint it is not desirable since it can obscure the purpose of the disobedience which is to expose an unjust situation.<sup>64</sup> MacFarlane takes the position that if the authority or State is extremely oppressive and violent itself, then violent disobedience may be justified. But...

"If constitutional methods are available or if non-violent civil disobedience is possible, then the adoption of physical violence will be difficult to justify, unless it can be shown that the objective is of extreme gravity or necessity, that other methods of struggle are incapable of realizing it in the time required, and that violence is capable of doing so."<sup>65</sup>

Violence and nonviolence can be seen as on a continuum. Violence is physical force used to injure a person or property. Coercion can be included as a psychological form of violence which denies a person free choice. Not all nonviolent civil disobedience is justified, because there are some forms that are more coercive than others. In order to establish the moral claims of nonviolent civil disobedient agents their

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<sup>63</sup>Blackstone, p. 233.

<sup>64</sup>Cohen, p. 24.

<sup>65</sup>MacFarlane, pp. 47 - 48.

behavior must be restrained and disciplined as well as physical nonviolent.<sup>66</sup> Nonviolent coercive civil disobedience which deliberately provokes violence will be more difficult to justify than that directed in a form directed at a conversion rather than coercion.

One reason nonviolence is claimed as a condition for morally justifiable civil disobedience is based on the interdependence of means and ends,

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<sup>66</sup>Cohen, p. 34.

## Interdependence of Means and Ends

There are two ways of arguing for nonviolent civil disobedience based on the interdependence of means and ends. The first is empirical and can be disputed according to various interpretations of empirical data. The second is primarily metaphysical, characterized by the law of karma, although it involves an empirical assumption and finds support in Western thought as well as Eastern. One formulation of this principle of interdependence of means and ends could be "as the means, so the ends."

The empirical argument (which can be contested given contrary evidence) states that in a majority of cases violence has been used the consequence has been the continuation of violence. This is typified by the saw "violence begets violence." It is backed up by evidence from history; societies which have been founded on, or revolutionized through means of, violence have in turn perpetuated that violence in some form or other. A counter to this argument is not to deny the violence of societies throughout history but to question the cause and effect relationship. Be that as it may, many who advocate nonviolent disobedience do in fact claim that the reason nonviolence is chosen is because they see violence as leading to violent consequences, and there is



a possibility that nonviolence will lead to peaceful ends.

The second interpretation of the interdependence of ends and means as a reason for including nonviolence as a characteristic of civil disobedience uses the empirical argument to support it, but it is based more on the assumption that the ends flows from the means. The end, the ultimate value for which the act is done, must find its roots in that very action. The agent cannot justify violence as part of his disobedience if he seeks a nonviolent society. If the agent intends the common good of society, and granted that the common good entails peace in society, then the agent must use nonviolent means of achieving peace for his intentions and actions to be consistent. The agent cannot treat people as means if he operates from the norm of treating them as ends; he cannot seek personal gain alone if he desires the common good. But the agent can disobey the law, as long as the law is not seen as an end in itself. Law is only a means of attaining order in society.

The most forceful proponent of the means - end interdependence argument is Mahatma Gandhi. Gandhi, unlike most European thinkers, does not make a sharp distinction between means and ends. Rather the two are seen as interdependent. Nor does Gandhi emphasize the

end; rather he emphasizes the means.<sup>67</sup> For Gandhi the moral quality of the end is dependent on the moral quality of the mean. This focus on the means and on the subsequent faith that the end will naturally follow stems from Gandhi's belief in karma, "the law of ethical causation or moral retribution that links all the acts of interdependent individuals."<sup>68</sup> Every act has repercussions in society and returns back to the agent. The end will reflect the means. It is not necessary for the ends to look like the means, but then a tree does not look like its seed. "The means may be likened to a seed, the end to a tree; and there is just the same inviolable connection between the means and the end as there is between the seed and the tree."<sup>69</sup> If the law of karma holds, then there is no way in which the end and means can be separated.

Since the purpose of civil disobedience is to make some beneficial change in society, and since it intends the means least harmful and most conducive to its end, and since the end flows from the means, then the form of the disobedience must be nonviolent. "Nonviolence is justified

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<sup>67</sup>Raghavan Iyer, The Moral and Political Thought of Mahatama Gandhi, (New York: Oxford University Press, 1973), p. 361.

<sup>68</sup>Iyer, p. 361.

<sup>69</sup>Iyer, p. 361.

by Gandhi because it seeks to achieve an integration between means and ends."<sup>70</sup>

Gandhi states, "As the means so the end. Violent means will give violent swaraj (soul force),"<sup>71</sup> Pure means lead to pure results; impure means lead to impure results. Thus,

"we cannot attain to any truth through untruthful means,...we cannot secure justice through unjust means, or freedom through tyrannical acts, or socialism through enmity and coercion, or enduring peace through war."<sup>72</sup>

If we seek a truthful and peaceful society, our means must be truthful and peaceful; to the degree that our means are peaceful and truthful, so our results will be peaceful and truthful.

Although I appeal heavily to Gandhi in the support of nonviolence through the ends-means interdependence argument, I do so not because Gandhi himself holds the position but because he seems to have the best formulation of it.

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<sup>70</sup>V. V. Ramana Murti, "Buber's Dialogue and Gandhi's Satyagraha" Journal of the History of Ideas, 29 (1968) 608.

<sup>71</sup>Mohandas Gandhi, Young India, July 17, 1924, In Murti, p. 608.

<sup>72</sup>Iyer, p. 363.

Cohen supports the Gandian position of the interdependence of means and ends.

"Finally, if the civil disobedient really has, as he professes, the goal of a peaceful and just society, he will do what he can to exhibit peacefulness and justice in his own conduct. He is likely to understand that the character of the means one employs in social action greatly influences the character of the results accomplished. The interpretation of means and ends, their mutual support or mutual corruption, has been well understood by nonviolent activists through the generations.....The principle applies not only to wars and their outcomes; it is more generally true that it is not possible to bring about an orderly and humane society through inhumane and disorderly conduct. Everywhere, violence in the means will infect the ends. Therefore, his object being what it is, the honorable civil disobedient has a special obligation to pursue his protest in a way that inflicts no direct serious harm on any person...."<sup>73</sup>

Nonviolence is accepted as a condition of morally justifiable civil disobedience because it integrates the means and the ends.

But the discussion has centered primarily on social civil disobedience, i.e., that done for the good of society. With regard to personal civil disobedience, nonviolence is again claimed as a condition for morally justifiable disobedience based on the interdependence of means and ends. Personal civil disobedience has as its end upholding personal moral integrity. Gandhi holds, and I agree, that "no man can pursue greater integrity as an end by adopting means involving a sacrifice of the

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<sup>73</sup>Cohen, pp. 30-31.

integrity he already has."<sup>74</sup> And nonviolence is the test of a person's moral integrity or personal truth.

Gandhi, guided by the two ethical concepts of satya (truth) and ahimsa (nonviolence), is very much aware of the frailty of humanity, of the possibility of being misguided even with the best of intentions. Thus, in seeking the truth he encourages a humility and self-purification which ensures that if the agent misses the truth none will suffer harm but himself. Civil disobedience must be nonviolent because of the possibility of the agent being mistaken in his judgment regarding the means or the end or the law opposed. For if the agent recognizes that the law can be wrong in its end, its formulation, or operations, then he must be willing to accept the possibility of personal and group error as well. It is possible to have good intentions and yet be wrong.

Violence forcibly imposes the will of a group or a person on society. Nonviolence (if well regulated) acts as a guarantee that nobody will be hurt intentionally whether or not the act of disobedience is rightly conceived.<sup>75</sup>

Civil disobedience demands of the individual a

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<sup>74</sup>Iyer, p. 371.

<sup>75</sup>MacFarlane disagrees, p. 46.

high regard for society, for truth, rationality, humility and selflessness, and a strong sense of duty to follow one's conscience. Civil disobedience demands of the group the recognition of individual differences and similar regard for truth and the good of society. Finally, civil disobedience demands that the agent use truly nonviolent means in order for the ends to follow the social benefits of truth and peace and the preservation of the agent's integrity.

## Self-Suffering

According to Gandhi true civil disobedience can be practiced only by those who are trained and purified in order that their motives be unselfish and their actions be truly nonviolent. In order to demonstrate the purity and selflessness of his motives the civil disobedient must be willing to accept suffering as part of the means. I hold that in order to judge the moral sincerity of an agent, one condition that must be fulfilled is his willingness to suffer for his cause. While this is not sufficient condition of civil disobedience being justified, it is a necessary condition all other things being equal.

This self-suffering takes on very concrete forms; imprisonment, public ridicule, physical and psychological abuse, disruption of normal lifestyle, estrangement from family and friends, loss of employment, loss of social prestige, anxiety, depression, and even death.

Why should a person or group risk such suffering? The personal and ideological reasons may vary, but from the perspective of justification of the action willingness to accept suffering is: (a) at least practically advisable, for any action in defiance of the State will most likely result in some suffering, especially the possibility of

imprisonment; (b) it is advantageous in terms of public opinion, for through demonstrating conviction and selflessness there is a possibility of convincing the public, arbitrators, and even opponents of the truth of one's position. Tied in with this last point suffering is accepted (c) in order to convert the opponent to one's cause and to demonstrate one's love for the opponent. It is not intended to coerce the opponent. Some accused Gandhi of trying to coerce the British and recalcitrant Indians with his own "fast to the death", but when he discovered this he terminated the fast and tried a different form of disobedience which would not be misunderstood as coercive.<sup>76</sup> Willingness to suffer may be (d) demanded as a duty arising from the moral law within the person or community. In order to fulfill one's duty to self and to others suffering can be recognized not merely as a price to be paid, but as a positive means of respecting persons as ends in themselves. This is usually seen in the cases of passive resistance and non-resistance, wherein the disobedient agent accepts the violence of another without retaliating. Finally, (e) willingness to suffer may come from the agent's perception of natural law; the agent may perceive his obligation to God and the community to be so strong that security and

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<sup>76</sup>For accounts of Gandhi's fasts see Joan Bondurant's Conquest of Violence, pp. 37, 71, 87, 118, and Erikson's Gandhi's Truth.



self-preservation take second place. This also holds for the duty of preserving the integrity of one's conscience.

Political justification qua civil disobedience is not ordinarily given to groups with solely selfish concerns or with power over others, even if some social advantage accrues.<sup>77</sup> But what can convince others that the concerns of the group or individual are not merely selfish and that the agent does not hold power over others, but as truly civilly disobedient the agent seeks to convert rather than coerce? Gandhi uses terms which indicate a selfless purification and a renunciation or detachment from the fruits of one's labors: non-possessiveness (vitaraga), selflessness (anasakti), renunciation of actions (sannyasa), and especially self-suffering as purification (tapas).<sup>78</sup>

MacFarlane understands the value of willingness to suffer on the part of the group in a utilitarian vein. Since civil disobedience as a tactic is often directed at gaining public support, one way to accomplish that support is through the willingness of the group to suffer. But the justification itself turns on the purpose, nature,

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<sup>77</sup>MacFarlane, p. 28.

<sup>78</sup>Iyer, pp. 423-427.

circumstances and consequences of the act itself and not on the willingness to suffer punishment. "Personal integrity and adherence to conscience are no guarantees of justification, although justification is impossible without them."<sup>78</sup> Thus willingness to suffer is a necessary factor in justification for civil disobedience even though it is not sufficient in itself.

But for Gandhi it is only individual disobedience which demands purification of motives and self-suffering as a demonstration of selflessness. Indeed in such a case Gandhi calls civil disobedience a "terrifying synonym for suffering."<sup>79</sup> But mass or group civil disobedience can be selfish in that individuals hope for some personal gain. Also groups cannot be expected to act from entirely altruistic motives. Raghavan Iyer in The Moral and Political Thought of Mahatma Gandhi summarizes Gandhi's position:

"Civil disobedience is exercised by the masses as an inherent and legitimate right to secure the recognition of claims that they regard as due to them as citizens. In the case of individual resisters, their civil disobedience is simply the performance of a duty that they owe themselves under the dictates of their conscience."<sup>80</sup>

Self-suffering also relates directly to the

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<sup>78</sup>MacFarlane, p.36.

<sup>79</sup>Iyer, quoting Gandhi in Young India, April, 1926.

<sup>80</sup>Iyer, p. 279.

question of whether or not punishment by a legitimate authority should be accepted by the disobedient agent. In Blackstone's "Appeal to Justice" argument for justification he notes that to say that, by becoming a member of a democracy and enjoying its fruits, a person agrees to live by all the rules and therefore cannot engage in civil disobedience, does not hold. The argument he refutes continues to the point that if a person does engage in civil disobedience he must accept the consequences. But Blackstone holds that a person's obedience to a democratic State is not absolute but prima facie and can be overridden by other moral considerations. Those who accept punishment for trying to live by their moral convictions or for trying to better society or preserve the rights of others receive disproportionate treatment in society, i.e., they take on the burdens of society through their punishment. Thus this contradicts the argument of those who say that the lawless disobedients can enjoy the benefits of society but can disobey the rules and burden the State. Finally, it is society as a whole which benefits from the actions of the disobedients in the long run."<sup>81</sup>

Finally, from a Gandhian view voluntary suffering will prevail over calculated violence. With a similar view Don Morano in "Civil Disobedience and Legal Respon-

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<sup>81</sup>Blackstone, p. 244.

sibility" lauds the civil disobedient for leading judges and lawmakers to reevaluate their positions, i.e., if they have become morally insensitive or careless. The disobedient who acts with no hope of personal advantage and is willing to provide arguments in defense of his positions demonstrates a true legal responsibility which includes a "delving and criticism of existing laws". "Therefore, the civilly disobedient individual, who is willing to put his head on the block in order to abrogate unjust laws, is in fact the legally responsible individual par excellence."<sup>82</sup>

To summarize, civil disobedience is not justified merely according to the end intended, i.e., changing an unjust law to benefit the common good or to preserve personal moral integrity. The form of the disobedience and the moral sincerity of the agent also play a part in justifying civil disobedience. A necessary condition (all other things being equal) for the form of the disobedience to be morally justified is that of non-violence. Several reasons were given for the inclusion of nonviolence as a condition of civil disobedience, the main reason being that it demonstrates the interdependence of means and ends. One condition for judging the moral sincerity of the agent is his willingness to suffer. The willingness to bear suffering demonstrates the agent's

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<sup>82</sup>Donald Morano, "Civil Disobedience and Legal Responsibility", Journal of Value Inquiry, 5 (1971) 193.

conviction and selflessness. Thus, whether the agent justifies the disobedience through natural law, a priori formalism, or utilitarianism the conditions of nonviolence and self-suffering aid in justifying the act qua civil disobedience.

Having investigated the reasons given for justifying civil disobedience and having examined two conditions for morally justifiable civil disobedience for groups and individuals, it is now possible to see how these might apply differently to groups and to individuals.

## CHAPTER IV

## INDIVIDUAL DISOBEDIENCE VS. GROUP DISOBEDIENCE

With all the restrictions and requirements for proper justification for individual disobedience it would seem to be difficult for the person to carry out justifiable disobedience. Even with the emphasis on the individual conscience and how it is so often justified through natural law, a priori formalism and utilitarianism nonetheless strong arguments can be raised against the individual conscience. The discussion of the limits of the individual disobedient was introduced in the second chapter through the distinction between personal and social civil disobedience.

Personal disobedience, a matter of conscience, often is carried out to preserve the moral integrity of the agent. For example, a devoutly religious person who interprets the command "Do not kill" to mean "Do not engage in armed combat or even support armed combat in any situation" may feel morally obligated to refuse a government's draft call. He may do this, not because he feels that war is wrong for society, or that this particular war is unjust, or that he finds the sight of blood disgusting, but because he would violate his conscience if he killed. The other factors may enter into

his decision but are not the justification or the ground of his position.

Social civil disobedience, on the other hand, is motivated by a positive desire to preserve a good in society, to better society, or to eliminate an evil in society. The action may be directed to defending the right of one person, of a minority, or of the whole. Thus, an individual engaged in social civil disobedience may, for example, refuse to be drafted not because he himself cannot kill, but because he perceives the war as harmful to society or as unjustly waged. The group can fit under both personal and social civil disobedience categories if it is seen as a unit.

In the first chapter we saw that the possibility of the tyranny of the individual conscience led to the positing of the group as a moral agent of civil disobedience. In the second chapter we saw that the three theories used to justify civil disobedience according to the rational and social nature of the individual conscience could also justify group civil disobedience. In the third chapter the conditions of nonviolence and willingness to suffer were added to justify the form of the disobedience and the moral sincerity of the agent. These two conditions seem to be sufficient to counter the dangers of the tyranny of the individual conscience.

The individual conscience which is misinformed or is evil, if given the supreme right to do as it pleases without taking into account the good of the community, is dangerous to that community. To say that it has a prima facie right to disobey any law it perceives as unjust or not to its personal advantage is to look too superficially at the relationship between the individual and the community. For the individual to have a properly formulated conscience it must be concerned with the needs of the larger society.

The Gandhian requirements of satyagraha (truth-force),<sup>83</sup> nonviolence, and self-suffering can be seen as means of enhancing a communal consciousness in the sense of forming and developing a socially aware and concerned individual conscience. Such a conscience once purified through satyagraha, suffering and nonviolence cannot be accused of selfishness or tyranny. Thus, a person purified to act according to the greater good of society but motivated by a sense of duty to follow the truth nonviolently and to obey the highest law would be worthy to be civilly disobedient according to Gandhi.

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<sup>83</sup>Satyagraha, truth-force, is a technique and philosophy of nonviolent resistance which is based in Gandhi's interpretation of karma in the social-political realm, and from which comes morally justifiable civil disobedience. For Gandhi, only the true satyagrahi (agent of satyagraha), trained in nonviolence and purified in his intentions through accepting suffering, can engage in true civil disobedience.



This is not to say that non-satyagrahi character types would not be justified in committing civil disobedience. A Gandhian ethic as applied to the individual does demand strigent requirements. A person of that character type can be more easily justified according to the Gandhian theory, especially since the disobedience comes from a sense of duty and is directed to the good of society.

Whether or not a person is a Gandhian satyagrahi, a Gandhian theory of ethics seems to justify civil disobedience for the individual more easily than any one other theory of ethics alone. It contains elements of the natural law position and of Kantian rationalism. Indeed Gandhi is often viewed as Kantian with his emphasis on the interdependence of means and ends further emphasis on duty and the individual conscience.<sup>84</sup> The Gandhian emphasis on the interdependence of means and ends further guarantees proper motivation and nonviolent action by the individual which the utilitarian position does not guarantee. To justify one's actions on utilitarian grounds without the Gandhian conditions being fulfilled would seem to bring the problem back to the tyranny of the individual conscience.

Both the Kantian and Thomistic positions would

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<sup>84</sup>Iyer, p. 71.

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involve some willingness to suffer by the disobedient, if only for satisfaction of duty to the State through accepting valid punishment for the good of the whole. Thomas is concerned lest the disobedience cause a scandal or disturbance, but nonviolent disobedience would seem to cause less scandal than violent disobedience or rebellion.<sup>84</sup> (It is another question altogether to ask whether Kant, who had such a difficult time condoning rebellion would support non-violent revolution.)

Is it sufficient, then, to have socially-aware individual disobedients justified without trying to justify groups as we have attempted? There is no reason to turn to the groups to justify civil disobedience on the basis of the insufficiency of the individual if the Gandhian criteria are employed. But can we turn to the group on its own merits? And furthermore, can the group be more than the locus for individual civil disobedience, but be considered an agent itself?

In the first chapter the advantages and disadvantages of turning to the group were enumerated. Throughout the paper the fifth way of interpreting the groups's justification was used, i.e., considering it as a moral agent operating in the same way as an individual moral agent. Differences and distinctions were noted, especially

<sup>84</sup>In some cases violent overthrow may be more stabilizing and less damaging. MacFarlane, op. cit., p. 46.

in the decision-making process, the question of rights and obligations, and knowledge and information sharing. To interpret the group as operating like an individual, it is supposed to have a consciousness of its own, a collective conscience, and, therefore, the moral rights and obligations a conscience has.

Many groups already have legal rights and obligations; governmental agencies, international Non-governmental Organizations (NGO's), corporations, and church groups. Other more informal groups and clubs can be said to have lives of their own. Although not bound by external laws, they have their own rules and fundamental purposes and reasons for existing. Granted that the rules and purposes of the group are formed by the individual members acting in concert, (although mutual agreement, consensus, majority vote, compromise, etc.) they are beyond each individual member. This is not to say that groups are ontologically separate from members, for each group is very dependent on its membership and the members' ideas, purposes, degrees of conformity to the rules, relationships with each other and actions. But the group is at least a matrix between the individual and larger society as posited in the first chapter. It is a qualitatively different entity than a mere conglomeration of diverse individuals. There is an agreement and a unity to the decision-making,

whether through consensus, compromise, majority vote, or brute force. There emerges something from this decision-making process which is called the will of the group. To oppose the will of the group constitutes disloyalty, disobedience or dissent. Of course, the will can include the right and obligation of the members to disobey any decision which goes against the individual's conscience. But it is assumed that in the small group there is a general conscience which is formed by and reflected back onto the individual consciences. The will of the group can change, and it is changed by the members, but that does not deny the existence of the common will. If there is no unity of will, then the group dissolves. It can no longer be called a single agent, but is a conglomeration of individual agents.

To posit such an entity invokes frightening images of totalitarianism. Indeed Gandhi, the champion of the individual conscience, rejects the possibility of a mass conscience. Even though Gandhi was the proponent of mass civil disobedience, he could not justify mass civil disobedience on the same grounds as individual disobedience because of his rejection of the mass conscience.<sup>85</sup>

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<sup>85</sup>Iyer, p. 279.

What the individual and the group have in common, according to Gandhi, is the willingness to undergo suffering and the strict adherence to nonviolent methods. Yet the group can be selfish as the individual cannot, for the group at least agitates for the rights of a minority, even if it is the group itself which is the minority.<sup>86</sup> But for Gandhi to imply selfish motives of the group, seems to indicate a certain ambiguity in terms of considering the group as an agent with a conscience. To call a group's motives selfish is to use the language of the individual. It also implies a unity of desire which might imply consciousness of some sort. If the desire is unified, then it is more than the sum of individual desires.

For example, let us say a group of white parents do not want to obey a Federal Law ordering them to bus their children to schools which are predominately black. They band together, and form a strategy of non-cooperation, keeping their children home. The overall purpose is to change the law or to agitate for the rights of the parents to send their children to whatever school they wish. This is a selfish form of disobedience, and even though it may be wrongly conceived, it may be justifiable on Gandian grounds. At least the group of parents are justified in wanting the best education for their

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<sup>87</sup>Iyer, p. 280.

children. Individual parents may have differing desires and reasons for boycotting the bussing order. One parent may think she is starting a revolution against the federal government. Another may be merely concerned for his child. A third might hate blacks, while another thinks this action will benefit both blacks and whites. But as a group these individual reasons are subsumed under the predominate purpose of changing the law and agitating for the group's rights.

(Civil disobedience, as applied to the dynamics of a group, does have a radically different dimension than as applied to an individual.) For while the individual must always decide for himself, must make a conscious, free intelligent choice, it is in the context of the group that this choice is made. The individual operates within a sphere of other persons, and his decisions and actions are seldom merely privative (except perhaps in the case of the hermit or mystic). The social nature of the person demands that there be an interaction of the person and the other. But this is done in the social community.

Yet we cannot speak of community in abstract terms. Even though the disobedient may justify his action by saying, "I do this for the good of humanity, for the good of the world," it is in fact an action done in the

context of the local milieu. The individual's decision to oppose a law set to regulate the larger community is carried out in his local community, or group. Let us take a trivial example: the disobedient act of jaywalking. A person generally follows the rule not to jaywalk, or positively, to obey the traffic regulations. He may obey for a variety of reasons: habit, self-preservation, fear of punishment, sense of duty, half-hearted and unarticulated respect for the law, whatever. But when a person disobeys this particular law it is usually for his immediate advantage coupled with the absence of a coercive force against him. The trite and unreflective justification by the individual may sound like this: "I had to get to the other side, and I did not see any police." The absence of any coercive force gives the person a subjective sense of freedom to disobey the law. No higher justification is sought or claimed. But what is happening here is that this act of disobedience depends on a concrete situation, a relationship between the jaywalker and the present or absent policeman. The person is in a communal relation with the present or absent coercive force. It is not a case of being against the law in general or law enforcement officers in general. The disobedience is carried out in an immediate communal context. If the act of disobedience were different and for a higher purpose, the disobedient individual would still operate within an immediate communal context.

But there is an additional element when the group carries out a civil disobedience campaign. No longer is it the individual acting within but against the large community, but it is a community acting against the larger society (but for the benefit of the larger society). True group, or communal, disobedience requires the unity of will and purpose investigated earlier in this chapter. It entails the social nature of the individuals in the group; it relies on the sharing of knowledge and ideals of the members of the group. It demands a discipline and a willingness to accept responsibility on the part of the members. Finally, it depends on the conscious and free choice of each of the members to support the group, the purpose of the group, and the disobedient action to be chosen by the group.

The group as a whole must allow for the dissent and disagreement of individual members, lest it suffer from the charge of totalitarianism. Indeed, to be consistent with a policy calling for selective disobedience against the laws of the larger society, the group should allow for individual disobedience of any of its actions which violate the individual conscience. But what is presumed with the group as a disobedient community is that it has a single conscience formed by the decisions of its members. Thus, the group has a sense of its rights and obligations. In the case of its disobedience it has



a general right or obligation depending on the situation and the conditions outlined in the previous chapters.

To summarize, the individual is best justified if he fulfills the conditions of nonviolence and willingness to suffer, otherwise the tyranny of the individual conscience generally will preclude justification except through the group. The group need not accept suffering as a condition for disobedience since its ends may be selfish in part. For civil disobedience to be justified for the group, it must have a united will and yet allow the members to follow their own consciences.

## CHAPTER V

## CONCLUSIONS

Given that civil disobedience is justified in some cases, we have tried to pinpoint the conditions for the justification of both individual and group civil disobedience. Acknowledging with Gandhi that there can be no one system of hard and fast rules that apply universally for civil disobedience, nonetheless, I would like to set some guidelines for groups and individuals.

Firstly, individuals and groups have a moral right to disobey directly unjust laws or symbolically unjust laws.<sup>88</sup> Individuals have a right to follow their consciences, and although they have an obligation to form their consciences as accurately as possible, mistakenness does not abrogate the right of disobedience. However, the right of disobedience may be superceded by

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<sup>88</sup> One requirement often given in order for civil disobedience to be justified is that the law disobeyed must be perceived as immoral or unjustifiable. A qualification is needed here. Civil disobedience can be of two types: direct or indirect. Direct civil disobedience means the violation of a law, policy or custom of society which is not itself perceived as immoral but is symbolic or is the only effective means of public protest against the law, custom, or policy opposed. An example of this is the common tactic of trespass or obstruction of traffic in front of buildings perceived by the protestors as being used for immoral purposes, e.g., draft offices, the Pentagon, military and nuclear complexes.

a higher obligation and must be discerned carefully.

The group has a similar right but this right depends upon the nature of the group, i.e., to the degree that it allows freedom of choice in its members and has a united will. A mob is not justified as is a group. The right to disobedience depends also on the nature of the action, violent disobedience being much more difficult to justify than nonviolent disobedience.

Secondly, individuals and groups have a duty to disobey the law in some cases. For the individual this duty can arise from the obligation to obey a higher law or the obligation to follow one's conscience. For the group it can arise from the obligation of the group to the welfare of its members and the good of the larger society as well as the obligation to obey a higher law and to follow the group's conscience. The duty to disobey needs to be justified as taking precedence over other duties.

Thirdly, specific conditions are required for the justification of civil disobedience for both groups and individuals. The truth of the situation should be sought impartially, i.e., the intention is not to prove one's own position, but to seek to resolve an unjust situation. The means are nonviolent; harm is not intended to those who oppose the disobedient agent. The disobedience is directed to the greater good of the society or the minority group.

It can also be for the personal moral integrity of the individual. There is a willingness on the part of the agent to accept suffering, but not necessarily punishment by the State. The ends and means are interdependent, thus the ends do not justify the means. Consequences of one's action are taken into account on a tactical level. On a moral level the individual or group is responsible only for the foreseeable consequences. (Thus, arguments such as "if one is permitted to disobey, all will disobey, therefore society will be destroyed" are insufficient blocks to the right or obligation to disobey.) The disobedience must be freely chosen by the group or individual and not be accidental or coerced. Finally, the justification for the civil disobedience depends on the concrete situation, the unjust form or execution of the law which is opposed and the satisfactory prior use of legitimate channels of dissent.

The nature of the disobedient individual is such that he has a communal conscience, i.e., is responsible to, and aware of the needs of, larger society. The nature of the disobedient group is such that it is both responsible to larger society and to its members. It has a unity of will that it may be called analogously an individual with a social conscience. And it is the matrix of action and decision-making for society and the individual. As such, it can be an effective agent of

civil disobedience and social change through the rational sharing of information and moral purpose and through being a testing ground for an experience of the common good.

Truthful, nonviolent civil disobedience is a difficult task for the conscientious individual, much less for the group. It can be, and has been, misused by groups and persons for selfish gain or as a military tactic. If, however, it is seen in the wider context of satyagraha as morally justifiable action flowing from a sense of duty to larger society based on personal moral integrity, and if it is safe-guarded by the conditions discussed above (especially, nonviolence and self-suffering), then there is hope that it will be seen as a politically acceptable and morally laudable means for solving conflicts in society. For when laws fail (either in their execution, interpretation, or formulation) to serve the people, then some tool besides violent conflict is needed. And what better tool than one which demands individual reflection on moral values, group co-operation, and the formulation of socially concerned consciences.

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