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Violent Civil Disobedience and Willingness to Accept Punishment

Abstract. It is still an open question whether or not Civil Disobedience (CD) has to be completely non-violent. According to Rawls, “any interference with the civil liberties of others tend to obscure the civilly disobedient quality of one's act”. From this Rawls concludes that by no means can CD pose a threat to other individuals' rights. In this paper I challenge Rawls' view, arguing that CD can comprise some degree of violence without losing its “civil” value. However, I specify that violence must not be aimed at seriously injuring, or even killing, other individuals. This would contravene the communicative aspect of CD. The main claim is that what really is important is that the civil disobedients be willing to accept the punishment following their law-breaking behaviour. By doing so, they demonstrate the conscientiousness of their civilly disobedient action. This also shows that they are aiming for future cooperation with the State, and are expecting the State to be sensitive to their concern for the principles of justice.

Introduction.

This paper aims to offer an argument for a form of civil disobedience that does not necessarily rule out the use of coercive means. Focusing on Rawls' notion of civil disobedience, I will discuss what Brownlee (2004) has recently singled out as two “features of paradigm cases” of civil disobedience. One is the *communicative* nature of civil disobedience. By reference to this concept, I will claim that civil disobedience can comprise the use of some forms of violence, insofar as violence is not aimed at seriously injuring, or killing, other individuals. The other feature is the *conscientiousness* of the civil disobedient, by reference to which I will argue that, rather than a commitment to pure non-violence, what really is important for an act of civil disobedience is that protesters be willing to accept the legal punishment following their law-breaking action.

1. Rawls and Civil Disobedience: Communication and Conscientiousness.

In *A Theory of Justice*, Rawls holds that civil disobedience hinges upon the shared conception of justice, accepted by all the members of a political community, which underlies the community itself and allows for social life. This conception consists of the principles that “free and rational persons concerned with furthering their own interests would accept in an initial position of equality as defining the fundamental terms of their association” (Rawls 1999, 10). In Rawls' views, it is to this conception of justice that the civil disobedients *appeal* to when carrying out their protest. When citizens see a violation of the fundamental principles of justice in a law or policy issued by the government, they resolve to engage in civil disobedience as a way to address the majority in power, as a way to *communicate* their concern to them. Since, in doing this, the protesters appeal to the principles that underlie the political organization, civil disobedience represents “a political act” (320): it relies upon those *common* principles of justice that men can require one another to follow, and not upon religion, ideology, or other *particular* reasons, that they cannot expect everyone to adhere to. However, once the appeal to political principles is in place,

non-political motivation might play a supportive role in civil disobedience, by confirming the agents' judgement about the possible injustice.

The notion of "political act" underscores the difference between civil disobedience and conscientious refusal. Both these forms of protest involve non-compliance with a legal injunction or administrative order, carried out non-violently, publicly, and with the willingness to accept the sanction imposed on their acts. Yet, in conscientious refusal the individual demands exemption from a legal obligation considered repugnant to its conscience. He or she does not need other people to act likewise. From this standpoint, it seems clear that conscientious objection is an individual action that does not address the majority's idea of justice. The agent, in conscientious refusal, does not necessarily invoke the convictions of the community, and so its action is not an act "in the public forum". Those who appeal to conscientious refusal seem to be less "optimistic" than the civil disobedients, as they may entertain no expectations to change laws or policies. Further, the "communicative aspect" at the basis of civil disobedience is not necessarily included in conscientious refusal. The conscientious objector, though acting openly to public display, may maintain the reasons and motives impelling him or her in secret, while civil disobedients must make their motives public, in order to show their good intentions and make their protest effective. For Falcon Y Tella, while civil disobedience proposes the education of the public and the realization of political-legal change, conscientious objection limits itself to private exemption, to a sort of "washing of the hands". The objector does not aim at changing the law, and this makes his or her action be not the result of a political strategy, but of a personal attitude. While in civil disobedience the individuals "descend into the public arena" to fight for their ideals, in conscientious refusal they "remain in their ivory tower awaiting immunity, but do not fight for a transformation of the system face to face with other citizens" (Falcon Y Tella 2004, 77).

From these considerations, and Rawls's view that the civil disobedient "addresses" the sense of justice of the society, it seems clear that civil disobedience has a fundamental *communicative* nature. Smart (193) takes this as the trait that distinguishes civil disobedience from other forms of protest: it is a form of *communication*, and it is *intentional*, in that the civil disobedients' first target is to convey to others their conviction of an injustice within the society. In contrast, the conscientious objector chooses to ignore the law but does not necessarily *intend to* bring about a change in society: his primary target is not to communicate his concern to others, although this may ultimately happen. It is also important to specify that the kind of communication enacted by civil disobedience is both *vertical* (seeking to convey a message from the bottom to the top, that is, from the civil society to the State) and *horizontal* (towards the other citizens, in order to make them aware of the possibility of an injustice) (Smith 2004, 363).

Civil disobedience is an *other-directed* activity (Brownlee 2004, 343), that requires a speaker, a hearer and a response that the speaker intends to elicit from the hearer.¹ The "response" may be the acquisition of the belief that a law, policy, or public attitude is wrong, and that appropriate action should be taken. In order to get a response, the speaker needs to choose the right means of communication: yet, it is also necessary that the hearer be receptive to the message conveyed by the speaker. That is to say, the success of civil disobedience depends as much upon the civil disobedients (the speaker) as it does upon the majority in power (the hearer). Rawls makes this clear when he specifies that civil disobedience is possible only in a *nearly just society*.

Rawls defines as "nearly just" a society that is "well-ordered", regulated by a constitution based on the shared conception of justice, but in which there is the presence of "some degree" of injustice (320). In

that context, the civil disobedients think that the majority in power have “diverted” from the conception of justice that regulates the constitution, but that it may be willing to reconsider its decisions whenever citizens would manifest concern about a possible injustice. That is, in a nearly just society citizens would still accept the majority in power as legitimate, and would still believe in *future cooperation* with it: they would aim at convincing the government of the necessity to change a law or policy. In essence, they would assume that *communication* is possible.

Rawls introduces this proviso to define the political context where civil disobedience may be appropriate. Obviously, under a Stalinist or Nazi regime, civil disobedience would barely produce any result: it would inevitably fail as a communicative act, due to the government’s unwillingness to receive the message sent by civil disobedients. Further, it would be very unlikely that citizens would acknowledge the possibility of future cooperation with a similar government. A totalitarian society might require, and justify, the appeal to more extreme forms of protest, like guerrilla or revolution, to re-establish the principles of justice.

Yet Rawls’ notion of “nearly just society” seems too restrictive. It has been pointed out² that between Nazi Germany and an ideally just society there is a lot of middle ground. Both Gandhi and King acted in social contexts that were clearly not “nearly just”; nevertheless they preferred to resort to civil disobedience rather than to other forms of protest. Rawls seems to be aware of this fact: he does not deny that a nearly just society may involve “serious” injustice, that those practicing it may be “immovable and apathetic” (330-331), willing to enforce the injustice with the use of illegitimate force. The problem seems to be that it would be hard to define a society like this as “nearly just”. Hence, it seems reasonable to argue that civil disobedience could be a viable option also in a society that is not, in the Rawlsian sense, “nearly just”.³

Together with being a communicative action, civil disobedience is a *conscientious* action. “Conscientiousness” implies that the civil disobedients have a *sincere and serious* belief that a law or policy warrants re-examination by the government, and that the risk of an injustice allows for a law-breaking action in order to communicate such a belief (Brownlee 2004, 341). It is *sincere*, for the individual refers to the principles of justice and not to its particular values (religion, ideology, etc.); and it is *serious*, for there is genuine concern about a diversion from the shared conception of justice that underlies the political society. Under these circumstances, individuals would be *morally inconsistent* in denying having reasons to engage in civil disobedience against that law or policy. Hence, they resort to this form of protest as a way to *communicate* to the rest of society this belief, thus showing the sincerity, seriousness and moral consistency of their behaviour, that is, the conscientiousness of their action. It is important to clarify that, *for a belief to be sincere and serious, it does not need to be true*: it might be that the civil disobedients misinterpret the situation, and wrongly see an injustice where there is none. Still, their decision to engage in civil disobedience would be conscientious, although they may be wrong in seeing a particular law as unjust.

Rawls highlights the conscientious aspect of civil disobedience when he defines the latter as “a political act”. In acknowledging the value of the public conception of justice underlying the society, the disobedients perform a law-breaking action that, at the same time, remains *within the limits of legality*. The disobedients do not aim to protest the whole system, or to topple over the existing government: they want to denounce a violation of those principles of justice accepted as fundamental by the whole community. Therefore, while breaking a particular law to protest, they still want to show *respect for the*

legal system as a whole. This is why Rawls points out a necessary requirement for an action of civil disobedience: *protesters must be willing to accept the legal consequences of the law-breaking action*. For an action to be an instance of civil disobedience, the agents must be aware that they are bringing about a violation of the law: since the constitution forbids law-breaking actions and prescribes punishment for those who commit these crimes, the civil disobedients must accept the punishment and not try to escape it.

2. Non-violent Vs. Violent Civil Disobedience.

It is normally accepted that civil disobedience is a “peaceful” action, one that does not entail violent acts. Rawls maintains this when he writes that engaging in violent acts likely to injure or hurt is not compatible with civil disobedience. “While it may warn and admonish, [civil disobedience] is not itself a threat” (322). Rawls does not rule out the necessity of violent protests, in some contexts. Yet, in those contexts we would not be talking about civil disobedience, since coercion and violence, according to him, must not be employed in it.

The proviso of non-violence has been criticised by many theorists, who have argued that some degree of violence within civil disobedience may be allowed. The main difficulty lies, indeed, in what we mean by “violent act”. According to the traditional view, violence is equated to the illegitimate use of physical force applied to people, or things, with the intention of causing harm. Falcon Y Tella (2004, 57-59) underlines the fact that in the 1960s there were two opposed factions, a moderate one, affirming that violence should be excluded entirely from civil disobedience, and a radical one, taking violence as permissible against the State, its representatives, and third parties directly or indirectly linked to the state. Members of the “radical” faction held that civil disobedience, while “peaceful”, should not be equated with “non-violence”. They assumed that, although civil disobedience cannot aim at moral or physical destruction of the adversary, a certain risk of violence -on occasion and always as a secondary condition- is to be accepted. Thus, according to them, the main issue would be choosing carefully which methods could achieve the limited objectives aimed for. It is also crucial that the use of violence be proportional to the injustice that one is trying to abolish. It is on this “radical” faction that I will focus my discussion.

Civil disobedience can be either “persuasive” or “coercive” (Rosenberg 1981, 45-62), the difference resting upon the means used to attain the target. The former kind of disobedience appeals to public conscience, the latter involves the use of threats. An example of *persuasive* civil disobedience would be the temporary obstruction of a public space, with the aim of making the public opinion aware of a possible injustice in the society: that is, to send a message, to *persuade* the society, and the majority in power, of the necessity of a change. Coercive civil disobedience, on the other hand, seeks the attainment of its objective not by “persuading”, but by “threatening the rest of society with the dire consequences the disobedients will bring about unless their goals are attained” (Falcon Y Tella, 2004, 61). For example, the prolonged or repeated obstruction of public spaces, or the sending of false recruitment papers in order to oppose military call-up, as during the protest against the war in Vietnam. The attitude of this action is not to persuade the public, but to cause an inconvenience in order to *coerce* the State into accepting the demand of the disobedients.

Given Rawls’s specification mentioned above, we should reject coerciveness since, being a form of *threatening* activity, it is incompatible with civil disobedience. Smart has proposed an account of civil disobedience that, though built on Rawls’s model, does not rule out every form of coercion and, therefore, of violence. With reference to an argument proposed by Ted Honderich (Honderich 1976, 109-

115), Smart distinguishes the *coercion of force* from the *coercion of persuasion*. In the former case, the victim of coercion is presented with a choice between two alternatives, though only one is humanly practicable: e.g. if a burglar points a gun towards the victim ordering her to surrender her wallet, the victim is faced with a threat that offers no possibility for an actual choice. This would constitute an instance of coercion of force. In the latter case, a director threatening to resign if the board votes against a takeover would be exercising “coercion of persuasion”: the board would still be in the condition to choose rationally between two alternatives. According to Honderich, a form of coercion of persuasion would be permissible in an act of civil disobedience: yet this would not apply to coercion of force, as this would be appropriate to an act of revolution, not of civil disobedience. Smart holds that *both* forms of coercion can be performed in an act of civil disobedience. He thinks that Rawls’ and Honderich’s refusal of the coercion of force is due to the fact that they fear that other kinds of goals may accompany the act – like seizure of power, overthrow of all authority- that are typical of revolutionary actions. Smart does not share this fear, or at least recognizes that coercion of force does not aim exclusively at revolutionary goals. Civil disobedients may resort, for example, to the destruction of missile bases to prevent the implementation of the government’s policy to remain a NATO member, and nothing more. This would be an instance of coercion of force, in which protesters may make perfectly clear that the only policy they do not want the government to pursue is that particular one. Apart from this, they would have no aim for overthrowing the elected government. They would be applying coercion of force to the State: yet, their action would represent a case of civil disobedience, which seeks for partial, not total, change.

These assumptions lead us to the next step. As I said, Rawls rejects coercive civil disobedience, taking “persuasion” as the only strategy that civil disobedients have to employ. Smart, as I said, denies Rawls’ opinion, pointing to cases in which coercion would not undermine the value of an action as an instance of civil disobedience. Furthermore, we need to consider that, on a deeper analysis, it seems hard to separate “persuasion” from “coercion”. Most of the time, the former seems to require the latter.

Let us think, for example, about the case of civil disobedients that occupy a public space, with the aim of leading the government to re-examine its policy. Rawls allows this kind of protest: yet, it may be possible to argue that this is not “pure persuasion”, rather a form of “mild coercion”. In fact, even those forms of civil disobedience that satisfy Rawls’s conditions seem to contain some elements of coerciveness. As both Morreall and Greenawalt underscore, most of the times *persuasion involves coercion*.

To clarify this point, let us consider Gandhi and M. L. King’s strategies of non-cooperation, two passionate endorsements of the principle of non-violence. Both of them aimed at *persuading* the oppressor of the necessity to change a policy: yet both of them recognized that the inconvenience caused to the oppressor might have been a necessary means to focus their attention on the issue of justice (Greenawalt, 179). King’s words seem to give support to this view: “Non-violent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is *forced* to confront the issue.” (King, 71, emphasis added). It seems that *pure appeals* to persuasion, in civil disobedience, are rare: some form of pressure is usually present. There is not a big gap between trying to persuade the majority that a certain law is unjust, and trying to persuade them that enacting a certain law will be “inconvenient”.

Furthermore, if we denied civil disobedience any form of coercion, there would not be much left. We may even wonder why we need to break a law, if what we are aiming for is simply the persuasion of the other part. We have to reject, of course, what Morreall calls “naked coercion”, that is, coercion applied to

unreasonable demands, as in the case of “unconscientious” civil disobedience, i.e. the case of disobedients acting not from a sincere and serious belief that a law is unjust, but from more particular reasons such as religion, ideology, or even self-interest. In this case, the act would not be civil disobedience; rather it would constitute the illegitimate attempt to impose one’s view upon the majority. Nevertheless, when the reasons for civil disobedience are genuine, clear and coherent, i.e. when there is the sincere and serious belief of an injustice, we may be allowed to put pressure upon the government using coercion, be it coercion of persuasion or of force.

Recognizing the possibility of coercive civil disobedience is still not enough to justify the use of violence in it. Even though some form of violence might be required, under certain conditions, in order to make one’s own voice heard in the public arena, still it is hard to draw a line between a “violent” and a “non-violent” action.

Gandhi offered an interesting interpretation of violence in civil disobedience, described in Haksar (1986, 156): *there is no violence*, Gandhi writes, *when there is no infraction of a duty*. He presented the example of milk drivers that decide to cut off the milk supply because of a grievance with the local municipality: in this case, endangering people’s life, they would be guilty of a crime against humanity. However, if the milk drivers were underpaid by their employer, and were consequently starving, they might be justified in refusing to drive the milk carts (had alternative legal ways to get better wages been previously tried without results) even though their action may cause the death of babies in the city. This is because it was not part of their duty to supply milk to children under every circumstance. Equally, even if India’s boycott of British goods would cause the suffering of people in Lancashire, the Indian population could not be accused of violence against those people, since India never bound herself to maintain Lancashire.

Morreall analyzes in detail the notion of violence and the role it may play in civil disobedience. The essence of violence, he writes, does not lie in the use of great physical force, contrary to what, for example, Hugo Adam Bedau (1961) has argued. For Bedau, the essence of violence would be summed up by actions such as “deliberately destroying property, endangering life and limb, inciting to riot” (656). Morreall objects to this view, by stating that, on the one hand, in many cases great physical force is used against people without the action being violent; on the other, that many instances of violent actions involve no physical force at all.

For Morreall, violence is whatever violates the human being in its value, integrity, sacredness. This value is defined by what he calls *prima facie rights* of the individual: the right to *one’s own body*, violated by physical violence; the right to make *free decisions* and carry them out, contravened by psychological violence; and the right to own and control *property*.

Morreall criticizes the fact that Rawls has overlooked the second form of violence, recommending that civil disobedience respect the first and the third of these rights, but not the second. Law protects *all* of these rights, furthermore psychological violence can often produce more damage than physical violence, and we might argue that it deserves more protection, on a hierarchical scale, than the right to property. Nonetheless, Rawls and others seem to be less worried about violations of the right to psychological freedom. This is not true, it seems, as Rawls writes that “*any interference with the civil liberties of others*” obscures the quality of civil disobedience, and the aforementioned right to make free decisions and carry them out is part of these liberties. Morreall also sees inconsistency in the fact that Rawls forbids acts likely to damage one’s possessions since they violate the right to property, but takes as justifiable other forms of attack against this right, such as limiting the control over one’s own property

through illegal trespassing.

According to Morreall, it may be justifiable to violate the rights just mentioned if a higher moral claim “supersedes” them. Under normal conditions, it is not permissible to violate, for example, a person’s right to determine what is done to one’s own body, i.e. to use physical violence against someone. Yet, in situations of self-defence, we are justified in using violence against the others. By attacking me, my opponent cannot appeal to the right to the preservation of his or her body, by violating mine: that is why we consider violence aimed at self-defence as being (at least in part) justifiable.

The same would apply to the following case. Imagine I live in the US of the 1850s, where anti-slavery legislation has not yet been enacted, and I see a slave running away from the slave-owner. If the latter had almost caught up with the former, I may be justified in hitting the slave-owner to help the slave escape. I would be violating both the law of the time, which orders me to help the slave-owner, and the slave-owner’s right to her own body. Nevertheless, I would be justified in acting in this way since the slave-owner’s *prima facie* right to bodily security has been superseded by a higher moral claim, that is, my considering immoral the law that allows for slavery.

For Morreall the same reasoning could apply to civil disobedience. If the State promulgates a law that I consider seriously immoral, I would be justified in using violence, since the higher moral claim behind my action would supersede those rights.

Yet, he goes too far. Although self-defence allows for physical violence, this cannot be taken as an argument to justify any infringement of the right to one’s own body. Civil disobedience could make use of violence against one’s property, but not against one’s own safety. Let us suppose that the slave-owner is catching up with the slave, but is out of my reach. Would I be justified in trying to stop him or her by throwing stones? Could I use a gun and shoot at the slave-owner, given the higher moral claim justifying my violation of the right to one’s own body? I am afraid Morreall might say “yes”. We ought to remember that there is a difference between posing a threat to a person’s safety, and causing effective physical injury to others. The former may be civil disobedience, but the latter is closer to terrorism; Morreall’s view might justify both.

We need an argument to define to what extent an act of civil disobedience can be violent. I endorse the view that civil disobedience can comprise some degree of violence, when it goes against a strong injustice, i.e. when, to use Morreall’s words, it is backed by a moral claim that is “higher” than the respect due to some rights. However, in what follows I intend to show that under no circumstances can civil disobedience allow for *direct physical harm*, by which I mean aiming at injuring either the opponents, or third parties.

3. How Violent Can Civil Disobedience Be?

I assume that the use of violence that aims at injuring or killing others contravenes the communicative aspect of civil disobedience. My argument is grounded on Kant’s Formula of Humanity:

So act that you use humanity, whether in your own person or that of another, always at the same time as an end, never merely as a means (G 429; 436).

I propose to apply this Formula to the fundamental communicative nature of civil disobedience.

According to what I have said above, the civil disobedients intend to communicate, to representatives of government and to the rest of society, their concern about a possible violation of the principles of justice that underlie the constitution. In every communication, the speaker acts on the assumption that the hearer is in possession of its own rational faculties, i.e. that it is able to receive and understand the speaker's message. Clearly a communication with a subject that may not understand what we say, e.g. because of a temporary or permanent impairment of his or her faculties, would be seriously biased and probably doomed to failure (note that this is different from cases where the hearer simply *refuses* to understand the message). Therefore, the agents that decide to engage in civil disobedience do so because they think that the communication could be successful, that is, that the State and the rest of society, being rational agents, will be able to understand the message.

I now want to distinguish cases in which violence is aimed at damaging someone's property (e.g., the anti-war protesters that damage a weapons factory to protest against the State's military policy) in order to communicate a message, from cases in which violence is aimed at causing direct physical harm to someone (e.g., protesters that kidnap and kill a soldier to protest against that same policy) for the same purpose.

In the first type of case, the protesters undoubtedly act violently, causing a serious inconvenience to others, in order to have their message heard by the State. They violate property rights, in order to carry out their protest against an unjust law: hence, in some respects they use the persons whose rights they violate as a *means* to get to their end. In this case, the disruption caused for the State (i.e. its representatives) via inflicting damage to its property (the weapons factory) seeks to make the State pay attention to the protesters' message. Nevertheless, the State is *also treated as the end* of this action, since the disobedients appeal to its rationality: they assume the State will understand the reasons behind that violent action (i.e. the concern about an unjust policy). The protesters still look at the State as their interlocutor: they aim at its rationality, that is, they aim at the State *also as the end* of their action.

The same does not happen in the second type of case I have proposed. This use of violence would disregard the individual as a rational being: the protesters would treat the person they injure merely as the means to force the State to listen to their voice. In no way would they be appealing to the rationality of the person they injure or kill. This use of violence would treat that very individual, and the rationality it embodies, *merely as a means* to a further end, not also as an end in itself.

Applying Kant's Formula of Humanity to the case of violent civil disobedience, we understand that violence aimed at injuring other people contradicts the very nature of civil disobedience as a communicative act. As I said, those who decide to engage in this form of protest think that the communication with the State can be successful. They think so for they take the State as a rational interlocutor in the communicative process, able to understand our message. If, then, we discard the value of human rationality by treating someone merely as a means for our ends, and not also as a rational agent, we discard the communicative nature of civil disobedience as well.

Raz has highlighted another interesting point in favour of the justifiability of violent civil disobedience. As also noted by Morreall, there are many instances of harmful actions in which there is no physical contact. If ambulance drivers were to go on strike, their action, though non-violent, would cause great harm to the population, maybe greater than a violent act would. This seems to go against the Rawlsian notion of non-violence as a guarantee of basic civil liberties. Kimberley Brownlee (2006, 8) also challenges Rawls on this point, affirming that the use of violence, i.e. of coercive measures, can support,

rather than undermine, the communicative aspect of civil disobedience. There is no general reason, she writes, why violence should not be available to a person that engages in civil disobedience. Such violence may be necessary to preserve or reestablish the rights and civil liberties that unjust laws have suspended. This view would be consistent with the criticism I made before, about the Rawlsian notion of a “nearly just society” as the appropriate context for civil disobedience. As I said, the gap between the powerful group and the oppressed one may be considerable; hence, employing some form of violence may be necessary in order to try to bridge this gap.

These considerations allow us to draw the following conclusion: a certain degree of violence does not deprive civil disobedience of its “civil” status. As I have tried to show, some (not all) violations of civil liberties, which Rawls forbids as a whole, are justifiable, if the disobedients are moved by a genuine conviction of a grave injustice in the society. Sometimes the only way to have one’s voice heard is to coerce the opponents to listen and this may require the use of force. Nonetheless, no violence aimed at injuring or eliminating the opponent is acceptable as part of a civilly disobeying action, since it would contravene the fundamental communicative nature of civil disobedience.

This is not an endorsement of violent civil disobedience. On the contrary, violence must always be discouraged, for three main reasons that Raz singles out. First, we must aim at avoiding every form of harm to others, as much as possible. Second, the use of violence in situations in which it may be justified would encourage violence in cases where it would not be justified. Third, the use of violence has a high emotional impact, and in using it, one may antagonize potential allies and confirm many opponents in their opposition. Given these admonitions, I hold that non-violence does not constitute a *necessary* requirement for civil disobedience.

4. Civil Disobedience and Willingness to Accept Punishment.

What is really necessary, for an act of civil disobedience, is the disobedients' willingness to accept legal punishment. According to Rawls, civil disobedients must be willing to accept the legal consequences of their law-breaking act and not try to avoid them (322). By doing so, the disobedients express “disobedience to law within the limits of fidelity to law, although [civil disobedience] is at the outer edge thereof” (ibid.). Broadly speaking, the argument runs as follows: those who resort to civil disobedience choose to violate a law; hence, they commit an illegal action. Since law-abidance is fundamental for the subsistence of the political organization, by accepting the punishment for the illegal act the civil disobedients demonstrate their respect for the Law in itself, and the exceptional character of their law-breaking behaviour. This would give moral support to the civil disobedients’ behaviour: although being based on an illegal act, it would turn out to be an endorsement of law-abidingness.

A famous defence of the unconditional value of law-abiding is in Plato. In the dialogue *Crito*, Socrates makes it clear to Crito that he *must* accept the capital punishment, for this is what the Laws of the State tell him to do, and that, like him, each individual has the moral obligation to obey the laws. Plato’s conclusion is that the refusal to obey the laws of the State is morally wrong. Socrates accepts the requirement to give up his life, since this is what the law tells him to do, and the law deserves obedience always. The civil disobedients have to accept the punishment following their illegal action, for the same reason.

This idea has echoes in Martin Luther King:

In no sense do I advocate evading or defying the law (...). This would lead to anarchy. One who breaks an unjust law must do it *openly, lovingly*, (...) and with a willingness to accept the punishment. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law (King, 74).

A strong critic of the necessity of accepting punishment for civil disobedience, Zinn has objected to Plato and King's arguments in support of it (Zinn, 1991). He casts doubt on King's true commitment to the idea of showing "the highest respect for law". King states that he goes to jail "to arouse the conscience of the community over its injustice". There is no appeal to the rightness of the law, or to the Platonic obligation to obey to what the law prescribes. King accepts being arrested in order to give his case more resonance, since the arrest of a famous person like him would "arouse" indignation in the community, thus increasing public exposure and attention upon the issue. Hence, for Zinn, *King accepts punishment for practical purposes, not for moral or philosophical reasons*.

Furthermore, Zinn holds that accepting punishment for civil disobedience would be *contradictory*. The contradiction would lie in the fact that the civil disobedients disrespect the law in the first place, with their law-breaking action, and then accept the legal punishment with the aim of showing that they respect the law itself. Why, asks Zinn, was Socrates willing to disobey the authorities by preaching as he liked, but then was not willing to go against the laws when a divided majority sentenced him to death? "Why is it all right to disobey the law in the first instance, but then, when you are sentenced to prison, start obeying it?" (Zinn 1991, 914). The same puzzle is underscored by Storing, who thinks that an open refusal to obey an unjust law, with the willingness to accept punishment, shows respect for law "in the same way that an open insult to a degraded woman, with a willingness to be slapped for the insult, shows the highest respect for womanhood" (Storing, 93). Yet, Storing proposes a possible argument for the acceptance of punishment in civil disobedience, which I discuss below, while Zinn takes a very negative stance against it. The civil disobedients do not need the willingness to accept the legal consequences of their conduct; neither do they have to worry about showing respect for the law. As King apparently shows, going to jail can have a practical value, i.e. giving more resonance to the case of the disobedients, but not a moral value, i.e. giving a moral justification to their action. The refusal to obey a law deemed unjust would already be enough for the action to be morally acceptable. Since it seems contradictory to violate the law and then to seek to show respect for it by accepting the punishment, and since the disobeying action is aimed at a law issued by the State, the civil disobedients must carry on the rift with that State by refusing to obey the law that imposes punishment. With reference to those who protested against the war in Vietnam, Zinn writes:

Refusing to go to jail makes a different kind of statement: "The system that sentenced me is the same that is carrying on this war. I will defy it to the end. It does not deserve my allegiance". (917)

Zinn takes civil disobedience as a way to disassociate oneself from a State's unjust policy. The disobedients think that the law they violate is wrong, and that the violation of that law does not deserve punishment: therefore, they take the law prescribing punishment for that violation to be unjust as well. "The principle is clear. If it is right to disobey unjust laws, it is right to disobey unjust punishment for breaking those laws" (918).

This seems to be a serious issue for those who endorse the Rawlsian principle that civil disobedience requires the willingness to accept punishment: if the individual's concern were about respecting legality in itself, then there would be no civil disobedience, since civil disobedience entails violating the law. However, Zinn's conclusions are built on his misunderstanding two aspects of civil disobedience. The first derives from the fundamental communicative nature of civil disobedience: as I have argued before, citizens that decide to engage in this form of protest consider the majority in power as still legitimate. They do not want to overthrow it and to establish a new government: nor do they aim to "defy it to the end", as Zinn holds. Their target is to convince the majority to re-examine a particular law or policy. The civil disobedients address the majority in power with a forward-looking attitude: they accept the principles underlying the State, and aim for *future cooperation* with it (Sabl 2001).

Zinn overlooks this aspect of civil disobedience, and in so doing misinterprets the role played by the willingness to accept punishment. As Storing points out (95), when the disobedients accept the legal consequences of their action, they are not showing respect for the *law in general*, but for the *system of laws* underlying the State. The civil disobedients protest against a particular law or policy, but accept the political system as a whole, although that system has produced the law they are protesting against. Thus, they accept the punishment imposed by the law, to show they still hold cooperation with the State to be possible. This is why "militants" do not accept punishment: they believe this would "play into the hands of forces that [they] believe cannot be trusted" (Rawls 320). The civil disobedients, in contrast, believe that the majority can still be trusted, for it may still be sensitive to their appeal to the shared conception of justice underlying society.

The other aspect Zinn does not pay enough consideration to is the conscientiousness of the civil disobedients. As said above, those who decide to carry out an act of civil disobedience do so from a sincere and serious belief that a law or policy deserves re-examination by the majority in power. Hence, they are motivated by political reasons (i.e., the concern about the shared conception of justice), not by personal interests. Accepting the legal consequences of their action, the civil disobedients show the seriousness of their commitment to the shared conception of justice, to defend which they are willing to accept punishment. This would also prove that, inasmuch as they still trust the majority, the majority can still trust them, and that, once again, future cooperation is still possible.

What is more important is that when the civil disobedients show, through acceptance of legal punishment, the conscientiousness of their behaviour (i.e., the seriousness of their commitment to justice) to the rest of society, they attain a crucial result: they shift the moral burden onto the majority in power. They make clear to the majority that their concern for a possible violation of justice is sincere and serious: it is now the responsibility of the State to show the same concern for justice, by accepting that it should reconsider that particular law or policy against which the civil disobedients are protesting. If the State did otherwise, for example resorted to extreme repression, it would progressively forfeit the right to be treated as a partner for future cooperation. If the majority in power insisted on rejecting the requests of the civil disobedients, it would finally appear to have lost that sense of justice that grounded the political community: it would then justify the resort to more extreme forms of protest, with the aim of re-establishing the principles of justice upon which the whole community has agreed.

There is an important difference between the kind of civil disobedience that Zinn upholds and the one I defend here. Both these views derive from the question "Do we have to obey a system that is not able to guarantee justice?". For Zinn, the decision to resort to civil disobedience expresses a negative answer to this dilemma: in the view presented here, it expresses a positive one. From Zinn's perspective, civil

disobedience aims at defying a system that is not entitled to citizens' allegiance any more: from the perspective I propose here, civil disobedience, with the acceptance of punishment for the law-breaking behaviour, demonstrates that "the system" still deserves citizens' allegiance. This is because citizens still expect the representatives of the State to regard justice as the value that allows society to survive. Hence, they assume the State will pay attention to their concern about a possible diversion from justice. Once again, the willingness to accept punishment highlights a sense of trust in the State, which sets civil disobedience apart from more radical forms of dissent.

Conclusions.

Civil disobedience as communication implies that both the protesters (the *speaker*) and the State (the *hearer*, together with the other citizens) will act out of concern for justice. Yet, it seems that, because of the growing lack of responsiveness from State's authorities, sometimes the only way to have one's voice heard is to resort to some form of coercion. Under this perspective, protesters that damage private properties, or cause other more or less serious violations of citizens' liberties, may be doing something that does not contravene the dictates of civil disobedience. The risk may be that allowing some forms of violence might pave the way to allowing any form of violence. I hope I have offered an argument to answer this criticism. I have emphasized that the key aspect for an action of civil disobedience is the willingness to accept the legal punishment following the act of law-breaking. Such willingness demonstrates civil disobedients' commitment to the principles of justice underlying the political community, and their desire to cooperate with, rather than defy, the State, and the rest of the community itself. Civil disobedience makes sense as long as citizens view the State as a suitable partner in a communication. A State that repeatedly denies attention to citizens' requests may finally jeopardize their trust in its authority. This may make civil disobedience pointless, and justify more extreme forms of protest. Citizens that resort to civil disobedience are sending a warning to the State: they will not be "civil" forever.

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Notes.

1. It may be objected that pointing a gun to somebody's head to have her money is an other-directed, communicative action too. That is, any form of protest, from passive resistance to terrorism, may have a communicative nature. As I show immediately below, in civil disobedience communication is aimed at cooperation, a feature that more extreme forms of protest do not possess.
2. See Sabl (2001).
3. Sabl considers societies in which justice is not "homogeneously" present. He proposes the expression "piecewise just", to indicate those in which justice is prevalent within a powerful group, but is practiced to a very small degree, if ever at all, in dealing with an excluded or oppressed group. In a piecewise just society, though divided it could be, there would still be the aim of the oppressed group to bridge the gap with the powerful one and realize, eventually, a "just" society: there would still be hope for future collaboration between government and citizens. Such would be, for example, the type of society in which Gandhi and King acted. See Sabl (2001), p.314. Although this would not imply that they accept that punishment as right, that is, as deserved for an unjustified act (Rawls 322).

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