

Revitalizing democracy through civil disobedience

Revitalizando a democracia através da desobediência civil

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ABSTRACT

Civil disobedience is a widespread form of political protest used by minorities to make their voices heard in democratic societies. It is a mechanism of participation in the process of shaping public opinion, and of intervention, by via negativa, in the legislative process. In exercising it, citizens can assert their public autonomy when faced with serious decisions that, from their perspective, undermine the values on which society is based. This form of political dissidence is thus a highly valuable device in order to revitalize the participatory fundamentals of representative democracy.

Keywords: civil disobedience, representative democracy, political participation, citizenship, social change, Arendt, Habermas.

RESUMO

A desobediência civil é uma forma generalizada de protesto político usado pelas minorias para fazer ouvir suas vozes em sociedades democráticas. Trata-se de um mecanismo de participação no processo de formação da opinião pública e de intervenção, via negativa, no processo legislativo. Ao exercê-la, os cidadãos podem afirmar sua autonomia pública diante de decisões sérias que, sob sua perspectiva, minam os valores em que a sociedade se baseia. Esta forma de dissidência política é, portanto, um instrumento altamente valioso para revitalizar os fundamentos participativos da democracia representativa.

Palavras-chave: desobediência civil, democracia representativa, participação política, cidadania, mudança social, Arendt, Habermas.

Responding to the democratic impulse can be seen as an attempt to reduce the distance between those who make political decisions and those who are affected by these decisions. Public debate about the different options, with arguments for and against freely put forward by everyone who is affected by and involved in their possible implementation, is necessary to give political agreements a genuinely democratic complexion (see Velasco, 2006). In most current democracies, however, those possibly affected by the decisions are neither taken into account nor given a voice. When official channels of deliberation and participation are in practice closed off to most citizens, it is then that the potentials of civil disobedience become more visible: civil disobedience presents itself as a means to non-violently channelling the prevailing discontent into the

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real functioning of democratic systems and, therefore, as an instrument to guarantee democratic participation in matters of general interest.

Democracy can be characterized as a form of political organization that converts the expression of popular will into binding regulations for members of society as well as the whole of state powers and organs. So that this conversion is carried out legitimately, in the complex process of creating laws and making decisions, it is necessary to consider not only strictly institutional aspects, but also non-institutionalized elements that are conducive to the most direct participation of citizens. The realization of the principle of popular sovereignty—on which the democratic system is based—requires numerous conduits of expression that are much broader than those provided by the customary institutional channels of political representation.

Although the principle of popular sovereignty, insofar as it conceives of the citizenry as a legislative power and even a constituent power, is closely related to the conception of laws, its mere abstract citation does not sufficiently explain the genesis and transformation of laws, complex phenomena that are not clear from the perspective of the legislative process in its institutional dimension, that is, the creation of laws by the state. Democracy exists on the basis of suppositions that neither institutions nor laws create, but instead only channel. Parliament, which embodies ordinary legislative power as an organ that represents popular will in constitutional systems, is, from the point of view of the normative self-understanding of democracies, the most renowned sounding board in the public sphere of society, where the proposals that are afterwards debated in legislative chambers are actually generated. If this is so—and from a regulatory point of view, at least, it is—the genesis of opinion-shaping is found in non-institutionalized processes, in different kinds of associations (trade unions, churches, discussion forums, neighbours' associations, non-governmental volunteer organizations, etc.) which make up civil society, a genuine network of networks (see Cohen and Arato, 1992). Therein lies the dynamism of the social corps, society's infrastructure for the shaping of public opinion and the formulation of needs; civil society is the first instance of the creation of concrete political proposals and, most importantly, for the control of the practical execution of constitutional principles.

However, in modern democracies, political parties—with their bureaucratic structures and under the tight control of their highest-ranking leaders—have in practice monopolized these functions, denying citizens the opportunity to define the election choices and to oversee the execution of their programs. From this negative experience arises the conviction that we need other forms of citizen participation and alternatives for collective action that do not necessarily pass through the filter of conventional hierarchical parties.

Throughout history, small groups of citizens have played a decisive role in the expression of the common will. In fact, some important changes in mentality have resulted from the

action of critical minorities mobilized by a determined will to influence society. Put another way, "social innovations are frequently advanced by marginal minorities, although afterwards they are generalized to the whole of society at an institutional level" (Habermas, 1990, p. 129). In modern societies, where opinion is directed (and frequently manipulated) by the mass media, the criteria of the majority, based on a mere addiction to votes, is not always the criteria of normative rightness, nor a guarantee that justifies its content in terms of general interest. Only some minorities that hold non-conformist stances are able to question dominant acritical generalizations at a given moment. The protest of a dissident conscience, organized in a social movement, is an important point of mobilization that can culminate in the creation or reform of a law or in the design and implementation of new policies. It is precisely from this perspective that it is possible to understand the phenomenon of civil disobedience in advanced societies as a touchstone of the legitimacy of democratic law.

Until a couple of decades ago, a large part of the European literature on the subject focused on the legal implications of civil disobedience—in particular, possible determinations of the legal code in response to a violation of one of its laws—and the moral suppositions of civil disobedience—in close relation to the classic question of the reasons for obeying the law. However, and with all due respect for these dimensions, civil disobedience is essentially a type of social action with a specific political goal carried out and publicized by an organized group of individuals, as highlighted by the North American literature that grew out of the activities of the civil rights movement in the 1960s (e.g., Bedau, 1969; Arendt, 1972). In the meantime, this emphasis on its political aspect has become routine, to the extent that civil disobedience has come to form part of the contemporary political lexicon.

On the specific political nature of civil disobedience

Following the personal example and doctrine of different figures like Thoreau, Tolstoy, and Gandhi, throughout the last half century there has been a dramatic increase in open disobedience to the law in democratic societies, and not exactly by selfish delinquents, but by persons inspired by venerable ideals such as justice, equality, liberty, peace, and environmental conservation. This trend became more common after the revolutionary hopes associated with socialism as an alternative to capitalism were liquidated—a liquidation whose greatest emblem is the fall of the Berlin Wall—and the consequent abandonment of the most radical forms of rebellion and dissidence. Since then, civil disobedience has been incorporated as a strategy of direct action by different political factions such as the multi-faceted anti-globalization movement, defenders of immigrants' rights, conservative groups opposed to the legalization of same-sex marriage, and mobilizations denouncing the abuses of banks in mortgage

settlements (see Fernández Buey, 2005, p. 8-11). In times marked by a profound economic crisis in which numerous political regimes evolve towards post-democratic authoritarianism and technocratic governments multiply, while social inequality increases, new forms of social resistance appear to be vindicated by social movements of a very different profile.

Numerous political scientists, sociologists, philosophers of law, and moral philosophers have shown a keen interest in the many theoretical and practical questions raised by this expressive form of political dissidence. Among the questions that capture the attention not only of specialists but also of politically conscious citizens, some, like the following, are especially relevant: Is the citizen bound to uncritical obedience to a democratically elected government? Under what circumstances can one refuse to obey a government or a law created through democratic procedures? Can one as a citizen or member of a minority group embark on acts of civil disobedience in order to change the laws to which one theoretically consented, or must one wait for the next election to express one's disagreement, given that these laws—again, theoretically—constitute the express will of the majority? Must a democratic society be tolerant with regard to illegal forms of protest? Who is the more exemplary citizen, one who complies with everything the established powers dictate or one who disobeys whatever contravenes the sense of justice proclaimed in constitutional writings? Obviously, it is not this paper's intent to answer such a variety of questions but rather only to create a theoretical–practical framework that will allow one to take a reasoned position.

For different individuals or groups that at any given moment are part of a minority, the exercise of civil disobedience represents a way to firmly though peacefully express their disagreements with the opinion of the majority. In totalitarian regimes, dissidents do not normally have many opportunities to demonstrate without putting their personal integrity at risk. Under such circumstances, it might be more appropriate to act more radically, and not necessarily respectfully towards the authorities and their more-or-less arbitrary regulations. It is in democratic societies that civil disobedience is most commonly exercised. However, this statement contains a paradox: the actors of civil disobedience normally give reasons of a moral nature precisely against a system that can assert its superiority over any other real form of government in virtue of embracing important elements of the moral discourse in question. The democratic process is only recognizable if it facilitates the exercise of popular sovereignty—through the application of majority rule—and the effective enjoyment of human rights. If it is accepted that the democratic procedure of decision-making is greatly analogous to the procedure of

moral discourse, and in that sense the corresponding solutions can be morally justified, it would not seem reasonable to call into question the results of this procedure and try to politically justify civil disobedience. However, the contrast with the disappointing practice of many real democracies unfortunately renders this type of dissidence much more acceptable.

Civil disobedience is not the only non-institutionalized political instrument to express rejection of the decisions of the majority and/or the established power. There is at least one more radical form of opposition to the law that has a long tradition: the right of resistance (see, for example, Kaufmann and Backemann, 1972). An important historical precedent can be found in 16th-century controversies about the limits of the sovereign's absolute power and the defence of tyrannicide, all within a discussion about legitimate domain. Throughout the 18th century, the notion of resistance to established power rids itself of its feudal burden and can be characterized as revolutionary disobedience, in that it tried to radically subvert the reigning status quo, modify the legal code, and change the direction of the government. Thus, the right to resist oppression was proclaimed in the *Declaration des Droits de l'Homme et du Citoyen* of 1789 by erudite philosophers as a guarantee of protection of other rights (freedom, property and security). There is oppression, which, in the context of this declaration, equals bad government when power does not restrict itself to the end of all political association, that is, to the guarantee of the rights of human beings and citizens. As such, according to the same historical context, the right to resist presents a peculiar statute:

In legal terms, the right to resist is a secondary right in the same way as secondary norms provide for the protection of primary norms: it is a secondary right which is triggered at a secondary stage when the primary rights of liberty, property and security have been trampled on. The right to resist is also different in that it is triggered to protect the other rights, but cannot itself be protected, and therefore is exercised at one's own risk (Bobbio, 1996, p. 84).

With the notable exception of the Basic Law for the Federal Republic of Germany, references to the right to resist do not normally appear in contemporary *magna chartae*, as it is felt that its recognition implies being outside of the system itself, an argument that was defended by Kant with his usual rigor (see Kant, 2007, p. 176-182).² Another significant exception, now in international legal texts, is the Universal Declaration of Human Rights, the United Nations document

² In addition to the idea of legal security as an important asset that must be protected, Kant would put forward that, for a people to be authorized to resist, there should be a public law that allows for this; but this sort of regulation would be contradictory because the sovereign, the moment she allows resistance against herself, renounces her own sovereignty and the subject becomes sovereign in her place. This is a contradiction that, in my mind, is not a contradiction if we take seriously the idea of *popular sovereignty*, that is, that the people are the true sovereign.

that for more than fifty years has established the guidelines of the debate and action about human rights on an international level (see Hunt, 2007, p. 204-206). The preamble of the UDHR states why the document came into being: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

Civil disobedience is also different from another form of resistance to authority and laws that has been well-received in democratic societies, namely conscientious objection. This term has come to refer exclusively to a form of recognized—and, as such, legal—exemption from a general duty (such as obligatory military service), which is why it is no longer properly a form of disobeying the law or non-compliance with established authorities. The recognition of conscientious objection serves as a measure of how flexible a political system is in response to individual dissidence, as well as its ability to deactivate criticism of that dissidence. Conscientious objection must be conceived, in principle, as disobedience to the law without political purpose, a trait that civil disobedience does not share (in the latter the will to modify or reform legislation and/or current policies is made explicit). The distinction established by Hannah Arendt between one form of dissidence and another is valid here: while the conscientious objector is driven by the morals of the *good human*, the person who engages in civil disobedience follows the morals of the *good citizen* (Arendt, 1972, p. 58-62). In practice, however, it is difficult to think that the individual who considers a legal duty morally unacceptable does not simultaneously try to change current legislation. If her objection is morally grounded, she will aspire to its becoming a universal law. It is different, however, if, based on pragmatism (e.g. after the verification that the social majority is far from reconciling its point of view), one renounces undertaking political action.

After these observations, a conceptual demarcation of civil disobedience can be outlined: its essence lies in the general idea of a *transgression of politically motivated law* exercised within the patterns of a democratic culture. That is why a definition like the one below is extremely fitting:

'Civil disobedience' can be understood as an intentionally illegal (as opposed to legal forms of protest), principle-based (in contrast to 'ordinary' crimes or 'groundless' disturbances) act of collective protest that pursues the political goal of changing certain laws, certain policies or certain institutions (in contrast to rejection for reasons of conscience, which is constitutionally protected in some states) (Celikates, 2013, p. 40).

One can deduce from these words that this form of dissidence basically consists of a conscious breakdown of the legal system in place, not so much to seek a personal exemption from a general duty shared by all citizens (as would be the case with conscientious objection), but instead to replace the

broken law with another that is supposed to be more in agreement with general interests. However, these are interests that must be identified through a democratic procedure of developing informed opinion.

Habermas and the legitimacy of civil disobedience

Until now we have highlighted two important components of the meaning of civil disobedience, namely a break from current law and its political purpose. However, in our times, the term is an object of constant use and abuse that cannot be clarified by merely resorting to these two notes. For its ambiguous and sometimes incoherent use, the following explanation can be given:

The second word of the expression—disobedience—is intuitively clear to everyone or almost everyone who writes or pronounces it, but the first—civil—is ambiguous, polysemous. From this ambiguity about what must be understood by 'civil' originate many of the controversies about the foundation of and justification for civil disobedience at this time (Fernández Buey, 2005, p. 13).

In this section of the article, we will try to clarify the meaning of the term "civil" with the help of the theoretical and conceptual resources that the work of Jürgen Habermas provides. The question of obedience to the law in general, and civil disobedience in particular, is closely related to a position that is held about the foundations of legitimacy of power from which the binding regulations for all persons emanate. And at the same time, the answer to this question depends on the treatment given to the use of violence in social relations. For these two reasons alone, reference to Habermas is indispensable. As put forth below, Habermas explores the potentialities of civil disobedience in political practice, without forgetting to analyse the conditions of its moral admissibility and, in short, of its legitimacy.

Between speech and policy there is a close link, as Aristotle warned in offering us two complementary definitions of the human being: as an animal with the ability to speak and as a political animal (see Arendt, 1973, p. 9). The preference given to speech as an alternative to violence for resolving matters that affect the whole community is part of politics. This idea is closely related to the deliberative political model that Habermas defends (see Velasco, 2013, p. 138-182), a model that nonetheless cannot avoid the existence of forms of political intervention that, without ceasing to use speech, become action: "A well-considered theory of political deliberation cannot rely on the power of reason alone and needs to explore when protest is justified, in what form, and how it can be integrated into a rational dialogue" (Parekh, 2000, p. 306).

Normative considerations of the proliferation of protest actions—against the law and sometimes testing the acceptable limit of violence—cannot be disconnected, according to Habermas, from the phenomenon of structural violence that is inseparable from political life. In the daily functioning of political systems, even in those that are democratic, there is a constant intertwining of power and violence, a common situation that prevents the free communicative action of coercion from being a real option:

In political institutions—and not only in them—there is structural violence involved. Structural violence does not manifest itself as violence, but instead, surreptitiously blocks communications in which convictions generated from legitimacy are formed and propagate (Habermas, 1987b, p. 246).³

This is why all political effort that seeks to render the project of recomposing public space as a viable stage for democratic politics must unabashedly assume the intrinsic ambiguity of power. A liberating social practice cannot totally exclude the use of a calculated form of symbolic violence (in any case, directed against things and never against persons), even at the risk of being qualified by the established power as mere violence. Although in pluralist democracies the recognition of formal equality includes widespread access to public debates, that right cannot be exercised in practice immediately, as “the social system is one of domination, and the dominating party cannot be brought to listen to an argument or accept any kind of reciprocity unless it is forced to pay attention” (Heller, 1982, p. 27). Beyond the possible relevance of this observation made by Agnes Heller in a tone of reproach against Habermas, the fact is that, not long afterwards, Habermas would approach the question of civil disobedience as a valid instrument in the process of the radical-democratic shaping of political opinion, in the most genuinely republican tradition. In some of his most spirited essays, Habermas sustains that civil disobedience represents, in short, a normal and necessary element of democratic culture, an instrument for achieving the goals of democratic rule of law and for assuring the effectiveness of constitutional values and rights, that is, a vehicle for the maturation of public opinion and real political participation on the part of citizens.

The only two works by Habermas devoted explicitly to the subject of civil disobedience date back to the first half of

the 1980s, and are entitled “Civil Disobedience: Touchstone of the Democratic Rule of Law”—which the author previously presented at a symposium organized by the German Social Democratic Party, and which was published in September 1983—and “Law and Violence: A German Trauma,” published in January 1984.⁴ These public appearances by Habermas connected his own interest in critically rethinking the regulatory basis for democratic parliamentary systems. In addressing the matter of civil disobedience, Habermas is to a great extent indebted to some North American liberal-democratic theories, as he himself explicitly recognizes. In complete agreement with John Rawls, Ronald Dworkin, and Peter Singer, he conceives of civil disobedience as the execution of non-violent action against current laws carried out to directly influence public opinion—on which it exercises moral pressure—and in this way succeed in modifying certain laws or government decisions.⁵ She who breaks the law, in addition to being motivated by political-moral reasons, must not reject the rest of the legal code and must accept the penal consequences of her actions. In this way, civil disobedience can be characterized as the *right to symbolic resistance*:

The concept implies a symbolic breaking of the law as a last means of appealing to the majority so that, in matters of principles, it might again reflect upon on its decisions, and if possible, revise them. This consequently assumes that one is in a rule of law, and also a psychological identification of whoever breaks the law with the legal system in place, considered in its entirety. Only then can he or she justify their protest by resorting to the same constitutional principles the majority resorts to in order to be considered legitimate (Habermas, 1990, p. 95-96).

Insofar as anyone who exercises it abides by these requisites, civil disobedience will move in an uncertain threshold located between the rejected legality and the demanded legitimacy. Although presumably a democratic state should not only consider those who perpetrate these acts as radically different from common criminals but should even grant them a certain public recognition, given that their attitude denotes a radical civic commitment, with the aim of conserving the aforementioned tension, neither criminalization nor legalization would be adequate responses, according to Habermas.

³ Arendt and Habermas share concerns such as the effort to restore the dynamism of public space, critique of the functionalism of the social sciences, and the will to acknowledge the importance of political activity. Habermas (1987b) has carefully read Arendt's work, whose influence is decisive in his conception of public opinion and his idea of communicative power. For affinities and dissimilarities between these two authors, see Roman (1987, p. 161-181); Ferry (1987, p. 75-115); and Benhabib (1995, p. 96-130).

⁴ These two articles make up the section titled “Autumn 1983 or The Moral Neutralization of Law” of Habermas's book *Die Neue Unübersichtlichkeit* (Habermas, 1985, p. 51-89). On the socio-historical context in which Habermas develops this position, see Specter (2010, Ch. 4).

⁵ Specifically, Habermas adopts the definition of the dissident phenomenon proposed by John Rawls quite literally (Habermas, 1985, p. 83-84). Rawls's definition, which in turn explicitly follows Bedau (1961), states: “a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (Rawls, 1971, p. 363).

The appeal to what John Rawls calls the “sense of justice” of the majority of society is a constituent element of civil disobedience. It is not a plea to a vague or abstract idea, as this sense of justice is typically formulated in the fundamental laws of the state. For this reason, political dissidence in the mode of civil disobedience has its rightful place in a democratic state as long as a minimum constitutional loyalty or acceptance of the legitimacy of the system is maintained, fundamentally expressed in the essentially symbolic—and hence peaceful—nature of protest. The occasional infringement of certain binding regulations then acquires a strategic sense: a calculated act to raise public awareness of the mistake of certain legal or administrative decisions or of the need to take new steps to adapt current constitutional principles to changing social circumstances. The sphere of action of civil disobedience is defined and demarcated by these assumptions.

On the basis of these ideas, Habermas analyses some political demonstrations that could be classified as non-conventional democratic practice. The big pacifist demonstrations in the autumn of 1983 and protests against the installation of *Euromissiles* (nuclear ballistic missiles *Pershing II* deployed by NATO in the strategic context of the Cold War) fuelled an important political-moral debate that split German public opinion. The mass protests, which included violations of administrative laws (for example, the blocking of public streets), were justified as civil disobedience. In the midst of that debate, Habermas expressed his conviction that civil disobedience was the most reliable indicator of the maturity of a democratic political culture. This morally motivated disobedience represents the last guardian of the legitimacy of the democratic rule of law, a legitimacy not measurable without further considerations on the basis of the exclusively procedural calculation of parliamentary majority rule. Apart from denouncing the attempt to make the will of Parliament prevail over the will of the majority of citizens as reflected in the polls, in the aforementioned pacifist campaign, the structural limits of the mechanisms of the representative state were exposed in facing a problem that went beyond the traditional spheres of recognizing decisions. Along the same line, Claus Offe and other authors recall the aporias and ambiguities that purely demoscopic methods of shaping opinion involve. The moral legitimacy of these methods is especially dubious when they concern decisions weighted with irreversible future significance. Because of this, they defend the limitation of the principle of majority through the subjection of the criteria and conditions of its application to a decision in turn made by a majority.⁶

The inability to understand the reasons given by dissidents can produce some undesired consequences, as *the reasonable limits of civil disobedience* are easily stretched, always at the risk of its actors silencing its peaceful democratic condition. As a consequence, it was necessary to evaluate the

landmark that its mass practice signified in German political and legal culture, in the sense that it implied a rupture with political abstentionism, with citizens’ disinterest in public affairs, since all in all it constituted a way of actively participating in the creation of a radically democratic political opinion. However, there were those (in the German case, important authorities like the President, the government, and the Constitutional Court) who sustained that any form of resistance to the law, even if non-violent, is not only punishable but also morally reprehensible. This vision of things entails a dangerous blindness, as “there is only one step between scorning the political-moral motivations of one who breaks the law and isolating that person, discrediting them as an enemy” (Habermas, 1985, p. 102). On the psychosocial level, Habermas identifies this mistrust of civil disobedience as a symptom of what has been called the German Trauma, a trauma that, on a more theoretical level, would answer to what he himself called German Hobbesianism, a doctrinal position close to the authoritarian legalism adopted by many jurists and which Habermas sees personified in Josef Isensee. For this author, civil disobedience to the rule of law is a perversion of an unacceptable right to resist, since the monopoly of force and the assurance of peace constitute the foundation of the modern state, and that goal is impossible if it is the citizen who decides for herself when justified resistance will occur.

The challenge of Hobbesianism is one of the theoretical centres of the Habermasian defence of civil disobedience. On the occasion of the English translation of some of the early writings of Carl Schmitt, Habermas wrote an article against the recent uncritical reception of this author’s thought, and by way of this reception, the thought of Thomas Hobbes (see Habermas, 1987a, p. 103-114; a most detailed study of this topic can be found in Maus, 1976). This kind of Hobbesianism entails accepting the pre-eminence of formal legality and legal security, entrenched as superior assets, over the legitimacy of the system. Put this way, any form of resistance to the law, as justified as it may seem, destroys the legality of the legal code, which, following Hobbes, “is only supported in the state monopoly of force and does not require any recognition in view of appropriate content.” The line of argument put forward leaves no doubt about the authoritarian nature of the solution adopted: “Only a State that monopolizes force can prevent the great evil, that is, civil war” and, consequently, “matters of legitimation must be subordinated without reservations to the problem of guaranteeing legality” (Habermas, 1985, p. 108-109). This thesis leads not only to relativizing the matter of legitimacy, but also to its practical cancellation. Applied to the subject of civil disobedience, it is wrong from the beginning, upon getting the meaning of the problem wrong. Not all dissidence can be assessed as an act of violence: at question is not the possible right to resist a radically unjust government but instead the practice of a form of partial dissidence in rule of law.

⁶ The authors agree for the most part on Tocqueville’s preoccupation with stopping the “tyrannical effects of the omnipotence of the majority”, the characteristic evil of democratic systems (see Tocqueville, 1981, vol. I, p. 343-360).

The Habermasian position on civil disobedience tries first of all to consider the problem within the question of adherence to democratic and social rule of law and, second, to distinguish it from violent resistance and all connotations of the classical right to resist oppression. However, if it is appropriate to speak of civil disobedience only in the context of the rule of law, it will be necessary to remember that “from a normative point of view, democratic rule of law is made up of two ideas *in equal measure*: a State guarantee of domestic peace and legal security for all citizens, and the aspiration that the government order is recognized as legitimate by its citizens, that is, freely and by conviction” (Habermas, 1985, p. 110). This immanent—and consequently, postmetaphysical—foundation of positive law allows us to openly pose the question of its legitimacy, which is not reduced to the mere formal correction of its rules:

The legitimacy of democratic rule of law is not satisfied by the simple fact that laws, sentences or measures are dictated, pronounced or adopted according to prescribed procedure. On fundamental points, procedural legitimacy is not enough: the procedure itself and the whole of the legal code must be justified on the merit of principles (Habermas, 1985, p. 111).

There is, then, no *unconditional obedience* to positive law: not all laws deserve to be obeyed. Only those that present material adaptation to constitutional principles can hope for *qualified obedience* from citizens, an obedience that as such allows for the possibility of disobedience. The examination of this adaptation is precisely what distinguishes that qualified disobedience. The minority gives its conditional consent to the decision of the majority only if it is adopted in a public forum of open debate and can be revised.

Owing, most likely, to the harsh criticism that German legal circles uttered against this position, Habermas is careful when justifying civil disobedience. He insists that this form of political discrepancy requires the respect of one important condition: it must never be exercised outside the context of the Constitution. As such, Habermas does not defend a revolutionary use of civil disobedience, as was done in the student movements of the 1960s (and whose terrorist offshoots he sweepingly condemned). He recognizes the legitimacy of its exercise if it is used through calculated strikes that are merely symbolic in nature, with the explicit intention of appealing to the *legal sensitivity* of the majority, and especially to its capacity to understand and its sense of justice. At any rate, they are actions exercised by loyal citizens who practice non-violent resistance, admissible only with acceptance from the legal and political system:

A democratic Constitution even tolerates the resistance of dissidents who, after exhausting all legal channels, fight some resolution or sentence that nonetheless has been legitimately adopted, although on the

condition that this resistance that infringes on laws is justified in a plausible manner on the basis of the spirit and the letter of the Constitution and it is conducted with means that lend the air of a non-violent call to the majority so that they think about their decision once more (Habermas, 2004, p. 30, emphasis mine).

In his 1992 book *Between Facts and Norms*, in which he summarizes his legal-political theory, Habermas even adds some little nuances—as in the paragraph quoted above—to his conception of civil disobedience, with the aim of settling it even more firmly in the “ground of the Constitution.” He insists on defining civil disobedience in constitutional terms: “These acts of peaceful and symbolic violation of laws are understood as an expression of protest against binding decisions that, according to the conception of the actors, are, despite their legal processing, illegitimate in view of current constitutional principles” (Habermas, 1992, p. 462). Consider as well that the strategy of legal and political coverage of civil disobedience based on the reference to the spirit of the principles and values recognized in the Constitution would be strengthened if “a dynamic understanding of the Constitution as an unfinished project” were adopted, that is, a non-essentialist conception of the same (Habermas, 1992, p. 464). “From this long-term perspective,” Habermas continues in the same text, “democratic rule of law is represented not as a completed image, but rather as an undertaking that is sensitive (worn out), irritable, above all fallible and in need of revision.”

The Constitution of a democratic state is always an “open work,” something that can and must evolve, for in order to maintain its effectiveness as a legal-political framework for coexistence, it needs to constantly adapt to the changing situation of social reality. It is, like any other human work, revisable, and as such modifiable, not through unilateral means, but instead through a new consensus that renews the initial agreement on which the current text is based. It is not merely a “historical document;” it is a plan conceived by a just society to outline a political “horizon of expectations;” and the members of this just society, through their different interpretations, must be able to adapt it to changing historical circumstances. In addition to being citizens of current laws, citizens form themselves as qualified constitutional interpreters. In this sense, and going one step further, practitioners of civil disobedience could be considered active collaborators with the constitutional system that they defend whenever laws, government decisions, or jurisdictional rulings challenge the meaning of constitutional mandates. This idea is reconcilable with recognition of the Constitutional Court as the *highest judicial interpreter*, but that does not mean it is the *only* interpreter of the supreme law (see Rawls, 1993, p. 231-240), as constitutional interpretation in its broadest meaning is not an activity limited to the narrow and closed circle of jurists, but a process open to the participation of all citizens, the last repository of sovereignty.

Civil disobedience and responsibility for democracy

Considering civil disobedience a form of behaviour closely linked to moral convictions has almost become a cliché. Undoubtedly, the subjection or rejection of an order of political domination in general and of a law in particular is a decision that only the individual in the solitude of her conscience can make. But the fact that protagonists of this *strategic* form of collective action do not appeal simply to their moral conscience in the exposition of reasons, but to recognized principles in the legal code, with special reference to the constitutional text, is overlooked. More than an objection for reasons of conscience (in which case, moreover, the evidence would have to be more complete, better defended, and more rigorous if it were not possible to put forward subjectively shared reasons), it is a clear exercise of public autonomy, that is, of putting into practice the citizen's capacity for self-determination. The citizen is not only the passive recipient of laws and government decisions, but also an active author in legislative processes and decision-making. Specifically, in opposing certain laws or governmental measures through actions of civil disobedience, citizens actively take part in the public life of society.

In spite of everything, one wonders whether the actions that fall under the category of civil disobedience really seek effective results or only try to have a moral or testimonial value. Borrowing a term from Max Weber, the question is whether civil disobedience represents a manifestation of the ethics of conviction or instead the ethics of responsibility (see Weber, 1991, p. 120-121). If it were merely a case of acting in good conscience, as some wish to say, it would have to be included in the first ethical form. Through their actions of protest against social injustices, those who exercise civil disobedience would then seek to keep the "flame of pure intentions" burning. However, wanting to identify them as dogmatic followers of an ethic of conviction, that is, as "moral solipsists" concerned only with "saving their soul without regard for the consequences of their actions," is a false image that has been created by the academic literature (see Estévez Araujo, 1994, p. 31, note 60).

Agents of civil disobedience normally cite universal principles that serve as a normative framework for democracy, principles that are incorporated into modern constitutional law, like respect for the dignity of the person, justice, freedom, equality, solidarity, the search for peace, or political participation. In fact, in the justifying arguments put forward by those who civilly disobey, reasons of a moral, legal, and political nature intertwine. Those who act as such are convinced of the relative uselessness of the legal procedures available, be it because of their unbearable slowness or their proven lack of effectiveness. The dissident seeks other ways of participation different from conventional forms, which does not relegate her to the position of a passive subject. She is not an anti-democrat, either, but rather a radical democrat.

Although civil disobedience is, at least from the perspective of its protagonists, certainly a way of refusing to collaborate with injustice, they themselves normally demand something else: the construction of a more just world. If they accept the legal punishment that results from their actions, it is so that it serves as a salutary lesson. Their actions are not only public, but are normally explicit attempts to capture public attention. They also have the foreseeable consequences of the action in mind (the increase in repressive reactions among them), but never abandon their clear calling of legal reform or even social change.

Neither is it in keeping with recorded experience to sustain, as the aforementioned literature usually does, that disobedient citizens in general accept the system of democratic legitimacy as the most correct for the adoption of collective decisions. Convictions of that sort can be very different. The appeal to publicly accepted principles, such as constitutional principles, has an evident component of strategic calculation. It would fit the facts more to point out that, given that, in reality, that meaning of justice made its own by the majority comes loaded with prejudices and has been shown to be immune to criticism. What disobedient citizens strive for is to rectify this distorted meaning of justice that has given rise to opposition (see Celikates, 2013, p. 38-39). As a consequence, it is extremely curious—if not cynical—that *politicians with power* and jurists with a positivist background even morally condemn protesters for using these legally unjustifiable means.

Something else on which Arendt, Rawls, Dworkin, Singer, and Habermas coincide is in remarking that respect for the current political system is essential in order for an act of political dissidence to be considered civil disobedience, as long as the system corresponds to a democratic Constitution. However, this trust in government decision-making mechanisms (and in the execution of the same) within a political form of representative democracy is not so certain, and the emergence of new social movements is proof enough of this mistrust. The current situation of civil disobedience cannot be separated from the crisis of representative democratic systems. Its practice must be understood as a more or less partial criticism of traditional representative procedures, but a criticism in radical democratic code.

Public initiatives by citizens are increasingly undertaken through non-traditional political options. Political action in advanced democracies is often carried out via channels other than those offered by political parties or trade unions. Social protest movements of a broad thematic spectrum or non-governmental volunteer organizations are in many cases considered by many to be preferable options (see Offe, 1985; Riechmann and Fernández Buey, 1994). In this sense, and given its well-known transnational reach, the impact achieved by the anti-globalization movement, varied in its demonstrations and not without its internal contradictions, is noteworthy. It has managed to present to public opinion—paradoxically, ever more global—demands for another form of globalization

(for which reason the movement should be called *alter-globalization*): one that attends to, or at least addresses, the needs of the poorest of the poor, the environment, and the extension of democracy and human rights. The importance of its work has not gone unnoticed:

The sub-agents and networks of cooperation that are not tied to territories and national priorities are in fact those that in recent decades have placed the problems of ecological survival, equality between women and men, peace and, of course, the financial crisis on the political agenda (Beck, 2013, p. 80).

The non-conventional participatory actions mentioned in the paragraph above are no doubt a good reflection of the dissatisfaction with the democratic flaws of the party-representation system that so many political scientists have studied over the past century. If the discontent continues and it is not desirable to remain inactive in the face of the inexistence of realistic global alternatives, it would be most appropriate to correct some of the malfunctions observed in representative democracy, or at least complement them with other formulas—hence the search for new models of citizen participation that do not necessarily pass through the bureaucratized sieve of political parties and which have a bearing on political processes that shape public opinion and decision-making.

An adequate interpretation of civil disobedience would be to consider it a complement of the democracy necessary for the creation and maintenance of a participatory political culture. The development of democracy is viable only if the sometimes conflictive but always enriching emergence of dissidence is allowed. Minorities in a democracy do not have to renounce their convictions, but they must avoid any imposition that goes beyond the symbolic coercion of the better argument. The majority can exercise both legislative omnipotence and unbearable moral pressure on the whole of society, eventually breaking any opinion in disagreement. But given that there is no indissoluble and necessary union between the majority and normative rightness, the decision of the majority must always be revisable in light of the best arguments. If democracy entails a cooperative effort in reaching agreements, it is essential for there to be differing, even contrasting opinions so that a rational opinion can arise from the process. Dissent is, as such, as vital as consensus. Dissidence as such has a creative function with a meaning of its own in the political process, and in this context, civil disobedience can come to be an indispensable instrument.

Given the oligopolic nature of the public-opinion media, citizen-led movements do not easily find avenues through which their messages can be transmitted to the rest of the population and be included on the political agenda. To overcome these obstacles, the breaking of a law with the specific purpose of generating the most open debate possible about its justice, its constitutionality, or simply its timeliness could be

a legitimate possibility. This provocative nature that disobedience preserves makes it an ideal way to shake up the public, contributing to an increase in the public debate of ideas. In order to continue to expand the participatory element of representative democracy, the new emerging political culture demands a greater assessment of political dissidence. For all of these reasons, civil disobedience deserves to be taken seriously.

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