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## TOWARD AN ETHICS OF CIVIL DISOBEDIENCE

HARRY PROSCH

CIVIL disobedience is being used today mostly as a tactical weapon by pressure groups who are trying to accomplish changes in laws, institutions, and public policies. In defending its use, however, partisans of these groups quite frequently go beyond its defense as an available and sometimes effective means for securing desired social changes and seek to defend it as a general moral right to disobey "unjust" laws. No doubt these defenses may sometimes be insincere. Yet they are not always mere rhetorical sophisms—or even self-deceptive rationalizations. Some of them certainly are seriously believed by those who express them.

One such defense of civil disobedience which is often heard today conceives it as a sort of "truth-force," much along the lines expressed by Gandhi.<sup>1</sup> In this basically religious understanding of it, the individual sacrifices demanded by its non-violent practice (such as abuse, injury, imprisonment, death, or other punishment), and which are to be willingly accepted by its adherents, are not looked upon as merely effective means to the accomplishment of some desired political or social goal. Sacrificial living is itself understood as an end. Offering to die rather than to kill<sup>2</sup> is regarded in this view as an expression of the saintly attitude, encompassing *all* men in the scope of one's love and care—including one's own oppressors.<sup>3</sup> Non-violent civil disobedience—even when aimed at erasing the separative and exclusive circles

such oppressors have drawn—is never to be aimed at *opposing* these oppressors, as though they were separate and foreign beings, but rather at engulfing them in one's own wider circle of identification with all men.<sup>4</sup> Even violent revolutionaries such as Sartre have had this aim;<sup>5</sup> but non-violent revolutionaries hold that this end cannot be accomplished except by restricting oneself to methods which do not violate it even temporarily—that is, by methods that are utterly peaceful and non-violent.<sup>6</sup> The notion seems to be that the commitment always to suffer in one's own person rather than to harm others when seeking to accomplish social reforms establishes of itself this larger circle already now in the present—even before all men are willing to live according to it.<sup>7</sup> Those who hold this view thus must suppose that the true human situation is not the separateness of individuals and groups in continuing conflict, but rather their unity,<sup>8</sup> their capacity to respond to each other directly with love and understanding and patience—their ability, in other words, to live together in true human solidarity.<sup>9</sup>

To "overcome," then, for such religiously oriented disobedients, means something more—much more—than to win a political victory or to succeed in getting laws, institutions, or policies changed. Such changes are important.<sup>10</sup> But of greater importance are the changes that can be wrought in *people*—including one's own opponents.<sup>11</sup> One's own self must be "overcome" as well, since "overcoming" is not thought

to be possible except by very simply and directly living before all men as though human solidarity were a fact—and taking the frequently terrible consequences with no diminishment of one's own love and patience.<sup>12</sup>

The similarity of this attitude to that advocated by many of the great religious figures, such as Buddha and Christ—and also found in some of the Indian traditions—should be fairly obvious. In spite of its pervasive attractiveness, however, the total implications of this view run counter to certain very basic Western notions, and it is not likely that many civil disobedients in America hold to it in its purity.

Logically such a view entails the notion that the highest good—because it would be the attainment of the highest truth—would be the total absorption of the self into the Whole—the actual elimination of the separate self in its identification with the All.<sup>13</sup> This is so even if, as in the case of the partially westernized Gandhi, one tries to forego the denial of life which seems to have been historically associated with this view. For even if one refuses to regard life as a sort of ontological “mistake,” he must still hold (in terms of this religious view) that no single purpose or end or valued object ought to take precedence over his devotion to the Whole. Even if his own humanism waters this big Whole down to the smaller whole of humanity only, he still must be prepared to sacrifice, not only his life, but anything else, to this whole—that is, to the ideal of human solidarity. The separate self must therefore be forgotten—unless, of course, the separate self is such a self that it finds its own self-fulfilment in nothing but “the personal experience of universal identification.”<sup>14</sup> All other selves, however—selves with

any other more particular interest predominating—must be overcome.<sup>15</sup> So the only self with a real right to continued existence becomes, for all practical purposes, a self-negating self. To most Western minds, such a self is like the grin without the cat.

Yet it is not merely our propensity in the West to cringe at notions entailing the total loss of the separate self that vitiates against the possibility of this religious view ever becoming part of an acceptable social or political philosophy for us. A political philosophy which committed individuals in this way to total human solidarity, if truly held and followed by everyone, would be unworkable in practice. Surely it would be naïve to suppose that all men would always see eye to eye, at least on the most important issues, if they were cemented together by a religious love (or rather if this were all they were cemented by). No more than a nodding acquaintance with *The Acts of the Apostles* should raise some serious doubts about this. Yet if such unanimity were not forthcoming, then even one dissident could obstruct what every other living soul might think ought to be done. For no one else (if everyone did truly believe in non-violence) would be able to bring himself to cross this one dissident's picket line. Social institutions of every sort would therefore require continuous unanimous consent in order to function.

It is sometimes asserted that India has shown the practicability of a universal right to civil disobedience by having built it into its Constitution. Yet it is revealing to see what areas its Constitution excludes from such a right. No one in India has a right of civil disobedience against laws involving the security of the state, friendly relations

with foreign states, public order, decency and morality, contempt of court, defamation, and incitement to an offense.<sup>16</sup>

As things go in the modern world, these exceptions can surely be made to serve as sufficient grounds for denying the right of civil disobedience on any issue which most of those in power happened to think important. Such an escape clause is, however, essential; because if civil disobedience could not be so curtailed, India would be unable to function in terms of the needs of its people. Civil disobedience, therefore, cannot be regarded as always right. Some guidelines (or an "ethics") are required for its proper use quite as much as they are for the proper use of any other social practice.

A defense of civil disobedience as a religious truth-force, therefore, able to effect reforms without coercion and so to reveal directly the fact of human solidarity, cannot be an adequate one. In being forced by the logic of its own practical universalization to tolerate every act of disobedience of what anyone may term an unjust law—and so being forced to rule out the propriety of coercing dissident individuals and minorities—it makes the existence of a society impossible. A defense of a particular social practice which logically requires the conceptual annihilation of other practices necessary to a society cannot, of course, achieve its goal. Defenses of social practices are likely to suffer from such a fault when they are attempted as though they were defending the *one* thing needful—the basically right, or the most important, social practice. For this one element is then dealt with too abstractly, too much out of context with the total human and social complex. Any given practice can,

in fact, be only one functional part of a social complex. It cannot even be defined adequately except by its relations to the rest of the complex. Only such defenses of civil disobedience are therefore likely to be truly viable which are integral to a full-scale social philosophy (i.e., to a systematic set of ideas which attempts to be comprehensively adequate to the basic problems of human societies). Moreover, it is only these which can then result in a sensible and appropriate ethics. Let us, therefore, sample such full-scale social philosophies to see how they have dealt with civil disobedience.

One of the social philosophies that might seem to be most promising in terms of a defense of civil disobedience is John Locke's. And some of the more philosophic defenders of civil disobedience do appear to have Locke-like notions in mind. Locke conceived that all men have certain natural rights anterior to all the merely conventional, legal, or positive rights they may find implemented for them in their own separate societies. He is often thought, therefore, to have asserted that men have a right to disobey all those laws that violate their natural rights.

Locke did, indeed, justify *revolution* on such grounds. Men, he said, have natural rights to their own lives, liberties, and properties by virtue of the fact that they are all God's property and thus have no title to each other's lives, liberties, and properties. Since no one man has title to these things, inasmuch as all belong really to God, there is also no way for a group of men to acquire title to them.<sup>17</sup> Consequently, a government chosen by a society of men exceeds its limits if it encroaches upon the lives, liberties, and properties of its people for any reason other than for

the purpose of preserving these rights in general—that is, preserving them for everyone.<sup>18</sup> Authoritarian government and slavery were, therefore, two examples of what Locke could not find to be a legitimate exercise of political power.<sup>19</sup> A society has a right, he held, to revolt against its government, that is, to take back to itself the powers that it gave to its government and to give them to another when its government violates men's natural rights.<sup>20</sup> If this reconstitution is not provided for in the mechanics of the government (by limited terms of office, for instance),<sup>21</sup> then Locke thought actual revolution was perfectly justifiable.

Two things, however, must be noted here. In the first place, although an actual revolution would no doubt involve disobeying laws, it is more of an active attempt to *overthrow* a government and to establish another in its place than it is a simple disobedience of laws on the grounds that they are judged “wrong” by an individual conscience—or as part of an effort to render certain laws ineffective, to cause their repeal, or to exert pressure to get one's political wishes on some other issue. Locke makes it plain that he regards revolution as only a last, desperate resort when all else has failed and when the government has engaged in a long train of abuses<sup>22</sup>—and only then when the inconvenience has become “so great that the majority feel it.”<sup>23</sup>

This provision concerning the feelings of the “majority” brings us to the second point. It is true that Locke says each man must “judge for himself” when another has put himself in a state of war with him and when he thinks it fit to make an “appeal to Heaven” and to “put himself upon it,”<sup>24</sup> that is, to revolt. Nevertheless, he immediately

follows these remarks with this statement in the paragraph concluding his whole treatise: “The power that every individual gave the society when he entered it can never revert to individuals again, as long as the society lasts, but will always remain in the community, because without this there can be no community.”<sup>25</sup> When the rulers forfeit their right to rule, the “supreme power,” he says, “reverts to the society.”<sup>26</sup> This statement, at the end, fits in with his earlier flat remark that “No man in civil society can be exempt from the laws of it.”<sup>27</sup> A civil society exists by unanimous consent.<sup>28</sup> This means that either an explicit or an implicit consent to live in a society binds one to the decisions of that society.<sup>29</sup> And so a consent to be in a society, he says, is a consent to be bound by (at least) the majority of that society.<sup>30</sup> As a result, the status of an individual right, or of a factional group right, of revolt against a government—when not supported by the majority of a society—has a somewhat dubious and unclear position in Locke. For all practical purposes, it would seem not to exist. No matter how sincerely I might think the government (or even the laws) were in violation of my natural rights and therefore that I have a right to revolt, if most of my society does not join me in my judgment then, according to Locke, no one else seems to be under a moral obligation to regard me as having the right to revolt. Perhaps an individual's right to revolt has, therefore, for Locke, no other real status than the “right” of conscience he provides for in his *Letter Concerning Toleration*. If I find a law requires me to do what I think it is wrong to do, I ought to disobey it, says Locke in that letter. Yet my state is also in the right to insist that its laws be obeyed, and

thus I must accept its rightful punishment for my disobedience. Locke says that “the private judgment of any person concerning a law enacted in political matters, for the public good, does not take away the obligation of that law, nor deserve a dispensation.”<sup>31</sup>

It could, therefore, be argued that Locke does not really give a *right* of disobedience to anyone. My having a right must surely entail that others have a duty to allow me to do something. If I were to be said to have a right to choose the punishment rather than obedience of the law, in cases of conflict with my conscience, then others ought to have the duty to allow me to do so. Yet Locke does not hold that others ought to allow me to do so. Quite the contrary. He holds that others ought to try to discourage me from doing so by applying punishment to me. He seems to hold, in fact, that it would be wrong for them not to apply it and also for me not to accept it. My willingness to accept the punishment does not, therefore, give me a right to disobey the laws. Rather it indicates that I understand I do *not* have such a right. All Locke seems actually to accomplish is the absolution of such civil disobedients from blame for having acted from culpable *motives*—not at all from having acted in a culpable way.

This failure of Locke’s philosophy to provide a full justification for civil disobedience—that is, to see it as a “right”—is not, however, just a feature of his philosophy accidentally due to the character of his times or to the habits of his wet nurse. Inevitably, a philosophy that claims men have rights over and above those actually provided in a given society must end up, paradoxically, by refusing to individual men the right to disobey laws with which they

do not agree. For if men have rights over and above their own societies, then a society can only be understood as a voluntary compact or association of these naturally free men. This might appear to mean that each man would then be free to leave such a society at will—and so he is, if he leaves the physical location of the association. But otherwise he cannot be. For if he could, then as Locke says, “coming into a society . . . upon such terms . . . will be only like Cato’s coming into the theater, *tantum ut exiret*.”<sup>32</sup> Hobbes, in fact, based the origin of the very notion of “justice” upon the necessity of this obligation. So—if the association enacts a sovereign (à la Hobbes), *he* is binding upon individuals. If it enacts laws (à la Locke), *they* are binding upon individuals. Individuals may indeed fall back into a state of war, but then they are regulating their behavior toward each other by force, not by the notion of right and so not by a system of ethics. As Rousseau saw more clearly than any of the contract theorists, men logically give up all their rights to the society which they form in contract theory. Only the society (which can mean only the consensus of the majority of the persons involved) may change its rulers or change its laws. Individual persons can have no right to do so. The General Will must rule. There is otherwise no General Will, that is, no society. There is indeed a normative way of judging whether governments are good or bad in such natural rights philosophies, but only men collated into a total group can really have a right to implement such normative judgments.

Since the notion of natural rights then, although it might look promising at first glance as a basis for the right of civil disobedience, cannot consistently

provide such a basis, let us look at a philosophy that did not provide for natural rights, but that did provide for natural *laws*, that is, for norms and rules of life over and above those accepted in a society. Such a philosophy might also be expected to hold forth some possibility for the justification of civil disobedience. Not only was the philosophy of Plato such a natural law philosophy, but it also is commonly thought to have drawn for us a portrait of the ideal philosopher as a martyr to the truth and righteousness that lies beyond convention. Plato's Socrates has usually, therefore, been assigned an honored place in the pantheon of the civil disobedients.

The contention that Socrates was understood by Plato to have claimed a right to disobey civil laws in the name of a "higher" law seems to rest mainly on a statement that Plato has him make in the *Apology*. Here Socrates declares that he owes "a greater obedience to God" than to the gentlemen of the jury and consequently that if they "should offer to acquit" him on the condition that he give up spending his time "on this quest and stop philosophizing"—with the threat that they would put him to death if they caught him "going on in the same way again"—he would not obey them rather than God, even if he were to "have to die a hundred deaths."<sup>33</sup>

It is not at all clear, however, that the court before which Socrates was tried even *could*—legally—make such a conditional offer of acquittal—or of a quasi-suspended sentence. As far as we know, its powers seemed to be limited to finding the accused innocent or guilty and, if guilty, to assigning either the punishment proposed by the accuser or else that offered as an alternative by the condemned. Since the ac-

cuser in Socrates' case had already asked for death, it would seem Socrates himself would have had to propose the suspended sentence he is rejecting in this passage—in order to be able to reject it! It is likely, therefore, that he is merely choosing this dramatic way (1) to establish the fact that he does respect the gods and (2) to warn the jurors that he will not propose such a penalty. As his whole defense shows, he really believes that the true wish of the Athenians is to silence his talk and his criticism—the particular charges brought against him being merely trumped up in order to accomplish this ulterior purpose. So he thinks the conditional "suspended sentence" is what they would like to force upon him—the threat of death being the lever they hope will induce him to close his own mouth. If he were to acquiesce in what they really want, he is telling them, he would be obeying them rather than the god from whom he claims to believe he has the commission to engage in his quest. As he points out, to do this would be to become guilty of the impiety with which he is charged.<sup>34</sup> Socrates can therefore assert what none of his jurors could deny, that he owes a greater obedience to the god, that is, to the god's *will*, than he does to the mere *will* of men, and that the fear of death ought never deter anyone from his obligations—either to God or to men.<sup>35</sup> Nothing at all is said about the laws of God or the laws of Athens here, nor of how they may be related; for the problem is not with the laws, with which Socrates evidently has no quarrel,<sup>36</sup> nor therefore with the actions of officials taken in accordance with existing legal forms and procedures—however substantively wrong they may be. It is the extra-legal actions of such officials that Soc-

rates is maintaining he will not obey—even under the threat of death.

Such an interpretation of Socrates' statement about obeying God rather than men would also fit in well with the point Plato makes very clearly in the same *Apology* when he has Socrates relate the two occasions upon which he openly disobeyed public officials in Athens. It is made very clear that on both these occasions Socrates was acting in defense of the law—not against it. His disobedience was clearly shown to have been disobedience of officials who were acting in defiance of the known legal procedures.<sup>37</sup>

But even though Plato's portrayal of Socrates' trial and death does not therefore provide us with the evidence, it can nevertheless be maintained that Plato does justify disobedience of the law. In the *Statesman*, he holds that the law is deficient as a ruler because it must be invariable for all, and this cannot always be what is best for each.<sup>38</sup> Only the true ruler, judging not by the law, but by his true art of government and by what is best, can accomplish what is best for each case. It is true that even the true ruler cannot prescribe each individual's actions for him at each moment on an individual basis, and so even he must resort to law.<sup>39</sup> Yet, Plato adds, this law should be no more binding upon the true ruler's actions than the rules for the care of a patient which a doctor leaves in his absence should be binding upon the doctor when he returns.<sup>40</sup> Plato holds, therefore, that the true ruler or statesman (he who knows the art of ruling "scientifically") will do no wrong by "administering impartial justice . . . under the guidance of intelligence and the art of government," rather than the laws. He will be using this art "as a

stronger power for good than any written laws."<sup>41</sup> Moreover, in the interest of accomplishing that which is "juster, more effective, and more noble" but which might require action contrary to written laws and ancestral customs, Plato holds it would be right for such rulers to use compulsive force. And the citizens subjected to such essentially illegal compulsion ought not think "they have suffered disgrace, injustice, or evil at the hands of those who compelled them."<sup>42</sup> This is a strong defense of the right to *set aside* the laws in order to do what is manifestly better—not merely to amend them in a constitutional or legal way.

The rub comes in, however, when we try to bring current civil disobedience under this defense. For we must ask whether those who are not "rulers"—but who may nevertheless know "the good"—may also disregard the laws. Plato seems to see that there is the possibility of an analogy here. He says: "So an individual or group who possess a code of laws but try to introduce some change in them because they consider it an improvement are doing the same thing according to their light as the true statesman. . . . If . . . they possessed scientific knowledge . . . it would be the real and original statesmanship we are talking about."<sup>43</sup> But then he immediately denies that this analogous situation could in fact exist. He says it is not "the wealthy group or the whole citizen body" that would be able to acquire any such art or scientific knowledge.<sup>44</sup> He declares, therefore, that "these imitative constitutions" (those in which the wealthy group or the whole citizen body rule—a plutocracy or a democracy) must obey "an invariable rule. . . . They must all keep strictly to the laws once

they have been laid down and never transgress written enactments or established national customs."<sup>45</sup> The wealthy when they do this (i.e., keep strictly to their laws) are, he says, copying "the ideal constitution and we call what results 'aristocracy,' but when they disregard the laws, the constitution produced is 'oligarchy.'"<sup>46</sup> In the absence, then, of a state run by a true statesman, that is, by one man or by the few who are "really possessed of scientific understanding of the art of government,"<sup>47</sup> Plato asserts that the state is to be one of commitment to the laws. He says flatly, "none of the citizens may venture to do any act contrary to the laws."<sup>48</sup>

Thus the rigid rule of law, although only second best ideally, becomes for Plato the best in general. As he observes, the true kings do not arise in cities "the way the royal bee is born in a beehive—one individual obviously outstanding in body and mind and capable of taking charge of things at once. And therefore it seems men gather together and work out written codes, chasing as fast as they can the fading vision of the true constitution."<sup>49</sup> "Laws," he holds, "represent the fruit of experience. . . . Each of them has been put forward by some advocate who has been fortunate enough to hit on the right method of commending it and who has thus persuaded the public Assembly to enact it. Any man who dares by his action to infringe these laws is guilty of a wrong many times greater than the wrong done by strict laws, for such transgression, if tolerated, would do even more than a rigid code to pervert all ordered activity."<sup>50</sup>

Plato thus sees law as arising gradually from the experience of men in trying to work it out. And they are forced

to do this, he says, because they cannot count on the true (philosopher?) king to make his appearance—or because they despair of finding such a one, or perhaps even distrust the very notion that anyone could have such absolute power without misusing it.<sup>51</sup> Since what they are working out is guided, he thinks, by their "fading vision" (recollection?) of the ideal or true commonwealth, it would seem that to Plato such law as they do achieve must be the image in the world (however poor) of the law which would govern the best or true state (the natural law), and it must therefore be respected as the closest approximation to the laws of a true state that men in that time and place find it possible to achieve. Disobedience of these positive laws—even though they, like every other "image" in the world of becoming, are imperfect—would then seem necessarily to him to be a failure to honor such reflections of the real forms of "order" and "justice" as do exist in the world.

It seems then that for Plato only a functioning king is in a position to become a true statesman and, therefore, that only such a one (if he were to come to know "the good") would be able to acquire a right to act contrary to the laws—with violence if necessary—for the sake of "the good." A private citizen could never acquire the right to do so—whether he thought he knew "the good" or not. Plato therefore clearly denies to himself such a right in his *Seventh Epistle*.

These are my principles. . . . Upon a slave I might force my advice . . . but to use compulsion upon a father or mother is to me an impious act. . . . This is the principle which a wise man must follow in his relations with his own city. Let him warn her, if he thinks her constitution is corrupt and there is a prospect that his words will be listened to and not put

him in danger of his life; but let him not use violence upon his fatherland to bring about a change of constitution.<sup>52</sup>

Plato thus rejects both deliberate martyrdom and the use of "violence" on behalf of "the good" by citizens. And this "violence," since it means the use of force rather than of the legal forms of persuasion, would no doubt also include for Plato what we term "non-violent" civil disobedience, or passive resistance.

But this rejection of a right of civil disobedience is probably also not due simply to some of Plato's idiosyncrasies. It seems likely that any natural law type philosophy—if adequate to its own demands—would have to deny the right of a citizen to disregard the positive laws of his society in favor of the natural law. Such a philosophy does indeed imply a prior right to act in terms of the natural law. But for practical reasons this right can only belong to one, or at the most to a very few, absolute authorities. It is true that if these authorities do not know the natural law then they will be exercising their authority wrongly. But it would be a practical absurdity for anyone else to have such a right. The claim that any truly knowing citizen ought also be allowed to disregard the laws would set an insoluble practical problem. There would have to be some way of publicly assessing which of the citizens are knowing ones—otherwise we would never be able to agree in practice *whose* civil disobedience we ought to tolerate. But if we tried to achieve this agreement by maintaining that that man's civil disobedience is to be allowed by us as "right" who is able to convince "us," the operative majority in the society, that he *is* a knowing citizen, then such a citizen's primary

efforts would have to be shifted from civil disobedience to moral persuasion—and the necessity for him to engage in civil disobedience would evaporate. And if we tried to achieve the necessary agreement by granting a judge or a mediator power to decide who the knowing citizens are, then such a judge would himself be given a monopoly of the right to disobey laws, and this prerogative would not then really belong to the knowing citizen. In fact, if a judge with this power could also be said to be qualified to make such decisions, he would be, in terms of Plato's philosophy, the true statesman of the *Statesman*, Plato's veritable philosopher-king, and the state over which he presided would not be a plutocracy or a democracy at all but the "perfect" monarchy outlined in the *Republic*.

It is worthwhile to observe, however, that Plato's whole argument against the right of citizens to violate the law rests upon the assumption that there is a true "good" and that it is knowable, but only (as in the case of other arts and sciences) by some few individuals who have wrestled mightily to acquire this knowledge. This assumption implies that only such individuals—when in a recognized position of power—may do what Plato clearly sees ought to be done at times, that is, set aside the law for something better. Restriction of the right to disobey laws to the truly wise *ruler* enabled Plato to preserve intact the important and necessary principle of the subordination of the citizen to the laws. The consequence of this restriction is, however, to rule out *any* disobedience of law by anyone in a democracy. Following such a principle as this must obviously seriously hamper a democracy—so seriously, in

fact, that its citizens would be unlikely to submit to it. One reason why Plato could see so little sense in democracy was probably, therefore, the apparent incongruity, both practical and conceptual, of a single individual's wearing at one and the same time two hats: (1) that of a citizen subordinate to the laws and (2) that of a lawgiver or statesman superior to them and therefore entitled to use force if necessary to set the laws aside—that is, to disregard them upon some occasion, rather than simply to amend them in a legal way.

But granting, as even Plato does, that it is foolish to allow conventional laws to stand in the way of what is truly beneficial, we are put on the way to seeing how this foolishness may be avoided in a democracy also, if we suppose—contrary to Plato—that “the good” is *not* grasped by knowledge, but “worked out” pragmatically by men's collective efforts through time—in much the same way as we have seen that Plato thought the laws of a state were, in the absence of a “scientific” lawgiver. “The good” would then not be understood as definable in absolutistic or conceptual terms. Its definition would, rather, be seen to grow and develop right along with its existence—with its social implementation.

The termination of its growth in some state of affairs that could be justified as the one final and unchangeable “good” could never then be anticipated. A society ought always remain “open,” therefore, and no one in it should be excluded (at least not on absolute or a priori grounds) from a right to push for the fulfilment of his own or of his group's interests and desires. His pushing could rightly be limited only by the compromises and accommodations de-

manded by the interests and desires of others with whom he finds he must associate.

Such a social philosophy as this, which regards the good as something constructed by men, has as a matter of fact had a slow growth in the West. Aristotle might be said to have brought it forth long ago alongside his conceptual analysis of “the good for man.” These two notions of “good” were connected in his philosophy through his belief that the true good for man could not be achieved except in a political state and, therefore, that the rock-bottom political necessities had first to be taken care of.<sup>53</sup> And these rock-bottom necessities were for him exactly those accommodations and compromises necessitated by the factional interests actually present in an interdependent group of men. Only that society could achieve the minimally necessary internal peace and stability, Aristotle held, which was supported by a concomitant majority—a majority of *each* of the politically interested and active factions.<sup>54</sup> His “polity,” being such a compromise supported by most of the rich, most of the poor, and most of the middle class, was therefore, he claimed, the best state “in general.” And the best condition in which a nominal “democracy” or a nominal “oligarchy” could be was very much like this “polity,” except that the compromises leaned in the direction of the more powerful faction in each case.<sup>55</sup>

Aristotle outlined, in both the *Politics* and the *Rhetoric*, those arts of accommodation, compromise, and rhetorical persuasion that were at once necessary to the attainment of such constitutions and also definitive of their existence. These arts, in fact, could almost be said to set forth the ethical

principles essential to the life of such states. *This* "ethics" of Aristotle, however, seemed itself to be his own compromise with the stubborn democratic tendencies of his day of which he was not fond. He did not hold that the true good for man was simply and alone whatever men could work it out together to be. He apparently thought this "working out" was the only way, when opposing interest groups were vying for political power, that men could finally succeed in achieving the political stability essential to attaining any sort of decent human life—including the rather aristocratic "active life of rational principle" he thought was the true good for man.

But with the advent of Humian utilitarian thinking and the subsequent growth of Utilitarian philosophy proper, the notion was brought forward that "the good" was only what men's needs, wants, and desires gradually accomplished through their natural and free political and economic interactions. It was an optimum, the "greatest good of the greatest number," not a substantial "form" to be rationally grasped, as in Plato; or a truth about what is potentially satisfying to human beings, dialectically defensible, but fully understood only by the practically wise man, as in Aristotle.

Pragmatic philosophy finally freed Utilitarian thinking from the last vestiges of the "form of the good" which still hung about it—its commitment to the notion that the good (or "happiness") was definable as a balance of pleasure over pain. John Dewey, it is true, seemed at times to replace this Utilitarian definition of the good with that of "growth." Yet, if one sees that this "growth" is expressed sometimes in Dewey as the unconscious result of

actual problem-solving, and sometimes as the very process itself,<sup>56</sup> one can free Dewey's thought from even this sneaking remnant of the "form of the good." Dewey clearly indicated he was pointing us to a region in between the "solution" of man's problems by "short-sighted opportunism" and brute force and their merely conceptual "solution" in an organic *theory* of society. Neither of these "solutions" really solved anything, according to Dewey. Only "actual reconstruction of special situations" could do this.<sup>57</sup> Only that can be said to be "good," therefore, that can be seen to contribute "to the amelioration of existing ills."<sup>58</sup> And the "action needed to satisfy" a given situation must not be derived conceptually from some rationally discoverable "ethics," he held, but must be searched for among the "conflicting desires and alternative apparent goods" presented by the given situation.<sup>59</sup> The function of a state became then, for Dewey, that of fostering and co-ordinating "the activities of voluntary groupings" or factions.<sup>60</sup> There is, therefore, a need for all to share in the shaping of aims and policies.<sup>61</sup> This democratic participation by all is essential for Dewey, not only because the activities of voluntary groups could hardly be fostered and co-ordinated if some of them were excluded from participation in shaping aims and policies, but also because he holds that the test of a "genuine" as against a "spurious" good is just its "capacity to endure publicity and communication"—that is, its capacity to become truly "public" and "social," rather than to remain mere transient sensation or private appetite.<sup>62</sup> "Communication, sharing, joint participation," he says, "are the only actual

ways of universalizing the moral law and end.”<sup>63</sup>

Public demonstration then (with or without civil disobedience) could be seen in this philosophy as possibly one of the ways in which a populous democracy might be forced to function in order to attain a sufficiently broad enough participation on the part of its citizens to accomplish that communication with each other without which “genuine goods” could not be “worked out.”

Significant communication about issues of public import is still perhaps the biggest problem facing the possible development of a full democracy in our large societies. Political units are too large for “Town Hall” meetings. Business firms are too large for democratic management, as are school systems and universities. In *The Public and Its Problems*, Dewey could, therefore, only rail fruitlessly against the obvious deficiencies of our media for mass communication<sup>64</sup> and pointlessly urge a return to smaller communities where face-to-face relations, and so where genuine communication, could again take place.<sup>65</sup> He seemed to have suspected however, even then, that solutions along these lines were becoming more and more unlikely.

By the time he wrote *Freedom and Culture*, he had to admit that “to a very considerable extent, groups having a functional basis will probably have to replace those based on physical contiguity.”<sup>66</sup> Democratic decision-making, in other words, would have to operate through consultation among functional groups—labor, management, etc. Dewey did not appear eager for this. It was possible that most of the interests in a society might in this manner be able to represent themselves to

each other and so be able to give a real substance to democracy—even though individuals could be the direct participants only within their own functional groups. But Dewey was afraid that members of these associations might become their servants rather than their masters<sup>67</sup> and that democratic participation in the control of them might not develop. His fears were well grounded. Democratic participation in their control has not developed to any real extent. Not only this, but such groups have proved to be rather blind (as might have been expected) to broader issues not of immediate concern to them as they entered into consultation with each other. As a result, bureaucratic government has grown rapidly upon the basis of functional group, consultative decision-making—in order to try to protect the public from exploitation from *ad hoc* combinations of functional groups. But bureaucracy tends to be government by experts, and such a government, as Dewey pointed out, is the antithesis of democratic participation.<sup>68</sup>

Unable then, because of the circumstances of modern living, to talk to their fellow citizens in direct communication, unable even to influence their own functional groups to any significant extent—and their bureaucratic officials even less—people with passionate interests in public issues and with the firm belief that things ought to be run by means of democratic participation have taken to the streets to speak to each other—and to their officials—by means of demonstrations. A pragmatic philosophy could not fail to note the limitations of such a method of communication, of course. It can obviously be only an extremely rough and ready way to communicate. It cannot

deal with problems with much finesse. It can make only slight use of intelligence or of fine but important distinctions or of funded knowledge. And the spirit of enthusiasm which people seem to need in order to pick up a sign and march—or go to jail—seems to be somewhat contrary to the conciliatory attitude essential to consultation and compromise. But still it would have to be recognized as a form of democratic communication—and maybe as the only form open to large numbers of people in a widely sprawling democracy.

If demonstrations were understood in this way as democratic communication, the question of whether civil disobedience should be resorted to in demonstrations would not be regarded as a distinctly moral question but more as an operational one to be answered by reference to such things as the relative need for getting sufficient attention, the relative urgency or importance of the issue involved, and possibly also the relative availability of other effective means for making such views heard or felt. As such, it would not be thought wrong. For as even Plato showed very clearly, the true statesman (the ruler who knows the good) must be understood to be right in disobeying the laws and customs in order to accomplish the genuinely better. And it is the statesman himself who must decide *when* unlawful or coercive action is called for.<sup>69</sup> Who else indeed would be qualified? Since it is the people who are the real rulers in a real democracy and since in this pragmatic view the good is not the end result of inquiry but rather a sort of *modus vivendi* achieved among striving interest groups, if the people should decide that it is more expedient to use extra-legal force rather than to use legal po-

litical or moral persuasion to construct the good, they must surely be understood to have a statesman's right to do so. But "the people" in a democracy do not exist as a single entity. "The people" exist only as the sum of the fragmented individuals and interest groups. And so, since it is only these *parts* of a democratic society that can "decide" anything, "the people's" decision to use force can only exist in and through the partial decisions of some of its functioning parts to use it—for example, in and through the decision of an interest group to resort to civil disobedience.

And such a decision can, of course, have intelligent grounds. Any given demonstration may be said to be effective (1) if it involves more than an insignificant number of people and (2) if it calls considerable attention to itself. Civil disobedience, especially of the sort likely to result in the arrest of the demonstrators, would call considerable attention to itself. Moreover, it is likely to do this in a better way than merely inconveniencing large numbers of people would. Although the latter is an attention-getter, it can result in the ill will of the general public and so in damage to the cause. Accomplishing one's own arrest and punishment keeps injury to the general public quite minimal, at least to all immediate appearances; and even this injury may be somewhat counteracted in the public mind by the greater injury usually suffered by the demonstrators themselves, particularly if the police must use force to make the arrests or to disperse the illegal assembly. The cry of "police brutality," which usually then arises, never fails to impress many hearers. Besides, the spectacle of numbers of people ready to suffer indigni-

ties, arrest, legal penalties, and sometimes even physical injuries for the cause they have embraced also impresses the public. The public sees their dedication and their seriousness—and so also the intensity of their devotion to their cause—and is thus led perhaps to respect them, but certainly at least to count them and their wishes as a real power to be reckoned with. Non-violent, unlawful demonstrations would be likely, therefore, to be more striking than lawful ones (unless these should involve massive numbers of demonstrators) and might, as a consequence, become pragmatically preferable under certain conditions.

But such a defense of civil disobedience does not give it a blanket indorsement. As we have noted, it is justifiable in this philosophy as a mode of democratic participation, facilitating communication between factional interest groups, and leading to a new and better accommodation of them. Reference to this function can provide us (as we have just seen) with reasonable criteria for determining when civil disobedience ought to be used. But such reference can also provide us with rational criteria for determining *how* it ought to be used.

The function served by civil disobedience tells us, for instance, something of the proper motive or reason for engaging in it. A motivation naturally operative would be, of course, the wish to see one's own interests and convictions furthered. But this motivation can be overlaid by other motivations arising from the status one supposes his basic interests or convictions have. In pragmatic philosophy, one necessarily sees that his own interests or convictions are not the only ones in existence—nor the only "true" ones.

The problem, therefore, becomes not simply how to ram one's own interests through, but how the meaning and importance of these interests and convictions can be best communicated to those who do not share them, to the end that they can acquire the best and fullest accommodation possible, given the necessity to "give and take," which the other interests and convictions practically operative in the society require. One must possess a readiness to be content with compromise, therefore, however sound his own convictions may seem to him to be. This readiness will be difficult if one's disobedience is allowed to become too much an expression of righteous indignation at unjust laws. Those who engage in their civil disobedience mainly as such an expression will tend to give their cause peculiarly moral or religious airs and so to turn their struggle into a "holy" crusade, claiming the "unconditional surrender" of their opponents as the only right end, and therefore regarding any thought of compromise as an immoral "sellout." Besides, few people think their own interests and convictions are morally bad. Presenting a "holier-than-thou" face toward them only succeeds in insulting them and in stiffening their resistance both to an understanding of what one is trying to say through his demonstration and to the possibility of others ultimately joining him in the construction of a compromise. Such prejudices and passions as one's opponents have could only be further inflamed by these tactics—not overcome.

We have seen how a determination might reasonably be made in pragmatic thought as to when and how civil disobedience ought to be used. A determination as to when it ought *not* to be

used can also be reasonably made. Since it ought to be a meaningful and sound part of a strategy aimed at seeking significant compromises and accommodations, civil disobedience obviously ought not be resorted to where its use might seem to have the probable result of interfering with the process of communication or of compromise. If participants close their eyes to this consideration, they are actually treating civil disobedience as an end in itself, rather than as a means. It should be interesting to note here that, no matter how much some of Gandhi's admirers have elevated passive resistance to the status of an end in itself, Gandhi himself was an astute politician. He turned passive resistance on and off as part of a strategy aimed at a very clear objective—Indian independence. Moreover, he was ready to accept compromises along the way.

Concentration on the strategic use of civil disobedience might possibly make resort to it sufficiently infrequent to meet one further very important restriction. This restriction is, however, sufficiently important to be noted separately and to be consciously borne in mind. Since accommodations of conflicting interests are effective only through a dedication to follow the "working rules" achieved through negotiation and compromise, civil disobedience should not be used so frequently as to spawn a general spirit of lawlessness or of disrespect for law. Sidney Hook has recently found reason to issue a public warning concerning this danger.<sup>70</sup> Somehow the democratic citizen must learn to wear his two hats. If he discards either of them, his democracy will perish. He must create, therefore, a social or public ethics enabling him to know

when to don and when to doff each one in turn.

We have seen that a pragmatic defense of civil disobedience is able to provide a basis for such a necessary ethics. It is able to do so because it discovers a socially necessary function for civil disobedience. It can therefore (1) limit civil disobedience to what is essential to the performance of this function and (2) limit this function to the social situations in which it is needed. The "religious" understanding of civil disobedience, by contrast, always sees all genuine instances of it as of the highest moral worth. But what is of the highest moral worth cannot, of course, be understood to function toward an end and cannot, therefore, develop limiting principles or an "ethics" for its proper use—beyond those which simply define it. On the other hand, defenses of civil disobedience attempted on the basis of natural rights or natural laws are, as we have seen, only specious. They do not logically exist. The kind of disobedience of law which these approaches can uphold is all to one side of what is called civil disobedience today, and so they are unable to generate an ethics for its use. Holding that the good (or the right) is cognizable in some sense, these natural law and natural right philosophies are unable to trust either the concept or the existence of the good (or of the right) to what ordinary men can pragmatically work out together as their going adjustment to the world, to each other, and to their own aspirations. They are quite far, therefore, from trusting these things to mass civil disobedience.

Yet perhaps not *every* species of pragmatic thought, either, will embrace civil disobedience with enthusiasm. Pos-

sibly it is only a certain species of it which is wedded, like Dewey's, fairly firmly to a faith in extensive democratic participation that can do so. A pragmatism that is so open as to regard democratic participation as also an open question—to be answered in different ways in the face of different problems and situations—might not be as enthusiastic. Some pragmatists may even suppose—with Plato—that no large numbers of people will be likely to master *any* "science" of government, even one so rudimentary as that expressed in the foregoing remarks about a possible ethics for civil disobedience. Such pragmatists, tending therefore to believe that most direct participation of

"the people" in the management of affairs ought to be discouraged, would no doubt also think that most civil disobedience ought to be discouraged.

Perhaps, in the end, general approval of a right to civil disobedience may, therefore, have to be said to rest more on a faith in democracy than it does on a philosophical commitment to pragmatism. Yet the two are closely related. A pragmatist, it is true, may not find it necessary to be a democrat. But a democrat who wishes to inform his faith with an adequate philosophy may find it hard not to become a pragmatist—if indeed he does not discover he is one already.

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#### NOTES

1. Ralph T. Templin, *Democracy and Non-violence* (Boston: Porter Sargent, Publisher, 1965), p. 256.
2. *Ibid.*, pp. 245, 255.
3. *Ibid.*, pp. 253, 258.
4. *Ibid.*, pp. 272, 273, 283.
5. Jean-Paul Sartre, *Literary and Philosophical Essays*, trans. Annette Michelson (New York: Collier Books, 1962), p. 232.
6. Templin, *op. cit.*, p. 255.
7. *Ibid.*, p. 249.
8. *Ibid.*, p. 183.
9. *Ibid.*, pp. 251, 257, 281.
10. *Ibid.*, p. 253.
11. *Ibid.*, p. 258.
12. *Ibid.*, pp. 254, 271.
13. *Ibid.*, pp. 214, 257, 259.
14. *Ibid.*, p. 215.
15. *Ibid.*, pp. 254, 255.
16. *Ibid.*, p. 264.
17. John Locke, *Of Civil Government* (New York: E. P. Dutton & Co., 1924), pp. 184–85.
18. *Ibid.*, p. 229.
19. *Ibid.*, pp. 128, 160, 186.
20. *Ibid.*, p. 231.
21. *Ibid.*, pp. 229, 242.
22. *Ibid.*, p. 231.
23. *Ibid.*, p. 203.
24. *Ibid.*, p. 241.
25. *Ibid.*, pp. 241–42.
26. *Ibid.*, p. 242.
27. *Ibid.*, p. 164.
28. *Ibid.*, p. 165.
29. *Ibid.*, p. 177.
30. *Ibid.*, p. 165.
31. *Ibid.*, p. 166.
32. *Ibid.*, p. 165.
33. Plato, *Plato: Collected Dialogues*, ed. Edith Hamilton and Huntington Cairns (New York: Random House, 1961), p. 15 (29c–30c).
34. *Ibid.*, p. 15 (29a).
35. *Ibid.*, p. 15 (29b).
36. *Ibid.*, p. 39 (*Crito*, 54c).
37. *Ibid.*, pp. 17, 18 (32a–c). See also Plato's *Seventh Epistle* (Plato, trans. R. G. Bury [Cambridge: Harvard University Press, 1952], VII, 479 [325a]).
38. *Ibid.*, p. 1063 (294b).
39. *Ibid.*, p. 1064 (295b).
40. *Ibid.*, p. 1065 (295c–d).
41. *Ibid.*, p. 1067 (297a–b).
42. *Ibid.*, p. 1066 (296c–d).
43. *Ibid.*, p. 1071 (300d–e).
44. *Ibid.*, p. 1071 (300e).
45. *Ibid.*, p. 1071 (300e–301a).
46. *Ibid.*, p. 1071 (301a).
47. *Ibid.*, p. 1062 (293c).
48. *Ibid.*, p. 1067 (297e).
49. *Ibid.*, p. 1072 (301e).
50. *Ibid.*, p. 1070 (300b).
51. *Ibid.*, p. 1072 (301c–d).
52. Plato, *Epistles*, trans. Glenn R. Murrow (Indianapolis: Bobbs-Merrill Co., 1962), p. 224 (331a–d).

53. Aristotle, *The Basic Works of Aristotle*, ed. Richard McKeon (New York: Random House, 1941), pp. 1108–12 (*Nicomachean Ethics*, Book X, chap. ix).
54. *Ibid.*, pp. 1250, 1271, 1167, 1218 (*Politics*, 1309b, 1320a, 1270b, 1294b).
55. *Ibid.*, pp. 1205–19 (*Politics*, Book IV, chaps. i–ix).
56. John Dewey, *Reconstruction In Philosophy* (Boston: Beacon Press, 1948), pp. 180, 177.
57. *Ibid.*, pp. 191–93.
58. *Ibid.*, p. 172.
59. *Ibid.*, p. 163.
60. *Ibid.*, p. 205.
61. *Ibid.*, p. 209.
62. *Ibid.*, p. 206.
63. *Ibid.*, pp. 205, 206.
64. John Dewey, *The Public and Its Problems* (Chicago: Gateway Books, 1946), pp. 179–83.
65. *Ibid.*, pp. 212–19.
66. John Dewey, *Freedom and Culture* (New York: G. P. Putnam's Sons, 1939), p. 161.
67. *Ibid.*, pp. 166, 167.
68. Dewey, *The Public and Its Problems*, pp. 203–7.
69. *Plato: Collected Dialogues*, p. 1076 (304d).
70. Sidney Hook, "Neither Blind Obedience nor Uncivil Disobedience," *New York Times Magazine* (June 5, 1966), pp. 52 ff.