

## Civil Disobedience on Respect for Law and Human Rights

*Marta Kunecka*\*

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*An individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.*

*Martin Luther King, Jr.*

### Abstract

The following paper will present the theory and possibilities of implication of the phenomenon of civil disobedience understood as one of the most powerful and most effective tools of democratic society when it comes to implementing the necessary and indispensable changes required for the improvement of the political domain and the social public sphere.

In the first part I will present the narrow but orthodox and widely discussed definition of civil disobedience presented by John Rawls in his *Theory of Justice* (1971). Given such a definition, as well as the major conditions under which the actions undertaken in the name of civil disobedience can be justified, I will focus my analysis on two major aspects of the discussed notion.

Firstly, I will discuss civil disobedience, which is in its essence an unlawful act, paradoxically expresses the highest respect for the positive law by the person performing the civilly disobedient act through one's submission to the judgment of the law which is an object of one's protest. This way, civil disobedience presents itself as the phenomenon which, not having a legal recognition (not being legalized), holds

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\* Philosophy Senior Instructor and Advisor, School of History, Philosophy, and Religion, Oregon State University, Corvallis, USA.

Email: kuneckam@oregonstate.edu



super-legal force required to impose the changes on the unjust legal system or on the particular unjust regulation.

Secondly, I will point out that civil disobedience, as a public act performed by the people (the subjects of the particular law), expresses the will of the people and, therefore, it can not be used (by themselves) in the ways contradictory to their best self-interest but always supported by the “the commonly shared sense of justice” (Rawls). From this premise I conclude that the universal human rights, as their supporters claim, are one of the main ends of the political activism in the recent decade and should be advocated in the civilly disobedient manner.

In the last part I will contrast the Rawlsean definition with a much broader and more relevant understanding of civil disobedience when it concerns today’s globalizing world. In this world, the nation-states cease to be the only political actors when confronted with the transnational public sphere, and, therefore, the understanding of civil disobedience as a transversal arena of public dissent presented by Roland Bleiker (2000) is more appropriate. In this definition civil disobedience becomes, not only a political instrument of particular subjects of a particular society, but it also becomes a tool for the international mobilization of means and of people in the name of presenting and imposing the respect for the universal human rights despite the national borders and societal paradigms.

**Keywords:** Civil Disobedience; Law; Civil Law; Democratic Society; Human Rights.

## 1. Introduction

In his *Theory of Justice*<sup>1</sup>, one of the most influential works in the field of political theory of the XX century, John Rawls discusses an issue, which at the time of publishing his book, had emerged as one of the most important and urgent political questions in the American public debate. The question of civil disobedience emerged anew, as the result of the massive nonviolent movements of the '50 and '60 in the name of equality for Afro Americans lead by Martin Luther King and in the name of peace during the Vietnam War.

The notion has a relatively new history, even though the phenomenon described by it, existed long before it was formalized. Civil disobedience can be discussed among other topics connected with the theory of mass resistance or civil dissent. Some scholars go as far as back as the Bible, Greek tragedies and the works of the classic western philosophers. The term first appeared in the title of the short essay written by American abolitionist Henry David Thoreau, who wrote his essay in 1849<sup>2</sup> during his confinement in a Boston prisons for his refusal to pay taxes in order to express his disagreement with the government, which started the 1848 war with Mexico and sustained slavery.

Nowadays, there are still many disagreements among scholars on what is the exact definition of civil disobedience (if there is one), and, under what circumstances shall we justify civilly disobedience acts. The commonly shared idea is that civil disobedience does refer to a democratically established system and it is justified only within its limits. Understanding the concept becomes, in such a view, an indispensable part of the theory of just government.<sup>3</sup> According to Rawls, who discusses the role of civil disobedience in legitimately established democratic government, the problem with civil disobedience arises only within a nearly just society among the citizens who, in the tradition of social contract, recognize and accept the legitimacy of the constitution. Civil disobedience, in this case, is viewed as a test case for the moral basis of democracy and as a stabilizing device of a constitutional system. Used with due restraint and sound judgment, it can help to maintain and strengthen just institutions.

What distinguishes civil from uncivil disobedience is crucial to understand the phenomenon as the part of the theory of free government since as Gandhi

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1. See: Rawls, 1971.

2. The essay *Civil Disobedience* was originally published as *Resistance to Civil Government*.

3. "Understanding the concept of civil disobedience is part of the theory of free government". As such it is a necessary element of the theory of democratic societies", See: Rawls, 1971.

writes: “Disobedience without civility, discipline, discrimination, non-violence is certain destruction”. (Gandhi, 1970) So, while dealing with the word “civil” it is helpful to refer to its definition by H.A. Bedau who relates it to the “cives” or citizen; understands it as opposed to the military, while emphasizing the note of non-violence; as the antonym of uncivil or uncivilized, also the opposite of the criminal; and, finally, as a demonstration of the public as opposed to private, in terms of publicity.<sup>1</sup>

A difficulty arises for a theory of civil disobedience, when one takes under consideration the inevitable changes that face the democratic world. Nowadays, the processes of globalization help to form an emerging discourse on international law and the human rights that become one of the key features in the transnational, democratic society. How does the orthodox definition of civil disobedience fit into this new world order? Is there room for civilly disobedient actions in the transnational society? If so, why is it important to promote nonviolent ways of resolving world conflicts, especially those that arise from the non-observance of the basic human rights? What, if anything, can be accomplished by such international civil solidarity?

## 2.

Let me first begin by establishing the classic Rawlsian definition of civil disobedience. The broad definition of civil disobedience states that it can be *any noncompliance with law for conscientious reasons*. The advocates of such understanding can be found among such scholars as R. Dworkin, already mentioned H. D. Thoreau, M.L. King or H. Zinn. Rawls, on the other hand uses the narrower definition that defines civil disobedience as *public, nonviolent conscientious political act contrary to law, which aims to bring change in the law or policy of the government and appeals to the commonly shared sense of justice*. Rawls strongly distinguishes civil disobedience from other types of resistance. He does distinguish it from, for instance: a militant, opposed to the legal order, resistance, where there is no appeal to the sense of justice of the majority and where the resistant may try to evade a penalty. He also distinguishes civil disobedience from conscientious refusal, which does not appeal to the sense of justice of the majority, is not done in the public forum and is not necessarily based on political principles but it may be found on religious or moral principles of an individual.

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1. See: Bedau, 1991.

According to Rawls, civil disobedience is a justified political act for a few reasons:

- 1/ it is addressed to the majority that holds political power;
- 2/ it is an act guided and justified by political principles;
- 3/ it is an act done in public and is engaged openly with fair notice;
- 4/ it is nonviolent, meaning that:
  - a/ it is a public act what requires avoiding a use of violence;
  - b/ it expresses disobedience to law within the limits of fidelity to law (sincerity of an act).

According to Rawls, what makes the actions defined above politically legitimate is that they are performed only when the normal appeals to the political majority have already been made in good faith and they have failed. Furthermore, the following conditions must apply:

- 1/ there is a violation of the principle of equal liberty and the action it is lead by the principle of fairness or duty of justice;
- 2/ if the certain minority is justified in engaging in civil disobedience, then any other minority in relevantly similar circumstances is likewise justified;
- 3/ it is lead by the principle of fairness, duty of justice;
- 4/ it is performed by the responsible citizens (citizen must look at the political principles, that underline the interpretation of constitution) and the right of civil disobedience should be rationally framed to advance one's ends or the ends of those one wishes to assist. (Rawls, 1971)

### **3.**

In order to point out the need for reframing the given definition let me now focus on one aspect of it: its complex relation to law. According to many scholars, including Rawls, ccivil disobedience, is in its essence an unlawful act, which paradoxically expresses the highest respect for positive law by a person performing a civilly disobedient act through one's submission to the judgment of the law. This way, civil disobedience presents itself as the phenomenon which, not having a legal recognition (not being legalized), holds super-legal force required to impose the changes on the unjust legal system or on the particular unjust regulation.

There are three main grounds on which civil disobedience can be seen as an act which expresses the respect for law: its difference with mere criminal acts, its organized way of channeling mass resistance; its basic acceptance of the terms of the social contract.

a/ As given in the definition quoted above, civil disobedience is not a private but a public act. As such it demands the public consent and asks for public understanding. This requirement is very crucial in this debate since this mere element distinguishes such acts of dissent from a mere law breaking. As Hannah Arendt points out: "There is a difference in the world between the criminal's avoiding the public eye and the civil disobedient taking the law into his own hands in open defiance. The former, even if he belongs to a criminal organization, acts for his own benefit alone; he refuses to be overpowered by the consent of all others and will yield only to the violence of the law-enforcement agencies. The civil disobedient, though he is usually dissenting from majority, acts in the name and for the sake of a group; he defies the law and the established authorities on the ground of basic dissent, and not because he as individual wishes to make an exception for himself and to get away with it". (Arendt, 1971) The importance of distinguishing civil disobedience from a mere criminal act is one thing which helps to understand it as an act done in the respectful manner, the other is understanding its effects.

b/ Many scholars do not allow justification of civil disobedience since they are concerned that allowing the actions to take place will result in mass revolt and tumult. Abe Fortas, a Justice of the US Supreme Court, in his legalist argument in favor of limiting civil disobedience, expresses the worry that wherever there is doubt in law and order then social disorder takes place and that leads to unwanted anarchy.<sup>1</sup> In his reply to Justice Fortas, Howard Zinn argues, that civil disobedience is exactly the one channel to avoid anarchy. As he points out: "Those, who fear the spread of social disorder should keep in mind that civil disobedience is the organized expression of revolt against existing evils; it does not create the evils, but rationalizes the natural reactions to them, which otherwise burst out from time to time in sporadic and often ineffectual disorders. Civil disobedience, therefore, by providing an organized outlet of rebellion, may prevent chaotic and uncontrolled reactions".<sup>2</sup> With such argument we may look at civil disobedience as not a revolutionary act

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1. See: Fortas, 1968.

2. See: Zinn, 1971.

which is about to bring a change of the system and its legal framework but as an act which aims at improvement of particular regulations of a particular system within that system.

c/ In a democracy the very condition for the obedience to the majority established laws is the participation of an individual in the process of making the law. This specific understanding of law in democratic societies directs us towards the enlightenment idea of the social contract. The tradition according to which positive law is the result of the majority consent and expresses “the moral judgment of the majority, and its sense of justice”. (Rawls, 1971) Understood as such, morality of the consent obliges us to follow the prerogatives of commonly accepted law and to obey its orders in the name of the social order and in the name of the respect of the fellow citizens. This is our obligation as a member of society since, as the citizens of such system we do benefit from existence of law; therefore, we owe it its respect also when it punishes us. This very idea is deeply expressed by Socrates, the protagonist of Plato's dialogue entitled *Crito*. Socrates, given a chance to avoid the penalty imposed by the people of Athens decides to follow its orders and drinks the hemlock in the name of the respect for its law with the following words on his lips:

“And was that our agreement with you?” the law would say; “or were you to abide by the sentence of the State? For, after having brought you into the world, and nurtured and educated you, and given you and every other citizen a share in every good that we had to give, we further proclaim and give the right to every Athenian, that if he does not like us when he has come of age and has seen the ways of the city, and made our acquaintance, he may go where he pleases and take his goods with him; and none of us laws will forbid him or interfere with him. Any of you who does not like us and the city, and who wants to go to a colony or to any other city, may go where he likes, and take his goods with him. But he who has experience of the manner in which we order justice and administer the State, and still remains, has entered into an implied contract that he will do as we commend him. And he who disobeys us is, as we maintain, thrice wrong: first, because in disobeying us he is disobeying his parents; secondly, because we are the authors of his education; thirdly, because he has made an agreement with us that he will duly obey our commands; and he neither obeys them nor

convinces us that our commands are wrong; and we do not rudely impose them, but give him the alternative of obeying or convincing us; that is what we offer and he does neither.”

Some advocates of Socrates standpoint, argue that the very idea of agreeing with the punishment envisioned in the protested legal system is the expression of the higher moral order and the respect for Law in general but not necessarily for the particular positive laws. We may disobey certain laws or sanctions but our respect for Law is expressed by obeying the envisioned sentence for our actions. In this tradition we, indeed, see such commonly recognized figures as M. Gandhi famously stating that: “Civil disobedience means our desire to surrender to a single unarmed policeman. Our triumph consists in thousands being let to the prisons like lambs to the slaughterhouse. If the lambs of the world had been willingly led, they would have long ago saved themselves from the butcher's knife. Our triumph consists again in being imprisoned for no wrong whatsoever. The greater our innocence, the greater our strength and the swifter our victory”. (Gandhi, 1951) When the legal means of the system were undertaken and the results did not provide justice then certain actions must be justified, and signify a moral commitment of the disobedient, if the imposed punishment has not been rejected. Further, we may also recall Martin Luther King, who after being jailed for his actions, said that: “he never felt more a partner in the making of American law than when he was in jail protesting one”. (M.L. King, 1963) In those cases, acceptance of the punishment is the case of fulfilling the Law or *closing the gap between law and justice*<sup>1</sup> by improving the positive representations of it. All of the above examples only comply with the very idea that in democratic system, which operates upon the principles of participation and equal rights, we need to be able to see the particular laws as fallible and as the subject to change in order to improve itself in the name of justice.

We must agree that even in the democratic societies there needs to be room for discussion and improvement and since such dialogue is required in order to adjust the regulations to the moral requirements of the societies “we must accept a law that teaches by posing questions and being questioned”. (Wofford Jr., 1971)

If we conclude from this section that civil disobedience is a tool for improving some particular laws of particular societies, which is in accordance with Rawls, the challenging task would be to examine the role it has in the context of emerging transnational discourse on international law.

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1. See: Zinn, 1968.

#### 4.

Until now, civil disobedience has been presented as the mean to improve the legal democratic system of a state and was justified by the moral consensus of the fellow citizens. Since, in the globalizing world, we can no longer talk about the exclusive moral force of the nation state, civil disobedience gains a new dimension and creates space for the expression of the transnationally shared morals based on the respect for basic human rights. Universal human rights, which are guaranteed by the international law, should become one of the main ends of the political activism of today and should be advocated in the non-violent, civilly disobedient manner in those parts of the world where non-observance of human rights takes place.

Given that a justified act finds the public recognition means that it appeals to the commonly shared ideas of what is moral and what is not, therefore, seeks the agreement with the basic idea of justice. Rawls demands from us to seek justification for civil disobedience within the specific political societies of which laws become the subject of protest. In the globalized world though his restricted idea must be questioned. In Rawlsian words, “common morals” were restricted to the nation wide recognition of the rights, while his “peoples become windowless monads who have no interest in mixing, mingling, and interacting with others”. (Benhabib, 2004) On the other hand, in the globalizing world our identity gains new aspects, which exceed our nationality, so we are obliged to think about the community made up from all human beings and take responsibility for those whose rights, are being violated in different parts of the world.

As Sayla Benhabib suggest the transnational agreements upon certain values may be reached by democratic iterations defined as a “complex process of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualize, invoked and revoked, posited and positioned, through legal and political institutions, as well as in the associations of civil society”. (Benhabib, 2004) This is possible only if the transnational iteration take place; iterations, which will redefine and challenge the stiff and fossilized national values. In this context, transnational civil disobedience becomes the mean for the minorities stripped from their rights on the national level to claim their rights on more international level. Human rights may become the basis for such moral transgression and the ends on which civilly disobedience actions can be undertaken.

The very moral regard of the individuals as the citizens of the world is rooted in the idea of the universal human rights. The morality limited, until

now, and shared only among the equal members of the state, nowadays can be universalized into the morals shared by equal members of the world. Making basic human rights the binding premise for cooperation, we can now clearly justify the use of civil disobedience as a legitimate sort of political action that can bring about desired political and social changes on the commonly shared acceptance of the dignity of every human being. In this context, civil disobedience, “as the best way for the excluded to remind those in power that they exist and that they have to take them into consideration”,<sup>1</sup> becomes a tool which may be broadly used by minorities with no power in context of certain states who then become united and visible on the transnational level.

Thus, in such a framework civil disobedience becomes, not only a political instrument of particular subjects of a particular society, but also a tool for the international mobilization of means and of people in the name of presenting and imposing respect for the universal human rights despite the national borders and societal paradigms. When conceived this way, certain questions, nonetheless, arise about transnational civil disobedience:

- Who is this public to whom transnational civil disobedience appeals?
- To whom or what the claims are directed towards?

## 5.

As Carol. C. Gould points out, global public opinion, where the iterations take place, becomes the addressee of the minority claims in today transnational public sphere. It is possible thanks to “the developments of the international law and especially doctrines of human rights and their increasing institutionalization; and the emergence of large number of transnational civil society organizations, NGO’s, and regional or even global social movements”.<sup>2</sup> With such an institutionalization “acts of dissent now have the potential to transcend their immediate spatial context and enter domains that lie beyond national boundaries”,<sup>3</sup> especially when we take under consideration, as Fraser observes, that: “current mobilizations of public opinion seldom stop at the borders of territorial states”.<sup>4</sup> This transgression

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1. See: Bentouhami , *Civil Disobedience from Thoreau to Transnational Mobilizations: The Global Challenge*, Essays in Philosophy. A Biannual Journal, Vol. 8, No. 2, June 2007, Available at: <http://www.humboldt.edu/~essays/bentouhami.html>

2. See: Gauld, 2004.

3. See: Bleiker, 2000.

4. Fraser

helps to unite public opinion, which from now on can use the acts of civil disobedience at a new transnational platform. The international community can now not only protest the regulations and policies of worldwide and multinational organizations,<sup>1</sup> with their increasing economic growth and political power exceeding the legislation of the particular states, but it can also unite itself in the name of human rights. “Even though the global society is comprised of many distinct cultures, each with its own traditions and political values, the quest for human dignity is, nevertheless, a global struggle. It is a universal normative task, symbolized by the development of international humanitarian law, because of the shared conviction that each person is entitled to dignity, respect, and equal treatment by government authorities regardless of citizenship or nationality”.<sup>2</sup> Such cosmopolitan thinking indicates the need to undermine the role of sovereign states and to grant each individual the moral superiority over states. In such a case the moral solidarity of the people becomes the tool to advocate for recognition of human rights and make it possible for the states to see the problems of poverty, injustice, insecurity in the global context.

Anti-globalization movements, looked upon as one of the strategies for the social transformation in the globalized world, embody, to a certain extent, the ideas of international public opinion that engages in the civil disobedience presented herein. Those movements not only call for active participation on the multinational level, but bring about debate on the meaning of the justice in the transnational world order. “Through a range of seemingly mundane acts of resistance, people can gradually transform societal values and thus promote powerful processes of social change. These transformations are not limited to existing boundaries of sovereignty. The power of discursive practices is not circumscribed by some ultimate spatial delineation, and neither are the practices of dissent interfering with them. At a time when the flow of capital and information is increasingly trans-territorial, the sphere of everyday life has become an integral aspect of global politics (...).” (Gould, 2004)

The claims of such global public opinion need to be protected and enforced by supra national institutions which transgress the state regulations.

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1. World Bank (WB), International Monetary Fund (IMF), and the World Trade Organization (WTO), North American Free Trade Agreement (NAFTA), Free Trade Area of the Americas (FTAA), Multilateral Agreement on Investment (MAI), General Agreement on Trade in Services (GATS) etc.

2. See: Amstutz, 2008.

Traditionally, crimes were prosecuted within the territory of the sovereign states, but with the massive violation of the now recognized as human rights, during the World War II, the international justice system started to emerge in the second half of the XX century. So far states have adopted and ratified many treaties and legal documents whose aims are to protect human rights. With the emergence of the crimes against humanity that could not be prosecuted within the states themselves, such as in Yugoslavia or Rwanda, the international criminal tribunals emerged. In 1998, as the result of the Rome Treaty, ratified by sixty countries, the International Criminal Court was established. The court focuses mainly on the crimes connected with genocide, crimes against humanity, war crimes, and aggression.

## 6.

Given such transformation in the world order, the Rawlsian definition of civil disobedience needs to be adjusted.

Firstly, we can no longer restrict the understanding of citizenship within the context of the nation state. The ideas of transnational world order and of cosmopolitanism bring about the issue of citizenship based not only on the rights protected by the particular state, but by universal human rights, which make all human beings the citizens of the world.

Secondly, the commonly shared idea of justice to which civil disobedience appeals is not limited to the particular societies, but needs to be understood as the idea encompassing all the human beings in cosmopolitan society. With the United Nations Human Rights Declaration, the basic idea of justice transgresses from a nation state framework into that of the whole of humanity.

Thus, the nation state ceases to be the only addressee of civil disobedience; civil disobedience is no longer a means to improve only a particular society, but can be expanded in such ways as to improve the international world order as well.

The civilly disobedient actions not only appeal to the global public opinion in favor of human rights but, at the same time, in the process of appealing to it and opening the spheres of transnational deliberation, it also helps to create it. In order to fulfill the claims of the international public opinion, there must be institutions which will enforce the claims and newly established norms. This way, nonviolent civil disobedience is also helping to influence the meaning of the norms within the international justice system, it also helps to establish the non-governmental institutions that can persuade the governments to observe and protect human rights.

## 7.

In her Nobel Prize speech Shirin Ebadi speaks of human rights in these words: “If human rights fail to be manifested in codified laws or put into effect by states, then, as rendered in the preamble of the Universal Declaration of Human Rights, human beings will be left with no choice other than staging a “rebellion against tyranny and oppression”.”<sup>1</sup>

Peace understood as an opposition of war is, like Hobbes called it, the first precept of natural law, which is reason. Such reason demands from all human beings that they preserve themselves as well as the rest of humankind. It is contrary to reason, according to liberal thinkers, to sustain the state of war since it inevitably leads to self- destruction. War and any other conflict, do endanger humans and deprive them of their fundamental rights. Peace then, understood as antonym of war, becomes the symbol of the civil society which aim is, thanks to the social consensus, to avoid the state of nature and as such becomes a condition to protect and sustain the universal human right to live. As Farid Mirbagheri, states “There is clearly a strong association of sort between peace and security; for the most basic human security of all, which is survival, is threatened by the absence of peace, that is war.”<sup>2</sup>

The more modern definition of peace presented by Johan Galtung, qualifies the liberal understanding only as one aspect of the notion of peace. Galtung calls it *negative peace* and defines it as “the absence of violence, absence of war”. According to Galtung, in order to completely grasp the notion, we must understand peace in its positive aspect as well. He understands *positive peace* as “the integration of human society”.<sup>3</sup> The first aspect of peace, understood on the level of nation states or United Nations (when we think of the supranational level), implies the existence of coercive powers which prevent conflict and can bring about positive peace, in this case: integration. So, “negative peace may be accomplished by international treaties and international law policy. Examples of peace policies and proposals in this tradition are multilateralism, arms control, international conventions (Geneva Conventions), balance of power strategies, and so on”.<sup>4</sup> On the other hand,

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1. See: Ebadi, 2003. available at: [http://nobelprize.org/nobel\\_prizes/peace/laureates/2003/ebadi-lecture-e.html](http://nobelprize.org/nobel_prizes/peace/laureates/2003/ebadi-lecture-e.html)

2. See: *Islam and Liberal Peace*, Professor Farid Mirbagheri, Intercollege, Nicosia.

3. See: J. Galtung, An Editorial: *Journal of Peace Research*, 1964(1).

4. See: Baljit Singh Grewal, *Johan Galtung: Positive and Negative Peace*, at: <http://209.85.173.132/search?q=cache:ld20B19hH0IJ:www.drawloop.com/published/10379/download+negative+peace+galtung&hl=en&ct=clnk&cd=7&gl=us&client=safari>

positive peace may only be achieved through the international communication and cooperation at the level of civil society, which raises awareness of the leaders and societies about the violations of the basic rights which are endangered in a situation of conflict or war.

Petitioning, writing letters, cultural events and all the other means of direct action, may increase the awareness about the rights violation but may not be enough. Therefore, passive resistance as well as civil disobedient acts, which are supported by the moral consensus of the world civil society--under the condition that it is done within the limits of fidelity to law (agreeing with the sanctions envisioned in the law) and does not engage any violent actions (is absolutely nonviolent)—are some of the powerful tools for making sure that the changes will take place. Global solidarity in the name of human rights, which is possible thanks to the modern technology and ways of communication, is the essence of activism today. I advocate for understanding civil disobedience as the means to express and develop this global solidarity in the name of respect for just law in the international context, meaning the law which respects human rights. Such understanding very much complies with the requirement of peaceful transformation towards more just world order. Gandhi as an example of civil disobedient activist provides us with some ideas when it comes to peaceful change. According to him: “Civil disobedience combined with love is the living water of life. Civil disobedience is a beautiful variant to signify growth; it is not discordance which spells death”. (Gandhi, 1951)

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