CIVIL DISOBEDIENCE AND THE RULE OF LAW

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> In the constant effort to find the proper fulcrum between the rule of law and the enjoyment of liberties, there must be that goal of striking at a practicable point of equilibrium between the two, such that the enjoyment of liberty prevents law from being oppressive and tyrannical, and the execution of law prevents liberty from being licentious and abusive.
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> — F. I. CHAVEZ

INTRODUCTION

The concept of civil disobedience is not novel. It may well be traced back from the days of Socrates, Thoreau and Gandhi to the recent landmarks in the movement accentuated by sit-in demonstrations, protest marches, pickets and parades foremost among which were the historic Birmingham Parade and the March from Selma to Montgomery in the United States. Civil disobedience has indeed been pronouncedly put to the fore by the civil rights movement in the United States spearheaded by Martin Luther King Jr. using the movement with the ultimate aim of securing racial as well as social reform for the Negroes.

As Diogenes Laertius recorded it, Socrates was brought to trial on the charge of not worshipping the gods whom the State worships but introducing new and unfamiliar religious practices and further of corrupting the young.[1] Thus Socrates' disobedience was directed towards a law validly passed by the State but which he could not in conscience take in harmony with his views on religious freedom. Socrates was, as involved men were and will be, placed between the horns of a dilemma — the duty of obeying the law and the obligation to disobey it insofar as it clashed with his moral views. Socrates made his choice. A choice to disobey the law, but like a good soldier ready to face death in battle, was more than willing to take the corresponding penalty for his disobedience. No more was this aptly revealed than in the dialogue between Socrates and the Constitution and The Laws. When his friends tried to persuade him to escape from prison, Socrates put his arguments into the mouth of the Constitution and Laws of Athens. "Do you imagine," said the Constitution and the Laws, "that a city

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[1] STUMPF, SOCRATES TO SARTRE, A History of Philosophy, 19 (New York, McGraw-Hill) (1966).

can continue to exist and not be turned upside down, if the legal judgments which are pronounced in it have no force but are nullified and destroyed by private persons? — Was there provision for this in the agreement between you and us, Socrates?" The argument continues that it was by the laws that Socrates' parents were married and that he was their legitimate son; that by then his parents were compelled to give him a decent upbringing and education.[2]

With quite a distinct subject, Henry David Thoreau's civil disobedience was not directed against the law *per se* but rather against the injustices that result from the implementation of the tax law. His refusal to pay the tax polls for six or more years was ultimately directed towards the abolition of slavery and the cessation of the US-Mexican War — calling the attention of the community to what he called the government's machination to deprive the Negroes and the Mexican of their human rights. His voluntary non-payment of taxes was a protest not against the tax laws in general but rather against the use for which the taxes were devoted. Thus he said:

> "Unjust laws exist: shall we be content to obey them or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. It makes it worse. Why is it not more apt to anticipate and provide for reform? Why does it not cherish its wise minority?... Why does it not encourage its citizens to be on the alert to point out its faults and do better than it would have them?... if it (injustice) is of such a nature that it requires you to be the agent of injustice to another, then I say, break the law. Let your life be a counter friction to stop the machine (government). What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn."[3]

Although Gandhi derived his doctrines from Thoreau and among others like Jesus (Sermon On The Mount) and the writings of Ruskin and Tolstoy, yet the far-reaching effects of the application of these doctrines in socio-economic and political spheres were entirely the product of his own genius and originality. Civil disobedience is but a branch of Gandhi's "Satyagraha" or "Truth-force." Gandhi's "Satyagraha" is thus broader than civil disobedience for besides the latter being a mere branch, the former embraces passive resistance and non-cooperation contrasted with the active and dynamic concept of civil disobedience. Gandhi's civil disobedience was geared not only

[2] KONVITZ, *Civil Disobedience and The Duty of Fair Play*, in LAW AND PHILOSOPHY 19 (1964).

[3] THOREAU, WALDEN AND CIVIL DISOBEDIENCE, 285 (New York, Rinehart) (1948).

towards unjust and humiliating laws such as those in South Africa imposed on Indians in that country but could be converted or enlarged into a non-violent resistance against the entire government as was done in India in 1920-22, 1930-34 and 1940-44.

Of more recent occurrence and significance was the celebrated march from Selma to Montgomery, Alabama, U.S. last March 1965 led by Martin Luther King Jr. As Burke Marshall puts it, the march had dignity and national impact. At the same time it had its ludicrous side, and it illustrates what happens to law enforcement under the federal systems, as attention focuses, as it often does, upon the protest itself, rather than its causes. A group of people marched 50 miles, for almost a week, in heat and rain, from Selma to Montgomery, blocking traffic on a major interstate highway, protected legally by a federal court order and physically by elements of the Alabama National Guard and two battalions of regular military police, shepherded on the one hand by high officials of the federal government and on the other by representatives of the major church groups of the nation, including at least one nun and one archbishop.[4] In all these, the movement was aimed at securing for the Negroes equal voting rights as the whites. The movement was not without reward. It moved the US Congress for the passage of the Voting Rights Act of 1965.

CIVIL DISOBEDIENCE: MEANING, SCOPE AND AIMS

Sundry definitions and descriptions of civil disobedience have been made most of which, however, are devoid of essential distinctions as to its requisites and nature. Civil disobedience is the voluntary or wilful disregard or violation of a plainly valid law, ordinance, court order, rule, regulation or the manner of implementation and execution thereof, usually in a non-violent manner, considered by the civil disobedient as indifferent or unjust and for which violation, the "disobedient" is more than willing to accept and take the concomitant penalty the law attaches therefor.

Gandhi refers to civil disobedience as "a civil breach of unmoral enactments. It signified the resister's outlawry in a civil, i.e., non-violent manner. He invoked the sanctions of the law and cheerfully suffered imprisonment."[5] Nicholas Puner considers civil disobedience a deliberate violation of any law, be it ordinance, decree or judgment. It is an open violation, not a clandestine one. That is, it is "performed" in public, though it need not be announced in advance. Those who violate the law in question are actively prepared to take the con-

[4] MARSHALL, *The Protest Movement and the Law*, 51 VA. L. REV. 787 (1965).

[5] GANDHI, NON-VIOLENT RESISTANCE, 3-4, (New York Schocken Books) (1961).

sequences of their act, though they may not expect or desire those consequences. Civil disobedience is selective; it does not entail disobedience to all laws. It is purposive; civil disobedience is always directed at some "injustice" the law allows or protects. Hence, the purpose of civil disobedience is amelioration of conditions through law, not apart from law. It is preservation; a protest within the framework of existing government.[6]

Professor John Rawls however seems to limit his considerations only to laws against acts that are *malum prohibitum* thereby excluding laws against acts that are *malum in se*. It arises as a necessary implication from the general thought of Rawl's article that civil disobedience may be exercised only against laws that are enacted against acts that are outlawed by mere legislation, acts which are not in themselves condemnable nor calling for punishment and exclude therefrom as objects of civil disobedience laws against acts that are inherently evil for, as he asserts, they are condemnable independently of there being a legal system. In other words, there is no need to exercise civil disobedience against the latter acts for they are by themselves repugnant to basic social and moral values. He further limits civil disobedience only in societies founded on constitutional democracy.[7] Civil disobedience is not a monopoly only of societies founded on constitutional democracy. The civil disobedience exercised by Socrates, Antigone and Gandhi were not limited along lines embraced within constitutional schemes upon which their respective society was founded. While civil disobedience may be selective in the sense that it is not directed against any and all laws, it is not, at the same time, restrictive as to limit its exercise only upon a society with a constitutional or democratic scheme. As a rejoinder to Professor Rawl's article, Milton Konvitz pointed out that civil disobedience does not exclude laws against acts that are *malum in se*. To support his argument Konvitz illustrates thus:

> "Before the April 15th deadline a clergyman in California sent a letter to the Internal Revenue Service saying that he refused to pay 61 percent of his federal income tax because, he said, this portion would go for carefully planned machinery to kill millions of human beings. He added that he would be glad to pay the withheld money if it would be devoted to peaceful ways of solving international differences instead of going for military purposes. Now, we should note, that in the mind of this taxpayer the income tax is not itself unjust. He is not objecting to this law. His objection is to the use to which most of his tax money would be put. He really objects to national budget and to the government's military expenditures. And as to these acts of government, he re-

[6] PUNER, *Civil Disobedience: An Analysis and Rationale*, 43 N. Y. U. L. REV. 651 (1968).

[7] RAWLS, *Legal Obligation and The Duty of Fair Play*, in LAW AND PHILOSOPHY 3 (1964).

> acts as if the government had legalized what he considers murder and other acts of violence, in which he has no will to participate. He means to practice civil disobedience directed against wrongs that are *malum in se*."[8]

And, indeed, as Konvitz further points out, civil disobedience does not require a society founded on constitutional democracy for it to be exercised. Just as a constitutional democracy has laws that are directed at both kinds of wrongs (*malum prohibitum* and *malum in se*), so has any other kind of social order. There are traffic laws in Spain, under France and in the U.S.S.R.; also income tax laws, compulsory school-attendance laws and thousands of other laws over the justice or reasonableness of which reasonable minds may differ.[9]

Konvitz' arguments are more in keeping with the broad concept of civil disobedience. Obviously, no distinction should be made as to the laws against which civil disobedience is exercised i.e. whether they be laws against acts that are merely prohibited by the law or against acts that are inherently evil. In the same light, civil disobedience should not be considered as a monopoly attaching to those who live in societies founded upon constitutional democracy. It is a truism that due to the vagaries of the human mind and the complexity of the legal order some laws enacted by duly constituted authorities, apparently concerned with the majority, will result to injustices to the "wise" minority. But this is not to say that the views of the minority be muffled and disregarded. For after all, civil disobedience may start from a minority of one which, if duly amplified and enlarged, may awaken the misled majority.

But, granting that civil disobedience is directed against laws which are unjust, they be laws against acts *malum prohibitum* or against acts *malum in se* or whether the social leader be that founded on constitutional democracy or not, one may ask: Is "civil" disobedience not a contradiction in terms? How can disobedience of a law, which, one may argue, is criminal, be "civil"?

"Civil" disobedience is not a contradiction in terms; neither are all disobedience criminal. It is civil in the sense that it is a non-violent resistance of a person or a group of persons who are ordinarily law-abiding citizens; also because the laws which they choose to disobey are not moral laws but only such as are harmful or unjust to the people. It is civil also in the sense that those who break the law are to observe the greatest courtesy and gentleness in regard to those who enforce the law.[10] In other words while one disobeys the

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[8] KONVITZ, *supra*, note 2 at 23.
[9] KONVITZ, *supra*, note 2 at 22.
[10] GANDHI, *supra*, note 5 at IV.

law, one obeys it ultimately; while one denies the law, one affirms it in the process of such denial by taking the corresponding penalty for violation. Thus, while one violates a law which one considers unjust in fulfillment of his moral duty yet he vindicates it when he takes the penalty in fulfillment of his legal obligation. The object of the civil disobedient does not end upon the violation of the law protested against but rather his goal is to sear or awaken the attention of the community to the unjustness of such law and to the superior morality of his acts to justify it.

The civil disobedient's willingness to take the penalty the law attaches for his violation is what distinguishes him, among other things, from fugitives or from those who break the law in wild and culpable abandon. The purity of his intentions attached to his disobedience is what distinguishes him from criminals and fugitives who, as much as possible, would bargain for impunity.

Note however should be taken that civil disobedience involves a violation of a plainly valid law — valid in the sense that it was passed through the processes adopted by the constituted authorities. Otherwise, a violation of a law which is not valid is no violation at all. No violation is committed against a law which is a nullity. Consequently, the protester of such kind of law cannot be said to be engaged in civil disobedience.

Civil disobedience may take the form of sit-in demonstrations, parades, marches, labor or student demonstrations, pickets — all of which have a common objective, i.e., violation of a valid law to call the community's or the people's representatives' attention to the unjustness of a particular statute or statutes. Just as civil disobedience was utilized by King in obtaining racial reforms for the "submerged Black," by Gandhi in obtaining social and economic reforms in South Africa, Champaran, Kheda, and Bardoli, the same may be availed of in obtaining changes and reforms in the religious as well as in the educational fields. Civil disobedience is a mighty weapon of reform if it be wielded not ultimately and exclusively towards the destruction of the legal order but in introducing current updated reforms for the inadequacy of the law in certain fields. It must be wielded with a surgeon's skill and not with a butcher's instinct. As a matter of fact, one may nicely put it that civil disobedience counteracts the near possibility af a bloody violent revolution. This may be debatable. Be that as it may, one could just imagine the terrible consequences if the people were restrained from engaging in marches and parades protesting against laws which they consider unjust. Such a situation breeds elements fertile for more drastic means. A society cannot stand still

and bury its head in the sand, indifferent to the needs of the times. It has got to go; find an outlet for the ills which perniciously plague it.

POINTS OF CONSIDERATION

Can Law Tolerate A Movement Which Has For Its Motive Power Pure and Simple Disobedience?

It is a truism that no mature politically organized society would light its own powder keg of destruction by even hinting that it should tolerate a movement based on disobedience. But the question is not whether it shall but rather, whether it can. Mr. Justice Black in his dissenting opinion in *Cox v. Louisiana*[11] prognosticates that "experience demonstrates that it is not a far step from what to me seems the earnest, honest, patriotic, kind-spirited multitude of today to the fanatical, threatening, lawless mob of tomorrow. And the crowds that pass in the streets for noble causes today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends." Even former U.S. Assistant Attorney-General Burke Marshall expressed his fears when he said: "I frankly do not know how our society can support, or at least as far as law enforcement is concerned, even tolerate a movement which relies on genuine disobedience to law as its source of energy and the threat of violence alone to induce social change."[12]

Mr. Justice Black and Burke Marshall may have some basis for their fears but there is here a need to qualify. Fears of violence which would possibly erupt in demonstrations, parades, marches, strikes and protests movements, furnish no justification for their suppression. The Constitution would not be protecting constitutional freedoms and rights by suppressing the same, based on fear of violence. Such fear, at most, is indicative of the law's inadequacy to cope with situations as they present themselves. The law does not operate on fear and speculation. To overcome such fear of violence the law may set up reasonable regulations as to time, place and conduct of civil disobedience be it in the form of demonstrations, protest marches and parades to which no valid objection can be raised. Allowing certain flexibilities in the law does not mean breaking the law for, more often than not, such flexibilities offer commendable changes in the law and benefits to the governed. Flexibility should never be equated with brittleness. The former contemplates expansion and elasticity, the latter destruction. It is not sweeping to say that even in a society where the rule of law is absolute, such system recognizes or at the very

[11] 379 U.S. 559, 575, 584.
[12] MARSHALL, *supra*, note 4 at 785.

least does not categorically deny ample room for some disobedience. Toleration of disobedience of the law with prescribed limits does not mean the surrender of law and order to disobedience. The toleration of one does not preclude the operation of the other.

Toleration of some disobedience does not suppose the abandonment of law. Charles Black[13] cites certain value judgments which would serve as basis for civil disobedience to be tolerated. They are the clarity and magnitude of the evil, the hopelessness of the remedy within the law, the possibility of disobeying the law without causing harm to innocent people, the probable efficacy of the act of disobedience and the selflessness of one's motives. Puner summarizes his reasons why the course of civil disobedience should not automatically be foreclosed:

> "Some kinds of violation of law are considered more serious than others, and order is not an overriding value; — the cases admit the realm of conscience and thereby imbue the idea of higher law with force; civil disobedience has a positive outlook — rights are for present enjoyment; majority rule is an imperfect guarantee of justice; democracy must change to retain its vitality; controlled disobedience may act as a safety valve against harsher alternatives like open violence; law rests on respect and respect derives from enforcement of the spirit, not the letter of the law; in a society which admits few transcendent values other than basic rights and deliberate change, there should be room for experiment about what our future values will be."[14]

Civil disobedience must be viewed as a mode of attaining catharsis or purgation of society, a form of undercurrent to prod law in search of its real purpose. Law is after all man-made, human instrument. Rather than being antagonistic to or far-fetched from the needs of the governed, law must be trimmed in such a way as to be tolerant and immanent — without excluding therefrom the value judgments and ethical considerations of the community which it purports to govern. More than just punishing the body of a person engaged in civil disobedience as an outlet or form of declaration of conscience, the law should at least pause and query that there must be something wrong somewhere — with what or with whom. These queries could only be answered if the law itself would be tolerant enough to find out. Suffice it to say, experience has also demonstrated that civil disobedience had already brought laudable benefits. It brought about considerable racial and social benefits in the United States most especially to the "submerged group" — the Negroes. It is not impossible to say that civil disobedience could also be geared towards the attainment of reforms in other fields of endeavor as well as the stimulus to provide the filler in certain

[13] BLACK, *The Problem of Compatibility of Civil Disobedience with the American Institution of Government*, 43 TEX. L. REV. 492, 495 (1965).

[14] PUNER, *supra*, note 6 at 713-714.

lacunae of the law. Law therefore not only should, but also can tolerate civil disobedience.

Can Moral Considerations Justify Disobedience Of The Law?

It is deemed appropriate to cite here Sophocles' Antigone. Sophocles brings to life in his play the ruler Creon who declared an otherwise innocent act as inherently evil, such that burial of a corpse became a treasonable act deserving capital punishment. On the other hand, to Antigone the failure to bury her brother Polyneices seemed to be a wickedness that she could not in conscience take. Asked as to whether she dare defy the law of Creon and suffer the penalty of death, she answered:

> "Yes, For this law was not proclaimed by Zeus, or by the Gods who rule the world below. I do not think your edicts have such power That they can override the laws of heaven Unwritten and unflailing, laws whose life Belongs not to today or yesterday But to time everlasting...."[15]

Even courts of justice in applying and interpreting man-made laws recognize the existence and involve the greater force of a "higher law" — be it moral considerations or value judgments. Thus, the U.S. Supreme Court, speaking through Justice Douglas in *Girouard v. United States,*[16] said:

> "The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is *MORAL POWER HIGHER THAN THE STATE.* Throughout the ages, men have suffered death rather than subordinate their allegiance to God to the authority of the State" (emphasis supplied).

To the same effect, the same Court through Mr. Justice Jackson, in passing up a state law requiring compulsory flag-salute in the case of *West Virginia State Board of Education v. Barnette*[17] said that such a legislation "invade the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."[18]

From all the foregoing it may be safe to arrive at a conclusion that although law has functions and nature of its own distinct from the "higher law" of morality, no strict line of dichotomy can be drawn between the two so as to limit each one within a definite gamut of application. Somehow, somewhere law and morals overlap. While the

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[15] BANKS, SOPHOCLES: THREE THEBAN PLAYS, 62 (Newly translated by Theodore Howard Banks, N.Y. Oxford University Press) (1956).

[16] 328, U.S. 61, 68 (1946).

[17] 319, U.S. 624 (1943).

[18] *Id.* at 642.

Civil Code, the Revised Penal Code or the Rules of Court are legalistic in form nevertheless, it seems unfair to refer to them as mere examples of the secular character of the law for it cannot be denied that they too have moral considerations. The interrelation of law and morals cannot be overemphasized. This is true in the Homosexuality Laws in England and in the United States. Is homosexuality *per se* a crime? Or are they made so by laws because of the injection of moral considerations? Again, the interrelation of law and morals is revealed in the moral imperatives behind the enactment of the Usury Law; the value judgment behind the provisions found on the Chapter on Human Relations[19] in the Civil Code.

A citizen is thus confronted by the horns of a dilemma: "If he disobeys the existing rule established by the statute or embodied in judicial decisions (on the ground that the same is unjust), he violates the precept of voluntary compliance, but if he obeys, he forgoes for himself and thereby deprives all of us of the chance that the law will change, and that, under the impact of his action, it will be decided that what he did was actually legal.[20] By this is meant that if man has the legal duty to obey the law, he too has the moral obligation to disobey a law which revolts against his conscience and morality. Somehow, there has got to be a point of equilibrium between these two seemingly opposing duties — interrelation of which will be discussed in the latter part of this paper.

At this stage, however, the discussion is centered on the moral justification for disobedience to the law. Law must justify itself by what it does for men in meeting their needs, including their ethical judgment and moral aspirations. In this sense the rule of law — our constitutionalism — offers three ultimately moral justifications:

First, it secures for men the maximum of individual liberty, freedom of speech and association, religion and privacy, and equality before the law.

Second, it secures the greatest opportunities for peaceful change not only today but in the future.

Third, the ultimate commitment of those devoted to the rule of law is to the belief that the growth of each individual toward responsibility and the freedom to choose the best he can discern is a purpose which must never be made subservient to other objectives.[21]

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[19] CIVIL CODE, arts. 19-36.

[20] COX, *Direct Action, Civil Disobedience and the Constitution*, in COX HOWE and WIGGINS CIVIL RIGHTS, THE CONSTITUTION AND THE COURTS 2 (1967).

[21] *Id.* at 19-20.

From the foregoing considerations of law posed by Cox, it seems inescapable to conclude that the law has some shade or quantum of morality. If this be true, then an individual who engages in civil disobedience must be motivated by that moral conviction that the law as applied to the social order is unjust, calling the attention of society by such disobedience to the superior morality of his act to justify it. Puner cites Charles Black as having suggested (that) the duality of American law buttresses the case for civil disobedience. If federal law is to be pre-eminent, an unharmonious state law manifestly cannot stand. We permit dissidents to disobey it for that reason alone; if out of harmony with SUPERIOR LAW. There is a corporeal law and there is other law, be it "fundamental", "higher", or "natural".[22]

To negate moral consideration in the justification of disobedience to the law in exercise of civil disobedience would be to contradict the very essence of civil disobedience. Moral considerations are essential in the existence of civil disobedience. This is what, among other things, distinguishes a person engaged in civil disobedience from one who violates the law in utter lawlessness. His moral convictions spur him to disobey a law, otherwise plainly valid, in order to "sear" the conscience of the community.

Does Civil Disobedience Include Violation Of A Court Order?

There are two appropriate American cases which seem to deal with this particular question. In *Abington School District v. Schempp,*[23] notwithstanding the Supreme Court's decision that to start classes in public schools by reading from the Bible or reciting a prayer violates the First and Fourteenth Amendments, Governor Wallace refused to heed the decision and announced that the teachers would continue in reading the Bible in the opening of classes and even defied the Attorney-General to enforce the Supreme Court's decision. Again in *Walker v. City of Birmingham*[24] the question of whether civil disobedience includes violation of a court order deemed unjust by the person violating it was answered in the affirmative when the late Martin Luther King defied a court order enjoining him and others from participating or abetting the proposed demonstration. For his violation, Martin Luther King and others were convicted of contempt and sentenced to five days in jail and $50 fine.

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[22] PUNER, *supra*, note 6 at 707.
[23] 374 U.S. 203.
[24] 388 U.S. 307 (1967).

From the cited cases, it can be seen that civil disobedience supposedly exercised by Governor Wallace and Martin Luther King were not directed against a law as is the usual case for civil disobedience. Their disobedience was against a plainly lawful court order but which they deemed unjust. This is not to say that a court order is not "law" but distinction is hereby drawn between law as the product of enactments, formulations and promulgations of basically law-making bodies and law as the product of judicial pronouncements. That the former is the usual object of civil disobedience, there can be no doubt; as to the latter, serious objections may be made but it is the proposition herein that the same may be made the object of the exercise of civil disobedience.

On the part of Governor Wallace, it would be quite unfair to deny moral considerations in his violation of the court's decision and to attribute the presence thereof in the case of Martin Luther King. Governor Wallace may have been morally motivated when he violated the court's decision asserting therein his moral conviction that such a decision or order was unjust. Similarly, the late Mr. King disobeyed or violated the court injunction labelling it as an "unjust use of the courts."

Let the problem be further posed by the following illustrative situation. A large group of students of the College of Law of the University of the Philippines protested as morally unjust the decision of the Supreme Court denying the petition for writ of habeas corpus filed by six political prisoners notwithstanding the fact that for 18 years they have languished in jail and have suffered untold miseries and torture when under the law, their acts are punishable by imprisonment for 12 years. The students believed among other things that the Supreme Court did not act in accordance with its policy of requiring criminal cases to be acted upon promptly when they allowed 18 years to elapse without passing upon the case of the "politburo" prisoners when it was brought before the same court on appeal and that the Supreme Court overemphasized the letter overlooking the spirit of the law when it denied the petition of the political prisoners when it relied solely upon the definition of the Spanish word "penado" implying therein that since the petitioners are not actually undergoing imprisonment, they are deprived of certain allowance for judicial concessions. To dramatize their protest, the students blocked entrances to the College, locked the classrooms, cordoned the entrances and exits and prevented the professors and other students from going to classes and practically "seized" the College from University control. A court injunction was issued restraining the students from blocking the entrances and exits of the College and from preventing the professors and other

students from going to classes. In defiance of such court order, the students continued their "coup d'etat." Could this be considered civil disobedience? Although the situation illustrated seems far-fetched in Philippine setting, it is believed that the students may have been engaged in civil disobedience — symbolic civil disobedience, i.e. their disobedience is against a court order clothing the decision they deem unjust as symbolic of the evil or injustice which they denounce, in contradistinction with direct civil disobedience which "occur where, in a person-to-person confrontation, ascertainable individual rights are demanded and the law (or the court order as is submitted herein) is the one that prevents effectuation of those rights. . . .[25] Moreover, lest it be misunderstood that the answer given to the question posed in the preceding illustration be taken as license for students to stage campus "coup d'etat's," there is a need for qualification. For the students' acts to be taken as civil disobedience it is essential among other things, that they have exhausted all possible remedies to call the attention of the proper authorities to the object of their protest; that such remedies are available to them; that they destroy no property nor do violence to persons and that they be willing to take the corresponding penalty imposed by law for their disobedience if only to call the attention of the nation and of the Justices of the Supreme Court to the "superior morality" of their act to justify the same. At this point, one may ask: Is not the availability of redress within the framework of existing order adequate? That available means of seeking redress are adequate in Philippine setting generally cannot be denied. But the question is not on whether such available means are adequate but rather on whether the established order is not remiss in its obligation to see to it that the supposed available means are functioning and are being operated as they ought to be. While the individual is bound to exhaust available means of redress, the state too should not make illusory the effort of such individual by sleeping on its duty to see to it that laws are administered. As a matter of fact, even the principle of exhaustion of remedies in administrative bodies before resort to the courts of justice may be made is not always followed to the letter as when it is apparent that even by exhausting such administrative remedies, the results would be unjust or ineffective. What is called for here is faithfulness on the part of the individuals and the State with respect to their corresponding duties and obligations for the maintenance of a well-ordered society. As to what damage may be occasioned to the rule of law will be discussed presently, but at this juncture, it seems quite clear that civil disobedience may be exercised against a plainly lawful court order deemed unjust by the civilly disobedient protester.

[25] PUNER, *supra*, note 6 at 694-695.

Is Disorder Justifiable on the Ground That It Arose In The Exercise of Civil Disobedience? What About Violence?

The lessons of the march from Selma to Montgomery, Alabama are in point. The march lasted for five days, as a consequence of which half the highway was closed, innumerable traffic jams and disorder followed, it called for more than $500,000 in expenses for the payment of National Guardsmen alone and magnified once more the racial discrimination in the United States. The criterion advanced by Judge Frank Johnson that the "extent of the right to assemble, demonstrate and march peaceably along the highways and streets in an orderly manner should be commensurate with the enormity of the wrongs that are being protested and petitioned against"[26] was thus applied. Judge Johnson found the wrongs to be "enormous." He said that the march was beyond the bounds of what was allowed by the Constitution but acted nonetheless because he believed in the injustices unconstitutionally inflicted upon the Negroes and because he noted that the constitutionally-provided means of protest in a republican form of government — the right to vote — had been systematically denied those who were protesting.[27]

From the criterion laid down by Judge Johnson it seems apparent that for disorder (short of violence upon person and property) to be justifiable as an incident of civil disobedience there must be that proportion between the extent of the exercise of civil disobedience and the "enormity" of the wrongs such that the disparity between the two can be easily discerned not only by the participants in civil disobedience but also by the expectedly impartial judge. However, is "enormous" a judicial question or is it a question left to the judgment of the civilly disobedient protesters? Will the novel standard of Judge Johnson be equally applicable to a society where the mainstream of civil disobedience is not geared towards racial reforms but rather towards changes in other fields? The pronouncement of Judge Johnson is quite sound considering the fact that it may be referred to when civil disobedience is directed towards changes other than racial for after all it touches only upon the extent of civil disobedience and not necessarily upon its objective. Impliedly, Judge Johnson seems to say that if the wrongs "protested and petitioned against" are not enormous, traffic jams, national expenses, closure of highways and disruption of daily business seems unjustifiable. It is believed, however, that independent of the "enormity" of the wrongs protested against, the

[26] Williams v. Wallace, 240 F. Supp. 100, 106 (1965).
[27] MARSHALL, *supra*, note 4 at 789.

exercise of civil disobedience bringing about traffic disorder or disruption is justifiable, more so in the case of direct civil disobedience. By its very nature, protest marches and parades in exercise of civil disobedience would bring about traffic disorder. It should then be the duty of the State to provide the necessary regulation of time, place and manner as well as safeguards to prevent the disorder foreseen. Undoubtedly, any act done by the protesters beyond the regulation set by the State would be a violation and for which the protester is willing to take the corresponding penalty.

But what about violence? Is it justifiable on the ground that it was committed in the exercise of civil disobedience? Gandhi, who admits that he is no example of perfect ahimsa,* says that "whilst it (civil disobedience) avoids violence, being not open to the weak, it does not exclude its use if, in the opinion of a passive resister, the occasion demands it...."[28] But by its very nature, civil disobedience as earlier defined herein is non-violent, "civil." It follows therefore that violation upon persons or property cannot be justified on the ground that it is incidental to the exercise of civil disobedience. On the contrary, violence is incompatible with civil disobedience. Furthermore, as earlier mentioned, civil disobedience, as Puner pointed out must be exercised without causing damage or injury to person or property. To suggest that violence is a justifiable incident of civil disobedience would be tantamount to planting the seed of armed resistance — which is indubitably unlawful and reprehensible. While the civilly disobedient protester may "sear the conscience of the community" by his disobedience, he cannot and should not overdramatize his cause by resorting to violence — causing damage to person and/or property for which he ought to suffer the penalty imposed by law.

While civil disobedience may be employed to fill up certain gaps in the law, to bring about racial, political or social reforms, to purge or cleanse society, care must be taken to suppress the abuse of civil disobedience by the employment of violence in the process of its exercise. It is not here denied that violence may be inevitable according to the demands of certain situations. But said violence cannot be justified on the pretext of being incidental to civil disobedience. Violence must be condemned. If among its supposedly noble objectives civil disobedience is to bring about changes in the law for the benefit of society by educating and magnifying to the community the evil of a particular law violated, violence committed in the exercise of the same would only tend to defeat its very purpose and becloud the legal contents of civil disobedience.

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* non-violence.

[28] GANDHI, *supra*, note 5 at 3.

Have the Citizens by Having Accepted The Constitution, Deprived Themselves of Self-Help and Direct Action in the Form of Civil Disobedience to Violate an Unjust Law?

Rawls say that "in accepting the benefits of a just constitution one becomes bound to it, and in particular one becomes bound to one of its fundamental rules: given a majority vote in behalf of a statute, it is to be enacted and properly implemented."[29] Rawls proceeds from the premise of there being a just Constitution. But it does not follow as a necessary consequence that all laws enacted by the representative majority is just. The existence of unjust laws cannot be denied and overlooked. Rawls himself does not discredit the well-founded possibility that even the most efficient Constitution cannot prevent the enactment of unjust laws if, from the complexity of the social situation and like conditions, the majority decides to enact them. A just constitutional procedure cannot foreclose all injustices; this depends on those who carry out the procedure. A constitutional procedure is not like a market reconciling interests to an optimum result.[30] The Constitution was not enacted with the verbosity and minute details of a code so as to serve as a perfect strainer to filter any and all injustices brought about by statutes with due regard to the complexities of changing times and conditions.

If it be true that sovereignty resides in the people and all government authority emanates from them[31] it would be inconsistent to posit that by having accepted the Constitution they have waived thereby their right to protect and to engage in peaceful "self-help" and "direct action" movements against laws which, though presumably based upon a just Constitution, turn out to be unjust in its application to the people, the real and ultimate sovereign and source of government authority. By having accepted the Constitution it is not to be taken that the people will come to accept too, all laws passed in accordance with constitutional process be they unjust, discriminating or unconstitutional. Law should not be viewed as antithetical to changing conditions and increasing needs of the people. The relation is not like a one-way traffic where all considerations are for upholding the law as infallible. Rather, there must be that symbiotic relation of give-and-take between law and the changing needs of the governed. One should give sustenance to the other. Civil disobedience must be viewed as society's direct act of self-defense against unjust laws which would

[29] RAWLS, *supra*, note 7 at 9.
[30] *Id.* at 12-13.
[31] See CONST. art. II, sec. I.

ultimately affect them adversely. Mr. Justice Douglas, in his dissent in the case of *Walker v. City of Birmingham,* expressed his belief that "(t)he right to defy an unconstitutional statute is basic in our scheme."[32]

In *Keegan v. United States*[33] the US Supreme Court speaking through Mr. Justice Ruthledge said:

> "One with innocent motives, who honestly believes a law is unconstitutional, and, therefore, not obligatory, may well counsel that the law shall not be obeyed; that its command shall be resisted until a court shall have held it valid"....

Almost all the decided cases on civil rights movement and civil disobedience never even hinted that by having accepted the benefits of the Constitution the citizens have thereby jettisoned any and all protests against any and all laws passed. The Constitution should be viewed as a fundamental law and not as a justification for the passage of unjust laws and the suppression of peaceful "self-help" and "direct action" of the citizens to protest against unjust laws. While it is recognized that the law has its force and sanctioned effect upon the governed, it cannot be availed of for the suppression of legitimate protests. Law may come to punish the body but it can never imprison the call of conscience and moral convictions. That the citizens retain their right of protest against an unjust law is not debatable. It is not only an established but a guaranteed right of the citizens. To hold otherwise would be defeating the purpose of the Constitution. It cannot be sweepingly said that acceptance of the benefits of Constitution constitutes a waiver on the part of the governed in engaging in self-help to bring changes in the law. The fact is that it is being done now — a fact from which sensitive and involved citizens cannot just turn their heads in cold indifference.

Is the Rule of Law Damaged by Tolerating The Exercise of Civil Disobedience?

At the very start of this article it has been pointed out that one thing, among others, which distinguishes a civilly disobedient protester from a criminal or fugitive is his willingness to accept and receive the penalty the law imposes upon him for his violation or disobedience. As has been previously mentioned, civil disobedience aims to reach catharsis or purgation of society by filling up certain "lacunae juris" or by focusing the people's attention upon the unjustness of certain laws. Civil disobedience is transient, it does not seek to estab-

[32] *Supra,* note 24 at 336.
[33] 325 U.S. 478, 493-494 (1945).

lish a permanent state of disobedience. Rather, it intends to revert to obedience once the law disobeyed as unjust is corrected or attuned to the moral justness contemplated by the protesters. It is his willingness to take the penalty for his violation that makes his disobedience civil. As Martin Luther King puts it:

> "One who breaks an unjust law must do it *OPENLY, LOVINGLY* . . . and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustices, is in reality expressing the *VERY HIGHEST RESPECT FOR THE LAW.*"[34] (emphasis supplied).

In effect, therefore, while the person(s) engaged in civil disobedience, disobeys or violates a plainly valid law on grounds of its unjustness, he nevertheless restores and respects the integrity and rule of law by accepting the penalty provided therefor. In a way, civil disobedience may be regarded as a "negative pregnant" in the sense that it is a negation of a particular law but at the same time it is a negation pregnant with affirmation of the rule of law. As a matter of fact, it is because the civilly disobedient protester respects the rule of law so much that he could not in conscience obey a law which is unjust and which if contradistinguished from the general body of other laws would be incompatible with the latter's general scheme of justice, that he has resolved to disobey such particular law as unjust. Note should also be made that the modes available to the persons disobeying a plainly valid law on the ground that it is unjust should be similarly available to those who believe otherwise. Having recognized the groups believing differently, the State should come in and supply the necessary but reasonable regulations as to time, place and conduct of protests and counterprotests. Another point which reasonably and practically negates damage to the rule of law in the exercise of civil disobedience is the fact that, Puner says, not everyone will disobey the same law at the same time. More important, some will stridently call for immediate suppression of the dissidents, a salutary counterbalance even if those who would suppress are entirely wrong. There are in other words, some built-in safeguards.[35] In other words, due to the diversities of human thoughts and approaches conditioned by situations as they present themselves, a unanimous breach of a particular statute is too far and remote from reality.

Another aspect of civil disobedience which negates damage to the rule of law is the openness of violation committed by those exercising it thus giving the law ample opportunity to apprehend the violators,

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[34] KING, *Letter from Birmingham City Jail*, New Leader, June 24, 1963 at 7 in Puner, *supra*, note 6 at 719.

[35] PUNER, *supra*, note 6 at 707.

prosecute them, if necessary, and mete out the corresponding penalty thus foreclosing the possibility of subversive or clandestine movements which seek to overthrow the basic principles upon which a society may have been built and founded. The purpose of civil disobedience is to dramatize their cause and to "publicize and attract sympathy, not to pillage and plunder."[36] In other words it requires not just the civil disobedient's willingness to take the penalty for his disobedience but his strong resolve to come out in the open and declare his conscience in violating an unjust law.

In the last analysis, civil disobedience does not intend to wreck the fabric of order and the rule of law. On the contrary, it intends to establish the wholeness of the law, admit its sanctions at the same time that it tries to center attention for certain changes in the law itself. By civil disobedience nothing essential to the force of law is taken away; on the other hand, it adds something to or completes the law by filling up certain gaps where the same would have been taken for granted if not overlooked had it not been for the vigilant force of civil disobedience. Summing it up then, no damage to the rule of law would actually result in the toleration of the exercise of civil disobedience.

Can There be a Constitutional Right to Violate a Plainly Valid Law Which One Deems Unjust?

Archibold Cox distinguishes three different situations involving forms of demonstrations or individual protest. First, he points out the proposed demonstration may indisputably be an exercise of freedom of speech and liberty to assemble and petition for redress of grievances. In that event, he further states, the action of the local authorities (presumably of refusing to issue a permit required by local statute) would be unconstitutional. He places in a second category protests which violate plainly valid and constitutional laws, citing illustrations the consequences of which however were limited to mere physical obstruction caused by the protesters. Between these two categories, Cox inserts a third which he believes "goes to the outer boundaries of and perhaps exceeds any constitutional right. When there is doubt, the demonstrator takes his chance upon the ultimate decision of the highest court which will hear his case and to which he has the means and perseverance to carry it. If the court sustains the constitutional claim, he will go free; otherwise he will suffer the penalty...." But what is quite sweeping in his statements is that: "One can say categorically that there is no constitutional right of civil disobedience to a valid law (and that) the Constitution does not give anyone a privi-

[36] *Id.* at 719.

lege to violate a law in order to test its constitutionality. Recognition of such a privilege would mean that the actual constitutionality of the law could never be tested; the sole issue would be the *bona fides* of the claim of unconstitutionality."[37]

Cox believes that "Recognition of such a privilege (to violate a law in order to test its constitutionality) would mean that the actual constitutionality of the law could *NEVER BE TESTED;* the sole issue would be the *BONA FIDES OF THE CLAIM OF UNCONSTITUTIONALITY*"[38] (emphasis supplied). But this is a matter of conclusion. It does not give a starting point for his analysis; neither is it motivated or explained in his arguments. The civil disobedient does not necessarily violate the law to test its constitutionality. Unconstitutionality should never be confused nor equated with unjustness of a law. More often than not, the question of constitutionality forms up primary consideration in his protest. It is not impossible that he may not even be aware of such a question. What matters to him is that the law or its implementation is "unjust" or "indifferent" as it affects the social order based upon what he claims the "higher law of morality" rather than the legalistic query of whether or not it violates the Constitution. To hold the latter controlling would be ignoring the fact that a great majority of a nation's people may not come to know and value their constitutional rights in the same light and degree that lawyers, judges and other educated segments of society do. Can it be categorically said then that those who are not aware of nor know how to test the constitutionality of a law but who have convictions that a particular law is unjust or indifferent be excluded from engaging in civil disobedience? In this connection, due consideration should be given the fact that in the Negroes' civil rights movement employing a civil disobedience in the United States, only an accountable few thought above the level heads of millions who formed and gave force to the movement.

At this juncture, the discussion should be centered in finding out whether or not it is true that in the exercise of the "constitutional right" to violate a law to test its constitutionality, the actual constitutionality of the law could never be tested. Contrary to Cox's arguments, an affirmative answer is hereby submitted. For this purpose, an illustration is necessary. Since the premise starts from a constitutional right, let it be assumed for purposes of this illustration that there is such right. Congress, for instance, passes a tax law imposing exorbitant and unconscionable rates in such extent that it would be tantamount to a deprivation of property without due process of law. Sure-

[37] Cox, *supra,* note 20 at 10-11.
[38] *Id.*

ly, a person may in exercise of his constitutional right, violate or disobey such law by not paying his taxes required by that law on the ground that he deems the law unjust. True it is that he will be prosecuted for tax evasion but it is also true that in the same proceedings he can set up the defense that his refusal to pay the tax was in the exercise of his constitutional right and raise therein the question of constitutionality of such law as a taxpayer. But then it may be asked: Will the constitutionality of that law be necessarily tested? Perhaps, the necessity of testing its constitutionality could very well be appreciated if the situation is magnified. Suppose, instead of only one person, 14 million of the 24 million taxpayers will refuse to pay their taxes on the ground that the rates therein are unjust, will not the constitutionality of such law be tested? Or will the court uphold the protester's bona fide claim of his constitutional right without passing upon the law's constitutionality as is the implication of Cox's argument? Undoubtedly, such a procedure determines no rights, settles no issues, decides no conflict and would be disruptive of the judicial order which the law itself seeks to establish. It is believed that if a person, in the exercise of his "constitutional right," granting arguendo that he has such, violates a law to test its constitutionality, the actual constitutionality of such law could in fact be tested. While the court in many instances engages in procedural maneuver and legalistic gymnastics to avoid deciding questions of constitutionality of a statute, it is believed that the court may not so indifferently evade questions of constitutionality especially on matters concerning rights protected by the Constitution. This was the necessary implication arising in the American case of *Walker v. City of Birmingham*....[39] This case came about when a local court enjoined Martin Luther King and other civil rights leaders from abetting, or participating in street demonstrations and parades at the height of racial demonstrations in Birmingham, Alabama in 1963. Believing in good faith that the injunction was "unjust," King and other civil rights leaders disobeyed the injunction and pushed through with the enjoined demonstration. King and others were convicted of contempt of court for their violation of the injunction and were each sentenced to five days in jail and a $50 fine. On appeal to the Supreme Court the decision was affirmed. Yet in that same case Justice Stewart recognized that the generality of the language of the ordinance would raise substantial constitutional issues had King and others elected to do so. But since they did not, obviously the court cannot assume the ordinance void. Thus Mr. Justice Stewart said:

[39] 388 U.S. 307 (1967).

> "This case would arise in quite a different constitutional posture if the petitioners, before disobeying the injunction, had challenged it in Alabama courts. . . ."[40]

If there can possibly be a right, as gleaned from the above-cited case, to raise constitutionality of an ordinance before disobeying the injunction, could not the same right be granted even after the ordinance and injunction were violated be recognized? For ultimately, considerations of questions of constitutionality will have to be put into the fore had not that particular ordinance been placed under the protective mantle of an injunction.

Thirdly, Cox concludes there is no constitutional right of civil disobedience to a valid law. If by this, Cox means that the Constitution at present does not recognize the right of civil disobedience to a valid law there may be no objection. For after all, it would be a statement of the status quo. But this does not solve the problem. This does not end the search. Considerations would be quite different if the discussion is to be turned on whether or not there can be a constitutional right to violate a valid law. In other words, can the constitution allow or grant a right to violate valid laws? An affirmative answer is hereby submitted.

Order should not be imposed and obtained for the sake of order at all cost. No society can be more orderly than that where order is the product of the spontaneous obedience and consent of the governed to the substance and wisdom of the law. That the law is the law be it good, bad or indifferent is indicative of a society which overemphasizes its unflinching determination to stress its infallibility. Such a society would be static and indifferent to the felt necessities of the times. Such a society would have to punish any violation of its law for it fears that if any such violation would be left unpunished or tolerated, it may generate into chaos or anarchy. But if a society is one which operates under the principle that the laws are the by-product of man's ideas, fears, doctrine, morals and biases and if a society seeks to enforce its laws without ignoring and suppressing individual rights and without being indifferent to the changing conditions of the times, then a regulated flexibility in the law may be allowed.

A perusal of the leading cases in the United States concerning "civil disobedience" — *Peterson v. City of Greenville,*[41] *Lombard v. Loui-*

[40] *Id.* at 318.
[41] 373 U.S. 244 (1963).

siana,[42] *Wright v. Georgia,*[43] *Robinson v. Florida,*[44] *Bell v. Maryland,*[45] *Ham v. City of Rockhill*[46] — would reveal that although the U.S. Supreme Court did not categorically sanction and recognize the right of civil disobedience, nevertheless it allowed considerable latitude of tolerance for it to flourish. It did not uphold civil disobedience as a right; neither did it totally suppress it.

The Constitution was not laid down and adopted to serve as the fundamental law for a limited number of years but it was promulgated to endure through the ages, at all times and for all the people. Surely, an 18th century Constitution should be adjusted in such a manner as to allow certain expansions in its scope to meet 21st century conditions and needs. A recognition of a constitutional right to violate a law is not an all-embracing right so as to cover license thereby exempting no law from violation in the same way that the recognition of the constitutional right of speech and expression does not operate as a "self-wielding sword" as to allow anyone to say with impunity libelous, quarrelsome, fighting words or those which by their very utterance would indubitably bring about breach of peace. In other words, the grant of the Constitutional right to violate a valid law on the ground that it is unjust should be such as to be "canalized in banks to keep it from over flowing."[47] This right does not authorize anyone to violate the law upon flimsy and trivial grounds under the pretext of civil disobedience. These will be questions of fact and evidence for the court to determine i.e. whether the accused was or were really engaged in civil disobedience or otherwise was or were violating the law in criminal abandon. It is conceded that speech as a fundamental right is different from conduct but this does not mean the latter is incapable of regulation. Undoubtedly to grant the right of conduct sans restrictions will germinate into anarchy and would be incompatible with the fundamental law upon which that supposed right depends. Under what circumstances then could civil disobedience be properly exercised? Puner lays down some interesting circumstances under which the right of civil disobedience may be exercised. First, he believes there must be an articulable evil, and correlatively, an alternative to it. In the nature of things, he goes on, there will never be disobedience unless the opposed law or policy does deny or in some way trench upon a right or privilege. Secondly, the hopelessness of remedy at law. Third, an assessment of the probable efficacy of civil disobedience must be made, i.e.

[42] 373 U.S. 267 (1963).
[43] 373 U.S. 284 (1963).
[44] 378 U.S. 153 (1964).
[45] 378 U.S. 226 (1964).
[46] 379 U.S. 306 (1964).
[47] A. L. A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935) (Cardozo, J. dissenting.)

whether its use will make the authorities more intractable. Fourth, whether or not the use of civil disobedience will cause physical harm to persons or property.[48] Although the criteria laid down by Puner offers no assurance of order, nevertheless the same may be referred to as starting points in allowing civil disobedience the same scope as we allow the freedom of speech.

Paul Freund points out that "there are questions for the law in the process of becoming. There are some lessons to be drawn from the history of organized labor and the law. At first, concerted strikes were regarded as conspiracy. Then they were viewed by some common law judges and some legislators as a means to achieve more nearly equal status with ownership in the community of the plant or industry and therefore were privileged. Then there came with the Wagner Act a legal guarantee of the right which in turn was followed by limitations on labor organizations in the Taft-Hartley law, when they acted outside the scope of the means spelled out in the law. Now the Negro movement, insofar as it includes demonstrations, boycotts, rent and school strikes, is similarly seeking equal status and recognition in the political and economic communities. . . ."[49] These statements of Freund seem to supply the key to the controversial question of whether there can be a constitutional right to violate a plainly valid law without bringing about the deterioration of the rule and sanctions of the law. If in the early history of labor in the United States, strikes were considered unlawful, it is obvious that in the course of time the law has not only tolerated but more importantly has recognized the right of labor to engage in strike without damage to the rule of law. This is because the law on its part had set down definitive regulations, limitations and modes in the conduct of strikes. It is believed that by analogy, applying similar regulations and restrictions in the conduct of strikes and by the observance of criteria laid down somewhere in this article, the law could allow room for the recognition of the constitutional right of civil disobedience. The law must not be strict and stern nor static and nonchalant to changing conditions. The law must be fashioned in such a way that it allows changes as a human instrument designed to suit the needs and morals of the governed without being remiss in its functions of commanding and enforcing obedience.

Freund comes to a conclusion which emphatically advances or strengthens the argument that there can be a constitutional right of civil disobedience.

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[48] PUNER, *supra*, note 6 at 715.

[49] FREUND, *Civil Rights and the Limits of Law*, 14 BUFF. L. REV. 199, 206 (1964).

> "Even before the law makes adjustments..., before there are changes in the substantive law as there were in the law of strikes, *AS THERE ARE DOUBTLESS COMING TO BE* in the law of rent, the moral frame in the civil rights movement *NEED NOT GET UNRECOGNIZED.* I refer to the elements of discretion in our legal system which were devised for such contingencies for *CLASH BETWEEN THE MORAL SENSE OF THE CASE AND THE STRICT LEGAL OBLIGATIONS:* the discretion of the prosecutor whether or not to bring a case following a one-day school strike, the discretion of a jury of whether to convict or to acquit, the discretion of a judge in sentencing, the discretion of a governor in pardoning.... To sum up, the civil rights movement is a challenge to law in many ways, to the moral influence of the law, to its impartiality and to its acceptance and observance.
>
> The general body of the law is being altered under the pressures engendered by the civil rights movement in many ways that may seem collateral but are nonetheless significant for general reform.... Out of the sometimes terrible struggles that threaten to rend the fabric of society, some constructive efforts may still come as they have come in the past with the scourge of wars, depressions, and labor troubles. Out of danger we may pluck security, out of injustice we may hope to discover a sider justice."[50] (Emphasis supplied)

Fears of riots and demonstrations supply no justification in ignoring a movement if not a global trend to violate a law deemed unjust by the governed. If indeed as Freund points out, the civil rights movement in the United States poses a challenge to the law, such challenge is not fairly met and accepted when the law suppresses civil disobedience under the guise of the Aristolelian doctrine that the law is the law be it unjust, unfair or indifferent. The law should allow a certain latitude of tolerance of civil disobedience as a constitutional right most probably embraced by the broad scope of the freedom of speech and assembly with the corresponding restrictions in the same light that it tolerated and eventually recognized the right of labor to engage in strikes. For these considerations, it is believed that there is now an evolving constitutional right of civil disobedience which law and society could not in conscience just ignore.

Conclusion

Throughout the ages, the law has been in constant search for its real purpose and role in a community of diversified claims, situations and conditions. More often than not, its sanctions and rule have been challenged, but in the end, the law triumphs. But law itself as a human instrument is not infallible, and perfect; it admits, as in fact it should, changes, expansions and fillers to its loopholes. Indeed, nothing is more preferred than a society which is stable rather than one in the brink of chaos and anarchy. But at the same time, without dis-

[50] *Id.*

crediting the advantages of a stable society, there's a need for a society that is dynamic, a society which is mature not slavish nor charlatan in its mentality, vibrant and alert to its own needs. There is that need too for a society which is not blindly indifferent to, but cognizant of certain inadequacies of its laws to get adjusted to certain changes brought about by the exigencies of swiftly moving conditions.

The concept of civil disobedience, as has been previously stated, is as old as Socrates but its effects and challenge to law and order have been felt ever since protest demonstrations were increasingly employed. The idea of law tolerating a movement based upon disobedience is truly controversial, if not radical to a conservative's mind who resolves all doubts in favor of the superiority of the rule of law. But the law should not be placed on a pedestal far beyond the reach of the governed when certain changes are needed. Law must be immanent not transcendental or existing "somewhere up there."

Civil disobedience does not seek to undermine nor abrogate the fundamental principles upon which society is founded, for that would require something else. It does not seek to convert the streets into battlefields. What it does aim at, is the elimination of certain evils and injustices in certain laws geared towards the ultimate amelioration of human conditions. Civil disobedience magnifies an injustice so that the law may come in to remedy the same but it seems narrow-mindedness to make a sweeping conclusion that civil disobedience sows the seeds of lawlessness and violence. No damage is caused to the rule of law as had been discussed, but granting for the sake of argument that there is, note should be taken of the following: Whatever possible damage that may be caused to the rule of law, must be counterbalanced by the benefits and necessary changes to the law brought about by civil disobedience.

Puner[51] cites Freund to have found room for civil disobedience deriving from the reciprocal rights and duties posed by the social compact theory. The obligation runs both from the state and the individual, and it does not derogate from the sanctity of the law to practice civil disobedience of an undefined nature in order to move the state to fulfill its obligations.[52] What is quite interesting is the fact that Freund considers the civil rights movement a challenge to the creativity of law:

> "In law creativity is a product of the tension between heresy and heritage. I often like to say that law is like art in that it imposes a

[51] PUNER, *supra*, note 7 at 712.
[52] FREUND, *supra*, note 50.

measure of order on disorder without suppressing or disrespecting the underlying diversity, spontaneity and disarray."[53]

Freund intends to find the balance of equilibrium between law and changing social needs. In other words, civil disobedience must be viewed as a catalyst for change in the law if only to awaken a static society from its lethargy. To illustrate, law may be viewed as a living tree. When a tree grows old, sometimes it is deemed necessary to cut some of its branches and twigs, not for the purpose of killing the tree but with the aim that it grow bigger, healthier and rejuvenated branches. Care must be taken however, that in the process of pruning, the life blood of the tree is not thereby cut. When a tree is pruned, not all the branches and twigs are cut, but only those which seem weak and unhealthy. In pruning, branches of a tree are not cut indiscriminately. Distinction should be made between a surgeon's scalpel and a butcher's hatchet. The former intends to preserve life, the latter to end it. Civil disobedience is the pruning which discards laws that are unjust and unhealthy to a growing society. But civil disobedience must be exercised in a restricted and controlled manner so as not to derogate the sanctity of the law. What is meant hereby is a recognition of civil disobedience — one that is regulated and controlled in the same manner that even established and guaranteed rights and freedoms are subject to restrictions and regulations.

To summarize, the following conclusions are drawn:

(1) The law can tolerate a movement founded on disobedience — it is civil, non-violent and where the violators are willing to take the penalty imposed by law.

(2) Moral considerations supply the basic justification in the exercise of civil disobedience.

(3) Violence can never be justified on the ground that it was committed in the exercise of civil disobedience.

(4) Civil disobedience is a catalyst for changes in the law; rule of law is not damaged due to the willingness of protester to take sanctions of law for his disobedience.

(5) The constitutional freedom of speech and expression may be expanded so as to include within its scope the evolving right of civil disobedience.

(6) The recognition of the right of civil disobedience does not preclude the operation of the law.

(7) There is an evolving constitutional right of civil disobedience which should not get unrecognized.

Finally, many express their fears that if civil disobedience should be recognized as a constitutional right, then there may come a time when the majority of the governed will disobey a plainly valid law and thus cause chaos, and lead society into anarchy. But let those

[53] *Id.* at 207.

who nurture this far-fetched and nervous apprehensions be allayed in their fears that this will not come to pass. First, there is the existence of a "heterogenous" people who may not come to violate the same law at the same time as Puner pointed out. Second, the diverse reactions of human beings serve as a countercheck to a law being unanimously violated. Third, and most important of all is that: If everybody or the majority will engage in civil disobedience, there is no danger of anarchy, because if that point is reached, then there would no longer be any need for civil disobedience to be exercised, since the majority by that time shall have prodded or moved their legislators who, it is not illogical to presume, shall have been part of that majority, to change the law. Then at that point, the growth of law shall have been achieved.

Of great significance, worth mentioning in this article, is the very recent incident which marked the rainy day of September 23, 1969. A national newspaper reported: "Some 300 rain-soaked farmers and students rushed into Malacañang's ornate ceremonial hall at 7 last night, broke up an induction ceremony and forced President Marcos to listen to their demands for reforms."[54] Newspapers of national circulation point out one fact: That the demonstrators forced their way into the hall of Malacañang Palace to see President Marcos and make him listen to their demands. It was reported too, that the demonstrators decided to get into the Palace after the President failed to show up to meet them as assured by an emissary from Malacañang. The impact and significance of this event may not be fully appreciated now for its occurrence is still fresh. But surely, this event will be recalled in the turbulent days that are yet to come. This event is unparalleled in the entire history not only of demonstrations and protests in the Philippines, but even those in the United States. In the latter country, the farthest that demonstrators had gone was to pitching tents in front and outside the White House, but in no event did the demonstrators break loose and force their way to seek audience with the highest official of their country.

From the light of facts obtaining in this particular demonstration, it cannot be said, even liberally, that they were engaged in civil disobedience. First, their demonstration was not directed against an unjust law but rather, as was stated in their mimeographed appeal, to "force our government officials to come down from their arrogance and honestly and sincerely do something about our demands." In short, the demonstration was directed against the inaction of the government to take the steps necessary to meet demands for social and agrarian reforms which had too long been aired by the demonstrators.

[54] *The Manila Times*, Septembter 24, 1969, (1, 10-A).

Second, whether the demonstrators were willing to take the corresponding penalty for whatever breach of the law they may have occasioned thereby had never been tested.

But, in spite of all these, it cannot be said that the demonstration is devoid of merits. Their demands were not trivial nor illegal. Among other things they demanded the speedy implementation of the land reform program to alleviate the conditions of oppressed farmers who had almost always been victims of exploitation and land-grabbing and the fulfillment of the President's "promises" to the farmers at the auditorium of the University of Santo Tomas last October. But this is not to say too that they were justified in "storming" the Palace to get an audience with the President.

The lessons of this demonstration are quite apparent. Perhaps it would not be rash to state that the demonstrators lacked sobriety in the same way that the President failed to give attention to right priorities. The President sought to calm the demonstrators by telling them that a President had other duties to perform, so he was not able to see them at the Agrifina Circle as agreed upon. But what was the President doing at their time? He was preoccupied with swearing-in officers of an election campaign organization. It is indeed disheartening to note that at hard times like these government officials seem to give topmost priority to election and politics, but cannot meet problems of social justice which plague the country all over. If sincerity on the part of government officials begets justice and reforms, then it will be inconsistent if sobriety begets civility. The demonstration is significant in more ways than one. It is indicative of the demonstrator's sincerity to achieve social justice through land reform as well as of their desire and hope for peaceful negotiations. But then too, it is a sign of a stirring and growing interest which only a responsive government can solve. It had set a precedent. As to whether this would start the motive power for a movement to seek redress in the manner it displayed and thus displace traditional speeches in front of the Palace, still remains to be seen. Let it then form its own sophisticated approach. But one thing which the demonstration pointed out is that it takes more than just empty promises and evasions of national problems on the part of government officials to tone down the increasing vigor of seeking redress by taking into the streets. One cannot help but hope that after this erratic pace of events and the right balance is struck between the interest of law and the governed, recourse will once again be had on civility.

From this unsettling set of turbulent conditions which seem to confront the world, a movement is born; a mode of effecting social, political and racial change comes to life and, with it, the evolving constitutional right of civil disobedience.