From Locke's Dissent to Rawls's Civil Disobedience: The Way Forward

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This essay aims to trace the trajectory from John Locke's notion of dissent in overthrowing - with violent means, if necessary - an unjust government, to John Rawls's idea of political obligation, which underlies the act of civil disobedience in modern democracies. I hope to explain here why it would be necessary to transcend both, in our collective quest for a more just society.

I

John Locke, the seventeenth-century English philosopher, has assumed several avatars thrust on him by scholars in the past 70-odd years. He has been variously viewed as a religious individualist[1], as a Whig supporter[2], as a subversive revolutionary[3], and as an apologist for the capitalist order. In fact, Thomas Jefferson's 1776 *Declaration of Independence* reads like a text book application of Locke's *Two Treatises of Government* (1689): "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit

1 *The Political Thought of John Locke,* Cambridge University Press, 1969

2 CB Macpherson's *The Political Thought of Possessive Individualism,* Oxford University Press, 1962

3 James Tully's *A Discourse on Property: John Locke and his Adversaries*, Cambridge University Press, 1980

of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organising its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness…"

Thus, according to a conventional reading of John Locke's *Two Treatises of Government*, every individual has God-given entitlements or rights, even in the state of nature. In the state of nature, there may be different biases and interpretations of such natural laws. These could give rise to conflicts and attacks on vulnerable persons and their property. Locke is often viewed as one of the first modern thinkers to articulate a capitalist defence for the right to property, but it is fascinating to note that there is considerable ambiguity in Locke's understanding of this notion. Sometimes, for Locke, "property" means material possessions, and at other times, it is coexistent with man's rights and freedoms, when he refers to Lives, Liberties, and Estates.[4]

In the state of nature, Locke does not always advocate the use of force to settle disputes; quite often, he leaves the outcome in God's hands: "Where there is no judge on earth the appeal lies to God in Heaven", or "I will answer it to the Supreme Judge of all men."[5] Since it is vital to safeguard every individual's right to life, liberty, and property, men and women must give their consent to move from a natural to a civil society. Near the middle of the *Second Treatise*, Locke asks the same question, "Who shall be judge?" The answer is the same: "(Since)…there can be no judge on earth, appeal must be to heaven" (par. 168). It is only at the end of the *Second Treatise* that Locke declares unequivocally that the "people shall be judge" (par. 240).

In a civil society, individuals give up their own legislative and executive powers and enter a social contract by submitting to a central authority or government,

4 See The Term 'Property' in Locke's *Two Treatises of Government* by Karl Olivecrona, Archives for Philosophy of Law and Social Philosophy, 1975, Vol. 61 No. 1, Pages 109-115, for a fascinating account of the influence of Hugo Grotius and Samuel von Pufendorf on Locke's elaboration of the concept of property.

5 Second Treatise, par. 20

which sets up public laws and administrative institutions. While the king takes a coronation oath to serve the people's interests in a monarchy, the people (however they are defined, in terms of age, gender, level of wealth) also take an oath of allegiance to the king. This exchange of oaths is in the form of a contract based on trust.[6] In other words, individuals or 'citizens' expect their government to guarantee their basic rights to life, liberty and property. When the king or government fails to do that, citizens no longer have any obligation to obey the king, and thus having the right to overthrow him and replace him with a rights-respecting new government.[7] But as Katrin Flikschuh[8] points out, "There is an interesting shift in Locke from an individual right to self- (and other) defence in the pre-civil condition to the people's right to revolution in the civil society" (Page 378). Such a shift from the individual to the collective may be difficult to defend in philosophical terms, but it could well serve the purpose of political rhetoric.[9]

Indeed, in political terms, Locke is viewed as a great defender of liberalism and a proponent of the Glorious Revolution of 1688-89, which saw the dismissal of the Roman Catholic monarch, James II of England (previously, James VII of Scotland), and the installation on the throne of his Protestant daughter, Mary, and her Protestant Dutch husband, William of Orange. However, in 1956, the English historian, Peter Laslett,[10] made the revelation that Locke's *Two Treatises of Government* was actually written during the exclusion crisis (efforts to prevent the accession of James II to the English throne) of 1679-81 – that is, almost a decade before the Glorious Revolution. Laslett's sources for this study of Two Treatises were formidable and included Locke's own corrected copies of the first and third editions, the then newly available Locke papers in the Bodleian Library, and his own impressive knowledge of the history of the seventeenth century.

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6 See 468 of Locke on Consent: the '*Two Treatises' as Practical Ethics* by Michael Davis, The Philosophical Quarterly, July 2012, 62.(248), 464-485

7 See Chapter 19 of th*e Second Treatise,' On the Dissolution of Government'.*

8 Reason, Right and Revolution: Kant and Locke, Philosophy and Public Affairs, Fall 2008, Vol.36, No. 4, 375-404

9 Ibid., 401

10 See Peter Laslett's *The English Revolution and Locke's 'Two Treatises of Government'*, The Cambridge Historical Journal, Vol. 12 No. 1, 1956, 40-55

Laslett affirmed that the First Treatise was worked on after the first two chapters of the *Second Treatise* were completed, and only after Locke had read the posthumously published *Patriarcha* (1680), which was written by Sir Robert Filmer decades earlier. The *First Treatise* is largely a refutation of Filmer's book. Filmer's *Patriarcha* expounded the view that it is the right pedigree, rather than a social contract, that is the legitimate basis of governance, and this thesis had been enthusiastically appropriated by Tories of that time who claimed that James II had the right pedigree and was therefore fit to rule England. Michael Davis, expounding Filmer's views on the analogy between a father and a king, says, "Parliament could no more deny James the throne than a minor child could dispossess his father... For Filmer, the king was twice absolute: first, because his authority over his subjects was without legal limit; and second, because the moral obligation of subjects to him (barring divine intervention) was absolutely indefeasible (even though morality and true religion both bound the king)."[11]

John Dunn's thesis (op.cit. footnote 1) that Locke's criticism of Filmer in the First Treatise reveals his own religious individualism deserves closer scrutiny. According to Locke, man is a creation of God's workmanship, and the philosopher uses this workmanship argument to politically challenge Filmer's patriarchal absolutism, by claiming that God created all men as equals, and therefore no man can have dominion over another. Such a move in the beginning of the Second Treatise could be classified as the politicisation of God by Locke, especially when he calls Him the "One Sovereign Master". By politicising God, Locke manages to elevate both the moral and political status of men. "Thus the relation between God and man is expressed with reference to a number of different political relationships which variously embody God as king, sole lord, and sovereign master, as well as Maker and Creator. God must be all-powerful, of course, otherwise he is no God." [12]If man is created in God's own likeness, then he, too, is capable of "Dominion".[13]

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11 Filmer's ideas as well as Locke's refutation of them are found on Page 474 of Michael Davis, 2012.

12 See Pages 92-93 of The "*Figure" of God and the Limits of Liberalism: A Rereading of Locke's Essay and Two Treatises* by Vivienne Brown, Journal of the History of Ideas, January 1999, Vol. 60 No. 1, 83-100

13 Vivienne Brown (Ibid.) refers to Locke's First Treatise, pars. 30, 40

Laslett's 1956 revelation would not be significant were it not for the fact that it has spawned a cottage industry of refutations of his timeline (Locke is now believed to have been writing Two Treatises at least till 1683, and even a little beyond) and further explosive revelations regarding Locke's politics. Consider Richard Ashcraft's assertion that Locke was more closely associated with his patron and mentor, the radical Earl of Shaftesbury (who was later imprisoned), than acknowledged by earlier scholars. "It must be admitted...that there is a large, black hole in the centre of the Locke-Shaftesbury relationship, which is there precisely because of their political relationship and because of the dangerous situation in which the two men found themselves in the 1680s."[14] Locke and the Two Treatises, according to Ashcraft, have been part of the 1685 Monmouth Rebellion to oust the Catholic James II, who had just inherited the English throne. Indeed, the known conspirators in this Rebellion firmly believed in Locke's political pronouncement in Chapter 19 of the Second Treatise, namely, the legitimisation of the use of force against a tyrannical government.

This subversive aspect of Locke's ideology, says Ashcraft, is reflected in most of the politically radical pamphlets after 1683, when Locke himself hastily left London and returned only after the 1688 Glorious Revolution: "In my view, Locke's *Second Treatise*, Ferguson's *Declaration,* Sidney's *Discourses,* and the proposals by West and Wade, were all formulated in the context of the revolutionary conspiracy begun by Shaftesbury and carried on by the Council of Six."[15]

Again, the conspirators often used expressions like "wolves or tigers", ostensibly referring to King Charles II and James, Duke of York, and echoing Locke's own statements of destroying "noxious beasts", like "wolves", "tigers", or "lions". [16] Locke further claims that anyone who poses a threat to an individual's life, liberty or property, may be resisted or killed. Similarly, when government magistrates pose the same threat, they may be resisted legitimately as well, since they have breached the trust of the people. Locke says: "This I am sure, whoever...by force

14 Page 461 of Richard Ashcraft's *Revolutionary Politics and Locke's Two Treatises of Government: Radicalism and Lockean Political Theory*, Political Theory, November 1980, Vol. 8 No. 4, Pages 429-486

15 Ibid., 468

16 Ibid., 471-472; for references to Locke's Second Treatise see pars. 8, 10, 11, 16, 93, 172, 181, 228

goes about to invade the rights of either prince or people, and lays the foundation for overturning the Constitution and frame of any just government is guilty of the greatest crime, I think, a man is capable of...And he who does it, is justly to be esteemed to be the common enemy and pest of mankind."[17]

Nevertheless, Locke's manner of expressing himself on these matters substantially differed from that of the radical pamphleteers of his time. As one commentator points out: "In their concerns to explain the nature of the social bond and the rise and extent of political power by reference to states of nature, natural liberty, natural rights and natural law, Hobbes and Locke had more in common with one another than either had with any of their contemporaries who argued from Englishmen's rights and duties derived from Saxon contracts, Magna Carta, the constitutional contract of 1688, or whatever."[18] That is to say, Locke, while expounding his philosophical contract theory, was concerned about rights, not historical facts.

For Locke, there are three grounds for overthrowing a king or a government — subverting the Constitution by breaking the contract; violating the fundamental laws by listening to wicked advice; abandoning the subjects. Even Thomas Hobbes, the older contemporary of Locke, who believed in a covenantal relationship between rulers and ruled in the interests of peace and to escape the misery of war, would agree that a ruler who no longer rules ceases to be a ruler.

Although Hobbes has traditionally been viewed as an absolutist favouring the monarchy, there has been a reassessment of the philosopher in recent years. What is Hobbes' problem of politics? Hobbes famously wrote in chapter 13 of the *Leviathan*[19] (1651) that the life of a man in a state of nature, when there was "the warre of all against all", was "solitary, poore, nasty, brutish, and short". The only way out is for men to sign a social contract and submit to the will of an absolute monarch or sovereign. The point to note is that Hobbes never limited his notion

17 *Second Treatise*, par. 230

18 Ashcraft, Page 280

19 *Leviathan: Or the Matter, Forme and Power of a Commonwealth, Ecclesiasticall and Civil*

of sovereignty to monarchy. The sovereign could be one man or an assembly (*Leviathan*, Chapter XXVI, Of Civill Lawes).

Conflict as an inevitable part of human existence is an area of accord in the thinking of Hobbes and the American Founding Fathers. According to Hobbes and to the Founders, man's reason is fallible, but since he has the freedom to exercise it, it will lead to clashes with others' opinions. The biggest moral dilemma for Hobbes was the imposition of private conceptions of justice on others against their consent – which is why his ideas are being re-examined as having influenced the writing of the *Federalist*, notably, James Madison's ideas on factionalism in politics (*Federalist* Paper No. 10).[20]

The problem of private conscience for Hobbes was solved by the transfer of the private right to enforce notions of justice to the transcendent sovereign. But how can we be sure that the will of the sovereign is, indeed, transcendent and above base human emotions? For the American Founding Fathers, there was the added complication of reconciling private conscience with the public good in the popular form of majoritarian democratic government without an absolute sovereign. Faction, for James Madison, one of the authors of *The Federalist,* was the republican equivalent of Hobbes' dilemma. Since the causes of faction cannot be removed, the Leviathan-like solution lies in controlling its effects. In place of Hobbes' absolute sovereign, which could turn against the society or merely reflect the tyranny of the majority, the Founders saw in the supreme laws of a society the overarching regulator of different factions and their varying opinions.[21] What are these supreme laws and where are they embodied? According to the Founders, these laws are embodied in a written constitution. 'Constitutional equilibrium' gave the Founders the ability to limit factionalism within government proceedings.

But the critical point is that Hobbes' sovereign is absolute, and has the capacity to compel obedience, whatever its institutional avatar. This is why the American

20 See Gary L. McDowell's *Private Conscience and Public Order – Hobbes and the Federalist*, Polity XXV (3) Spring 1993

21 *The Federalist,* No 33, 207

Founding Fathers, grounded as they were in ideas of individual liberty, had to reject Hobbes' solution to the problem of human conflict, even while they appreciated the philosopher's articulation of the problem of politics. More significantly, to a generally religious people, Hobbes' apparent atheism and his call for the creation of a 'Mortal God' struck most Americans as undesirable and untenable (see Part III of Leviathan). In Chapter XL, *Of the rights of the kingdome of God, in Abraham, Moses, High Priests, and the kings of Judah*, Hobbes says that "in every Commonwealth, they who have no supernatural Revelation to the contrary, ought to obey the laws of their own Sovereign, in the externall acts and profession of Religion." Hobbes makes the extraordinary point that no person can serve two masters, and since the contract has been made with the sovereign, it is he who gets precedence over God![22]

For the American revolutionaries, John Locke's ideas were far more suitable to their purposes and he clearly emerged as their poster-boy.[23] If the ideas on factionalism in *The Federalist* may be reconciled with the Hobbesian analysis of the subject, the idea of individual freedom – which is the bedrock of the American Revolution – is founded on the writings of Locke. For Locke, slavery is the precise opposite of legitimate political authority.[24] Slavery exists on the basis of the exercise of force. The opposite of force is reason – but this reason is what God wills men to exercise. Like Hobbes, Locke envisages the social contract as the surrender of individuals to a political authority. However, the Lockean political authority is expected to impartially enforce the natural law and ensure peace and well-being for all subjects. Since there is the constant danger of this political authority abusing its power, its existence depends on the consent of the subjects. What makes political authority legitimate is the service it renders to its subjects. A legitimate monarch or authority is not the owner, but the servant, of his subjects.

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22 Leviathan, Chapter 43, especially the section titled *The Difficulty of Obeying God and Man Both at Once*

23 "The philosophically feeble John Locke rather than the superb Thomas Hobbes remained the favourite thinker of vulgar liberalism; for he at least put private property beyond the range of interference and attack as the most basic of 'natural rights'." This colourful quotation is from Page 288 of Eric Hobsbawm's *The Age of Revolution 1789-1848*, Weidenfeld and Nicholson Ltd, 1962

24 In what follows, I depend on John Dunn's *A very short introduction to John Locke*, Oxford University Press, 1984

Could we then conclude that Locke's rationale for writing *Two Treatises* was to issue a warning not only to the monarchs Charles II and his successor, James II, but to all future monarchs of England, including William III? [25] This would have certainly appealed to the American revolutionaries, who were engaged in their own battle against the British monarchy. It would seem that Locke was not just allergic to popery, but to monarchy in general. The constant worry that he expressed, especially in the *Second Treatise*, is who shall be the judge to decide whether any monarch's prerogative has been put to good use, that is, for the benefit of the people? In the last chapter of *Two Treatises*, Locke declares that the people shall be the judge of monarchs and governments and take appropriate action against them. Locke's dissent could take the form of violent resistance, and therefore its sustainability is in question. Historically, it is unclear whether the use of violence has resulted in lasting peace, liberty, and social justice.

II

The ideological distance between John Locke's (sometimes, violent) dissent and John Rawls's civil disobedience is rather long. While we understand the difference between violent dissent and civil disobedience, could we affirm that civil dissent is the same as civil disobedience? In other words, are dissent and disobedience the same? Not quite. Usually, the dissentient is a private individual or a part of a small organization. In Locke's time, any dissentient who refused to comply with the purported law, on the ground that it violated natural law or the constitution, would be imprisoned and subsequently put to death. A contemporary Lockean refers to a contractarian view of the US government, whereby its legitimacy lies in its unswerving respect for rights enshrined in the Bill of Rights.[26] If the government fails to do that, citizens will have a right to revolt against the government and even overthrow it, if necessary.

25 See Page 277 of *Significant Silences in Locke's Two Treatises of Government: Constitutional history, contract and law* by Martin P. Thompson, The Historical Journal, June 1988, 31(2), 275-294

26 See Parts II and III of David A.J. Richards' *Toleration and the Constitution,* Oxford, 1986.

However, in a modern constitutional democracy, the dissentient will generally try to persuade others to share his point of view – e.g., of refusing to pay taxes to finance an unjust war or to be injected with a vaccine on religious grounds – or at least try to convince others of his sincerity and thereby get an exemption from punishment for refusing to comply with law that would be contrary to conscience. T.R.S. Allan informs us: "Where the dissentient appeals to principles of … morality which he claims underlie and inform the constitutional order itself, it is particularly plain that we misdescribe his dissent as disobedience to law."[27]

Whereas civil disobedience is a form of political expression involving the public protest of several people, the civil dissentient's non-compliance with a law is based on a direct requirement, like Manipur's Irom Chanu Sharmila's long-lasting hunger strike (2000-2016) against the Armed Forces (Special Powers) Act (AFSPA), 1958. Sharmila's legal obligation to comply with AFSPA was overridden by her moral obligation to refuse to do so. Unlike the dissentient, the civil disobedient may be untouched by the offending law, like AFSPA, the Citizenship Amendment Act, 2019, or the three farm laws passed by the Indian government in September 2020, and subsequently repealed in December 2021. The civil disobedient does not appeal to the voice of conscience but to the political principle of moral obligation to protest collectively and publicly against an unjust law or government policy.

The freedom to criticise a democratic government, or even to incite revolt against an undemocratic government, is considered the hallmark of free humanity. In reality, of course, such voices are silenced by the institution of anti-sedition laws against dissentients and the civil disobedient. While it is true that most of the adult population in a polity can participate regularly by voting during elections, the rule of law by the government does not automatically imply the surrender of citizens' autonomy.

27 Page 107 of *Citizenship and Obligation: Civil Disobedience and Civil Dissent,* The Cambridge Law Journal, March 1996, 55 (1), pp 89-121

John Rawls's theory of civil disobedience[28] depends on the theory of political obligation in general.

Rawls believes that we have a natural duty not to oppose just and efficient social institutions, but to comply with and support them because these institutions conform to the principles that free and rational persons would have chosen in the original position of equal liberty. According to Rawls, the two principles of justice chosen in the original position behind the veil of ignorance by means of an abstract contract will pave the way for a just social order. The Rawlsian contract doctrine obliges us to conform to just laws. The question naturally arises: why are we expected to comply with unjust laws as well? Rawls's rationale for this is that the legislative and the constitutional processes, even in a near-just society, are characterised by imperfect procedural justice, whereby unjust laws may be passed, and wrong policies may be imposed. Citizens may resort to civil disobedience when they feel that these enactments have crossed far beyond the bounds of social justice and have clearly violated the principles of justice.

Rawls defines civil disobedience in the following manner: "(I)n a reasonably just…democratic regime, civil disobedience, when it is justified, is normally to be understood as a political action which addresses the sense of justice of the majority in order to urge reconsideration of the measures protested and to warn that in the firm opinion of the dissenters the conditions of social cooperation are not being honoured. This characterisation of civil disobedience is intended to apply to dissent on fundamental questions of internal policy…"[29]

Civil disobedience, for Rawls, is a form of public, nonviolent, conscientious, political – not altruistic or spiritual – act that is contrary to law and done with a view to bringing change in government's laws or policies. It should be seen as a last resort, when standard negotiations have been followed and failed. Nevertheless, civil disobedience is addressed to the sense of justice of the majority, and any group in society that resorts to civil disobedience should accept the fact that

28 I depend on sections 55, 57, 59 of A Theory of Justice, Harvard University Press, 1971. I have also included in this study, Rawls's *The Justification of Civil Disobedience*, 1969, in *Collected Papers: John Rawls* edited by Samuel Freeman, Oxford University Press, 1999

29 Rawls 1969, 176-189; the quotation is on 176

other groups with similar or other grievances against the government should have the same right to participate in civil disobedience. This is what Rawls has to say on the three conditions that legitimises people's right to engage in civil disobedience: "when one is subject to injustice more or less deliberate over an extended period of time in the face of normal political protests; where the injustice is a clear violation of the liberties of equal citizenship; and provided that the general disposition to protest similarly in similar cases would have acceptable consequences."[30]

Not all liberals support the Rawlsian position on civil disobedience. A well-known liberal, Joseph Raz, thinks civil disobedience is a right only in illiberal societies.[31] In liberal democracies, people consent to laws and can exercise their right to participate in the process of making or influencing laws, without resorting to civil disobedience. Raz's view overlooks the possibility that even the most democratic government can do something wrong from time to time and must be put on the dock by citizens. What is more important, a person's legal right to civil disobedience might be a precondition to its being morally right for her to embark on it – particularly in the eyes of the state. As one analyst pointed out more than 40 years earlier, "Theories of consent fail because no philosopher of this tradition has succeeded in showing that people ever do really consent in a morally relevant sense of consent, i.e., in a sense of consent that creates a moral obligation of obedience."[32]

The standard liberal view – contra Raz -- is that the right to civil disobedience implies that we should be tolerant of the civil disobedient, however wrong or unsound their cause may be. Ronald Dworkin uses the right to civil disobedience in a way which implies that if there is such a right, then it would cover the cases where civil disobedience was not right but wrong. [33] That is to say, even fascists

30 Rawls, 1969, 186

31 The authority of law: *Essays on law and morality*, 1979, Clarendon Press, Oxford

32 See H.J. McCloskey's *Conscientious Disobedience of the Law: its necessity, justification, and problems to which it gives rise*, Philosophy and Phenomenological Research, June 1980, Volume 40 Number 4, 536-557

33 *A Theory of Civil Disobedience* in Howard Evans Kiefer & Milton Karl Munitz (eds), Ethics and Social Justice, State University of New York Press, 1970

and racists should be allowed to collectively protest state laws and policies, as long as these protests are conducted in a peaceful manner.

Rawls thinks that civil disobedience, when properly conducted, could work as a safety-valve (especially in weak democracies), for, in its absence, there would be violent threats to the constitutional system. Rawls thinks that the civil disobedient should be willing to submit to the penalty and thus establish their sincerity to themselves and to others. He contends that civil disobedience is a final device to maintain the stability of a just constitution. Rawls's view is that civil disobedience expresses disobedience to law within the limits of fidelity to law. The laws, that we could in principle break, are oppressive state-made laws, as opposed to the laws which reflect morality and justice.

Rawls points out that state authorities should never impose substantial penalties against the civil disobedient, and these may range in the US from Native American struggles to the 'Black Lives Matter' movement. At the same time, Rawls may be too restrictive in advising the civil disobedient never to embark on civil disobedience unless the injustice is clear and obvious. [34] By imposing too many restrictions on civil disobedience, Rawls fails to see its intrinsic value in publicising an injustice and forcing lawmakers and politicians to reconsider and repeal unjust laws.

In his writing on civil disobedience, Rawls emphasises the principle of political obligation within the context of a near-just society. The question is: does the principle of political obligation hold within the context of an unjust society, like colonial India or a society characterised by racial, caste, or religious discrimination? The answer, according to David Lyons,[35] is an emphatic 'No'. Lyons believes that there are moral limits to Rawls's argument that we have a political obligation to respect both just and unjust laws in a near-just polity. In fact, Rawls himself admits as much, when he says: "(I)f justified civil disobedience seems to threaten civil discord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the

34 Vinit Haksar, *Rights, Communities and Disobedience – Liberalism and Gandhi,* Oxford University Press, 2001, 34

35 See *Moral Judgment, Historical Reality, and Civil Disobedience*, Philosophy and Public Affairs, Winter 1998, Volume 27 Number 1, 31-49

coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist."[36]

Nevertheless, Rawls's major preoccupation regarding the right to civil disobedience is within the confines of a near-just society and this right is predicated on the principle of political obligation. As Lyons points out, the Rawlsian civil disobedient is expected to regard the system under which he lives "as morally flawed but basically just and requiring modest reform rather than fundamental change".[37]. She or he is expected to be non-violent and use moral persuasion rather than indulge in outright rebellion. The disobedient's willingness to submit to police arrest would provide proof of political obligation to the state.

Such "exemplary" behaviour is true of both M.K. Gandhi and Martin Luther King. But neither Gandhi nor King believed that it was obligatory to support unjust laws. Gandhi's 1930 salt satyagraha was a protest movement against the unjust salt law imposed on Indians by the British colonial government. King eloquently discusses the difference between just and unjust laws and the moral, even religious, imperative to resist the latter, in his 1963 *Letter from a Birmingham City Jail*. In a Rawlsian sense, both Gandhi and King were being unlawful when they were resisting what they perceived as the unjust laws of the state. Ironically, in a system of entrenched injustice, the first persons to break the law or dishonour the constitutional provisions are indeed state officials and ruling politicians. Lyons is right in claiming that the toleration by many among the privileged of egregious racism, casteism, or communalism is morally reprehensible and amounts to "culpable indifference". [38]

In fact, one may ask, what political obligation do individuals owe any government when they can be arbitrarily arrested by state authorities or discriminated against, based on colour, caste, or religious affiliation? What is more, does any actual society measure up to the standards of Rawls's ideal just society? While claiming that civil disobedience must remain suspended between legitimacy and legality,

36 *Theory of Justice,* Harvard University Press, 1971, Section 59, 390-391

37 Lyons 1998, 39

38 Ibid., Page 48

Jürgen Habermas forcefully states: "A democratic constitutional state can demand of its citizens not an unconditional, but rather only a qualified obedience to the law, because it does not ground its legitimacy in sheer legality (Page 102)."[39] If we only depended on a narrow legalism to add force to the argument in favour of political obligation, we are likely to conjure up the Hobbesian spectre of religious wars – or 'external security threats' today – to more or less force citizens to submit to the authority of a supreme sovereign or leader.

In conclusion, could we say that Rawls's notion of 'political obligation' has little or no moral force and needs to be discarded? If protesting against unjust laws in any society, which may be near-just or unjust, is a citizen's duty and may even be constitutionally enshrined, then should we go so far to say that there is no need to look for moral justification for acts of civil disobedience? The problem arises when we confront sincere and conscientious fascists or religious fundamentalists who may be protesting peacefully on a subjective understanding of morality but may be objectively grossly mistaken (Dworkin 1970). Of course, this is likely to be the case with any dissentient or the civil disobedient who necessarily harbour different conceptions of the good society. Given that the polities most of us live in are at considerable distance from the Rawlsian ideal society, and that conceptions of the 'good' society differ widely, any ideologically minded group in society should be allowed to protest in a manner that does not cause harm to others.

And we may safely conclude that there is no prima facie obligation for any of us to obey laws that do not promote conditions of universal or inclusive justice in a society. In an objective understanding of morality, these would include laws and policies that violate our inalienable human rights based on universal liberty and equality. The primacy of the "just" over the "good" is a Kantian notion that is endorsed by Rawls. Therefore, Rawls's excessive caution in allowing citizens to engage in civil disobedience, even in the cause of furthering justice, appears to be misplaced and unwarranted.

39 *Civil Disobedience: Litmus Test for the Democratic Constitutional State*, Berkeley Journal of Sociology, 1985, 30, 95-116