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## Moving Conceptual Limits of Civil Disobedience: The Case of Serbia

### Abstract

Based on comparative analysis of dominant contemporary conceptions of civil disobedience, it is concluded that all of them, to a lesser or greater extent, stay within the Rawlsian theoretical matrix, with a quite rigid schematics of conditions requisite for implementation and justification of this type of political practice. It is about a mainly system- related approach, in which a strictly determined institutional framework, represented in a developed and already consolidated democracy, is presented as a limiting and only possible contextual framework for the use of civil disobedience. The author emphasizes that the institutional framework is certainly a desirable, although not a necessary condition. For experience shows that this type of practice is possible not only in the circumstances of a developed and stable system of democratic institutions, but also in those of the minimal, electoral democracy, and under quasi-democratic conditions, the best example for which is the case of Serbia, that is analysed here. In addition, there are also cases of contemporary protest movements that carry out their actions of nonviolent resistance under conditions of a developed democracy, but direct them against its existing liberal form and/or do not base them on the Rawlsian justice principle, thus surpassing the dominant conceptual framework. The author, in fact, wants to indicate that this concept forms a theoretical model too abstract, exclusive and narrow that, as an expression of a purely scholastic standpoint, does not correspond either to historical or contemporary empirical practice, and as such even makes the very notion of civil disobedience completely senseless. As a result, the significance of different interpretation of the context necessary for this type of civil action is underlined, the one where accent would not be only on the required institutional, but also certain political culture framework, too. It suggests a correction of the systemic-institutional approach, first and foremost in the sense of lowering its too high demands, and then its supplementation with a complementary normative approach that would emphasize the importance of participatory political culture with a system of liberal-democratic values and advanced civic virtues (so-called civic culture approach). By that a necessary flexibility of the concept of civil disobedience would be achieved, one that would approximate it more to the social and political reality, but also enable its far larger theoretical-analytical and practical-political applicability.

Key words: Civil disobedience, the contemporary concept, civic political culture, political obligation, democratic constitutional state, quasi-democratic order, the case of Serbia, legitimacy, legality, legal injustice.

Although the question of the legitimacy of political power is a very old one, and crisis of political legitimacy has been an almost chronic occurrence throughout history, only with the development of contemporary democratic theory and practice the modern society, with a liberal-representative system of a responsible government that demands not pure passive obedience but citizens' consent and their political participation, has become aware of this crisis and its consequences, as well as the need for its overcoming in the manner not threatening to democratic achievements of the civilizational development. Civil disobedience is exactly the specific instrument or the strategy of civil action that can play a significant role in it. Namely, it is a type of political practice that, as an element of civic political culture, represents a significant democratic achievement itself. The development of a modern concept and practice of civil disobedience also signified the development of civic self-confidence, i.e. citizens' awareness of their own political subjectivity that enables them to act not only as holders and realizers, but also, if necessary, as defenders of their own human and civil rights.

It was, therefore, necessary to meet certain theoretical and empirical conditions in order for the modern idea of civil disobedience to develop in the form known today. It actually took a form of a concept *sui generis*, i.e. a typical modern form of disobedience that exists today parallelly with some other concepts of disobedience that have further evolved from the historical forms of obedience or loyalty refusal to established authorities and their decisions, such as an early Christian tradition of disobedience for reason of conscience and the right to resistance against tyranny.<sup>1</sup> Civil disobedience, although partially an heir to these older traditions, nevertheless surpasses their frameworks in its conceptual conditions and elements, primarily because it "appears under completely new historical and political conditions and is a subject to a different kind of justification" (Spasić, 2004: 41). In addition to that, there are opinions, like the one presented by Aleksandar Molnar, that civil disobedience is rooted primarily in ancient conceptions of so-called Socratic heritage, then partially in early Christian tradition of disobedience for reason of conscience, but not at all in the right to resistance against tyranny, for their histories are significantly different.

It is very important to emphasize that the insistence on making a strict distinction between older forms of disobedience, as well as the distinction between these forms and civil disobedience, is only a feature of modern, especially contemporary political theory. For instance, Ralf Dreier indicates that a consistent distinction between the right to resistance and civil disobedience was made only with the development of the institutions of a democratic constitutional state, and we add with the parallel development of democratic theory itself, in any case it means only in the 19th and 20th century. In addition to that, there was a tendency among some political and

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1 These historical forms of renouncing obedience to political authorities and their decisions, i.e. their orders or bans, and also ancient conceptions, as forms of disobedience that preceded the modern concept and practice of civil disobedience, we considered in detail in previous papers. See: (Mirović, 2009b: 1-26) and (Mirović, 2009c: 11-44). More on the issues see also: (Molnar, 2001); (Molnar, 2002: 230-231); (Ibidem: 363-390); (Spasić, 2004: 41-44); (Stanovčić, 2003: 24-25); (Ibidem: 32-38); (Stanovčić, 1992: 43-88); and (Neumann, 1974: 170-174).

law theorists to equate and synonymously use these terms denoting two, essentially different forms of resistance to the authorities, i.e. their decisions. On the other hand, the distinction between the conscientious objection and civil disobedience is a very contemporary one, characteristic only to the legal and political theory from the second half of the 20th century; special merits for its conceptualization go to very influential theorists of today, such as John Rawls, the aforesaid Dreier and even Hannah Arendt (although she was not of the opinion from the beginning),<sup>2</sup> while among the domestic authors we would single out A. Molnar.

It can be said that the democratic constitutional state, along all its regular institutional mechanisms, also has two degrees or levels of extra-institutional protection, and that different means available to people for defending their rights and principles of democracy corresponding to them. Civil disobedience and so-called the aid to the state in danger belong to those informal protective mechanisms; in that sense, civil disobedience would be the first protective level related to the regular functioning of a democratic constitutional order, whereas the aid to the state in danger would be supplementary instrument at the second level of protection, related to a state of emergency in the broader sense<sup>3</sup> when functioning of this order is endangered by anti-constitutional forces and the danger of establishing a tyrannical government exists, allowing the pro-constitutional oriented individuals to resist such forces, if it is necessary, with weapons also. It means that only if these protective mechanisms had error or failed and there was porousness of the very institutional obstacles, the establishment of tyranny would be possible, and along with it, activation and use of natural right to active (armed) resistance to it. The right to resist tyranny - which still exists, contrary to wide belief that it is abolished in democratic societies of today, just it is not legally positivised but remains an unpositivised natural right, as it has in its essence ever been (although there are also exceptions)<sup>4</sup> - is treated as the final instrument to use only in the case of definitive forming or real existence of a tyrannical government, so the democratic constitutional system can be (re)established. Although providing "the aid to the state in danger" is

2 At first this author viewed civil disobedience in a broader, traditional sense that makes it equal to the conscientious objection as an individual act, and as such distinguished it from "confrontation" as a collective act, i.e. "act in concert" (Hannah Arendt, "Discussion". Alexander Klein /ed./, *Dissent, Power, Confrontation*, McGraw-Hill Book Company, New York, 1971, p. 25; cited by Molnar, 2002: 261). When she subsequently accepted the existing distinction between civil disobedience and the conscientious objection, she kept the same criterion of distinction (collective acting, joint opinion/individual acting, private opinion), but it was now in the function of demarcating these two types of disobedience (see: Arendt, 1972: 87).

3 Here we talk about state of emergency in the broader sense, for it does not mean only its formal proclaiming procedure, keep in mind that individuals who want to defend endangered democratic order cannot be led by formal criteria because of the possible misuse by the organ authorised for proclamation of such state, and that they have to decide on their own if the existing state can be considered the one of emergency, i.e. the one that requires "aiding the state in danger". Thus the "unique democratization of the right to proclaim state of emergency was performed, with the final decision on justification of using the institute is shifted to the judicial domain (that will act only upon removing the danger to the constitutional order)" (Molnar, 2002: 326).

4 For example, by the Constitution of the former GDR, but also today by current Constitutions of some West German states, as the one of the state of Hessen, the right to resistance is included in the Constitutional Law, thus being positivised.

still a specifically German constitutional law norm (regulated by Art. 20, Par. 4 of the Basic Law for the Federal Republic of Germany), the starting point here is Molnar's concept of a democratic constitutional state, according to which a state of emergency (in the broader sense), and application of this institute related to it, is an "in-between" state generally positioned between regular functioning of a democratic constitutional system and establishment of tyranny.<sup>5</sup>

In a democratic society, power cannot be based on an *a priori* secured and lasting legitimacy, or a so-called self-legitimization. A permanent and continuous process of its legitimization is needed, as a two way process conducted from above as well as from below. Otherwise, in the absence or failure of such a legitimization process, a crisis of legitimacy arises and, in case of serious deficiency of this authority attribute, it can cause a situation where not only is the cessation of political obligation of citizens to obedience possible, but then disobedience is their civic duty (Mirović, 2010a: 109-132). It results from the fact that political obligation of citizens to the government has to be proportional to the degree of its legitimacy. This opinion has formed as a consequence of a developing critical awareness on nature of political obligation that can only be two-sided, that is relative and conditional<sup>6</sup>, as well as on grounds for the legitimacy of political authority and its decisions, that cannot be related only to the principle of legality, but also to some qualitative conditions and standards. Legality in its formalistic sense of positive laws could be a basis for the legitimacy of authority only if previous legitimacy of legality exists. In other words, "the legitimacy of legality" (Dyzenhaus, 1996) is necessary as a *conditio sine qua non* of the political authority legitimization by law.

Although many contemporary theorists have tried to determine the precise criterion for the legitimacy of political authority and its decisions, i.e. a reliable and clear ground for justified civil disobedience, and even some of them - like Dreier and Molnar - consider only its grounds in positive law as possible (in the form of human rights as positivised natural rights), there is still no agreement in theory on these legitimating basis and criteria. It basically also means that the question at what point or degree a legitimacy crisis requires the termination of political (also legal and moral) obligation of citizens to obedience remains open. In addition to this one, there are such views that there are not only difficulties in formulating unique and universal grounds for political obligation, but it is impossible due to cultural diversity of contemporary societies. For example, Bhikhu Parekh criticizes, from the viewpoint of multiculturalism, contemporary "monoculturally oriented theories" of political obligation (actually having in mind Rawls' theory of justice) that in the tradition of those old philosophies start from the wrong hypothesis of

5 More on this Molnar's concept of the democratic constitutional state within which he developed his view on civil disobedience and "aiding a state in danger" as unique forms of practicing "conservative constitutional authority", see: Mirović, 2010b: 13-17.

6 On necessity of such viewing nature of citizens' political obligation to obedience, see: Stanovčić, 2001: 255-296.

a culturally homogenous society and formulate certain explanatory and normative principles with the aspiration that they would apply universally to all members of a given society and people in general. In his opinion, previously any such principle represented as a ground for political obligations (for example consent, justice, common good, etc.) could really have reliable application and effect with relatively similar moral power for most members of a society. However, today it is not a case anymore due to significant cultural diversities of modern societies whose members define ground for their political obligations differently; in regards to core values of their cultural tradition. Thus this author concludes: "A well-considered theory of political obligation, as well as of legitimacy and authority, will necessarily be thin and formal, leaving sufficient moral spaces to fill it differently in different moral traditions" (Parekh, 1996: 503-518). Franz Neumann once went even further in his skepticism about capacities of theory to produce a generally applicable formula of the legitimating political authority. He presented a viewpoint stating that the ground for liberation from political obligation is not a matter of law or theory, but conscience; that "everyone has to solve the problem on his own", and "if theory ascribes that ability to itself, it just repeats empty, abstract formulas" (Neumann, 1974: 179).<sup>7</sup> However, even with existing difficulties that we tried to accentuate, we consider that with using a method of analytical testing (examining) certain areas, i.e. the groups of factors, that surely need to become part of the legitimating basis of authority, it is possible to achieve great efficiency in determining (non)existence of a property of legitimacy or its deficiency in a particular political authority. To these areas of legitimacy that have to be the object of critical examination, both separately and in their cumulative effect, belong: values and goals proclaimed, propagandized and promised by the government; instruments used for achieving them; and consequences and results of government actions and application of certain instruments.<sup>8</sup> Thereby the border could be determined where political obligation of citizens to obedience ends, and where not only their natural right but also their natural duty to civil disobedience are actualized and begin to implement. In other words, if the existence of the quality of legitimacy would be denied to a government (or a law, political measure, decision, even the whole political system), based on such a test, to politically (self-)aware citizens with the advanced civic political culture and a strong completely developed moral, autonomous and intellectual personality, it would be more than a clear sign that such government is not deserving of their appreciation and obedience.<sup>9</sup>

7 However, this author who clearly belongs to the tradition not distinguishing the conscientious objection and civil disobedience, equating the latter greatly to the right to resistance, risked nevertheless and tried to draw some minimal theoretical principles of the legitimacy of a political authority. More about it see: Mirović, 2010a: 126.

8 It is a method of testing political legitimacy as suggested by Vojislav Stanovčić. We consider that, by introducing such an analytical method, this big Serbian theorist, professor and academician, who devoted a lot of time in his research to that, by his opinion, key political issue, developed one of the most complete conceptions on ground for legitimisation of political authority, giving his scientific contribution to the international political science. See: Stanovčić, 1992: 94-96.

9 On relation between civil disobedience and civic political culture see: Mirović, 2010c: 1-20.

Applying this civil strategy of political action, if successful, should result in overcoming legitimacy crisis which, as a crisis of the very political authority, represents the deepest political crisis possible. In that manner elimination of legitimization deficit can be achieved by returning the political government in a legitimate, democratic constitutional framework or instead by improving and consolidating democracy if it has not existed in a more developed form. It means that, along with securing normal functioning of a democratic constitutional state, and therefore its preservice, civil disobedience can contribute to its stabilisation and further improvement, even its establishing. Thus contrary to dominant views, civil disobedience does not only have a protective-defensive and conservative, but also an inovative-dynamic and projecting role in the development of a democratic legal and political system, that is, socio-political development in general.

According to the contemporary concept, in its dominant version, the term civil disobedience implies a public, in principle illegal but nonviolent political action of citizens, directed against certain laws or decisions brought by the government in a democratic constitutional system or, more precise, a system with a liberal-representative democracy, without questioning the constitutional arrangements and calling solely to justice, very specifically determined. It is based on prevailing views of today that originate from Rawls's dogmatic theoretical matrix and its very rigid schematics of conditions required for justification and application possibility of this type of political practice. John Rawls developed this concept with strictly formulated conditions and limits of justified civil disobedience within his general theory of justice (Rawls, 1998: 305-347), and it was taken by many, even authors belonging to different theoretical positions, like Jürgen Habermas that accepted it to a greater extent. As a result, their theories of civil disobedience are even cumulatively called "Rawls-Habermas conception". However, Rawls's conception of civil disobedience is, in fact, integral part of his theory of political legitimacy, and could hardly be properly understood without it. It can be said to a certain degree that he found inspiration for the conceptualising his theory in a deep turbulence that was shaking American society during the 1950s and 1960s, main social protagonists of which were these protest movements - like the Civil rights movement, anti-war and student movements against the Vietnam War - challenging existing laws and policy, and also American establishment in general, even institutions of the society. Therefore the theory represents a reflection of Rawls's attempt "to constitute a way of justification, but also of criticizing fundamental institutions in American society, acceptable to everyone" (Matan, 2008: 61).

Thus, the possibility of implementing civil disobedience as a specific strategy of political action is here associated to a strictly determined systemic-institutional framework, where an already built democratic constitutional system is presented as the only possible context and basic condition for its use, as the one that is close to the "circumstances of justice" (Rawls) or characterised by "a constitutional state remaining wholly intact" (Habermas), and thereby civil disobedience is outlined exclusively as a "continuation of a democratic policy" (R. Barker). Furthermore, additional

conditions for its justification are presented and, along with the also systemic one dictating that this kind of action cannot question the existing order, but only single legal and political acts, the most significant is one relating to the character and content of the justice to which disobedient citizens can refer. Although Rawls's view that these acts are justified only in cases of greater injustice is generally accepted (and he determined them primarily as a violation of what he called the first and the second principle of justice, i.e. violating equality of freedom and equality of opportunity), regarding justice itself as a founding principle, there are certain discrepancies in the viewpoints, but finally they all come down to Rawlsian insistence on constitutional political principles as its content. However, it is important to underline that Habermas, albeit starting from this matrix and without neglecting that institutional framework of a democratic constitutional state, by not accepting Rawls's view of the "public conception of justice"<sup>10</sup> in congruence with his own discursive theory of democracy, and by emphasizing civil disobedience as an element of a developed, i.e. participatory or, as he forms it, "mature" political culture (Habermas, 1989: 54), in a way leaves the Rawlsian point of view and extends it with a political culture context. Our opinion is that it makes his conception more susceptible a propos contemporary protest movements and their acts of disobedience.

Nowadays the most reliable legitimization principles, that would also form the content of justice which civil disobedients can refer to, are the principles of human and civil rights and liberties, including the basic right to life, even though according to some prevailing opinions it cannot be an object of civil disobedience.<sup>11</sup> Here we would want to point out that when speaking of those nonviolent acts of disobedience carried out under democratic institutional circumstances but are right directed against them, or are not based on the principle of justice in the Rawlsian sense, there are no valid reasons why they should not be treated as examples of civil disobedience. Primarily we mean those civil demands and protest actions generated in a wide civic area to which various contemporary or so-called alternative social movements (ecological, feminist, anti-globalistic, anti-abortion, etc.) belong, and from where the most radical criticisms<sup>12</sup> are today pointed towards "Rawls-Habermas" conception of civil disobedience, although, to be fair, it has also been criticized before, regarding all

10 According to Habermas's model of discursive democracy, not only political but also legal and procedural issues can and have to be the object of argumentative communicative action in discursive processes of creating political will (see: Mirović, 2009a: 45-84). Thus he does not accept Rawls's view of the "public conception of justice" as an a priori predetermined and completed concept agreed upon once and for all in a constitutional democracy, never again to be reconsidered, revised and adapted, that is the one that could never be the object of civil disobedience itself. Namely, Habermas would probably concur with an attitude that instead of the "public conception of justice", it is more important and acceptable Rawls's notion of "sense of justice", in terms of human readiness to act fairly, meaning reciprocally (Sabl, 2001: 307-330).

11 Thus Molnar estimates that this new form of disobedience used with a referral to an endangerment of life as core values, cannot be considered civil disobedience or the right to resist tyranny in a strict sense, but that is closer to the latter, even treating it as one of its forms. He insists that the essence of this concept, in its radical variant at least, is Thomas Hobbes's logics of the right to resistance leading to civil war and basing on the right to self-preservation, rooted in Martin Luther's teachings. See: Molnar, 2002: 358-360.

12 For instance, such criticism of the conception, that is also a very comprehensive one, was presented by Jennifer Welchman (Welchman, 2001: 97-107).



of its key characteristics. An important part of the criticism starts from the view that big technological changes in the contemporary world brought humanity to a whole new existential situation where its survival is endangered. Hence there is a necessity for different policy, but also for different basis of civil actions in resisting existing policy, since under such conditions civil resistance cannot longer lie only on values like justice, but has to be based on value of the life itself. Thus representatives of this concept, among who many also have practical and activist experience, intercede for disobedience actions to be carried out with referring to lives in jeopardy, whether one's own or all in the world, and with the aim of developing the "ability to learn" (H. Kleger)<sup>13</sup> with the democratic majority, in fact the democratic constitutional state itself. It is a moderate variant of the concept of so-called new disobedience, where even the term is used to emphasize the difference in relation to the essentially "loyalistic" civil disobedience.

Now, the controversial issue remains: why would the key human right such as the right to life be excluded as a reliable founding principle of civil disobedience practice, when today this status is given to all other human rights. Certainly, an expected explanation given by some representatives of this viewpoint would be that the reason lies in its fundamental character: if the right and life itself are in danger, there can be no talk of a democratic government, but only of tyrannical, and under such circumstances the only applicable natural right is the one to (armed) resistance. However, we consider these arguments untenable today when really the existing threats to a human life coming from different sides take previously fantastic proportions. Although, namely, actual political authorities of a democratic constitutional state are not necessarily the only or directly responsible for endangering lives (albeit sometimes authorities need to be held responsible for a non-action), and they often are not but it is a result of different globalization processes and increased accompanying interdependence of contemporary societies, the tactics of refusing obedience to them with referring to the value of life, that is carried out by members of ecological, anti-missile, anti-nuclear and other movements in their nonviolent protest actions, is the use of civil disobedience. Therefore, its practitioners must have the same treatment by authorities as "loyalistic" disobedients.

Nevertheless, basic human rights are a part of the legitimization ground for authorities and their decisions regardless whether they are constitutionally recognized and legally positivised, especially since today they are codified in international law, and as such are treated as positivised natural rights. Subsequently, the goal of protection by the use of civil disobedience can be not only constitutional, but also the international law provisions on human rights and freedoms.

Further, contrary to Rawlsian view, constitutional political principles, i.e. principles of an existing constitutional order even in its developed democratic form, should be able to be the object and legitimate area of the using civil disobedience.

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13 Heinz Kleger, *Der neue Ungehorsam. Widerstände und politische Verpflichtung in einer lernfähigen Demokratie*, Campus, Frankfurt am Main, New York, 1993, p. 87; cited by Molnar, 2002: 361.



This viewpoint is necessary if we accept the critical-rationalistic way of thinking and relating to social and political reality, which implies that law and politics, as well as legal and political systems, are two very revisionist categories liable to constant adjustment by means of their revision and innovation. Otherwise, as Roland Bleiker points out, civil disobedience as an instrument of political struggle turns into an instrument of apparent challenging of illegitimate policies and political structures, i.e. into a means of firming the existing liberal system, along with practical suppression of a systemic alternative possibility (Bleiker, 2002: 37-40). The contemporary concept, however, in addition to setting a democratic constitutional system as a limiting framework of the object and area of the legitimate using civil disobedience, takes such systemic-institutional framework as the only context within which this type of political practice is possible. In this way, civil disobedience is seen mainly from the perspective of a necessary and limiting institutional context, the result of which is excluding a large number of important historical and contemporary cases as examples for carrying out this type of civil action. It has caused a big gap existing today between dominant conceptions of civil disobedience and social reality, and such aberration of theory from sociopolitical practice is unacceptable.

These prevailing views form a too abstract, exclusive and narrow theoretical model, as an expression of a purely scholastic standpoint not corresponding neither to historical nor contemporary empirical practice. By narrowing down conditions, role and legitimate area of use of civil disobedience, the background of applying this means of political struggle is distorted and does not provide adequate and satisfactory theoretical framework for its understanding. Also, theoretical-analytical and practical-political usability of the concept are reduced. Finally, this approach makes the very notion of civil disobedience senseless.

Empirical practice, besides refuting the aspect of the contemporary concept regarding the content of justice as the founding principal of civil disobedience, also shows that the use of this strategy is possible in societies, which are not characterized by the systemic-institutional framework explicitly demanded in this concept. This experience, namely, implies that the practice of civil disobedience is possible not only in the conditions of the developed system of democratic institutions, therefore, in the existence of the consolidated and stable constitutional democracy. It is also possible in the conditions of the minimal, electoral democracy (which is, in our view, still only one form of semi-democracy), and also in the quasi-democratic conditions, for which the best example is the here-highlighted case of Serbia. Not only that, certain contemporary experiences, like the ones which some Eastern European socialist societies at the end of the eighties of the 20th century went through, already confirmed that this political practice, under certain circumstances is possible even in the non-democratic conditions; there where no institutional minimum of democratization exists, which again, we are trying to postulate here as though one of the necessary factors of the contextual framework of this practice. However, in these cases, we are discussing, as we have emphasized, specific circumstances. They are expressed in the fact that the non-democratic order there had already collapsed

(the so-called implosion of socialistic system) and was dying and also in the fact that liberalization in most of those societies came from above, carried out by the representatives of that regime, practicing what John Keane called "the politics of retreat" from the government (Keane, 2003: 60).<sup>14</sup> Hence, paradoxically, the same non-democratic rulers encouraged the development of local civil societies and the strengthening their protest capacities. That is why we give our attention primarily to the case of Serbia, as one of those examples that was characterised by a different systemic-situational context. There, inspite of the initial democratic pseudo-morphosis of the political system, no politics of retreat from the government by the forces of the old regime occured. Therefore, the application of the civil strategies of democratic changes, among them civil disobedience, not only wasn't encouraged or made easier from above, but exactly from that direction everything was done to limit these civil actions and postpone the enforcement of the substantial democratic changes.

Although it breaks the scope of the prevailing theoretic conceptions, civil antiregime protests during the last dacade of the previous century in Serbia, as well as during events from the 5th October 2000, unequivocally represent an example of the successful use of civil disobedience also in the conditions of the existing certain quasi-democratic order, even when this hybrid regime<sup>15</sup> entered the phase of its decline, with the strenghtening of the authoritarian tendencies.<sup>16</sup> The case of Serbia shows that acting through the use of this evolutionary and reformatory strategy, with all the characteristics which it has per deffinitionem, can be directed not only against the will of the majority that stand behind certain laws and political decisions, that is behind the ones who made them, but also against the (self-)will of the political government that, exactly by ignoring the will of the majority in the society, lost its legitimacy.

There are many reasons why 5th October protest actions of Serbian citizens are, after all, important examples of civil disobedience practice, regardless of the absence of the strictly defined institutional condition. However, one of the key reasons for that, in our opinion, is the fact that Martin Luther King's tactic of

14 See also: Keane, 1990: 340-352; and Mirović, 2005: 937-956.

15 We rely on Larry Diamond' typology when defining Milosevician regime as a quasi-democratic hybrid regime. Firstly, he placed pseudo-democracy in the *genus* of the authoritarian orders, defining it as "more liberal form of authoritarian regime" (see: Diamond, 1996); In his later works (*Developing Democracy*; 1999; and "Thinking about hybrid regimes", *Journal of Democracy*; 2002), he singled it out as a special, hybrid type of order that is between authoritarianism and electoral democracy, combining the characteristics of both, but not belonging to any kind.

16 The important fact, which is sometimes, deliberately or not, overlooked, is that there were two phases which characterized a political order in Serbia during the last decade of the XX century: One involved the period from 1990 until 1996/1998 and the other one, which started in 1996 but was fully profiled in 1998, when the so-called red-black coalition was formed at the Republic level. It included the Socialist party of Serbia (SPS), the Serbian Radical Party (SRS) and the Yugoslav United Left (JUL). The establishment resorted to make a series of repressive laws and measures in that period. The second phase lasted until the fall of Milosevic on 5th October 2000, i.e. until the pre-term republic parliamentary elections on 23. December of the same year. Therefore, it is clear that the balance of the pseudo-democratic hybrid regime could not last long, so a certain involutive transformation in the political establishment's behavior happened. However, in our opinion, even the claim that these two phases simultaneously were two different types of political order is disputable.

reversing legalistic argument against the rulers themselves was used then. This tactic represents a tactic typical of civil disobedience. In other words, this tactic, which implies that the arranged demands are founded on the constitutional principles and positive norms of the legal system, is connected with the case of the African-American Civil Rights Movement figuring in literature as the “purest” historical example of such political practice. King, in contrast to, for example, M. K. Gandhi and his struggle against the whole British colonial system of government in India<sup>17</sup>, did not question American legal and political system on the whole, nor did he aspire to establish some new state. The aim of what he and his Movement did consisted of appealing to the original constitutional principles, i.e. constitutionally positivised and regulated basic rights of a human being, which represented nothing more but their protection. Thus, King directed this protest movement against individual legal acts and political practice of the government which were unconstitutional. Civil disobedience, first of all in the form of massive nonviolent protests<sup>18</sup>, was used as a means of drawing attention of the American public to the existing legal injustice and obtaining its support to make the necessary pressure on the governmental bodies.

This is exactly what the participants of the massive protests in Serbia did. They did not demand the formation of some completely new constitutional system, but defended the constitutionally guaranteed right of vote and other existing constitutional rights and principles, as well as the formally established democratic basis of the political authority legitimatization based on them. As Rawls would say, the “public concept of justice” and sense of the same with majority of citizens were not in collision with the constitutional principles and positive - legal norms, but first of all with the behavior of the rulers of that period (with the way of ruling) which was distinguished by their violation. There was a clash between constitutional norms and political reality, and an effort to eliminate it through forcing the political authority, which caused it, to accept the electoral defeat and enable normal functioning of the constitutional system. Consequently, tendency to carry out political discontinuity was not followed, at least not by the majority of the participants, by the tendency for the constitutionally legal discontinuity. On the opposite, protests were directed towards forcing recognition and respect of legality itself. Accordingly, in this context, these civil actions of resistance had protective and defensive role in regard to the formal constitutional system in FR Yugoslavia, i.e. Serbia, just as it was the case with other “genuine” examples of civil disobedience. This fact - to characterize the events from 5th October as

17 However, besides some disputation of Gandhi's theory as a theory of civil disobedience, we can say that he, perhaps, contributed mostly to the popularization of this civil strategy in the contemporary world. For the look on Gandhi's way of fighting for *swaraj* (independence) of India, see (Gandhi, 1966) and (Gandhi, 1970).

18 It should be emphasized that this great pacifist and fighter for civil rights of blacks had many difficulties in his efforts to preserve a nonviolent character of Black Power movement, due to the existence of the strong militant fraction within it. As King himself noticed, one of the great paradoxes of the Movement was that it constantly insisted not to imitate the values of the white society while, on the other hand, "in advocating violence it is imitating the worst, the most brutal and the most uncivilized value of American life" (King, 1968: 64).

protective elements, i.e. what Molnar calls exercising “conservative constitutive power” - shows not only that these were indeed the acts of civil disobedience, but also that it is not correct to call them revolution, as it is very often done.<sup>19</sup>

In order to give emphasis to the importance of the change that happened (the change of regime) and the ones that were expected (structural reform of the society) and consequently accentuate the revolutionary aspect of the overall changes, the events from 5th October are often mentioned in the literature and practice as an “overthrow” or “revolution”. Moreover, sometimes they are characterized even with the notion of *putsch*. However, in our opinion, the terms like “civil” or “moral rebellion” are more appropriate, since they point out to the role of civil public and the shown potential and strength of the civil society. Not only that the preservation of the constitutional continuity in the immediate period after these events states that it is wrong to characterize them with the term revolution, but also their mainly nonviolent nature itself implies it.

The force had crucial influence on the direction of the development of events, hence affecting their outcome. However, it was not the applied force that was in question, no one in the form of factual violence, which was really limited and mostly controlled. As Vladimir Goati states, a potential force had crucial influence. It remained in the latent form and was reflected exactly in the mass of demonstrators and their manifested readiness to resort to violence as an answer to the possible use of force by the authorities. Extending a certain “initial violent challenge” to the regime (Stojanović, 2001: 24), citizens demonstrated that this time they would not unconditionally and at all costs adhere to the method of nonviolence. They showed their determination and decisiveness to fight, if necessary, with all means for the recognition of their electoral will. Hence, this great potential power of active citizenship was actually the factor of averting armed apparatus from following and enforcement the orders of the political establishment to suppress the demonstrations violently, which would, with a high degree of probability, lead to a civil war. Because of it, police members recoiled and, canceling also the obedience to the ruling regime, stepped over to the citizens’ side. Since the scenario of putting up active, that is real (or armed) resistance to the regime was not realized, 5th October protests remained at the level of the civil (mostly peaceful) fight for the protection of the existing constitutional order, which the political establishment of that time itself jeopardized (so-called the usurpation of legality) by its way of ruling. This is what gives us the right to treat these protest actions of Serbian citizens as the acts of civil disobedience. Especially bearing in mind the minimal use of violence in the October political turnaround, many theorists and analysts are apt to characterize it as “peaceful” or “soft revolution”. However, this essentially contradictory term, which is widely used since Prague “velvet revolution” in 1989, “implies that an order broke up under the strokes of peaceful popular outcry (emphasis added - A. M.), with the government failing to launch the last armed struggle” (Antonić, 2001: 35). In other words, the

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19 Spasić also calls attention specifically to that, 2004: 74.

term "peaceful revolution" today implies neither more nor less than what Henry D. Thoreau defined with it yet in the middle of the 19th century, which was putting (moral) pressure on the government through canceling civil obedience.<sup>20</sup>

Although it also emphasizes the significance of some other factors, which were not in the focus of our attention here,<sup>21</sup> it is certain that democratic changes would be achieved with great difficulties without massive civil activism and mostly nonviolent resistance to the regime, which then lost its already questionable legitimacy formally, through the elections. The use of civil disobedience as a means of political struggle in the conditions of one hybrid systemic-institutional context, which the Serbian society of that time was in, was possible above all because the actors of the forming civil society had a sufficiently developed critical awareness of the nature of their political obligation to obey, as well as a sufficient level of civic virtue of courage to stop carrying it out. Serbian citizens acquired these and some other important civic virtues, like mutual solidarity and cooperation, greatly owing to their veteran experience in the many years of resisting, and somewhat adjusting to the ruling regime of Milošević.<sup>22</sup> This is the exact reason why our fundamental finding says that systemic-institutional context represents only a certain scope of people's behavior, while also social norms, i.e. values and orientations of the political culture influence their political acting, even crucially.

Because of all the mentioned shortcomings and deficiencies of the dominant theoretic concept of civil disobedience, it is necessary to redefine it in some key aspects. This implies certain corrections, above all, in its part which regards necessary contextual framework of this practice and also in regard to the previously mentioned definition of its justification basis, i.e. limits of political obligation. For redefining contextual framework of civil disobedience, we find that, first of all, it is necessary to mitigate or "soften" the systemic approach itself so that the needed democratic-institutional conditions would boil down to a necessary minimum, instead of the present high demand for the existence of already established and "on the whole intact" democratic constitutional state. This necessary institutional minimum would demand the existence of at least partial institutionalization of democracy and human and civil rights and freedoms, which would enable: 1. the existence of civil society, at least in its rudimentary form, and certain needed space for its relatively autonomous acting and self-defense; and 2. democratic legitimization of government and political system, or at least caring about it. The corrected systemic-institutional approach should then be supplemented by some complementary approach, which would

20 This author, who is considered to be the founder of the modern concept of civil disobedience, while discussing his notion of "peaceful revolution", says: "When the subject denounces obedience and a civil servant resigns, then the revolution has taken place" (Toro, 1981: 313).

21 It should be noted that one part of domestic professional and wider public, when examining 5<sup>th</sup> October events and its outcome, gives decisive importance to the foreign influences, most of all, to the actions of international non-governmental organizations and their financial and organizational support to the actors of civil society in Serbia.

22 More on anti-regime civil activities during the 1990s in Serbia as a special form of social learning from experience see: Pavićević, Spasić, 2001: 142-149.

enable considerably wider and empirically more adequate and more stimulating analytic framework. In our opinion, it can best be achieved by normative approach and emphasizing a certain type of political culture, one with civic value orientations, as a key condition for the civil disobedience practice. What is in question is the civic political culture as the valuable context which provides necessary self-reflection on both sides, in civil society and on the part of political authority. Without such political culture framework, civil disobedience is in fact absolutely impossible, since in that case those who can only be the protagonists and carriers of such civil actions and initiatives would not exist, and they are politically mature citizens and their associations as the civil society actors. At that, we do not consider that practicing civil disobedience necessarily demands the existence of this civil culture in some developed form, in other words, its completely mature shape. It is enough that it is in the process of development. Then it is certain that the activity of civil society itself reversibly affect further development and widening of those civic virtues and liberal-democratic values necessary for citizens' associating and acting. Besides that, this normative approach is imposed because the rights to civil disobedience, regardless of certain foundations for its justification coming from positive law, by its very essence and logic, cannot be an element of any positive legal order, not even the most democratic one. It is possible only as a category of the political culture.

Such a combined approach, which includes complementing the reduced systemic-institutional approach with a normative one, i.e. the civic culture approach, would enable the civil actions of nonviolent resistance to the illegitimate political authority and its unjust decisions, and such a legal and political system on the whole, which are carried out in societies that do not fulfill the rigid institutional condition *stricto sensu*, can also be treated as acts of civil disobedience. Moreover, such emphasizing of the civic-cultural contextual framework would enable those cases of contemporary protest movements, whose actions of nonviolent resistance are performed in the conditions of consolidated and developed democracy, but are directed exactly against its existing shape and are not founded on the Rawlsian principle of justice, to be involved in the redefined concept of civil disobedience. It is our opinion that we would then get a more comprehensive and more stimulating conceptual framework, which would, therefore, have significantly greater use on the cognitive and theoretical analytic plan as well as on the practical-political plan or, in other words, the field of social mobilization.

In theoretical aspect, it is certain that such redefinition of the contemporary concept of civil disobedience, along with the widening conditions and roles and the legitimate field of this kind of political acting, enables further development and democratization of legal and political theory, and also some other disciplines of political science whose thematic corpus consists also of these prominently interdisciplinary problems. In social-political view, by using this combined approach, while emphasizing the normative one, civic political culture and its role



in the political and social development on the whole would be affirmed. This would stimulate the development of certain civic virtues and people's responsibility towards their own political community and others. In other words, it would contribute to democratic education and development of political awareness of society members. It would also contribute to democratic education of the political decision-makers, as well as the overall better understanding of the civil disobedience as a specific civil strategy. This practice, if it represents an element of civic culture and is justified, should not be treated as a disturbing, but as a normalizing factor in the functioning and development of a democratic constitutional state.

However, one has to bear in mind that neither in the case of Serbia, nor in any other similar case, massive civil disobedience could not be efficiently and effectively applied as a strategy in carrying out the change of the political regime if the existing authoritarian regime had not already been worn out and/or the political authority did not lose its legitimacy formally at the elections. It could be assumed that in such circumstances the army and the police would quite possibly fit into defence of the regime and react much severely. When the the government has a devoted apparatus of force and the political will to use it in order to break the demonstrations, then the number of participants in the protests is certainly not an obstacle to it. Therefore, in such situation, as S. Antonić says, "peaceful revolutions' are still exceptional. It is difficult for peaceful demonstrators to perform a revolution" (Antonić, 2001: 35).<sup>23</sup> Possible failure in the breakdown of a nonviolent resistance of citizens can then be more a consequence of the government indecision to finish it. However, in such circumstances the necessary institutional minimum that we emphasized as one of the two crucial conditions for practicing civil disobedience would not exist, first of all in regard to a certain necessary degree of possibility for the self-defense of the civil society. In this case that is the subject of our analysis here, one contradictory conclusion is imposed: "A partial explanation of the electoral (and factual - note by A.M.) defeat of the authoritarian order in Serbia should be sought in the fact that the order was not authoritarian enough" (Goati, 2001: 51) nor, as it turned out, authoritative enough (having in mind the crucial refusal of the armed force members to execute the orders of the political establishment to use force). What we really wanted to call special attention to is the second key condition which, under the presumption that the first one is fulfilled, is also necessary for civil disobedience as a specific kind of political practice, i.e. as we mentioned above, in order to exist at all those who can only apply it - the citizens themselves, but in the full sense of the word. It is clear that the civic political culture is in question here.

As regards the Serbian society, and especially its part called the civil society, it is important to emphasize that, after some initial utopian expectations about democracy, the "moral" and a lesson which should be reached now through past

23 With this remark, the author refers to Gordon Tullock's view: "A truly ruthless leader with loyal troops and a good internal intelligence service does not need to worry very much about popular uprisings" (G. Tullock, *Autocracy*, Martinus Nijhoff Publishers, Dordrecht, 1987, p. 69; quoted by: Antonić, 2001).



social and political experience, are that “democrats are not ‘people of some special make’ and that democracy should not be equaled with good government and good decisions yet by definition, but only with some special procedure for the election and the control of the government and the decision-making” (Stojanović, 2001: 25); and which is especially important, also with the potential non-procedural means of government control and non-institutional mechanisms of influence on the revision of its decisions and innovation of law and politics.

The case of Serbia, but also many other historical and modern examples of successful practicing of civil disobedience, actually leads to the conclusion excellently given by V. Pavićević: “Faith in a citizen is stronger than the faith in any positive legal system, since a citizen is the one who has the democratic rights, but also a right to justice as an utmost ideal. Because ‘the divine law’, as Antigone calls it, always lies in the citizen’s heart, it is, therefore, the most sensitive to injustice”. (Pavićević, 2001: 31). In our opinion, one should solely add and emphasize here - that citizens have not only the natural right to justice but also the natural duty to fight against injustice. Thus, although in their fight, by offering nonviolent resistance to what Gustav Radbruch called “legal non-law” (Radbruch, 1980: 266), citizens cannot refer to any positive law which would directly allow disobedience, if they take on such risk and bravely engage into it, they will - using Neumann’s words - “acquire our sympathy” (Neumann, 1974: 179).

In the end, one should point out that all the exposed does not mean that we plead here for some anarchist vision or anomic state of society. Nor do we consider that every act being, by those who perform it, self-perceived, i.e. self-defined and self-understood as the act of civil disobedience is always and just because a priori justified. It is our opinion that “civil disobedience” which is not “submerged” in the concept of civic political culture and does not fulfill the conditions regarding the elimination of legal injustice, primarily in the case of endangering and violating basic human rights (whether it is about individual unjust legal or political act or such legal and political systems on the whole), that are necessary for it to be justified, and hence the demands of its practitioners to be considered as legitimate by the other citizens and also the international public, even the political authority itself, is not civil in the real sense. Accordingly, we can even agree with the position that “civil disobedience which does not arise from sensible reasons and does not manage to find its right measure, generates implacably collective madness” (Jelovac, 2001-2002).

Bearing that in mind, but also, on the other hand, the general tendency of the state authorities and even judicial bodies in all societies, albeit the most democratic ones, to behave in accordance with the so-called authoritarian legalism, automatically punishing civil disobedients like all other violators of law, we consider these Habermas’ words, which are also our message for the

end, to be very instructive: "The fools of today are not always the heroes of tomorrow; many will remain tomorrow the fools of yesterday. Civil disobedience often moves in the dusk of history" (Habermas, 1989: 60).

## Bibliography

- Almond, G., Verba, S. (2000) *Civilna kultura: Politički stavovi i demokracija u pet zemalja*. Zagreb: Politička kultura.
- Antonić, S. (2001) "Priroda petooktobarskog prevrata, 'Miloševićevo zaveštanje' i demokratska Srbija", in: Spasić, I., Subotić, M. (eds.), *R/evolucija i poredak: O dinamici promena u Srbiji*. Beograd: Institut za filozofiju i društvenu teoriju, pp.
- Arendt, H. (1972) *Crises of the Republic*. New York: Harcourt Brace Jovanovich.
- Bleiker, R. (2002) "Rawls and the limits of nonviolent civil disobedience". *Social Alternatives*, 21(2): 37-40.
- Diamond, L. (1996) "Is the third wave over". *Journal of Democracy*, 3: 20-38.
- Dyzenhaus, D. (1996) "The legitimacy of legality". *Archiv für Rechts und Sozialphilosophie*, 82(3): 324-360.
- Gandhi, M. K. (1966) *Autobiografija ili priča o mojim pokusima s istinom* ("Predgovor" by Josip Đerđa). Zagreb: Naprijed.
- Gandhi, M. (1970) *Borba nenasiljem*. Beograd: Komunist.
- Goati, V. (2001) "Priroda poretka i oktobarski prevrat u Srbiji", in: Spasić, I., Subotić, M. (eds.), *R/evolucija i poredak: O dinamici promena u Srbiji*. Beograd: Institut za filozofiju i društvenu teoriju, 43-55.
- Habermas, J. (1989) "Građanska neposlušnost – test za demokratsku pravnu državu". *Gledišta*, 10-12: 52-68.
- Jelovac, D. (2001-2002) "Kako je moguća građanska neposlušnost u savremenom demokratskom poretku?" *Radio Student School of Political Democracy* [online]. Available at: [www.radiostudent.si/projekti/demokracija/teksti/28nepokorscinash.html](http://www.radiostudent.si/projekti/demokracija/teksti/28nepokorscinash.html) [Accessed 15 July 2009].
- Keane, J. (1990) "The politics of retreat". *The Political Quarterly*, 61(3): 340-352.
- Kin, Dž. (2003) *Civilno društvo: Stare slike, nove vizije*. Beograd: Filip Višnjić.
- King, M. L., Jr. (1968) *Chaos or Community?*. London: Hodder and Stoughton.
- Matan, A. (2008) *Teorija političke legitimnosti Johna Rawlsa*. Zagreb: Fakultet političkih znanosti.
- Mirović, A. (2005) "Savremena shvatanja civilnog društva s posebnim osvrtom na koncepciju Džona Kina (John Keane)". *Politička revija*, 8(3): 937-956.
- Mirović, A. (2009a) "Diskurzivna demokratija kao specifičan oblik deliberativno-demokratskog modela". *Srpska politička misao*, 26(1): 45-84.
- Mirović, A. (2009b) "Građanska neposlušnost i prigovor savesti: Konceptualni razvoj i pojmovno razgraničenje". *Politička revija*, 22(4): 1-26.
- Mirović, A. (2009c) "Građanska neposlušnost, pravo na otpor tiraniji i 'pomoć ugroženoj državi' kao mehanizmi zaštite i (ponovnog) uspostavljanja demokratskog ustavnog poretka". *Srpska politička misao*, 26(4): 1-44.
- Mirović, A. (2010a) "Kriza legitimnosti i prestanak političke obligacije, ili pravo i dužnost građanske neposlušnosti". *Srpska politička misao*, 27(1): 109-132.
- Mirović, A. (2010b) "Savremena shvatanja građanske neposlušnosti". *Politička revija*, 23(1): 1-20.
- Mirović, A. (2010c) "O građanskoj neposlušnosti kao elementu civilne političke kulture". *Politička revija*, 24(2): 1-20.
- Molnar, A. (2001) *Rasprava o demokratskoj ustavnoj državi 1: Pravo na otpor tiraniji*. Beograd: Samizdat B92.

- Molnar, A. (2002) *Rasprava o demokratskoj ustavnoj državi 4: Građanska neposlušnost*. Beograd: Samizdat B92.
- Neumann, F. (1974) "O granicama opravdane neposlušnosti", in: Neumann, F. *Demokratska i autoritarna država: Studije o političkoj i pravnoj teoriji*. Zagreb: Naprijed, 170-179.
- Parekh, B. (1996) "Political theory: Traditions in political philosophy", in: Goodin, R. E., Klingemann, H. (eds.) *A New Handbook of Political Science*. Oxford: Oxford University Press, 503-518.
- Pavićević, Đ., Spasić, I. (2001) "Prelazna ocena: Promene u Srbiji kao oblik socijalnog učenja", in: Spasić, I., Subotić, M. (eds.), *R/evolucija i poredak: O dinamici promena u Srbiji*. Beograd: Institut za filozofiju i društvenu teoriju, 137-150.
- Pavićević, V. (2001) *Građanska neposlušnost u savremenoj političkoj teoriji* [online]. Available at [www.vladimirpavicevic.info/tekstovi/gradjanska neposlusnost u savremenoj politickoj teoriji](http://www.vladimirpavicevic.info/tekstovi/gradjanska_neposlusnost_u_savremenoj_politickoj_teoriji) [Accessed on 22 April 2009].
- Radbruch, Gustav (1980) *Filozofija prava*, Beograd: Nolit.
- Rawls, J. (1998) *Teorija pravde*, Beograd: Službeni list, Podgorica: CID.
- Sabl, A. (2001) "Looking forward to justice: Rawlsian civil disobedience and its non-Rawlsian lessons", *The Journal of Political Philosophy*, 9(3): 307-330.
- Spasić, I. (2004) "Građanska neposlušnost", in: Krstić, P. (ed.) *Kritički pojmovnik civilnog društva* (II), Beograd: Grupa 484, 39-75.
- Stanovčić, V. (1992) "Problemi legitimnosti političke vlasti". *Glas*, CCCLXVI(26): 43-117.
- Stanovčić, V. (2001) "O osnovama i karakteru političke oblagacije građana". *Analiti Pravnog fakulteta u Beogradu*, No. 1-4: 255-296.
- Stanovčić, V. (2003) *Vlast i sloboda*, Beograd: Jugoslovensko udruženje za političke nauke, Čigoja štampa.
- Stojanović, S. (2001) „Demokratska revolucija u Srbiji”, in: Spasić, I., Subotić, M. (eds.) *R/evolucija i poredak: O dinamici promena u Srbiji*, Beograd: Institut za filozofiju i društvenu teoriju, 23-31.
- Toro, H. D. (1981) *Valden; O građanskoj neposlušnosti*, Beograd: Srpska književna zadruga.
- Vasović, M. (1998) „Politička socijalizacija i promene političke kulture”, in: Vasović, M. (ed.) *Fragmenti političke kulture*, Beograd: Institut društvenih nauka, 80-114.
- Vasović, V., Pavlović, V. (eds.) (2004) *Uslovi i strategije demokratizacije*. Beograd: Jugoslovensko udruženje za političke nauke, Fakultet političkih nauka.
- Welchman, J. (2001) "Is ecosabotage civil disobedience?". *Philosophy and Geography*, 4(1): 97-107