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THEORETHICAL AND VALUABLE FOUNDATIONS OF THE RIGHT TO CIVIL DISOBEDIENCE

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Abstract. *The right to civil disobedience could not be deduced from the so-called "positive right". The "positive right" expresses a particular state sovereignty embedded in law, namely, it means its own will. Therefore, there is no "legal" right to disobedience (which could be only contradictio in adiecto), but there are very strong juristic ordinances that prescribe "respect the Constitution and laws" in every states founded by law. In spite of that, I argue that the general theoretical ground of the so-called "natural right", as well as the ethical, religious, juristic and other humanistic teachings could (and also must) provide a theoretical and valuable basis for a certain "over-law right" to rebellion against "lawful injustice" (if it exists). Inasmuch as basic human rights are considered to be "natural" (which should be read as – cultural) and to exist before any political order, they represent not only the basis of (democratic) political order, but also a quite legitimate reason for the shifting – if they become a brake for their primary values and goals. As part of human rights, the right to civil disobedience represents some kind of meta-right that overarches any existing political order. In the same vein of thought, civil disobedience in contemporary political theory appears as conscious political activity confronting the existing ("bad") law, but not morality itself. Its roots lie in "law culture" or in "background values" of political culture, or in the "public conception of justice" (Rawls). In addition, the main goal of civil disobedience is not to awaken people's aggression toward authority but to develop moral virtue, civil courage and human dignity in them.*

Key words: *Civil disobedience, positive law, human rights, justice, freedom, legitimacy, order.*

Any assumed "list" of Human Rights could not be completed without the Right to Insurgence or to Civil Disobedience. In past times, this right was considered mostly under the issue of the so-called «tyrannicide» or «reignicide», but also as part of some other and more general topics (e.g. legitimacy, obligation) dedicated to the foundations of people's/citizens' obedience to power. If we look at the historical genesis of this issue, we

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could see that it was commonly resolved by compromise in accordance with ephemeral political interests: rebellion was approved when it was useful for some relevant social groups, or, on the contrary, condemned. As F. Neumann pointed out, the life of rulers in the ancient times depended on their expedience to city-state; that's why the ancient rebellion theory can be named *functional* theory: a resistance was fair, whenever a ruler could not realize his state functions.[1] The middle-age theories relied on the so-called "*Natural right*" and also permitted defiance if the ruler "forgot" the warranty of the mentioned right or did not behave accordingly. Finally, thought Neumann, the *democratic* theory of rebellion corresponded to the modern age.

The right to Civil Disobedience was permitted by all contractual and other theories which insisted on people's sovereignty (e.g. Roeaussau, Locke, Spinoza, etc.), even in some absolutist theories (e.g. Hobbes). If, as J. Locke puts it, "people's salvation is a supreme law", it is necessary in a logical way that people also have the right to dethrone vicious authority which is not concerned with their self-subsistence. There is no place here to mention what many proponents of the Theory of Social Contract said about both power's variability and people's sovereignty. My goal is to point to only one significant thing: the disobedience of "bad" laws or rulers could not be deduced from the so-called "positive right".The positive right expresses a particular state sovereignty embedded in law, namely, it corresponds to its own will; therefore, the right to disobedience inside it could only be *contradictio in adiecto*. I. Kant was especially aware of this contradiction and he argued that the changing state organization is a "most dangerous experiment" and "high treason" which even deserves a dead penalty. The right to Civil Obedience could influence an uncertain law constitution and induce a state of complete unlawfulness - which is typical for "state natural". Yet, wrote Kant, "if people thought that they had a right to use a force even against a wrong constitution and supreme authority, they would be self-deceived that they had a right to put might instead of legislation which prescribed all rights from above, what represented supreme volition which could ravage itself."[2] Notwithstanding all that, the same author (with equal strength) recognized the legitimacy of order which originated from the French Revolution. Although he thought that a revolution was illegitimate, the state established by it was legitimate, thus the post-revolutionary states deserved unlimited respect – like any other state. If one revolution is already successful, the illegitimate induction of the new order does not relieve subjects to subdue to "the new order of things"[3] as "good citizens". The contemporary political philosopher, E. Weil, in his own way, renews Kant's dilemma about possible citizens' rebellion. He wrote that citizens have to subdue, even if they think that positive law clashes with the "universal principle" which it is in favor for. Citizens could use passive resistance or speech, but only as long as "legal authorities pronounce their speech as seditious act." [4]

There is an opinion that democratic theory comprises "final" solution of such dilemma, which is, at least for me, very hard to accept. Even Locke – the great proponent of

[1] Franz Neumann, *Demokratska i autoritarna drzava*, Naprijed, Zagreb, str. 174 (*Democratic and Authoritarian State,* p. 174).
[2] Immanuel Kant: *Metafizika čudoređa*, Zagreb, str. 127 (*Metaphysics of Morality*, p. 127.).
[3] Immanuel Kant*, ibid*, p. 129.
[4] Vajl Erik: *Politička filozofija*, Nolit, Beograd, 1982, str. 59 (*Political Philosophy*, p. 59.)

freedom and rights founded on law – preserved in his system the so-called "prerogatives" which allow the government or ruler to act without law, even against them – although only if it endangers "common well".[5] According to Locke, God and Nature do not allow people to neglect their self-subsistence. However, this self-subsistence, as well as government misuse of prerogatives, could not be a permanent basis for insurrection. Thus Locke's contradictory attitudes concerning the right to civil disobedience are concluded in a dialectic form that people or "the majority" have to suffer and feel inconvenience as long as they are fed up with it and they consider that it is "inevitable to be removed".[6]

The democratic political practice knew such cases which allowed the right to rebellion through implicit or explicit ordinances of the positive law. For example, "The Declaration of Independence of the USA", mentions "people's right to change or neglect any kind of reign and establish a new form of state."[7] As a matter of fact, many people as well as scholars believe that the right to disobedience, by itself, stands at the very foundations of democratic order. According to such belief, all democratic freedoms and rights represent some rather institutionalized "right to rebellion". These (general) formulations, however, open the circle of questions concerning one word "People", the true meaning of which is (perhaps, majority?), as well as discussions about conditions under which people have the right to "justifiable revolution". Namely, one can immediately pose the question about the juristic practice of those that in the democratic process represent the minority. Needless to say, there are so many answers to that conundrum. Obviously, as Neumann pointed out, the dilemma between conscience and social order could not be resolved by theory. Such attempts are like the attempts to calculate circle's quadrate.[8]

Because of that, the right to rebellion remains constantly a personal problem for one who thinks that the state deprives him of his freedom and rights. Truly speaking, there is no valid theoretical answer to the right relying both on democratic values and the positive law guaranteed by the Constitution. J. Habermas shares such an opinion too. "One must decide alone about taking that risk. The right to civil disobedience according to exculpatory reasons remains to fly between legitimacy and legality."[9] Once again, there is no "legal" right to disobedience, but there are very strong juristic ordinances which prescribe "respect the Constitution and laws" in every state founded by law. As N. Bobio puts it - it is barely a fraud to represent the right to disobedience, the right to self-determination and the right to veto, as positive rights. "They are not, and one who has that opinion takes a risk to go to jail."[10]

Thus, the right to rebellion could not be deduced from the positive law. So, from where could we deduce one? The answer is both simple and difficult at the same time, be-

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[5] John Locke: *Dve rasprave o vladi*, knjiga II, NIP Mladost, Ideje, Beograd, 1978, str. 91 (*Two Tracts of Governmen*t, p. 59.).
[6] John Locke, *ibid*, p. 94.
[7] According to: Franz Neumman, *ibid*, p. 174.
[8] Franz Neumman, *ibid*, p. 179.
[9] Jürgen Habermas: *Građanska neposlušnost - test za demokratsku pravnu državu*, *Gledišta*, Beograd, br. 10-12/1989., str. 67 *(The Civil Disobedience – Test for Democratic Legal State*, p. 67.)
[10] Norberto Bobio: *Budućnost demokratije, Odbrana pravila igre*, Filip Višnjić, Beograd, 1990, str. 83 (*The Future of Democracy, A Selected Game Rule*, p. 83.).

cause it claims that philosophical grounds of the so-called "natural right", as well as the ethical, religious and juristic teachings could (and also must) provide an ethical and valuable basis for a certain "over-law right" to rebellion against "lawful injustice" (if it exists)! Any democratic society *de facto* has to provide the possibility of civil disobedience especially by non-violent means: it is not contrary to the idea of the "rule of law" because it could not be reduced to the rule of positive laws. Positive laws could be a personification of iniquity, as history has indicated so many times. As K. Čavoski points out, the positive law is valuable by itself, however, one right could reach its true value only in accordance with its idea, with its superior tenet – by which it is possible to discern legitimacy from illegitimacy, right from wrong, truth from untruth.[11] "The law of God" - Čavoski says - represents the value inasmuch as it has a broader and objective insight into the existing order of things. This insight could not be led only by actual and ephemeral, but also by epochal, durable and historical interests of a broader environment. The true rule of one law is not possible if it lacks some firm basis which could transcend the potential tyranny of political voluntarism. According to the idea of "natural law", the very authority has to rest on people's consent. Alternatively, the power was given or transferred by those whose right has to do or not with their gift. Because of that, the rule of law does not mean only sheer legality and mutual harmony with the law provisions: it includes an insight into the contents, purposes and scopes of superior codes which represent the basis of the whole legal order. Of course, the rule of law presumes full legality of all authority acts, but it is something more than sheer constitutionalism. As F. Hayek says, it requires that all the laws have to be in full accordance with certain principles: "The rule of law thus is not the rule of a certain law but the provision considering what the law must be, a meta-legal teaching or political ideal."[12] In the same vein of thought, I. Kant once said that jurists-artisans knew people, but "they did not know a man and everything what could be done by him (which needs an upper anthropological standpoint)."[13]

The democratic "general will" embedded in some positive law could not represent any firm warranty of the misuse of rights either. As F. Neumann puts it, "an evil could not become right only because that evil seeks the majority. In spite of that, in such a case the evil became much bigger."[14] Inasmuch as the law matter has not been broadly scrutinized, it could be whatever – under the condition that it may gain general obligation. The positive law does not represent law by itself because of its "right" contents. It is the law because of its general nature: it speaks to all people in an identical way, without considering their distinctions. In other words, positive laws establish a list of roles which people must consider in order to be recognized as "equal bearers of roles" - not as people with their natural or historical attributes. The equality provided by the positive law is the equality of persons as bearers of roles (a worker, businessman, student, politician, etc.), which ex-

[11] Inasmuch as "ideal aspirations [are considered], the law appears as the highest achievement of civilization and human emancipation power, as a basis of human dignity and freedom as well as hope and order in the gloomy, uncertain and disordered world." Kosta Čavoški, *Revolucionarni makijavelizam i drugi eseji*, str. 65. (*Revolutionary Machiavellism and Other Essays*, p. 65.).

[12] Friedrich A. Hayek: *Poredak slobode*, Global book, Novi Sad, 1998.str. 181 (*Constitution of Liberty*, p. 181.)

[13] Immanuel Kant*, Um i sloboda*, *Spisi iz filozofije istorije, prava i države*, Ideje, Beograd, 1974, str. 159 (*The Reason and Liberty*, Writs *on Philosophy of History, Law and the State*, p. 159.)

[14] Franz Neumman*, ibid*, p. 177.

cludes all concrete features of individuals. Only in that way one could understand Hegel's legal request – "be a person and respect others like persons."[15] But first, we must remember the genuine sense of the notion "*persona*" – which was a Roman phrase for theatre (or actors) - a *mask*. In the ancient times, it had not a sense of significant individualism but rather of functional character. According to T. Adorno and M. Horkheimer, Cicero's use of the term "sublimates the meaning of the character mask by which one shows oneself to others: it is the role which an individual, as a philosopher, plays in life, namely, the bearer of the role and, especially, dignity which, as an actor, possesses."[16] The positive law allocates certain roles to those human masks; thus E. Weil can say that, according to the positive law, "Peter is not the one with rights and obligations, but Peter as a Father, Debtor, Householder, who is reasonable and against whom one reasonable (legal) act is possible. When Peter appears only as Peter, he appears as a deranged person, lunatic, cretin, somebody who does not have or could not keep his role, or, more accurately, somebody who can not or does not want to choose any role; thus he is transformed from legal subject to legal object."[17] In that way, the point of assertion "all the people are equal in front of law", means that anybody can take any role, under the condition of its correct realization. The positive law language is a language of abstract possibilities and roles, not the language of concrete vital experience. As Hegel puts it, the law is "something which remains indifferent to specialty" – which means that the agent of law is abstracted from individual life and observed as an independent being – deprived of his particular interests.

However paradoxical it may be, this abstract and general traits of positive laws make the *ethical core* of the so-called "formal" or legal equality: the law is determined independently of interests and wishes which one could reach by it. The formal structure of law contains the "ethical minimum", namely, the "minimum of equality because the Lawmaker has to consider persons and situations abstractly as equal, and has no possibility to discriminate a person individually."[18] The law abstractionism is a prerequisite for court independence which makes it possible to realize the minimum of freedom and equality contained in the formal structure of law deeds. Otherwise, the law formality itself does not give justice, but it is the very first guarantee against tyranny and violence of those individuals that possess power or mandate to rule.

The minimum of freedom, though, always remains – minimum, thus in theory of the positive law there is nothing that can prevent the appearance of some bad or repressive law, for example. By itself, the positive law is not inevitably right, although it is (by its formal structure) subdued to the claim of rationality. Of course, it is not *a priori* unjust, but if it is considered out of the context of human rights there is no any guarantee that it is rational and human. The highest level of the positive law achievement is freedom as an "absence of obligation" – which should be thus supplemented by an innate human need for "good order" and its philosophical vindication.

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[15] G. W. F. Hegel, *Osnovne crte filozofije prava*, Veselin Masleša, Svjetlost, Sarajevo, 1989, str. 84. (*The Basic Traits of Philosophy of Law*, p. 84.).
[16] Theodor W. Adorno, Max Horkheimer: *Sociološke studije*, Skolska knjiga, Zagreb, 1980, str. 50 (*Sociological Studies*, p. 50.).
[17] Erik Vajl, *ibid*, p. 64.
[18] Franz Neumman, *ibid*, p. 93.

The theories of Natural Rights and Social Contract are based on the postulate that considers man as a rational being who has existed independently in society that included him empirically. This postulate, generally speaking, could be discarded only by the proponents of Platonism, Holism or the state Totalitarianism.[19] Of course, we are dealing here with Theory or Postulate, not with the historical fact. Nevertheless, this kind of postulate, as Kant likes to say, has a "practical reality" and demands "unconditional validity". If we consider man as a unique being gifted by intellect, we have also to accept all the ongoing consequences – including the possibility to resist any claim that confronts its conscience or its instinct of self-defense. Liberal methodical deliberation of the "state natural" has been on purpose driven to bring in the centre of philosophical considerations – the question about possible borders of the state influence on the sphere of citizens as free individuals. The theories of Natural Right and Social Contract have found those borders in inalienable human rights and freedoms that (theoretically) exist before any political order. Those primary human freedoms are the measure of the permitted political intervention upon citizens; if they are not respected, they are played out or brutally trampled, citizens have the full right to civil disobedience. The government is, as H. D. Thoreau pointed out, "the instrument by which people try to leave alone each other and, …. when it is most efficient, it leaves alone those whom it governs."[20] Inasmuch as basic human rights exist as natural before any political order, they represent not only the *basis* of some particular political order, but also a quite legitimate *reason* for its shifting – if it becomes a brake for those goals for which it has been established. The right to civil disobedience, however – let's repeat that once again – almost purely stays in the domain of "natural" (which should be read as – philosophical, or cultural) rights, because they could not be warranted by positive provisions. By itself, this right represents some kind of meta-right which overarches any existing political order.

In contemporary political theory, the natural right norms are observed and accompanied by other obligations of government – including the obligation to eschew open violence in protection of the common goals. The reasons for resistance to authorities could lie in various modes of manipulation of citizens as well as in other forms of reign which annul human dignity. Today, the right to civil disobedience is conceived as part of the "Principle of citizenships" as well as a component of broader legal (or democratic) political culture. The same authors even thought that the right to dethrone vicious, uncountable or oppressive government represents a paramount right of citizenships, "the mother of all other rights', because it gives a political guarantee to the rest of them.[21] This "right of all rights" is a very important factor of the "culture of government" as well as an expression of one particular citizen virtue – the courage of citizens – without which neither the

[19] "The modern theory of Social Contract arose as the denial of the holistic or organic cognition of society, the cognitions according to which, from Aristotle to Hegel, the whole is not determined by parts, namely, it arose from the idea according to which the starting point of any social project is the liberation of an individual with his *passions* (which have to be routed or tamed), his *interests* (which have to be regulated and coordinated), his *needs* (which have to be satisfied or pressed back)." (Norberto Bobio, *ibid*, p. 134.)

[20] Henry David Thoreau: *O dužnosti građanina da bude neposlušan*, Global book, Novi Sad, 1997, str. 12. (*Civil Disobedience and Other Essays*, p. 12.).

[21] Milan Matić, *Građanin*, u: *Enciklopedija političke kulture*, Savremena administracija, Beograd, 1993. str. 351 (*Citizen*, in: *Encyclopedia of Political Culture*, p. 351.).

autonomous acting of democratic persons nor Democracy itself could exist. Public and non-violent actions led by a design to awaken citizen consciousness about the disturbance of legitimacy of one political order or some of its positive laws are usually conceived by civil disobedience. There are, nevertheless, situations in which even a violent resistance could be justifiable, because it is the only possible one.[22] According to J. Rawls, the issue of civil disobedience represents a "crucial test-case of any theory about the moral basis of democracy". The author, thinks that civil disobedience is a "public, non-violent, though conscious political act opposite to law, usually realized on purpose to elicit change in law or the politics of authority."[23] Briefly stating, the forms of civil disobedience address "the sense of justice" of the majority in the community with the explication that the principles of social cooperation between equal and free people are interrupted. The excuse for civil disobedience is not related to any personal morality nor to religious doctrines, but in the commonly adopted "apprehension of justice" which lies at the very basis of political order. Civil disobedience does not also take place on purpose to prevent the faith in law itself, but appeals to the majority justice conscience by design. As a matter of fact, civil disobedience "represents disobedience to law at the borders of the adherence to law,"[24] and it is justifiable if the three main conditions are satisfied: 1. if it is the case of essential an obvious injustice, 2. inasmuch as all legal means for correction of injustice are futile, and 3. if its effects do not lead to a serious riot which could cause a breakdown of the legal system and the constitution.[25] Thus, Rawls's attempt to reconcile "illegal action" with "the adherence to law" appears paradoxical only at first glance: if a democratic society presupposes the system of cooperation between equal people, as Rawls argue, its deprived citizens do not have to be subdued to law. Yet, civil disobedience as well as free elections, the independent judiciary system and other democratic institutions are the means of stability of the constitutional system, although, by definition, it is illegal, concluded Rawls.[26]

In the same vein of thought, J. Habermas asserts that the "legal state," by accepting "the non-institutional distrust to itself", lifts itself over its own complex of the positive-legal order. The paradox of civil disobedience finds its solution in the political culture that grants citizens sensibility, a certain volume of possibility to judge and the readiness to

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[22] For example, K. Popper argued that the use of violence in political disputes is justifiable in two cases: 1. if people are under tyranny which makes nonviolent reforms impossible, 2. Inasmuch as democracy is already achieved, they ensue attack (from outside or inside) on the democratic constitution. "As a matter of fact", thought Popper, "the functioning of democracy is chiefly based on the cognition that government which tries to misuse its power and establish itself as tyranny (or which tolerates tyranny by anybody else) puts itself out of law and thus citizens do not have only right but also obligation to interpret this government activity as a felony, as well as its members as a dangerous band of criminals."
Karl R. Poper: *Otvoreno društvo i njegovi neprijatelji*, tom II, *Plima proročanstva*: *Hegel*, *Marks i posledice*, BIGZ, Beograd, 1993, str. 184-185. (*Open Society and its Enemies*, Volume II, *Hegel, Marx and Consequences*, p. 184-185.).

[23] Džon Rols: *Teorija pravde*, JP Službeni list SRJ, Beograd, CID, Podgorica, 1998, str. 331 (John Rawls, *Theory of Justice* , p. 331.)

[24] Džon Rols, *ibid*, p. 333.

[25] Džon Rols, *ibid*, p. 338-340.

[26] Džon Rols*, ibid*, str. 348.)

risk "acting against the law from moral credibility in case of necessity"[27] Briefly, civil disobedience does not disturb all legal order, but it accounts for morally grounded experiments, revisions and self-correctness. It is not "delict" as many others; its dignity arises from a highly nominated claim for legitimacy of a democratic legal state. Its opposition is the state which treats civil disobedience as felony: "When the state defenders and judges do not respect this dignity, by treating rulers the one who breaks the rules as a criminal and by punishing him accordingly, they are then distorted into the *authoritarian legalism*."[28]

Thus, civil disobedience in contemporary political theory and philosophy appears as a conscious political activity confronting the existing law, but not public morality.[29] Its valuable and theoretical roots lie in the law culture as well as in political culture and its "background values", or in the "public conception of justice" (Rawls). In constitutional democracies, it contributes to the restoration and recruitment of legitimacy, while in autocratic regimes it enhances discrepancy between the official and real order, between artificially maintained picture of political community and the normative claim in shifting its identity. In non-democratic regimes, its effect is mirrored at two parallel tracks: the first is routed toward *centers of political power*, while the second evokes the basic *sense of justice* of the majority in political community - in order to mobilize critical publicity and insert influence on self-reliance in civil society. So, civil disobedience contained, according to the positive law, illegal, but not violent, primarily symbolic, started the reaffirmation of "the rule of law" principle, constitutional freedoms and democratic legitimacy, regarding the actions of citizens. The main goal of civil disobedience is not to awaken people's innate aggression or sheer animosity toward authority "itself". Its purpose is not also to turn back citizens to the "state natural" but to develop moral virtue, civil courage and human dignity in them. Needless to say, one could not be free without the feeling of human dignity: one would rather be prepared to deliver himself to the imbecile comfort of subjection and the other poisoned fruits of voluntary slavery.

In the very end of this article dedicated to civil disobedience, we must assert one additional claim, pertaining to theoretical or cultural roots of all human rights. In time of permanent technological and other changes, no list of guaranteed individual rights could be finished. It is possible, as F. Hayek says, that "the main threats to human freedom are still in the future".[30] Indeed, "the charters of human rights" represent only a general limitation of the state power, thus, by itself, they could not mean anything more than the sheer protection from the premature activity of the positive legislature. The full protection of human rights needs a synchronical activity not only of the mentioned "charters" or legislature, but also of the public opinion, namely – all political culture – which has to be

[27] Jürgen Habermas, *ibid*, str. 58.
[28] Jürgen Habermas, *ibid*, str. 62.
[29] As Z. Stojiljković says: "because of that, civil disobedience marked only those activities which are determined to shift the law and government practice and have a clear public, conscious, nonviolent and political character. They are public and voluntary, because they are used publicly and are led by the general principles of moral and right. They are political, because in relation to the government they are led by democratic political principles." (Zoran Stojiljković: *Rečnik demokratije*, Građanske inicijative, Udruženje građana za demokratiju i civilno obrazovanje, Beograd, 1998., str. 179. (*Democratic Vocabulary*, p. 179.)
[30] Friedrich A. Hayek, *ibid*, p. 190.

permanent reservoir of all democratic values, including those pertaining to individual rights. Only in that way the alleged "abstract" or "philosophical" human rights could become part of a clear political belief that could be defended by citizens in any occasion – not as passive objects but as active agents of the (democratic) political system.

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TEORIJSKE I VREDNOSNE OSNOVE PRAVA NA GRAĐANSKU NEPOSLUŠNOST

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Pravo na građansku neposlušnost se ne može izvesti iz tzv. "pozitivnog prava". "Pozitivno pravo" izražava partikularnu državnu suverenost pretočenu u zakon, to jest, označava njenu volju. Prema tome, ne postoji "zakonsko" pravo na neposlušnost (što može biti samo jedan contradictio in adiecto), ali zato postoje veoma strogi zakonski propisi koji propisuju "poštovanje Ustava i zakona" u svakoj zemlji temeljenoj na pravu. Uprkos tome, smatram da filozofska osnova tzv.

"prirodnog prava" kao i etička, religiozna, pravna i druga humanistička učenja mogu (i moraju) ponuditi etičko-vrednosnu osnovu za izvesno "nad-zakonsko" pravo "zakonitom ne-pravu" (ako ono postoji). Ukoliko osnovna ljudska prava, kao "prirodna" (što zapravo treba čitati kao filozofska ili kulturna), postoje pre svakog političkog poretka, ona izražavaju ne samo osnovu (demokratskog) političkog poretka, vec i sasvim legitiman razlog za njegovu izmenu, ako ovaj postane kočnica za svoje primarne vrednosti i ciljeve. Kao deo ljudskih prava, pravo na građansku neposlušnost predstavlja svojevrsno meta-pravo koje natkriljuje svaki politički poredak. U sličnom duhu, građanska neposlušnost se u savremenoj političkoj teoriji sagledava kao svesna politička aktivnost suprotstavljena postojećem ("lošem") zakonu, ali ne i moralnosti kao takvoj. Njeni koreni leže u "pravnoj kulturi" ili u "pozadinskim vrednostima" političke kulture ili pak, u "javnoj koncepciji pravde" (Rols). Takođe, glavni cilj građanske neposlušnosti nije da probudi urođenu ljudsku agresivnost prema vlastima, već da u građanima razvije moralnu vrlinu, građansku hrabrost i ljudsko dostojanstvo.

Ključne reči: *Građanska neposlušnost, pozitivno pravo, ljudska prava, pravda, sloboda, legitimnost, poredak*