

**MARTIN LUTHER KING'S "LETTER FROM THE BIRMINGHAM CITY JAIL":
AGAPE, INTEREST, AND JUSTICE**

by

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Martin Luther King's "Letter From the Birmingham City Jail: Agape, Interest, and Justice"

King's "Letter From the Birmingham City Jail"

On Good Friday, April 12, 1963, Martin Luther King, Jr. was arrested and placed in solitary confinement, charged with defying an Alabama Court injunction prohibiting protests and marches for racial equality in Birmingham. During his confinement, King wrote the "Letter from the Birmingham City Jail," responding not only to this arrest, but to an open letter written earlier in the day by eight fellow clergy. The Alabama rabbi and ministers criticized the civil rights protests, proclaiming them as untimely, unwise measures, that were led by outsiders and precipitated violence. Synthesizing nearly a decade of his civil rights activism, King answers these charges, offering a carefully crafted analysis of civil disobedience. The "Letter" can be examined from two distinct perspectives, the contractarian theory of liberal democracy and the concept of community found in Christian theology. Before the "Letter" can be claimed by either tradition, scholars must reconcile these different facets and the aspects of King's life and work that they represent

Civil disobedience is understood in contractarian theory as a corrective to unjust constitutional institutional arrangements, a position best reflected in the work of John Rawls. Rawls treats Martin Luther King, Jr.'s "Letter from the Birmingham City Jail" as an archetypal illustration of civil disobedience's role in a contractarian account of justice. More than a historical example of liberal theory in action, however, King's protest and the "Letter" convey a shared religious heritage, indicating limitations in the contractarian expression of human justice and its interpretation of the "Letter."

By introducing a conception of justice that is not simply based on human calculation, King encompasses Rawls's definition of citizen rights and obligations, yet broadens the contemporary contractarian idea of justice. In the "Letter," King relies particularly on the writings of Augustine and Aquinas in developing his view of the transcendent foundations of human justice. King cannot simply adopt Thomistic and Augustinean thought, since, unlike King, these theologians worked in a context of unitary sovereignty. King reconciles their cosmologies with liberal philosophy through a unique synthesis of their ideas with the work of Paul Tillich and Reinhold Niebuhr. The model for King's religious challenge to political authority amalgamates Catholic, Protestant, and Jewish theology, as well as liberal political theory. In contrast to the contractarian view, King assumes that political institutions may regulate a community's relationships, but they do not create the community itself. His

words address not only political philosophy's concern with human justice, but, because they are based on this theological synthesis, more importantly present an ontology required of liberal philosophy and justice. The "Letter," although only a 325 sentence brief, exposes the moral foundations of viable social contract, challenging modern political science to reconsider our interpretation of justice as simply human convention. By contrasting Rawls's secular justification for civil disobedience with King's interpretation of its moral and religious significance, we can examine the transcendent basis required of institutional justice.

King does not provide us with a systematic philosophical treatment of these issues, nor does his eclectic, idiosyncratic theology simplify our attempts to determine the origins of his thought. Rather than focusing on the intellectual origins of King's ideas, my essay will suggest an ontological foundation that could support the logic of his conclusion that civil disobedience and the justice it animates have transcendent meaning in democratic practice.

Martin Luther King through the Contractarian Lens

Rawls's use of King in his presentation of civil disobedience is puzzling. While he draws on King's treatment of the subject, he also argues that religious doctrine and personal morality are unnecessary in defending civil disobedience as a corrective for injustice. An adequate case for civil disobedience, Rawls argues, requires only a commonly shared conception of justice. In contrast, King not only places Christianity at the center of his account of civil disobedience, he also makes Christian love, agape, a defining characteristic of justice.

Faced with this puzzle, the social scientist might argue that each man is looking at the same problem: how do individuals unite in collective endeavors such as forming a political community? King emphasizes the origins of shared beliefs. Rawls explores what happens after we have a shared understanding of the principles of justice. These authors' views could be reconciled by assuming that religion is one of many human inventions useful for generating shared beliefs, and by assuming that the specific origins of any particular community are of limited theoretical interest. In this context, King's work then becomes an application of Rawls's observations; Rawls presents the more universal and abstract case, King is but an example. Such a reconciliation depends on the social scientist's understanding of religion as only a useful medium to assent, with its significance deriving only from its existence as a political institution. This political institution is itself understood in a very limited way.

This approach, while perhaps true to much social science misappropriates King's political thought, reducing the religious significance of his work to its sociological content and political effect.

More than simply presenting different facets of the same subject, King and Rawls articulate competing views of the substance of justice in the context of self government. Their conclusions reflect dissimilar assessments of religion and moral sentiments in the philosophy and history of self governing communities. Religion is viewed as an artifact in the Rawlsian system; religion is not of human creation in King's view. The contractarian equates religion and philosophy, reducing both to intellectual systems that lack any transcendent meaning. Religion is simply another cultural system, lacking any particular capability for transcending human error. For Rawls, religion, once *constituted*, may provide the basis for assent to common principles of justice.

For King, religion is intrinsic to the human consciousness, not constituted by it. Drawing from this position, King believes justice requires love, *agape*, in the Christian sense of disinterested love. He views religion as the foundation of all relationships and concludes that God's justice exists whether or not we observe its tenets in human acts we might agree to call justice. Instead of attenuating King's activism to fit a de-ontological social science, we might contrast Rawls and King to illuminate the ontological foundations required in Rawls's shared principles of justice.

John Rawls and the Contractarian Framework for Civil Disobedience

Rawls formulates his theory of civil disobedience within his larger examination of "fairness," as the guiding principle of justice. Rawls explores the theoretical motivation for social cooperation among free, rational, self interested people, empowered to distribute social benefits and assign basic social rights and obligations. Rawls adopts two heuristics, the original position and the veil of ignorance, to abstract more general principles of justice from contractarianism.

Injustice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract ____ [N]o one knows his place in society, in the distribution of natural assets and abilities, his intelligence, strength, and the like ____ [The parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice.⁴

Several aspects of this definition should interest us, including the status of belief and language in this hypothetical state. The original position contains no story of origins. Rawls assumes the shared understanding necessary for shared symbols, including language, but it is unclear how rational beings develop and learn the shared foundation that makes them capable of a sense of justice. By narrowly defining moral agency as self-conscious pursuit of interests, Rawls reduces our concern with the origins of belief.⁵ Contract theory requires this indifference to origins in abstracting and generalizing its principles.

Indifference and isolation also characterize humanity's natural state in contractarian theory. For the sake of a generalizable theory Rawls argues that the basis for joint enterprise is not deduced from antecedent or "natural" relationships. Instead, people form relationships on the basis of rational attention to self interest. This awareness leads to social cohesion, not by means of affinity or concern for others as ends, but by way of the use one might be to another. Other justifications for association might follow in the development of cultural systems, but these are not the original premises for collective endeavor. When individuals engage in collective action their interests may become enlightened; they, as human beings, however, may or may not⁶

No metaphysical standards need prevail for communities to arrive at the conventions that assign rights, duties, compensatory benefit, sanctions, or legitimate inequalities in determining the social good.⁷ Justice is a human invention. Indifference to the origins of shared meanings contributes to the abstract character of political inventions for ending individual indifference and isolation. Our attempt to extract general theories may involve ignoring ontological premises that appear particularized; moral sentiments and religion, paradoxically, appear beyond the capacity of contractarian demands for universal assent.

While maintaining his theoretical exposition at the most generalizable and abstract level, Rawls asserts that moral principles are part of the premises for our judgments. A theory of justice is a theory of moral principles, "setting out the principles governing our moral powers, or, more specifically, our sense of justice."⁸ Social science has a limited vocabulary for discussing these premises, however. Human beings express their moral premises and evaluations of justice imperfectly, citing numerous, competing, yet reasonable positions. Contending that no transcendent order is required for these moral principles to inform a theory of justice, Rawls offers a provisional view of our extraordinarily complex moral capacity.

One may think of moral philosophy... as the attempt to describe our moral capacity; or, in the present case, one may regard a theory of justice as describing our sense of justice. This enterprise is

very difficult. For by such a description is not meant simply a list of the judgments on institutions and actions that we are prepared to render, accompanied with supporting reasons when these are offered. Rather, what is required is a formulation of a set of principles which, when conjoined to our beliefs and knowledge of the circumstances, would lead us to make these judgments with their supporting reasons were we to apply these principles conscientiously and intelligently. A conception of justice characterizes our moral sensibility when the everyday judgments we do make are in accordance with its principles.⁹

For Rawls, political philosophy (as an exploration of moral theory in terms of a theory of justice) should locate the fundamental beliefs and understanding of circumstances that enable just evaluations of the acts and artifacts of self government. Our search for these shared principles is based on critical reflection, guided by observations made in a state of consciousness that Rawls calls "reflective equilibrium." Because our moral theories are primitive, Rawls suggests using this method to understand routine, as well as complex judgments.

According to the provisional aim of moral philosophy, one might say that justice as fairness is the hypothesis that the principles which would be chosen in the original position are identical with those that match our considered judgments and so these principles describe our sense of justice. But this interpretation is clearly oversimplified. In describing our sense of justice an allowance must be made for the likelihood that considered judgments are no doubt subject to certain irregularities and distortions despite the fact that they are rendered under favorable circumstances. When a person is presented with an intuitively appealing account of his sense of justice... he may well revise his judgments to conform to its principles even though the theory does not fit his existing judgments exactly. He is especially likely to do this if he can find an explanation for the deviations which undermines his confidence in his original judgments and if the conception presented yields a judgment which he finds he can now accept. From the standpoint of moral philosophy, the best account of a person's sense of justice is not the one which fits his judgment prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium.... This state is one reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (and the corresponding conception).¹⁰

Rawls explains that individuals' deliberative strategies are complicated by self delusion, denial, and ignorance. Since the process of reflective equilibrium is "shaped by self examination," we may seek harmony in our convictions by artificially reducing dissonant principles. We may avoid radical reconceptualizations of our positions, even when they are appropriate. "Reason is no panacea for liberal theory's dilemma of uncertain knowledge." Reason, as Madison suggests, is tainted by self love, and, as Augustine cautions, "reason is a snare." Moral philosophy as human artifice provides no exit for our under-identified model of justice.

To address human fallibility and our consequent disagreement about moral foundations, Rawls writes of an "overlapping consensus" that contributes to stability in modern democratic societies. Since diverse religions, moral, and philosophical doctrines comprise the political culture of democratic polities, Rawls doubts that we could obtain agreement on these fundamentals without severely curtailing our individual liberty. To have an

enduring, secure polity, one that avoids factionalism from contesting fundamental beliefs, while also avoiding tyranny, Rawls contends that we must obtain a consensus at a more superficial level of belief. Contrary to many other analysts of faction, Rawls argues that common assent to fundamental beliefs is not required. What we hold in a common may be superficial and may, in fact, hide normative dissensus in the polity.¹³

This overlapping consensus assumes that individuals can reach agreement about central political issues, even when they do not agree about more comprehensive moral or religious philosophies. These political views are conceived as narrow and superficial in contrast to general, comprehensive moral beliefs. Rawls contends that members of a liberal community may disagree about a range of fundamental moral subjects while assenting to a more superficial political conception, what Rawls calls "the basic structure of society." These political views stay on the philosophical surface, so to speak, and citizens may agree to them on the basis of a variety of diverse, even conflicting, basic presuppositions. Rawls distinguishes the overlapping consensus from the model of a truce. Yet, for a broad majority of citizens to accept this consensus, while maintaining a discordant moral foundation, the normative side of Rawls's political ideal is probably shallow and fragile.¹⁴

Rawls parries this apparent dissonance, arguing that citizens derive their superficial consensus from an intuitive construction of justice. Political philosophy, he explains, articulates and makes explicit these shared notions or principles latent in our "common sense." People in a democracy can recognize these principles "as expressing ideas they implicitly hold;" because they hold these ideas, they accept the principles based on them.

Rawls examines two such recognizable principles for a just social order: equal liberty and fair equality of opportunity. He further gives us the "difference principle," a sort of reasoned sympathy, as a criterion for evaluating distributions of benefits according to the second principle.¹⁵ Rawls explains that of the two principles of justice, liberty is the more fundamental, "liberty can be restricted only for the sake of liberty."¹⁶ Equality is prior to other concerns such as efficiency, resulting in the following "general conception" of justice as fairness.

All social primary goods — liberty and opportunity, income and wealth, and the basis of self-respect — are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.¹⁷

These two principles of justice, Rawls asserts, can be derived from the fundamental intuitive ideas of liberal political culture.¹⁸ The inviolability of liberty likewise arises from our "common sense" intuitive notions of right relationships with other citizens. These two principles represent the implications of moral principles to which a

broad majority of citizens subscribe, Rawls contends, whether or not they are aware of them.¹⁹ The intuitive may perform as a unifying principle without transcending human illusion or invention.

Injustice, similarly is an intuitively accessible invention, defined simply as "inequalities that are not to the benefit of all."²⁰ Presumably this sense of injustice, as with a sense of justice, implies an intuitive sense of a deeper moral principle. This principle remains ambiguous, as do deeper beliefs about the meaning of human beings beyond their interests or utility. Rawls offers the contractarians²¹ characteristic view of the basic institutional structures that enable the distribution of benefits, one that interprets society "as a cooperative venture of mutual advantage."²²

Now I have said that the basic structure [of society] is the primary subject of justice. This means... that the first distributive problem is the assignment of fundamental rights and duties and the regulation of social and economic inequalities and of the legitimate expectations founded on these. Of course, any ethical theory recognizes the importance of the basic structure as a subject of justice, but not all theories regard its importance in the same way. In justice as fairness society is interpreted as a cooperative venture for mutual advantage. The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share in the proceeds. What a person does depends upon what the public rules say he will be entitled to, and what a person is entitled to depends on what he does. The distribution which results is arrived at by honoring the claims determined by what persons undertake to do in the light of these legitimate expectations.

Although Rawls's perspective on a self governing community appears to broaden the scope of political philosophy, by relying entirely on human constructions of justice, Rawls may, in fact, have narrowed our view. Rawls's approach is limited in its application to several important circumstances. His argument concerning civil disobedience is part of a much larger concern for the status of majority rule and exceptional majority tyranny in otherwise just societies. Rawls studies civil disobedience as a corrective to unjust institutional arrangements, limiting its role to correcting institutional arrangements in a primarily cooperative situation. He reduces the subject of justice to that of bringing "the arrangement of major social institutions into one scheme of cooperation. "Conceived as a political strategy, narrowly applicable to basically fair, democratic regimes, civil disobedience appears irrelevant to settings characterized by dominance and disinterest in the disenfranchised. When societies share a common sense of justice that informs their political convictions, Rawls may argue successfully that effective civil disobedience requires only an appeal to "the principles of justice which regulate the constitution and social institutions generally,"²⁴ and not to religious convictions. By omitting the moral premises of common agreement, however, the contractarian analysis tells us little of situations that deny people

citizenship, rights, and in some cases, even status as human beings. Democratic practice displays a variety of constitutional claims about the status of persons, including claims of "just" majority dominance. This history suggests that neither cases of majority dominance nor beliefs supporting these claims are peripheral to a theory of civil disobedience.

In the "Letter," King confronts a situation characterized by an overlapping consensus, encompassing an attenuated, normative foundation that has justified majority dominance. In contrast to Rawls, King must develop a theory of civil disobedience for this situation. To do so, he rejects the contractarian view that the polity is merely an institutional arrangement, and envisions a community of antecedent substance. King's "beloved community," amalgamates tenets of contractarianism with theological presuppositions, resulting in an institutional analysis inspired by the belief that human purpose lies beyond mere existence.

The Contractarian Approach to Civil Disobedience and King's Transcendental Analysis

Comparing these two presentations of civil disobedience clarifies the theoretical importance of contractarians's unsatisfactory account of the transcendental in the political. Relying solely on a contractarian theory of justice for understanding King and civil disobedience disregards three fundamental points: 1) We cannot take religion out of King's theory of civil disobedience when it is so fundamental to his beliefs, theory, and action; 2) We fall short of a true analysis of justice in the American case when we disregard the significance of the religious origins basic to American commonalty; and 3) We fail to present an analysis of justice that goes beyond the level of political institutions; we fail to consider the consciousness required for democratic people to be self governing.

Rawls presents his constitutional theory of civil disobedience in three parts: the definition of this kind of client, specification of the conditions justifying such action, and exploration of the role of civil disobedience within a constitutional theory that accounts for its appropriateness as a protest in a just society. ' Contrasting King and Rawls in each of these parts illuminates their different views of the primary subject of justice, the basis for just welfare distributions, and the limitations of a de-ontological approach to the study of justice.

Definitions

Viewed through the contractarian lens, King's civil disobedience appears to conform with Rawls's definition. Rawls defines civil disobedience "as a public, nonviolent, conscientious yet political act contrary to

law usually done with the aim of bringing about a change in the law or policies of the government."²⁶ He believes King's dissent exemplifies this ideal as a political action against the specific court injunction, but faithful to the rule of law.²⁷ The "Letter" reflects this general conception, Rawls says, while placing it into a broader frame.

King's framework differs in more than its breadth, however. An initial distinction between these authors' views can be drawn from their treatment of conscientious and political acts. This difference betrays a deeper conflict in their views about the purposes of laws and constitutions in achieving order in just political relationships, and, more significantly, about the purpose of human communities. In Rawls's analysis civil disobedience is a political strategy for correcting injustices that block cooperation. Obstacles to cooperation in the social substratum obstruct the relations required for self government. Rawls must distinguish between civil disobedience and conscience objection and civil disobedience, in his model of assent, for protest to correct, not destroy, the social contract. Rawls argues that conscientious acts may be based on idiosyncratic beliefs that could lead to civil strife. Political acts, he suggests in contrast, draw their account of justice from the overlapping consensus. Civil disobedience is a political act not only because it addresses the majority's use of political power, but also because it is "guided and justified by political principles."²⁸ This act "addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected."²⁹

King, in contrast, distinguishes between civil disobedience and disregard for law, but does not differentiate civil disobedience as a political act from conscientious acts. For King civil disobedience has transcendent purpose and is not simply a political strategy.

In no sense do I advocate evading or defying the law as rabid segregationists would do. This would lead to anarchy. One who breaks an unjust law must do it *openly*, lovingly... and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice is in reality expressing the very highest respect for law. (12-13 Liberation)

Rawls and King vary in their understanding of civil disobedience even when they consider its effect as political strategy. Rawls and King each show that civil disobedient practice outstretches legal tests as constitutional correctives (e.g. The NAACP test in *Brown v. Topeka Board of Education* 1954), by arguing that civil disobedience entails more than official pronouncements and citizen obedience. Instead, they believe that

civil disobedience must also call on the shared understanding of justice, educating the community as a whole.³⁰ The content of this education differs for Rawls and King.

For Rawls, the majority is reminded of the overlapping consensus when a citizen breaks a particular law as a protest, revealing that law's injustice.³¹ With the Birmingham protest, King illuminates another possibility for civil disobedience as a political strategy. Denied a parade permit for the protestors' Good Friday march, King broke a legitimate secondary law used by government officials to buttress a tyrannical law. He argued that although the requirement for a parade permit is neutral *prima facie*, the State of Alabama had used it tyrannously to proscribe a particular group's right to assembly. He reasons that even if enforcing the parade permit law had been neither arbitrary nor tyrannous, using such a provision to prevent a demonstration designed to uncover the more basic tyranny of segregation, amounts to protecting the unjust segregation law. Thus, breaking a non-tyrannous law is warranted in order to demonstrate the tyranny of law that it conceals. In King's view, a larger category of citizen participation, non violent direct action, embraces all such forms of political protest

The significance of these definitions become clearer when we look at the role civil disobedience plays in constitutional systems. Through direct action, King engaged human conscience in evaluating ordinary law, policy, and enforcement not only against more fundamental, constitutional law, but also against what he believed were universal moral claims. King, like Rawls, believes that the whole community should learn of injustice; official proclamations are no substitute for actual change of heart. However, King does not stop with an education about the majority's perceptions of justice. He seeks a different sort of illumination of human conscience. The correction of injustice is not simply evaluated in terms of policy and law, but by the degree to which the protestor's conscience has aroused the conscience of others. For King, constitutional law is no substitute for compassion, nor is it intended to create compassion.³²

Conditions Justifying Civil Disobedience

King and Rawls differ not only in defining civil disobedience, but also in assessing this protest's role and use in democracy. Rawls maintains that a constitutional understanding of civil disobedience requires only an account of "the principles of justice which regulate the constitution and social institutions generally."³³ These principles assume a "reasonably just democratic regime" in which "there is a public conception of justice by reference to which citizens regulate their political affairs and interpret their constitution."³⁴

In justifying civil disobedience one does not appeal to principles of personal morality or to religious doctrines, though these may coincide with and support one's claims ... Instead one invokes the commonly shared conception of justice that underlies the political order.³⁵

For Rawls, civil disobedience in a constitutional system presupposes this shared sense of justice, at least concerning principles of social cooperation. For example, citizens agree to standards of equal treatment in enforcing rules, they rely on a common understanding of individual discretion in judging one's own interest and a common view of necessary rules to protect the community against excessive individualism (vigilantism, self interest). Beyond this commonalty, citizens may disagree on the extent of individual authority and community authority, but self governing communities must have basic agreement concerning their fundamental rights, responsibilities and the equity of treatment regarding the rules they create. Civil disobedience in the Rawlsian case calls upon this sense of justice as fair treatment under mutually contracted laws. In the Rawlsian conception, King's defiance of the law, and the "Letter," are political not only because they are public, but more importantly, because they are guided and justified by the principles of justice that regulate a constitutionally governed community and the social and political institutions of democracy. For civil disobedience to work, the majority must recognize that the basis for social cooperation is threatened by their dominance. In particular, the majority must see that unfair treatment in one case fundamentally threatens standards of fairness more generally.

In reaching his conclusions, Rawls assumes that the principles of justice are "publicly recognized as the fundamental terms of willing cooperation among free and equal persons."³⁶ He argues that we are appealing to this sense of justice in the majority, asking them to put themselves in our position.³⁷ The principles of justice are the "principles of willing cooperation among equals."³⁸ Rawls assumes more fundamentally that conflicts are negotiable and compromise is possible.

Assuming that civil disobedience addresses a shared sense of justice in a nearly just polity, Rawls's confines the circumstances that justify civil disobedience

to serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity."³⁹

Rational people, Rawls suggests, may disagree about when the principles of justice have been infringed. Although basic liberty often seems obvious when infringed, it is not. Consequently, the cases of fair equality of opportunity and the just distribution of social benefits according to the difference principle are even more difficult to evaluate. To Rawls, such rational disagreements imply that compromise is required and that civil disobedience

may be inappropriate. Rawls concludes that civil disobedience is most appropriately applied when infringements of liberty are substantial, and, therefore, obvious to the majority.

Injustice must be corrected because it substantially disrupts the foundation on which social cooperation depends. The costs of correction must be balanced by the benefits of change. Injustice that fails to disrupt the basic social structure or could only be corrected at costs greater than the benefit to all apparently may be justly ignored. For King, injustice requires correction even when costs seem to exceed majority benefits. Direct action is a nonviolent way of indicating fissures in the social fabric that otherwise seem trivial to a society that cannot recognize injustice outside of cost calculations. More is at stake than even the basic structure of society for King; the subject matter of injustice comprises more than a utility calculation of distributed benefits. As a consequence, King believes civil disobedience is appropriate even when its chance of success on the material plane appears limited by the lack of commonly held precepts of justice.

King might agree with Rawls that the political viability of civil disobedience depends on the majority's ability to reach a common understanding of justice. Yet King contends that even without this commonalty, the individual citizen must bring injustice to light, referring to a perfect standard of justice — transcendent justice. King believes that commonalty fails to materialize in human history not because the transcendent fails to exist, but because humanity knows this transcendent standard imperfectly. King assumes, however, that the seeds of this knowledge germinate in every heart. The individual who speaks to others on the basis of a transcending sense of justice causes all to recognize commonalty as reality. King assumes ubiquitous human purpose beyond our constructed common understanding of our interests.

King's protest, consequently, requires more than a test case of ordinary law against higher human law, such as a constitution. The Supreme Court was not the final arbiter of justice for King. The "Letter" makes it clear that King understands justice not only as a constitutional claim, but within a moral frame. As a statement of the interplay of religious and political concepts of justice, King's protest is political and moral. The origins of a public conception of justice is not Rawls's concern, but it is King's. Unless we wish only to address a limited set of unjust conditions, it must also be ours.

Role of Civil Disobedience as Constitutional Corrective

Civil disobedience corrects unjust laws in a constitutional order. For Rawls, evaluations of civil disobedience's effectiveness must show how this strategy neither leads to anarchy nor promotes majority tyranny. In Rawls's system, civil disobedience can mitigate majority tyranny only by calling on the shared sensibility of the majority.

King also calls on a shared sensibility, appealing to "others" to put themselves in the position of the lawbreaker and to recognize that one cannot expect people to acquiesce indefinitely to tyranny. Yet King wants civil disobedience to appeal to deeper sensibilities than our rational attention to self interest. Rational interest, King argues will not supply the foundation on which individuals create shared principles of justice.

Since each citizen is responsible for interpreting these shared principles - the essence of self government ~ the basis for these individuals' views is far from trivial. Rawls's model diminishes the force moral sentiments might carry in political assent to a shared construction of justice, making unclear the basis on which the majority will choose to care about those whom they not only cannot become, but those whom they see as actually disconnected from them.⁴⁰ While contract theory assumes a right of resistance, it is not clear how such an appeal will work if rationality teaches the majority that it has no reason to care — let alone change places with the minority.

Reasoned attention to interest is no substitute for the sort of awareness King, in contrast, seeks. Although experiments in coordinated pursuits of interest may exercise our consciences and even engage us in reflective equilibria, it is unclear how these opportunities can strengthen the force of the conscience itself. Since reason-based morality is limited by humanity's fallibility, extending reason does not guarantee that a majority can learn enough to comprehend a total social situation. Reason does not eliminate uncertainty, although we often elevate reason to transcendent significance in an attempt to do so. King's view of civil disobedience and, more generally, non violent direct action reflects a view of justice at odds with the normative basis of the contractarian view. In King's view, religion, not reason alone, strengthens conscience. King finds that an amalgam of Christian and Jewish theology informs the public conception of justice in America, implying that we cannot omit the foundation of moral sentiment from a science of American politics. To the extent that America represents an important democratic experiment, King's argument suggests that Rawls's de-ontological approach to justice will not provide a sufficient account of civil disobedience or justice in democratic communities.

King draws on Augustinian and Thomistic views of tyranny and justice to present his argument. He relies on Augustine to argue that an unjust law is not a law, and turns to Aquinas' conception of eternal law to argue that segregation laws are inconsistent with divine law. Just as there was a puzzle with Rawls's use of King to make a secular argument from his religious texts, so there is a puzzle in King's use of Augustine and Aquinas to make an argument in liberal theory from their theologies. While the contractarian approach may omit the ontological foundation of justice, neither Augustine nor Aquinas encounter justice in the context of consent and self government. King turns to Reinhold Niebuhr and Paul Tillich to make the religious foundation of justice compatible with liberal philosophy and democratic practice.

Several theological presuppositions underlie King's view of civil disobedience exemplified in the political strategy and conscience-effecting work of nonviolent direct action: the Christian concept of the equal worth of all humans formed in the image of God, Jewish and Christian monotheism, the Jewish exodus and God's demand for justice on Earth for God's children, and the Christian conception of agape.

King's View of Justice and Agape

When King was only 29 years old he accepted the leadership of a movement to end segregation in public transportation. In his first public speech, given in what would become known as the Montgomery Bus Boycott, King electrified his audience by justifying the boycott as an action of love that would correct injustice: Justice is love in calculation. Justice is love correcting that which would work against love.⁴¹ King's formulation of justice as love draws from his dissertation on the work of Paul Tillich. Tillich writes of justice not only in the context of common precepts held by a democratic community, but as a form of love, reuniting human beings separated from each other and God. Tillich, as King explains, understands sin as separation. This estrangement from God, self, and other is opposed to the basic commandment of the Jewish and Christian faiths, to love God, and one's neighbor and self for the sake of God. The human failure involved in this sin occurs primarily when a person objectifies others as means to an end. Love transcends the Golden Rule as the great commandment, making the Golden Rule a possibility that reflects more than rational calculations of enlightened interest. Justice as love requires a love that transcends calculating love or enlightened interest.

In Tillich's work, love is the ultimate principle of justice. Justice is the form in which and through which love reunites; what love reunites justice preserves. Tillich puts this simply in the following sermon.

Love makes justice just. Justice without love is always injustice because it does not do justice to the other one, nor to oneself, nor to the situation in which we meet. For the other one and I and we together in this moment in this place are a unique, unrepeatable occasion, calling for a unique unrepeatable act of uniting love. If this call is not heard by listening love, if it is not obeyed by the creative genius of love, injustice is done. And this is true even of oneself. He who loves listens to the call of his own innermost center and obeys this call and does justice to his own being.

For love does not remove, it establishes justice. It does not add something to what justice does but it shows justice what to do. It makes the Golden Rule possible. For we do not speak for a love which swallows justice. This would result in chaos and extinction. But we speak for a love in which justice is the form and structure of love. We speak for a love which respects the claim of the other one to be acknowledged as what he is, and the claim of ourselves to be acknowledged as what we are, above all as person. Only distorted love, which is a cover for hostility or self-disgust, denies that which love unites. Love makes justice just. The divine love is justifying love accepting and fulfilling him who, according to calculating justice, must be rejected, the justification of him who is unjust is the fulfillment of God's creative justice, and of His reuniting love.⁴²

More than political rights, King's fight against segregation seeks this reconciliation of humankind.

King opposed segregation as a statement about the perfect freedom of God's justice and its potential reflection in more just human relationships. Because King's cosmology recognizes God as integration and wholeness, segregation expresses profound separation in a broken relationship with God. Just as slavery is a tragic example of objectifying other human beings and failing to see our essential connectedness, segregation opposes a cosmology of wholeness and is, in its essential nature, sinful. The white moderates' greater concern with order than with justice demonstrates how injustice and lawful order can coexist under segregation. Justice as such is incomplete; so, also would be an end to segregation or even "integration" that occurs only as legal change. Without moral transformation, it is impossible to recognize ourselves as connected children of God, a process that only love can carry out. The moral and political community that King envisions requires the union of love and justice.

By drawing on the Christian conception of love, agape, King creates the foundation for relationships he believes democracy demands. In 1957 he wrote for *Christian Century*

In speaking of love at this point, we are not referring to some sentimental emotion. It would be nonsense to urge men to love their oppressors in an affectionate sense. "Love" in this connection means understanding good will. There are three words for love in the Greek New Testament. First, there is *Eros*. In Platonic philosophy *Eros* meant the yearning of the soul for the realm of the divine. It has come now to mean a sort of aesthetic or romantic love. Second there is *philia*. It meant intimate affectionateness between friends. *Philia* denotes a sort of reciprocal love: the person loves because he is loved. When we speak of loving those who oppose us we refer to neither *Eros* nor *philia*, we speak of a love which is expressed in the Greek word *agape*. *Agape* means nothing sentimental or basically affectionate; it means understanding, redeeming good will for all men, an overflowing love which seeks nothing in return. It is the love of God working in the lives of men. When we love on the *agape* level we love men not because we like them, not because their attitudes and ways appeal to us, but because God loves them.⁴⁴

In the "Letter," King presents similar ideas when he describes himself as an "extremist for love."⁴⁵

Through disinterested love of humanity, this sort of extremist provided the vigilant concern for justice through law.

So the question is not whether we will be extremists but what kind of extremists will we be. Will we be extremists for hate or will we be extremists for love? Will we be extremists for the preservation of injustice -- or will we be extremists for the cause of justice?... Jesus Christ was an extremist for love, truth, and goodness and thereby rose above his environment. So, after all, maybe the South, the nation and the world are in dire need of creative extremists.⁴⁶

Avoiding not only physical violence, but also internal violence of spirit, King's protest demonstrates this love, because it is only this foundation that can promote the transformation he contemplates. Political purpose, in King's thinking, is imbued with the greater depth of human spiritual capacity. While government might function productively on the basis of enlightened self interest to achieve some goals, the proper functioning of our basic institutions requires the greater concern for other's well being embodied in *agape*. King believes that *agape* is required to maintain free institutions. From this foundation King locates the motivation for self governing in qualities that consider others as ends, not means. King believes that enlightened self interest, without this interested concern will result in an "anemic democracy." If justice requires the constant correction of tomanity's inevitable failures, it would follow that the will required for this correction must spring from a deeper moral impetus. In King's unique synthesis of Augustinian and Thomistic theology, *agape* provides the basis for this motivation.

Augustine

Augustine writes of harmonizing the City of God with the city of man, exploring the connection between justice and the atonement of the temporal world with the eternal. Augustine's reasoning presents two methods for "harmonizing earth with heaven": shaping God according to our own likeness; or understanding God as immutable wisdom itself, with ourselves in a process of drawing nearer to the peace and tranquility of order. For Augustine, this peace and order comes not simply from acting in accordance with temporal rules, but from knowing God. Temporal rule, in Augustine's view is useful only if it provides the peace and safety of human fellowship, and he warns that the lust for rule "lays waste men's hearts with ruthless domination." The need to dominate he argues, is fueled by fear, destroying humanity's ability to realize actual peace. Just rule, in his terms, occurs not from a love of power, but from a sense of duty owed others.

The person enlightened by faith lives free from fear. Consequently, such a person's actions, motivated by the desire to know God rather than by the desire to protect or dominate, are governed by eternal law - God's law. From this position Augustine declares that any law undermining the true relationship of humanity with God, is not only an unjust law, it is no law whatever. Augustine's analysis of just laws, is elucidated in a dialogue between Euodius and Augustine in which Euodius asks if human law may punish an act of self defense and whether it may command an agent of law to take a human life.

Augustine's answer reflects his belief that God's law is more fundamental than human law. If, in Augustine's reasoning, peace and tranquility come from knowing God, and knowing God requires faith and love, lack of faith in one's eternal bond with God results in the fear of loss, including the loss of property and the loss of one's life. Actions therefore, motivated by fear and the desire to protect or dominate, are not compatible with God's law. It is from this basis that King confronts violence and "temporal rule's" misguided separation of humanity's inescapable relationship with God and with one's neighbor.

King extrapolates further from Augustine's position that the order of human law is inextricably linked to a process of seeking knowledge of a cosmic order - a position King believes applies to all Christians. For Augustine, two precepts govern the peace and tranquility of order: "to love one's neighbor and one's self; and to love God with one's whole heart, soul and mind."⁴⁷ He states that all love flows from the love of God and that the single purpose therefore, of our temporal existence is to love life as an expression of loving God.⁴⁸ central to this love of God is the duty to correct human errors that block our understanding of God, the immutable good.

Augustine sets forth seven steps that guide individuals, as instruments of God's justice, in seeking God's grace in correcting human mistakes and misjudgments. It is God's grace that brings justice with mercy and forgiveness, allowing the mandate to love one's neighbor to include even one's enemies. Augustine's seven step process is similar to King's four steps of non-violent direct action, specifically his demand for self purification. Central to each process is the belief that God's grace, not human will, perfects our standards and actions. Recognizing that human justice is imperfect, we do not indulge in a hopeless exercise of comparing ourselves or our neighbor to eternal law, nor do we shun Truth to please others and avoid adversity.⁴⁹ Instead, seeing the standard for human justice as a representation of love, we are called to show the same mercy shown by God to human frailty. For Augustine, the harmony of earth with heaven is not possible without merciful authority

eschewing domination, for even rules require compassion. It is the "ruthless domination" that Augustine believes will close human hearts to God. In arguing that unearned suffering is redemptive, King calls to mind the manner of breaking open human hearts through empathy, compassion and mercy - the same mercy and compassion of which Augustine speaks.

Aquinas, derives his ideas about justice and arrangements of human authority from this Augustinian foundation. King's analysis of just laws depends on Aquinas's formulation that unites reason from Greek philosophy with Augustine's revelatory principles. Aquinas

Opening with Augustine, Aquinas presents a systematic discussion of law as a foundations element of his theology.

Augustine says, 'A law that is unjust is considered to be no law at all.' Thus its quality as a law depends on the extent to which it is just. A thing is said to be just in human affairs when it is right because it follows the rule of reason. Now as we have said, the first rule of reason is the law of nature. Hence every human law that is adopted has the quality of law to the extent that it is derived from natural law. But if it disagrees in some respect from the natural law, it is no longer a law but a corruption of law.⁵⁰

While conforming Augustine's treatment of unjust laws to the rule of reason, Aquinas maintains the revelatory purpose for human law, enabling humanity's quest for tranquility of order through knowing God. King draws from this amalgam of reason and revelation.

A law may be unjust in two ways. First if it is contrary to human good, ,, either in its object, for example when a ruler imposes onerous laws on his subjects which are not for the benefit of the community but for his own cupidity ... or in its author as when someone makes a law that exceeds the power given to him — or in its, form, for example, when burdens are placed on the community in an unequal fashion even if they are aimed at the common good.”

Since Aquinas calls unjust laws acts of violence, we might conclude that citizens not only have the right, but also a duty to disobey. Yet the case for civil disobedience is not so simply made. Citizens are bound to law if disobeying will bring "scandal or disorder," Aquinas argues. Laws that do not bind conscience are those that are "contrary to divine goodness. For example laws enforcing idolatry ... under no circumstance may such laws be obeyed, for it says in the Acts [of the Apostles] "We must obey God rather than men."⁵¹ It is not clear that segregation laws fit this description for Aquinas, particularly since he construes suffering tyrannous rule as a punishment for humanity's sinful separation from God. The process of adapting Aquinas to a democratic context in support of King's conclusions is no simple task.

Three aspects of Aquinas's theology are relevant for King's defense of non violence: the purpose of life and the manner in which political authority facilitates that purpose, Aquinas's perception of the relationship of God and humanity, and his understanding of law. Aquinas's presentation of justice and love relies on a typology of eternal, divine, natural, and positive (human) law. This cosmology underlies Aquinas's hierarchical model of law. Divine law is the foundation of this hierarchy, existing because humankind cannot produce justice in history through human action without God's grace.

Unlike other writers of this time, Aquinas distinguishes between divine and eternal law. Aquinas starts from two premises in defining eternal law: the universe is governed by divine reason and, because, this reason emanates from God it is eternal.⁵⁴ Human beings can participate in eternal law through natural law, humanity's natural desire to do good and avoid evil. This natural desire to preserve life and avoid what destroys life may be approached both through practical experience, deductive reasoning, and speculative reasoning. In contrast, human beings need insight only available as grace to choose good in accordance with eternal law. Hence God gives an additional law, divine law, for humanity to share more perfectly in eternal law.

Reason, for Aquinas, is the first principle of human action. Yet eternal and natural law, accessible through grace and reason, are variably grasped by humankind. All individuals have the capacity to know, but their consciences may be inconsistently open, given differences in their experiences, intellectual powers, and faith. Human law reflects the variability of human consciousness. Aquinas concludes that human law must be illuminated by eternal law, since people cannot understand the contingencies, uncertainty, and peculiarities of each situation. In addition to obstacles posed by coordination problems, humans can only judge by behavior, not the motivation in the hearts of others. Humanity's purpose likewise involves more than improving coordination to simplify the satisfaction of our interests. Challenging though these problems may be, neither they, nor the order they require is our goal. For Aquinas, the end of the human being and society alike is not to be found in human relationships alone.

The final end of organized society then is not [merely] to live the life of virtue but through a life of virtue to attain the enjoyment of God.⁵⁵

Aquinas and Augustine seek the tranquility of order that reveals God. Human rule cannot alone lead to this end; the power of grace must be added to our natural powers of reason to participate in this supernatural good.⁵⁶

Following Aquinas's observations of these purposes for laws, King argues not simply for a change in law, but for civil disobedience to heal hearts.

Yet King has taken Aquinas out of the context of unitary rule and placed him in the context of democratic relationships. The meaning of community and the status of human beings in liberal philosophy differs significantly from the view expressed in Thomistic theology. The whole community is our subject of inquiry, from the Thomistic perspective; the individual is only a fraction of the whole, representing this totality imperfectly. Thomistic theology focuses on individual salvation, not individual rights; law, in this context concerns the good of the community. Aquinas writes:

[L]aw has as its first and foremost purpose the ordering of the common good. To order something to the common good is the responsibility of the whole people, or of someone who represents the whole people. Therefore making law belongs either to the whole people or to the public personage who has the responsibility for the whole people, since, as in all other cases, direction towards an end is the responsibility of the one to whom the end belongs.⁵⁷

Tyranny, while adverse to reason, inheres in human law, in Aquinas's view. The sovereign's will is law and human reason is tainted by self interest. A tyrannical law, being discordant with reason, is a perversion of law. Given his focus on the community, rather than the individual, Aquinas maintains that even these laws have some legal character to the extent that they intend that the citizens should be good.⁵⁸ Since human law demonstrates its basis in eternal law by its concordance with right reason, it qualifies as law only to the degree that it does reflect this substance. Aquinas names unjust law "an act of violence," but has little to offer a solution to the dilemma of self interested kings with terrible powers.⁵⁹

Then once the king is established the government of the kingdom should be so constituted as to provide no opportunity for him to become a tyrant. His power should be limited so that he can not easily fall into tyranny. We will discuss later how this can be done.⁶⁰

Aquinas does not keep this promise. Although he argues that tyrants create a situation of mutual distrust, discord, and an end to peace, he believes that tyranny is less corrupt than dissension and that individuals may not act privately to overthrow a tyrant.⁶¹ Aquinas suggests few occasions when actions involving limited individual discretion and good judgment might be appropriate. He does not ascribe the capacity or right to make these judgments to individuals, asserting, such participation would destroy peace and community.

However it should be kept in mind that if the observance of the letter of the law does not result in a danger that requires an immediate response it is not up to any individual to decide what is, or is not, useful to the city. This is the sole responsibility of the ruler who has the authority to dispense from the law in cases of this kind. (56)

Laws can be changed, Aquinas argues, if they no longer fit with what reason teaches, or if they are no longer useful. Legal change must be carefully considered, however. Mutable laws may be a danger to the public welfare, because change may imply dissonance between customs and law. Injustice and tyranny can be addressed, but only through the institutional arrangements set up to do so, otherwise anarchy and the end of peace result.

It would be very dangerous for the community and for its rulers if any individual, using his private judgment could attempt to kill those in government, even when they are tyrants ____ It seems that the solution for the evils of tyranny lies not in the private decision of a few but in proceeding through public authority. First of all, if a given community has the right to appoint a ruler it is not unjust for the community to depose the king or restrict his power if he abuses it by becoming a tyrant____ If on the other hand it is the right of a higher authority to appoint a king over a certain community, then the remedy for the wickedness of the tyrant is to be sought from that authority ____ However if no human aid is possible against the tyrant, recourse is to be made to God, the king of all who is the help of those in tribulation. (24-25)

For Aquinas, there were no institutional arrangements that permitted individual citizens to participate in this way. Such arrangements and a public role for the individual were available for King, and the use of these institutions furthermore necessitated a new way of thinking about eternal law and the individual's response to tyrannous human law. Although Thomistic theology places little emphasis on individual rights, a self governing approach to the problem of human fallibility must also look at more than this issue. The public role of the individual as citizen includes calculations of interest as a basis for knowing rights through deliberation, choice, and action. Our conceptions of other's rights may require more than an understanding of our rational interests; justice, as all of these theologians argue must be grounded in moral precepts of disinterested concern, an ethic of love. Tillich refocuses our attention on this ethic in a democratic context, de-emphasizing our concern with interest or calculating love. Aquinas draws out the meaning of interest in terms of natural law, but does so in a non-democratic context. For King's amalgamation of reason and revelation to speak to a democratic context he must balance love and interest; his route to this conception of justice takes him through the theology of Reinhold Niebuhr. Niebuhr

All social groups require cooperation, Niebuhr argues, but they also require coercion.⁶² Niebuhr reasons that while taken singly individuals may be able "to consider interests other than their own in determining problems of conduct," or be a "moral person," such thinking is more difficult, perhaps impossible, for social

groups. Social relationships entail coordination problems, and greater individual anonymity. Consequently our political interactions suffer from limited comprehension and concern for others as well as reduced applications of conscience to constrain on our behavior. Perfect love, Niebuhr argues, cannot ever lead to perfect social interactions, since our natural difference and fallibility require complex calculations based on constructions of rights.⁶³ For the individual, estimates of rights are always influenced by interests, and there is probably even less ability for a group to transcend itself or even comprehend the needs of others. Interests, Niebuhr concludes must be part of the calculation of human justice.

For Niebuhr, reason provides the coercive force that governs each individual's impulse. We externalize reason as coercion through the rules we design. Religion relies on love rather than coercion as a basis for right action, insisting that the neighbor's need be met without a computation of relative needs. Niebuhr suggests that while religion emphasizes love as the highest ethic, the rational ethic seeks reason as the ideal, bringing the needs of others into equal consideration with those of the self.⁶⁴ The amalgam of the ethic of love with the ethic of justice requires reason as the basis for comprehending the needs of others.

Self interest is a medium for expressing these needs; coercion prevents their anarchistic expression. Just as love fails to prevent dominance without coercion, so it will fail to prevent tyranny through absolute coercive power. Institutional arrangements must be available for individuals to prevent the tyrannical exercise of power. Niebuhr says little about these instruments. King's actions and ideas suggest how the complex relationship between love and reason, coercion and legal limitations of authority evince justice in a self governing context.

King uses this amalgamated theology of justice in the "Letter" to address four concerns: the moral basis of human commitment, factors enabling people to perceive these commitments, material representations of these commitments in positive law, and how people make these commitments known to each other. His belief that love is the first principle of justice is evident in his discussion of the beloved community, direct action, and just laws.

Beloved Community

King begins the "Letter" addressing the white clergymen's charge that he is an outsider to Birmingham's African American community. Although he could have defended this charge by simply stating that he had been invited to participate in the Birmingham protests, as the president of the Southern Christian Leadership

Conference, he uses the opportunity to present his ideas about community and the integration of humanity through God's wholeness.

King explains that all communities are related and that each person's condition has an effect on everyone else in a community. He argues that an injustice in any community or in any person's life has effects throughout a system of interrelated persons. Arguing that our natural condition is interrelationship, King maintains that we are in a "web of mutuality, a single garment of destiny."

I am in Birmingham because injustice is here.... I am cognizant of the interrelatedness of all communities and states.... Injustice anywhere is a threat to justice everywhere.⁶⁵

Although these ideas could be read in the context of contract theory, King's view of natural interrelationships distinguishes him from the contractarians who view the original position as one of radical autonomy. King's public epistle more profoundly reflects the fundamental level of belief that informs the uses people make of political institutions and the role of the citizen in democracies that hope to limit tyranny. King not only points to a political obligation of citizens to right injustices, he also construes a moral obligation governing every person's life, whether or not that individual exists in a democratic context.

Likening his mission to the prophets and Apostles who carried the word of God from community to community, King explains that he similarly is impelled to carry a gospel of freedom beyond the boundaries of his particular hometown. He recognizes that his obligation to participate in community has less to do with the happenstance of his US citizenship than with his belief that God is integrated wholeness, unifying humanity in a manner that is inseparable from this ordered whole. For King, the obligation to participate in self government originates more fundamentally from beliefs about one's interconnection with others than from tacit consent to a social contract. Not only is he not an outsider, but, where moral obligation is concerned, none of us is.

By the time he composes the "Letter" King has articulated this position in speeches and sermons for nearly a decade, drawing heavily on his belief in the sacredness of human beings as children of God. In a 1962 speech before a church conference in Nashville, King explained:

There must be a recognition of the sacredness of human personality. Deeply rooted in our political and religious heritage is the conviction that every man is an heir to a legacy of dignity and worth. Our Hebraic-Christian tradition refers to this inherent dignity of man in the Biblical term *image of God*. This innate worth referred to in this phrase the image of God is universally shared in equal portions by all men. There is no graded scale of essential worth; there is no divine right of one race which differs from the divine right of another. Every human being has etched in his personality the indelible stamp of the Creator.⁶⁶

Proceeding in this teaching, King shows that the Declaration of Independence embraces this view of human dignity as God's creation. "Never has a sociopolitical document proclaimed more profoundly and eloquently the sacredness of human personality," he offers.⁶⁷ Human worth lies in its relatedness with God, and American documents are just, to the extent that they reflect this truth.

In the "Letter," King extends this analysis by attempting to convince white moderates to examine the deeper political and moral causes of the Birmingham confrontation. Segregation, he argues to his clerical critics, is a religious, as well as political problem.⁶⁸ King deplores his critics' superficial analysis not only because they misapprehend the sociological causes and cures of the riots, but, by failing to acknowledge God's required role in perfecting human institutions, they misperceive the religious significance of segregation. At best the human record reflects error, contemplation, choice, and imperfect correctives, belying the vision of history as a progressive destiny. Neither time nor invention necessarily improves the lot of human beings.

All that is said here grows out of a tragic misconception of time. It is the strangely irrational notion that there is something in the very flow of time that will inevitably cure all ills. Actually time is neutral. It can be used either destructively or constructively.... We must come to see that human progress never rolls in a wheel of inevitability. It comes through the tireless efforts and persistent work of men willing to be co-workers with God, and without this hard work time itself becomes an ally of the forces of social stagnation.⁶⁹

King's analysis reveals that through direct action, including civil disobedience, he seeks a new kind of relationship, the "beloved community." Speaking of non violent direct action, he explains

[I]t does not seek to defeat or humiliate the opponent, but to win his friendship and understanding. The nonviolent resister must often voice his protest through noncooperation or boycotts, but he realizes that noncooperation and boycotts are not ends within themselves; they are means to awaken a sense of moral shame within the opponent the end is redemption and reconciliation. The aftermath of nonviolence is the creation of the beloved community, while the aftermath of violence is tragic bitterness.⁷⁰

The beloved community operates as a spiritual and political conception of relationships. The beloved community is spiritual in that it involves a state of being and peace that is only accomplished through spiritual reflection. From this tranquility one might act in the material world to make a change in relationships, but the real change occurs first in the heart of the spiritual being. Change in the material world paradoxically holds less reality for King than spiritual change. Although material change is measurable, the inaccuracy and misconception of physical sensation suggests that the knowledge of peace of the soul is the only non-temporal reality.

King's deepest motivation to create a Beloved Community comes first from love. It is from the foundation of love that King develops a concern for fundamental rights. Rights reflect the mutual relationship of respect and love derived from the spiritual and expressed in the material world. A change of principles is therefore more important than a change of policy. King was trying to move beyond majority domination in democracy *not* through political strategies, but through spiritual enlightenment. For King, rights are not so much derived from nature, as they are from God working through human reason. A change of heart precedes a change in our conceptions of rights. Rights are imagined through our conceptions of self, intertwined with others in community. Because of God's love for all people, human beings recognize their true relationships, including the rights of self and other existing among all people.

King argues that we are in "an inescapable web of destiny" and underscores our basic mutuality. At their deepest level of meaning, these ideas confirm the fellowship of all humanity. We are unified in our essential nature as spiritual beings and in this way all persons are equal. The differences that we observe are manifestation of the sins of ignorance and separation that occur in time. These temporal differences betray differences in consciousness, not essential nature.

Non Violent Direct Action

By dissecting the process and purpose of direct action King illuminates the strategic and moral use of soul force. The goal of non-violence is to correct injustice by engaging the moral basis for human relations that King believes all communities could share. Through this process King hopes to establish the grounds for the beloved community.

[N]onviolence is vital because it is the only way to reestablish the broken community. It is the method which seeks to implement just law by appealing to the conscience of the great decent majority who through blindness, fear, pride or irrationality have allowed their consciences to sleep.

The nonviolent resisters can summarize their message in the following simple terms. We will take direct action against injustice without waiting for other agencies to act. We will not obey unjust laws or submit to unjust practices. We will do this peacefully, openly, cheerfully ~ because our aim is to persuade. We adopt the means of nonviolence because our end is a community at peace with itself. We will try to persuade with our words — but if our words fail we will try to persuade with our acts. We will always be willing to talk and seek fair compromise but we are ready to suffer when necessary and even risk our lives to become witnesses to the truth as we see it.⁷¹

Conscience, in this passage, implies a change of heart that goes beyond imperfect human justice and is the foundation for God's justicing on earth. The creative tension caused by direct action leads not only to negotiation

about rights, but also to a searching for reasons for the oppressors' behavior. The purpose of Direct Action is to "create a crisis that establishes a creative tension that forces the confrontation of problems."⁷² The tension is creative because it enables resolution through negotiation. The alternative to this transforming process is the passive acceptance of injustice, leading not only to frustration and violence, but to the truncated development of the personalities of oppressor and oppressed alike. This "corroding despair" is what more fundamentally must be changed if a new politics of self government is to occur.

King's critics have misunderstood the moral basis of nonviolent direct action. Moral principles guide the political import of these strategies and the deeper consciousness change that King anticipates. These Misperceptions underscore the role of the Church as a conservative force in contemporary society.

There was a time when the Church was very powerful. It was during that period when the early Christians rejoiced when they were deemed worthy to suffer for what they believed.... Things are different now.... Far from being disturbed by the presence of the Church, the power structure of the average community is consoled by the Church's silent and often vocal sanction of things as they are. ... But the judgment of God is upon the Church as never before.⁷³

Not only is the Church irrelevant in many lives, it is also unauthentic. The Church no longer acts as a challenging force in society. Moral sentiments no longer serve as foundations of justice. With irony, King denies concern either for the fate of the Church or the triumph of his argument, while simultaneously invoking the shared belief in justice that the Church once informed.

I hope the church as a whole will meet the challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are presently misunderstood. We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom.⁷⁴

On the political plane, the problems King confronts are legal but immoral segregation and bad faith negotiations to change the legal situation. On the spiritual level the problem King confronts is the misguided separation of those who are inescapably related to each other.

Understanding segregation as a moral as well as political problem, King responds not simply by attacking political institutions to gain political rights. His goal is also not simply to correct the specific wrongs in Birmingham or even the particular evil of segregation, but to attack the roots of racism, requiring nothing less than a conversion of spirit. Only such a fundamental change in human consciousness will enable fundamental change in the political order.

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice, and that when they fail to do this they become dangerously structured dams that block the flow of social progress. I had hoped that the white moderate would understand that the present tension in the South is merely a necessary phase of the transition from an obnoxious negative peace, where the Negro passively accepted his unjust plight, to a substance-filled positive peace, where all men will respect the dignity and worth of human personality. Actually, we who engage in non-violent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive.

Physical force impedes moral development of such magnitude; simplistic policy strategies might also.

Physical force might evoke policy and law aimed at quelling violence. Violence might even draw a government response more quickly and effectively than any other means. Change through legal institutions is not irrelevant, but it is also not sufficient for the task set out by King. Soul force rather than physical force guides the engagement that characterizes King's campaign. Soul force, as the foundation to non-violent direct action, requires self purification to act in coordination with the higher power of God.⁷⁵ Those who correct injustice through a non-violent confrontation must be pure in their attitudes about their opponents, caring for them as part of the community that will be built, rather than understanding them as obstacles to justice, separated from those seeking justice. A new relationship with these opponents must be part of the end desired and must be obtained for the good of others, regardless of its immediate impact on those seeking justice. Others, including one's opponents, must be ends, not means, and ends must be sought not for self interest, or even mutual benefit, but for the sake of others alone. Only through a cleansed soul, as part of the process of engaging in non-violence, can God work through the heart of the oppressed person to change fundamentally the oppressive situation.

When those who dominate political processes refuse to negotiate, direct action is used to uncover the negative peace and tension that exists in a situation of gross inequality. Direct action displays the conflict and forces the recognition of the crisis in the relationship, forcing those who hold political power to see that they must negotiate. Although direct action results in bringing power to bear on those who have dominant political power, this strategic move is itself not the goal of the process. King chooses direct action not only because it is strategically most feasible for a group that cannot hope to dominate the political arena, he chooses it because this method seeks to end political domination.⁷⁶

Just Laws

King distinguishes between just and unjust laws not only in terms of contract theory, but also on moral grounds. Although a focus on rights is important, this material manifestation of right relationships with other

human beings was based not in human law, but in God's eternal law. Although consonant with a theological emphasis on the moral basis of all law, King's contribution to American political thought nonetheless occurs in the context of democratic relationships and thus differs from the early Christian writers on which he draws.⁷⁷

King looks upon segregation laws as an embodiment of the original separation between human beings, our spiritual estrangement from God. Because King believes that segregation represents power for the sake of domination, he recognizes it is not in harmony with God's authority. In the terms of Thomistic theology on which King relied, it is arrogant rule; rule not for the sake of harmony or bettering those who are ruled, but for maintaining their subjection. In King's discussion, reason combined with this moral sentiment provides the foundations of political judgment. King explains

How does one determine when a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality.⁷⁸

King looks at how segregation laws in particular, and injustice, in general, distort the personality. Tokenism, or other situations in which some people benefit from the oppression of others, further exemplify the personality distortions of oppression. Segregation degrades the personality by relegating people to the status of things. Therefore, following Aquinas, it is morally necessary to break unjust laws.⁷⁹ King contrasts the extremist for love with individuals who have been led to despair through this personality distortion. Justice requires participation from those who are awake with this extreme love. This extremist acts politically as the vigilant citizen, correcting errors of injustice for the sake of others. Undertaking such participation requires tremendous political will. Self interest manipulated into its enlightened form will not suffice to inspire such will. For King, only this deeper moral impetus will lead to a dynamic understanding of justice, bringing people beyond despair.

King believes the contractarian view of political injustice could embrace concrete examples of morally unjust laws. He describes three types of injustice, evaluated from this perspective of human law. First he discusses laws by which a majority binds a minority, but not itself.

An unjust law is a code that a majority inflicts on a minority that is not binding on itself. This is difference made legal. On the other hand a just law is a code that a majority compels a minority to follow that it is willing to follow itself. This is sameness made legal.⁸⁰

Next King discusses laws made without minority participation.

An unjust law is a code inflicted upon a minority which that minority had no part in enacting or creating because they did not have the unhampered right to vote.⁸¹

King then discusses the instance for which he has gone to jail; a just law has been used to conceal an unjust law.

From the perspective of correcting injustice through politics, King describes the obligations that citizens must be willing to undertake to secure and protect their rights in democratic government. Individuals, he believes, must be willing to assess ordinary law against constitutional law, which must itself square with a higher level of law. More importantly, individuals must participate and emancipate themselves on the planes of politics and spirit. Justice is not the subject of convenience and order.

Explaining the significance of non-violence within the realm of civil rights and the context of a higher form of justice, King taps the faith of a people whose shared belief and political practice marks them as a community. King expresses this amalgam of a polity based on God's new covenant and God's will in statements reminiscent of the Puritan jeremiad, tying the destiny of the African-American to the destiny of the Puritans' "errand in the wilderness." The American wilderness for the Puritans represented the new Zion, evoking the Jewish exodus, an image carried forward in the traditional sermons of Black Church. Uniting images of the chosen people and the promise land with this exodus, King identifies with the Hebrew God who demands justice in this world.

Abused and scorned though we may be, our destiny is tied up with the destiny of America. Before the pilgrims landed at Plymouth we were here. Before the pen of Jefferson etched across the pages of history the majestic words of the Declaration of Independence, we were here.... If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.⁸²

For King, America's sacred heritage reflects humanity's pursuit of harmony in human and moral law. Even when our history betrays discord and inevitable failure, the basic presuppositions in King's protest reveal a quest for justice beyond the best that humanity can will. Tocqueville also believed that people naturally sought this harmony, and, if their political institutions permitted, would find it in ways that promote just rule of law.

By the side of every religion is to be found a political opinion, which is connected with it by affinity. If the human mind be left to follow its own bent, it will regulate the temporal and spiritual institutions of society in a uniform manner, and man will endeavor, if I may so speak, to *harmonize* earth with heaven.⁸³

By reading King in this context of harmonizing the transcendent and the political we deepen our understanding of the ontology required of a theory of justice.

1 King began his response to the eight clergy "in the margins of the newspaper in which [the clergy's] statement appeared... [and] continued on scraps of writing paper supplied by a friendly Negro trusty, and concluded on a pad [his] attorneys were eventually permitted to leave [him]. (Martin Luther King, Jr. *Why We Can't Wait* (New York: New American Library, 1964, p. 76.) "The letter was mimeographed and distributed by Wyatt T. Walker, and later 50,00 copies were distributed by the American Friends Service Committee for \$.10 each. (FBI 100-111180-9-176. Martin Luther King telephone call to Stanley Levinson, 5/23/63.) Several versions of the letter were published shortly after King's release from jail, including unauthorized reprints in *The New York Post* (*New York Post* (5/19/63) pp. 4,5.) and *New Leader* (*New Leader* (6/24/63) pp. 3-11.), a version submitted by King and edited by *The Christian Century* (Martin Luther King, Jr., "Letter From Birmingham Jail," *Christian Century*, 80:24 (June 12) 1963,767-773.), the version edited as Chapter 5 in *Why We Can't Wait* (Martin Luther King, Jr. *Why We Can't Wait*, New York: New American Library, 1964.), and the version printed in the journal *Liberation* as part of editor and civil rights activist Bayard Rustin's work, "The Meaning of Birmingham" (Martin Luther King, Jr. "Letter From Birmingham Jail," *Liberation* 8:4 (June) 1963, 10-16+ (23). In tandem with Bayard Rustin, "The Meaning of Birmingham," *Liberation* 8:4 (June) 1963,7-9+ (31)). The "Letter" has been anthologized in nearly a dozen college texts and the version appearing in *Liberation* is part of James M. Washington's *A Testament of Hope* (College anthologies include: Charles Muscatine and Marlene Griffith, eds., *The Borzoi College Reader*, 3rd ed. (New York: Knopf, 1976); Arthur M. Eastman et al., eds., *The Norton Reader*, 4th ed. (New York: Norton, 1977); Caroline Shrodes, et al., eds., *The Conscious Reader*, 2nd ed. (New York: Macmillan, 1978); Richard E. Young, et al., eds., *Rhetoric: Discovery and Change* (New York: Harcourt, Brace & World, 1970).; Halsey P. Taylor and Victor N. Okada, eds., *The Craft of the Essay* (New York: Harcourt Brace Jovanovich, 1977); and Forrest D. Burt and E. Cleve Want, eds., *Invention & Design: A Rhetorical Reader* (New York: Random House, 1978). Martin Luther King, Jr., *A Testament of Hope: The essential writings of Martin Luther King, Jr.* James M. Washington, ed., (New York: Harper & Row 1986) 289-302.). The *New Leader* version is essentially similar to the one used by Rustin in *Liberation* and later collected into King's writings by Washington. David Garrow suggests that the *New Leader* version is the most reliable and, although he does not explain by what criteria he makes this evaluation, there is substantial support for this conclusion. David J. Garrow, *Bearing the Cross*, New York: Vintage, 1988, p 671 note 18 to Chapter five. Richard P. Fulkerson ("The Public Letter as a Rhetorical Form: Structure, Logic, and Style in King's "Letter From Birmingham Jail," *Quarterly Journal of Speech*, 65:2 (April) 1979,121 note 4.) suggests that the alterations made are minor changes in diction and syntax from the early versions to the fifth chapter of *Why We Can't Wait*. (The versions, which do seem largely edited for style have, however, lost some of the clarity of the argument pertaining to the key section on tyrannous law.). Although the *New York Post* version was apparently the first version to be published, substantial portions that appear in the *Liberation* and *New Leader* versions are omitted. In particular the section concerning just and unjust laws omits King's reference to Aquinas in connecting eternal and natural law to human law. Other important sections concerning the psychological effect of segregation on the oppressed and the segregationist, King's confessed disappointment in the white church's paternalistic attitude towards change in segregation, and King's analysis of time and destiny. (See, Martin Luther King, "A Letter from Birmingham Jail," *New York Post* May 19,1963, pp. 4-5.). Particularly in the sections defining just and unjust laws, *Liberation*, and *New Leader* versions differ substantially from the *Christian Century* and *Why We Can't Wait* versions. The *New Leader* version carries several important explanations of obeying just laws and disobeying unjust laws not contained in *Liberation*. In the *Christian Century* and *Why We Can't Wait* versions the references to majority tyranny are obscured while they are quite clearly explained in the former versions. For example, *Christian Century* gives King's explanation as follows:

Let us consider some of the ways in which a law can be unjust. A law is unjust, for example, if the majority group compels a minority group to obey the statute but does not make it binding on itself. By the same token a law in all probability is just if the majority is itself willing to obey it. Also, a law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Martin Luther King, "Letter from Birmingham Jail," *Christian Century*, 769.

Why We Can't Wait quotes the passage as follows:

Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is *difference* made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is *sameness* made legal.

Let me give another explanation. A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Martin Luther King, Jr., *Why We Can't Wait*, 83.

The version in *Liberation*, *Washington*, and *New Leader* are substantially similar to this version in King's book.

Let us turn to a more concrete example of just and unjust laws. An unjust law is a code that a majority inflicts on a minority that is not binding on itself. This is difference made legal. On the other hand a just law is a code that a majority compels a minority to follow that it is willing to follow itself. This is sameness made legal.

Let me give another explanation. An unjust law is a code inflicted upon a minority which that minority had no part in enacting or creating because they did not have the unhampered right to vote. Martin Luther King, Jr., "Letter from Birmingham City Jail," *Testament of Hope*, 294, *Liberation*, 12. *New Leader* 6. King is defining tyrannous, though non-arbitrary action — legal majority tyranny in this instance.

In the *Liberation* version, King is explaining that one part of "justice" is equality under the law. Both a majority and a minority are bound by the same law. Considering that a just law, in King's view, must meet a higher test of squaring with a universal moral code, it is doubtful that he meant that a law would "in all probability [be] just" simply because the majority was itself willing to obey it as the *Christian Century* version states it. On the contrary, equality under the law is one condition of justice, but not a sufficient condition. For example, such a law as establishes the religion of the majority as a state religion might bind majority and minority peoples equally, yet be unjust for those of the minority viewpoint. The context of King's writing in *Liberation* makes clear that he understands this, while such nuance is obscured in the version appearing in *Christian Century*. The *New Leader* version adds a discussion of the moral obligation to disobey unjust laws that does not appear in *Liberation*. There is also a typographical error at the beginning of the first quotation in which the *New Leader* repeats the phrase "Let me give another explanation," instead of "Let us turn to a more concrete example..." For these reasons this essay will refer to the *Liberation* article, with the addition of the discussion of moral obligations to disobey unjust laws considered from the *New Leader* version.

² John Rawls, *A Theory of Justice* Cambridge: Harvard University Press, 1971, 364-365. ³

Ibid 11

⁴ *Ibid* 12

⁵ *Ibid* 11-12

⁶ *Ibid* 13-14

⁷ *Ibid* 21

⁸ *Ibid* 51

⁹ *Ibid* 46

¹⁰ *Ibid* 48

¹¹ *Ibid*

¹² *Ibid* 52

¹³ We can contrast the position with Tocqueville's which holds that consensus on a few "simple ideas" made it possible for Americans to negotiate deep political divisions. These simple ideas -- the love of God, self and neighbor as creations of God, and the immortality of the soul — were anything but superficial. Tocqueville

develops the conditions required for fundamental factions to be reconciled in the vein of Madison and Hamilton. Rawls inverts this equation so that consensus can be superficial, and, therefore, very likely fluid. Tocqueville would suspect that souls adrift in the Rawlsian calculus of consent would not long retain the principles of justice.

¹⁴ George Klosko "Rawls's 'Political' Philosophy and American Democracy," *American Political Science Review* 87:2 (June) 1993, 350

¹⁵ In Rawls terms:

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty)

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases:

- (a) a less extensive liberty must strengthen the total system of liberty shared by all;
- (b) a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice over Efficiency and Welfare)

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

- (a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- (b) an excessive rate of savings must on balance mitigate the burden of those bearing this hardship.

General Conception

All social primary goods — liberty and opportunity, income and wealth, and the bases of self-respect -- are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored. *Ibid* 302-303

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ These intuitive ideas are implicit in the political culture of the policy, although Rawls does not address their origins. In the American case, I would surmise that such "intuitive ideas" have their origins in our Puritan amalgam of religion and capitalism.

¹⁹ Rawls has developed his position on the inviolability of liberty throughout the past four decades. Although we do not need to review his various positions here, but he has consistently argued for the inviolability

of liberty and faulted utilitarians for allowing trade-offs of liberty to other values. His conception of justice as fairness is defined in opposition to utilitarianism.

²⁰ *Ibid* 62

²¹ *Ibid* 84

²² *Ibid*

²³ *Ibid* 54

²⁴ *Ibid* 365

²⁵ *Ibid* 363-364

²⁶ *Ibid* 364

²⁷ *Ibid* 366-368

²⁸ *Ibid* 365

²⁹ *Ibid*

³⁰ Walton believes that King uses civil disobedience because he wants a strategy to dominate as a minority because Blacks can never become a majority. This analysis misapprehends the situation, however.

³¹ The SCLC and SNCC lunch counter sit-ins employed such lawbreaking to protest segregation laws. For Rawls, the Montgomery Bus Boycott represents a different order of political protest, as do the Freedom Rides which asserted a legally protected right that authorities failed to protect. In the latter case, just laws existed; they were not enforced.

³² Indeed, such actions point to the complex meaning of civil disobedience in a federal system in which the coercive powers of federal government shielded the non-violence.

³³ *Ibid*

³⁴ *Ibid* 365

³⁵ *Ibid*

³⁶ *Ibid* 382

³⁷ *Ibid* 383

³⁸ *Ibid* 384

³⁹ *Ibid* 372

⁴⁰ *Ibid* 386

⁴¹ King, 1954.

⁴² Paul Tillich, *The New Being*, New York: Charles Scribner's Sons, 1955, Pp. 32-33.

⁴³ King op. cit. 12

⁴⁴ Martin Luther King, "Non Violence and Racial Justice," *Christian Century*, 1957.

⁴⁵ King, "Letter," 14

⁴⁶ *Ibid*

⁴⁷ St Augustine, Bishop of Hippo. *On Christian Doctrine*, trans. D.W. Robertson, Jr. (New York: Macmillan), 1988, orig. pub. 397. p. 19)

⁴⁸ *Ibid* 22-23

⁴⁹ *Ibid* 62

⁵⁰ St Thomas Aquinas. *De Regimine Principum, (On the Governance of Rulers)*, trans. Gerald B. Phelan, Ph.D. (London: Sheed & Ward) 1938, orig. pub. 1265-1267. p. 53

⁵¹ *Ibid* 55.

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ *Ibid* 46

⁵⁵ *Ibid* 27

⁵⁶ *Ibid* 60

⁵⁷ *Ibid* 45

⁵⁸ *Ibid* 48

⁶¹ *Ibid* 19-20

⁶² Reinhold Niebuhr, *Moral Man and Immoral Society*, (New York: Charles Scribner's Sons, 1932, p. 3)

⁶³ Niebuhr, *The Nature and Destiny of Man*, (New York: Charles Scribner's Sons, 1943) V 2, p. 252

⁶⁴ Niebuhr, *The Children of Light and the Children of Darkness*. (New York: Charles Scribner's Sons, 1944) 57.

⁶⁵ King, "Letter" 10

⁶⁶ King, 1962,2

⁶⁷ *Ibid*

⁶⁸ King, "Letter," 10

⁶⁹ *Ibid*, 13

⁷⁰ King" The Current Crisis in Race Relations," King papers 1958,4

⁷¹ King, "The Case Against Tokenism," King papers 1962,5

⁷² King, "*Utter*" 11

⁷³ *Ibid* 15

⁷⁴ *Ibid* 16

⁷⁵ *Ibid* 11

⁷⁶ Hanes Walton, Jr. (*The Political Philosophy of Martin L. King, Jr.*, Westport, Conn: Greenwood Publishing Co. 1971, p. 7) argues that King's method attempts to create for Blacks in America what is impossible but necessary for any racial minority that hopes to participate politically, the opportunity to move from minority to majority status. But King does not seem to have this sort of model of dominance in mind. He argues that King was trying to find a way to have what American political democracy requires: a way for a minority to become a majority.

⁷⁷ The Augustinean quotation King is fond of using directs the reader of a dialogue between Euodius and Augustine to consider when an action taken against another is evil. In particular, this dialogue asks if human law may punish an act of self defense or may it properly command its agents to take another human life. Augustine considers such questions to pertain to one's understanding of God's law as more basic than human law. God's law requires that action be motivated by the desire for a greater understanding of God, not the desire for unworthy (what can be taken away) material goods. Although all humans naturally desire to live free from fear, the good person does not fear the loss of a relationship that cannot be lost — a relationship to God. To fear the loss of property is surely to place one's sights too low and to be attached to the ephemeral, but Augustine argues fear for

one's life is likewise a representation of the lack of faith in the eternal nature of one's spiritual bond with God. It is in the context of these thoughts that Augustine cautions that an unjust law, one that undercuts the true relationship to God and one human being to another for the purpose of right relationship with God, is no law whatever. St. Augustine, Bishop of Hippo, *The Teacher, The Free Choice of the Will, and Grace and Free Will*, Robert P. Russell, O.S.A. trans. Washington: Catholic University Press 1968.

⁷⁸ King, "Letter" 12

⁷⁹ Three aspects of Aquinas's theology are relevant for King's defense of non-violence: the purpose of life and the manner in which political authority facilitates that purpose, Aquinas's perception of the relationship of God and humanity, and Aquinas's understanding of law. Divine law is the foundation of this hierarchy, and exists because humankind cannot produce justice in history through human action without God's grace. This cosmology underlies Aquinas's hierarchical model of law. Aquinas's presentation of justice and love relies on a typology of eternal, divine, natural, and positive (human) law.

Aquinas considers a number of authority arrangements for delivering human justice and decides that the unitary authority of a king is best. It is in the context of concern for the chance that such a sovereign would institute a tyrannous reign that Aquinas considers the problem of tyrannous human law. Aquinas cites Augustine, and although King cites Aquinas correctly that a tyrannous law is no law at all, it is not clear that King and Aquinas mean the same action to follow on the part of individual citizens from that conclusion. King has taken Aquinas out of the context of unitary rule and placed him in the context of democratic relationships. It is important to understand Aquinas's original meaning of these ideas in the context of a single sovereign. For Aquinas, it is the whole community that is the object of concern. Looked at from this perspective, the individual is only a fraction of the whole, and is, in this way, an imperfect representation of the whole. Law, therefore concerns itself with the happiness of the community and individual rights are not an important focus of this discussion, although individual salvation might be. Aquinas, St. Thomas. *De Regimine Principum, (On the Governance of Rulers)*, trans. Gerald B. Phelan, Ph.D. (London: Sheed & Ward) 1938, orig. pub. 1265-1267, 45.

Aquinas is aware that since the sovereign's will is law, there is the possibility for tyrannous law. He argues that tyrannous law is also adverse to reason; though he acknowledges that human reason is tainted by self-love, he does not have a solution to the tyrannous King. (Ibid.48)

By arguing that human law has the quality of a law only in so far as it is in accordance with right reason, and is therefore evidently derived from eternal law, Aquinas can name an unjust law "an act of violence" (Ibid), but has little to offer a solution to the dilemma of self-interested Kings with terrible powers. (Ibid 23)

The content of human law must be distinguished from the process of this discipline of law, because all human laws are not perfectly derived from Natural law.

Saint Augustine says 'A law that is unjust is considered to be no law at all.' Thus its quality as a law depends on the extent to which it is just. A thing is said to be just in human affairs when it is right because it follows the rule of reason. Now as we have said, the first rule of reason is the law of nature. Hence every human law that is adopted has the quality of law to the extent that it is derived from natural law. But if it disagrees in some respect from the natural law, it is no longer a law but a corruption of law. (Ibid 53)

Aquinas asks in what way a human law obliges conscience. In this context he explains,

A law may be unjust in two ways. First if it is contrary to human good ... either in its object, for example when a ruler imposes onerous laws on his subjects which are not for the benefit of the community but for his own cupidity... or in its author as when someone makes a law that exceeds the power given to him -- or in its form, for example, when burdens are placed on the community in an unequal fashion even if they are aimed at the common good. (Ibid 55)

Even though Aquinas calls these not laws, but acts of violence, it does not necessarily follow that citizens have the right to disobey. Citizens are bound to law if disobeying will bring "scandal or disorder." (Ibid 55) Laws that do not bind conscience are those that are "contrary to divine goodness. For example laws enforcing idolatry... under no circumstance may such laws be obeyed, for it says in the *Acts [of the Apostles]* 'We must obey God rather than men.'" (Ibid 55) It is not clear that segregation laws fit this description for Aquinas,

particularly since he argues that suffering such as tyrannous rule can be God's punishment of humanity's sinful separation. It is for this reason that King must argue to heal hearts, not just change laws. Aquinas's view has a bearing on his conclusions that place the sovereign above the law and limit the actions that citizens might take to disobey unjust laws. (Ibid 55)

Aquinas's examples, involve limited individual discretion and good judgment, not acts of civil disobedience, however. He does not ascribe to citizens the capacity or right to make these latter judgments. In fact this sort of participation would be destructive to the type of system Aquinas describes. (Ibid 56)

Laws can be changed if they no longer fit with what reason teaches or if they are no longer useful. But one must be careful in changing laws, because change itself can be adverse to the public welfare, if they imply ideas that are not consonant with the customs that are associated with law. Injustice and tyranny can be addressed, but only through the institutional arrangements set up to do so; otherwise anarchy and the end of peace would result. For Aquinas, there were no institutional arrangements that permitted individual citizens to participate in this way. Such arrangements were available for King, and the use of these institutions furthermore necessitated a new way of thinking about eternal law and the individual's response to tyrannous human law. (Ibid 24-25)

⁸⁰ King, "Letter" 12

⁸¹ *Ibid*

⁸² *Ibid* 16

⁸³ Alexis de Tocqueville, *Democracy in America*, 1-2, trans. Henry Reeve, (New York: Vintage) 1945, orig. pub. 1830-1835; trans. George Lawrence, (Garden City: Doubleday) 1969 V.I 310.

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