

4. PROMOTING DEVELOPMENT AND CHANGE: CIVIL DISOBEDIENCE IN THE LEGAL-POLITICAL THINKING AND THE MUSICAL FIELD

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Abstract: *A public, non-violent act not abiding by a recognized rule, and conscientiously done with the intent to frustrate the latter, is called an act of civil disobedience. Those who practice civil disobedience reject a specific rule, considering it unfitting with their own ethical, religious, or artistic values, and are prepared to suffer the indignities which may greet their act. The paper offers a comparative view on civil disobedience in the legal-political and the musical field, basing on the conceptualizations by philosophers and legal thinkers as Thoreau, Bedau, Rawls and Dworkin, and briefly analyzing some works by Monteverdi, Mozart and Liszt as examples of civil disobedience.*

Key words: *Artistic values, composition rules, ethical values, law, music theory*

1. Introduction

It is well known that artists and musicians may express their political thought choosing a specific subject for their art works, and innovative artistic forms to express this thought. Nevertheless, considering the connection between musical innovation and civil disobedience could seem quite daring. Therefore, I will first define the term “civil disobedience”, and cite the works of important thinkers and scholars on this theme. The most famous definition of civil disobedience may be the one given by Hugo Bedau: “Anyone commits an act of civil disobedience if and only if he acts illegally, publicly, nonviolently, and conscientiously with the intent to frustrate (one of) the laws, policies, or decisions of his government” (Bedau, 1961, p. 655). Therefore a public, non-violent act not abiding by a recognized rule, and conscientiously done with the intent to frustrate it, can be qualified as an act of civil disobedience.

2. Discussions

In this regards, it is important to distinguish what Hart calls “external obligation”, that is the willingness to conform one’s own conduct to the rules of a specific society fearing punishment, from what he calls “internal obligation”, which is the willingness to follow the rules believing in their intrinsic validity, even if there is no sanction that deviation from those rules can result in (Hart, 1993). A civil disobedient recognizes that the law establishes a number of obligations he has to abide by, but he chooses to comply only with the rules which in turn conform to the superior principles he trusts in. In the opinion of a civil disobedient, if a rule does not respect these fundamental principles and does not fit with his own ethical, religious, or artistic values, it is this rule that should be put aside. In effect, he believes that there are further obligations

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beyond those of the law, which might compel law breaking (Hall, 2007), and is prepared to suffer the disapproval which may greet his act.

It could be said that each civil disobedient endorses Thoreau's sentence "It is not desirable to cultivate a respect for the law, so much as for the right" (Thoreau, 1849). Monteverdi was a musician who decided not to abide by the composition rules in force at his time, believing that it was time to amend them: in his third book of madrigals, published in 1592, Monteverdi introduced a new style of composing, making a widespread use of dissonance, which he further extended in later works. The theorist Giovanni Artusi, who attended a concert in which the new kind of madrigal was performed, fiercely attacked Monteverdi, although without mentioning his name, qualifying his music as imperfect music, having broken the rules of counterpoint (Artusi, 1950).

Monteverdi, *Ah, dolente partita!*, measures 1-11

Indeed, in his *Ah, dolente partita!*, the first of the fourth book of madrigals (1603), Monteverdi lets the Canto and Quinto perform the first three syllables at the unison, and then bifurcates the two voices, introducing a dissonant interval E-F in the Canto part, while the D of the Quinto is retarded by prolonging the previous C. This creates in the first measures some dissonant intervals of seconds among the different voices, and later similarly dissonant intervals of sevenths, which Artusi considered to be "crudities" and undue licenses. The civil disobedient relies therefore on his own conscience, which suggests him to express his deeply-held belief in the injustice of a specific rule, and to testify his commitment to higher obligations overriding this rule. It is noteworthy that a civil disobedient is witting to violate the rule, but considers his act as a morally or artistically justified protest.

In the past, reflections upon civil disobedience received special attention in dramas, such as Sophocles's *Antigone*, and in works by legal, political and religious thinkers belonging to the current called jusnaturalism. The jusnaturalists held that, as all rights were natural, resistance to unjust law was not only justified, but in some cases even a moral duty (Thomas Aquinas, 1969; de Soto, 1553; Suárez, 1944; Vitoria, 1991; Locke, 1988). More recently, also

the jurist and philosopher Ronald Dworkin cast a positive light on civil disobedience, affirming: “In the United States, at least, almost any law which a significant number of people would be tempted to disobey on moral grounds would be doubtful – if not clearly invalid – on constitutional grounds as well” (Dworkin, 184, p. 68). In order to be considered as morally justifiable, civil disobedience must take place publicly or bear the “signature” of the protester, so that the public opinion becomes aware of the protest act, and the authorities can identify who disobeyed the law (Smith, 2000).

The public nature of such an act can result from either its enactment before the physical presence of many witnesses or its publication in the form of pamphlet, article on a newspaper or a magazine, book, or musical composition. In any case, an act of civil disobedience does not pursue the goal of undermining the legal order, triggering a revolution which would destroy the legal and moral bases of the society concerned (Hall, 2007). On the contrary, this act expresses a fundamental acceptance of the legitimacy of the legal order, and a firm belief that the specific society is, to put it in Rawl’s words, “well ordered for the most part (...) [although] some violations of justice nevertheless do occur” (Rawls, 1999, p. 319). It could be supposed that, in writing his quartet K 465, the last of the quartets dedicated to Haydn, Mozart shared a similar view on the composition rules in force at his time, considering them as unduly constraining.



Mozart, Quartet K 465, measures 1-8

In fact, in this work Mozart opens up the Introduction with a Ab major triad, gradually formed in measures 1-2 by the cello, the viola and the second violin, but straight after undermines this quiet atmosphere by means of a cross-relation, putting a dissonant A in the part of the first violin. The whole *Adagio* is characterized by a lack of fixed key, resulting in a feeling of growing tension, which will be resolved only with the beginning of the sunny C major *Allegro*. The subsequent tempi show acceptance and adhesion to the composition rules in force. The work was composed in 1785, but for many years performers and theorists did not accept that the dissonances of the *Adagio* really came from Mozart’s pen. In 1799 the *Allgemeine Musikalische Zeitung* reported that some Italian performers returned their parts of the quartet to the publishing house Artaria, complaining many errors, and that the Hungarian Count Grassalkowich was very angry about the score he deemed full of misprints (AMZ, 1799). Some

years later, in an article on *La revue musicale*, Fétis qualified the Introduction as bizarre and suggested some minor changes in the rhythm of the first measures, in order to soften the undesired dissonances (Fétis, 1829).

Generally speaking, it can be argued that civil disobedience simultaneously provides a means to vent one's own dissent, respecting those relying on a different opinion, and avoiding to enact a destructive behavior (Hall, 2007). In fact, the civil disobedient enacts his protest hoping not so much to do his own interest, for instance becoming the leader of the opposition, but rather to cause a public debate, which in turn will lead to a change of the contested rule. In the musical field, Liszt could be considered a civil disobedient in this sense: in 1881 he had an accident from which he never fully recovered, and in the last years of his life he became increasingly affected by serious health and mood problems, which eventually led to his death (Walker, 1997). It is therefore arguable that he did not support specific musical innovations with the aim to gain international reputation or be appointed to prestigious positions. In the process of his own musical evolution, he drifted more and more away from the musical taste of his time, and showed a kind of foresight, prefiguring important developments which became established many years later. An example could be his *Bagatelle sans tonalité*, written in 1885, in which he experimented the still forbidden atonality.



Liszt, *Bagatelle sans Tonalité*, measures 177-183

It is also noteworthy that Liszt showed in this piece a strong liking for the non-diatonic, octatonic scale, which was later used by Stravinsky, Bartók, and Webern. This scale divides the octave in eight intervals, alternating semitones and tones, and has two modes: in the first mode, the ascending scale begins with a tone interval, whereas in the second mode it begins with a semitone interval. In particular, the *Bagatelle sans tonalité* is based on the octatonic scale on B.



octatonic scale on B, first and second mode

3. Conclusions

Summing up, acts of civil disobedience, either in the legal-political or in the musical field, have important purposes: among them, to cease to abide by a rule which the subject considers as unjust according to morally or artistically superior rules, and to promote a public opinion movement. The latter could have

a decisive importance in the evolution of legal-political thinking or music theory and practice, and foster in this way wide-ranging change and development.

Bibliography

1. AMZ. (1799). Anekdoten. *Allgemeine Musikalische Zeitung*, 11 September 1799.
2. Arthur, J. & Shaw W. H. (Eds.). (1993). *Readings in the Philosophy of Law*. Englewood Cliffs: Prentice-Hall.
3. Artusi, G. (1950). L'Artusi, ovvero Delle imperfezioni della moderna musica. In O. Strunk, *Source Readings in Music History*. New York: W.W. Norton & Co.
4. Bedau, H. (1961). On Civil Disobedience. *The Journal of Philosophy*, 58 (21), 653-661.
5. Dworkin, R. (1984). On Not Prosecuting Civil Disobedience. In J. Arthur & W. H. Shaw (Eds.), (1993), *Readings in the Philosophy of Law*, Englewood Cliffs: Prentice-Hall.
6. Fétis, F. J. (1829). Sur un Passage singulier d'un quatuor de Mozart. *La Revue musicale*, 5, 601-602.
7. Hall, M. R. (2007). Guilty but civilly disobedient: Reconciling Civil Disobedience and the Rule of Law. *Cardozo Law Review*, 28(5), 2083-2132.
8. Hart, H.L.A. (1993). Law as the Union of Primary and Secondary Rules. In J. Arthur & W. H. Shaw (Eds.), *Readings in the Philosophy of Law*, Englewood Cliffs: Prentice-Hall.
9. Locke, J. (1988). *Two Treatises of Government*. Cambridge: Cambridge University Press.
10. Rawls, J. (1999). *A Theory of Justice*. Cambridge: Harvard University Press.
11. Smith, K. H. (2000). Essay-Therapeutic Civil Disobedience: A Preliminary Exploration. *The University of Memphis Law Review*, 31(1), 99-134.
12. Soto, D. (1553). *De Iustitia et Iure*, Salamanca.
13. Strunk, O. (1950). *Source Readings in Music History*. New York: W.W. Norton & Co.
14. Suárez, F. (1944). *Selections from Three Works*. Oxford: Clarendon Press.
15. Thomas, A. (1969). *Treatise on Law* (Summa Theologica, Questions 90–97). Chicago: Stanley Parry, Henry Regnery Company.
16. Thoreau, H. D. (1849). *On Civil Disobedience*. Retrieved from <http://xroads.virginia.edu/~hyper2/thoreau/civil.html>
17. Vitoria F. (1991). *Political Writings*. Cambridge: Cambridge University Press.
18. Walker, A. (1997). *Franz Liszt, The Final Years (1861–1886)*. Ithaca: Cornell University Press.