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Civil Disobedience, Social Justice, Nationalism & Populism, Violent Demonstrations and Race Relations

Civil disobedience

Definition: A deliberate act of law breaking to protest a law or governmental policy that is regarded as immoral

Criminal justice issues: Civil rights and liberties; morality and public order

Significance: Civil disobedience is an important type of political dissent that goes beyond legal means of protest; it was widely employed by participants in the Civil Rights and anti-Vietnam War movements.

Notable discussions of the conflict between the individual and legal authority are found in Plato's *Apology* and *Crito* and Sophocles' *Antigone*. The classic discussion of civil disobedience, however, is in the essay "Civil Disobedience" by Henry David Thoreau, first presented in a public lecture at Concord, Massachusetts, in January of 1848 under the title, "On the Relation of the Individual to the State." Thoreau defended his refusal to pay the Massachusetts poll tax because of his opposition to government policies, specifically the Mexican War and governmental acceptance of slavery. He contended that the claims of individual conscience were superior to those of the state and should be followed, even if the individual must violate the law and be subject to arrest and imprisonment. Thoreau himself had been arrested for his refusal to pay taxes, and he spent one night in the Concord jail until an anonymous friend made the tax payment owed by Thoreau.

Early in the essay, Thoreau posed the question: "Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator?" His famous answer was: "I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume, is to do at any time what I think right." He added the observation that "Law never made men a whit more just; and by means of their respect for it, even the well-disposed are daily made the agents of injustice." For Thoreau, the emphasis is placed on the appeal to individual conscience to justify the breaking of law.

Major Events in the History of Civil Disobedience

1849	Henry David Thoreau publishes "Resistance to Civil Government" (later known as "Civil Disobedience").
1906	Mohandas K. Gandhi urges Indians in South Africa to go to jail rather than accept racist policies, beginning his <i>satyagraha</i> campaign.
1919	Gandhi leads nationwide closing of businesses in India to protest discriminatory legislation.
1920-1922	Gandhi leads boycott of courts and councils in India and develops noncooperation strategies.
1928	Gandhi organizes on behalf of indigo workers in Bihar, India, and initiates fasting as a form of <i>satyagraha</i> .
1932-1933	Gandhi engages in fasts to protest untouchability.
1942	Gandhi arrested for <i>satyagraha</i> activities.
1955	Martin Luther King, Jr., leads boycott of transit company in Montgomery, Alabama.

1956-1960	King leads protest demonstrations throughout the American South.
1963	King leads March on Washington for civil rights.
1965	King leads "Freedom March" from Selma to Montgomery and organizes voter registration drive.
1968	King initiates a "Poor People's Campaign" but is assassinated before it can be carried out.

The best-known contemporary manifesto on civil disobedience is Martin Luther King, Jr.'s "Letter from Birmingham Jail," written in April, 1963. King's letter was a response to a public appeal made by eight white Alabama clergymen who urged King and his associates not to engage in mass protests against segregation in Birmingham. Instead they recommended negotiation and dialogue. King in reply insisted that sit-ins, marches, and other forms of nonviolent direct action were a means of creating a crisis and thereby establishing "such creative tensions that a community that has constantly refused to negotiate is forced to confront the issue."

King also addressed the white ministers' criticism of King's readiness to resort to breaking the law, especially when he had urged officials in the South to obey the 1954 Supreme Court decision outlawing racial segregation in public schools. King wrote: "One may well ask, 'How can you advocate breaking some laws and obeying others?' The answer is to be found in the fact that there are two types of laws. There are *just* laws and there are *unjust* laws. I would agree with St. Augustine that 'An unjust law is no law at all.'" According to King, an unjust law is one that is out of harmony with the moral law. He thus offers what is sometimes called a "higher law" defense of civil disobedience, which differs from the appeal to individual conscience made by Thoreau.

Defining Civil Disobedience

In the writings of both Thoreau and King, one characteristic feature of civil disobedience is the deliberate violation of some established law or legal requirement. Civil disobedience is, after all, disobedience, although, as King and others have noted, the law violated may be only a putatively valid law. Especially in American legal contexts, a law may sometimes be challenged in order to test its constitutionality in court. Some have questioned whether such law-testing should be counted as civil disobedience.

Other definitional concerns have been to distinguish civil disobedience from other forms of law-breaking such as "ordinary" criminal activity and revolutionary action. One contrast is in the type of typical motivation; unlike the ordinary criminal, motivated by self-interest or malice, the civil disobedient is often moved by moral or conscientious motivation, in the sense that a moral belief prompts the illegal act. The revolutionary aims, at least ultimately, at overturning the existing political or legal order, whereas the civil disobedient seeks change within the established system. King captured these points when he affirmed that the civil disobedient must break the law "openly, lovingly..., and with a willingness to accept the penalty" and that one who does this "to arouse the conscience of his community over its injustice, is in reality expressing the very highest respect for law."

There is considerable controversy over how precisely to define civil disobedience. The philosopher John Rawls, in his book *A Theory of Justice* (1971), defined 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 government." Rawls regards civil disobedience as breaking the law from motives of conscience (that is, not from self-interest) and also requires that it be nonviolent. Some critics have questioned whether nonviolence should be a defining feature of civil disobedience, suggesting instead that it is a tactical feature of civilly disobedient protest or a factor to be considered in determining whether such a protest is morally justified. Other critics have objected to requiring as part of the definition that acts of civil disobedience be public, with the likelihood of detection and arrest.

Civil rights sit-in demonstration in Washington, D.C., in 1965. Throughout the Civil Rights movement, nonviolent forms of civil disobedience played a constant role. In sit-in demonstrations, protesters often went limp when they were arrested, forcing the arresting officers to carry them away. (Library of Congress)



Types

Definitions such as that offered by Rawls construe civil disobedience quite narrowly. Thoreau's refusal to pay the poll tax, a pacifist's refusal to submit to military service, and a Jehovah's Witness's refusal to salute the flag are not counted as acts of civil disobedience but instead are classified as cases of "conscientious refusal." Rawls recognizes that his definition is narrower than Thoreau's but favors it because it enables him to call attention to the public and political character of those protests he chooses to label as "civil disobedience," and to relate them to political activity within a constitutional democracy.

Conscientious refusal is not primarily aimed at political change and is not made in terms of principles shared by the community. Rawls also excludes from the category of civil disobedience militant acts of resistance and disruption. An example might be animal rights activists breaking into laboratories in order to rescue the animals from experimentation. It is possible to use a more generic definition of civil disobedience, classifying under it such phenomena as conscientious refusal, militant action, and civil disobedience (in its narrow sense).

A commonly drawn distinction is between direct and indirect acts of civil disobedience. The former are acts in which the law objected to is the one violated. A clear example is the sit-ins at segregated lunch counters by civil rights protesters in the 1960's in order to protest segregation laws. They were violating the laws they were protesting. Such direct action is not always possible, since the law or policy regarded as immoral cannot be violated. Indirect acts of civil disobedience are ones in which a law violated is not the one protested. During the late 1950's,

Bertrand Russell and the Committee of 100, involved in the Campaign for Nuclear Disarmament, engaged in mass demonstrations involving civil disobedience. They were arrested for violating (morally unobjectionable) trespass law during the demonstrations. In a statement on the subject, "Civil Disobedience and the Threat of Nuclear Warfare," Russell observed: "By means of civil disobedience, a certain kind of publicity becomes possible." The aim of the group was to draw attention to the dangers of nuclear weapons policy, not to protest trespass law.

Some forms of indirect civil disobedience are concerned less with publicity than with interfering with what participants in civil disobedience regard as immoral activity. This is sometimes referred to as "direct action," although that expression is used in other ways as well. Activities associated with "Operation Rescue," a campaign of abortion opponents to shut down abortion clinics in the hope of sparing the lives of the unborn who would have been aborted, constitute an example of direct action.

Justification

One of the most vexing questions is whether and when civil disobedience is morally justified. Thoreau seemed to be of the opinion that he and, presumably, others ought to do what they think is right. Many have taken a polar opposite position to the effect that, in a constitutional democracy at least, deliberately breaking the law is never justified. Others have argued that indirect civil disobedience is never justified. Former Supreme Court justice Abe Fortas, in the widely cited 1968 essay entitled "Concerning Dissent and Civil Disobedience," specifically condemned indirect civil disobedience. Fortas, writing at a time of massive protests in connection with racial discrimination, the military draft, and the Vietnam War, concluded,

So long as our governments obey the mandate of the Constitution and issue facilities and protection for the powerful expression of individual and mass dissent, the disobedience of laws which are not themselves the target of the protest—the violation of law merely as a technique of demonstration—constitutes an act of rebellion and not merely dissent.

In the background of this issue are large questions about the nature of law, morality, and democratic government. A number of grounds have been offered for a general obligation to obey the law. In Plato's *Crito*, Socrates cites several reasons why he should not escape from jail but should instead submit to the laws of Athens. Among them are gratitude for the protection the law has afforded him as well as an implicit agreement with the state. Another common appeal has been to considerations of fair-ness—in a democracy, laws and policies are arrived at by procedures in which people can exert their influence.

Finally, others have cited the general value of respect for law and the threat to peaceful and orderly processes of collective decision posed by deliberate law breaking. If individuals are allowed to follow their diverse and sometimes erratic consciences, or if they are permitted to observe "higher laws," which are difficult to verify and to interpret, then the health of the democratic process is seriously jeopardized. On the other hand, many defenders of civil disobedience have held that the obligation to obey the law is not absolute, because even in constitutional democracies the political process may yield morally unacceptable outcomes. Defenders of civil disobedience cite approvingly the nineteenth and twentieth century targets of protest and civil disobedience, including slavery and fugitive slave laws, the denial of suffrage to women, laws supporting segregation and discrimination, the war in Vietnam and the military draft, and nuclear weapons policies.

Few defenders of civil disobedience see its justification as an issue that lends itself to resolution by a simple and easy formula. Complex factors relating to the type of civil disobedience, the motives and aims of the practitioners, and the circumstances in which it must be carried out must be taken into account. Among the questions that must be answered are: How gravely wrong is the law or policy being protested; what are the motives of those engaging in civil disobedience (that is, whether they are predominantly moral or are heavily mixed with less admirable motives such as fame or greed); what is the likelihood of success; what are the dangers of violence, especially injury to persons; and what is the risk of encouraging or spreading lawlessness and disrespect for law? On this latter point, the distinction between direct and indirect civil disobedience comes into play. Furthermore, significance is also given to the character of civil disobedience—that it is nonviolent, that it is done openly and with an acceptance of the penalty, and that it is done as a last resort, after available political and legal resorts have been exhausted. These are perceived as important in demonstrating that civil disobedience can be, in Rawls's words, "a form of political action within the limits of fidelity to the rule of law."

While civil disobedience may be morally justified, courts and prosecutors have seldom shown any special leniency toward those who have broken the law for reasons of conscience. As noted earlier, in the context of American law, significant constitutional issues are implicated. In particular, there is the issue of whether an apparent illegal act is really that, since the law might subsequently be declared unconstitutional by judicial review. There are also First Amendment concerns, especially the extent to which protests are protected speech. For example, the U.S. Supreme Court has held that burning a draft card is not protected speech (*United States v. O'Brien*, 1968) but that burning an American flag as a political protest is protected speech (*Texas v. Johnson*, 1989).

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Further Reading

- 1 Bedau, Hugo. *Civil Disobedience: Theory and Practice*. New York: Pegasus, 1969. One of several excellent collections of essays that include Thoreau's famous essay.
- 2 Greenawalt, Kent. *Conflicts of Law and Morality*. New York: Oxford University Press, 1987.
- 3 Murphy, Jeffrie, ed. *Civil Disobedience and Violence*. Belmont, Calif.: Wadsworth, 1971.
- 4 Singer, Peter. *Democracy and Disobedience*. New York: Oxford University Press, 1974. Scholarly discussion of civil disobedience.
- 5 Thoreau, Henry David. "Walden" and "Civil Disobedience": Complete Texts with Introduction, Historical Contexts, Critical Essays. Edited by Paul Lauter. Boston: Houghton Mifflin, 2000.
- 6 Walzer, Michael. *Obligations: Essays on Disobedience, War and Citizenship*. Cambridge, Mass.: Harvard University Press, 1982. Discussion of the idea that obligation derives from consent and applies it to practical situations, including civil disobedience.

See also Marshals Service, U.S.; Nonviolent resistance; *Texas v. Johnson*; Trespass.

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