

II

WHAT CIVIL DISOBEDIENCE IS NOT

1. NOT EVERY PUBLIC DEMONSTRATION IS CIVIL DISOBEDIENCE

It will be clear from what has gone before (see Chapter I, Section 4) that most protest, however vehement or unusual, is not civil disobedience and would be improperly classified as such. Because civil disobedience necessarily involves some deliberate infraction of the law, all parades, assemblies, marches, picket lines, and other public demonstrations that abide by the law are *not* civil disobedience. Such lawful protests also need to be evaluated; they also may be foolish, wrongheaded, or (even if well motivated) tactically ill-advised. But public demonstrations of protest, as such, are not disobedient and are not our present subject.

2. CONSCIENTIOUS OBJECTION IS NOT CIVIL DISOBEDIENCE

Civil disobedience must be conscientiously performed (see Chapter I, Section 7); that is, it must flow from the principled and deeply held convictions of the protester. But “conscientious objection” is a special expression, generally reserved to

identify a special device of the body politic. This device usually takes the form of a clause in certain legislation that makes it possible for those who find the acts that law requires morally intolerable to comply with the law in some alternative (and to them morally unobjectionable) way. Its most common, but not exclusive, use is in conscription legislation, under which religious pacifists or other categories of conscientious objectors may apply for permission to render an equivalent period of social service to the state in some welfare organization of a noncombatant, and usually non-military character. The conscientious objector—whether or not he is right in his repugnance for all military activity—acts entirely within the provisions of the law. He follows procedures specified by statute and is protected by the law once his status as conscientious objector is administratively established. He must not be viewed as a violator of the law; his conduct certainly is not civil disobedience.

It is also true that some persons deliberately violate the selective service laws out of sincere respect for moral principles. Their acts *are* instances of civil disobedience. Although truly motivated by conscience, such persons are not properly classed as “conscientious objectors” as that expression is most generally used. Conscientious objection, in the normal sense, may be considered a form of protest, but it is never disobedient.

3. CIVIL DISOBEDIENCE IS NOT REVOLUTION

Revolution seeks the overthrow of constituted governmental authority, or at least repudiates that authority in some sphere; civil disobedience does neither. This distinction is of

the most fundamental importance in understanding civil disobedience and in appraising it.

In certain circumstances, of course, even revolution may prove justifiable. Of the countless revolutions that have transpired in human history, many are the culmination of a process in which an exploited mass throws off what they believe to be their oppressive yoke; some are the work of a dedicated minority acting on behalf of the masses. We Americans think our colonial forefathers were justified in rebelling against the British Crown, and so likewise the loyal citizens of many nations believe their nationhood owed to the courage and wisdom of their revolutionary founders. In France, in Mexico, in China, and Ireland, and Cuba, and in a hundred other lands, "the Revolution" is regarded as the event of greatest national honor, and the revolutionaries are gloried and revered. Of course, revolutionaries are traitors. Their treason is against an authority they believe illegitimate or cruel; nevertheless it is high crime, and when the rebel is caught he is likely to be executed. But if the act accuse, the result will excuse—provided, as Machiavelli carefully points out—that the rebel is successful. If he is, he may become the Father of his Country. Revolution is the classic case in which—at least so far as the official history of the nation will record—military success assures moral justification. Might does not make right; but in some circumstances it produces a very persuasive synthetic.

Viewed objectively, of course, some revolutions have been justified and some have not. Oppressive cruelty has not been rare in human history, and the appeal to arms to end it may sometimes have been the only recourse left. Which cases are truly of that sort? The Algerian? The Bolivian? The Indo-

nesian? The American? Reliable answers require the most careful historical study of particular cases, and even then are never beyond doubt. Some revolutions, on the other hand, seek the overthrow of a reasonably stable and generally decent government and advance chiefly the private interests of the revolutionaries. "Governments long established should not be changed," as the American revolutionaries who signed the *Declaration of Independence* wisely agreed, "for light and transient causes." Revolutions are too serious to be undertaken lightly. Almost invariably they spill human blood; sometimes, as in the American and Spanish civil wars, revolutions bequeath a legacy of misery and bitterness that cannot be forgotten for decades, or even a century. He who revolts against the constituted authority, whatever his reasons, necessarily unsettles the life of the entire community, shakes the security and peace of mind of all its members, brings on great loss of property, and renders probable the injury and death of many human beings. Revolution tears up the fabric of a nation's life; justified or not it is an awful thing.

Civil disobedience is another matter entirely. It does not result in death or misery and rarely entails significant loss of property. It does not seek to unseat an existing government and does not destroy the order or stability of national or community life. It is a serious matter, in being a deliberate violation of the law, but it is a shallow (although common) mistake to confuse it with revolution or to view the civil disobedient as a revolutionary.

The essential difference between the two lies in this: the civil disobedient does, while the revolutionary does not, accept the general legitimacy of the established authorities. While the civil disobedient may vigorously condemn some

law or policy those authorities institute, and may even refuse to comply with it, he does not by any means intend to reject the larger system of laws of which that one is a very small part. In accepting that system he accepts even the technical legitimacy of the law he breaks; he recognizes that in one very important sense that law does claim obedience from him, and he knows that his defiance of that claim—while he accepts the general legitimacy of the system—requires some special justification. In short, the civil disobedient acts deliberately within the framework of established political authority; the revolutionary seeks to demolish that framework, or to capture it. The difference is monumental.

Two great men, both alleged practitioners of civil disobedience, may be more fully understood in the light of this distinction. The first, Henry David Thoreau, wrote the most famous of all essays on the subject: “On the Duty of Civil Disobedience” (1849). He also refused to pay taxes lawfully imposed. The object of his attack was twofold: the American prosecution of an unjust war with Mexico and, more especially, the American retention of a system of human slavery. His conduct—deliberate violation of the law and submission to arrest without resistance—is typical of civil disobedients. His essay makes it very clear, however, that what he intended was not merely protest but the complete repudiation of governmental authority. He wished the government to “treat him as a neighbor,” to recognize him as a “higher and independent power.” He said:

How does it become a man to behave toward this American government today? I answer that he cannot without disgrace be associated with it. I cannot for an instant recognize that political organization as my government which is the slaves' government

also. . . . *I quietly declare war with the State, after my fashion, though I will still make what use and get what advantage of her I can, as is usual in such cases. . . . I think that it is not too soon for honest men to rebel and revolutionize.*

Thoreau's act may have been a noble one, but in placing himself above the law and denying its jurisdiction over him, he became a rebel. Although his essay probably introduced the expression into common speech, Thoreau himself did not, in the strict sense, defend civil disobedience.

The second, Mahatma Gandhi, was one of history's most effective leaders, and the greatest exponent of the technique of "passive resistance," *satyagraha*. Gandhi's movement was exceedingly subtle and complex, but one aspect of it needs clarification for our purposes. He sought to develop and strengthen moral resistance to the British rule of India, and to do so wholly without force of arms. His strictly nonviolent methods often incorporated disobedience of some British law or decree, but it was the spiritual resistance, not the disobedience as such, that was the leading character of his acts; prolonged hunger strikes that served as symbolic defiance of British authority were more typical of him than deliberate legal infractions. Most important, the entire movement aimed at, and accomplished, the destruction of British authority in the land. Although the transfer of authority did come, at last, in a peaceful way, that transfer was the culmination of a genuinely revolutionary movement, of which Gandhi was the known and self-conscious leader. Gandhi was a rebel; had tactical considerations permitted, he would surely have been permanently banished or executed. That he was not was due to the special reverence with which he was regarded by the

Indian masses, and his consequent political power. It is therefore quite misleading to treat Gandhi as a civil disobedient exclusively. To do so is to err on both sides, missing first the fundamental nature of his aims and achievements, and supposing second that civil disobedience typically seeks the overthrow of established authority.

Still, the history of Gandhi's movement is evidence that although revolution and civil disobedience are conceptually distinct, it is in some cases difficult to draw a sharp line of distinction between them. He who seeks the destruction of one system of government and its replacement by another is a revolutionary; but in the slow process of building that revolution he may practice and encourage civil disobedience directed against specific acts of oppression. In this, as in every case of moral significance, what a man is *doing* depends importantly not only upon his external deeds but also upon his internal intentions. These intentions are difficult to determine in some cases—as criminal lawyers know well—but in many cases they are reasonably clear. There was never much doubt that Gandhi's intent was revolutionary; he said so quite straightforwardly. In a similar but not so obvious way, some of those who practice civil disobedience in America or Great Britain may have long-range revolutionary hopes. But their hopes are one thing and their concrete acts are another. A just government must be always meticulous in prosecuting at law only established infractions of the law, not fantasy or deluded political ambition.

The great majority of civil disobedients, in any event, leave no doubt about their real intentions. They abjure revolution, and, although sometimes angry at their government, they

make it very clear that their act is one committed *under* the law, even if against it. In one sense revolution is the furthest thing from their minds. Their object—pursued with self-sacrificial vigor—is not to replace the system but to improve it.

4. CIVIL RIOTS ARE NOT CIVIL DISOBEDIENCE

Riots have become a serious threat in large American cities. Periodic onsets of civil chaos have recently become much more frequent and much more destructive than ever before, creating a widely felt sense of national insecurity and disorder. The causes of these social paroxysms lie very deep—in history, in the selves of their participants, and in the structure of the society that gives birth to them. Linking these fundamental causes with the riots themselves are a set of intermediate disorders that are both ugly and humiliating: rotten housing, bad schools, broken families, general filth, and a widespread feeling of powerlessness and alienation. These are running sores on the body politic. Leaders of all parties talk much about the need to heal them, but in fact very little is being accomplished toward that end; the fundamental causes are little understood and rarely dealt with. Minor patches of improvement emerge here and there, with fairer employment practices and more public housing, but the infection still spreads in the Nation, showing new and ever more virulent symptoms.

The riot is one way—violent, destructive, and irrational, but for many concrete and satisfying—of reacting against a set of social injustices for which we seem to have no foreseeable effective remedy and no rational problem-solving system that

promises remedy. It is important to differentiate these unhappy outbreaks of disorder from civil disobedience.

In the first place, civil disobedience, unlike riots, is not violent or destructive (see Chapter I, Section 8), and even the slightest use of physical force directly against persons or property will be avoided wherever possible. Nonviolence is usually a principle of importance to the civil disobedient; rampant violence is anathema to him and is inconsistent with both the strategy and the objective of his protest.

In the second place, civil disobedience, unlike riots, is (whether or not it proves ultimately justified) a rational tactic, intellectually chosen and pursued. It is undertaken thoughtfully and deliberately, with careful limits self-imposed. The civil disobedient breaks the law, but he does not disregard it; his acts are coolly and calmly performed and are never, as civil riots are, sheer bursts of passion or blind ventings of fury. In its tranquility, forethoughtfulness, and ultimate respect for authority, civil disobedience is as much unlike civil rioting as anything can be.

There are, it is true, some features in common. Both violate the law. Both are, in some rough sense, protests, and the object of attack is sometimes the same general sort of injustice—racial discrimination, felt oppression. But the differences are more important than the likenesses. Riots, in the final analysis, are revolutionary in intent. Their participants do not—at least for that time in that place—accept the legitimacy of the authorities or their laws. They have no real plan for the replacement of these authorities by another, and probably no serious intention of forming such a plan. To that degree their revolt is partial and chaotic, and doomed to accomplish little

but destruction. A revolt it is, nevertheless. The law is blatantly defied. Looting, arson, mad rampaging, and even beatings and deadly assaults, follow one another without reason, not in a spirit of civic dedication but in that of fiery anger, and with exultation that the chains of "the system" are, at least for a few wild hours or days, defiantly cast aside, without apparent danger of arrest or punishment.

Rioting is a kind of civic madness. Of course the sickness is no more to be cured with tanks and guns than is the sickness of insanity cured by the use of a strait-jacket. In both cases the patient may be quieted until he regains his senses; but in both cases the repeated and severe application of physical restraint is likely to increase hostility and alienation, providing yet more fuel for the next fire. In neither case does sheer force even approach the roots of the malady.

The riots that have beset American cities, and promise to continue to do so, are, in a word, uprisings. The descriptive term used by the participants themselves, and their leaders, is *rebellion*. That is on the whole an accurate description, and it clearly marks off these disorders from all varieties of civil disobedience.