

CIVIL DISOBEDIENCE: A MORAL CRITIQUE

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CHAPTER FOUR of Vatican II's *Gaudium et spes* speaks to "The Life of the Political Community."¹ Concerning political participation, the Council teaches: "Citizens must cultivate a generous and loyal spirit of patriotism, but without being narrow-minded. This means that they will always direct their attention to the good of the whole human family, united by different ties which bind together races, people, and nations."² This perspective was illustrated by the bishops of the United States in their 1983 pastoral *The Challenge of Peace*. In their final remarks to "Catholics as Citizens,"³ the bishops recall that "All papal teaching on peace has stressed the crucial role of public opinion." They speak of the need for all citizens to be loyal to their country and its ideals, and then state: "The virtue of patriotism means that as citizens we respect and honor our country, but our very love and loyalty make us examine carefully and regularly its role in world affairs, asking that it live up to its full potential as an agent of peace with justice for all people."

These two documents teach that the political community exists for the common good. *Gaudium et spes* also comments (no. 74): "Where public authority oversteps its competence and oppresses the people, these people should nevertheless obey to the extent that the objective common good demands. Still it is lawful for them to defend their own rights and those of their fellow citizens against any abuse of this authority, provided that in so doing they observe the limits imposed by natural law and the gospel." Citizens sustain the moral responsibility of cultivating the good of the whole human family, but likewise bear the right and duty to critique public authority carefully and regularly against abuses that oppress and dehumanize people.

This political and moral perspective also finds articulation in such documentation as the Hague Convention of 1907, the Nuremberg Accord, and the United States Army Manual. Citizens have the duty to obey legitimate authority; but should the authority give an order against international law (e.g., indiscriminate and mass destruction of cities and towns), the citizen has not only the right to disobey but also the duty.

In this essay I shall (1) bring to the surface some significant moments

¹ *The Documents of Vatican II*, ed. Walter M. Abbott (New York: Guild, 1966) 282-89.

² *Gaudium et spes* no. 75.

³ *Origins* 13 (1983) 29-30.

and important facets in the history and theology of civil disobedience, (2) wrestle with its precise nature, and (3) discuss briefly the particular recent disobedience that is tax resistance. At bottom, I am addressing the issue of patriotism, to perceive whether and in what circumstances civil disobedience is a morally responsible activity.⁴

HISTORY, THEOLOGY, AND LAW

Civil disobedience, dissent, and conscientious defiance of law are very old in human thought and action. Scripture and history give numerous illustrations of conscientious violations of particular laws. In the OT, the Book of Esther presents two instances of people who, from faithfulness to God, violated the king's laws; the Jewish people, in fact, were saved by acts of courageous lawbreaking (Esth 3:2, 8; 4:10–11, 16). In the NT, Peter and Paul taught conformity for conscience' sake (e.g., 1 Pet 2:17; Rom 13:1–2); they also believed, however, that "one must obey God rather than man" (Acts 5:29).

Many of the early Christians left illustrations of civil disobedience, committed primarily to preserve personal integrity.⁵ Maximilianus (295 A.D.) is a clear example of civil disobedience in his rejection of military service.⁶ This young man saw no hope of changing the social structure of his time; nonetheless, he refused to serve in the army, since to do so would violate God's commands not to kill or to sacrifice to idols. He was eventually killed by the state for his refusal to kill; but he felt he was preserving the integrity and health of his soul.

More recent examples abound. Many German people in the 1930's violated Hitler's anti-Semitic laws in order to save Jewish people. In the 1850's, numerous American abolitionists broke the Fugitive Slave Law by refusing to hand over escaping slaves to their pursuers. In our own time, December 1, 1955 is pivotal: Mrs. Rosa Parks refused to give up her seat in the back of the bus to a white man and was promptly arrested; out of this incident grew the epochal Montgomery bus boycott. With the lunch counter sit-ins that began in February 1960, civil disobedience became in the United States a deliberate and influential feature of civil-rights activity. 1955 and 1960 mark the origin of the nationwide effort for racial equality, what some writers have termed "the politics of creative disorder." Central to this movement has been the use of civil disobedience

⁴ The theme of responsibility is well handled in Bernard Häring, *Free and Faithful in Christ 1* (New York: Seabury, 1978), and Josef Fuchs, *Personal Responsibility* (Washington, D.C.: Georgetown University, 1983).

⁵ Cf. Mulford Q. Sibley, *The Obligation to Disobey* (New York: Council on Religion and International Affairs, 1970) 88–89.

⁶ The transcript of Maximilianus' trial is reprinted in Adolf von Harnack, *Militia Christi: Die christliche Religion und der Soldatenstand* (Tübingen, 1905) 114–17.

by people not fundamentally pacifist in religious or moral commitment, but who recognize civil disobedience as an effective tactical weapon against a majority who are perceived to be the instruments of social control.

Very recently a growing minority of Christians have come to believe that it is wrong to *pay* for war through the tax system. The most celebrated example is Archbishop Raymond G. Hunthausen of Seattle, who declared in 1981 that it is morally permissible for Christians to withhold the portion of their income tax used for the military. In 1982 he announced that he intended to protest the drift toward war by refusing to pay a portion of his federal income tax: "Form 1040 is the place where the Pentagon enters all of our lives, and asks our unthinking cooperation with the idol of nuclear destruction. I think the teaching of Jesus tells us to render to a nuclear armed Caesar what that Caesar deserves—tax resistance."⁷ Other acts of antiwar civil disobedience have been massive direct actions against military installations, especially those involving the use or construction of nuclear weaponry.

What pattern can one sense in all of these examples? In general, a belief that authority cannot always be blindly obeyed; somewhere a line has to be drawn; and beyond this line lies civil disobedience.

Classical Approach

It is worth viewing this history from the perspective of Thomas Aquinas, for he is truly representative of the classical approach. He did not anticipate the rise of modern democratic institutions, but his approach to civil consent provides an important critique of our present concern about the morality of civil disobedience. In Thomas' later works he argues that social co-operation is necessary to achieve the specifically human goals of intellectual and moral well-being.⁸ At the same time, he spells out in detail in the *Summa theologiae* how royal power must be "tempered":

The best form of government is to be found in a city or kingdom in which one man is placed at the head to rule over all because of the pre-eminence of his virtue, and under him a certain number of men have governing power also on the strength of their virtue; and yet a government of this kind is shared by all, both because all are eligible to govern and because the rulers are chosen by all (1-2, 105, 1).

Virtue is an essential ingredient for a ruler. Thomas carries out this

⁷ *National Catholic Reporter*, Dec. 2, 1982, 43. For a treatment of tax resistance, see Gerard A. Vanderhaar, *Christians and Nonviolence in the Nuclear Age* (Connecticut: Twenty-Third Publications, 1982).

⁸ *Ethics* 1, 1, 4; *Sum. theol.* 2-2, 72, 4.

thinking in the *Commentary* (2 *Sent.* 44, 2, 2), where he teaches that the commands of temporal authority bind in conscience. He adds, however, that this temporal authority may be defective either because the ruler's source of authority is illegitimate or because the ruler exceeds his authority. If the ruler is a usurper, there is no moral obligation to obey him. If he exceeds his authority and commands what is sinful, there is even a moral obligation to disobey him; if he exceeds his authority and commands what is not sinful, subjects are morally free to obey him or not, as they choose.⁹

In the *Summa* Thomas appropriates the injunction of 1 Peter 2:13-14, "Be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme or to the governors as sent by him." The Christian is morally obliged to obey secular rulers. Here too, however, Thomas holds that if the ruler's authority is unjust because he is a usurper, or if he commands what is unjust, subjects are not obliged to obey him, except to avoid scandal or danger (2-2, 104, 6, ad 3). We note here a qualification not found in the *Commentary*: subjects may be morally obliged to obey for extrinsic reasons, i.e., to avoid bad example or the retribution of rulers.

Thomas also teaches in the *Summa* (2-2, 6, 4) that human laws are just and binding in conscience only if they satisfy three conditions: they are directed toward the common good, proceed from within the limits of the lawmaker's constitutional power, and lay burdens on subjects according to an equality of proportion. This last point is important, for Thomas claims that a human law is unjust if it imposes disproportionate burdens on different individuals and classes, even though for the common good.¹⁰

For Aquinas, political authority is derivative from human nature, and so part of God's creative plan and will. This means not only that there is a moral responsibility on the part of a community to order the body politic rightly, but also that legitimate political authority imposes moral obligations on individual citizens to obey just laws under penalty of sin. Conversely, this means that citizens who resist legitimate rulers without sufficient justification commit sin. Still, there are "some cases in which

⁹ Cf. Richard J. Regan, "Aquinas on Political Obedience and Disobedience," *Thought* 56 (1981) 77-88.

¹⁰ Thomas invoked 1 Peter 2:18 to insist that rulers who were legitimate deserved obedience, even if they were overbearing; he taught that the attitude of the martyrs confirmed this position. Thomas further insisted that violence by private citizens for the best of reasons would invite violence by other private citizens for the worst of reasons, ultimately threatening the dissolution of society itself. In his treatise *On Kingship* (1, 6, 49) he did maintain, however, that public authorities may depose or resist a king who abuses his power by ruling tyrannically.

authority is defective in title or exercise and therefore not derived from God, and in such cases there is no obligation of obedience."¹¹

The tradition of Catholic moral theology, therefore, has made allowance for certain types of disobedience, although it has not considered the precise form(s) this disobedience might take. Thomas and later Scholastic thinkers did allow for active resistance—for example, in face of tyrannicide. Developed outside the democratic context, however, this tradition does not deal specifically with resistance as a form of suasion.

The manualist tradition followed this line of thinking. "We must always remember that all legitimate civil authority comes from God, and that civil rulers, however mistaken their views may be on matters of religion, have a right to command obedience to their laws in conscience and that usually their primary intention seems to be to require obedience to their laws in as far as they have the right to demand it. Consequently, civil laws should be regarded as binding in conscience unless the opposite is evident."¹²

The Right to Disobey

What is evident in the tradition is that citizens ("subjects") should first see themselves as members of the *civitas*, the civic community, and thus accept, as a duty flowing from this membership, the obligation to obey its laws, "unless the opposite is evident." In *The Morality of Consent* Alexander Bickel writes: "The First Amendment is no coherent theory that points our way to unambiguous decisions but a series of compromises and accommodations confronting us again and again with hard questions to which there is no certain answer."¹³ Bickel then demonstrates that the First Amendment decisions of the Supreme Court incorporate, in part, a "right to disobey,"¹⁴ a right that has been controlled and stylized: "The amendment makes allowance for domesticated civil disobedience much after the fashion of exemptions for conscientious objection."¹⁵

¹¹ For a treatment of this tradition in Catholic theology, cf. Mark R. MacGuigan, "Civil Disobedience and Natural Law," *Catholic Lawyer* 11 (1965) 118–29, and Timothy McDermott, "Must We Always Obey the Laws?" *New Blackfriars* 56 (1965) 418–22.

¹² Francis J. Connell, *Outlines of Moral Theology* (Milwaukee: Bruce, 1953) 28. Cf. also Henry Davis, *Moral and Pastoral Theology* 1 (London: Sheed and Ward, 1946) 164, and Edwin F. Healy, *Moral Guidance* (Chicago: Loyola University, 1942 and 1960) 23–24.

¹³ Alexander M. Bickel, *The Morality of Consent* (New Haven: Yale University, 1975) 57. Bickel died in 1974, leaving a legacy of writings in the area of law and obedience. He has been one of the most respected writers in this field; I often follow his perspective in this paper.

¹⁴ *Ibid.* Bickel's interpretation is held by the vast majority of commentators on the First Amendment.

¹⁵ *Ibid.*; cf. esp. all of chap. 3.

This First Amendment "right" is often appealed to by disobedience demonstrators, claiming that because their protest is clearly a form of political speech, it is protected by the Constitution of the United States. Speech, after all, is not restricted to verbal activity. It can take many forms, oral, written, or other; its essential element is the communication of an idea. A classical example is picketing in a labor dispute, long held to be a violation of state law, but in 1940 declared worthy of protection by the Supreme Court in *Thornhill v. Alabama*.¹⁶

It is crucial to add here, however, that it does not follow logically that an act becomes principally and essentially an act of speech merely because a person *wishes* that it be so regarded. The deliberate violation of a trespass statute that is not being deviously employed, whatever the motivation of the violators, cannot reasonably be treated as one of the forms of speech deserving constitutional protection. In other words, an action does not become an act of speech protected by the First Amendment simply because the actor claims it is such a "speech." As Carl Cohen points out, "Such generalized protection was not the original intention, nor is it the proper function, of the First Amendment of the American Constitution."¹⁷

This dilemma is not easy to address or solve. Helpful in the discussion is a major point in the writings of Mahatma Gandhi: "I am but a seeker after Truth. I claim to have found a way to it. I claim to be making a ceaseless effort to find it. But I admit that I have not yet found it. To find Truth completely is to realize oneself and one's destiny, that is, to become perfect. I am painfully conscious of my imperfections."¹⁸ The admonition of Cromwell to Parliament, "I beg you to remember that you may be wrong,"¹⁹ applies to every person who considers disobedient activity.

Citizens are under a duty, then, to assess potential disobedient activity carefully in terms of its relative as well as its absolute importance. Bickel's words are informative: "Anybody who wishes responsive government, a society in which law formation is a continual round, should never, simply for the sake of convenience, cross the street against a no-walk sign. Freedom to disobey when it matters can exist only if at all other times perfect obedience is yielded."²⁰

¹⁶ Cf. Carl Cohen, "Law, Speech and Disobedience" in *Civil Disobedience*, ed. Hugo A. Bedau (Indianapolis: Pegasus, 1969) 166-67.

¹⁷ Carl Cohen, *Civil Disobedience* (New York: Columbia University, 1971) 189. Cohen was associate professor of philosophy at the University of Michigan and has been considered one of the most articulate and thoughtful interpreters of the meaning and role of civil disobedience.

¹⁸ Cited in Joan V. Bondurant, *Conquest of Violence* (Berkeley: University of California, 1965) 17.

¹⁹ Cited in Sibley, *Obligation* 38.

²⁰ Bickel, *Morality* 119.

It seems clear that it is the individual alone who is ultimately responsible for deciding whether or not to obey the law. Individuals must go through the hard process of deciding where their obligations begin and end. In the final analysis, only the individual can ultimately interpret whatever general principles he or she has adopted for the guidance of conscience. The "burden" of disobedience is, therefore, always on the person who claims that a violation of law is justifiable and responsible.

Conscience

Obviously, then, civil disobedience and an informed conscience are essential correlates. The supremacy of conscience is highlighted by Vatican II:

In the depth of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged.²¹

This "voice of conscience" is a moral power respected in constitutional law:

Morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep is its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process.²²

Since society is pluralistic, and since the state cannot judge the tenets that support conscience claims, the state has the duty to respect any reasonable claim of conscience. As one Catholic moralist declares, "If the conscience claim is genuine, there is no question of the subjective moral integrity of such violation [of law]."²³

While it is true that belief about the moral integrity of one's act cannot be the only court before which that act may be judged, reflective conscience is a very important court. Doing what one honestly thinks one is obligated to do is not the only sufficient condition of a morally honorable act, but it is a necessary condition of such moral integrity. "One who

²¹ *Gaudium et spes* no. 16.

²² Chief Justice Harlan Stone, "The Conscientious Objector," *Columbia University Quarterly* 253, 269 (1919), cited in *United States v. Seeger* (1965).

²³ Richard A. McCormick, *Notes on Moral Theology, 1965 through 1980* (Washington, D.C.: University Press of America, 1981) 97.

does what he really believes he ought not do (even if his act proves objectively right) is untrue to himself, morally insincere, a hypocrite. Conscientiousness, therefore, is a feature of high moral value."²⁴

A classical example of the supremacy of individual conscience and its relation to civil obedience is found in Henry David Thoreau's refusal to pay his Massachusetts poll tax as a protest against slavery. He defended his action in a lecture published first under the title "Resistance to Civil Government," now known as his essay "Civil Disobedience."²⁵

For Thoreau, to be a human being involves the free exercise of "the judgment or moral sense." He asserted that "the only obligation which I have a right to assume, is to do at any time what I think right." He taught that no one should ever resign one's conscience to the legislator. In his view, for example, to pay taxes and thus to support a government that was condoning slavery was to be an agent of injustice: "... Then, I say, break the law . . ." Key to Thoreau's thinking here is his unwillingness to acquiesce in what he sensed to be an injustice toward others. In the development of one's conscience, both social and individual concerns must be weighed. A well-informed conscience is the result of multiple factors: commitment to one's faith, a listening to conceptions of right and wrong framed in history and law, a reasonable analysis of the situation, etc. In deciding a case of conscience, I need to weigh my personal experience with that of others, balance the opinions of others (framed perhaps in laws and customs) against my own: "I owe [others] the tribute of seriously examining their viewpoints as they bear on the conscience I am endeavoring to shape. I should have, as Jefferson put it in the Declaration of Independence, a 'decent respect for the opinion of mankind.'"²⁶

CIVIL DISOBEDIENCE

We are now in a better situation to address the precise nature of civil disobedience. It is a concept and activity that defies absolute and clear definition. The complexity of the issue can be glimpsed in varied attempts to grapple with a definition:

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."²⁷

. . . civil disobedience may be defined as an organized refusal to obey particular

²⁴ Cohen, *Civil Disobedience* 21-22.

²⁵ In Bedau, *Civil Disobedience* 27-48. Nowhere in the original essay does Thoreau use the term "civil disobedience," although he does refer to it in other writings.

²⁶ Sibley, *Obligation* 51.

²⁷ Bedau, "On Civil Disobedience," *Journal of Philosophy* 58 (1961) 661.

laws in order to secure or prevent change by exerting direct pressure on an offending government.²⁸

By an act of civil disobedience I shall mean an act of deliberate and open violation of law with the intent, within the framework of the prevailing form of government, to protest a wrong or to accomplish some betterment in the society.²⁹

These "definitions" exemplify the fact that there is no single manner of describing precisely the nature of civil disobedience. Authors seem agreed that it is an act of disobeying formally binding general law on grounds of moral or political principle, without challenging the validity of law. Civil disobedience can also include an incidental disobedience of general law, which itself is not directly challenged or disapproved of, but is disobeyed in the course of agitating for change in public policy, actions, or social conditions. In either case the legal order makes no allowance for the disobedience.

Civil disobedience is a deliberate attempt to coerce the legal order; it is not merely dissent, where a person differs with the legal order in speech, in the press, by petition, or in an assembly. It involves a deliberate and punishable breach of a legal duty. There cannot be civil disobedience, then, unless there is a conscious choice to violate not merely a government policy but a technically valid law or order: "Only such laws and orders as are . . . held valid under our Constitution are subject to genuine civil disobedience."³⁰

One further distinction: direct civil disobedience is an act in which the law deliberately broken *is itself* the object of protest; indirect civil disobedience includes all the rest, in which the law broken is *other than* the object of protest. In direct disobedience, then, the law itself is regarded as unjust, or is closely connected with a particular injustice. In indirect disobedience the law itself may not be regarded as unjust, but the disobedient may feel that it must be violated to protest some injustice—for example, when traffic to the New York World's Fair was impeded to dramatize and protest injustice in racial discrimination and segregation.³¹ But whether the disobedience be direct or indirect, in some fashion the legal order is being violated. Therefore, parades, assemblies, marches,

²⁸ Anthony de Crespigny, "The Nature and Methods of Non-Violent Coercion," *Political Studies* 12 (1964) 263.

²⁹ Morris Keeton, "The Morality of Civil Disobedience," *Texas Law Review* 43 (1965) 508.

³⁰ Charles E. Wyzanski, Jr., "On Civil Disobedience and Draft Resistance," in Bedau, *Civil Disobedience* 195.

³¹ In *Concerning Dissent and Civil Disobedience* (New York: World, 1968) 124, e.g., former Justice Abe Fortas argued that civil disobedience is a "technique of demonstration" and "constitutes an act of rebellion, not merely dissent."

picket lines, and other public demonstrations that abide by the law are *not* civil disobedience.

While civil disobedients do break the law, they do not disregard law. Their acts are deliberately 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."³²

Another factor that must be considered is the element of protest. While protest is not an easy notion to grasp, it is clear that an act of protest is not an act undertaken for the sake of sheerly private gain. That the civil disobedient pursues the activity with the virtual certainty of some form of penalty provides some criterion that the act is a true form of protest. Every act of genuine civil disobedience sustains some cause, then, some larger goal or principle for whose sake the disobedient consciously breaks the law as a form of protest: "Deliberately unlawful protest is a rough definition of civil disobedience."³³ Interwoven in this element of protest is the disobedient's willingness to accept the penalty so as to help preserve the principle of lawfulness: "We disobey because we have concluded that disobedience will enhance righteousness; but a part of the righteousness we endeavor to preserve is respect for law."³⁴

St. Thomas, we saw, feared that disobedience to the law could lead to scandal and disturbance. Against this it is argued that civil disobedience does not lead to such possibilities since it always involves the highest respect for law: "By openly and peacefully disobeying an unjust law and asking for the penalty, we are saying that we so respect the law that when we think it is so unjust that in conscience we cannot obey, then we belong in jail until that law is changed."³⁵ Several authors insist that it is precisely the civil disobedients' willingness to accept the penalty that

³² Cohen, *Civil Disobedience* 49. Participants in riots do not, at least for that time in that place, accept the legitimacy of the authorities or of law; the law is blatantly defied. There is really no civil dedication but only anger expressed in such acts as looting, arson, rampaging, and assaults. Cohen names rioting "civic madness."

³³ *Ibid.* 16.

³⁴ Sibley, *Obligation* 98. While the disobedient's willingness to accept the penalty is basic to the definition of civil disobedience, this willingness might not always be present, either immediately or in the long run, by individual persons: e.g., Daniel Berrigan's months-long evasion of capture by the F.B.I.

³⁵ Harris Wofford, Jr., "Non-Violence and the Law: The Law Needs Help," in Bedau, *Civil Disobedience* 66. The judgments of Nuremberg clearly support the essential principle that individuals have duties that transcend the national obligation of obedience. A close examination of these judgments demonstrates, however, that they do not correctly apply to cases of ordinary civil disobedience for a number of reasons: e.g., the protesters are not confronted with a moral choice between obedience and disobedience.

constitutes the force of their advocacy and encourages other people to think about the wrong that is being protested.³⁶

One element quite clear in the discussion is that civil disobedience is always "civil": citizens who are disobedient are fulfilling their responsibilities to society; the disobedient is not rejecting civil obligations. The honorable civil disobedient thus sustains a special obligation to pursue the protest in a way that does not damage property, and certainly in a way that inflicts no direct or serious harm on any person.

While this concept of "civil" is inviting and ironic, it is naive to think that this nonviolent civil protest is not also a type of "force." One author states the case dramatically: "Even though your action is non-violent, its first consequence must be to place you and your opponents in a state of war. For your opponents have only the same sort of choice that any army has: that of allowing you to continue occupying the heights you have moved onto, or of applying force—dynamic, active, violent force—to throw you back off them."³⁷ But since the civil disobedient peacefully accepts the punishment for the act, it is probably better to understand the object of the act as not force but pressure, a form of persuasion put on the general public to correct an abuse.

What, then, is civil disobedience? A public, nonviolent, and conscientious act contrary to law usually done with the intent to bring about a change in the policies or laws of the government (protest). As a public act, then, the dissenter believes that his or her act is addressing the sense of justice of the majority in order to urge reconsideration of the measures protested and to warn, in the sincere opinion of the dissenters, that the conditions of social co-operation are not being honored.

Another element of importance for our definition is a factor already implied: disobedience must always be considered a *final* resort—after petitions, boycotts, legislative activity, self-purification. An eminent example is Gandhi, who believed that civil disobedience properly carried out could be one of the most moral and efficacious of political methods; but he understood it as a last resort, fearing always that mass civil disobedience leads to violence.³⁸ In reality, it was not so much massive disobedience that Gandhi feared as the possibility of violence as a form of disobedience.

Civil disobedience "properly carried out" supposes, then, that the

³⁶ Cf. William T. Swigert, "Moral Preemption: Claims of 'Right' under the Positive Law," *Hastings Law Journal* 17 (1966) 453-71.

³⁷ Harry Prosch, "Limits to the Moral Claim in Civil Disobedience," *Ethics* 75 (1965) 103. Cf. also Joseph J. Farraher, "Moral Preemption: The Natural Law and Conscience-Based Claims in Relation to Legitimate State Expectations," *Hastings Law Journal* 17 (1966) 439-51.

³⁸ See Krishnalal Shrinidharani, *War without Violence* (New York: Pegasus, 1939).

normal political appeals have been made in good faith and that the standard means of redress have been tried. Obviously, therefore, civil disobedience must always be limited to substantial and clear violations of justice. Archbishop Hunthausen put it well upon deciding to withhold a portion of his tax payment: "I say with deep sorrow that our nuclear war preparations are the global crucifixion of Jesus Our nuclear weapons are the final crucifixion of Jesus, in the extermination of the human family with whom he is one I believe that the present issue is as serious as any the world has faced. The very existence of humanity is at stake."³⁹

Resort to civil disobedience is, then, a final decision based upon (a) a moral decision or judgment that a law or activity is unjust, (b) after normal channels of addressing the injustice have proven fruitless, and (c) the moral objections to this injustice of the law outweigh the moral reasons in favor of obedience. Dietrich Bonhoeffer stated the case clearly out of his agonizing decision to participate in the plot to assassinate Hitler:

In the course of historical life there comes a point where the exact observance of the formal law of the state, of a commercial undertaking, of a family, or for that matter of a scientific discovery, suddenly finds itself in violent conflict with the ineluctable necessities of the lives of men; at this point responsible and pertinent action leaves behind it the domain of principle and convention, the domain of the normal and regular, and is confronted by the extraordinary situation of ultimate necessities, a situation which no law can control.⁴⁰

Disobedient protesters must be able to present a rational defense of their deliberate violation of law, articulate the reasons compelling the violation. This may mean that they can only fall back on the moral intuitions which fund the inspiration to take the illegal stance. Civil disobedience is rooted in moral reason and is never the result of whim or caprice.

One of the foremost means of the civil disobedient is pressure, i.e., to prod the legislature, or the executive, or the corporate managers, or whoever has the power to make the desired change, into making it: "The disobedients aim to force those in positions of influence and authority into action by public embarrassment."⁴¹ The nature of this pressure is not physical but ethical: "The demonstrators reason that, to retain the

³⁹ *National Catholic Reporter*, Dec. 2, 1982, 42. Cf. also "Bishop Urges Protest of Armaments," *Origins* 11 (1981) 110-12, and "Seattle Bishop Tells of Plans to Resist Taxes," *National Catholic Reporter*, *ibid.* 1 and 27.

⁴⁰ Cited in J. G. Davies, *Christians, Politics and Violent Revolution* (New York: Orbis, 1976) 87.

⁴¹ Cohen, *Civil Disobedience* 61.

political support of their constituents, the authorities will react to the exposure of injustice in the existing scheme."⁴² Pressure thus becomes interconnected with confrontation: i.e., since reasoned pleas, appeals, and petitions have proved hopeless, authority must be stunned, provoked, and awakened.

By pressure and confrontation the protesters hope also to accomplish an educative purpose. In not paying his taxes, Thoreau declared, "I am doing my part to educate my fellow countrymen." One aim of current trespassing of atomic test sites is to educate the public on the possible or inevitable consequences of continued atmospheric testing or nuclear war. Civil disobedience is thus a form of advocacy, a technique of disobedience-as-suasion.⁴³ To this point, Howard Zinn describes civil disobedience as the "deliberate violation of law for social purpose."⁴⁴

Civil disobedience can never be equated with social passivity, a withdrawal from the world. While taking an active role in the social sphere, however, the civil disobedient never advocates the type of direct violence that would result in destructive and physical force. Violence supposes the use of force in ways that are directly and wilfully injurious to persons or property. But, as Cohen points out, violence-advocacy is not the aim of civil disobedience: "I am not violent when I refuse to leave some place in which I am entitled to remain, or when I peaceably but deliberately refuse to obey some other governmental order. If I refuse to report for induction or to pay my taxes while my government wages an unjust war I am not violent."⁴⁵

What of Gandhi's fear that violence can occur all too easily? Civil disobedience sometimes verges on violence: e.g., the protester's body as a disruptive object. It is for this reason that civil disobedients are sometimes referred to as extremists. In his famous "Letter from Birmingham City Jail,"⁴⁶ Martin Luther King Jr. disavowed this objection: "Was not Jesus an extremist in love. . . trust and goodness, and thereby rose above his environment?"

It is for such reasons as the verge-of-violence that many authors speak out strongly against any type of civil disobedience. In his reply to King, Louis Waldman claimed that any violation of law is an open invitation to others to join in such violations.⁴⁷ Explicit in criticism of actual cases of civil disobedience is this clear challenge: "But if everyone did as you do, the consequences would be disastrous."

⁴² Ibid. 63.

⁴³ This is the position taken in Richard Wasserstrom's brochure *Civil Disobedience* (Santa Barbara: Center for the Study of Democratic Institutions, 1966).

⁴⁴ Howard Zinn, *Disobedience and Democracy* (New York: Random House, 1968) 119.

⁴⁵ Cohen, *Civil Disobedience* 23.

⁴⁶ In Bedau, *Civil Disobedience* 72-89.

⁴⁷ "Civil Rights-Yes; Civil Disobedience-No," in Bedau, *ibid.* 106-15.

To combat the potential negative effects of civil disobedience, then, it is essential that disobedients ask themselves, before taking any action, what might be the short-term and long-term consequences of their activity. How serious will be the inconvenience caused other citizens? How great is the expense incurred by the community? Is there any threat to persons or property? Is a bad example being set, respect for law decreased, democracy subverted?

Cohen analyzes seven arguments against civil disobedience⁴⁸ (I merely present their basic formulations). (1) Civil disobedience implies contempt for the law, as the disobedients deliberately flout the law. (2) Civil disobedience supposes the primacy of selfish interests, assuming the superiority of individual to social concerns. (3) Civil disobedients take the law into their own hands, deciding which laws to obey and which to disobey. (4) Civil disobedience undermines respect for law and thus creates social chaos. (5) Civil disobedience is self-defeating, because, even when its motives are worthy, it creates in the minds of both legislators and the general public a widespread feeling of resentment and anger, thus producing an adverse reaction to the cause advocated. (6) Lawlessness cannot be justified when lawful channels remain open, which is always the case under a constitutional government. (7) Civil disobedience cannot be justified, because it subverts democratic process by a deep form of procedural revolution.

In light of these negative arguments, it is important to set forth standards and criteria necessary to justify civil disobedience: (1) Civil disobedience is not so much a right as an individual ought or obligation. "The 'burden' of disobedience is always on the person who claims that his or her violation of law is justifiable and responsible." (2) Standard means of redress must have been tried. (3) The object(s) of protest must be substantial and clear, and the protester must be willing to affirm that everyone else subjected to the avowed injustice has this similar freedom of protest. (4) The civil disobedience must be rational and reasonably designed in advance to protect against all possible injury to property and to persons; short-range and long-range effects must have been carefully weighed. (5) The protesters must be willing to accept the penalties provided by law for the disobedience. (6) Respect for law and for the democratic process of government must not be undermined.

These standards and criteria raise a final essential point. We have noted that the disobedient works out of a moral exigency that discerns that some impediment is present that is obstructing the fulness of the kingdom of God. To embark on the path of civil disobedience, then, one's personal strength and conviction must be strong. Gandhi, Martin Luther

⁴⁸ Cohen, *Civil Disobedience* 129-72.

King Jr., and Dorothy Day are all people whose inner life was nourished in a profound faith and ideals of wholesomeness and life.

Civil disobedience must rest on a sound "spirituality," one that develops empathy for the poor, the oppressed, those who suffer violence anywhere, one that involves a continual reflection on one's own life-style and motivations.

TAX RESISTANCE

Civil disobedience is an act whereby a person conscientiously refuses to obey an unjust law or violates a law in order to protest some injustice. Tax resistance in the U.S. is a recent example of the latter. It is an extraordinarily difficult option, because in most cases the federal government can simply attach the bank account of the protester or proceed to obtain its revenues from the resister's employer. As Bedau writes, "The government in the end always gets its money, plus a surcharge of 6% per annum."⁴⁹

Most forms of war tax resistance are illegal under U.S. law. Nonpayment of taxes is clearly an act of civil disobedience, punishable by law. Gandhi considered tax resistance so grave that he warned: "Civil non-payment of taxes is indeed the last stage in non-cooperation. We must not resort to it till we have tried the other forms of civil disobedience."⁵⁰

There are several reasons against tax resistance.⁵¹ (1) Moral ambiguity: it is not clear what precise percentage of money is used by the government for the protested target: e.g., military purposes. (2) Compromise is unavoidable: we live in a society that is inescapably a mixture of good and evil; thus, tax refusers might put their savings in banks that turn around and invest in defense industries. (3) A dangerous precedent: Do tax resisters want *everyone* to refuse to pay taxes each time there is disagreement with some government policy? (4) Scripture and the Catholic moral tradition lend support for paying taxes: Mk 12:17; Mt 17:24-25; Rom 13:7. (5) Pragmatically, the government obtains the funds anyway, with interest and added penalties, where refusers may end up paying more to the government than they would if they had paid the tax in the first place. (6) Tax resistance lacks effectiveness: critics will accuse tax resisters of renegeing on the fundamental obligation of citizenship, thus shifting the burden to others.

Several reasons are supportive of tax resistance.⁵² (1) There is a moral

⁴⁹ Bedau, *Civil Disobedience* 119-20.

⁵⁰ Cited *ibid.* 22.

⁵¹ These reasons are fully developed in Ronald J. Sider and Richard K. Taylor, *Nuclear Holocaust and Christian Hope* (New York: Paulist, 1982) 174-77.

⁵² *Ibid.* 177-81.

connection between taxes and war: in the past, government's main requirement for making war was soldiers, but in today's technological world the primary tool of war is money; to finance and pay for an activity is to participate in it. (2) Compromise is an unavoidable part of life, but the tax resister refuses to participate in the perceived evil. (3) Tax resisters respect the law; they act openly and are willing to take the penalty; they demonstrate that they believe in America's system of laws, even though they refuse to support a particular one; in addition, many tax resisters advocate legislation such as the World Peace Tax Fund Bill. (4) In Scripture, the priority is to "render to God the things that are God's" (Mk 12:17); in our own time this means to contribute to peace rather than, e.g., nuclear holocaust. (5) Tax resistance does make people think, and this is a value that is educative.

On January 28, 1982, Archbishop Raymond G. Hunthausen announced his decision to withhold one half of his federal income tax as a protest against the involvement of the U.S. in the nuclear arms race. We have here an example of civil disobedience that relies on at least the five elements mentioned above. He further indicated that this sum of money was to be deposited in a fund and used for charitable, peaceful purposes. He is the first U.S. bishop to express his opposition to government military policy in this fashion.⁵³

A study of the statements published by Hunthausen reveals a person completely dedicated to the cause of world peace and to the eventual elimination of nuclear arms. This dedication is total enough to permit him to participate in an act of civil disobedience. His decision demonstrates clearly the general factors of civil disobedience with which we have been concerned. He explains his actions by pointing to the need for all persons to identify and to name the evil in their society (the educative standard) and then to speak out against it (the protest). Nuclear weapons, with their potential for exterminating the entire human family, represent the "final crucifixion of Jesus" in our world. They can lead to "incalculable harm," not only because they divert funds and resources from the poor and needy, but also because they lead inevitably toward nuclear destruction. He then points out that everyone who pays income taxes is participating in this crucifixion.

This decision is not meant to divide the church community, Hunthausen stresses. There are different ways of dealing with the problem of the arms race; his wish is to have this decision stand both as effective protest and as inspirational model (disobedience-as-persuasion).

⁵³ Hunthausen outlined this plan in a pastoral letter published in the diocesan newspaper, *Catholic Northwest Progress*. The day following the release of this letter, January 29, he explained his position more fully in a speech at the University of Notre Dame.

CONCLUSION

Civil disobedience is a matter of rejecting a moral demand of society, while at the same time admitting the legal right of society to govern. True civil disobedience, then, is not the same as some violation made under a genuine legal claim. In 1964, accepting the Nobel Peace Prize in Oslo, Martin Luther King Jr. said:

The nonviolent resisters can summarize their message in the following simple terms: We will take direct action against injustice despite the failure of governmental and other official agencies to act first. 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.⁵⁴

This statement describes well the many ingredients this paper has discussed as essential components for civil disobedience: direct action against a perceived injustice, done nonviolently and openly, performed in order to persuade, as a form of protest after words have failed, with a willingness to accept the sufferings and penalty of the activity.

Is civil disobedience morally responsible? We have noted consistently throughout this paper that true civil disobedience first of all respects the conscience of the law; at the same time, the protester perceives some injustice that normal channels of correction are not facing. The civil disobedient can act in a moral, responsible manner to the extent that he or she performs the chosen activity in a spirit of *hope* that there will be a progressively better future brought about through the nonviolent protest. Civil disobedience is morally responsible, then, to the extent that it realizes that the political life of humanity is always the realm of patient endurance until the end of time when God and not we ourselves will bring about the peace and unity of the kingdom, or the City of God. Civil disobedience is never, therefore, violent revolution.

The demands of civil order are important, but they must be tempered with the elements of justice, love, and hope in humanity's life in the political arena. Order remains a basic factor in the ethical evaluation of the state and its functions. At the same time, the state and the existing order partake of the sin and injustice they try to restrain. Justice, love, and hope attempt to transform the existing order. The realm of hope and the realm of civil order cannot be separated. We are called to responsible obedience that may at times be also a call to responsible disobedience, but always for the purpose of transforming the existing order with justice, love, and hope.

⁵⁴ *New York Times*, Dec. 12, 1964.