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RADICAL RESISTERS

David B. Lyons

Editor's note: This article is from an address to the Pacific division of the American Philosophical Association on April 2.

In the early 1840s Henry David Thoreau stopped paying the Massachusetts poll tax. When pressed for payment in 1846, he invited arrest and went to jail.¹ He had wanted to protest his state's complicity in the federal government's support of chattel slavery and its policies toward Native Americans. By the time he delivered his lecture on civil disobedience, in 1848, events had produced another cause. Thoreau also condemned this country's expansionist war against Mexico.

Thoreau's writing influenced Mohandas Gandhi, who in turn inspired Martin Luther King Jr. Those three are widely acknowledged as paradigm practitioners of civil disobedience. That fact creates a problem for the theory of civil disobedience. The prevailing theory holds that resistance qualifies as civil disobedience only if it is public nonviolent protest performed conscientiously by someone who accepts the legitimacy of the existing political system and is willing to suffer the legal consequences.² Each provision of the theory can reasonably be challenged. I shall focus on the requirement that one who engages in civil disobedience accepts the political system's legitimacy. That issue has been neglected, and it seems politically important.

What is it to accept the legitimacy of one's political system? The terms suggest that the resister respects the system as a whole and thus acknowledges a duty to obey all its laws, including those the resister condemns as unjust.³ The resister adopts unlawful measures only because the system contains a grave defect that resists repair by lawful means. Because of the duty to obey, the resister faces a moral dilemma when contemplating unlawful protest. The resister's willing acceptance of the legal sanctions expresses respect for the system and acknowledges the duty to

obey. In short, the civilly disobedient resister is a reformer, not a radical or a revolutionary.

That picture fails to fit Thoreau, Gandhi, and King. None expressed the required respect for law. None indicated acceptance of a general duty to obey the law. Each had radical aims.

Thoreau embraced philosophical anarchism. He regarded laws as tolerable only if they did not require one to become an "agent of injustice."⁴ Even before the Fugitive Slave Act of 1850 (which required all to aid slave catchers), Thoreau saw the government's promotion of slavery as violating that limit.

We might think of discounting Thoreau's political statements because he calls for "revolution"⁵ but ignores the need for organization to achieve change,⁶ and he suggests that one need only "wash one's hands" of the government's crimes by refusing to pay taxes.⁷ On closer inspection one finds, however, that Thoreau's resistance was not limited to tax refusal. He helped many escaped slaves make their way to freedom. Appalled by his state's enforcement of the Fugitive Slave Act, he applauded efforts to free by force those taken as fugitives. He supported John Brown's violent antislavery campaign in Kansas, and—while other abolitionists tried to regain their composure after the raid on Harper's Ferry—he spoke out strongly in praise of Brown.⁸

The resister adopts unlawful measures only because the system contains a grave defect that resists repair by lawful means.

Opposite: Henry David Thoreau, 1861; right: Thoreau's possessions from his cabin at Walden Pond



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Aquinas's view
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So Thoreau's radical perspective cannot simply be discounted. But Thoreau was an atypical resister: he was not a target of the unjust laws and policies he protested, and he resisted on his own. Gandhi and King are more typical in both respects.

Gandhi is a crystal-clear counterexample to the prevailing theory. He rejected the existing political system, including British sovereignty over India, which is why he led campaigns for India's independence. The Indian National Congress became a major force as a result of those campaigns, but he participated in Congress only in connection with them. He had little regard for political parties and parliaments. He believed in dealing with social injustice by means of what he called *satyagraha*—confronting issues first through discussion and then nonviolently defying custom or law as necessary.

Gandhi's aims were more radical than those of the colonial rebels of 1776: not only full political independence from European colonizers⁹ but also economic self-sufficiency, political decentralization to the village level, drastic reform of the caste system, and the development of labor-intensive industry to provide employment and dignity for ordinary Indians.

King's resistance may seem to accord better with prevailing theory. The campaigns that he led or supported had reformist objectives, such as easing discrimination in public facilities. He could wholeheartedly appeal to constitutional principles, democratic ideals, and egalitarian values, which were officially endorsed at the time. He claimed that his resistance expressed "the highest respect for law."¹⁰

But King's talk of respect for law was misleading. He embraced Aquinas's view that just laws are morally binding but unjust laws merely coerce. He acknowledged that there can be good grounds for respecting a system with flaws but reasoned that a system disfranchising some of its citizens lacks a moral basis for asking them to respect the laws that discriminate against them.

The Montgomery bus boycott presented modest demands: courtesy by drivers toward African American passengers, the hiring of African American drivers, and a less discriminatory manner of applying the Jim Crow law.¹¹ It was prudent to adopt limited objectives, which might be achieved at a reasonable cost. But everyone saw the desegregation of Montgomery buses as merely a step toward the goal of equal rights for African Americans.

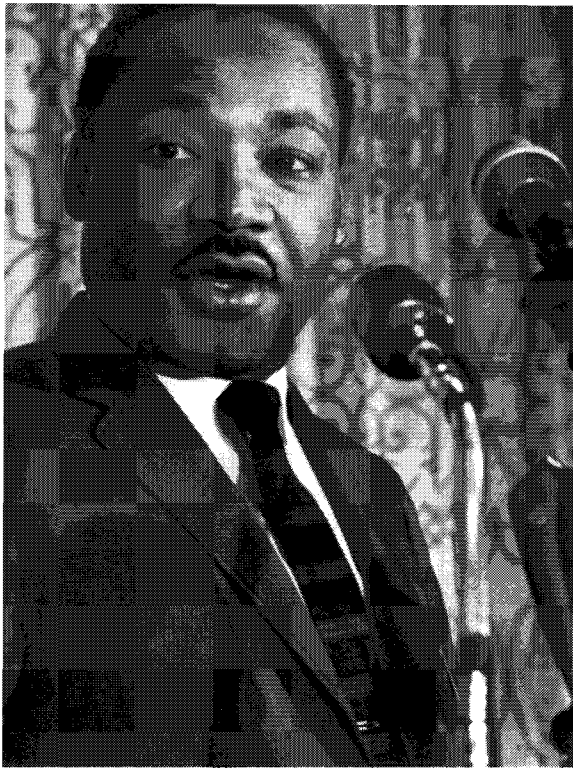
That is why those modest demands evoked violent reactions. Homes of boycott leaders were bombed. Shotguns were fired into King's home and into an integrated bus. Four African American churches were bombed. Those actions were understandable, as similar challenges to white supremacy were developing throughout the South. The entire system of white supremacy was at risk.

The unlawful violence was supported by local officials, who themselves participated in terror, rape, and lynching. The federal government refused to take timely measures against the violence, which was a pervasive, long-standing feature of the system, not in theory but in practice. It would be unreasonable for the targets of terror to regard the system as legitimate.

King also became more radical with experience. Like many other organizers, King expanded his aims beyond civil rights for African Americans. He recognized the interracial scope and terrible significance of poverty, and he saw that the problem could not be addressed by modest measures. He questioned "the basic system of social and economic control" and spoke of the "need for a radical restructuring of the architecture of American society." He rejected "traditional capitalism" and embraced programs that he recognized would face "fierce opposition."¹² It is clear that his talk from early on of the need for "revolution"¹³ acquired more expansive meaning throughout his political career.

What accounts for these clashes between the prevailing theory of civil disobedience and the orientation of its practitioners? The theorists addressed issues raised by the civil rights movement of the 1950s, which emerged in a period of severe political repression. While officials persecuted dissenters who acted within the law, civil rights activists not only challenged established authority but sometimes broke the law. Even worse in the eyes of those in power, most of the activists were African Americans, who were expected to know their place. Critics of civil disobedience argued that unlawful conduct could not be justified in our society, and they offered arguments for conformity.

In those circumstances the most pressing issue for theorists who were sympathetic to civil disobedience was its justifiability. They recognized that a duty to obey the law did not settle the issue of obedience, because duties are rarely absolute. When law supports an unjust practice, a duty to obey might



Martin Luther King Jr., 1966

be outweighed by the duty to oppose injustice. Justifiable disobedience could not be ruled out a priori.

The theorists' focus on the justifiability of civil disobedience was not, however, a mere tactical maneuver. Most sympathetic theorists agreed with the critics that the burden of justification falls on the one who disobeys the law. That amounts to the idea that there is a duty to obey the law. But they also saw that civil rights activists identified grave deficiencies that the system appeared incapable of addressing adequately through lawful procedures.¹⁴ Because the theorists believed that disobedience could be justified in some cases, they argued that a just system allows for some unlawful acts that aim at reform. The point of the theory was to identify those acts.

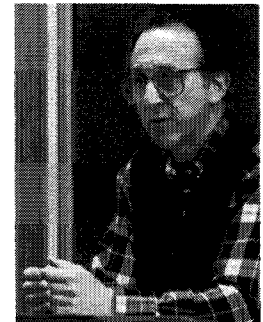
Within the framework of contemporary political philosophy, to assume that there is a duty to obey the law is to regard the system as basically just, not requiring radical transformation. In that respect the theorists accepted the legitimacy of the system. At the same time, they respected such individuals as Thoreau, Gandhi, and King. They appear to have assumed that those individuals shared their political orientation. Thus sympathetic theorists projected their own less radical perspective onto the civil disobeyers they respected.

At any rate, the prevailing theory of civil disobedience assumes an improbable set of conditions: on the one hand, that civil disobedience requires substantial justification because the system is suffi-

ciently just to support a duty to obey the law; on the other hand, that civil disobedience can be justified when lawful political action cannot rectify a grave moral problem in the system. But a basically just, well-functioning democracy would not long tolerate serious pockets of injustice. If a system contains such entrenched flaws, then it must systematically disadvantage politically weak segments of the community, in which case the democracy does not function well. Furthermore, plausible conceptions of social justice and political democracy would not imply that those who lack a fair share of political power and are the targets of entrenched injustice are morally bound to obey all the laws, including laws that support their systematic victimization.

The combination of conditions presupposed by prevailing theory seems impossible. For reasons such as those, the radical political orientation of the paradigm practitioners of civil disobedience seems to have been both reasonable and warranted.

1. Thoreau was jailed just one night, because someone paid his tax.
2. P. Harris, *Civil Disobedience* 2 (1989).
3. There are often various good reasons to comply with law. The only one at issue here applies to all people in the community and all its laws and requires conformity even when laws are unjust—on the ground, e.g., that even those laws are products of democratic institutions.
4. H. D. Thoreau, *Reform Papers* 73 (1973).
5. *Id.*, at 67.
6. He distrusted all organizations, including voluntary groups dedicated to reform, such as antislavery societies.
7. Thoreau, *supra* note 4, at 71.
8. It is arguable that Thoreau understood better than many others the difference between a madman and a committed revolutionary.
9. The position of the Indians relative to Britain was comparable not to that of the British colonists but to that of the Native Americans.
10. M. L. King Jr., *Why We Can't Wait* 84 (1964).
11. Drivers would require African Americans to give up seats so that whites could sit down and would insist that there be empty seats between the two groups. Neither arrangement was clearly required by the segregation law.
12. M. L. King Jr., *Where Do We Go from Here?* 17, 133, 186, 163 (1968).
13. King, *supra* note 10, at 15.
14. That is, reliance on such procedures would not eliminate the injustice or would impose excessive costs on its victims.



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