Florida Law Review

Volume 20 | Issue 3 Article 1

January 1968

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UNIVERSITY OF FLORIDA LAW REVIEW

VOL. XX WINTER 1968 NO. 3

CIVIL DISOBEDIENCE AND THE LAW*

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It will be my purpose to introduce for consideration some historical and jurisprudential factors that seem to bear on the validity and practice of the doctrine of civil disobedience in this country. I will not in any way advocate a doctrine or declare a position other than I have already done in court decisions. I would suggest, however, that lawyers and judges must concern themselves with the social changes this country is presently experiencing. It is essential that we understand these changes—even if we do not actively participate in any of the movements that have as their purpose social and political changes through the practice of civil disobedience.

We lawyers have our function: We draft laws and interpret them; try cases and render legal decisions; we advise clients about their rights and defend those rights with every clause of the Constitution and every legal tool at our command. But social change is not ordinarily one of our skills. For the most part we are not trained to reconstruct the relationships of a community or to change the minds and hearts of people. Nevertheless, most of us understand that unless the minds and hearts of people are changed, laws are powerless. "[I]n this and like communities," Lincoln said, "public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed. Consequently, he who moulds public sentiment goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible to be executed."[1]

Lincoln was not one to sell the legal profession short. The Constitution must be enforced, he said, knowing that enforcement of the law is itself a form of persuasion. The law is a teacher. People learn to drive on the right side of the street by obeying the law requiring them to drive there. Citizens of the Thirteen Original States came to consider themselves citizens of the United States because the Constitution of the United States was ratified, established, and enforced. Without the working of the Constitution, no amount of talk would have convinced Americans to abandon their parochial loyalties for a higher allegience.

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*Address prepared for the annual University of Florida Law Review Banquet, January 27, 1968.

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1. First Lincoln-Douglas Debate, Ottawa, Ill., Aug. 21, 1858, in LINCOLN TREASURY 255 (comp. by Hansberger 1950).

Today, compliance with the Constitution is still the best instruction in our constitutional duties. Decisions of federal and state courts, fulfilling the Constitution's promise of due process and equal protection of the laws, are great and necessary milestones. But these decisions do not mark the end of the road; they only point the way. Despite an impressive unanimity of the courts and the determination of the majority of federal and state chief executives, recent constitutional decisions leave us at an impasse. We still have a substantial and sometimes dominant part of the public opposed to compliance with one or more applications of the constitutional guarantee of equal rights. It will not be enough to get more court orders. The courts and the police power of all the states, cities, and federal government cannot by themselves overcome emotional and psychological obstacles to school and faculty desegregation, nondiscriminatory housing, equal job opportunities, and other governmental action or policy such as prosecution of the undeclared war in Viet Nam. The law cannot act as teacher where the conditions necessary for the educational process do not exist. Where opposition is violent and widespread, the law may be ignored, or obeyed only in form, its spirit submerged in a wave of irrationality.

The question then is what can lawyers and judges do to help the law? What can we do to break up the concentration of emotions on such issues, to take the initiative out of the hands of social and political demagogues, and release the forces of moderation, of respect for the law? At the outset, we must understand the techniques and philosophy of those challenging the law. The Negro rights and anti-war movements probably constitute the most important new social-political forces in America since the Civil War. They evidence the turmoil in man's thinking today: anti-war, anti-injustice, equalitarian, and generally nonviolent. It is important to comprehend how their philosophies and procedures — whether styled sit-ins, demonstrations, or rebellions — have been and are being oriented into our system of law.

My discussion of this subject will not permit a search for or consideration of legal or moral justification for the rioting, burning, looting, and killing that have occurred in the Watts section of Los Angeles, in Detroit, Chicago, and Newark. These acts are nothing more than inflictions of gross wrongs upon innocent citizens; the loss of life and property through such activities can only be condemned. Such outbreaks are insurrections against government and cannot be justified under the guise of civil disobedience. Neither does the subject "Civil Disobedience" include, except for comparative purposes, totally "obedient" nonviolent challenges to law or state policy such as distribution of pamphlets on Viet Nam or segregation, programs of voter registration, and parades and picketing under permits, where permits are required.[2]

During recent years, many public events have repeatedly dramatized the ancient and always troublesome problems of "civil disobedience." A group of students defies the State Department's ban on travel to Cuba; a teachers'

2. *E.g.*, the Selma-Montgomery, Alabama, march delayed until application was made to the court to outline the "reasonableness" feature of the planned demonstration. Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965).

union strikes despite prohibition by state law; advocates of civil rights employ mass demonstrations of disobedience of the law to advance their cause (for example, marching without a permit where one is required); and the governors of southern states obstruct enforcement of federal laws and declare themselves within their rights in doing so. A student editor flagrantly violates his school's policy by criticizing the Governor and State legislature;[3] a coed poses nude for an off-campus humor magazine, disregarding her university's standards of "appropriate conduct";[4] reputable California doctors continue, in violation of California law, to perform abortions on women exposed to German measles during pregnancy.[5]

Regardless of the form civil disobedience takes, we should be aware that it is a *procedure* for challenging law or policy, and that such nonviolent challenge is deeply rooted in our legal traditions.[6] Even our laws recognize a modified form of civil disobedience. To illustrate: tax law requires one to report fairly his income and to pay all taxes assessed thereon. But the law in this instance gives him a procedural choice to determine whether the government's command must be obeyed. A citizen may either refuse to pay and go into the Tax Court's deficiency procedure, or he may pay and sue for a refund in the federal district court. A similar procedure is recognized in Title II of the 1964 Civil Rights Act.[7] Many demonstrators assert that

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3. Dickey v. Alabama State Bd. of Educ., 273 F. Supp. 613 (M.D. Ala. 1967).

4. Gainesville [Fla.] Sun, Feb. 9, 1967, §A, at 2, col. 5 (18-year-old sophomore, Pamela Brewer, convicted by Faculty Discipline Committee for "indiscreet and inappropriate conduct").

5. Alabama Journal, Jan. 22, 1967, at 3, col. 1.

6. On June 15, 1215, King John of England sealed the Magna Charta, which is regarded as the basis of the English Constitution; the rights incorporated therein were *forced* from constituted authority and provided against the abuse of power by the King. Charles I was denounced as a tyrant who was a constant threat to freedom, and in 1628 he was *compelled* by his subjects to give his assent to the Petition of Right—a declaration of the liberties of the people. James II ascended the throne of England in 1685 and promptly put down a Protestant rebellion, at the same time trying to return England to the Roman Catholic Church. James was deserted by the people of England for William of Orange in what is now called the "Glorious Revolution." The "Declaration of Rights" was extracted as a condition to William's ascending the throne. The American colonists were following tradition when they opposed the British government in taking from the colonists the rights of free Englishmen. Opposition manifested itself explicitly and solemnly in the memorable Declaration of Rights of the First Continental Congress, which convened in Philadelphia in October 1774. That declaration, containing the assertion of great fundamental principles of Anglo-American liberty, constituted the basis of those subsequent bills of rights that appeared in all our state constitutional charters. The delegates to the First Continental Congress demanded the repeal of the most offensive of the recent British laws. One of these demands inspired William Pitt to support the colonists—even in their "disobedient" Tea Party.

At the Provincial Convention held in the Colony of Virginia in March 1775, Patrick Henry introduced resolutions to organize the militia and place the colony in an attitude of defense. The resolutions met opposition, and Patrick Henry made his "liberty or death" speech in response. The Declaration of Independence, adopted on July 4, 1776, was predicated in whole upon the theory that man has not only a right but also a duty to throw off what he considers to be abuses and usurpations of authority.

7. Civil Rights Act of 1964, 42 U.S.C. §2000a-2: "No person shall punish or attempt

since the Vietnamese War violates international law they cannot be forced into service. In *Keegan v. United States*,[8] a member of the German-American Bund advocated refusal of military service as a means of protesting a congressional enactment that disqualified Bund members for certain jobs. Keegan asserted that the law unjustly discriminated against American citizens and therefore they were not bound by the Selective Service Act. In holding that an acquittal should have been directed as requested, the Court stated:

> One with innocent motives, who honestly believes a law is unconstitutional and, therefore, not obligatory, may well counsel that the laws shall not be obeyed . . . .

The same principle was applied in *Okamoto v. United States*,[9] when Japanese-Americans who had been evacuated from west coast cities and placed in internment camps decided they were not subject to Selective Service while so confined. Today, some student protestors and draft demonstrators insist that when Selective Service revokes their deferred status because they protest foreign policy, they are entitled to disobey the law because the revocation is unconstitutionally discriminatory. Where does this leave the prosecution of Dr. Benjamin Spock and Yale Chaplain William Sloane Coffin when the law specifically sanctions the right to counsel "that the laws shall not be obeyed . . . ."?[10]

The problems raised by the theory of civil disobedience are as old as civilization itself. Centuries ago Antigone was torn between two loyalties: her religion commanded her to bury the body of her dead brother; the state demanded that she follow the dictates of the law and leave her brother uncovered to be eaten by vultures and hounds. She chose to follow her conscience and was forced to pay with her life. Socrates was condemned to die for exercising his "freedom of speech." He chose to remain in Athens and accept the penalty. Thoreau refused to pay taxes, which he thought were illegally and immorally imposed to assist in enforcing the Fugitive Slave Act. We must classify Gandhi and other contemporaries, such as Dr. Martin Luther King, Jr., on the side of Thoreau and Antigone.

While one may approve some of the motives that led to these actions and disapprove others, all, nevertheless, raise the same fundamental question: Does the individual have the right – or perhaps the duty – to disobey a law that his

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to punish any person for exercising or attempting to exercise any right" protected by the act. The Supreme Court has said that "nonforcible attempts to gain admittance to or remain in establishments covered by the act are immunized from prosecution." Hamm v. City of Rock Hill, 379 U.S. 306, 311 (1964).

8. 325 U.S. 478, 494 (1945).

9. 152 F.2d 905 (10th Cir. 1945).

10. *E.g.*, Musser v. Utah, 333 U.S. 95 (1948) (publicly advocating polygamy); Taylor v. State of Mississippi, 319 U.S. 583 (1943) (condemning the war and draft and distributing literature to this effect); Cantwell v. Connecticut, 310 U.S. 296 (1940) (playing anti-Catholic records in streets where 90% of the people were Catholic); Herndon v. Lowry, 301 U.S. 242 (1937) (recruiting members for the Communist Party). Is there a "clear and present danger" under Schenck v. United States, 249 U.S. 47 (1919), when no war has been declared? For an extensive treatment of this phase of the problem *see* Freeman, *The Right of Protest and Civil Disobedience*, 41 IND. L.J. 228 (1966).

mind, his conscience, or his faith tells him is unjust? What is a citizen to do when he finds himself in the position of Thoreau, Antigone, or Yale's chaplain? If he obeys his conscience, his moral convictions, or his religious belief he may violate the law. Yet if he obeys the law, he may violate his conscience or his moral or religious convictions. What would you do if the Florida Legislature passed a statute making it a criminal offense to publicly proclaim a belief in God? When and under what circumstances should the individual be indifferent to the commands of the state?

Some answer this question unequivocally "never," reasoning that there can be no law to which obedience is optional; that there never can be a legal right to disobey the law. They argue that whatever is illegal is therefore immoral; and that the law creates its own duty, concluding that social disaster would result if everyone disobeyed the law or determined for himself which laws he would obey. This position was recently stated by the Honorable Charles E. Whittaker, former Justice of the Supreme Court:[11]

> While I do not claim that all of our crime is due to any one cause, it seems rather clear that a large part of the current rash and rapid spread of lawlessness in our land has been, at least, *fostered and inflamed by the preachments of self-appointed leaders of minority groups to "obey the good laws, but to violate the bad ones"* — which, of course, simply advocates violation of the laws they do not like, or, in other words, the taking of the law into their own hands.

The same point of view has been put another way:[12]

> The conduct of various leaders, both political and social, who are busily engaging in the frustration of law and the spirit of the law for their own personal avarice must be condemned by those intelligent citizens who live by the law.
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> You citizens of reason and integrity cannot sit idly by while these political leaders, aided and abetted by misguided and ignorant followers, make a mockery of law by prostituting legal process and stultifying the forms of law in defiance of their sworn duty to uphold the Constitution and the laws of our land, while some of our powerful leaders in the social field, reinforced by a multitude of blind followers, engage in demonstrations that inevitably foment violence and preach moral defiance of judicial decisions designed to protect the rights of society. In both instances, the motivation is personal gain — economic, social and political — without any regard to their government, their laws, their courts or their people.
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> It is the duty and unique responsibility of every fair-minded citizen to recognize and follow the proposition that respect for law is the most fundamental of all social virtues, for the alternative to the rule of law is violence and anarchy. This is true whether the individual agrees or not. No system can endure where each citizen is free to choose which law he will obey. Obedience to the laws we like and defiance of those we dislike is the route to chaos.

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11. Whittaker, *Law and Order*, 37 N.Y. STATE B.J. 397 (1965).

12. Address by Frank M. Johnson, Jr. to Atlanta, Georgia, Bar Association, 1964. A partial reprint of this speech was published as *The Attorney and the Supremacy of Law*, 1 GA. L. REV. 38, 41-42 (1966).

In response to the same question, others reply as did Dr. Martin Luther King, Jr., testifying in the United States District Court in Montgomery in March 1965. When asked "Well, what is your philosophy?" Dr. King responded:[13]

> I have said often and I have tried to write about it, that non-cooperation with evil [ignoring evil] is as much an evil as cooperation with evil, and I think there are times that laws can be unjust and that a moral man has no alternative but to disobey that law, but he must be willing to do it openly, cheerfully, lovingly, civilly, and not uncivilly, and with a willingness to acept the penalty, with a hope and a belief that by accepting this and doing it in this way he will be able to arouse a conscience of the community over the injustice of the law and therefore lead to the bright day that everybody will set out to change it.

Stated differently:[14]

> Thus civil disobedience is a new answer of how to divide our duties to Caesar and God. As the claims of Caesar have grown louder, our answer too often has been: We render unto Caesar that which Caesar says is Caesar's and go to church on Sunday. With nonviolence we can make real decisions — effective moral choices — in this apportionment between God and Caesar, between our conscience and the state.

Since the theory and practice of the civil disobedience we see is based primarily upon the Gandhian technique, it is essential to explore briefly the basic tenets of Gandhi's philosophy. His experiments with civil disobedience, first undertaken in South Africa, were extended beyond the individual protest in India. During the struggle to lift the yoke of English rule, the British-trained lawyer developed a practice, which through application and refinement became a technique for social and political changes. *Nonviolence* in Gandhi's terms means the exercise of power or influence to effect change without injury to the opponent. The technique is thus distinguishable from urban riots and even from passive resistance intended to cause injury.

Gandhi's approach to civil disobedience combined two different views. The first is that man has the right to act in accordance with his conscience in opposition to external authority. The second is that every citizen must qualify himself by previous obedience of the laws before he has the right, which should be exercised on rare occasions, to violate the law he feels is unjust. Gandhi's technique is one that can be used by all who feel a conscientious need to alleviate social problems or injustice. In justification, advocates of Gandhi's method argue that it develops a social protest against unjust or

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13. Record, vol. 1, at 75, 76, Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965).

14. Wofford, *Non-Violence and the Law: the Law Needs Help*, J. OF RELIGIOUS THOUGHT (1957-1958). This article was written for the purpose of challenging others to follow the practice of Rosa Park who in 1955 violated the bus segregation laws of the State of Alabama and the City of Montgomery. *See* Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd*, 352 U.S. 903 (1956). *See also* Keeton, *The Morality of Civil Disobedience*, 43 TEXAS L. REV. 507 (1964).

coercive sovereign action. The moral force linked with this practice is that there is no violence or malice involved in the act. It is well known that Gandhi used his methods with remarkable success.

To many, protest movements represent only crises in law enforcement. They ask what is happening to the concept of law, and to the notion there can be no disobedience of the law. The first to propound this question were those opposed to any social or political change and accustomed to relying on law itself to preserve ordered injustice instead of ordered liberty.[15] This continual misuse of law shows an interest in promoting its tendency to resist rather than its ability to foster peaceful social change. It must be recognized, however, that the civil disobedience movement has indeed caused many problems for law enforcement. It is particularly this aspect to which lawyers need to give serious consideration. Among its most troubling characteristics is its dependence on fostering disrespect for law. Misguided talk of civil disobedience is dangerous in that it arouses doubts in the minds of those who could favor and support the law. Moreover, such loose discussion lends itself to exploitation as an excuse for violence perpetrated by those so inclined.

The problems of the protest movement become more complicated as its aims become more diffuse. The relationship between the act of protest and the condition of injustice protested is no longer clear. There has grown a feeling that protestors as such should be immune from the law regardless of the nature of their protest activities. Even though the laws may be legally sound, the protestors sometimes feel they should be exempt from punishment simply because they are demonstrating and protesting. On this point, I have already observed:[16]

> There is no immunity conferred by our Constitution and the laws of the United States to those individuals who insist upon practicing civil disobedience under the guise of demonstrating or protesting for "civil rights." The philosophy that a person may — if his cause is labeled "civil rights" or "states rights" — determine for himself what laws and court decisions are morally right or wrong and either obey or refuse to obey them according to his own determination, is a philosophy that is foreign to our "rule-of-law" theory of government. Those who resort to civil disobedience such as the petitioners were engaged in prior to and at the time they were arrested cannot and should not escape arrest and prosecution. . . .

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15. This theory was advanced as justification for the authorities' failure to protect the student "freedom riders" from assaults by Klansmen. The argument is predicated upon the theory that the existing local law required segregation of the races even on the interstate buses, in the station waiting rooms, and the station restaurants; that the students violating these local and state laws (as opposed to going to court to have them declared invalid) did so as "outside agitators" and were entitled to very little, if any, public protection. United States v. U. S. Klans, Knights of Ku Klux Klan, Inc., 194 F. Supp. 897 (M.D. Ala. 1961).

16. Forman v. City of Montgomery, 245 F. Supp. 17, 24 (M.D. Ala. 1965), *aff'd*, 355 F.2d 930 (5th Cir. 1966), *cert. denied*, 384 U.S. 1009 (1966). For a general discussion of this aspect of the problem *see* Marshall, *The Protest Movement and the Law*, 51 VA. L. REV. 785 (1965).

> The petitioners and others so inclined must come to recognize that judicial processes are available for the purpose of protecting their constitutional rights in this district. This does not mean to say that peaceful, orderly and lawful demonstrations for purposes of dramatizing grievances or protesting discrimination can ever justify arrests and prosecutions; however, demonstrations and protests in a disorderly and unpeaceful and unlawful manner are not sanctioned by the law as this Court understands it. There is a place in our system for citizens, both Negro and white, who wish to protest civil wrongs or present grievances against violations of their rights, to do so, provided they act in a peaceful and orderly manner and provided they resort to the courts and not to the streets when they are thwarted in the exercise of this privilege by authorities acting under color of law.

It would be difficult, if not impossible, to forecast the legal guidelines that will ultimately control decisions on "direct action" civil disobedience. However, it is interesting to note the "trend" of the Supreme Court. In the first notable "direct action" case, *Garner v. Louisiana*,[17] the Supreme Court unanimously reversed the convictions of students who staged sit-ins; however, in *Bell v. Maryland*,[18] the Court was divided. This split continued through *Robinson v. Florida*[19] and *Griffin v. Maryland*.[20] By 1965, in *Cox v. Louisiana*,[21] the Court was divided 5-4 for reversal of Cox's conviction for picketing a courthouse. This 5-4 division of the Court was emphasized in *Brown v. Louisiana*,[22] and finally in *Adderley v. Florida*,[23] a similarly divided Court affirmed the conviction of Florida A. & M. University students for demonstrating at a Tallahassee jailhouse to protest the arrest of other students who had attempted to desegregate public theaters.

It should be kept in mind that *disobedience of the law* and *evasion of the law* are two different things. Civil disobedience is open violation of the law in support of principles of conscience, accompanied by a willingness to accept the punishment for such violation. The law evader tries to conceal his violation. The traffic violator who tries not to get caught is an evader and not a civil disobedient. Thoreau, a true civil disobedient, announced to all the world his refusal to pay what he considered an illegal and unjust tax and willingly went to jail for his refusal.

When is it justified, then, for the citizen acting as his own legislator and judge to decide he will or will not obey a given law? An answer covering all the issues this question raises cannot be given here. Nor can a set of principles be proposed from which anyone can make automatic and infallible judgments on the legal or moral validity of a specific act of civil disobedience.[24] Such

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17. 368 U.S. 157 (1961). There were earlier cases: Boynton v. Virginia, 364 U.S. 454 (1960) (refusal of service to Negroes in an interstate bus terminal); Wolfe v. North Carolina, 364 U.S. 177 (1960) (trespass on a golf course).
18. 378 U.S. 226 (1964).
19. 378 U.S. 153 (1964).
20. 378 U.S. 130 (1964).
21. 379 U.S. 536 (1965).
22. 383 U.S. 131 (1966).
23. 385 U.S. 39 (1966).
24. For an interesting discussion of this phase of the problem, *see* Black, *The Problem*

judgments require detailed knowledge of the fact situations, often unavailable to the ordinary citizen. Nevertheless, it is possible to indicate some of the principal issues raised by modern civil disobedience, some of the more common mistakes made in considering these issues, and one approach that might be taken toward such issues today.

Initially we should reject — at least in part — two extreme positions. One is the view that civil disobedience is incompatible with American institutions of government, and that obedience to law is an invariable obligation, until the law is changed by constitutional procedures. This has been referred to as the "hard-shelled" lawyer's view. The other extreme position is that only "just" laws need be obeyed, meaning simply that a law carries no obligation of obedience if the individual thinks it unjust. To accept the latter position without regard to specific circumstances would lead to destruction of our legal order.

It is possible, however, to take a much more moderate and plausible position, and many quite reasonable people do. They conceive that disobedience to the law sometimes can be warranted and, under extreme circumstances, even necessary. Examples of such laws are city ordinances and state laws that continue, in the face of settled law of the land, to separate races in the use of public facilities; or an edict by the Selective Service Director to the effect that when a student protests — even in a legal manner — against the Viet Nam war, he will be punished by revocation of his student deferment; or laws of the State of California that prohibit reputable physicians from performing abortions when considered medically necessary by an official board of doctors.

Most people will agree that there is a stronger case for total obedience to the law, including bad law, in a democracy than in a dictatorship. The people who must abide by the law in a democracy have presumably been consulted, and have legal channels through which to express their protests and to work for reform. One way to define democracy is as a system designed to provide alternatives to civil disobedience. Some argue that the basic fallacy in this proposition is that it confuses the *ideals* or aims of democracy with its inevitably less than perfect accomplishments, and that the power to work for elimination of injustice within the framework of the law may be illusory.

It would be a mistake to conclude here that civil disobedience is justified provided only that it is disobedience in the name of high principles. Strong moral conviction is not all that is required to turn breaking the law into a service that benefits society. Civil disobedience is not as simple as other acts in which men stand up courageously for their principles. *It involves violation of the law,* and the law can make no provision for its violation except to hold the offender liable for punishment. This is the reason President Kennedy was in such a delicate position at the time of the Negro demonstrations in Birmingham. He gave many signs that he was personally in sympathy with the goals of the demonstrators. As a political realist, he probably knew that

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of the Compatibility of Civil Disobedience With American Institutions of Government, 43 TEXAS L. REV. 492 (1964).

these goals could not be attained without dramatic actions crossing the line of legality, but as Chief Executive he could not give permission or approval to such actions.

In conclusion, while some may admire men like Gandhi and Thoreau and King, the right to break the law cannot be officially recognized. No society, free or tyrannical, can give its citizens the right to break its law; to ask it to do so is to ask it to proclaim, *as a matter of law,* that its laws are not laws.

If anybody ever has a "right" to break the law, the right must be moral, not legal. It is not an unlimited right to disobey any laws that one may regard as unjust. If it is to be recognized as a "right," it necessarily must have important and significant restrictions.

First of all, its exercise is subject to standards of just and fair behavior. One may be correct, for example, in thinking that an ordinance against jaywalking is an unnecessary infringement of an individual right. The conclusion, however, does not make it reasonable for that individual to organize a sit-down or lie-in in the streets, and hold up traffic during a peak work-period. Conformity to the concept of justice requires that there be some proportion between the importance of the end sought and the power of the means employed to obtain it. I recently declared this concept legally sound and applicable in appropriate civil disobedience cases:[25]

> There must be in cases like the one now presented, a "constitutional boundary line" drawn between the competing interests of society. This Court has the duty and responsibility in this case of drawing the "constitutional boundary line." In doing so, it seems basic to our constitutional principles that the extent of the right to assemble, demonstrate and march peaceably along the highways and streets in an orderly manner should be commensurate with the enormity of the wrongs that are being protested and petitioned against. In this case the wrongs are enormous. The extent of the right to demonstrate against these wrongs should be determined accordingly.

This principle constitutes a very significant restriction. Although violence may be no part of the intention of those who practice civil disobedience, the risks of violence are present and are part of what must be taken into account when a program of civil disobedience is contemplated. In short, civil disobedience is a grave enterprise. It may sometimes be morally or socially justified, but the provocation for it must be extreme. Basic principles have to be at issue. The evils being combatted have to be serious ones likely to endure unless so fought.

Nor is this the only limitation on the individual's *moral* right to disobey the law. A more important limitation is that his cause must be just. For instance, it is argued that if absolutely necessary and if the consequences have been properly weighed, then it is right to break the law to eliminate racial inequalities or to dramatize opposition to the Viet Nam conflict; but it can never be necessary — and no weighing of consequences can ever make it

25. Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965). *See also* Marshall, *The Protest Movement and the Law,* 51 VA. L. REV. 785 (1965).

right — to break the law in the name of Nazi principles. In short, the goals of those who disobey the law must lie at the very heart of what we regard as morality before we can say they have a moral right to do so.

But who is to make the decisions? Who is to say that one man's moral principles are right and another's are wrong? The man who breaks a law he considers immoral asks the rest of us to trust him in preference to established social conventions and authorities. He has taken a large and visible chance and implicitly asks us to join him in relying on the probity of his personal moral judgment.

Thomas Hobbes once remarked that a man may be convinced that God has commanded him to act as he has, but that God, after all, does not command other men to the same belief. The man who chooses to disobey the law on principle may be a saint, but he may also be a madman. He may be a courageous leader, but he also may be merely a political or social demagogue. Whatever he is, his very existence tends to make us painfully aware that we too are implicitly making choices and must bear responsibility for them.

Stimulating this awareness indeed may be the most important function of those who practice civil disobedience. They remind us that the man who obeys the law has as much of an obligation to look into the morality and rationality of his conduct as does the man who breaks the law. But the man who puts his conscience above the law, right or wrong, does take personal moral responsibility for the social arrangements under which he lives. And so he dramatizes the fascinating fact that those who obey the law might do the same. One may obey the law and unfailingly support what exists, not out of habit or fear, but because he has freely chosen to do so and is prepared to live with his conscience having made that choice.