All Things New: On Civil Disobedience Now

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I intend this piece as an invitation to think through civil disobedience as a strategy for social transformation and, more specifically, to rethink its significance for revolutionary political change. To that end, I offer a series of theses, each of which may serve as an occasion for public debate and all of which together constitute an argument for a particular way of thinking about civil disobedience as an historical phenomenon and as a contemporary strategy. My argument, in short, is that civil disobedience is better understood and more effectively practiced as a means by which to dismantle and reconstitute social orders than as a tool by which to effect change within social orders that remain intact. The discussion is of significance for practitioners and would-be practitioners to the extent that it clarifies what is at stake when one engages in civil disobedience. It is of significance for social and political philosophers concerned with the ideological consistency of civil disobedience as a strategy within contemporary movements for social change, and it is of significance for historians of philosophy seeking to assess campaigns that have moved civil disobedience toward the center of political discourse – most notably the Gandhian independence movement in India and the Civil Rights movement in the United States.

1. The “civil” of civil disobedience has the sense of *civilis*, relating to a citizen or to public life. It requires a *civitas*, a human community, in which disobedience may take place. It is a *res publica*, a public thing.

2. The “disobedience” of civil disobedience effectively stipulates the existence of an authority that has power (though not unlimited power, and not necessarily legitimate power) to require obedience to a directive or directives in the form of rule(s), law(s), custom(s), etc.

3. To say “disobedience” is to enunciate also the possibility of obedience. It posits a real choice to be made by an agent.

4. Associating disobedience--and, by extension, obedience--with “civil” locates power in the agent to affect (and, perhaps, effect) a civitas.

5. This power is a sovereignty that exists in tension with sovereignty assumed by the civil authority.

6. Confronted with an authority that requires obedience to a directive or directives, the agent may obey (which, intentionally or not, grants the authority in question legitimacy); the agent may disobey (which, intentionally or not, withholds legitimacy from the authority in question); or the agent may ignore the directive (which amounts to disobedience, though it is “civil” only in a negative sense and might more properly be called private disobedience).
7. Private disobedience is circumscribed by a limit beyond which it has a public effect. Cheating on taxes, for example, is a form of private disobedience that becomes public when it is exposed or becomes significant enough to have a noticeable effect on the civitas.

8. All government derives its authority from the consent of the governed. While this may appear more explicit in the case of “democratic” governments than in the case of authoritarian governments, the process is the same in both. Consent is measured by obedience (even if obedience is undertaken under protest). As Henry David Thoreau noted and Emma Goldman reiterated, voting is, at best, largely irrelevant to this process. At worst, it is an illusion of action that partly facilitates consent by diverting attention from the action that matters--obedience, disobedience, or disregard. In the final analysis, it matters less who is elected or how particular faces of civil power in particular places came to occupy their positions than whether their directives are obeyed by publics on which they are imposed. If yes, the civil power has consent; if no, it has no authority.

9. It follows (as Thomas Paine noted) that sovereignty is a property of individual agents, not States. The legitimacy of a State is derived entirely from its people.

10. In this sense, the legitimacy of a State may depend as much on the confusion of its people as on their informed consent. Since it is not relevant to the authority of the State whether consent is informed, obfuscation is as likely as information to be the means by which a State secures its legitimacy. In “democratic” States, one of the most familiar instances of this is the widely cultivated notion of respect for law, often expanded to encompass the idea of “a government of laws, not of men.” The idea, of course, is directed against corruption, individual abuses of power, and cults of personality. But, as Thoreau noted in his classic treatise on civil disobedience, respect for law in and of itself does nothing to improve the human beings who respect it--and, in the case of unjust laws, it has quite the opposite effect. In a society, for instance, in which slavery is the law, respect for law demeanes human beings--whether they be slaves, slave owners, or bystanders. This was Thoreau’s point in attacking particularly his own “free” State of Massachusetts and its citizens for their complicity in slavery. What is to be respected, Thoreau argued, is not law, but right.

11. This question of “right” lies at the heart of the matter, and it is particularly susceptible to obfuscation. If it is “right” to respect law in an abstract sense (and, hence, to obey it), then breaking a law is “wrong.” It is uncivil. This may have the effect of legitimizing an unjust law by establishing those who obey as “normal,” those who disobey as “abnormal.” In the slave society in which Thoreau wrote, a slave owner who treated human beings as property could be thought a good citizen while Nat Turner, who resisted such treatment, could be thought a criminal.

12. Abstract respect for law creates considerable resistance to the breaking of law and therefore has a generally conservative force. This is not an entirely bad thing, as it tends to put a brake on capricious or simply expedient changes; but it may also have the effect of institutionalizing injustice. Thoreau addressed this in his distinction between inconveniences and intermittent injustices that follow from the “friction” of society and persistent abuses and misappropriations of power. The friction, he said, should be minimized but endured. Where friction is encountered, the proper response is to lubricate the machine, to make it run more efficiently. Where persistent abuses and misappropriations of power are encountered, the proper response is to dismantle it. For civil disobedience, the ability to tell the difference is critical.
13. That the difference is systematically obscured is well known on all sides of most revolutions. Tom Paine, for example, in one of the most famous pamphlets of the “American” Revolution wrote that “the long habit of not thinking a thing wrong creates the superficial impression of its being right and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason.” Edmund Burke, a supporter of that revolution, wrote on the other side of the French Revolution about the dangers of abuse in sudden change (dangers that have also been noted in subsequent revolutions, including the Cultural Revolution in China). Burke moved toward privileging gradual change, a position that has been generally adopted by post-Enlightenment conservatives from the Tories of nineteenth century Britain through Margaret Thatcher, Ronald Reagan, and Deng Xiaoping to the Democratic Leadership Council and the “new” Communist Party of the Peoples Republic of China. But Paine pointed in a different direction.

14. The key distinction is not between “sudden” and “gradual” but between “capricious” and “considered.” Paine concedes that the mass of public opinion is a matter of time and will not be easily moved. But he does not concede the ideologically conservative conclusion that one should therefore do things as they have been done and wait for injustice to collapse under its own weight. Paine, as a quintessential Enlightenment thinker, did not deny the power of time but answered it with reason. Revolution requires rational justification (this is Jefferson’s rationale in the Declaration)--enough to move enough people to radical change, which, if reasonable, will move the mass of the people in time. (This was also the idea behind Lenin’s revolutionary vanguard at its best. But both the Soviet and Chinese experiences offer ample evidence of the kinds of problems posed by vanguards suddenly institutionalized when they seize power. Mao’s Cultural Revolution was the material enactment of the infinite regress inherent in these problems--always one more revolution... Marx’s more “conservative” approach is closer to Paine’s, as evidenced by a three volume argument and all the drafts that preceded it, still waiting for time to bring the mass of the people around.)

15. Paine and Marx both had confidence in reason, though they had more confidence in time. Events of the twentieth century shook confidence in reason, and the beginning of the twenty-first suggests that many are coming to have serious doubts about time. The point of bringing the two together, doubts and all, is to cultivate a patience that might facilitate addressing long habits of not thinking things wrong rather than erecting cosmetic changes on habitual foundations that will not support them in the long run. And this brings me back to the threefold distinction among responses to the imposition of civil authority--obedience, disobedience, disregard.

16. For civil authority, obedience is the only relevant form of consent. Verbal dissent accompanied by active obedience legitimates civil authority as much as active obedience accompanied by silence or verbal consent. Verbal consent accompanied by active disobedience delegitimizes civil authority as much as active disobedience accompanied by silence or verbal dissent. In the case of the Vietnam War, for example, a conservative young Republican who vocally supported the war but joined the National Guard or became a divinity student as a form of draft evasion did as much to delegitimate the civil authority as a radical Leftist whose evasion of choice was to move to Sweden. On the other hand, a liberal young Democrat who vocally opposed the war but volunteered for military service or complied with a draft order from the Selective Service did as much to legitimate the civil authority as the young Republican who enlisted to support the war effort. The point is that to obey civil authority, for whatever reason, is to consent. Not to obey, for whatever reason, is to withhold consent.

17. For the agent, however, reason is the heart of the matter. And the heart of the matter is the reason for
the civitas, whether it is vocalized or not. What is at stake in what I do is the kind of person I become. What is at stake in what we do is the kind of city we inhabit. In both the individual and the social variation of that mantra, familiar from virtue ethics, every action is the conclusion of a practical syllogism; it carries with it an argument, and the argument underwrites both character and civitas. The relationship is circular: character forms and is formed by every action, and each action tends to confirm the character of the agent. And the city forms and is formed by the characters it contains. When Paine says that the long habit of not thinking a thing wrong creates the superficial impression of its being right, he brings to our attention the fact that the long habit of not thinking a thing wrong makes it unlikely that we will think to change it. The shape of the city, like the shape of character, is a counterweight to change. On the positive side, this makes cities and characters relatively stable; and it gives us some idea what to expect of them if we have been paying attention. On the negative side, this renders characters and cities largely impervious to reason. Time makes more converts than reason, but time also tends, for better or worse, to confirm reasons of the heart that reason cannot know. What passes as stability may simply be inertia.

18. Revolutionary theory turns on this question: is it stability or is it inertia? Either way, change is—and should be—difficult. For conservative theorists such as Burke, this translates into gradualism. The civitas changes in the manner of an organism, maturing in time and evolving across generations. Sudden change is the exception, not the rule. And, to a large extent, revolutionary theorists agree. Jefferson felt obliged to document a long pattern of abuse as justification for a single violent act. David Walker, writing with Jefferson in mind and partly in response to his Notes on the State of Virginia, followed the same pattern. Thoreau urged readers to let the ordinary friction of civil society pass and reserve disobedience for consistent affronts to human dignity. The African National Congress documented centuries of abuse before turning to armed resistance. Jefferson and Mao Zedong both asserted that every generation needed its own revolution, but, even so, they agreed that every revolution required reason. The whole world, for Jefferson, is a court before which the revolutionary has to make a case. That the New Left in the United States took up this Jeffersonian approach is reflected in its most simplified form by the chant “the whole world is watching” that framed demonstrations in Chicago in 1968. That the actions were (and are) called demonstrations suggests, at least, an audience and something to be demonstrated.

19. The most articulate theorists of violent revolution since the eighteenth century—including Thomas Jefferson, David Walker, Thomas Paine, Che Guevara, Kwame Nkrumah, Nelson Mandela, Oliver Tambo—have extended the Enlightenment vision of reason to contain violence as an extension of an argument against injustice. In this, they have much in common with just war theory and the Clausewitzian understanding of war as politics by other means. War and revolution are rhetorical strategies to be deployed judiciously before a court of world opinion.

20. Both revolution and war are put forward as rhetorical strategies within an argument that involves the world as a whole. Drawing the whole world into every act of violence may partly explain why “local” wars and revolutions have escalated into global conflicts. But my point here is to focus on rhetorical strategy in the context of an argument. Thoreau was convinced that no act was rhetorically insignificant, and both Gandhi and King followed him in this. The most revolutionary act in Gandhi’s account was spinning the thread with which to make the clothes one wore. And this is critical to civil disobedience as a rhetorical strategy.

21. One common thread in rational justifications for war and revolution is the documentation of violence
and abuse against which war or revolution is a reaction. War and revolution are invariably depicted as last resorts: they are justified when there is nothing else to be done. This is hardly surprising, since the strongest argument demonstrates a necessary conclusion. If the conclusion is necessary, then disagreement with it is nonsensical.

22. In this regard, civil disobedience is a promising variation on a theme that includes the perpetual revolutions of Jefferson and Mao. Perpetual revolution suggests that no revolution is a conclusion: as a step in an argument, it can never be more than provisional. If resort to violence can be justified only by necessity, then it can never be justified. More to the point, it can never be more than provisionally justified. The rhetorical question (and, contrary to popular usage, there is no more important question to ask) is “what next?” Mao and Jefferson suspected that revolution led to revolution. As good revolutionaries, they went into this with their eyes open (at their best) and never let the revolutionary flame die down. In this regard, Tom Paine and Che Guevara were more consistent revolutionaries. But Thoreau was perhaps the most consistent revolutionary of all. Rather than fanning a revolutionary flame, he maintained that every act is part of a political argument. Compliance justifies the political context within which it takes place. Noncompliance undermines it. But while noncompliance undermines the political context within which it takes place, it implies another political context. Consciously and unconsciously, intentionally and unintentionally, it imagines and cultivates another political context. The constitution of the civitas is the ensemble of actions undertaken by those who inhabit it.

23. This is the basis for rejection of violence in both Gandhi and King—and for the insistence in Mandela and Tambo that it is both provisional and a failure (even if a necessary one). Thoreau’s civil disobedience was not necessarily nonviolent, and there was no contradiction in his admiration for John Brown. The question for Thoreau was whether an action furthered the cause of the city he envisioned: “I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow men. A State which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious State, which I have also imagined, but not yet anywhere seen.” If he believed that violent resistance to the injustice of slavery would tend toward that city, he was not opposed to it. For Gandhi and King, the question is the same. Gandhi shaped civil disobedience into a campaign that made it possible for those defined as powerless within a particular civil order to exercise power—in effect, to be the society they desired to attain. Violent resistance to the British occupation would have been violently defeated. While nonviolent resistance was also met with violence, it did not accept terms that made its defeat predictable if not inevitable (though Chairman Mao might caution that it is still too soon to tell whether the Indian Revolution was a success). It is important to note that Gandhi’s campaign did not depend on the “civility” of the British. One only has to remember Amritsar to dispel any illusion that such civility existed. It depended on the civility of the campaign, which exercised the power it had and avoided a conflict defined in terms of powers that it did not have. King took this a step further by insisting that the practice of violence always leads to violence. Since violence lay at the heart of the civil order he opposed, a practice of violence directed against it would be self-defeating.

24. This is consistent with Thoreau’s understanding of abstract respect for law—and, as King was aware, it is consistent with the Augustinian injunction to “love and do what you will.” An unjust law is no law, and the civitas we envision, according to King, is the beloved community, which we embody by
practicing it. Respecting an unjust law legitimizes it. Breaking an unjust law affirms an order in which it is no law.

25. The question, then, for every act of obedience, disobedience, or disregard is what sort of order it affirms. This is the public context within which civil obedience, civil disobedience, and private disobedience all operate.

26. Civil obedience has inertia on its side. It is conservative and affirms the constitution (written or unwritten) of the civil order within which it is practiced.

27. Private disobedience has self-interest on its side. It is likely to affirm a constitution (written or unwritten) within which practice is self-interested. A close reading of Thoreau may help us understand how civil order can so apparently be in contradiction with written constitutions. Contemporary China can be an effectively laissez faire Capitalist society while it is nominally socialist. The contemporary United States can be an effectively plutocratic society while it is nominally democratic. In both instances, voting can underwrite this by creating the illusion that one has done something. Join the party, elect the leadership, and respect the law--then complain about injustice the way you complain about the weather while you wait for another election. A spectacular instance of this (complicated, perhaps by a misreading of the Constitution that may be an instance of disrespect for the law) is Senator Joseph Biden’s comment that a sitting President can prosecute a war if he has decided to do so no matter what Congress does. By extension, this would also mean no matter what the people do. It is the kind of logic that led Thoreau to dismiss voting and refuse to pay taxes. Recall, too, the earlier reference to conservative young Republicans who supported the Vietnam War but avoided military service by joining the National Guard. Those young Republicans matured into old Republicans who moved easily into positions of power in a civil order that defines rational behavior as self-interested.

28. Civil disobedience has nothing but imagination on its side. It is undertaken without power as commonly understood and depends on the imagination of new contexts within which power might be reconceived. It needs a new common, as it were. To be effective, it must be public. By going public, it takes place and creates a civil order in opposition to the established order within which it is defined as disobedience.

29. Obedience, disobedience, and disregard are all contained in the civitas. Civil order is the conclusion of a single argument. But to be human is to be in the middle of the argument, in particular instances of “order” that are always provisional, always defined by interactions of obedience, disobedience, and disregard. In the middle of an argument, the question of obedience, disobedience, or disregard is both rhetorical and strategic. Which strategy furthers the argument?

30. That is a question that cannot be answered abstractly or finally. If Thoreau was correct, it is repeated in every act. For civil disobedience to be politically effective, it must occur within a public conversation that makes its challenge to an established order apparent. It is most likely to be effective in a context dominated by civil obedience. Principled refusal to pay a tax is most likely to be noticed where most people pay taxes on principle. People who pay taxes on principle may be open to reassessing their actions on the basis of a clear articulation of another principle. In a context of private disobedience, where taxes are thought of as a burden to be avoided by any means, principled refusal is likely to be understood as one more means. And where the challenge to an order is lost, disobedience to a particular law becomes, paradoxically, a form of civil obedience--a means by which to modify the law without affecting the
31. In a context of pervasive private disobedience, civil disobedience may fail as a rhetorical strategy because it is understood as another instance of private disobedience. In the case of taxes, it may be subsumed under a broad category of evasion that swamps whatever principle may have motivated it. It may also be subsumed under a broad category of heroic but politically irrelevant action. Practitioners have sometimes encouraged this with variations on “we are called to be faithful, not effective.” People across the political spectrum could express admiration for the faithful action of protesters without any modification of their own political perspectives or the system. That protesters could engage in prayerful acts of disobedience could, in fact, be taken as evidence that the system was working. George Bush is not the first President to express his support for the right of protest—even his respect for the principles motivating protest—while pointing to its possibility as a mark of a smoothly functioning democracy. An act of prayer may be understood as a private act, easily contained within a public order.

32. Disobedience ritualized becomes a form of obedience that enhances the legitimacy of the civil order within which it occurs. Disobedience privatized is disconnected from its “civil” dimension, which, though it does not disappear, becomes inarticulate.

33. The challenge to civil disobedience as a rhetorical strategy in any political context is twofold: it must continually confront both ritualization and privatization. When civil society creates categories within which to contain disobedience—the saint, the martyr, the madman, the artist—those categories themselves must become objects of disobedience. When principled disobedience is swamped by private disobedience, agents must attend more carefully to public articulation. In the first instance, a healthy skepticism of heroes and celebrities is in order. In the second, order itself must always be an open question: what is the civil order that makes this action necessary? What new civil orders does this action make possible?

34. It may seem paradoxical that an “individualist” like Thoreau would drive us to attend so constantly to civil authority. But Thoreau never opted out of society. He was a social visionary who located sovereignty in individuals and derived the legitimate power of civil order from its exercise. He imagined a society of neighbors and judged the State by the extent to which it facilitated such society—an extent measured not by written Constitutions, verbal promises, or legislation but by the everyday practice of ordinary people. That is where civil disobedience begins, and that is why spinning may be a more revolutionary act than crossing a police barrier in a shirt you bought at Walmart.

35. The point of civil disobedience is public discourse. It rarely has the effect of directly stopping the abuse toward which it is directed. The question, finally, is whether it contributes to an argument that calls the authority of the abuser into question.

36. This is complicated by the inclusion of media through which public discourse may take place in a Culture Industry that is an integral part of the Power being confronted. (A classic description of this is Salman Rushdie’s depiction in The Satanic Verses of the fragile and expensive camera in a “riot” that protects itself by remaining behind police lines, meaning that the “public” sees the “riot” from the perspective of the police. One practical response is to make cameras less fragile and less expensive. The pervasiveness of cellphones partly addresses this, but it also raises a new set of questions revolving around interpretation.) In “total” States, civil disobedience must be systemic if it is to be effective. As a strategy, it is effectively contained when it becomes ad hoc or “merely” symbolic. Though public
discourse is the point of civil disobedience, disobedience is effectively contained when it becomes a strategy by which to secure media attention. (Again, the proliferation of cellphones that are video cameras complicates this in interesting ways. Getting “media” attention has become a matter simply of uploading what has been recorded by bystanders or participants with cellphones.) Structurally, a celebrity arrest at a staged demonstration does not differ significantly from a Presidential photo-op on an aircraft carrier. Both play by carefully defined and protected rules in which media attention (not an electoral process) is the primary measure of democratic legitimacy. Neither threatens rules by which State or Corporate power operates. Either may lead to modification of a policy (or, as has been the case in some instances of police brutality caught on cellphone video, disciplinary action), but not to systemic change.

37. It is instructive to contrast this *ad hoc* deployment of civil disobedience as a strategy for securing media attention (which may, it should be noted, certainly be part of a broader political campaign rather than simply an attempt to seize the limelight) with the two campaigns of civil disobedience that are probably best known to readers in the United States--Gandhi’s independence campaign in India and that part of the Civil Rights movement that included the Montgomery bus boycott in Alabama, both now more than fifty years old. One undermined the legitimacy of a colonial power and led to the establishment of modern India and Pakistan (and it is important to recall that, though the establishment was a success, the partition was a failure in Gandhi’s eyes). The other undermined the legitimacy of a local government and, to some extent, a state government, while insisting on the legitimacy of a national framework within which they operated. After half a century, there is considerable room for debate about the extent to which each succeeded. But both appear to have worked to the extent that they were able to mobilize massive noncooperation with a system that embodied an illegitimate power. The point was not to persuade the power in question to modify its policies or grant privileges. The point was to make the illegitimacy of that power so undeniable that it could no longer be exercised effectively. Certainly practitioners of civil disobedience in both the Indian independence movement and the Civil Rights movement in the United States embraced legislative goals and included civil disobedience in a range of strategies aimed at achieving them. But the point of both movements was to affirm a common humanity that included *inherent* human rights. This is evident, for example, in Martin Luther King’s description of “the need to be maladjusted” in his 4 June 1957 address to the YWCA at Berkeley: “there are some things,” he said, “within our social order to which I am proud to be maladjusted and to which I call upon you to be maladjusted. I never intend to adjust myself to segregation and discrimination. I never intend to adjust myself to mob rule. I never intend to adjust myself to the tragic effects of the methods of physical violence and to tragic militarism...” And this leads directly to a reference to Jefferson’s claim of “inalienable rights” in “the midst of an age amazingly adjusted to slavery.” (*A Testament of Hope*, pp.12-15.) Perhaps more subtly, King spoke of legislation *declaring* but not granting human rights, and he consistently applied the Augustinian distinction between just and unjust laws, basing it on the conviction that there is a moral order in the universe by which human orders must be judged. Both Gandhi and King described civil disobedience as acting in accordance with a moral order that made disobedience a “sacred” duty whenever a human order contrary to the moral order is imposed. When Gandhi spoke of civil disobedience “on a scale that no Government can resist,” he imagined a social power that depended on the demonstration of a government’s illegitimacy – not on pressuring that illegitimate government to “grant” a *human* right, a right possessed already by virtue of being human. When he spoke of the duty to disobey a lawless State, he went on to say that “a citizen that barters with such a State shares its corruption or lawlessness” (*Non-Violent Resistance*, p. 174). One of the most poignant and powerful statements of this philosophy was articulated outside the “leadership” of the movements, by one of the unheralded people on behalf of whom King said he accepted the Nobel Peace Prize. John Henry Faulk
records it in his report of an interview with Fountain Hughes conducted as part of the WPA project to document the memories of former slaves. In the course of the interview, Faulk offered a list of “rights” he thought should be “granted,” as he put it then, “to colored people.” Fountain Hughes’ response was “You know, you still got the disease, honey. I know you think you’re cured, but you’re not cured. You talking now you sitting there talking and I know it’s nice and I know you a good man. Talking about giving me this, and giving me that right. You talking about giving me something I was born with just like you was born with it. You can’t give me the right to be a human being. I was born with that right. Now you can keep me from having that if you’ve got all the policemen and all the jobs on your side, you can deprive me of it, but you can’t give it to me, cause I was born with it just like you was.” (Remembering Slavery, p. 330)

38. Systemically, making the illegitimacy of power embodied in a system of which one is a part undeniably requires a seriousness beyond \textit{ad hoc} or intermittent actions motivated by self-interest. Speeding because one is in a hurry breaks a law as surely as Thoreau’s refusal to pay a tax. Done persistently or on a massive scale, it may effectively undermine the legitimacy of the authority responsible for the law--in which case, it may effectively redesign the \textit{civitas}. But it is, to say the least, a problematic form of civil disobedience. One could put forward the German autobahn or Montana highways as results of this private disobedience made “civil.” Both might be extended into arguments for an emergent or implicit ideological framework, as opposed to an explicit political one. Most drivers who disobey posted speed limits do so for (what they take to be) self-interested reasons, but if enough do it, the result might be a system in which speed is regulated by drivers, the technological capacity of their vehicles, and the condition of highways rather than by government. This, of course, slides over issues such as accident rates, injuries, fatalities, and fuel consumption that may prompt reimposition (and enforcement) of speed limits in some cases. This kind of \textit{ad hoc} disobedience, though, doesn’t so much call an authority into question as transform the way in which it is exercised. In this sense, the appropriate image may be Texas, not Montana, highways--highways where there are posted limits and troopers to enforce them but a practice of enforcement that results in \textit{de facto} limits higher than those posted. In this case, disobedience may be an instrument of policy change but not revolution. Copyright violations on YouTube or in p2p music sharing follow a similar pattern and are likely to have an impact on the practice of enforcement (as well as, perhaps, production and distribution), but are less likely to prompt structural change.

39. But even these instances of \textit{ad hoc} disobedience illustrate that there is a price to pay for treating the power (or a power) of a system within which one operates as illegitimate. A driver who breaks a speed limit \textit{may} be ticketed. A driver who breaks a speed limit repeatedly may lose his or her license to drive. In a setting where the \textit{de facto} speed limit is higher than the limit posted, a driver may misjudge the difference--or a state trooper may decide to enforce a limit that had previously been unenforced. (And this is an important clue regarding contexts within which enforcement tends to become arbitrary.) States often make public announcements as high traffic periods such as holidays approach that speed limits will be enforced, suggesting that posted limits apply only when public announcements are made or when traffic is present. The effect is a \textit{civitas} in which obedience to traffic regulations is modulated by awareness of public enforcement campaigns, the visible presence (or absence) of enforcers, and/or whether the driver judges traffic volume to be high or low. Similar patterns emerge in the case of copyright, with the availability of “pirated” music depending partly on levels of enforcement, partly on available technology, and partly on location. My point is to emphasize a tension among the laws (formal and informal) that govern behavior within a system--a tension that has an impact on behavior (and is
likely to make behavior less smoothly predictable than it would be if regulators were not in competition) and may also raise the question of which laws are to be the object of civil disobedience. For example, the driver who observes a posted speed limit of 40 miles an hour on Lake Shore Drive in Chicago may be engaged in an interesting form of principled civil disobedience. By obeying the posted limit, s/he disobeys the de facto limit and may make a contribution to public discourse (though this depends partly on how other drivers interpret the behavior).

40. This is relevant to the question of civil disobedience as a strategy of social change five decades after the well-known examples cited earlier for at least four reasons. First is the reminder that civil disobedience is a strategy and that strategies are deployed within contexts based on whether they can be expected to work. Whether or not they can be expected to work is measured with reference to a goal or a set of goals—a vision of who “we” are, where we are now, and where we would like to be. Second is the reminder that civil disobedience is not necessarily nonviolent in its origins but is made necessarily nonviolent by the disproportionate power of the systems against which it is directed, the relative “democratization” of violence (meaning that it has become easier and easier for more and more people to deploy mass violence that once was the province of governments alone), and the self-defeating logic of violence articulated especially by King. Third is the reminder that civil disobedience is most likely to be effective where civil obedience is the norm and “private” disobedience is not widespread. Where “private” disobedience renders law secondary to custom and self-interest, the target of civil disobedience, at least, has to be adjusted. Fourth is the reminder that civil disobedience is systemic, aimed at calling into question the legitimacy of a system’s exercise of power. Where it becomes an ad hoc strategy for securing media coverage or effecting policy change within a system, it is the equivalent of a shout, easily countered, easily contained.

41. The third and fourth points are of particular interest to anti-globalization movements, which are both systemic by definition and local by design. In a context where the most relevant actions are transnational and their guiding principle is consistent, explicit self-interest, governments are less relevant as targets than corporations. But corporations use different mechanisms to secure consent and regulate behavior than governments—so civil disobedience in this context requires a different strategic framework if it is to be effective. Where government is the target, breaking a law may be an effective strategy. Where the target is a corporation, it is likely that something else must be broken. Some have turned (as in Seattle and subsequent WTO protests) to breaking property. But that doesn’t appear to be an especially effective use of available power. It may work better in circumventing DRM, digital resource management (which, by the way, draws our attention to the extent to which governments serve corporations), meaning that breaking property is breaking a law. But the question is whether this effectively diverts attention from the corporate target to the government that has implemented a law to protect property. (It is a bit like climbing a fence to protest production of nuclear weapons. Breaking a law against trespass may divert attention from the illegitimate exercise of power implicit in manufacturing weapons of mass destruction.)

42. But what about an assault on habit or custom as a way to transform culture? Here, the most relevant models are Cesar Chavez and others who have turned in their campaigns from explicitly political targets to targets more generally understood as economic. If we examine something like the United Farm Workers boycotts of table grapes, simple economic leverage is only part of the picture. A community of sufficient size and solidarity can have an impact on corporate behavior by cutting into profits—and that can be used (as Chavez and, later, anti-sweatshop campaigners have shown) to improve conditions for workers. But, more to the point, such a campaign may alter the way in which people interact with
corporations; and I am convinced that the most important dimension of this change is the extent to which it undermines the truism that “rational” action is action undertaken on the basis of economic self-interest. One could argue that an economic boycott (or a strike) is a temporary suspension of action motivated by economic self-interest as a means to later action with greater economic benefit. If that is the case, it doesn’t challenge the overall framework in which all behavior is motivated by economic self-interest. But I think Chavez in particular took this in a different direction. As a campaign of civil disobedience, the UFW-led boycott of table grapes was a campaign against a system that defined all action as individual action motivated by self interest. As an alternative, it proposed action in the context of community that shared a vision of justice. Action motivated by that vision challenged the “law” of “rational” economic activity and, with it, the power of an abstract Market to determine behavior. This is an interesting variation on King’s beloved community, and, as in Gandhi, it depends on a community being the civil order it seeks to establish.

43. A community is embodied as it is enacted: the constitution of the civitas is the ensemble of actions undertaken by those who inhabit it. But we are most likely to inhabit more than one civitas at a time (simul iustus et peccator, one might say). Civil disobedience in the tradition of Thoreau constitutes a new civitas emerging from an existing one that it, in effect, seeks to burn down. In terms borrowed from liberation theology, it is simultaneously denunciation and annunciation. Like any rhetorical strategy, it lives and dies not only in the words of the speaker but also in the response of those to whom they are directed (and those who simply happen to overhear). Consistent with Thoreau, it is a pragmatic argument with an aesthetic that makes it more likely to gesture in the manner of an invitation than to compel in the manner of a directive. Be the change you seek, Gandhi said. That being is a becoming within an existing social context that proceeds by making it new--not tinkering around the edges but transforming, not adjustments in policy but all things new.

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REFERENCES


