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THOREAU'S CIVIL DISOBEDIENCE: A REASSESSMENT

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An essay  
presented to  
the faculty of the Department of English  
University of the Pacific

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In partial fulfillment of  
the requirements for the degree  
Doctor of Arts

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by  
Thomas A. Murawski

July 9, 1975

This essay, written and submitted by

THOMAS A. MURAWSKI,

is approved for recommendation to the  
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July 8, 1975

"Animals are either social or isolate. Man is a social isolate, and from this duality have come ages of pain."

--Jacob Bronowski

Although civil disobedience is as old as Socrates and Antigone, in the twentieth century it is to Thoreau's essay that advocates have returned for inspiration and justification. The extraordinary appeal of Thoreau's Civil Disobedience is demonstrated in the diversity of political philosophies to which it speaks. Anarchists have appropriated it as an uncompromisingly antigovernment tract. Marxists have been known to embrace it for anticipating the defeat of capitalist government and the ultimate victory of the proletariat. During World War II, the Danish resistance circulated copies of Civil Disobedience for moral support. Both Martin Luther King, who sought to prod a government, and Mohandis Gandhi, who sought to topple one, wrote of the inspiration they found in Thoreau for their nonviolent protest movements. Most recently, some Americans protested the Vietnam war by mailing copies of Civil Disobedience in place of their tax returns.<sup>1</sup>

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<sup>1</sup>For reviews of the essay's impact, see Henry David Thoreau, "A Brief History," The Variorum Civil Disobedience, ed. Walter Harding (New York: Twayne Publishers, Inc., 1967), pp. 19-27, and Walter Harding, "Thoreau's Fame," A Thoreau Handbook (New York: New York University Press, 1959), pp. 175-205. For a close look at the essay's influence upon Gandhi, see George

This record of Thoreau's influence is both impressive and troubling, for it may easily be interpreted to mean that Civil Disobedience is a practical guide to political activism. It is not, primarily because too many issues go undeveloped or simply unaddressed for Thoreau's essay to be more than an inspirational tract. This is not to say that Thoreau should have written a detailed manual instead of a bold call for "action from principle."

However, one surely ought to know just what he can--and cannot--find in Civil Disobedience. Missing from Thoreau's essay are firm distinctions between civil disobedience and revolution.<sup>2</sup> That Thoreau blurs

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Hendrick, "The Influence of Thoreau's Civil Disobedience on Gandhi's Satyagraha," New England Quarterly, 24 (1956), pp. 462-71.

<sup>2</sup>The term "civil disobedience" has been popularized by Thoreau's essay. The great temptation is to pun on "civil," as in civil war. Sometimes "civil," in the sense of courteous, is taken as a sign that Thoreau disassociates himself from criminals and revolutionaries. However, we cannot be confident of Thoreau's meaning from the present title, for it was not until four years after his death that it first appeared over his essay. The essay was originally delivered as a lecture in January 1848 under the title "The Relation of the Individual to the State." When first published as an essay in May 1849, it was called "Resistance to Civil Government." To my mind, "resistance," with its connotation of strategies against coercion, comes closer to the sense of Thoreau's essay than the present title. See Harding, A Thoreau Handbook, pp. 50-2. For a definition of modern civil disobedience that examines alternative meanings of "civil," see Christian Bay, "Civil Disobedience: Prerequisite for Democracy in Mass Society," in Civil Disobedience and Violence, ed. Jeffrie C. Murphy

the two is suggested implicitly by the essay's influence on an audience which has ranged from loyal citizens to irreclaimable rebels. It is suggested explicitly in such conflicting statements as these:

Thoreau was the first political theorist to advocate a selective and agitational disobedience directed toward a government he had no intention of supplanting with a new regime.<sup>3</sup>

His Civil Disobedience, indeed, is little more than a sermon on that very doctrine [of the Declaration of Independence which justifies revolution when perversion of the forces of government has reached a point where revolt is more useful than forbearance], and his refusal to pay his taxes was his mode of putting it in practice.<sup>4</sup>

Which, then, does Thoreau mean to advocate--civil disobedience or revolution? Because the evidence is mixed, any simple answer is likely to depend on where the reader is in the essay when the question comes to mind. Thoreau is alternately extreme and mollifying, in both his actions and his rhetoric. This lack of uniform consistency, when coupled with a reader's inclination to emphasize, say, Thoreau's defense of radical

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(Belmont, California: Wadsworth Publishing Company, Inc., 1971), pp. 76-77.

<sup>3</sup>Gary Wills, quoted in Variorum Civil Disobedience, p. 91.

<sup>4</sup>James Mackaye, quoted, bracketed material as well, in Variorum Civil Disobedience, p. 69.

individualism over his rejection of Black slavery, will result in widely differing interpretations. All told, Thoreau's essay presents a paradigm of civil disobedience, but to rest on discovering it is to miss the extremity to much of his case.

Thoreau's particular civil disobedience involves three distinct but related steps, each with its own array of implications: first, his refusal to pay his state taxes; second, his submission to imprisonment; and last, his publicizing his actions and governing rationale through his lecture and essay. Taken together, these steps conform, at least loosely, to the typical pattern of modern civil disobedience: limited and nonviolent public lawbreaking followed by uncontested punishment.<sup>5</sup>

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<sup>5</sup>This is probably the most widely accepted understanding of what an act of civil disobedience looks like. There have been challenges recently to the wisdom of nonviolence and acceptance of punishment; however, these two characteristics still stand as essential for distinguishing the civil disobedient from the criminal and the revolutionary. They demonstrate that the disobedient is concerned with moral persuasion rather than physical coercion.

Misconceptions surround civil disobedience. The vast majority of all public, nonviolent challenges to law and state policy in recent decades has been totally "obedient" (distribution of pamphlets on Vietnam or segregation, programs of voter registration, teach-ins, parades and picketing under permits or where no permits are required, etc.). For some convenient definitions of terms from pacifism through civil disobedience to violence without hate, see Harrop A. Freeman in Civil Disobedience, An Occasional Paper on the Free Society

A deepened understanding of Thoreau's essay may be gained by exploring Thoreau's three steps, one at a time, in the light of modern civil disobedience.

There is a clear line of descent from Thoreau to modern tax resisters. However, it is worth acknowledging that the simplicity of Thoreau's refusal to pay his state taxes (he paid none for years before spending his night in jail) pales next to present-day difficulties.<sup>6</sup> In most cases the government will simply attach the resister's earnings until it gets its money plus a surcharge. Thoreau encourages his readers to live minimally so that they will not be vulnerable to

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published by the Center for the Study of Democratic Institutions (Santa Barbara, California: Fund for the Republic, 1966), pp. 2-10. For an extended definition of civil disobedience and its political justification, see John Rawls "The Justification of Civil Disobedience," Civil Disobedience: Theory and Practice, ed. Hugo Adam Bedau (Indianapolis: Pegasus, 1969), pp. 240-55.

<sup>6</sup>The poll or state tax was levied annually by Massachusetts on all males over the age of sixteen. Thoreau stopped paying it probably as early as 1842. War with Mexico was not declared until 1846, so it would seem that the slavery issue was his principal motivation. The unpopularity of the tax (it was a political football in the 1840's) may have influenced Thoreau also. Thoreau knew that Bronson Alcott had been detained for several hours in the Concord jail three years before him for not paying the poll tax. See John C. Broderick, "Thoreau, Alcott and the Poll Tax," Studies in Philology, 53 (1956), 612-26.



government demands, and indeed some people have lived on less than the annual taxable income for just this reason. But for many would-be tax resisters, particularly those in cities or with families, it is simply impossible to survive on so little money. Besides, were they to make the enormous sacrifices involved, they would nevertheless pay sales taxes on the goods they purchased with their untaxed income.<sup>7</sup> Furthermore, practicing tax resistance to deny the government war money, for example, may backfire. In pre-Keynesian days, governments did use tax bills as a means of raising revenues for specific purposes, but as Michael Harrington explains, there are ironies to the new economics:

A consistent [tax resister] would have had to oppose the tax cut in 1963-64, for that policy made it more possible for the government to spark the economy and thus increase the tax base to raise the actual revenues which it received and devoted, in part, to Vietnam. (Harrington's emphasis)<sup>8</sup>

Thoreau deliberately recognizes few impediments. Rather,

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<sup>7</sup>Milton Mayer, "The Tribute Money," Civil Disobedience: Theory and Practice, pp. 127-34.

<sup>8</sup>Harrington also argues that the 1967 tax increase was implemented not to provide additional war money (the military always gets its money in a shooting war) but to dampen inflation (from which the poor suffer the most). Had there been no tax increase, inflation would have grown faster; and "the result would not have been to bring the end of the war in Vietnam any closer but to place the main burden of that conflict upon the black and white poor." "Politics, Morality and Selective Dissent," A Conflict of Loyalties: The Case for Selective Conscientious Objection, ed., James Finn (New York: Pegasus, 1968), pp. 230-31.

he calls attention to the indiscriminate nature of his tax refusal: "I do not care to trace the course of my dollar, if I could, till it buys a man or a musket to shoot with."<sup>9</sup> In one sense Thoreau's logic is indisputable. If he reduces his tax payment by the percent that goes to the military, some amount of whatever money he does pay will still go to "buy a man or a musket." So as a practical matter, only complete nonpayment will insure that none of one's tax money supports the military. Those who would follow Thoreau and resist by tax refusal face this incentive to pay all or nothing. Suffice it to say at this point that the one method of civil disobedience which Thoreau advocates, and affirms by his actions, is increasingly beyond our reach.

While an individual's refusal to pay taxes may be a private act of no great consequence to the government, its potential may be seen to extend beyond civil disobedience to outright revolution. As Hugo Bedau explains:

Refusing to pay one's taxes is not...merely another case of disobeying the law. It is performing an act the nature of which is to deny to government its capacity to govern, to administer and enforce any of its laws. Contrast this with trespassing and sit-ins: any government can accommodate this sort of

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<sup>9</sup>Variorum Civil Disobedience, p. 50. Subsequent page references to Thoreau's essay appear after quotations.

civil disobedience and still survive, no matter how widespread it becomes. (Bedau's emphasis)<sup>10</sup>

Commentators who subscribe to what has been called the duty of fair play urge civil disobedients to concede that individuals similarly subjected to injustices may agitate in a similar way.<sup>11</sup> By this logic, Thoreau practices a form of protest that would eventually lead to anarchy. On the other hand, anarchy would not necessarily follow from sit-ins at all the lunch counters of the South or all the offices of university presidents. It is the revolutionary finality of tax resistance, as it affects both the individual and the state, that stirs Thoreau's imagination. Thoreau describes his individual resistance not as a symbolic gesture but as a bellicose act when he announces, "I quietly declare war with the State" (p. 50). Furthermore, he calls attention to the logical outcome of general tax resistance: "This people must cease to hold slaves and make war on Mexico, though it cost them their existence" (p. 35). One argument directed against Thoreau is that although a government may be guilty of some abuses, it need not be stopped from

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<sup>10</sup>"Introduction," Civil Disobedience: Theory and Practice, p. 22.

<sup>11</sup>John Rawls in Civil Disobedience: Theory and Practice, p. 250.

existing at all.<sup>12</sup> Such is the premise of modern civil disobedience. However, it is certainly not the premise of Thoreau, who is willing to "cost them their existence." We may be confident that tax resistance will not be practiced in appreciable numbers. Nevertheless, we tame Thoreau unduly if we read this practical sense of things into his essay and minimize or moderate his extreme position.

By the vocabulary of modern civil disobedience theory, Thoreau's refusal to pay his taxes is an example of indirect civil disobedience. While he obviously approves of indirect civil disobedience, Thoreau takes for granted one of the thorniest aspects of the disobedience issue. In a pamphlet written while serving on the Supreme Court, Abe Fortas argued that in addition to such limitations as strict nonviolence and acceptance of punishment, civil disobedience must be confined to violations of laws which are themselves the object of protest--direct civil disobedience.<sup>13</sup> Fortas maintained

<sup>12</sup>C. Carroll Hollis, "Thoreau and the State," Commonweal, 50 (September 9, 1949), 531.

<sup>13</sup>The protean nature of civil disobedience should be pointed out here. In the case of direct civil disobedience, the dissenter violates a law which is itself considered unjust. Sometimes he is performing little more than the time-honored practice of bringing a questionable law to the attention of the courts so that it may be appropriately tested and struck down. Civil disobedience by Civil Rights activists of the 1950's and 60's, when there was any, often consisted of forcing courtroom showdowns on lower-level segregation laws that violated federal statutes.

further that "the violation of law merely as a technique of demonstration constitutes an act of rebellion, not merely of dissent" (my emphasis).<sup>14</sup> Howard Zinn countered with a pamphlet of his own in which he disputed the absolute necessity for either nonviolence or acceptance of punishment and emphasized compellingly the virtual impossibility of protesting a war--which is a condition, not a law--in any direct way:

True, a draft-age person can violate the draft law to protest the war. But Fortas might reply that since the draft law itself is not the

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Until very recently almost everyone would have agreed that indirect civil disobedience is always legally punishable and, if the point is lost, probably morally unjustifiable as well. Yet some advocates now argue that civil disobedience, indirect as well as direct, should be treated as a form of free speech protected as a right by the First Amendment. One commentator suggests that those who defend indirect civil disobedience as free speech use this treacherous logic: "They do no more, it is urged, than apply the tactics of the civil rights movement, and the philosophy of Martin Luther King, Jr., in other settings. If it was right, and legal, for black students to sit at the counter of a lunchroom in North Carolina twenty years ago, and ask for food despite a state law forbidding its sale to them, [higher courts overturned such segregation laws] ..., then it must be also right, and legal, for Harvard students to sit in the dean's office and demand an end of R.O.T.C., the abolition of grades, or the employment of more blacks on Harvard construction projects." Eugene V. Rostow, "The Rightful Limits of Freedom in a Liberal Democratic State: Of Civil Disobedience," Is Law Dead?, ed. Eugene Rostow (New York: Simon and Schuster, 1971), pp. 43-44. See Carl Cohen, "Civil Disobedience and Free Speech," Civil Disobedience: Conscience, Tactics, and the Law (New York: Columbia University Press, 1971), pp. 173-96.

<sup>14</sup>Concerning Dissent and Civil Disobedience (New York: New American Library Inc., 1968), p. 124.

target, but the war, that person is not justified in engaging in civil disobedience against the draft in order to protest the war.

If you are a woman, or not of draft age, you cannot even come that close in finding a law to represent your object of protest. Desperately seeking some way to dramatize your belief that thousands are being killed needlessly, you might decide to protest by refusing to pay your income tax. Fortas will say this is not a permissible act of civil disobedience, because the income tax is in itself a reasonable law. (Zinn's emphasis)<sup>15</sup>

Although Fortas is clearly unsympathetic, much civil disobedience is indirect. The risk of indirect disobedience, however, is that dissenters will break laws so remote from the object of protest that their point is lost. The president of Notre Dame University warns against this danger:

Opening water faucets to deplete a water supply, clogging highways to the World's Fair, or booing the President who was at the moment championing a new Civil Rights law is simply another form of injustice, insensitivity, or inhumanity--alienating friends and confirming enemies.<sup>16</sup>

Emerson took exception to Thoreau's refusal to pay his taxes for similar reasons: "It is worth considering that refusing payment of the state tax does not reach

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<sup>15</sup>Disobedience and Democracy: Nine Fallacies on Law and Order (New York: Vintage Books, 1968), p. 38.

<sup>16</sup>Quoted in Variorum Civil Disobedience, p. 89.

the evil so nearly as many other methods within your reach."<sup>17</sup> What, then, is Thoreau's defense?

By refusing to pay his state taxes, Thoreau prompts the most common criticism of civil disobedience and the one most readily countered: What if everyone disobeyed the law?<sup>18</sup> Most people do, if only by jaywalking. Furthermore, what of the person who exceeds the speed limit when rushing someone to a hospital? His speeding is illegal, but most people would agree that it is justified. So advocates of civil disobedience maintain that the question to ask is not may we break the law but when may we break the law. As Richard Wasserstrom

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<sup>17</sup>Variorum Civil Disobedience, p. 17. In criticizing Thoreau, Emerson may have had in mind the opportunities for immediately-related action available to Thoreau through the Abolitionist movement. Thoreau, never a joiner, did not become a member. Emerson summed up Thoreau's tax resistance as "mean and skulking, and in bad taste."

<sup>18</sup>For detailed replies to arguments against civil disobedience, see Carl Cohen, Civil Disobedience: Conscience, Tactics, and the Law, pp. 129-72. He counters the following seven criticisms: c.d. implies contempt for the law; c.d. supposes the primacy of selfish interests; c.d.'s take the law into their own hands; c.d. undermines respect for the law; c.d. is self defeating; lawlessness cannot be justified when lawful channels remain open; c.d. cannot be justified because it subverts the democratic process.

Whatever the subtleties of the opposing arguments, advocates of civil disobedience eventually return to the basic premise that between the rigid extremes of never violating the law and incessantly violating it there is room for carefully selected violations of specific laws for the purpose of extricating an individual from some corruption and/or stirring public awareness.

explains, it does not necessarily follow that carefully selected instances of civil disobedience provide wholesale encouragement to break all laws:

Anyone who claims that there are actions that are both illegal and justified surely need not be thereby asserting that it is right generally to disobey all laws or even any particular law. It is surely not inconsistent to assert both that indiscriminate disobedience is indefensible and that discriminate disobedience is morally right and proper conduct.<sup>19</sup>

Thoreau does not break the law indiscriminately. His motives are not those of the run-of-the-mill criminal, and his tactics are not the violent ones of revolutionaries. He distinguishes between the unavoidable and essentially harmless inequities of government and outright, unacceptable injustice. This is the core of his case:

If the injustice is part of the necessary friction of the machine of government, let it go, ...but if it is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn. (p. 40)

From here Thoreau goes on to demonstrate the application of this distinction by paying the innocuous highway tax but not paying the offensive state tax.

Challenges to the core of Thoreau's case center on the term, "injustice." One criticism is that Thoreau is

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<sup>19</sup>"The Obligation to Obey the Law," Civil Disobedience: Theory and Practice, p. 258.



inconsistent when he pays the highway tax but not the state tax. As Curtis Crawford explains, if Thoreau means to avoid all injustice he has not succeeded:

The decisions concerning where highways are routed, what is taught in the schools, or how much is paid the workers who make the products which Thoreau buys, are always outside his control, and often involve injustice.<sup>20</sup>

Such uncertainty over what injustices, if any, Thoreau means to tolerate leads to the criticism that "injustice" is too vague and subjective a criterion to be a generally reliable guide. This argument is hard to refute if we say that Thoreau bases his notions of injustice on nothing more than his private sense of higher law.<sup>21</sup> Admittedly, he seems to do just this when he urges abolitionists to withdraw their support from the government of Massachusetts because "they have God on their side" (p. 41). However, a more compelling defense of Thoreau can be made by emphasizing his utilitarian justification:

When a sixth of the population of a nation which has undertaken to be the refuge of

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<sup>20</sup>Civil Disobedience: A Casebook (New York: Thomas Y. Crowell Company, 1973), p. 153.

<sup>21</sup>Eric Sevareid's comment to the nation (CBS Evening News of September 16, 1974) treats the civil disobedient as motivated only by utterly private criteria: "The trouble with [obeying higher laws] is higher laws aren't passed; they're selected, and any number can play." His statement expresses what is probably a common but incomplete view.

liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize. (p. 35)

Although Thoreau's appeal to God, with its emphasis on private conscience, may not be a reliable standard generally, his utilitarian justification is based on widely-acknowledged humane values. (Thoreau does not rely on individual conscience alone to validate his actions. He is clearly motivated by a concern for the basic freedoms of mankind, freedoms supported by our own Declaration of Independence.) Stated this way, Thoreau's essay does not lend support to truckers who block highways in protest against rising gasoline prices nor to students who take over university offices to gain greater voice in faculty procedures. In Thoreau's terms, both the truckers and the students are objecting to "the necessary friction of the machine." The profound difficulty is that it is not self-evident that the civil disobedient who acts against slavery is proceeding from grounds fundamentally different from those which motivate, say, a member of the Ku Klux Klan. In both cases something like private conscience appears to be the arbiter that propels the individual to break the law. Because private conscience, aided by Western humanism or not, is always a factor in civil disobedience, Thoreau cannot escape the age-old attack made against the civil disobedient:

"'The rule of conscience' is a nice-sounding phrase. But in the end, it only means a man's selfish desire to be at peace with himself."<sup>22</sup>

One of the most troublesome aspects of Thoreau's case is that he perversely encourages the charge that he is motivated not only by a "selfish desire to be at peace with himself" but, worse, by a reprehensible concern for his own comfort. He cites import duties as a specific example of "the necessary friction of the machine," but his reason for letting them go uncontested rests on personal convenience:

If one were to tell me that this was a bad government because it taxed certain foreign commodities brought to its ports, it is most probable that I should not make an ado about it, for I can do without them. (my emphasis)  
(p. 34)

This statement raises the suspicion that Thoreau pays only the local highway tax because he gains immediate benefits from it; but as for the state and the benefits it provides, he "can do without them." Incredibly, Thoreau admits as much when he declares:

Until I want the protection of Massachusetts to be extended to me in some distant Southern port, where my liberty is endangered,...I can afford to refuse allegiance to Massachusetts.  
(p. 45)

At best Thoreau sounds naive. At worst, he undermines

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<sup>22</sup>Morris I. Leibman, "Second Lecture," Civil Disobedience: Aid or Hindrance to Justice?, Rational Debate Series (Washington D.C.: American Enterprise Institute for Public Policy Research, 1972), p. 21.

his credibility. Why should a reader be persuaded that Thoreau's lawbreaking has merit when it may be motivated not only by justifiable moral outrage over social conditions but by such a near-sighted and self-centered view of the role of the state? Thoreau hurts his case still further by admitting that although he refuses to support the state, he will let it support him: "I quietly declare war with the State, after my fashion, though I will still make what use and get what advantage of her I can" (p. 50). Thoreau's remark encourages accusations that he is dishonest and that his position is fraught with unresolved, and perhaps unresolvable, contradiction. Seen in this bad light, Thoreau appears to have conveniently spared himself a burden others bear quietly, and done so through a solitary act which will not have the slightest effect on the ills he supposedly finds so abhorrent. If Thoreau cares to persuade others of the moral worth of his lawbreaking, then he must give a sign that will overcome one of the principal difficulties facing any civil disobedient--the appearance that he is making an exception of himself for essentially selfish ends. To the understandably skeptical, Thoreau gives this appearance in spades. Consequently, the second step of Thoreau's civil disobedience, his going to jail, is crucial.

Thoreau's imprisonment has great symbolic value. ←

It demonstrates that his position is not that of the individual lawbreaker who expects to escape or be granted special immunity from prosecution. Rather, he makes his protest somewhat more public and in accord with the commonly recognized rule of law. By allowing himself to be imprisoned, he tacitly accepts the state's authority over him.<sup>23</sup> What is missing, however, is striking evidence that Thoreau accepts his duties as a citizen conscientiously. He lingers at Concord for three years before going to jail. When he finally does go, it is only because the tax collector seeks him out. Furthermore, he spends only one night in jail. At first glance, it seems unfair to criticize Thoreau for spending a single

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<sup>23</sup>Thoreau works by paradox when, for example, he speaks of "a majority of one" and declares, "Under a government which imprisons unjustly, the true place for a just man is also in prison" (pp. 41,42). Thoreau's own imprisonment is paradoxical as well. On the one hand he can declare, "I simply wish to refuse allegiance to the State" (p. 50). On the other hand, he can acquiesce to the state's punishment instead of fleeing.

If we hold Thoreau to his revolutionary rhetoric, it can be argued that he falls into a trap similar to the one which snares those who request exemption from military service as conscientious objectors. Such a request tacitly grants that the government has a legitimate claim on the bodies of its citizens and just happens to exercise that claim in the objector's favor. There is a parallel in Thoreau's accepting punishment because it carries the unspoken admission that he is answerable to the government he claims to reject.

See Richard M. Boardman, "Letter to Local Board No. 114," in Civil Disobedience: Theory and Practice, pp. 178-93. Boardman, a pacifist, explains his refusal to accept his draft board's offer of conscientious objector status: "To accept any classification is to tacitly accept the legitimacy of the system of conscription and the military for which conscription exists" (p. 180).

night in jail. He surely did not encourage the anonymous veiled lady to pay his tax for him, and reports of his anger at being released the next morning are doubtless true. Yet some of Thoreau's critics, Herbert J. Storing among them, have chided him for letting someone pay off his obligation.<sup>24</sup> It is surely not a desire to see Thoreau writhe that prompts such criticism. It is the feeling that Thoreau has not yet convincingly demonstrated that his intentions are unselfish. While Thoreau's imprisonment is a symbolically important gesture, it is too brief to have no-less-important emotional significance. Imprisonment demonstrates that the person who breaks the law for his principles is willing to make more trouble for himself than if he had left well enough alone.<sup>25</sup>

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<sup>24</sup>"The Case Against Civil Disobedience," On Civil Disobedience: American Essays, Old and New, ed. Robert A. Goldwin (Chicago: Rand McNally and Company, 1968), p. 106.

<sup>25</sup>Carl Cohen emphasizes the profound importance to most civil disobedients of accepting punishment not as a gesture (as in Thoreau's case) but as a hard test of one's sincerity: "It cannot be too strongly emphasized that civil disobedience usually a tactic aimed at effecting needed changes is through deliberate and public self-sacrifice. The disobedient breaks the law and is punished. He may expect that the punishment meted out to him will be (rightly or not) more severe than that inflicted upon less principled offenders of the same law (for he breaks the law with 'malice' of forethought). His suffering this punishment, his humiliation and probable maltreatment, are essential parts of his protest. It is not simply the breaking of the law as such but the entire demonstration, the preparation for it and its aftermath, that serves as his public declaration of anguish over a continuing community injustice." (Cohen's emphasis) Civil Disobedience: Conscience, Tactics, and the Law, pp. 131-32.

Worried by some of Thoreau's principles, we look to his imprisonment for convincing evidence of his credibility, and the less trusting among his readers may well be disappointed. [Even before Thoreau publishes his essay, he has technically performed an act of civil disobedience by his limited and nonviolent public lawbreaking followed by uncontested arrest.] But there is little of the underlying respect for law displayed in Martin Luther King's famous declaration, "One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty" (my emphasis).<sup>26</sup> (Still, Thoreau is not a (flaming) revolutionary; he is not so much hostile to government as indifferent to it.) Nevertheless, we may well ask whether this distinction finally matters. When generalized, Thoreau's laxity over the obligations of citizenship and the fate of the state (there is no disputing his humanity) would lead to revolution, if not anarchy. Punishment is a sign by which the civil disobedient distinguishes himself not only from the merely lawless but from the revolutionary as well.) It indicates both to the disobedient himself and to the public that his motives are not likely to be selfish,

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<sup>26</sup>"Letter From the Birmingham Jail," On Civil Disobedience, p. 67. Compare, for example, King's good will to the scorn Thoreau expresses at being jailed: "I saw that the State was half-witted, that it did not know its friends from its foes, and I lost all my remaining respect for it, and pitied it" (p. 46).

for he makes sacrifices after all. It is hard to follow those who argue that this safeguard is not essential to civil disobedience.<sup>27</sup> By the same token, it is hard to take without reservation the model Thoreau provides in going to jail willy-nilly.<sup>28</sup>

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<sup>27</sup>For an argument against acquiescing to punishment, see Howard Zinn, Disobedience and Democracy, pp. 27-32. "If the social function of protest is to change the unjust conditions of society, then that protest cannot stop with a court decision or a jail sentence. If the protest is morally justified (whether it breaks a law or not) it is morally justified to the very end, even past the point where a court has imposed a penalty. If it stops at that point, with everyone saying cheerfully, as at a football match, 'Well we played a good game, we lost, and we will accept the verdict like sports'--then we are treating social protest as a game. It becomes a token, a gesture." (p. 30)

<sup>28</sup>Paul Goodman calls civil disobedience too "fancy" an account of the radical activities of the 1960's. He distinguishes between "nostalgic patriots," who practice "classical" civil disobedience because political means are not available, and the more numerous kind of radical who practices something closer to "lawlessness": "Now in the resistance to the draft, Dr. Spock and Dr. Coffin declare that they are committing 'civil disobedience' and are 'willing and ready' to go to jail if convicted. No doubt they have a theory of what they are doing. Most of the co-conspirators, however, including myself, regard the present regime as frighteningly illegitimate, especially in military and imperial affairs; and we are not 'willing' to accept the penalties for our actions, though we may have to pay them willy-nilly. The regime is illegitimate because it is dominated by a subsidized military-industrial group that cannot be democratically changed." "Reflections on 'Civil Disobedience' and 'Lawlessness'" On Civil Disobedience, p. 128.

Thoreau comes closer in spirit to Goodman's radical than to Spock and Coffin because Thoreau does not insist on the importance of punishment. Of course, he can hardly be expected to, given his commitment to the superiority of the individual over the state. I hold out simply for the recognition that Thoreau is not the one to go to for those discriminations that clearly separate civil disobedience from other, less scrupulous, methods of dissent.



Just as punishment is widely thought to have great moral persuasiveness, so too nonviolence is generally considered essential to the special morality of civil disobedience. Thoreau appears committed to nonviolence because of his tax resistance and his peaceful acceptance of punishment.<sup>29</sup> Unfortunately, as with his arrest, Thoreau's adherence to nonviolence just happens; he offers no explicit theoretical guidance. While Thoreau's temperament seems here to dispose him against violence, elsewhere he can vigorously endorse John Brown's use of it:

It was [Brown's] particular doctrine that a man has a perfect right to interfere by force with the slaveholder, in order to rescue the slave. I agree with him....I do not wish to kill or be killed, but I can foresee circumstances in which both these things would be by me unavoidable.<sup>30</sup>

Because Civil Disobedience is an incomplete statement of Thoreau's attitude toward nonviolence, we dare not insist that he means to advocate only peaceful lawbreaking to avoid injustice. This much is clear: because Thoreau

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<sup>29</sup>To the cursory reader, Thoreau may also seem a pacifist, but he is not. It goes without saying that an objection to one war leads not necessarily to objection to war in general, which is characteristic of pacifism. Those pacifists who find moral support and encouragement in Civil Disobedience must be prepared to accept his observation (June 30, 1840) that "I have a deep sympathy with war, it so apes the gait and bearing of the soul."

<sup>30</sup>Henry David Thoreau, "A Plea for Captain John Brown," Walden and Selected Essays (Chicago: Packard and Co., 1947), p. 464.

takes nonviolence and punishment for granted in his own particular case, he does not encourage the reader to focus on two practical aspects of civil disobedience that help to distinguish it clearly from rebellion.

Thoreau expands his private act of withdrawal into a public act of education when, in the third step of his civil disobedience, he publicizes his actions and governing rationale by lecture and essay. Once again, Thoreau prompts the question of whether he means to reject the state completely (revolution) or to resist within the state's authority (civil disobedience). The evidence is mixed here, as elsewhere. The first step, nonpayment of taxes, is a passive and solitary act, but it carries revolutionary implications. The second step, acceptance of punishment, seems an admission of the state's authority, but Thoreau never openly concedes the point. As for the last step, Thoreau's rhetoric is sometimes mollifying and often extreme, and so it too provides indications that he does not teach civil disobedience so much as something revolutionary. Thoreau is mollifying when, for example, he concedes some merit to the existing government:

Seen from a lower point of view, the Constitution, with all its faults, is very good; the law and the courts are very respectable; even this State and this American government are, in many respects, very admirable and rare things, to be thankful for, such as a great many have described them. (p. 52)

For the most part, however, Thoreau's rhetoric is as

immoderate and "unreasonable" as his commitment to bold moral action. It works by spontaneous insight rather than sequential logic, by stirring declaration rather than calm analysis. Thoreau sustains so daring a style by repeatedly pressing his case beyond defensible limits. At their most brazen, Thoreau's pronouncements on law, government, and individual autonomy are easily disputed. "Law never made men a whit more just" (p. 33). (Does not law make men more just by defining and penalizing unacceptable behavior?) "It is not many moments that I live under a government" (p. 52). (Especially in our interdependent age, is any individual ever not under a government?) "A single man can bend [the government] to his will" (p. 31). (If a single man could bend the government to his will, would not that be tyranny?) And most striking of all, "The only obligation I have a right to assume, is to do at any time what I think is right" (p. 33). (Who, if not the government, will decide among conflicting claims of individual right?) To skeptics, such cavalier statements as Thoreau's violate common sense. To admirers, they represent simply the hyperbole of the advocate. However, whether we reject such rhetoric outright or make allowances for it instead, the wisdom of acting on the basis of Thoreau's essay has been thrown into question. [It would seem that Thoreau is able to respond to his social conscience by so radical an act as tax

Civil disobedience of today still question whether it is wise to act on the basis of Thoreau's Civil Dis. Many find Thoreau's tax resistance an act of personal and individual satisfaction, with no concern whatsoever for laws and gov. In this light, they, many

resistance out of an extreme commitment to individual autonomy and a general unconcern for law and government. Because we are not likely to share these premises, we may find ourselves in favor of civil disobedience but against the case Thoreau makes for it. /

Thoreau's case is easy in one sense and difficult in another. One of the chief attractions of Civil Disobedience, and one of its necessary limitations, lies in its prophetic quality. Recent American history has confirmed Thoreau's good judgment in abhorring state-supported racism and a questionable war. But in sympathizing with his outrage over these conditions, we are spared the difficult test to our forbearance that arises when others dissent against issues that lack the persuasive moral justification of Thoreau's case. So in this respect at least, Thoreau presents a comparatively easy case. His case is difficult in that he minimizes the problem which makes civil disobedience interesting in the first place. That is, Thoreau does not present himself as a genuinely loyal citizen for whom civil disobedience is a difficult act fraught with the pain that gives it moral persuasiveness. Thoreau's solution to the age-old problem of what to do when one can no longer be both a good person and a good citizen is to deny the problem. For Thoreau, one is always an individual before he is a citizen.

*might find themselves in favor of civil disobedience but against the way Thoreau presents it.*

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