

LIBERTY UNIVERISTY

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by

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Introduction

To say that civil disobedience is a complicated topic is to severely understate the topic. It is a subject matter that has derived many different and disparate opinions, points of view, and public policies. Specifically, within America today, we observe calls for civil disobedience from both sides of the political spectrum, over several divergent political ideals. These issues are, primarily, driven from both sides' desire to provide protection and provision for the oppressed and those who cannot necessarily speak for themselves. The definition of who is necessarily oppressed and whom their oppressors are varies from person to person, regardless of political affiliation. At the present moment, the general consensus from either side of the fence appears to be that we are existing in an increasingly flawed system, and that there appears to be fewer and fewer ways to address it within the bounds of our current legal system. This has led both sides to take drastic measures increasingly outside the rule of law in order for their voices to be heard. For Judeo-Christians, this causes no small amount of conflict. What manner of steps should those of the mind to intervene for whatever issue they feel is pressing be capable of doing, within the moral framework of their own worldview?

In this essay, these issues shall be examined, both with regards to our own American and Western history, and when it comes to Biblical viewpoints on such pressing matters. To begin, this essay shall define certain terms as can give a framework for better understanding what lies around the legality of a matter.

Definitions

Firstly, we shall give definitions which are relative to natural law, common law, and written law, and the impact which they have on any further discussion upon civil disobedience within a structure of Judeo-Christian thought.

Natural law, is, inherently, a concept which is constrained to natural rights. Natural rights then, are such things which mankind is capable of doing in the absence of a civil government, being outside of any preexisting manmade civil structure. Further, these natural rights may be seen as that same type of rights which are referred to by Thomas Jefferson in the Declaration of Independence of the United States, wherein he mentions "certain unalienable rights" wherein the people are endowed with by their Creator. That being, these natural rights include such things as are granted by Divine Providence and the ordering of the world at large, rather than at the dispensation and dispersion of any human body. Natural law then, in relation to these rights, was judged in early Americana to relate to that which man could perceive as that which protects these rights, using human reason and understanding upon observing the state of our being and existence when in relation to the natural world around us, absent of any governing body politic (Hamburger 1993, 907-10).

Common law then, is a matter which can be varied far more in its definition, because of its very nature. Common law is not that which can be defined, but rather only described. It is not that which is imposed upon society, but rather grows out of one naturally, through the judgements of various rulers and judges in diffusing interpersonal relations using human reason within the realms of their

individual understandings over the course of many hundreds if not thousands of years (Atiyah 1985, 1-24). The traditions, writs, and actions of various societies may and do vary widely, but taken by themselves, represent a legal tradition and understanding before such things as might be understood as civil government as those in modernity perceive it, and indeed in some cases before civilization as it is commonly known (Hamburger 1993, 911-27).. Most importantly, it is an oral law, which cannot be written down and codified, as this by definition would turn it into a statutory civil law. America and her founders in particular owed their understanding of the subject primarily in light of the traditions of Anglo-Saxon English common law, most famously and reputably described by the famed barrister Sir William Blackstone and his *Commentaries on the Laws of England* (Lobban 1987, 311-335). This is not to say that America is not influenced by the common law of other peoples, primarily of Germanic origins, but also of Native American, African, and increasingly, Oriental common law. Furthermore, it would be unfair to state that the American judicial system has not been building its own manner of common law after a sort, though not buried as deeply, throughout their various decisions and rulings over the centuries. To summarize, common law is an understanding of cultural and communal precedent (Atiyah 1985, 25-28).

Finally, written law is that which is fairly self-evident, being the various codified civil rulings of a body politic of any given nation. They vary from nation state to nation state and are provided by duly elected representatives of the people, whether the system be republican or monarchical. These laws can take many forms and be called by many names, but the critical order of these laws is that they are responsible for the greater protection of their citizens, primarily speaking using the general effusion of resources which the citizens grant to their government, namely taxes. It is in these laws that natural liberties are subjected. For instance, the right to bear arms would be that which is considered a natural right of man, but it is only permitted within the United States of America due to the written law, which the current constitutional system chooses to grant permission to the citizenry to continue to wield even within the present state of the system which we find ourselves within. The primary influences upon our American systems of written law of course include English law, Greco-Roman law, and Judeo-Christian law (Konvitz 1978, 1619-1640).

Research Methods

With all these particular understandings of the different manners of laws in mind, one can now turn attention to researching the history of civil disobedience within the general conscious history of the American people and influence. In doing so, a necessary place to begin would be the critical English Civil War, fought between the Stuart Dynasty's royalists, and the rebel Parliamentary roundheads between the years of 1642 to 1651 when the American colonies were still entering their earliest developments. The war was, in no small part, fought over causes of religion, but was initially declared due to the concurrent King, Charles I, seizing five knights of Parliament and refusing to grant them writs of Habeas Corpus, a right confirmed to them by the Magna Carta, and passed down from Roman law. From there, the conflict devolved into various political and religious motivators, but undeniably, movement against the Crown and royal

authority occurred because of perceived breaches against the rights of individuals which were granted to them both by prior English common law and the written contractual law that was the Magna Carta.

When one then comes to our own American Revolution, the reasons for which the American cause declared its independence from Great Britain are numerous, and well-studied. Critically, within the American Declaration of Independence, we specifically announced and listed our grievances which lead us to the initial separation from the Crown. This is something which, prior, no other nation had done in any sort of formalized manner, and is critical in our understanding of the current American legal system. Firstly, that the Declaration appealed to the natural rights which were given to them by their Creator, saying that the King and his Parliament had violated these by their actions. Secondly, the authors of the Declaration consistently point out that, from their point of view, the Crown has done things which are unreasonable, inconvenient, and against the better stability and comfortable growth of society. A common complaint which we see consistently levied by many American political figures of the time, not merely the authors of the Declaration of Independence, is that the actions taken by the Crown go against the common rights of the colonists insofar as they are Englishmen, and as such should be subject to the same rights and privileges that other ordinary Englishmen are entitled to.

This within itself raises a form of a conundrum. In many ways, the cause for the Revolution against the Crown is not a revolution due to the British breaking any laws against the Americans, at least in the written sense. Indeed, a primary complaint of the Americans appears to be that Americans are not under the written law of the British. However, if they are not under the protection of the written law of the British, that leaves them, and most importantly their rights, unprotected by the civil government. Therefore, the bonds which bind them to the Crown may be thrown off and broken, not necessarily because the Crown is creating more and more abusive laws, but because the Crown is not doing preforming its obligation to protect the rights of the citizens. (Hamburger 1993, 928-960). And then, if the Crown is not enacting such protections as it is supposed to, then the citizens must take it upon themselves to protect their rights outside of the Crown's prerogative (Locke 1690). Once the revolution was completed, the Americans established within their own government basically a system which was not at all dissimilar to the British system, barring the existence of inherited or granted nobility, civil power to a monarch, and a state sponsored church of specific denomination. Furthermore, the role of religion cannot be understated when observing our own revolution, the respect for Judeo-Christian virtues and ethics are seen throughout the conflict, and the elevation of that religion is seen evidently and preeminently throughout the public and private works of the Founders, from Patrick Henry to Frederick Muhlenberg to Thomas Jefferson's *Virginia Statute for Religious Freedom*.

This stands in stark contrast to the French Revolution against their own monarch. The French, largely influenced by the likes of the atheistic Kant and Rosseau, showed no interest in maintaining any forms of the former government, particularly upon the formation of the National Assembly. The manner of senseless and unrestrained bloodlust that resulted in the death of the King, Queen, and thousands of their supporters both noble and common were not constrained by

any concepts of prior law, nor was there ever a declaration of grievances given by the revolutionaries against the Monarch, to prove to the world the justice of their cause as was the case in the American Revolution (Burke 1790, 160-169).. With regards to the French revolution's view of Christianity, Edmund Burke, a Parliamentarian who was a noted supporter of the American cause within that body, had this to say about the nature of the men who sought to create a new France in his *Reflections on the Revolution in France*: "The literary cabal had some years ago formed something like a regular plan for the destruction of the Christian religion. This object they pursued with a degree of zeal which hitherto had been discovered only in the propagators of some system of piety. They were possessed with a spirit of proselytism in the most fanatical degree; and from thence, by an easy progress, with the spirit of persecution according to their means." (Burke 1790, 165).

Examining things further in the history of the American Experiment, in an episode mirroring to a degree the English experience, though dimly, one might examine the trials of the American Civil War. To say that the war was a matter of civil disobedience can easily be ascertained by those who observe it, but the matter of the causes are far more diverse and complex than might otherwise be perceived. The reality of the matter, however one observes it, is that the southern states thought that the danger of having a President with an abolitionist party was so great that it was something worth rebelling over, thus becoming disobedient to their civil authorities. This was due to, primarily, a fear that the government would take away certain written laws which protected their civilly granted rights and modes of income. Prior to this of course, there had been those on the abolitionist side that had committed notable acts of civil disobedience, to defeat that which they saw as an institution that took from others their natural and common rights as men. On both sides, fighting occurred for the preservation of certain perceived rights, and the preservation of written law of some form or another. To say that the side of the Union, and its ultimate abolition of slavery, is morally correct, is by nature affirming that man has natural and common rights outside of written law, by which slavery tramples upon.

Literature Review

When one is discussing the nature of human rights, and the civil disobedience that comes from one must be aware of the various arguments, both secular and religious, that have arisen over the course of the centuries, and compare them to the Judeo-Christian worldview which one finds developed by various theologians, and most importantly, the Bible itself. It is critical to understand, that even the most secular of scholars (such as Emeritus Professor of Anthropological Science at Cambridge University Alan MacFarlane) understand that the very basis of European and American Civilization is based around the constancy of the Judeo-Christian religion. And as such, up until the most recent of times, the majority of the thought placed into such matters as civil disobedience was done primarily by those members of the clergy as whom gave attentions to such things as the nature of the state of man and his place under secular and divine law. However, the first and most preeminent figure of proto-secular thought within the greater Anglosphere's understanding of civil disobedience is undeniably Thomas Hobbes.

Thomas Hobbes lived between the years of 1588 and 1679, and penned the seminal work known primarily as *Leviathan*, or by its longer title, *The Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil*, which introduced the world to social contract theory, namely, that any government entertains a social contract with its citizens, namely, to protect them from all foreign physical harms which might befall them. Key to this was the idea of the sovereign, the idea of a king, inviolable and strong, whose subjects owed him total allegiance in return for protecting their lives from the dull bleak chaos of the world. The rights of the citizens, in this view, are secondary to the protection that they are otherwise owed from the sovereign, who is then in turn owed the obeisance of the people under him without reservation. It is in this manner then, that Hobbes means to demonstrate that the only right that ultimately matters to man is the right of security, and all other rights are secondary behind this. Considering this, any form of civil disobedience against the sovereign is amongst the most cardinal sins that could be committed in light of the simple fact that rising against the sovereign for any cause breaks the security which it is the sovereign's duty to provide. In rebellion for any cause, whether it be from a minority or a majority, from noble or commons, the sovereign is obligated to answer such movements with forceful subjugation, for without these responses, the sovereign would not be performing his duty by allowing violence against the generally ordained balance of the citizenry.

To counter this line of thinking, two other critical English contemporaries arose to provide their own counters towards Hobbes' lines of thinking, these being, namely, the Speaker of the House of Commons Sir Edward Coke, and the doctor John Locke.

Sir Coke (1552-1634), for his part, in his work known as the *Institutes of the Laws of England*, made several postulations concerning the very nature of English concepts of property, constitutionalism, common law, and judicial jurisdiction, however his greatest contributions to the political discussion to which Hobbes began are thus. That firstly, the king is subject to the laws of his kingdom just as much as any other man. Secondly, that those laws passed by parliament could be rendered null and void if such went against, opposed, or violated such things as "common right and reason" (Routledge 2010, 111), thus holding the idea of common law over the idea of written law, while at the same time ensure that written law was applicable to all men, without exemption towards those who created it.

For John Locke's part (1632-1704), he dealt specifically with the idea that the sovereign was only obligated to provide the right of security. In his view, the sovereign was obligated to protect far more than the mere lives of the citizenry from foreign and internal physical threats. In his mind, beyond man's freedom to protect his life liberty and property in his natural state, the civil government had been created in man's reason to maintain greater peace and prosperity and cohabitation with his neighbors. From Locke's point of view, the sovereign had to be just as capable of maintaining the liberty and possessions of the individual citizen just as much as he was capable of maintaining his life in order to be a true sovereign. In the mind of Locke, rebellion was sometimes not just permissible, but required, if the sovereign were ever to endanger the life, liberty, and property of his subjects (Locke, 1690).

Within this nation, a critical thinker with regards to civil disobedience arose prior to the period of the American Civil War, specifically in the area of abolition. This man was Henry David Thoreau (1817-1862) of Massachusetts, who was a confirmed abolitionist and conscientious objector to violence. In his work, aptly titled *Civil Disobedience*, Thoreau lays out his criticisms for those who have true moral problems with a system of government, who do not actually take matters into their own hands. While he advocates initially, such things as nonviolent resistance, such as not paying one's taxes that go towards causes which one believes to be immoral, he does emphasize that there ultimately can be a point where violent resistance is admirable. Despite this, as governments are neither created by nature or by the direct hand of God, but rather by men, who are rational creatures, he maintains the hope that such individuals of whom the government contains to be those capable of being reasoned with. Nevertheless, Thoreau ultimately believes that noncompliance with government until it bends to the will of the individual is ultimately the method which is correct. To the mind of Thoreau, simply voting is not enough, equating it with being nothing less than wishing that the problem would go away. To make a civilly elected government comply, you must continually remind it that it is in your employ as a private citizen.

Within the themes of abolition and civil rights within our own nation, it would be remiss if one did not examine the two chief propagators and champions of the civil rights movement in America, namely the Rev. Dr. Martin Luther King Jr. (1929-1968) and Malcom X (1925-1965).

The Rev. Dr. King, a Christian Baptist minister for his part, who left behind many different writings and speeches, most particularly of interest for this specific topic being the *Letters from a Birmingham Jail*, which in its very nature espouses that it is the duty of mankind to oppose unjust laws, in as civil and reasoned a manner as possible, and furthermore, without delay. To this end, he argues that if the civil rights movement is one consisting of radicals, then he is pleased to be one, for he joins honored company, not the least of which is Christ. King strongly espouses his belief that opposition towards open disobedience towards law is not only the right course of action, but the only course of action for any sort of moral individual. However, King strongly reinforces the idea that citizens have obligations to obey just laws and rulings, just as much as one is obligated to oppose unjust rulings. King however was also of the mind that such things must be pursued nonviolently, most notably seen in his book *Stride Towards Freedom*, which contains an entire chapter about commitment to nonviolence.

Malcom X, by contrast, was a Muslim imam of the Nation of Islam, who often promoted violent responses to injustice against the African American community. He left no written works apart from his autobiography; however, he was very prolific in his speeches and public addresses. During his time with the Nation of Islam, he promoted many of the official beliefs of the organization, not that mankind was equal, and deserving of equal rights, but rather of the superiority of the African peoples at the expense of all others, promoted separationism, and even stood with the founder of the American Nazi Party as having similar ideals and principles in 1961. He rejected the nonviolent measures of the other civil rights leaders, including Dr. King, and as such saw that it was beneficial for the black population in America to advance themselves by any means possible, including violence. His views mellowed later in his life, interestingly enough after

going on the Hajj, the Muslim pilgrimage to Mecca, and split from the Nation of Islam, however his early visions still influenced thousands, based not on a belief of natural equality, but of natural inequality within peoples.

And how then, does this relate within the purview of Judeo-Christian thought? What are some of the opinions of the greatest theologians on the subject, and critically, what is the Bible's perspective on such affairs?

Dr. King, for his part, in his *Letters from Birmingham Jail*, is swift to mention two particular theologians, namely St. Augustine and St. Thomas Aquinas, in his defense of his battle for human rights.

Lex Iniusta Non Est Lex, "an unjust law is no law at all," was the estimation of St. Augustine when it came to matters of obedience to civil authorities, which is quoted and referenced by the aforementioned St. Thomas Aquinas in his *Summae Theologiae*. Aquinas goes even further, by stating that "'Human law is law only by virtue of its accordance with right reason; and thus, it is manifest that it flows from the eternal law. And in so far as it deviates from right reason it is called an unjust law; in such case it is no law at all, but rather a species of violence.'" (Aquinas 1485,19). Hereby, we can see that Aquinas views that any specific trace of virtue in human law is not because of necessarily human reason in and of itself, but rather when human reason reflects the virtue of God that law is in and of itself virtuous. Indeed, to go so far as to say that an unjust law is violence, implies by necessity that it must certainly not be brushed off dismissively by the people of God, but rather faced head on (Aquinas 1485, 15-25).

We can see Biblical examples where God himself specifically advocates for his people to commit acts of civil disobedience against an unjust government, both foreign and domestic. With regards to invasions by foreign powers and casting off foreign oppression with such as in Judges 3:12-4:1, where Ehud is led by God to overthrow the Moabite control of Israel, and in Judges 6:1-8:28 where a similar event occurs when Gideon is led specifically to overthrow the Midianite control over the nation. 2nd Kings 9:1-10:11 on the other hand, describes how God interacts with a general of the nation of Israel to overthrow a corrupt monarch, namely King Ahab.

There is also precedent to disobey civil government in the domestic legal sense, as is seen in the case of Joseph in Genesis 39:7-9. As a slave of Potiphar, and civilly under the authority of the wife of Potiphar, he is commended for refusing her commands to commit immoral acts. This should seem to be an indication that even such extreme circumstances of bondage, where Potiphar's wife was perfectly legally within her rights to demand services of her slave, Joseph is honored for disobedience to the legal rulings of the time and his adherence to his obligations towards God instead.

Within Jewish tradition, we see numerous methods by which to interact with those civic written laws which violates the Law of God, and one in particular stands out in Josephus' accounts as perhaps the first recorded mass event of nonviolent protest in history when the Emperor Caligula dispatched a Roman Legion to place his statue within the Temple in Jerusalem. (Josephus 75, 16.1-

3) "But there came ten thousands of the Jews to Petronius at Ptolemais to offer their petitions to him that he would not compel them to violate the law of their forefathers. "But if," they said. "you are wholly resolved to bring the statue and install it, then you must first kill us, and then do what you have resolved on. For while we are alive we cannot permit such things as are forbidden by our law and by the determination of our forefathers that such prohibitions are examples of virtue They threw themselves down on their faces and stretched out their throats and said that they were ready to be slain." (Josephus 75, 16.3)

Furthermore, Jewish Law is predicated upon a particular Natural Law, that was written on the hearts of all mankind, specifically that dealing with the seven laws given to Noah after his departure from the ark, these being imprinted upon the hearts of every man. They were placed on the conscious of everyman everywhere, that no one could ever be exempt from that which God had placed knowledge of innately within them (Babylonian Talmud 1935, 56a). Furthermore, civil disobedience is not necessarily spoken of as a right, but as a duty, within halakhic Judaism, when the orders of kings or the officials of state create order which go against one's fear of God.

The entire account of the Maccabees found in the Apocrypha can be seen as one long string of violent civil disobedience against a foreign conquering power, who undertakes to ban elements of both natural and Jewish common law, and throughout the Scriptures, we see numerous accounts of more peaceful civil disobedience take place (Landman 1969, 5-8). Notable instances can be seen when the Hebrew midwives refused the orders of the Pharaoh to kill the baby Hebrew boys in Exodus 1:15-17 due to their fear of God, when the soldiers of Saul refused to kill the priests of the Lord in 1st Samuel 22:17, or when Hananiah Meshael and Azariah refused to pray to the King of Persia in Daniel 3:22-27. Certainly, this can be reflected in the Christian martyrs of the later centuries, whose refusal to obey the decrees of the Roman Empire were similar acts of civil disobedience. (Landman 1969, 9-14).

Further, we witness within both within the Old and New Testament how God grants reason towards man when it comes to innately being capable of discerning what is right and wrong with respect to their situations around them, notably in Jeremiah 33:31 and in Romans 1:17-19. There is definitely a Biblical understanding of a clear understanding of right and wrong being placed within us, "reason" to relate it to the later words and views of the rational thinkers of the later 15th and 16th centuries (Childress, 1971).

Of course, to speak of civil disobedience within a Judeo-Christian viewpoint without speaking of Christ's example would be to completely fail in one's understanding of the subject from the Biblical perspective (Ryrie 1970, 3-6). We do see Christ is rather adamant about the obedience which should be delegated to civil authorities with regards to such things as taxes, in the famous passage of Mark 12:17, "render unto Caesar that which is Caesar's, and unto God what is God's." This, I would add, was not a government which the Jews had any input in in the slightest, nor had they any means of gaining access to by legal means beyond the near impossibility of gaining Roman citizenship, but the participation of a people in the government appears to be

inconsequential when compared with the importance of the people obeying and respecting their government (Konvitz 1978, 1619-1625).

We further see meekness from Christ during the accounts of his arrest in Gethsemane in the multiple gospels, regarding both how he treated the matter with Peter violently reacting to the unjust apprehension of the Messiah, and further concerning how he peacefully consented to go with the authorities at that critical moment. Though he knew his innocence, he still submitted to going and being led to the slaughter when he was brought before the authorities. Now granted, all this was admittedly part of God's divine foresight and plans, but nonetheless the example which Christ chooses to give is one of humility. Throughout the Gospels, instead of seeing Christ advocate for violence in disobedience to the powers of the world, he advocates that the best way that one can be disobedient against the laws of the world is simply to be obedient to the Law of God (Ryrie 1970, 7-8). Furthermore, we see him debating on matters of God's natural law, Jewish common law, and Roman civil law on multiple occasions throughout the texts, allowing us to grasp a clear picture of his views were on a variety of subjects, to which none of his responses were ever to take up arms at that exact moment. However, as we can observe within John's Book of Revelation specifically, he does take grave issue with the civic laws of men, to the point of vengeful violence (Konvitz 1978, 1626-1640).

Conclusion

To conclude, when one observes the nature by which we see numerous Judeo-Christian thinkers interact with the concept of disobedience, it becomes clear that one cannot take the idea of violent uprising lightly. It is a grave matter which cannot be examined without solid understandings of not only what law is, but what the law is which one finds oppressive, and also what nature or standard are you holding that law too which one sees the law overstepping. Certainly, from the viewpoint of a civic commandment contradicting the commandments of God, we are called to err with the commandments of God, rather than the commandments of men. However, one should be sure of the contradiction which is observed and be capable of clearly explaining and drawing clear reasons as to why civic law is in contradiction with the laws of God, which are the laws of nature as we understand that God places upon the hearts of men which are reasonable creatures. We must also observe whether not these civic laws have gone against any specific common principle of our shared civilization wherein we find ourselves, whether it be something hard and rooted within our culture, or something which we observe as being completely contradictory and foreign to it. Within this assessment, if one observes that both the laws of nature and common law are being broken by the written civic law, one cannot help but to weigh the types of disobedience which one is open to, and the level to which this can be pursued within the bounds of both natural and common law. There must be justice in warfare, just as there must be justice in laws, else a war which finds itself to be unjust, finds itself just as St. Thomas Aquinas related to unjust laws, mere violence. In everything, we should strive to show our loyalty to God's commands

before all else, but let us also not forget our duty and responsibility to ourselves and our neighbors in the wake of unjust civic laws and exercise of authority.

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