Roundtable

RIOTS, MINORITIES, AND THE STRUGGLE FOR JUSTICE AND ORDER

The American nation has been afflicted with unrest and turmoil during the past decade. The Editors of DIALOGUE *have asked three Mormon scholars, two professors of law and an economist, to examine how the fabric of law and the cohesion of society have been affected by minority problems, civil rights, and riots in the cities. Dallin H. Oaks is Professor of Law at the University of Chicago and former clerk to Chief Justice Earl Warren; I. Daniel Stewart is Associate Professor of Law at the University of Utah and member of the Board of Directors, National American Liberties Union; Royal Shipp is Senior Staff Analyst, Program Evaluation Staff, Bureau of the Budget, in Washington, D.C., and holds a doctorate in Business Administration from Indiana University.*

LAW AND ORDER—A TWO-WAY STREET

Dallin H. Oaks

Our society is afflicted with a tumorous disrespect for law. Ordinary citizens and public figures reject the requirements of law and boldly substitute some other set of values to justify clearly illegal behavior. Widely publicized spectacles of disobedience or disrespect for law invite similar action by others. When any person — especially a public official or other prominent person — takes the law into his own hands, his vigilante act moves society closer to violence and anarchy.

Many current examples of illegal behavior involve race relations. This has been true throughout our nation's history. During the last century, the formal passing of slavery left a legacy of legal and extra-legal measures in-

tended to "keep the Negro in his place." The most vicious extra-legal measure was the threat and practice of lynch law, which did not subside until the lifetime of most living adults. Between 1882 and 1951 there were at least 3,437 recorded instances where a Negro was put to death by a mob of whites who considered him guilty of some crime ranging from murder to "insult to whites." From 1900 to 1936 there was no year when there were fewer than six recorded lynchings of Negroes in the United States, and the annual figure was from 50 to 100 in most of those years. Some of the 76 Negroes lynched in the first year after World War I were returning Negro soldiers, lynched while wearing the uniform of their country. To these shocking figures one must add a host of lesser violences and indignities visited upon the Negro, some by frankly illegal means and some by laws only recently being stricken from the books. Examples range from the familiar laws requiring separation of the races in schools and places of public accommodation and amusement to such bizarre laws or practices as those requiring separation of Negro and white blood in blood banks established for wounded servicemen, separate storage for school books used by Negroes and whites, separate Bibles for courtroom testimony, and courthouses with separate windows for the payment of real estate taxes (A to M, white; A to M, colored; etc.)[1]

For more than a century both legal and extra-legal means have been used to deny Negroes the right to vote. After the passing of "legal" devices such as the poll tax, the grandfather clause and the white primary, recalcitrant white government officials have tried to disenfranchise Negroes by gerrymandering and by voter qualification tests (of "character" or "reading ability") that could be (and often were) administered in such a way that few if any Negroes would pass. Extra-legal means employed as recently as the last few years have included evicting Negroes from their tenant farms and subjecting them to other economic reprisals when they registered to vote. Some whites used more violent measures. In the summer of 1964 the nation was shocked when three civil rights workers (Schwerner, Goodman and Chaney) who had been working on a Negro voter registration drive were murdered near Philadelphia, Mississippi. Elsewhere in Mississippi, more than thirty Negro churches were burned and more than seventy buildings or automobiles belonging to Negroes or sympathetic whites were bombed during this one summer.[2]

Against this kind of background, a white man's plea for non-violence and respect for law may seem incongruous to a Negro with a sound feeling for his history and traditions. But the plea must be made. It was Abraham Lincoln

---

In addition to assistance from authorities cited in the footnotes, the author has also benefited from suggestions by Max Bell, Byron W. Daynes, and C. Weston Mickley.

[1]The World Almanac, 1956, p. 307; *Report of the National Advisory Commission on Civil Disorders*, pp. 100, 102, 104 (1968) (hereafter cited as "Kerner Commission Report"); Gunther, *Inside U.S.A.*, pp. 684–88 (1947); *Encyclopaedia Britannica*, Vol. 14, "Lynching and Lynch Law," pp. 476–77 (1965). The tax-window example is based on the author's personal observation in a county seat in Georgia in 1960.

[2]"The Summer Toll and Travail in Mississippi," *The National Observer*, Oct. 12, 1964, p. 5; Gunther, *Inside U.S.A.*, pp. 699–703 (1947); *Encyclopedia Britannica*, Vol. 16, "Negro, American," p. 193 (1965).

who declared, "There is no grievance that is a fit object of redress by mob law."[3] Our society, which grants almost unlimited opportunities for free speech, lawful protest, and peaceful efforts to adjust grievances and change legal rules by democratic means, need not tolerate any degree of violence or disobedience or disrespect for law.

As part of their battle to win equal opportunity in employment, education, and housing, Negro leaders have used marches, picketing, and other forms of lawful public protest to publicize their grievances and solicit support for their cause. Although sometimes inconvenient and irritating to non-participants, such protests have usually been held to be perfectly legal and proper exercises of the protesters' constitutional rights to free speech.[4] Speech must, of course, catch someone's attention in order to communicate, and it is one of the characteristics of *free* speech that the content of the message will be displeasing to some who apprehend it.

Another form of protest distinctly different from lawful protest is civil disobedience, which consists of an open and deliberate violation of law for the purpose of influencing government policy. Persons engaging in civil disobedience frequently do so with full knowledge of the personal consequences of their acts and with the expectation that their arrest and punishment will give increased publicity to their protest and added impetus to their cause. Although nothing said here is intended to be critical of legal protests (however inconvenient or irritating), this article does condemn most forms of civil disobedience, because deliberate defiance of the authority of law involves unacceptable risks to the well being of our democratic society. The discussion will return to the subject to civil disobedience after first trying to put this subject in the context of other flagrant examples of lawless behavior.

A SEQUENCE OF LAWLESSNESS

The death of Dr. Martin Luther King was part of a tragic sequence of lawless acts whose beginning was rooted in slavery and whose end is not yet in sight. As part of his effort to support the wage demands of a predominantly Negro garbage collectors' union, Dr. King led a demonstration march in Memphis, Tennessee. (1) Using Dr. King's crowds for cover and diversion, a small band of young Negro militants smashed windows and precipitated a riot that resulted in $400,000 worth of damage, 62 injuries, and one death. More than 4,000 National Guard troops were called to restore order. A second march, to involve 6,000 persons, was planned for two weeks later. After notifying all parties and considering evidence of the previous violence and of the anticipated consequences of the second march, a federal judge issued an order a week before the proposed march that enjoined Dr. King, his aides, and

---

[3] *Address*, Young Men's Lyceum, Springfield, Illinois, January 27, 1838, quoted in *Bartlett's Familiar Quotations*, p. 537 (13th ed.).

[4] Cox, Direct Action, Civil Disobedience, and the Constitution, in *Civil Rights, the Constitution and the Courts*, p. 1 (1967); B. Marshall, The Protest Movement and the Law, 51 *Virginia Law Rev.* p. 785 (1965).

"all nonresidents acting in concert" with them from "organizing or engaging in a massive parade or march" in the city of Memphis for at least ten days.[5] (2) The national executive director of the employees' union (American Federation of State, County and Municipal Employees), who had just served a term in jail for contempt of court during the New York City sanitation workers strike, immediately announced that the labor leaders would defy the injunction. "Our discipline is to the labor movement," he was quoted as saying. "We will march, regardless. The injunction won't stop us."[6] (3) Dr. King took the same position. In a statement issued on the same day as the court injunction, he announced, "We are not going to be stopped by Mace or injunctions or any other method that the city plans to use."[7] The position of these leaders was, in short, that they would take the law into their own hands.

(4) At about 6:00 p.m. the following afternoon another man took the law into his own hands, and Dr. King fell victim to the twelfth major civil rights assassination in the last five years. (5) During the following week Negro mobs in over sixty American cities discredited the memory of the Negro leader with carnival-atmosphere forays of looting and burning. Thousands were arrested.

(6) Then, as a crowning touch to this lawless sequence, many persons who were arrested in Chicago (and perhaps other cities as well) were held incommunicado and effectively without their constitutional right to bail for several days beyond the containment of the disorders. Many, probably a majority, of those arrested in Chicago had been swept up by mass-arrest policies designed to clear the streets, and were only charged with disorderly conduct, curfew violations, or other minor offenses. The effective denial of their constitutional right to release on reasonable bail occurred because responsible public officials failed or refused to take the simple planning measures necessary to process arrests, fix fair and appropriate bail, and have facilities and personnel to accept bail money and account for the detention of persons arrested for civil disorders. All of these measures had been strongly recom-

---

[5]"Court Bars March in Memphis, Dr. King Goes Ahead With Plan," *New York Times*, April 4, 1968, p. 30, col. 3.

[6]"Martin Luther King Slain by Gunman in Memphis," *New York Times*, April 5, 1968, p. 24, col. 8.

[7]Source cited note 5 *supra*. Two facts are helpful to put these two statements of defiance of a federal injunction in perspective. First, the public interest in obedience to the order of a court of equity (usually an injunction) is so great that a person can be punished for disobeying an injunction even though it was issued ex parte (without notice or opportunity to be heard), even though he believed that he did not need to obey it because it was invalid, and even though the injunction in fact should not have been issued. Tefft, Neither Above the Law Nor Below It, 1967 *Supreme Court Review*, pp. 181, 183. Only last year the United States Supreme Court reaffirmed that principle in sustaining Dr. King's own conviction and 5-day jail sentence for contempt of court for violating an Alabama state court injunction against parading in Birmingham without a permit. *Walker v. City of Birmingham*, 388 U.S. 307 (1967). After the Supreme Court's action, Dr. King served his time for that offense. Second, and of contrary force, violation of an injunction and later negotiation of an amnesty (with the consent of responsible government officials) as a part of the final settlement of a labor controversy has become a common (but lamentable) event in recent labor–management controversies.

mended in the *Report of the National Advisory [Kerner] Commission on Civil Disorders,* issued over a month before.[8]

Partly because of the administrative overload and confusion resulting from an absence of such emergency measures, and partly because judicial officers neglected or flatly refused to follow the plain dictates of law, many persons arrested in civil disorders had bail fixed at unreasonably high levels on an assembly-line basis contrary to the law requiring consideration of evidence showing the individual circumstances of the defendant and the likelihood of his appearance for trial.[9] Other persons, for whom bail money was available, were unable to secure release for up to several days because court clerks refused to accept the bail money that was tendered or (once bail was accepted) were unable to locate where the defendant was being detained to order his release. It should not be necessary to add that some of the persons so held were as innocent as the home owner arrested carrying his own belongings out of his burning home, and that others charged with minor offenses (such as disorderly conduct or curfew violations) were employed breadwinners whose lengthy detention resulted in loss of employment or income and in severe hardship to dependent families. Whether the cause of this breakdown of legal process was deliberate or negligent, it gave but one appearance to prisoners, family, and friends — illegal behavior by public officials to violate their rights.

DISRESPECT BY PUBLIC OFFICIALS

No society can flourish without a general obedience and respect of law. Disobedience and disrespect of law, especially by public figures and public officials, breeds violence and civil disorder and threatens the stability and life of our society. "If the Government becomes a lawbreaker," Justice Brandeis wrote, "it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."[10] Consider, then, the terrible significance of conditions revealed in a recent eleven month study for the United States Department of Justice of the behavior of 450 police officers in eight slum precincts in Boston, Chicago and Washington. Over 16% of the police officers were *observed* in conduct that could be classified as a felony or misdemeanor. Additional officers, numbering more than 10%, *admitted* similar be-

---

[8]The factual statements in point (6) and the succeeding paragraph about events in Chicago courts are based upon oral communications to the author of first-hand observations of respected members of the Illinois Bar, including colleagues and former students. It is only fair to record that the responsible judicial officers denied the charges of mismanagement and failure to follow legal procedures. See, generally, Ginsberg, Volunteer Lawyers Retrieve Due Process in Chicago, *Legal Aid Briefcase,* June, 1968, p. 207; "3 Groups Charge Riot-Case Bungling," *Chicago Daily News,* April 12, 1968, p. 3, col. 5; "Chicago Negroes Sue for Hearings," *New York Times,* April 13, 1968, p. 12, col. 7. The preparatory measures for handling mass arrests are suggested in *Kerner Commission Report,* ch. 13.

[9]The content of the Illinois bail law as administered in Chicago is discussed in D. Oaks & W. Lehman, *A Criminal Justice System and the Indigent: A Study of Chicago and Cook County,* ch. 7 (1968).

[10]Olmstead v. United States, 277 U.S. 438, 485 (1928) (dissenting opinion).

havior, which brought the total engaging in such conduct to 27%. The most common types of conduct that the study classified as illegal were shakedowns of traffic violators, drunks, deviants and businessmen (although the "extremely common" shakedowns for free meals or free drinks were not counted as misconduct for this purpose); theft from burglarized establishments; and payoffs to police to return stolen property, protect illegal establishments, or alter testimony at trial.[11] More recently, we have been shocked by the Walker Report's vivid description of "unrestrained and indiscriminate police violence," which it characterized as a "police riot," against demonstrators, newsmen, and bystanders at the Chicago Democratic Convention (*Rights in Conflict, The Walker Report to the National Commission on the Causes and Prevention of Violence,* pp. 1 and 5 in the Bantam Books edition).

Public officers and employees are more than servants of the public. They are also instrumentalities of the law. Respect for law cannot be expected of citizens generally if police and other public officers fail to yield respect to its precepts. Law and order is a two-way street. Consider what view of law is held by an urban Negro who has experienced police brutality in connection with arrests for minor infractions, who is frequently stopped by traffic officers who solicit $5.00 as the price of not writing an unjustified traffic ticket that could only be answered by losing a half day's work in attendance at court, and who is unable to buy a home in a desirable white suburb (even though he has the money) because he cannot obtain the essential fire insurance so long as the white members of the suburb's volunteer fire department let it be known that they will not answer (or be dangerously slow in answering) a call to a Negro home.[12] The kind of resentment and contempt for law engendered by such experiences is confirmed and reinforced when friends and relatives, arrested on curfew violations or other minor charges in connection with a civil disorder, are confined for a week or more and effectively denied their right to bail because the judicial system has neglected or refuses to employ the resources necessary to give them their constitutional rights. Is it any wonder that some Negroes see public officers as their enemies and view the law as the white man's way of keeping them in their place? "We have found," the Kerner Commission reported, "that the apparatus of justice in some areas has itself become a focus for distrust and hostility. Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders."[13]

Public officials sometimes seek to justify illegal behavior on the ground that the immediate threat is so great that government officers have to transcend legal requirements in order to preserve the public health, safety or morals. This may sound persuasive during crisis, but the history of such

---

[11]"Misconduct Laid to 27% of Police in 3 Cities' Slums," *New York Times,* July 5, 1968, p. 1, col. 3 and p. 28, col. 3–4. The study was directed by Dr. Albert J. Reiss of the Bureau of Social Research of the University of Michigan.

[12]These examples are not suppositions. They are occurring today in Chicago and some of its suburbs.

[13]*Kerner Commission Report,* p. 183.

justifications includes so many tyrannical episodes that a free people ought to be repelled by the suggestion that any public official could set aside the requirements of law under any circumstances.

CIVIL DISOBEDIENCE – LIMITS AND DANGERS

Deliberate and flagrant illegal behavior by private citizens is also dangerous to the long-run interests of society. The most newsworthy example today is civil disobedience, a concept so amorphous that almost every author who has contributed to the growing literature on the subject has felt obliged to provide his own definition.[14] For purposes of this article, the term *civil disobedience* signifies an open and deliberate violation of law for the purpose of influencing government policy. It should be recalled at the outset that this does not include lawful protests such as peaceful assemblies, picketing, or marches not in violation of law. This point needs to be stressed because all too often those who are offended by an inconvenient, irritating, or embarrassing protest brand it civil disobedience even though it is perfectly lawful. Even protesting groups sometimes imply that their perfectly legal conduct is illegal "civil disobedience" because, it has been suggested, this facilitates their effort to represent themselves as appealing to higher values such as morality or religious beliefs that transcend secondary values such as legality.[15]

Thoughtful writers have distinguished between two different types of civil disobedience.[16] The first is the type recently approved by a resolution of the General Board of the National Council of Churches, which defined it as "deliberate, peaceable violation of a law deemed to be unjust, in obedience to conscience or a higher law, and with recognition of the state's legal authority to punish the violator."[17] Here a person breaks a law as a means of attacking its morality or constitutionality or of publicizing efforts to repeal it.

In the second type of civil disobedience the law being violated is not itself the object of the protest but is disobeyed merely to dramatize and publicize the protester's cause. Although a significant number of thoughtful persons defend the first type of civil disobedience in at least some instances, few attempt to justify this second sort of law-breaking. In his recent and notable "Broadside" on civil disobedience Justice Abe Fortas states that in a country with ample protection for expression of individual or mass dissent, the violation of law merely as a technique of demonstration is "never justified" and "constitutes an act of rebellion, not merely of dissent."[18]

---

[14]The source materials for this discussion of civil disobedience are: Allen, Civil Disobedience and the Legal Order, 36 *University of Cincinnati Law Review* pp. 1–175 (1967) (The Robert S. Marx Lecture at the University of Cincinnati College of Law); A. Fortas, *Concerning Dissent and Civil Disobedience* (Signet Broadside, 1968); Morris, American Society and the Rebirth of Civil Disobedience, 54 *American Bar Association Journal* p. 653 (1968); sources cited in note 4 *supra*.

[15]Allen, *supra* note 14, at p. 7.

[16]Fortas, *supra* note 14, at pp. 31–35, 63; other sources cited note 14 *supra*.

[17]"Churchmen Back Defiance of Law," *New York Times*, June 8, 1968, p. 25, col. 5.

[18]Fortas, *supra* note 14, at p. 63. The organized Bar's resolution to the same effect appears in 54 *American Bar Association Journal* 1028 (1968).

What are the supposed justifications for the species of law-breaking known as civil disobedience? Some unsophisticated persons seek to justify the first type by the assertion that the law is immoral and therefore need not be obeyed. The unstated premise is always that the offender (or those who agree with him) has superior qualifications to indicate which laws need to be obeyed. Such an argument can only be allowed when the legal command in question runs counter to the common consensus of humanity, such as murder or genocide. Under any other circumstance the argument that some persons or principles are above the requirements of law leads to tyranny or anarchy. How can it be said that one person or group can be above the law and that another cannot? If "good" groups or "good" individuals are morally justified in ignoring laws or court orders on the basis of their higher moral laws, what is to prevent masked societies from invoking some "moral" principle to justify their murderous or repressive deeds? Or what is to prevent public officials from invoking some "moral" principle to justify practices destructive of freedom? In his impressive lectures on civil disobedience, Dean Francis A. Allen of the University of Michigan Law School identified the ultimate social concern with the precept and example of civil disobedience:

> The serious issue that is raised . . . by the modern protest movements is whether even our imperfect dedication to the rule of law can survive a widespread acceptance of the belief that the individual is morally licensed to withdraw his compliance from laws offensive to his own moral scruples, and (what is perhaps more important) the practical application of this belief by significantly large numbers of individuals and organized groups. . . . [S]ooner or later the persistent assertion of a right by individuals to choose which laws they will obey must ultimately destroy the fabric of principles and assumptions upon which public order in a free society depends.[19]

Justice Abe Fortas gives this definition of the proper limits of the first type of civil disobedience, and what a person should expect who engages in it:

> It is only in respect to such laws — laws that are basically offensive to fundamental values of life or the Constitution — that a moral (although not a legal) defense of law violation can possibly be urged. Anyone assuming to make the judgment that a law is in this category assumes a terrible burden. He has undertaken a fearful moral as well as legal responsibility. He should be prepared to submit to prosecution by the state for the violation of law and the imposition of punishment if he is wrong or unsuccessful. He should even admit the correctness of the state's action in seeking to enforce its laws, and he should acquiesce in the ultimate judgment of the courts."[20]

A type of law-breaking not subject to similar moral condemnation or social risk is an act principally motivated by a desire to test the constitutionality of a law. Frequently the only way to test the validity of a criminal law is to break it. In view of the public interest in obtaining rulings on the validity

---

[19]Allen, *supra* note 14, at p. 24–25.

[20]Fortas, *supra* note 14, at p. 63.

of doubtful laws, acts of civil disobedience principally designed to present test cases serve a legitimate social purpose. But this justification extends only to laws whose constitutionality admits of reasonable doubt, and only to methods reasonably necessary to obtain the desired ruling.[21] If the principal purpose is really to frame a test case, all that should be required is a reconnaissance; there is no need for massive and repeated frontal assaults that will "fill the jails." Even if this limited class of civil disobedience does perform a useful function, however, the person who engages in it does so at his peril since, to use the language of a distinguished former Solicitor General of the United States, "The Constitution does not give anyone a privilege to violate a law in order to test its constitutionality." If the law-breaker is wrong he is legally guilty and "can claim no constitutional protection for his mistake."[22]

In his thought-provoking discussion of the dangers and social costs of civil disobedience, Dean Francis A. Allen suggests that although non-violence or notoriety may be the lessons intended by the practitioners of civil disobedience, the lessons actually being learned by their followers may be defiance or rejection of authority. The evil in civil disobedience is that it weakens the bonds of law and therefore may become the progenitor of increased criminality and disorder. The risk, according to Dean Allen, is that "We know comparatively little about the stress levels a legal order can withstand, nor do we have secure knowledge of how far public defiance of the law can proceed without inflicting serious or even irreparable injuries on a democratic society."[23] The magnitude of this risk and the enormity of the possible harm should lead responsible citizens to conclude that, except for limited test-case purposes, civil disobedience is not acceptable social behavior. The appropriate precedent for would-be lawbreakers is that of Socrates, who refused an opportunity to escape the Athenians' sentence of death because he felt that this act of disobedience would discredit law and weaken the society. "Do you imagine," he explained to his rejected benefactor, "that a city can continue to exist and not be turned upside down, if the legal judgments which are pronounced in it have no force but are nullified and destroyed by private persons?"[24]

THE EROSION OF RESPECT FOR LAW

Disobedience and disrespect for law occur at every level of our society, even among those who are most vociferous in preaching law and order and most vocally devoted to condemning disrespect for law. Vehement and un-

---

[21]Compare Dworkin, On Not Prosecuting Civil Disobedience, *The New York Review of Books*, June 6, 1968, p. 14, which expands the test-case rationale into a supposed justification for law-breaking (and a plea for prosecutorial leniency) in any circumstance where a person has proceeded "on his own considered and reasonable view of what law requires," a view that implies some consideration of court decisions, including what the court "ought to decide," but need not treat even a recent United States Supreme Court decision as "conclusive." *Id.* at pp. 16, 18.

[22]Cox, *supra* note 4 at p. 11.

[23]Allen, *supra* note 14, at pp. 30, 32.

[24]Plato, *The Last Days of Socrates, The Crito*, p. 90 (Tredennick trans.; Penguin ed. 1966).

reasoned detractors of the United States Supreme Court or its justices must bear a share of responsibility for the conditions they decry. Public respect for law can only be decreased by reviling the institution which is a major source and the paramount symbol of law and the rule of law in our society. One cannot enhance public confidence in the purity of a stream of water by broadcasting that there is poison in one of its tributaries. The Supreme Court cannot be immune from criticism, but it is especially important that criticism of judges or courts be measured and informed since the judiciary, unlike the executive and legislative branches of government, cannot reply to its critics and cannot count on a forthcoming popular election to restore the confidence of its public.

A share of the blame for encouraging subsequent disorders must also be shared by prominent government officials whose irresponsible words have suggested that persons were justified in rioting against acknowledged social ills. Blame is also due those whose ill-managed and hasty implementation of government assistance measures has given the appearance of rewarding persons guilty of violence and wanton destruction and theft of property.

Widespread looting during recent racial disorders seems to have caused more citizen concern than any other variety of thievery in our society. On moral grounds it is difficult to distinguish the thief who loots from other kinds of thieves: the sneak thief, the shoplifter, the pickpocket, or the tax cheat. The greater concern with looting is probably on practical rather than moral grounds. Looting is not only morally reprehensible, it is the kind of flagrant act likely to provoke further defiance and disrespect for law and to lead to an escalating series of lawless acts whose end result is anarchy.[25]

Some of the ugliest current examples of lawless behavior involve court orders: government officials who defy them, government officials who refuse to enforce them, and private citizens who claim a privilege to ignore them.

When public figures — and especially government officers — announce their intention to defy laws or court orders or their refusal to enforce laws or court orders this is even more destructive and threatening to the cause of law and order than the acts of those who rob, loot and burn. Such irresponsible acts are profoundly destructive because they bring the agencies and personnel of government into opposition to the rule of law. Our citizens have seen too many such examples in the past decade. Some have involved labor disorders, where government officials have refused or neglected to take the difficult measures necessary to enforce court orders against labor leaders or union members who have been in contempt. The antics of Adam Clayton Powell, including willful disobedience of several court orders, have made him a fugitive from his own Congressional district. Other examples have dealt with the segre-

[25]Making a similar point in another context, Dean Allen suggests that one reason why the public is indifferent to building code violations by a slum landlord but sometimes outraged by illegal retaliation by injured tenants is that the landlord's efforts at token compliance or evasion reveal "a perverse but genuine concession to the law's authority," whereas conscious and deliberate law violation by a tenant, especially if founded on some theory of right, may be understood as "a fundamental challenge to the sovereignty of law." Allen, *supra* note 14, at p. 24.

gation of public schools, where some government and school officials have compiled a sordid record of public evasion, intransigence or open defiance of law. Recall, for instance, the actions of Arkansas' Governor Faubus and Mississippi's Governor Barnett, whose open and loud defiance of federal court orders forced the President of the United States to enforce them with federal troops. Or consider Governor Wallace, the self-appointed apostle of "law and order," who carried his public scorn of federal court orders to the point of standing in the schoolhouse door where every television viewer in America could see him personally barring the entrance of two Negro students the court had ordered enrolled at the University of Alabama. Immediately after the United States Supreme Court's unpopular decisions forbidding prayer in the public schools, numerous school officials showed their basic disrespect for law by publicly announcing their defiance of the Supreme Court's ruling and stating their intention to continue with the forbidden practices. In several recent labor disputes school teachers unions (emulating the conduct of subway workers, garbage collectors, and other public employees) have loudly defied court injunctions. So have policemen and firemen. On still other occasions parents have defied compulsory school attendance laws by keeping their children out of school to demonstrate support of civil rights causes, or to protest laws requiring students to be "bussed" to achieve integration. The tragedy of all of these examples – the defiant governors, the defiant school officials, the defiant school teachers, and the defiant parents –is that each of them communicates to everyone, and especially to the school children most immediately affected by them, a lesson in law-breaking and disrespect for the law that no amount of preachments about law and order can undo.[26]

In terms of the long-run effect on public order and respect for law, it may be that those who defy court orders are more to be feared than an assassin. An assassin's act is so final, so horribly threatening to everyone's sense of personal security, that the public is repelled and unites to find and punish the offender. An act of willful and publicized disobedience of law, and especially of a court order, on the other hand, holds the whole legal process up to disrepute while casting the offender in the role of a courageous underdog. This example can subtly encourage others to emulate the defiance by committing illegal acts that the originator would not dream of condoning. An act of civil disobedience may be more "moral" than an act of mayhem or murder, but those who argue that illegal behavior is acceptable in some circumstances incur the risk that their principle will be accepted by persons disposed to violence who are unable to make the fine distinctions and moral judgments on which those advocating civil disobedience rely. If the standard of what is lawful is rejected as the invariable norm of personal conduct and every man begins to substitute his own standards of behavior, we will have relinquished

[26]Editorializing upon the blatant defiance of court orders by that city's policemen, firemen and school teachers, the *New York Times* recently observed: "In this year of national concern over threats to law and order it is almost impossible to imagine a more demoralizing invitation to general contempt for law than this disregard of judicial process by those sworn to enforce the law, to protect the public safety and to teach good citizenship." *New York Times*, Oct. 26, 1968, p. 36, col. 1.

the peace and stability of our society. Even a bad law is better than no law at all. Even tyranny is preferable to anarchy. The worst tyranny of all is the indiscriminate tyranny of the vigilante society.

No group has a greater stake in lawful behavior and public devotion to law and order than a minority. No group has greater need for the rule of law than a minority. Law is the minority's assurance of protection from the tyranny of the majority. Whenever a minority takes any action in defiance of law it is sowing the seeds of its own destruction, since the evasion of any law weakens the authority of all law. The United States Supreme Court gave impressive expression to this thought in its opinion affirming contempt convictions and jail sentences for distinguished demonstrators who had violated court injunctions against a street demonstration:

> One may sympathize with petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.[27]

If it is true that a minority is obligated by duty and self-interest to give obedience and respect to law, it is no less true that the majority is responsible to provide the rule of law. When public officers ignore the law, their conduct is a reproach upon the majority to whom they are answerable. If the majority demands that a minority give obedience to law, then the majority must spare no effort to assure that all men — public officers as well as private citizens — subordinate personal desires and yield obedience and allegiance to the rule of law.

---

[27]Walker v. City of Birmingham, 338 U.S. 307, 321 (1967).

THE RULE OF LAW AND THE DILEMMA OF MINORITIES

I. Daniel Stewart

Civil disturbances are rarely born of frivolous causes. Human beings are more inclined to suffer grievances than to pit themselves in what usually appears to be a hopeless battle against the authority and power of the state. As symptoms of deeply felt injustice by members of the body politic, civil dis-