

Report
of the
Commission on Theology
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Civil Obedience and Disobedience

THE LUTHERAN CHURCH — MISSOURI SYNOD

Civil Obedience and Disobedience

The question is frequently asked: To what extent may Christians participate in public demonstrations and other forms of protest against laws which to them seem unjust, or against the inadequate enforcement of laws designed to correct injustice?

In reply to the question, it is necessary to establish some guiding principles:

A. God has instituted civil government as His minister to us for good, for the punishment of evildoers and for the praise of them that do well. (Rom. 13:1-6)¹

Therefore, Christians should respect and obey civil authority and be actively engaged in promoting the common good. (1 Peter 2:13-14; Rom. 13:1-6; 1 Tim. 2:1-2; Large Catechism, I, 150—54; Apology, XVI, 1, 3, 6)²

¹ Rom. 13:1-6: Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute His wrath on the wrongdoer. Therefore one must be subject, not only to avoid God's wrath but also for the sake of conscience. For the same reason you also pay taxes, for the authorities are ministers of God, attending to this very thing.

² 1 Peter 2:13-14: Be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme, or to governors as sent by him to punish those who do wrong and to praise those who do right.

Rom. 13:1-6: See Note 1 above.

1 Tim. 2:1-2: First of all, then, I urge that supplications, prayers, intercessions, and thanksgivings be made for all men, for kings and all who are in high positions, that we may lead a quiet and peaceable life, godly and respectful in every way.

Large Catechism, I, 150—54: The same may be said of obedience to the civil government, which, as we have said, is to be classed with the estate of fatherhood, the most comprehensive of all relations. In this case a man is father not of a single family, but of as many people as he has inhabitants, citizens, or subjects. Through civil rulers, as through our own parents, God gives us food, house and home, protection and security. Therefore, since they bear this name and title with all honor as their chief glory, it is our duty to honor and magnify them as the most precious treasure and jewel on earth.

He who is obedient, willing, ready to serve, and cheerfully gives honor where it is due, knows that he pleases God and receives joy and happiness for his reward. On the other hand, if he will not do so in love, but despises or rebelliously resists authority, let him know that he shall have no favor or blessing from God. Where he counts on gaining a gulden by his unfaithfulness, he will lose ten elsewhere. Or he will fall victim to the hangman, or perish through war, pestilence, or famine, or his children will turn out badly; servants, neighbors, or strangers and tyrants will inflict injury, injustice, and violence upon him. What we seek and deserve, then, is paid back to us in retaliation.

If we ever let ourselves be persuaded that works of obedience are so pleasing to God and have so rich a reward, we shall be simply overwhelmed with our blessings and we shall have all that our hearts desire. But God's Word and commandment are despised, as if they came from some

B. Since at times laws may be unjust or there may be an inadequate enforcement of just laws, Christians have the right and duty to work for the repeal of unjust laws and the proper enforcement of just laws through due process of law. In the evident failure of due process, a Christian may in good conscience participate in public demonstrations designed to dramatize the injustice.

This principle applies not only when one's own legal rights are infringed upon, but also and especially when one joins others deprived of their legal rights. (Prov. 31: 8-9; Gal. 6:2, 9-10; Large Catechism, I, 256—60)³

loutish peddler. Let us see, though, whether you are the man to defy him. How difficult do you think it will be for him to pay you back? You will live much better with God's favor, peace, and blessing than you will with disfavor and misfortune. Why, do you think, is the world now so full of unfaithfulness, shame, misery, and murder? It is because everyone wishes to be his own master, be free from all authority, care nothing for anyone, and do whatever he pleases. So God punishes one knave by means of another. When you defraud or despise your master, another person comes along and treats you likewise. Indeed, in your own household you must suffer ten times as much wrong from your own wife, children, or servants.

Apology, XVI, 1, 3, 6: There we confessed that a Christian might legitimately hold public office, render verdicts according to imperial or other established laws, prescribe legal punishments, engage in just wars, render military service, enter in legal contracts, own property, take an oath when the government requires it, or contract marriage—in short, that lawful civil ordinances are God's good creatures and divine ordinances in which a Christian may safely take part. . . . The Gospel does not introduce any new laws about the civil estate, but commands us to obey the existing laws, whether they were formulated by heathen or by others, and in this obedience to practice love. It was mad of Carlstadt to try to impose on us the judicial laws of Moses.

Julian the Apostate, Celsus, and many others opposed the Christians on the grounds that their Gospel would destroy the commonwealth by its prohibition of legal redress and by other teachings that were not suited to civil relationships. These questions were very disturbing to Origen, Nazianzus, and others, though they are very easy to answer if we keep certain things in mind. The Gospel does not legislate for the civil estate but is the forgiveness of sins and the beginning of eternal life in the hearts of believers. It not only approves governments but subjects us to them, just as we are necessarily subjected to the laws of the seasons and to the change of winter and summer as ordinances of God.

³ Prov. 31:8-9: Open your mouth for the dumb, for the rights of all who are left desolate. Open your mouth, judge righteously, maintain the rights of the poor and needy.

Gal. 6:2, 9-10: Bear one another's burdens, and so fulfil the law of Christ. . . . And let us not grow weary in well-doing, for in due season we shall reap, if we do not lose heart. So then, as we have opportunity, let us do good to all men, and especially to those who are of the household of faith.

Large Catechism, I, 256—60: Therefore God will not have our neighbor deprived of his reputation, honor, and character any more than of his money and possessions; he would have every man maintain his self-respect before his wife, children, servants, and neighbors. In its first and simplest meaning, as the words stand ("You shall not bear false witness"), this commandment pertains to public courts of justice, where a poor, innocent man is accused and maligned by false witnesses and consequently punished in his body, property, or honor.

This problem appears to concern us only a little at present, but among the Jews it was extremely common. That nation had an excellent, orderly government, and even now, where there is such a government, instances of this sin still occur. The reason is this: Where judges, mayors, princes, or others in authority sit in judgment, we always find that, true to the usual course of the world, men are loath to offend anyone. Instead, they speak dishonestly with an eye to gaining favor, money, prospects, or friendship. Consequently, a poor man is inevitably oppressed, loses his case, and suffers punishment. It is the universal misfortune of the world that men of integrity seldom preside in courts of justice.

A judge ought, above all, to be a man of integrity, and not only upright but also a wise,

Ultimately, however, the rights of individuals and proper standards of justice must be established by the government through legislative processes. (Apology, XVI, 7)⁴

C. Recognizing that the will of the Lord is a higher law than that of civil authority (Rom. 13:1), Christians are to obey God rather than man when a civil law conflicts with a clear precept of God, being willing, at the same time, to accept as a part of their crossbearing the punitive consequences of their action. (Dan. 6; Acts 5:29; Matt. 5: 11-12)⁵

This statement is in keeping with the Augsburg Confession, Article XVI:

The Gospel does not overthrow civil authority, the state, and marriage, but requires that all these be kept as true orders of God and that everyone, each according to his own calling, manifest Christian love and genuine good works in his station in life. Accordingly Christians are obliged to be subject to civil authority and obey its commands and laws in all that can be done without sin. But when commands of the civil authority cannot be obeyed without sin, we must obey God rather than men (Acts 5:29).

However, when a Christian disobeys a law which he considers to be in conflict with the higher law of God, he should:

1. be quite sure that all legal means of changing the law have been exhausted;
2. consult with men of good conscience to test the validity of his judgment;
3. carry out his act of disobedience in a nonviolent manner;
4. direct his act of disobedience as precisely as possible against the specific law or practice which violates his conscience;
5. exercise restraint in using this privilege because of the danger of lawlessness.

Although a Christian may need to join a protest action, he should guard against identifying himself with groups and individuals who may be protesting the same law

sagacious, brave, and fearless man. Likewise, a witness should be fearless; more than that, he should be an upright man. He who is to administer justice equitably in all cases will often offend good friends, relatives, neighbors, and the rich and powerful who are in a position to help or harm him. He must therefore be quite blind, shutting his eyes and ears to everything but the evidence presented, and make his decision accordingly.

The first application of this commandment, then, is that everyone should help his neighbor maintain his rights. He must not allow these rights to be thwarted or distorted but should promote and resolutely guard them, whether he be judge or witness, let the consequences be what they may.

⁴ Apology, XVI, 7: The Gospel forbids private revenge, and Christ stresses this so often lest the apostles think that they should usurp the government from those who hold it, as in the Jewish dream of the messianic kingdom; instead, he would have them know their duty to teach that the spiritual kingdom does not change the civil government. Thus private revenge is forbidden not as an evangelical counsel but as a command (Matt. 5:39; Rom. 12:19). Public redress through a judge is not forbidden but expressly commanded, and it is a work of God according to Paul (Rom. 13:1 ff.). Now the various kinds of public redress are court decisions, punishments, wars, military service.

⁵ Dan. 6: "Daniel in the Lions' Den."

Acts 5:29: But Peter and the apostles answered, "We must obey God rather than men."

Matt. 5:11-12: Blessed are you when men revile you and persecute you and utter all kinds of evil against you falsely on My account. Rejoice and be glad, for your reward is great in heaven, for so men persecuted the prophets who were before you.

from apparently wrong motives and who may be seeking to capture a movement for their own improper ends.

D. Since in the ethical field Christians do not always see eye to eye, The Lutheran Church—Missouri Synod at its Detroit convention wisely resolved:

That the Synod encourage its members to exercise the greatest care in judging one another in their individual and different responses to complex social problems as each endeavors to apply the divine principle of Christian love to the specific human situation.⁶

E. The foregoing principles can serve to guide also the Christian congregation if it contemplates taking corporate action to protest unjust laws or to seek adequate enforcement of just laws.

It is important that the congregation arrive at substantial agreement both with regard to the nature of the problem and with regard to the method of protest before action is taken in the name of the congregation.

F. In reply to the question: "What is the pastor's role in public demonstrations?" we submit the following:

The principles which should guide the individual Christian apply also to the pastor. He is, in the first place, a Christian living out his life, no less than his members, under Christ as his personal Lord.

In considering his responsibilities and possible action in civil protests he must also consider the special requirements of his unique office as shepherd of the flock of God.

It is incumbent upon him to speak the word of judgment and the word of healing as he seeks to equip his parishioners for their ministry. (Eph. 4:11-12)

G. In conclusion, we may make the following observations:

1. Public demonstrations generally are not contrary to law in and of themselves, and a Christian may at times feel constrained by Christian love to join a public demonstration.
2. Petitioning of the government for a redress of grievances can and should normally be done through due process of law for the preserving of the peace and tranquillity of the nation. However, the breaking of an unjust law, as civil disobedience is at times defined, need not necessarily reflect a spirit of anarchy, criminal intent, or general contempt for laws. It may, in fact, reflect an earnest desire to respect the rule of law and to test the validity of a specific law and so to provide a larger measure of justice.
3. At the same time, Christians should be cautioned against:
 - a) an exaggerated individualism that breeds contempt for law and due process of law;
 - b) the anarchic spirit which pits one segment of the population against another;
 - c) the asserting of individual rights at the expense of the rights of others.

⁶ *Proceedings of the 46th Regular Convention of The Lutheran Church—Missouri Synod, Detroit, Michigan, June 16—26, 1965, Resolution 9-22, p. 171.*

Some Reflections on Civil Disobedience

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I. DEFINITIONS

The term "civil disobedience" is used here in its conventional American sense: a refusal, especially by nonviolent collective behavior, to obey demands of government, as a means of forcing concessions from that government. It is not, like anarchism, a generalized opposition to the State with a view to sabotaging or destroying it, but a strategy of resisting (with varying degrees of firmness—ranging from mild to bellicose) a particular law or act of state. It sometimes loses its nonviolent character under provocation from others who employ violence as a countermeasure; and it is normally used only after recourse to other conventional remedies has been exhausted.

Civil disobedience in America earlier found its most characteristic expression in withdrawal of support from government, especially through nonpayment of taxes, and particularly to protest against unjust war (e. g., the Mexican War), or against public support for slave-owning (e. g., the Fugitive Slave Act of 1850), or against expenditures for the military establishment. There were, besides, such outbursts against public authority as the Boston Tea Party; the private expropriation of public lands by squatters, which eventually forced the enactment of the Homestead Law (1862) to regularize a practice that had grown too widespread to restrain; temperance agitation (which was anything but temperate) by well-meaning amazons whose pentecostal fervors led them to pray in the streets and then march, with axes swinging, into the saloons, two by two, like animals into the Ark. Even lynching (which, incidentally, in our earlier history was not a racial device, but claimed far more white victims than colored) was an extreme expression of the same propensity.

In recent years, civil disobedience as a tactic in the racial struggle has taken two principal forms. The first may be called primary action, in which the protesters refuse to comply with a specific law or publicly sanctioned usage (typically a segregation ordinance), whose validity is more or less clearly open to objection on constitutional or statutory grounds. Far more disquieting to public tranquillity has been the second form, which we may call secondary action—secondary only in the sense that it strikes at A in order to reach B. These secondary or indirect modes of attack on the color line have in common their reliance on various forms of obstructive, provocative, incitive, or inflam-

matory conduct to create an intolerable predicament which government can relieve by making a concession in the area of primary protest.

Much of the force of this latter maneuver derives from the circumstance that it seems to shift to government the responsibility for injuries that flow from private intransigence, on the thesis that the evil (a suicide, to take an extreme example) could have been averted if the government had agreed to lift, say, a ban on interracial swimming in a public park. Secondary action ranges from innocuous, peaceful picketing or the distribution of leaflets, to more active demonstrations like sit-ins, wade-ins, pray-ins, and prayers on the capitol steps, and thence to graver expressions of social rebuke like hunger strikes, or the assembling of a mass meeting under the traffic lights at a busy intersection, or by bodily interposition, as when the protestants lie inert in a public place until dragged, unresisting but uncooperating, to jail, hopefully in such numbers that the prisons cannot contain them. In extreme form, such dramatic commitment of body as well as mind finds expression in throwing up human barriers to oncoming traffic, and even in the supreme horror of self-immolation by putting one's body to the torch.

It is, one senses, perhaps impossible to render a categorical judgment as to either the morality or the ultimate legality of civil disobedience. The gradations on the spectrum of forms that civil disobedience can take are so infinitely numerous that much depends upon the point on the spectrum to which one addresses his judgment. The precise point of legitimacy is, moreover, a moving one and eludes definition, for it shifts in every separate context, responding to the nature of the injustices (and their authors) which the tactic is calculated to cure. To the deaf one must shout very loud if one is to be heard; to others the stentorian tone would be an affront.

Civil *obedience* derives from man's need to live with his kind. By its nature, political authority must be ultimately lodged in a sovereign, and the obligation of every citizen in the community to defer to it — not merely when it suits him, but always — is a prerequisite of orderly society living under law. When man enters society he relinquishes the right to private decision in those aspects of his life with his fellows upon which the sovereign has chosen to pronounce. The authority of the sovereign does not, however, extend, even in the most unconfined autocracy, to every aspect of the lives of those living under its rule. In a constitutional state, the limits of power are more or less carefully defined; and, in addition, certain areas are marked out as being wholly outside the reach of public authority, while in other realms its power is more or less explicitly circumscribed.

In a democratic society the sovereign is the people themselves, expressing their will through freely chosen representatives operating through majority rule under directives imposed by a Constitution, which, in turn, derives in some fashion from the popular will. And, again, by its nature, the State possesses the ultimate monopoly of force, which it employs in order to render unnecessary the private resort to violence by individuals and associations in the resolution of disputes.

The whole issue of civil disobedience is steeped in paradox, for in its purest form it breaks laws that Law may prevail. What may appear (perhaps correctly) to be civil

disobedience to some men, may to others (perhaps correctly) seem to be civil *obedience*: a compliance with law or laws which embody the popular consensus on matters of the highest import, but to which the State is itself disobedient. And sometimes civil disobedience comes not in the guise of resistance to bad laws but in insistence upon the faithful adherence to good laws already in the statutes. In such cases the strategy is one of pressing the government to effectuate a law or a constitutional precept which it is for some reason failing to enforce. Dramatic, articulate disagreement with the State's delinquency is, of course, a form of quarrel with the State, possibly for the loftiest ends to which the State owes allegiance. The defeat of a *law* may be, and often is, at the same moment a victory for Law, so that it cannot be asserted as a general proposition that resistance to laws is on its face lawless.

II. CIVIL DISOBEDIENCE AND THE AMERICAN CONSTITUTIONAL ORDER

1

The American philosophy of the State is grounded, as Louis Hartz has emphasized in *The Liberal Tradition in America*, upon "liberal unanimity," an all but universally accepted thesis that has never called forth a serious opposition faith: a credo that the State is by God's allowance, an instrument made by and for man, for the promotion of human happiness; that it rests upon consent; that its central function is the safeguarding of the rights indispensable to individual felicity; and that a government which neglects this function forfeits its claim upon the people's allegiance and justifies their altering or abolishing it. This doctrine, which finds its classic expression in the Declaration of Independence, asserts also the "right of revolution," translated in modern terms as the right to overturn or reconstitute the regime through unhampered electoral choice. Free elections, in turn, presume full consultation between ruler and ruled, full disclosure of all the relevant data necessary to prudent choice, and equal accessibility of all to an uninfluenced and unintimidated ballot.

2

The American constitutional system posits the priority of the Constitution of the United States and all federal laws made pursuant thereto as the supreme law of the land, binding upon federal, state, and local government alike. Its great conservator is the Supreme Court of the United States, which, in historical retrospect, has shown itself capable, like all human institutions, of error and of infidelity to the trust it bears (cf. *Dred Scott v. Sanford*, 1857; the Civil Rights Cases, 1883; *Plessy v. Ferguson*, 1896). In their own sphere, state constitutions are also supreme law in the state, and state statutes or city ordinances in conflict with state constitutions are unconstitutional, no less than those in conflict with the Constitution of the United States. It is, moreover, a fixed principle of American polity that the majority is not absolute, but subject to constitutional constraints (especially as expressed in federal and state bills of rights). Nor are specific rights which are guaranteed by constitutions in fact absolute; the right

of free speech does not include the right to shout "Fire!" in a crowded theater, for legitimate rights become illegitimate license when they are used to the injury of the commonwealth.

3

A self-governing society is one in which individuals both grant and withhold—and not infrequently withdraw—their consent. To assert that a citizen must not withhold or withdraw his consent to a particular law or policy until a majority of his fellows do so is, of course, to deny the existence of the right altogether. The process must be initiated by somebody, somewhere—conceivably by a solitary person who feels the moral imperative before his fellows sense it. Self-government, moreover, means government by the people, not by the people's ancestors; so that a self-governing society must keep its means and its purposes under continuous scrutiny and critical review.

4

A federal system like that of the United States is burdened with complexities from which a unitary state, like Britain or France, is exempt. The federal government is supreme; but in areas of authority reserved to the states, state governments are supreme, subject only to explicit restrictions imposed by the Constitution of the United States. The possibility of federal transgression against the constitutional distribution of powers between nation and states or against the explicit limitations upon federal powers, and of state violations of the limitations laid upon them by the Constitution of the United States, is always and everywhere present. When state and local ordinances are enacted contrary to federal constitutional or statutory provisions (or contrary to the state's constitution, for that matter), one cannot comply with one without violating the other. As a result, the citizen is sometimes thrust, even without will on his part, into automatic civil disobedience. In other cases, while the citizen may not be forced to choose between breaking federal or state law, he is confronted with the choice of either breaking an unconstitutional state law or waiting until the protracted processes of federal jurisdiction afford him relief. A dilemma of another sort arises if, after he has chosen the latter course, he finds the federal courts disinclined to apply the proper constitutional sanctions against state violation of, for example, the equal-protection clause of the Fourteenth Amendment. Yet another difficulty arises when legislatures and executive officers, national or state, refuse to transmute constitutional guarantees into effective statute. And in any case the courts cannot enter controversies of any kind—whether involving constitutional construction or the application of statutes—on their own initiative. There must be a bona fide litigant, with a bona fide dispute, confronting a bona fide antagonist.

5

It may be that we have reached, or are approaching, a stage in the evolution of the law of civil rights at which it can be said that the State and the law are now essentially on the Negro's side, so that the quarrel is, basically, no longer with the State. Yet it is

the State that is besought, beleaguered, and badgered to force private and quasi-private groups and agencies to abandon discriminatory practices.

6

Selective pressures (as, e. g., boycotts of Woolworth Stores, or of other particular firms or industries) penalize segments of society for the iniquities of the whole society, merely because they happen to be more convenient targets than are other segments of society which may in fact be even more guilty. Besides, the barber who refuses to cut a Negro's hair may be doing so in the certain knowledge that his clientele would otherwise desert him. Who is then the ultimate segregator, the barber or his public? Or perhaps the white customer who does *not* threaten to desert him if he does *not* cut the Negro's hair?

7

In a self-governing majoritarian society, inaction is in fact affirmative intervention in behalf of the status quo. Silence is complicity. The citizen who fails to use the resources available to him to avert or correct a wrong is by his silence an accomplice: he is, by his inaction, accessory to the fact, and morally guilty, just as surely as the bystander who elects not to deflect the arm of the assassin that drives the dagger is guilty of the victim's blood.

8

The machinery for repealing unjust laws or affording judicial relief from them is not self-propelled, nor are constitutional guaranties self-executing. They require articulate demands, challenge, litigation. Judicial review can become operative only when the "intransigence" of an aggrieved citizen (either the immediate victim of injustice, or his fellow citizen to whom the sight of injustice is insupportable and whose conscience forbids him to acquiesce in the injustice that exists by popular sufferance) sets the remedial process in motion. Even the Supreme Court does not and cannot render advisory or hypothetical opinions.

9

The agonizing task of the free, equalitarian society is the reconciliation of private rights, privileges, and immunities with the larger common good, which, in turn, is the climate in which alone private rights can prosper. And the freedom and security of the individual depend on the security of the State. To undermine the latter in the name of the former is, in the end, to undermine both. No individual right is absolute. The competing claims of private and societal rights perpetuate a dynamic tension in the democratic State that can never be more than momentarily relaxed. The point at which the two forces achieve a tolerable equilibrium is a constantly moving one, subject to continuous parley, negotiation, and accommodation. Changing social contexts compel legal and juridical adaptations to preserve the established national goals. In some circumstances, *not* to change is to change radically. The existing social apparatus and usages must be under perpetual scrutiny.

Lawlessness begets lawlessness. People are quick to take up a chant. They may join protest movements and spontaneous demonstrations for reasons that may be remote or wholly removed from the putative object of the protest. It may be only to acquire a TV set by plundering an appliance store in Watts, or to achieve personal catharsis by lashing out blindly at all whites or at their possessions. Civil disobedience, if unrestrained, attracts an alarming number of hitchhikers who come along only for the ride. It can erode the structure of lawful society and involve the whole community in a common ruin, like the proverbial Dutch farmer who burned down his handsome barn to be rid of the rats that infested it. Liberty ends where it imperils liberty itself. My freedom to swing my fists stops precisely where my neighbor's nose begins.

Because recourse to modes of relief and to social leverage is not equally accessible to all, society must manifest a particular solicitude toward the defenseless and the weak, especially when society itself has created, or helped to create (whether by overt action or by tacit acquiescence) the disparities that produce disequilibrium in the making of public policy.

Civil disobedience can transfer the argument over justice and first-class citizenship for Negroes to argument over the issue of civil disobedience itself, with the result that in the end the protesters defeat their ends by removing the real issue or burying it under another. It can also, as we have seen in recent months, drive the friends of racial justice away from the movement.

There are so few exceptions, that it may be set down as a rule that every gain for democratic-libertarian-equalitarian advance has been precipitated by resistance to the status quo. Almost never is such a gain voluntarily given in obedience to abstract conviction that its time has come. To check the instinct for resistance to public wrong is to condemn a society to arrested development and perpetuation of any and every ill that besets it, every failure that contains the power to destroy it.