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Dissent

*Disobedience can never be anything but a concrete decision in a single particular case. . . . The refusal of obedience in the case of a particular historical and political decision of government must therefore, like this decision itself, be a venture undertaken on one's own responsibility. A historical decision cannot be entirely resolved into ethical terms; there remains a residuum, the venture of action.**

THE FOUNDATIONS OF DISSENT

Dissent's American Heritage

We began our discussion of freedom of thought and expression by quoting from Thomas Jefferson. It would, therefore, be appropriate to begin our discussion of the extreme form of that freedom, dissent, with another set of very famous words from the pen of the philosopher from Virginia. He wrote that all human beings have basic rights, among them,

Life, Liberty and the pursuit of Happiness—that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed—.

He is here expressing the basic justification for any government and its corresponding set of laws. But inasmuch as he was writing to defend a decision to dissent from a particular government, he had to go on to provide a justification for what would become a violent revolution.

That whenever any form of government becomes destructive of these ends, it is the *right* of the people to *alter* or *abolish* it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. . . . [W]hen a long train of abuses and usurpations . . . evinces a design to reduce them [the people] under absolute despotism, it is their right, it is their *duty*, to

*Dietrich Bonhoeffer, *Ethics*, ed. Eberhard Bethge (New York: Macmillan, 1955), p. 343–344

throw off such government, and to provide new Guards for their future security.

These are powerful words, enshrined in our Declaration of Independence, and they lay out a rationale not just for free speech and expression but for a morally binding *duty* to so dissent from a particular form of government as to abolish it and throw it off. Unfortunately for those who would stifle dissent or who feel it has no place in modern society, the rationale set forth by Jefferson not only justifies political and military revolution, it also was the basis for the revolution that brought this country into being.

Dissent has a long history in our country. It has included peaceful and violent acts of disobedience against particular laws and in some cases against the dissenters, and it has led to new social legislation aimed at redressing injustices not given sufficient attention until dissent occurred. But dissent is clearly a major step beyond freedom of expression. Although speech is an act, and ideas have consequences, there is an obvious escalation from pronouncing dissatisfaction with the fairness of a law to refusing to obey it. Dissent is opposition to laws and policies that often takes on the form of disobedience. The ultimate form of dissent is rebellion or revolution: the abolition of one form of law and its replacement by another. This usually, but not inevitably, involves the removal of personnel and the profound restructuring of political institutions and legal machinery. Power (political, economic, and social) passes from one set of persons to another and new laws are created to better provide the security Jefferson talks about.

The Justification of Dissent

Dissent of this kind is clearly far more dangerous to the stability, peace, and order of a society than is freedom of expression as discussed in the previous chapter. Consequently, dissent requires a more thoroughgoing, more elaborate justification than do acts that simply put into effect the right of free speech. In some cases dissent involves the repudiation, through political action, of the very laws that provide for the protection of freedom of expression. Because dissent sometimes challenges the justification of the basis of law itself in a given society, it cannot appeal, in those cases, to the society's laws for *its* justification. In some sense, all acts of revolution can be morally justified only by an appeal to some law or principle that transcends the society being overturned.

But revolutions are the final form of dissent. Its preliminary form usually is an act of disobeying a particular law or set of laws regarded as unjust. The charge of injustice is normally based on a claim that the general principles of the society cannot sanction such a law, despite its having been

legislated. The most obvious example would be the laws protecting slavery in the years before the Civil War. Although clearly having the force of law, slavery came to be regarded by many as unjust, as not in keeping with the basic principles enunciated in the documents pertaining to the founding of the country. Those who sought to overturn slavery did not repudiate the society as such; they saw slavery as inconsistent with their vision of the highest ideals of the society. As long as slavery enjoyed the protection of the law, however, it could not be removed without violating the laws supporting it.

To get a better sense of what the decision to engage in dissent involves and how dissent can move through various stages, even to the contemplation of revolution, it might be helpful to imaginatively recreate the situation of a young woman in 1850 trying to think through her response to the issue of slavery and justice.

A Sense of Discrepancy

Dissent begins when an individual senses a discrepancy between a set of ideals and current practice. The ideals must not yet have been incorporated into specific laws. If they have, opposition to the practice is simply opposition to what is already illegal, not opposition to a fundamental defect in the law. Dissent can begin only when the law permits something regarded as evil or prohibits something regarded as right. The aim of dissent is to eliminate the discrepancy between law and practice either by altering the law to permit what is right or to pass a law to prohibit what is wrong. Opposition to slavery might begin, then, with a sense that slavery, while legally permitted in 1850, is wrong on the basis of ideals or values not yet given legal enactment. The form of dissent, at the outset, might be appeal to those agencies responsible for changing laws in the constitutional manner, in this case, the Congress. In fact, many individuals did petition Congress to take up the matter of slavery. Today such petitioning might take the form of writing to one's congressional representatives or organizing political rallies to show support for legislative change.

Conflict of Loyalties

At this point, one important question any dissenter must consider is: By what standard, or on what basis have I determined that I can be both loyal to my country and in opposition to one of its duly enacted legal statutes? In the case of slavery it was possible for many people to reconcile the original intentions of the founding fathers with slavery (since slavery was not explicitly forbidden in the Constitution, since slaves were recognized as being equal to only a portion of a free white person, etc.). Others argued

that despite these anomalies, the fundamental beliefs enshrined in the Declaration of Independence and in the Constitution regarding the equality of all persons were incompatible with the existence of slavery. With these beliefs as their base, they went on to argue that opposition to slavery was consistent with loyalty to the highest values of the country as set forth in its own fundamental charter.

Had that not been the case, the opponent of slavery would have had to face a more difficult decision: if her country's foundation explicitly approved of slavery and its existence reflected a fundamental ideal in the minds of those responsible for the Constitution, she would have to choose between slavery and infidelity to some of her country's stated values. At this point, she would have to fall back on a set of values that in her opinion are higher than those of her own country. These values might be based on any of the traditional moral positions considered earlier: an intuitive sense of what is just for all human beings, a response to the will of God, a belief about what is ultimately beneficial to the greatest number of people of which her countrymen are only a part, a Kantian sense of a categorical imperative demanding the universalization of justice, and so on.

But she must be clear that if her opposition to slavery is to escalate into full-fledged dissent, it must be based on a moral position transcending at least part of the legally enacted value system of her own country. She would have to accept the dissenter's working premise: Laws, while sometimes expressing morality, are not the definition or source of morality. Laws can be vehicles of justice, but justice sometimes reaches beyond particular laws. As Thoreau once said:

Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice.¹

In other words, obeying some laws that are in conflict with justice can actually perpetuate injustice.

Having made her decision whether the law in question is or is not in keeping with the basic values of her country, she must then decide what action to take. Her petitioning and other appeals to the bodies that have the power to change the laws have gone unheeded. She can choose to resort to other legal maneuvers such as electing to office candidates who promise to take up the issue of legal change, or she can choose to have the laws permitting slavery challenged in court to test their constitutionality. This latter method is often the most frequently employed just prior to nonlegal forms of dissent. It is always possible that a court, empowered to interpret law as being in conformity or nonconformity with the Constitution, could strike down the law in question. She must reckon with the possibility that

¹Henry David Thoreau, *Essay on Civil Disobedience*, quoted in *Dissent: The Institute for Contemporary Curriculum Development* (New York: Cambridge, 1972), p. 19.

her legal appeal will be lengthy (meanwhile the injustice of slavery continues to oppress and degrade thousands of slaves), that it might not even be given legal standing, and ultimately that it might be unsuccessful, i.e., the law permitting slavery might be declared perfectly constitutional.

Passive Disobedience

In the latter case, more forceful forms of dissent become viable options. In this country, one of the most time-honored and respected of these more direct forms of dissent is the tactic of passive disobedience, passively disobeying the law believed to be unjust. At this point the dissenter decides to disobey one or more laws pertaining to slavery, not by violent intervention against it but by refusing to obey it. For example, there was a law requiring that all fugitive slaves be returned to their masters. Many opponents of slavery chose to harbor runaway slaves, thereby directly disobeying the law. Their disobedience did not require them to take up arms against the duly constituted authorities and in that sense was a passive dissent. Much of the agitation against discriminatory, segregationist law in the southern states during the 1950s and 1960s was in the form of passive disobedience. If the law forbade black persons and white persons from eating together at a lunch counter, the dissenters—black and white together—disobeyed the law simply by sitting down as a block and waiting to be served.

If enough people passively disobey a law it will eventually come to be recognized by the official bodies of state that the law simply does not have the kind of social support necessary to make its enforcement possible. The law on prohibition is a case in point. It eventually was repealed because the large majority of Americans said by their disobedience of that law that it did not have enough social sanction to be a law representing the will of the people. Passive disobedience may also lead to a court challenge of the constitutionality of the law: the dissenters, given their day in court, can ask that the law, with whose violation they are being charged, be interpreted by a higher court as constitutional or unconstitutional.

At the very least, passive disobedience normally brings the issue to public attention. It is the hope of most dissenters that the public will eventually come to see the injustice of the law in question and that dissent will then spread widely enough that no further dissent will be necessary inasmuch as public opinion will force a legislative change.

The Acceptance or Rejection of Punishment

It should be recognized by our young dissenter, however, that whether or not public sentiment is aroused in favor of her cause, she may, as the price of her dissent, have to be willing to pay the full consequences of her

disobedience. The force of the law requires that its violation be punished in some manner. Normally, this would mean that as long as the law is in effect, and assuming our dissenter has been rightfully convicted of disobeying it, she will have to pay a fine or spend time in jail.

THE DILEMMAS OF DISSENT

It is at this point that a major transition can occur in the form of dissent considered appropriate. Those dissenters who feel that the general premise of law and the legal structure of their country as such are valid will normally accept punishment for violation of a specific law. To fail to do so calls into question the basis of law *per se*. To refuse to accept the legal consequences of disobedience suggests that the individual's own moral position is not only higher than the particular offensive law in question, but is higher than law in general.

The force of law depends on a willingness of people in a social order to accept the sanctions imposed when law is broken. This acceptance, which might include imprisonment, does not undermine the challenge mounted against the law—it may, in fact, highlight it by evoking in the public a sympathy for the person “unjustly” suffering punishment. That kind of sympathy may be just what is needed to have the law legally overturned. It calls forth a moral response from the onlookers regarding the injustice of the specific law, but it does not call into question the validity of law as such. It undergirds the legal system precisely because it accepts its general premise, that law is respected because it imposes punishment when it is violated.

But some dissenters are led to the position that not only is one law unjust but that the entire corpus of law in a particular society is unjust: that the injustices being perpetrated are so vast and so intertwined in the entire legal system that passive disobedience and a willingness to be punished for violation of one or more laws will either be futile or an excuse for the authorities to act even more repressively. A citizen in Nazi Germany, for example, might understandably have reached the conclusion that the whole array of anti-Semitic, racist legislation was so overwhelming and so much a reflection of the power structure's system of values, that isolated passive protest against a few laws would have been irrelevant and ineffective. At this point, many dissenters make the transition to active disobedience.

Here, many who break the law will not be willing to accept legal punishment. To do so, they argue, tacitly acknowledges the rightfulness of the legal order of that society. Therefore, their dissent must be seen as repudiating that order in its entirety since the individual laws are merely reflections of the fundamental injustice that the legal order represents. To make such dissent requires a profound moral choice. It entails a decision

on the part of the dissenter to reject the recourse of legal appeal and to take the law into her own hands. Such a step needs a strong and clearly thought out moral foundation, a foundation so deep as to stand in judgment not just on a single law but on a whole legal system. This kind of radical action is not lightly taken because it makes its appeal beyond the society and that society's principles and values. Certainly no persons whose moral values have been given to them solely by their society could make such a move.

Threat to Order and Law

Even those who feel there is a "transcendent" justification for rejecting the rule of law in a given society must weigh carefully the consequences of their action. Readiness to repudiate a whole legal system may lead to an undermining of social confidence in *any* legal system, which would clearly be disastrous for the kind of just society the dissenter is working toward. Many theologians have argued that our proneness to set up our own sinful desires in place of the needs of others is so strong that *any* rule of law is better than none at all. Law and order at least have the virtue of suppressing chaos or anarchy. If we returned to a state of complete freedom for each individual to do what he or she wanted without restraint, we would be back in a barbarous and destructive situation. Such views lead to the counsel of obedience even to unjust laws (although exceptions are made in religious arguments for those laws that directly contravene a "divine" commandment: no rule of law can be obeyed if it forbids worship of God, for instance). To reject this counsel and to engage in active rejection of a legal order takes the dissenter into the final arena of dissent—rebellion or revolution.

Our dissenter, therefore, faces another choice: She may refuse to accept punishment for her disobedience of the law regarding slavery without intending to call into question the general framework of law in her society. But if that is not her intention, she must show why her decision to refuse punishment does not rely on the principle that the force of law has no validity for anyone who thinks a law is invalid. If that principle is invoked, she has the further responsibility of showing that the order, which is necessary to any society, is not thereby seriously undermined. She would have to show, for instance, what distinguishes her refusal from the refusal of a rapist to accept the legal consequences of his act. She cannot argue that the law she has broken is wrong and the law the rapist has broken is right since, in the eyes of the society and its legal structure, both laws are right. She cannot argue that the purity of her motives, her moral sense of justice, is clearly superior to the lack of morality inherent in an act of rape. That may be true but a society cannot accept as morally binding *any* act an agent declares to be "sincere" or well-intended.

GANDHI ON CIVIL DISOBEDIENCE

The lawbreaker breaks the law surreptitiously and tries to avoid the penalty—not so the civil resister. He ever obeys the laws of the State to which he belongs, not out of fear of the sanctions but because he considers them to be good for the welfare of society. But there come occasions, generally rare, when he considers certain laws to be so unjust as to render obedience to them a dishonour. He then openly and civilly breaks them and quietly suffers the penalty for their breach. And in order to register his protest against the action of the law givers, it is open to him to withdraw his co-operation from the State by disobeying such other laws whose breach does not involve moral turpitude.

Mohandas K. Gandhi, *Non-Violent Resistance* (New York: Schocken Books, 1961. Copyright Navajivan Trust, Ahmedabad, 1951), p. 7.

Mohandas K. Gandhi (1869–1948) was a leader for India's independence from colonial rule and the foremost spokesman for the principle of satyagraha or nonviolent resistance. He combined political and religious concerns into a life revered by many as saintly.

Ultimately, our dissenter must argue that social orders and their legal systems are not absolutes: they are relative to the end of justice and/or fellowship. She must be willing to accept the conclusion that, as Jefferson put it in the Declaration of Independence, some abuses of justice are so great that an individual has the moral duty to appeal no longer to the values and laws of a given society for moral justification but must appeal to something universal, transcending that society, such as “the rights of persons in general,” or God’s will, or a fundamental moral sense not based on social consent.

Active Violation of Other Rights

This kind of appeal was made often in the case of slavery. Its radical injustice united many people not in revolution, but in active, sometimes

violent disobedience of the law. This involved in many cases an active violation not only of the rights of other persons but even of their property. Dissenters who do not wish to bring their dissent to the point of revolution must still consider the degree to which they can justify not simply disobedience of law and refusal to accept the legal consequences but also how far they should go in obstructing the rights of others. Recently, a number of incidents have happened in which anti-abortion demonstrators have prohibited persons from seeking abortions even though the latter is presently a right under the law. They have also, in the process, impeded the right of some doctors and nurses from practicing their trade, another right well established in law. In these cases the dissenter must decide on what basis one right can temporarily cancel out another.

In 1850 many people felt that the right of the slave to be free outweighed the right of the slave-owner to own the slave. Clearly both rights could not be exercised at the same time. In many cases of active dissent, the rights being violated are not the direct target of the dissenter (such as the right of access to a public building), but those rights can become the subject in a demonstration designed to call attention to the violation of other rights. Protestors blocked the entrance to public buildings in the late sixties in order to call attention to the injustice of the Vietnam War. In the process they denied some people access to the buildings even though they had no quarrel with that right as such. Part of the dissenters' justification in doing so was their claim that only by inconveniencing previously unconcerned people could they bring the force of their moral position to the attention of those individuals.

There is no way in such situations for each and every right to be harmoniously realized. The dissenter, therefore, takes on a heavy responsibility in deciding for others, in effect, what they will or will not be free to do. There are a number of variations on this problem that the dissenter must consider. Some have argued that destruction of property, while a serious escalation of dissent, is justified if the issue involves the destruction of persons. While seeking to avoid any harm to other individuals, some dissenters have forcefully broken into private homes to free slaves, or have ransacked the offices of people believed to be perpetrating injustice (e.g., the pouring of blood on the draft office files in Catonsville, Maryland, during the Vietnam War protests). Although these acts are not done lightly, it is pointed out by the dissenters that it is better to maim physical objects than to use those objects to aid in the maiming of persons. Also, by destroying objects, they argue, other people can be brought to see the relative values of human well-being versus material well-being. Some dissenters claimed that when a society cared more about the protection of physical objects than about the lives of men being sent off to war, it revealed a priority of values fundamentally at odds with their own. This revelation became, for some, a catalyst into revolutionary action.

Dissent in Democratic Societies

Before moving to a discussion of the moral problems involved in the ultimate form of dissent—revolution—we should note an important distinction often remarked on by opponents of violent dissent. They point out a very important difference between societies with and societies without a democratic process for resolving political conflict. In totalitarian regimes in which the law is determined by the ruler's whim and upheld by military might, dissent, to be realistic, must resort to arms since the force of reason is irrelevant. In democratic societies, on the other hand, the political process "ensures" that if enough people can be brought to see the correctness of a dissenter's position (by free distribution of his ideas, free election of his candidates, etc.), the evil opposed will be eradicated without recourse to violence.

There is great force in this observation. A dissenter who has not tried the legal and peaceful channels available before deciding to engage in violent acts against a social order obviously has little or no place in her scheme of values for law or due process. A person not willing to use the law to remedy a social evil is not normally a person a society should be willing to trust with the defense or enforcement of the law since it is apparent that she regards her claims as superseding any rights the law has on her.

Nevertheless, there are times, in many dissenters' opinion, when the level of bigotry in the populace and the manipulation of the political process by the powers that be are so inimical and so unresponsive to the demands of justice that they are justified in going outside the law to secure their ends. There were those who argued during the slavery debate that given enough time (perhaps another two or three generations), slavery would come to be seen by enough people as either so unprofitable or unjust that it would gradually be made illegal. Their opponents argued that a moral wrong, especially one that involves the degradation and oppression of human beings, cannot wait on the whims and subtleties of a less than perfect political process to bring about its elimination. Some rights, such as the right to be free from bondage to another, should not be held hostage to a process designed to reach a compromise on most issues—for how could there be a compromise on the right of freedom? If a practice is wrong, it should be stopped immediately; and if the legal and political processes are incapable of doing that, they must be transcended by acts of revolution.

REVOLUTION AND VIOLENCE

Revolution implies a complete change either in the persons who control a government or in the distribution of political and economic power. It also requires changes in the legal system greater than the mere abolition of

some laws and the addition of others. Revolutions involve a fundamental change of social values for which a change in government and law is a necessary prerequisite.

Revolutions would not be necessary if those who controlled the economic and political power of a society were amenable to change through persuasion or the political process. It is because those in power hold on to it, even through the manipulation and sometimes the subversion of the legal/political process, that active resistance becomes necessary if an alternative set of values is to be enacted.

Violence

Active resistance obviously raises the profound moral problem of violence: To what degree, if at all, is violence justified, against whom, and by what means? The violence done by armies has long been regarded as justified since it is done in the name of the society of which the army is an instrument of policy. The issue is not violence per se but *who* is being violent to whom and by what sanction. If the American revolutionaries had been unsuccessful in the war of independence, they could all have been convicted and punished as illegitimate, violent traitors. Because they won, their violence against the forces of the Crown attains an aura of legitimacy. We should remember that part of what makes violence justifiable is whether those who use it attain their goals.

But for a person struggling to know what is morally correct in this situation, mere success cannot be a sufficient justification for acting violently. Our dissenter must ask herself, Am I morally right in using physical force to restrain a slave owner from mutilating a slave, even though the owner has the legal right to do so under the laws of property and punishment? Her first barrier would be a definitional one. Some people believe that "violence" is only such when it is illegal. A police officer does not do violence when shooting a fleeing bandit but the bandit does violence when shooting the police officer in return. Others would argue that violence is any act that intentionally produces physical harm to another (though some such acts might be legally sanctioned, like those that occur in boxing).

To allow our moral considerations of acts that harm others to be resolved for us by a definition is to short-circuit the moral reasoning involved. Any act of harm to others needs justification: what the morally sensitive individual needs to do is sort out those acts of violence that are justifiable from ones that are not. We are talking here specifically about violent acts in the political sphere.

There are many arguments advanced against recourse to illegal violence. Religiously, many people feel that although they are expected by divine authority to do what they can to help other people, they are forbidden by

God's commands to use violence; if only violence will succeed in righting wrongs, then that "righting" will have to come from God. In the meantime the religious person must be patient if other acts, short of violence, are of no avail. Others have argued that since violence does an injustice to the body and/or mind of another, it cannot be justified since we should always treat others as ends, not as means. To act violently against you, even though you, through your actions are denying justice to others, is to violate your status as a person worthy of dignity and respect. Violence, therefore, directly contradicts in its enactment the very goals for which it is assumed to be the means. Such a contradiction is not morally permissible.

Perhaps the most prevalent argument against violence is one that appeals to its consequences. It is pointed out that when dissenters resort to violence, they normally bring down on their heads massive retaliation and repression. In other words, violence is self-defeating since its use by rebels justifies the established authorities' use of vicious reprisals and police-state tactics. More damaging in the long run is the fact that if a political order comes to power by violence, it creates a precedent for its own overthrow by violence. Violence breeds violence. (This is reflected in the fear of many in our society that too much exposure to the portrayal of violence in harmless settings, like in front of the TV, creates an atmosphere in which violence comes to be an acceptable way of resolving disputes.)

Is violence, then, justified? Those who think it can be point out that violence (harm to others through force) should not be assumed to be absent from even a smooth, well-run society. They argue that violence is done to our minds all the time by the power of false ideas and the propaganda of the power brokers. They also insist that when a regime is corrupt, the police and military forces, in the name of law, do violence to innocent victims continually. When the Nazis exterminated their Jewish victims, in the name of legally enacted statutes, was not violence being done? When slaves were treated as animals was not violence being done? Therefore, the proponents of selective violence conclude that if legality and order are maintained by violence and cloak injustice and brutality, there can be no legitimate objection to using counter-violence to remove the evil.

It should be noted that the end being appealed to here is social: that is, those who would use violence appeal to the need to establish a social order that is more just than the one in power. For those individuals whose highest moral end is not a social order at all but, say, obedience to a religious authority (even at the price of death or isolation), such an end is not ultimately relevant to their decision. If adherence to a moral principle, like "never do harm to another intentionally," is more important than creating a just society, then it would be difficult to find a justification for violence.

For those who hold that the establishment of justice *is* a moral end to be pursued, violence can be justified, according to the proponents, if there is a reasonable chance that its use will succeed in overthrowing the oppressive

regime and instituting a just one. The right or end to be achieved must be higher in one's scale of values than the right (e.g., to be spared harm by others) that must be temporarily denied by violence. The amount of violence to be used must be proportionate to the evil being opposed. If destruction of property will succeed in bringing about justice, violence against persons is not justified. If violence against one or a few persons will succeed, it is not justified to kill many.

This line of argument was used by those who collaborated in the attempt to kill Hitler. Although fully aware of the horror of their intended act, they believed that killing one man would have greater effect than a resort to random violence against many. Those against whom the violence is directed must be the most directly responsible for the evil or injustice that the situation permits.

Terrorist tactics are, in this regard, the most difficult of all acts to justify morally, if they can be justified at all, since they are directed against "innocent" people such as children. The justification advanced for terror is that it brings to people's attention the injustice being suffered and forces the perpetrators of injustice to confront the problem. But terror is random: it uses as its means complete disregard for responsibility to others—it is difficult to see how such blindness to the particularities of other persons' lives can ever be a means to a social order in which the lives of others are treated with sensitivity and respect.

AN ARGUMENT AGAINST VIOLENCE

How wonderful it is that freedom's instruments—the rights to speak, to publish, to protest, to assemble peaceably, and to participate in the electoral process—have so demonstrated their power and vitality! These are our alternatives to violence; and so long as they are used forcefully but prudently, we shall continue as a vital, free society. . . .

. . . Violence on the part of a minority is sometimes a means of producing quick recognition of needs. It is not a productive technique for inducing the majority to undertake a job that must be figured in years of time and billions of dollars.

I recognize that there are times and societies in which violence employed to accomplish political ends has been respected. In times long gone by, tyrannicide had its respectable defenders. George Washington and friends were violent revolutionists. It is certainly arguable that slavery was abolished only by force of arms. But these analogies are too facile.

Violence is never defensible—and it has never succeeded in securing massive reform in an open society where there were

alternative methods of winning the minds of others to one's cause and securing changes in the government or its policies.

Abe Fortas, *Concerning Dissent and Civil Disobedience* (New York: New American Library, 1968), pp. 39-40.

Abe Fortas (b. 1910) is a former Supreme Court Justice and prominent member of the legal profession.

Violence, then, if it is to be morally right at all, must be selective and guided by full consideration not only of its long-term effects but also of the means used in its implementation. These must be as much under the control of the agents of violence as possible. To rule out violence absolutely would be to sanction it under another name: the state or the established authorities. But when it is resorted to, as Reinhold Niebuhr once said so poignantly

... its terror must have the tempo of a surgeon's skill and healing must follow quickly upon its wounds.²

THE OPTION OF DISSENT

To return to the dilemma of our young dissenter: She has been struggling to know what to do in the case of slavery. Her dissent has escalated to the point where she has had to consider violence. Historically, of course, that violence eventually came in a legally sanctioned way for her: her government responded to acts associated with slavery by authorizing military conflict. Had the government gone the other way, had it continued to accept slavery as reconcilable with the nation's laws and traditions, she would have found herself much as Jefferson had found himself in 1776—deciding whether a full scale revolution was necessary to abolish this evil once and for all. Had society become “destructive of the . . . life, liberty and pursuit of happiness” of the enslaved black persons? If it had, then Jefferson's words would have special weight:

[I]t is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

²Reinhold Niebuhr, *Moral Man and Immoral Society*. (New York: Scribners, 1932), p. 220.

We can count ourselves fortunate that history did not take this turn, that the government came to see that slavery was not compatible with its ideals of freedom and justice. It is significant in this regard that Abraham Lincoln responded to the conflict that brought slavery to an end with imagery very similar to that used by Niebuhr in his justification of selective violence. In his Second Inaugural Address, Lincoln spoke of the need for an armed conflict to end the issue but immediately turned to the greater need for a healing process to begin:

[L]et us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and a lasting peace among ourselves and with all nations.

There is no way for a dissenter to know at the outset of dissent what forms it might take during the struggle. But as long as there is injustice being done to persons by legally constituted authorities, as long as rights are being violated, there will be a need for dissent. No one should become complacent enough to assume that dissent is never necessary or always disloyal. As long as values remain imperfectly realized, there must always be morally sensitive people to remind us of our highest vision and best ideals. We must even be prepared to see dissent escalate from public proclamation to radical revolution. Unless we can enter into the values and ideals of even those who resort to violent revolution in the name of equity, freedom, or justice, we cannot know what the full depth of being moral can entail. The greatest tribute active dissent pays to the moral quest is to take it so seriously as to give it life in the fullest social and political terms. Although there must be room in our moral equipment for the swift blade of violence, the greatest tribute moral persons can make to dissent is to provide the kind of open, rational, and just society in which the body politic maintains its health without recourse to the surgeon.

CHAPTER REVIEW

A. The foundations of dissent

1. The Declaration of Independence refers to the right of a people to throw off a government that has become destructive of liberty; this indicates that dissent has a long American heritage.
2. Because dissent is more revolutionary than freedom of expression, it needs strong justification.
3. Dissent begins when someone senses a discrepancy between a set of ideals and current practice in a society.
4. The potential dissenter will feel a conflict between loyalty to country or to values that transcend the country.

5. Dissent escalates through a series of stages, the first of which is to seek redress against an unjust law or practice through the congress or the courts.
6. Passive disobedience, i.e., passively disobeying a law regarded as unjust sometimes follows if legal or legislative remedies are not successful.
7. Dissenters have to face the question of whether to accept punishment for breaking a law regarded as unjust.

B. The dilemmas of dissent

1. When a law is regarded as part of an unjust legal system, dissenters sometimes feel justified in refusing punishment for breaking a law.
2. Those who refuse punishment must carefully consider the effect of their refusal on the stability of the social order as a whole.
3. Dissent sometimes involves the violation of other persons' rights.
4. Dissent within a democratic society permits many more options than does dissent within a totalitarian regime.

C. Revolution and violence

1. The final stage in dissent is reached when revolution is proposed.
2. If revolution is contemplated, the justification of violence must be considered.
3. Those opposed to violence argue that it simply breeds more violence and is ultimately dehumanizing. Those who support the use of violence point out that unjust regimes often use violence under the guise of law.

D. The option of dissent

1. Dissent is always an option for those who believe injustice is being done by legally constituted authorities. An open, rational, and just society will reduce the need to resort to this form of moral protest.

SUGGESTED READINGS

Barnes, Gilbert Hobbs. *The Anti-Slavery Impulse 1830-1844*. New York: Harcourt, 1964.

A detailed narrative of the events and issues surrounding the anti-slavery and abolitionist dissent in the antebellum period.

Cohen, Carl. *Civil Disobedience: Conscience, Tactics, and the Law*. New York: Columbia Univ. Press, 1971.

Arguments for and against civil disobedience, illustrated by case studies.

Fortas, Abe. *Concerning Dissent and Civil Disobedience*. New York: New American Library, 1968.

A powerful but succinct analysis of dissent in America by one of its leading jurists.

Hall, Robert T. *The Morality of Civil Disobedience*. New York: Harper, 1971.

A systematic study of civil disobedience including theoretical and practical considerations.

King, Martin Luther, Jr. *Why We Can't Wait*. New York: New American Library, 1964.

The classic statement of civil protest (including "Letter from Birmingham Jail") by the famous American civil rights leader.

Rasmussen, Larry L. *Dietrich Bonhoeffer: Reality and Resistance*. Nashville: Abingdon, 1972.

A study of the moral dilemmas involved in Bonhoeffer's decision to abandon pacifism and engage in the plot to assassinate Hitler.