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Direct Action and the Struggle for Integration

By Mulford Q. Sibley

A MOST striking aspect of the integration struggle in the United States is the role of non-violent direct action. To an extent unsurpassed in history,¹ men's attentions have been directed to techniques which astonish, perturb, and sometimes antagonize those familiar only with the more common and orthodox modes of social conflict. Because non-violent direct action is so often misunderstood, it should be seen against a broad background. The civil rights struggle, to be sure, is central. But we shall examine that struggle in the light of general history and the over-all theory of non-violent resistance. Thus we begin by noting the role of non-violent direct action in human thought and experience. We then turn to its part in the American tradition, particularly in the battle for race equality; examine its theory and illustrate it in twentieth-century experience; inquire into its legitimacy and efficacy; raise several questions crucial to the problem of civil disobedience, which is one of its expressions; and assess its role in the future battle for equality and integration.

Direct Action in Human Thought and Experience

Although non-violent direct action is a kind of "war,"² it seeks to avoid the violence of war and still reject acquiescence in social injustice. Historically, it has often been used not in pursuance of some principle, but rather because men in desperation have turned to it as the only way out.

The Ancient World

The resistance of Moses and the gradually awakening Hebrew people may be one of the earliest recorded instances. While the with-
drawal from Egypt was not to alter social conditions within the ancient monarchy, its threat may have caused the Egyptian minds to question whether they ought to redress grievances: by so doing, they might have retained the labor of the Hebrews, even though eliminating chattel servitude. And it is significant that in American Negro ideology, verse, and song, much reference has traditionally been made to Moses and the ancient Hebrews. Long before the modern liberation movement, Negroes held up the example of Moses as a model for themselves.

During the fifth century B.C. occurred another example of direct and largely non-violent action to redress social wrong. The monarchy had been abolished in Rome at the end of the sixth century and by that time the conflict between patricians and plebeians was well under way. Plebeians found themselves held down not only by the law but also by the extended social privileges of the patricians. In 494 the plebeians withdrew en masse to an adjoining mountain, where they planned to remain unless granted a greater voice in public affairs. The patricians, alarmed by this deprivation of soldiers and producers, soon granted concessions which one modern historian has characterized as little less than a revolution. The withdrawal to the “Sacred Mount” was the “origin of the tribunate of the plebs,” an extremely important office.

Without mentioning all the non-violent direct action episodes of ancient life, a useful reference is an instance in the relations between the largely disarmed Jews and the heavily armed Romans. When the Emperor Caligula ordered the erection of his statue in Jerusalem, he was met by adamant refusal of the Jews to allow it. Although disarmed, they met the commander of the Roman troops outside the city and said in effect that the soldiers could enter the city only over their bodies. They also instituted an agricultural strike. Before action of this kind the militarily powerful Romans hesitated, the commander referred the case back to Rome, and eventually it was decided not to erect the statue.

The attitude of early Christians to the Roman Empire was essentially one of non-resistance which had the effect, in many respects, of what we can call non-violent resistance. Ostensibly rejecting active opposition to the state, Christians nevertheless believed that there

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3 Exodus 1-15. Sanctions seem to be left to “The Lord.”
4 J. MOMMSEN, HISTORY OF ROME 346-50 (Dickson transl. 1894).
5 Id. at 349.
6 J. Josephus, Antiquities of the Jews Bk. XVIII, Ch. 8. (Whiston transl. 1737). Non-violent resistance, of course, was only one factor in a complicated situation.
were some acts which they simply could not in good conscience perform. What is more, a deep chasm developed between the outlook of many Christians and the general culture of the Empire. When the Christian was asked to sacrifice to the "genius" of the Emperor, he refused. While this was an individual act and not directly "political" or concerted, the effect of thousands of believers taking this position was not unlike that of the non-violent resister in every age: the rulers' self-confidence was undermined and they were beset by inner doubts. Although they frequently reacted with brutal violence, as in the persecutions of Decius and Diocletian, this very violence reflected a certain uneasiness about their own position. As for the Christians' clashes with the general culture, they were no less effective because they did not constitute formal civil disobedience. When Christians refused to eat meat which had been sacrificed to idols, declined to attend the games, or stubbornly rejected all public offices, they may have been violating no explicit law; but they were, nevertheless, by these boycotts, effectively undermining many of the values which traditional Roman culture held dear. And the larger the number of devotees, the more certainly was this true.

One is impressed by the insistence of the early Church Fathers that Christians must reject many practices which their contemporaries accepted. From admonitions about women's dress to rejection of military service, the Fathers in effect advised a program of partial non-cooperation. By the middle of the second century, this program had begun to have an enormous effect, even though Christians were then only a small minority. Their rejection of pagan cults had adversely affected the artisanship and trade connected with religious objects. Pagans like Celsus, writing against the Christians, alleged that military service was being seriously undermined by the repugnance of Christians for war and the oath.

**Middle Ages**

Although the Middle Ages were no doubt a violent epoch, examples of what might be legitimately termed non-violent direct

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7 Gibbon, Decline and Fall of the Roman Empire Ch. XVI (1776-1788), develops the theme of persecution in general. See also Mason, Persecution of Diocletian (1876).

8 1 Corinthians 8.

9 See generally Cadoux, The Early Church and the World (1925).

10 For Celsus's arguments against Christians in general, see Origen, Contra Celsum (Crombie transl.) in 23 Ante-Nicene Christian Library (Roberts & Donaldson ed. 1872).
action were not lacking. The medieval estates, for example, by withholding financial assistance to the King, could often help shape policies of the Crown; and while there always lurked the possibility of violent action by the nobility as part of this resistance, the prime power lay in largely non-violent non-co-operation. The indispensability of the economic resources of the town also played its role in developing traditions of municipal autonomy—when the burghers were willing to stand together and recognize the vital place of their co-operation in the life of the monarchy.

In Modern Times

But the efficacy of non-violent direct action seemed always to be obscured by the more dramatic and seemingly radical reliance on violence. During the sixteenth century, characterized by most religious groups’ resort to violence, the advice of men like Etienne de la Boétie was largely ignored. At a time when Catholics were destroying Calvinists and Calvinists murdering Catholics and during a period when political assassinations were prominent, de la Boétie was writing his treatise on voluntary servitude and attempting to state in simple terms the case for non-violent direct action. Going directly to the heart of the problem, he contended that in the end tyranny of all kinds flourishes because men choose “voluntarily” to be slaves. The structure of tyranny reposes basically upon the readiness of a few men to obey the sovereign, largely for immediate personal gain, the equally great willingness of other human beings to submit to these secondary “slaves,” and other subservient persons down through a hierarchy of submission. Catholics were oppressed by Protestant princes, argued the Catholic de la Boétie, because they lacked the courage or the will to withhold in concerted fashion the obedience so essential for any political rule. It is unnecessary, he went on, to use violence against the tyrant or his immediate minions: clear-cut withdrawal of support by those in the lower echelons would cause the whole structure to collapse without the firing of a single shot. De la Boétie was appalled by the fact that whole nations throughout history had accepted voluntary servitude so readily.

During the eighteenth and nineteenth centuries, theories of non-violent direct action, including civil disobedience, came to the fore with the development of the anarchist tradition and the beginning of

11 De la Boétie, Discours de la Servitude Volontaire (1576) (Kuit transl. as Anti-Dictator (1942)).
modern pacifism. William Godwin was a good representative of the former and, in great measure, of the latter as well. Analyzing the political problem in ways reminiscent of de la Boétie, Godwin suggested that both war and tyranny could be undermined by the development of an enlightened opinion which might be reflected in non-violent non-co-operation of individuals. And the poet Shelley made the spirit of Godwin explicit in verses advocating non-violent, non retaliatory resistance. Carrying on this tradition to some extent, Leo Tolstoy during the concluding years of the nineteenth century suggested that individual non-violent direct action, if implemented on a large scale, could accomplish what violence could never do.

Meanwhile, in the realm of practical politics, men without either the means of violence or truly representative government turned to various forms of non-violent direct action. In Ireland, much of the agitation against British rule took the form of non-payment of rents. In Hungary, after the violent methods of men like Louis Kossuth had proved ineffective against the claim of the Austrians to rule the Magyars, the latter turned to various expressions of non-violent resistance under the leadership of Francis Deák. Their actions were vital in securing the eventual establishment of the Dual Monarchy in 1867.

In the twentieth century the story of Gandhi is well-known. First in South Africa and later in India, he perfected the technique and theory of Satyagraha, which played a significant role in securing amelioration of the lot of the Indian in South Africa and in eventually bringing about the independence of India. In modern times non-violent direct action has also been important in broadening the suffrage in Belgium, obtaining the independence of Ghana, and developing the political consciousness of non-white inhabitants of South Africa.

12 Godwin, An Enquiry Concerning Political Justice (1793).
14 Tolstoy was not, however, an advocate of highly organized non-violent resistance. For a critical analysis of Tolstoy’s attitude, see Maude, Life of Tolstoy: Later Years 353-67 (1910).
15 Tucker, Individual Liberty (1926).
20 Id. at 354-5.
The American Tradition and the Negro Struggle

As part of the tradition of non-violence, the United States has had its own complex background and it is out of the American experience that Negro activities of the past two decades have sprung.

The Early Period

Early American non-violence developed out of the Anabaptist and Quaker religious heritages. The Mennonites, who settled largely in Pennsylvania, took a "non-resistant" position. While they generally emphasized passive obedience, under certain circumstances they refused to conform to prevalent custom or obey law; thus they refused to serve in the army, even when legally required, and they declined public office on what they deemed to be Scriptural grounds. The Quakers insisted that if exact justice were done, violence and oppressive rule would not appear on a large scale; and William Penn, as founder of Pennsylvania, endeavored to implement this idea. Pennsylvania under Quaker control was without an army, yet Indian wars were unknown for about two generations. The habit of resistance to oppressive rule became firmly rooted: thus on one occasion the judges resigned in large numbers rather than administer oaths; and at another time, Quaker shipowners engaged in non-violent resistance against what they regarded as illegal ship dues.

During the days immediately preceding the American Revolution, many actions of the colonists took the form of largely non-violent resistance, including boycotts. It is arguable that had resistance remained of this nature, the social and moral costs of independence would have been vastly less than they actually were as a result of the violence of the Revolution.

Nineteenth and Twentieth Centuries

Throughout the nineteenth century, justifications for and the practice of non-violent resistance were not lacking. Henry D. Thoreau penned his notable essay on the moral and political obligation of the individual to resist the state on occasion, although he did not advocate what is now called mass civil disobedience. Organized opposition

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22 On Mennonite doctrine, see generally Hersberger, War, Peace and Non-Resistance (1944).
23 Sharpless, A Quaker Experiment in Government (1898).
to the fugitive slave laws often took the form of deliberate disobedience by men who appealed to the "higher law" so exalted by statesmen like Seward. When Walt Whitman advised the States to resist much, obey little, he was undoubtedly not speaking merely for himself.

Non-violent direct action has played an important role in several areas of life since the Civil War, as Eric Goldman has recently emphasized. Thus the struggle for women's suffrage sometimes took the form even of civil disobedience. The labor strike, too, whether employed for economic or political ends, can be an excellent example of resistance without violence, and the ablest labor leaders have fully recognized that that strike which is least violent is the most likely to be successful.

**Non-Violence and the American Negro**

Historically, American Negroes have exemplified almost every possible attitude to their low status, from virtually complete passivity to advocacy of violence. During slavery their hopes for emancipation were often transferred to another life, although slave revolts were not unknown. After emancipation, their status was in some respects even more degrading than under chattel slavery and their patience the more remarkable, for their "freedom" was a kind of mockery. Nevertheless, their economic status improved somewhat after the opening years of the twentieth century and those who followed men like Booker Washington held that economic advancement must somehow precede claims for full civil and political rights.

With the foundation of the National Association for the Advancement of Colored People in 1909, a concerted effort for implementation of civil rights began to be made in legislative bodies and courts, particularly after World War I. These endeavors culminated in *Brown v. Board of Educ.* in 1954, and this decision has spurred not

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27 *Whitman, To The States* (1860), in *Leaves of Grass* 7 (Modern Library 1921).
29 Tom Mooney Molders' Defence Committee, Press Service, Aug. 26, 1936. Mooney's remark was, "[V]iolence is the weapon used by the employers . . . . Violence wins no strike . . . . only education and organization [wins]."
32 *Myrdal, An American Dilemma* 819-36 (1962 ed.).
33 347 U.S. 483 (1954). The significance of *Brown* in encouragement of the struggle for civil rights will probably be seen by historians as of greater import than is recognized today.
Although examples of direct action in the cause of Negro equality were not lacking in the nineteenth century—particularly with respect to travel segregation—nor until World War II was organized effort developed. The great demand for economic opportunity in the defense industries stimulated interest in non-violent resistance, as did valiant endeavors of a few dedicated pacifists such as George Houser and Bayard Rustin. In 1943 the Congress of Racial Equality was founded, after picketing and sit-ins by the Chicago Committee of Racial Equality had demonstrated possibilities of success. The Congress—or CORE, as it came to be called—was specifically Gandhian in outlook and its first director, Houser, had gone to prison as a conscientious objector during the war. The pioneer direct action efforts of CORE after 1949 in St. Louis, Baltimore, Los Angeles, and New York laid the groundwork for the better-known non-violent resistance of the sixties.

In 1955-1956 occurred the Montgomery, Alabama bus boycott, which did much to stimulate interest in direct action, and to encourage those who believed in peaceful protest. As a direct outgrowth of the Montgomery affair, some 100 Southern civil rights leaders met in Atlanta on January 10, 1957, to consider plans for co-ordinating the many campaigns of non-violent resistance which had sprung up as a result of the bus boycott. Two months later, as the fruit of the Atlanta meeting, the Southern Christian Leadership Conference was born in New Orleans. Although the best-known work of the conference has been its sponsorship of direct action, it also played an important role in general civic education. Indeed, its leaders insisted that education and direct action went hand in hand.

The year 1960 heralded the beginning of widespread direct action throughout the South and border States. Much of the work of organizing was taken over by college students, who increasingly reflected an impatience with “talk” and a corresponding demand for action. Although original student direct action was largely spontaneous, the need for co-ordination and planning led to the organization of the Student Nonviolent Co-ordinating Committee (SNCC). Centers

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34 See generally Westin, Ride-ins and Sit-ins of the 1870’s in Freedom Now 68-74 (1964).
37 Ibid.
of committee activity were located in Greenwood, Mississippi, Albany, Georgia, and Selma, Alabama. Workers for the committee often made heroic efforts to register voters and combat segregation, coming to know at first hand the social and economic problems of the desperately poor Southern Negroes.

As campaigns of non-violent direct action spread, organizations and groups hitherto unsympathetic became active and thus reinforced those who had taken the initial steps. The National Association for the Advancement of Colored People, although it had played an important part in the civil rights movement, had for the most part shied away from direct action. By 1964, however, even it had begun to sponsor some projects.

Meanwhile, civil rights leaders had to grapple with certain problems which the growth of direct action had created. The influx of relatively large numbers unfamiliar with non-violence made acute the need for more adequate training methods. Some who were new to the movement seemed to see non-violence as a mere expedient to be supplemented on occasion by violence. A few appeared at times to believe that direct action eliminated the need for other forms of activity. Still others sought to use direct action in doubtful contexts, as when some thought that “stall-in” tactics during the New York World’s Fair of 1964 could force action by legislative and administrative bodies. Finally, organizational and personality tensions sometimes caused efforts to falter.8

Despite these difficulties, by 1965 there was little evidence that direct actionists had lost confidence in the movement. To be sure, part of the leadership asked for suspension of demonstrations during the election campaign of 1964, but they did this only with the understanding that resistance would be renewed after the presidential contest. Some Negro voices were beginning to doubt that violence either could or ought to be avoided, but those most active in non-violent resistance seemed not to share these doubts and, indeed, as with Martin Luther King, appeared to be reinforced in their convictions by their experiences.

To evaluate the place of Negro direct action in the history of Western and American non-violence, we can observe that from the viewpoint of sheer numbers involved it is almost without parallel—only the Indian movement exceeds it in this respect. It has reflected; too, a remarkable capacity for organization, self-sacrifice, strategy,

8 See generally Lomax, The Negro Revolt 47-63 (1962); Westin, op. cit. supra note 34.
and tactics. In the future it will probably serve as model for similar efforts elsewhere. But any judgment of its future must depend on a more detailed examination of its theory and practice. To these we now turn.

**Theory of Direct Action and the Negro Struggle**

The general theory of non-violent direct action has been elaborated in a number of volumes. Although exact formulations of the idea will vary considerably from one writer to another, we can discern certain common threads.

**Basic Principles**

Underlying the theory is the observation that consent, either active or passive, is central to any power structure or scheme of super- and sub-ordination. Rulership is conditioned in great measure by the degree of acquiescence of those governed. Society, from this perspective, is a kind of confederation in which groups support or reject one another horizontally, and in which each group vertically, in greater or lesser degree, either accepts or rejects those who purport to rule. Any acts which seriously undermine a pattern of acquiescence or consent can potentially effect fundamental changes.

In most societies there is a psychological tendency, which varies with circumstances, for men to seek subordination to avoid the responsibility which goes with freedom. Power structures (the term is used frequently in the literature of Negro direct action) depend in considerable measure on this phenomenon. Then, too, they rely in greater or lesser degree on the fact that complex division of labor inevitably separates men from one another in terms of immediate interests: thus the police, who may come from the masses, can for social or economic gain be used to intimidate the latter. Patterns of acquiescence, moreover, which have existed for generations tend by virtue of that very fact to be continued without question, even without overt threat of sanctions. Once a syndrome of super- and sub-ordination has been initiated, the overwhelming tendency is for it to persist. On the basis of experience, as John Stuart Mill pointed out,
we can expect most men, even if they are badly exploited, to obey rather than rebel.

It is this acquiescence which exponents of non-violent direct action challenge in the sharpest way, for they deny that custom necessarily embodies moral authority. They may even challenge the claims of statutory law itself. Deliberately withdrawing their consent at crucial points, they confront the sustainer of current custom or law with a dilemma: he must either attempt to intimidate them by threatening greater use of physical force, which may imply the destruction of the order that gives him his authority and power; or, on the other hand, he must attempt to work out a settlement whereby the old pattern might be altered. To the ruler or defender of the status quo, neither alternative is pleasant, for both tend to lead to situations in which his old position is undermined.

In such a situation, the dissident group or individual not only withdraws consent but also appeals to a value system which the defender of the established system may have in common with the rebel. It is notorious that no culture ever implements its professed values completely: always there is a gap between the norm exalted and the performance. In calling attention to the violation of the standard which both profess to accept, the rebel of non-violent direct action hopes to appeal to the ruler’s moral sense, and to work on his conscience. The primary initial purpose of any non-violent direct action is, therefore, to produce a “change of heart” of the opponent, to arouse him spiritually, to appeal to that within him which, while submerged below the level of consciousness, is seeking a greater congruence between his professed ideal and his actions. Human beings strain for consistency, and while there is always a strong tendency to achieve it by rationalizing actions which do not conform to announced values, the attempt to attain it by changing conduct is certainly of at least equal significance.

One is impressed on reading Gunnar Myrdal’s classic study of the Negro minority problem with the relevance of these considerations. Long before the intensive direct action of the sixties, Myrdal was pointing out that the “American Dream” of equality acted as a critic of all the actions in American culture which betrayed it.4

4 MYRDAL, op. cit. supra note 32. See Introduction at lxix-lxxiii. Noting the conflict between diverse ideals and the tension between particular ideals and practice, Myrdal observes at lxxii: “We shall find that even a poor and uneducated white person in some isolated and backward rural region in the Deep South, who is violently prejudiced against the Negro and intent upon depriving him of civil rights and human independence, has also a whole compartment in his valuation sphere housing the entire
Throughout the history of Negro-white relations, a large segment of the exploiting "race" has been uneasy about its performance. Precisely because its guilt is pushed beneath the level of consciousness, its actions against the Negro often betray it. Its very vehemence in asserting superiority is in some measure an indication that it knows it is lying. Its fears reflects its uncertainties, just as its doubts feed on its fears: in pre-Civil War days, its obsession was the danger of slave revolts, and the more it sought to prevent them by repressive legislation the greater these fears became. In more recent years its acts of rank discrimination reflect not merely ignorance but also guilt—the guilt is fed by the discrimination and the discrimination by the guilt.

Direct action seeks to bring to the surface these inner doubts and implicit feelings of guilt, and to confront the exploiter with his own better self which he has so long suppressed. By a kind of shock treatment, it hopes to make him aware of his other self seeking to pass judgment on the self which supports discrimination. Direct action in the civil rights struggle expects that this newly revealed hidden self will win the victory. Just as Gandhi in his struggle against British imperialism hoped to bring out the anti-imperialist in the imperial administrator, so exponents of non-violence in America seek to expose the egalitarian that lurks, however deeply, in those who sustain segregation and racial discrimination.

More than this, however, is involved. In any social struggle an appeal must be made to public opinion. To be sure, it is often difficult to identify what we mean by opinion, and in some situations this force may seem to be absent—everyone appears to be directly involved in the struggle itself. Nevertheless, in most situations of non-violent direct action conflict, some segments of the community are not as intimately enmeshed as the immediate participants: the actions of the latter, therefore, become crucial. In the Gandhi struggle for independence the strategy and tactics of the Satyagrahis were intended to affect British home opinion and, indeed, world opinion. In the American Negro conflict the appeal is not merely to those regarded as immediate discriminators or segregators but also—and perhaps primarily—to the general public, which, it is hoped, will eventually side with the resisters.

But what specific acts of non-violent resisters, affect the attitudes either of those immediately involved or of the general public? First, the

American Creed of liberty, equality, justice and fair opportunity for everybody. . . . And these more general valuations—more general in the sense that they refer to all human beings—are, to some extent, effective in shaping his behavior."
general appeal to values widely held bears in itself a kind of influence. Much depends, of course, on how the appeal is made; and here blunders can be committed as in any struggle. Nevertheless, the proposition remains: an effective statement of the discrepancy between principle and practice, ideals and their betrayal, carries its own power.

Secondly, the fact that direct actionists take a public position and stand willing to suffer for it can constitute an enormous reinforcement of the verbal appeal to values. The theory of non-violent direct action holds that suffering endured without any attempt to retaliate in kind is both right in principle and expedient in terms of the effort to change the attitudes of the opponent and the outlook of public opinion. Although sometimes confused with the idea that suffering is to be sought in a masochistic way, the direct action notion is quite contrary to this distortion. The direct actionist on occasion speaks of “absorbing” evil or suffering. In so doing, he takes the discriminator by surprise, shocks him into an awareness of reality, and possibly opens up channels of communication which might not otherwise exist; for the discriminator expects retaliation and when he does not meet it, he may wonder, think, and come to see his own actions as futile, since they do not meet the kind of opposition he anticipates. Public opinion, too, may come to the assistance of the rebel, for there is something about non-retaliatory suffering, according to direct action theory, that appeals to the best and the most sympathetic in human nature. What is more, the resister himself can be strengthened in his own objectives and motivations: he does not carry the weight of guilt involved in retaliation, and the very demonstration that he can undergo suffering will often strengthen his morale for future conflict. He may even be transformed in outlook and character. The aggressions which he has hitherto directed blindly and unconstructively against others are now transmuted into constructive and non-violent power; hence the civil rights struggle has often witnessed a drastic decline in petty violence within the Negro community, as resisters have forgotten their frustrations and been absorbed in the larger conflict. Men who before may have been regarded as violent types are transformed into self-controlled and disciplined persons.⁴³

But while the hope of the non-violent direct actionist is that the opponent will be persuaded to change his position and that public

⁴³I have been told by those involved in the civil rights struggle that violence of Negroes against both whites and other Negroes declines as they become involved in civil rights direct action.
opinion will assist, most realistic interpreters of non-violent resistance as a tactic will admit that ultimate recourse is to a form of coercion. If the efforts of those participating in demonstrations and negotiations are not successful, more extreme endeavors are held in readiness—measures, including mass civil disobedience, which tend to deprive the opponent of the ability to sustain his position. Some have suggested that the coercive phase of non-violent direct action, by depriving the opponent of the external panoplies and sanctions of his position, places him in a situation where he will be forced to recognize the objective existence of a world that he has hitherto not seen. But however it may be stated, he is in effect being coerced, albeit non-violently.4

**Steps in Direct Action**

Although theorists of non-violent direct action may differ in the details and in the precise language they use, there is widespread agreement that “non-violence” embraces a series of steps from rather orthodox approaches, on the one hand, to possible mass civil disobedience, on the other.45 The beginning of a campaign must involve definition of the conflict to be resolved and an awareness that gross injustice exists. At first, a serious effort is made to correct the injustice through such methods as appeals to legislative bodies or petitions to employers or merchants. If these are ineffective, direct actionists feel justified in resorting to more unorthodox means, always hoping, of course, that channels of normal communication and negotiation will be re-opened. Thus street demonstrations may be held and, a still more drastic step, boycotts may be encouraged. Meanwhile, those who feel strong enough to play an active role are trained systematically in the disciplines of non-violent resistance, the emphasis constantly being on firmness combined with non-retaliation. Some doctrines stress a stage of “self-purification,” in which potential resisters examine their motivations and seek to purge themselves of selfishness. More extreme phases of resistance may include fasting and individual civil disobedience by certain leaders. Only under stress of great emergency and crisis will large-scale avowed civil disobedience be employed.

4 The title of Case’s volume, Non-Violent Coercion (1923), is an open avowal of the coercive element in non-violent direct action. Many advocates of this type of action, notably Gandhi, shy away from use of the word coercion, apparently because it offends their religious sensibilities. But it would be difficult to find a more descriptive term for at least this phase of non-violent direct action.

45 This is particularly emphasized by Gandhi. See Shridharani, War Without Violence 3-42 (1939).
The civil rights struggle has illustrated all levels or stages of direct action, from initial public protests and negotiations through picketing and boycotts to civil disobedience. It has also exemplified a broad awareness of the necessity for explicit education and training in the meaning and practice of non-violence. Thus there have been schools for sit-in resisters. The volunteers for the 1964 Mississippi Summer Project (to encourage voter registration) were carefully prepared for the kind of violent resistance which they would probably encounter. In developing the disciplines of resistance, appeals to the religious consciousness and background of Southern Negroes have played an important role; and it is significant that churches have frequently constituted the focal points and Negro pastors the leadership for the whole movement. Where religious consciousness and the church were less central in the Negro community, as in much of the North, the basis for disciplined non-violence seemed to be less stable.

But non-violent direct action can be fully understood only when we see it not merely in principle but also in practice. Although here we identify several different forms of non-violent direct action, we should remember that in any given situation virtually all of them may be and have been employed. Distinctions between forms are somewhat arbitrary and terminology used will often vary.

**Picketing and Walks**

In picketing, the non-violent direct actionist hopes to dramatize a situation, alter practices, and arouse opinion. Thus when college students all over the United States picketed Woolworth's and Kress' "dime" stores because their Southern affiliates refused to serve or hire members of minority races, they hoped either directly to change the policy of merchants or to develop a pressure of opinion which would do so. Various groups, sometimes known as Students for Integration, participated in the picketing, which was also stimulated by such well-known organizations as the Congress of Racial Equality. Two excellent examples of what we are calling the walk or march immediately come to mind. The first occurred in 1941 and the second in 1963.

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46 Selection of volunteers was difficult, for planners of the project were aware of the beatings and other mistreatment to which the college students would be subjected. See various issues of *The Student Voice*, published by the Student Nonviolent Coordinating Committee, Atlanta.

47 Pastoral leadership was due in part to the fact that Negro ministers included some of the more highly educated men.

48 Often stores picketed did not engage in discrimination, but they belonged to chains which did.
Although the first actually never materialized, its very proposal appeared to affect policy. It must be seen in the context of events immediately preceding American entry into World War II. Negroes were beginning to awaken and to become aware of their low status in American society. They were particularly concerned about employment opportunities in the defense industries; and although Robert Weaver had been appointed Assistant to the Secretary of Labor in 1940 ostensibly to facilitate this objective, he was without adequate authority and staff. To be sure, some public agencies did proclaim non-discrimination policies, but without too much effect. Thus as late as 1940 the aircraft industry was virtually out-of-bounds to Negroes, and a vast majority of all labor unions maintained a color bar.

The issue for Negro leaders was how to break down these barriers. In the autumn of 1940, Negro and white leaders conferred in Hampton, Virginia, on "Participation of the Negro in National Defense" and this aroused considerable interest in the non-Negro press. But pressures on the government for an effective policy against discrimination continued to fall on largely deaf ears. Thus when the National Association for the Advancement of Colored People asked General William Knudsen of the Office of Production Management to use pressure on General Motors (in which he had formerly been an executive), Knudsen refused; and Walter White of the NAACP asserted that Knudsen declined even to discuss the problem with Negro representatives.

Meanwhile, Walter White had tried to work on President Roosevelt himself. But he was constantly frustrated. Thus at a conference in the White House on September 24, 1940, the President said (according to White) that he would not take effective action against discrimination because if he did so "the South would rise up in protest." Although White said that the President betrayed an unjustified lack of trust in Southern whites, the President remained adamant.

By the end of 1940, to be sure, and early in 1941, some interest was aroused in Congress. Holders of defense contracts were asked by the Office of Production Management, on April 19, 1941, not to discriminate. But the OPM action was merely a "request" and had little effect. As a consequence, Negro delegations now decided that if anything fundamental were to be accomplished, an executive order had to issued barring all discrimination. But a new question now emerged:

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49 RUCHAMES, LAW, JOBS AND POLITICS 13-14 (1953).
50 Id. at 14.
51 Ibid.
How could Roosevelt be persuaded to sign such an order when his whole record on the discrimination issue had revealed so much reluctance to face it squarely and unequivocally?

It was at this point that A. Philip Randolph, President of the Brotherhood of Sleeping Car Porters, suggested a “March on Washington.” His call was taken up and elaborate preparations for the march began. Scheduled to take place on July 1, some 50,000 persons were expected to participate. No sooner was the march seriously considered, however, than pressures were placed on Randolph to abandon it. Thus Mrs. Roosevelt herself, after talking with the President, wrote Randolph:

I feel very strongly that your group is making a very grave mistake at the present time to allow this march to take place. . . . I feel that if any incident occurs as a result of this, it may engender so much bitterness that it will create in Congress even more solid opposition from certain groups than we have had in the past. . . . You know that I am deeply concerned about the rights of Negro people, but I think one must face situations as they are and not as one wishes them to be.

The letter implied not only that the march would offend Congress, but also that it might provoke violence. Mrs. Roosevelt’s position was seconded by other representatives of the White House.

To requests like Mrs. Roosevelt’s, Randolph and White replied that preparations had already been made and that to abandon them before concrete assurances had been given would be to betray the cause of non-discrimination. On June 18, nevertheless, the March on Washington Committee did meet with the President, who repeated his previous requests, and at the same time appointed a committee to discuss issues with leaders of the march. With virtual unanimity, the committee felt frustrated by its White House conference and proceeded to make final arrangements for the mass demonstration.

On June 24, however, the draft of an executive order was submitted to Negro leaders who, after suggesting broadening modifications, approved it. On June 25, President Roosevelt signed Executive Order 8802, which in principle banned discrimination throughout the government and in defense industries. Only after formal promulgation of the order did leaders of the march call off the July 1 demonstration, less than a week before it was scheduled to take place.

52 Id. at 15-17.
54 Ibid.
While the March of 1941 never went beyond the planning stage, that of 1963 actually took place and was one of the most dramatic episodes in the politics of integration. Coming after a long series of direct action efforts beginning in 1960, it represented the greatest involvement of the Negro rank and file in American history. President Kennedy had been slow in implementing many of his 1960 campaign promises, apparently believing that administrative action and the appointment of many Negroes to high federal posts would temporarily stave off demands for legislative measures. However, episodes involving admission of James Meredith to the University of Mississippi, direct action in Birmingham, and a restlessness among Negroes in the ghettos of the North as well as in Southern towns finally moved him to propose a comprehensive Civil Rights Bill. Negroes and their white supporters were enthusiastic. But they were also cautious, for they were quite aware that while the President might propose, Congress disposed; and Congress was controlled by a committee system which gave disproportionate power to Southern, and therefore hostile, leadership.

In view of the President’s legislative proposals, on the one hand, and their probable fate at the hands of Congress, on the other, Negro leadership had to develop the strategies most likely to arouse opinion in support of the pending bill. Thousands of letters to Congress had failed in the past under parallel circumstances, as had decorous speeches and lobbying activities before the national legislative body.

It was under these conditions that the idea of a giant demonstration began once more to grip the imagination of men like A. Philip Randolph. The issue was more complex than that which had arisen in 1940 and 1941, but it also developed within a context of greater Negro self-consciousness. Although Randolph had originally conceived of the march as a demonstration centering on Negro employment, conferences with other leaders led to the conclusion that the Civil Rights Bill should be the center of agitation.

The time seemed to be ripe for action. Much experience with direct action had now been accumulated and groups like the Congress of Racial Equality were pushing more conservative organizations in the direction of unorthodox methods. By the middle of 1963, some six hundred civil rights demonstrations of various kinds were taking place in 169 cities located in 32 states. Negroes hitherto silent or

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55 In autumn of 1962, the Meredith affair entailed serious clashes between state and national authority, as well as mob violence.
56 Booker, BLACK MAN'S AMERICA 49-50, 54-56 (1964).
57 Id. at 56.
indifferent were participating en masse in actions which a few years before they would have spurned.

With the support of most major Negro organizations, and of many non-Negro groups as well, the March on Washington was planned and executed. To those in charge, one of the most serious issues was how to prevent violence in what would be the largest demonstration ever to take place in the American capital. This required careful calculation, the development of a self-policing system, and not a little understanding on the part of the rank-and-file. When buses and trains eventually brought about 225,000 Negroes and whites to the August 28 demonstration, march leaders and government officials alike were concerned lest violence break out, despite all preparations. But the fears were groundless.

On the morning of August 28, leaders of the march button-holed members of Congress and sought in every way possible to emphasize the urgency of civil rights legislation. There followed the mass demonstration itself, with speeches from both white and Negro leaders. Whatever the effect of the march on the subsequent fate of the legislation passed in the summer of 1964, most observers agree on its significance for the Negro community itself. It demonstrated on a large scale the degree to which large masses of men could discipline themselves. It afforded a place in the sun of the civil rights movement for those who would otherwise have lacked a vehicle to express their concern. It gave voice to a surging mass of discontent and served to arouse even greater dissatisfaction with the gulf still existing between the ideals professed by the culture and the shoddy practices of the society. As one Negro journalist has put it: "Despite the critics, including Negroes who once opposed such a demonstration, the August 28th event became historic, not because of the size of the audience or the lack of violence, but because it set in the soil of thousands of marchers' minds the seeds for action against a major problem.”

Sit-Ins and Their Variations

The sit-ins and their variations were among the most dramatic of the direct action devices worked out in the course of desegregation and non-discrimination struggles. They illustrate what the student of direct action usually emphasizes: the technique to be employed depends upon the immediate objective as well as the general context of circumstances. In the sit-in, one challenged lunch counter and restaurant segregation by sitting where, according to the managers' rules or custom or law or a combination of the three, one was not supposed

58 Id. at 58.
to be. Variations were numerous: the wade-in for swimming pools open to whites only; the kneel-in for churches; the stand-in for libraries; and what might be called the walk-in for voter registrations. During the spring of 1964, some enthusiasts attempted to develop a stall-in, whereby one obstructed traffic or events at the New York World’s Fair in the name of integration and employment opportunities.\(^5\)

The sit-in movement, as contrasted with individual sit-ins which had occurred at least as early as the forties, began on February 1, 1960, when four Negro college students sat down at a lunch counter in Greensboro, North Carolina, and demanded service.\(^6\) Their act was spontaneous but it was almost immediately imitated in many states, which led to organization on a national scale and application of the principle to parks, transportation, voting, libraries, museums, beaches, swimming pools, voter registration bureaus, and court-rooms.

It has been estimated that by the autumn of 1961 every border and Southern state, together with several Mid-western and Western states, had been affected by sit-in and similar demonstrations;\(^6\) 3,600 participants and their allies had been arrested, and approximately 70,000 Negroes and whites had been involved in sit-ins, street demonstrations, picketing, and mass meetings supporting the sit-inners.\(^6\) During the same period—perhaps the classical epoch of what might be called the sit-in era—not a few students and faculty members were dismissed because of their connections with the sit-ins; although, as usual, college administrations on the whole alleged other reasons. In one institution, Southern University of Baton Rouge, Louisiana, 236 students felt so deeply about the expulsion of several student sit-in fomentors, that they withdrew from college in protest.\(^6\)

A few details will illustrate the situations in which the sit-inners found themselves. In Florida, the first sit-in took place on February

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\(^5\) These efforts were widely condemned by many who ordinarily sympathized with non-violent direct action, partly on the ground that the “stall-inners” were not truly motivated by the spirit of non-violence. The Christian Century, May 6, 1964, p. 623, sarcastically proposed a “Stall-In Code.”


\(^6\) Ibid.

\(^6\) Ibid.
12, 1960, in Deland, and later was taken up by Florida A and M students in Tallahassee, nine of whom sat in at the local Woolworth's store. Within a brief period of time some 243 sit-inners were arrested on such charges as "disturbing the peace," "unlawful assembly," and "disorderly conduct."64

In Louisiana, the first sit-in occurred in March, 1960, at Baton Rouge; the movement later reached the cities of Shreveport and New Orleans. In addition to the kinds of legal charges brought against Florida sit-inners, arresting authorities in Louisiana alleged violation of statutes prohibiting obstructing of "public passage" and invoked little-used laws against "criminal mischief" and "criminal anarchy."65

In North Carolina, where the sit-in movement had begun, many cities were affected within a brief period. There were more than 200 arrests, and new charges including "obstructing the sidewalk," "affray," and "assault and battery."66 One of the few serious charges of violence against a Negro occurred in Monroe, where Robert Williams, who rejected the ethic of non-violence, gathered his followers around him, and fought a white group.

In the border state of Oklahoma, sit-ins were initiated in 1958, long before the official beginning of the movement. By the autumn of 1961, scores of both college and high school students had become involved.67

Texas began its sit-in wave on March 5, 1960, when 100 Negro students from Texas Southern University protested at a lunch counter in a supermarket. From there the demonstrations radiated to Austin, San Antonio, Houston, Amarillo, Galveston, Marshall, Dallas, and Beaumont. As was true of most sit-ins, such violence as occurred was by whites against Negroes. Thus in Houston, a Negro was beaten by a white man; and another was whipped severely with a chain. In Marshall, the police, holding police dogs on leashes in a threatening manner, broke up a peaceful Negro meeting by fire hosing it.68

Leaders of the sit-in movement were unusually careful about training participants, realizing that there might be strong temptations to use violence. Local groups of sit-inners, also influenced by Gandhian and Christian teaching, sought to make explicit what non-violence implied in a sit-in situation. As an example of deliberately developed codes of conduct, we might cite the rules drawn up for their actions by Nashville students:

64 Id. at 5.
65 Id. at 7.
66 Id. at 8-9.
67 Id. at 9-10.
68 Id. at 11-12.
Don’t strike back or curse if abused. Don’t laugh out. Don’t hold conversations with floor workers. Don’t leave your seats until your leader has given you instruction to do so. Don’t block entrances to the stores and the aisles. Show yourself courteous and friendly at all times. Sit straight and always face the counter. Report all serious incidents to your leader. Refer all information to your leader in a polite manner. Remember love and non-violence. May God bless each of you.

Max Lerner, commenting on non-violent direct action about this time, remarked: “The American Negroes are almost the last Christians in America in the sense of taking their religion with serious simplicity. If anyone should be able to make the method work, they should.”

**Boycotts and Selective Buying**

Boycotts were used independently of sit-ins and other direct action, or sometimes in conjunction with them. In some instances, the term “selective buying” was employed partly in the hope that it might help participants avoid local laws against boycotts. The theory was, apparently, that if Negroes were advised to patronize certain establishments rather than to spurn others, it would be difficult to prove a boycott. Among the best-known examples of boycotting were those which took place in Tuskegee, Nashville, and Birmingham. But there were literally scores of boycotts, some informal and others organized.

The Montgomery, Alabama, bus boycott was a model for other efforts and will be used to illustrate the difficulties and complexities that arise in all such campaigns. It began on December 1, 1955, when Mrs. Rosa Parks, who had taken a seat just behind the “white” division line on a city bus, was asked to move back in order to permit a white man to have a seat. She refused to move, maintaining that it was unjust to compel her to do so, since she had occupied her seat first. Thereupon she was arrested and later on was tried. It should be noted that, like the first sit-in, this was a spontaneous act and was not initially connected with any organized movement.

But her adamant refusal to move struck a spark that eventually led to desegregation of the buses in Montgomery. Her action soon became known to the Negro community, a bus boycott was called for

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72 See generally KING, STRIDE TOWARD FREEDOM (1958).
by Negro leaders, and later on the Montgomery Improvement Association helped organize the protest. A car pool was established to carry Negroes to and from work—this was only one example of the spirit of solidarity which the boycott evoked. Many Negroes spurned the pool, however, preferring the symbolic value of walking as a protest against pent-up injustices suffered in the past. The demands of the boycotters were at first very simple: courteous treatment by bus drivers, seating on a basis of “first come, first served” within the limits of the city ordinance providing for segregation, and hiring of Negro bus drivers on routes serving Negro sections of the city.

During the course of the boycott, however, the leaders soon reached the conclusion that the original proposals for “justice” within the segregation pattern were not enough. The basic purpose of segregation was to promote injustice and inequality; hence the achievement of justice required the elimination of segregation. Thus while the original requests were “moderate,” they were soon transformed into the more basic or radical desegregation demands.

The leaders very early discovered, too, that they had to overcome what seemed to be almost impossible obstacles. Although they were widely supported by the Negro community, whites, with but few exceptions, gave them little assistance; and white ministers were almost wholly silent. Endeavors of all kinds were made to split the Negro community, ultimately with little success but with much short-run embarrassment. There were several serious bombings—all directed against Negro-owned or occupied houses. Negro leaders were subjected to all manner of harassment, such as arrests on trumped-up charges or for alleged violations of the traffic laws.

The boycott itself was virtually complete; participation far exceeded the expectations of those who initiated it. Its effect on businessmen was profound, for they discovered that concerted action by the Negro population could drastically change economic life. Organized as the Men of Montgomery, leading merchants and professional men endeavored to negotiate with the Improvement Association (the boycotters), and Martin Luther King thinks that the negotiations would have proved successful had it not been for pressures of the City Commission in the other direction. Even so, economic pressure would probably have succeeded eventually. But further negotiations

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73 Id. at 85. Close co-operation among a diversity of Protestant denominations was another example of solidarity.

74 Id. at 128. King was arrested and jailed for “speeding thirty miles an hour in a twenty-five mile zone.”

75 Id. at 121-22.
proved unnecessary, when the Supreme Court, confirming judgment of the federal district court, ordered desegregation of Montgomery buses.\textsuperscript{76} Thus the long and complex boycott ended on November 13, 1956, nearly a year after it had begun.

\textit{The Freedom Rides}

No assessment of direct action can ignore the "freedom rides." They served to underline the plight of the minority in a way sometimes more dramatic than sit-ins and boycotts. At the same time, they were perhaps the most controversial of all the methods, in that they appeared to provoke the greatest violence by the antagonists.

On March 13, 1961, the Congress of Racial Equality revealed plans for a biracial group to travel buses across state lines to force implementation of judicial rulings favorable to desegregation in transport facilities.\textsuperscript{77} The President of the United States, in accordance with the spirit of direct action, was informed of their intent.

When seven Negroes and six whites began their trip, they at first discovered little opposition. Through Virginia, North Carolina, South Carolina, and Georgia they met no violence; in fact, their deliberate challenge of local segregation customs was often successful in breaking down what hitherto had been an almost never challenged pattern of rigid segregation in waiting-rooms and other facilities.\textsuperscript{78}

In Alabama, however, the situation was radically different. Just outside Anniston, a mob cut the tires of the Greyhound bus and threw a bomb into it. A Trailways bus managed to get into Birmingham, only to have its freedom riders brutally beaten by a mob awaiting them at the station. Although the police had been warned beforehand to expect a mob, they did not arrive on the scene until ten minutes after the bus—and too late. So severely injured were the freedom riders that they took a plane from Birmingham to New Orleans and thus ended their official mission.\textsuperscript{79}

These were followed by many more riders who, far from being intimidated by the events of Birmingham, seemed only to be spurred on to greater efforts. Altogether, several hundred eager riders followed

\textsuperscript{76} Gale v. Browder, 352 U.S. 903 (1956).
the original thirteen, making the issue of segregated buses and waitingroom facilities one of the best-publicized of the whole direct action effort.

Spreading out through the Deep South, the riders were frequently met by violence and the force used on them was often aided and abetted by local police departments. Governor Patterson of Alabama called them "agitators" and said that while his officers would escort them to the border of the State, they would not accompany them to other Alabama towns.80 In view of the outbreaks, the Federal Attorney General ordered 600 federal marshals into the South to prevent further eruptions; and at points, National Guardsmen accompanied the riders on their mission.

A pattern of rides with arrests on arrival was eventually developed. When the riders would reach a given city, they were arrested, usually for a breach of the peace, and were frequently sentenced to jail. Here it is important to emphasize, however, that while they were detained on charges of violating local laws and ordinances, their whole purpose was to help implement federal court decisions which had prohibited compulsory segregation on interstate buses and in terminals associated with transportation.81 Thus the riders were not engaging in deliberate acts of civil disobedience but rather were seeking to exercise rights guaranteed by the Constitution.

A fact to be stressed, too, is that the riders themselves carefully refrained from violence. Because of the controversies stirred up by them, they were portrayed as "inciting" violence. Their personal actions, however, were as disciplined as the sit-inners; they refused to return blow for blow and carefully observed codes developed for non-violent resistance.82

Although their actions were like those of the sit-inners in many respects, it is also of interest to note wherein they differed. The sit-ins were almost always of local origin, even if later assisted by national organizations, while the freedom rides originated outside the South. This was to be the basis of much Southern criticism; for enemies, by alleging that the riders were "outside agitators," could appeal to a long-standing distrust of Yankees and Northerners.

80 1961 COMM’N ON CIVIL RIGHTS REP., JUSTICE 31; Ibid.
Civil Disobedience

Although avowed civil disobedience—that is, deliberate disregard by resisters of what they deemed to be a positive legal obligation—was relatively rare in the direct action movement, it did occur and was defended.

One of the clearest cases of civil disobedience in the eyes of non-violent resisters themselves occurred in connection with the campaign against discrimination in Birmingham, Alabama. Here the leaders and their followers consciously violated a court order issued to restrain their activities, and they recognized in their breach an explicit defiance of a legal command.

In the spring of 1963, a highly organized effort was begun. Its purpose was to break down discrimination and segregation in the business section of the city. The campaign was a complex of sit-ins, street demonstrations of various kinds, kneel-ins, and voter registrations. As usual, arrests of sit-inners on several charges began almost immediately. After three days of direct action against lunch counters, for example, there had been thirty-five arrests. On April 6, according to plan, a march on the city hall began. The marchers were carefully selected and highly disciplined and they walked without printed slogans or banners and did not even sing. All seemed to be going well when, three blocks from their goal, the participants were confronted by the police who barred their way. The marchers halted. They were ordered by the officers to disperse. This they refused to do, whereupon more than forty were arrested for “parading without a permit.” They were led off to jail singing songs of freedom, as Negro spectators cheered loudly. On the days following, demonstrations continued. The participants seemed to be encouraged by the jailing of their predecessors.

Meanwhile, the Birmingham authorities acted. They went into court on April 10 and obtained an injunction commanding the direct actionists to cease their activities until it could be proved that they had a legal right to demonstrate. Two days after the April 10 injunction, the leaders of the movement, after careful consideration, instructed their followers to violate it. Martin Luther King makes much of this act of deliberate defiance and tells us why he and his colleagues decided that they had to act as they did. In the South, he argues, the power structure has frequently used the injunction as a device to halt perfectly legal actions, including peaceful picketing. Even though

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83 See generally King, Why We Can’t Wait 47-96 (Signet 1964).
the actions may eventually be found to have been legal, the injunctive technique will prolong cases for perhaps two or three years. Meanwhile, the original occasion for the actions will have changed. King implies that the courts more or less purposely "sit on" cases of this kind, thus acting, in effect, as political agents of the status quo. In this way, he maintains, they crippled the car pool during the Montgomery bus boycott, and they destroyed the protest movement in Talladega, Alabama, and Albany, Georgia. The injunctive method, he points out, had excluded the NAACP from activity in Alabama.84

In view of this background the Birmingham direct actionists decided that the court injunction must be explicitly ignored in widespread fashion: "We decided, therefore, knowing well what the consequences would be and prepared to accept them, that we had no choice but to violate such an injunction."85

It is important to note that the announcement of the intention to disobey the court order was made to the press. There was no endeavor to surprise the public or officials; every effort was made to inform them. King made it clear that the movement was not "anarchist" and was not advocating "lawlessness." But since the courts of Alabama were notoriously abusing the judicial process to "perpetuate injustice," the campaigners could not live with their consciences if they obeyed the injunction.

The immediate consequences of civil disobedience were what might be expected. Already several hundred people had gone to jail as a result of previous demonstrations. Although financial problems had beset the movement, King and the Reverend Ralph Abernathy decided that they must be among the first to enter prison after the decision to defy the courts. With fifty others, they started on the route of march for the downtown section of Birmingham, to the plaudits of Negroes who lined the streets. King, Abernathy, and their followers were arrested and jailed. King was held in solitary confinement for more than twenty-four hours, and refused permission to see his attorney. Only later was he allowed to consult his legal adviser.

According to his own interpretation, King and his associates did not commit civil disobedience in Birmingham until they openly rejected the injunction and deliberately acted against its commands. The arrests prior to the injunction had been for parading without a permit, under an ordinance which King regarded as a clear violation

84 Id. at 70-71.
85 Id. at 71.
of the fourteenth amendment. The injunction, however, could not be dismissed in this way.

**Legitimacy and Efficacy**

Having outlined the theory of direct action and briefly examined illustrations of it in the civil rights struggle, we now turn to the questions of legitimacy and efficacy. Legitimacy as used here will refer to both legal and ethical permissibility.

**Legitimacy: Legal**

Most direct action in connection with the integration struggle has not, in the eyes of its advocates, breached the law. Although thousands of arrests were made, most of them occurred, according to this contention, under laws and ordinances which were either unconstitutional or misapplied. An examination of what might be called the law of direct action would seem to sustain this general interpretation.

Certainly the rights of free expression, assembly, and petition give legal sanction to most demonstrations. As the Supreme Court put it long ago, the very idea of republican government signifies a right of citizens to come together for consultations on public affairs.\(^6\) In general, too, the Court has sustained the right of peaceful picketing in industrial disputes,\(^7\) which should surely be enough to support it in the kinds of picketing characteristic of direct action during the integration struggle. The key throughout is “peaceable” assembly, “peaceable” petition, “peaceable” demonstration, “peaceable” picketing.

But while the general principle is clear, the difficulty of distinguishing between a “peaceable” assembly and a gathering likely to become non-peaceable is a notorious one. Some interpretations would seem to limit rather severely the legal right of public authorities to restrict public assemblies in the name of preserving order. Thus the Supreme Court declared unconstitutional a Jersey City ordinance which gave the director of public safety authority to deny a permit if, in his judgment, a public meeting might result in disorder and violence. The local regulation, said the Court, might become a means for arbitrary suppression of peaceable assembly. Moreover, the contention that suppression might be necessary for the preservation of order could not be sustained: it was the duty of the police to preserve

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\(^{6}\) United States v. Cruikshank, 92 U.S. 542 (1876).

\(^{7}\) Thornhill v. Alabama, 310 U.S. 88 (1940).
order at assemblies where men were exercising constitutional rights.88

On the other hand, in 1963 the Attorney General of Maryland maintained that within certain contexts, such as those which prevailed in the State during the integration struggle of that year, no public assembly could really be "peaceable." Any demonstration, however overtly peaceful, could be treated as an "overt act constituting riot," apparently because its consequences under the circumstances would be commission of violent acts.89 But the attorney general's view has found little acceptance in the higher courts.

Because state-enforced segregation is clearly a violation of the fourteenth amendment, convictions of direct actionists under statutes purporting to require segregation cannot be supported.90 Hence, as we have observed, most convictions have been sought under cover of breach of the peace, trespass, or similar ordinances. To direct actionists, such charges have usually been regarded as unconstitutional subterfuges or gross misapplications of the law.

By and large, the higher courts have agreed with them in their criticisms of local officials. Thus the Supreme Court has ruled that Negroes may not be prosecuted for seeking to use municipally owned or operated facilities.91 The mere "possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right . . . to be present."92 Freedom of speech and assembly, moreover, cannot be abridged "unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."93

The right of demonstrators to engage in sit-ins without being subjected to arrest for charges such as breach of the peace has been a problem of great concern. In 1961 the Supreme Court held that Louisiana sit-inners were denied due process of law under the fourteenth amendment when prosecuted for breach of the peace, since there was no evidence to show that they had either been boisterous or had by passive conduct tended to cause a public disturbance.94 In several cases coming from a number of Southern cities, the Court ruled in 1963 that sit-inners could not be convicted on a charge of trespass,

92 Id. at 293.
since state action enforcing segregation, either directly or indirectly, was involved.\textsuperscript{95}

Finally, street demonstrations constituted the issue in a South Carolina case. In March, 1961, nearly 200 students marched on the South Carolina State House in a protest against discrimination. They were ordered to disperse, and, on refusing to do so, were arrested on charges of breach of the peace. In reversing their convictions, the Supreme Court maintained that the demonstrators had been non-violent, had not obstructed traffic, and had not provoked onlookers. The Court said that “in arresting, convicting, and punishing the petitioners . . . South Carolina infringed the petitioners’ constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of grievances.”\textsuperscript{96}

By and large, then, the courts have interpreted the law so as to provide considerable scope for direct action. There are, no doubt, important limits, some of which have been suggested. But the over-all tendency has been to make these limits fairly broad. It goes without saying that avowed civil disobedience cannot be and has not been sanctioned, for law violation could hardly be made legal. This does not mean, however, that civil disobedience cannot be morally justified—a question which will be discussed later.

\textbf{Legitimacy: Moral}

“Legitimacy” can also have moral connotations. That is to say, whatever may be the positive law status of direct action, questions may still be raised as to its justifiability in terms of postulated norms of human conduct. A street demonstration or sit-in may be perfectly legal, and yet rejected because it is intrinsically not right to parade with banners or sit on restaurant stools where one is obviously unwanted. Some object to the coercive aspects of direct action, identify-


ing all coercion with evil. During the presidential campaign of 1964 one of the candidates implied several varieties of criticism, although he was usually rather vague, and suggested that direct action always leads to violence. In addition, it has been contended that direct action cannot be justified unless and until all normal or regular channels of protest have been exhausted.

But it is difficult to see how propositions of this kind can be sustained. By what standard of ultimate moral valuation can it be maintained that one should not walk in the streets or picket peaceably to protest social wrong? Often, it would seem, objection arises because the action may be unusual, or contrary to the social mores, or violative of traditional middle-class conceptions of propriety. But the fact that an action may be eccentric, against what has been done in the past, or contrary to an habitual way of looking at right or wrong should lead us simply to question the notion of identifying wrong with eccentricity or with rejection of what has been held to be good in the past. To be sure, coercion may be entailed in direct action. But it is involved, too, in all life and particularly in conflict situations. The very point of non-violent direct action is to employ only those forms of coercion which do not cause serious and irreparable injury and which help re-open channels of communication and negotiation, for those channels must be re-opened if violent forms of coercion are to be avoided. Always the objective is negotiation and not sheer domination or victory.

As for the allegation that direct action cannot be justified until all orthodox methods of protest have been employed, we need only point out that the more respectable means have been used for a hundred years—with only middling results. Most direct actionists, moreover, do not reject legislation, judicial remedies, and education; they think of them, indeed, as indispensable accompaniments of non-violent resistance.

Questions of moral justifiability cannot, of course, be sharply separated from those of efficacy. Motivations, means, and ends are inter-related; and the test of consequences, as well as of intrinsic character and motivation, is relevant. What can we say of the efficacy

97 In the speech which formally opened his presidential campaign, Senator Barry Goldwater criticized Ambassador Adlai Stevenson for the latter’s comment that a jail record in the cause of civil rights might be a badge of honor. N.Y. Times, Sept. 4, 1964, p. 12.

98 This argument is often directed against advocates of overt civil disobedience. Frankel, Is It Ever Right To Break the Law?, N.Y. Times, Jan. 12, 1964 (Magazine), p. 36.
of direct action as practiced in the struggle for integration? Assuming that the goals sought—desegregation and non-discrimination—are morally desirable and compatible with our entire scheme of values, has direct action actually brought us closer to the goals without impairing other normative commitments?

**Efficacy**

In assessing results of past direct action, a few preliminary observations are essential.

First, we should note the effect of the action not only on the external situation but also on the participants themselves. In some instances, it may have done little to change the former but much to prepare the latter for future struggle in terms of building morale, providing experience in organization, developing personal autonomy, and stimulating greater social consciousness.

Second, it is always difficult to judge just how efficacious a given device may be when it is used in a context of many other relevant factors. It is never possible to prove with any certainty that in the absence of non-violent demonstrations or resistance a given result would or would not have ensued.

Third, as in judgments of all human affairs, we must always be aware of the distinction between short-run and long-run consequences: the former can, perhaps, be grasped in some measure, while the latter are elusive, to say the least.

Keeping in mind these cautions, it would appear that preparations for the March on Washington in 1941 were vital in compelling issuance of the executive order banning discrimination in defense industries. The evidence suggests that there was a direct relationship between imminence of the march and Roosevelt's action. Whatever FDR's reasons may have been, he had been loath to act decisively until confronted with the adamant stand of Randolph, White, and their followers.

It is much more difficult to assess actions like the 1963 March on Washington. Between it and the final passage of the Civil Rights Act of 1964 a long period elapsed and during that time many other factors undoubtedly helped influence the results, not excluding, perhaps, the fear of violence which began to come to the fore early in 1964. Despite the difficulty of estimating the effectiveness of the march, however, it would be rash to assert that it had no impact on the development of support for the bill. We may speculate that it did serve to demonstrate

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99 See Ruchames, Law, Jobs and Politics 13-17 (1953).
the unity which underlay many of the surface divisions of the movement; and this, no doubt, was of political significance. Moreover, the moral fervor of the demonstrators probably had an effect on legislators who, while often dominated by rather narrow immediate considerations, still were not immune to moral appeals.

Of even greater importance, perhaps, was the effect of the march on its participants. It removed the sense of isolation under which many of them had labored and hence strengthened their ability to carry out other forms of direct action. Thus an acute observer quotes a Mississippi farmer as saying: “I got a new charge. I never realized all of these people were on my side.”\footnote{Boozer, Black Man’s America 57 (1964).} The fact that so many whites also participated greatly strengthened the morale of non-whites, who at times in the past had often felt deserted. Co-operation of white churches was especially significant, in view of the tardiness of ecclesiastical establishments in the past.

Martin Luther King points out that the march, if it did nothing else, produced a fresh image of the Negro in the American mind: by reason of its dramatic quality, the demonstration forced the mass media to give it full coverage and conveyed to the general public a glimpse of the new Negro. As King emphasizes, the picture was not one of a “minstrel show, or a brawl, or a comic display of odd clothes and bad manners.” Instead, one obtained an impression of “dignity . . . organization, . . . and friendly spirit.”\footnote{Id., at 27-46. King characterizes non-violence as “the sword that heals.”} This was of enormous importance in building up support for future integration efforts.

As for the sit-in and similar activities, while the immediate results were mixed, on the whole they would appear to have had a rather remarkable effect in promoting desegregation and helping establish that “creative tension,” as King has called it,\footnote{Southern Regional Council Special Report, The Student Protest Movement: A Recapitulation 4-5 (1961).} which is so essential if negotiations are to be serious. Thus while the sit-in movement in Alabama appeared to have had little overt effect after eighteen months of effort, in Arkansas the establishment of a bi-racial committee and the desegregation of Fort Smith were more or less attributed to efforts of the direct actionists.\footnote{Id. at 6.} In Florida, after about the same period of effort, one or more establishments in fifteen different cities were desegregated;\footnote{Id. at 6.} in Georgia a bi-racial committee was established in Savannah and some measure of desegregation in at least three cities; in
Kentucky, bi-racial committees were set up in two cities and desegregation accomplished in nine;\textsuperscript{105} and in Oklahoma, 116 eating places were opened on a desegregated basis in Oklahoma City, with at least five cities also affected.\textsuperscript{106} Where little or nothing appeared to be accomplished, as in Mississippi and Alabama, the sit-inners had to deal with much more deeply ingrained segregationist attitudes, and it was clear that the struggle would have to be much longer and more intense. By the autumn of 1961 lunch counters in more than 150 cities had been desegregated as a result of sit-in activity.\textsuperscript{107} This demonstrates surely some measure of effectiveness.

With respect to boycotts and selective buying, results have depended on adequacy of organization and extent of support. Where the boycott was sustained, well-organized, and supported over a considerable period of time, as in Nashville, Tuskegee, and Birmingham, it was undoubtedly an important factor in helping achieve less discriminatory and weaker segregationist policies. Although the Montgomery bus boycott did not directly bring about desegregation of buses in that city—the desegregation being ordered by the courts—there is little doubt that its effect in developing public opinion was an important one, and that it would have produced desegregation eventually, even if the courts had not acted.\textsuperscript{108}

Assessment of the freedom rides is perhaps the most difficult of all. They seem to have evoked a violence far greater than that associated with sit-ins or boycotts and to have led in certain instances to a kind of sit-down strike by many Southern policemen, who often tended to side with the mobs.\textsuperscript{109} On the other hand, it can be argued that without the freedom rides, the national government would not have taken action to fully implement the principle of desegregation in transportation facilities. Although segregation in buses and other facilities had been clearly ruled out by the courts, regulatory implementation by the Interstate Commerce Commission did not come until after the freedom riders had challenged the actual pattern of segregation. By November

\textsuperscript{105} Id. at 7.

\textsuperscript{106} Id. at 10.


\textsuperscript{108} The Nashville boycott, which began just before Easter, 1960, was particularly effective, as some 98% of all Negroes refused to purchase from stores practicing discrimination. These tactics, along with sit-ins, led to discrimination. \textsc{Lomax, The Negro Revolt} 130-31 (1962).

\textsuperscript{109} Thus a federal judge in Alabama found that a Montgomery Police Department officer told a newspaper that the police "would not lift a finger to protect" the hated outsiders. United States v. U.S. Klans, 194 F. Supp. 897, 900-01 (N.D. Ala. 1961).
1, 1961, signs were being posted on interstate carriers stating that seating was to be "without regard to race, color, creed or national origin," and an ICC order forbidding interstate carriers to use terminals in which segregation was practiced proved effective. In July, 1961, open racial segregation was practiced in 97 of 294 bus terminals in 12 of 17 states examined but a survey in the same states showed that after November 1 there were no segregated terminals.

In response to the charge of some "Northern liberals" that the freedom riders were "provocative intruders," Eugene V. Rostow defended them in eloquent language: "First, the South is not making rapid progress in the civil-rights field. Second, judicious intervention from outside is needed now, as it has always been needed, to help Southerners who believe in enforcing the Constitution to overcome the resistance of those who do not . . . ." A British journal, commenting on what it seemed to regard as the rather remarkable success of the riders, stressed the fact that direct action had set in motion the wheels of a legal machinery which all too often moved slowly and with little effect.

As for the Birmingham situation of 1963, in which resistance was pushed to the point of avowed civil disobedience, the immediate results were rather significant and the long-run consequences perhaps even more so. The leadership had been disappointed in results obtained by a general campaign in Albany, Georgia, and had concluded that the difficulty had arisen because the objectives in Albany had been too broad. Hence the decision was made to concentrate the effort in Birmingham on the specific goal of desegregating lunch counters.

Whether or not caused by the avowed civil disobedience, the immediate results of the Birmingham campaign were of some moment. They included an agreement, on May 10, 1963, to desegregate lunch counters, rest rooms, fitting rooms, and drinking fountains within ninety days after signing the pact. Negroes were to be hired and upgraded in a non-discriminating way within sixty days. City officials

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112 Ibid.
113 Reporter, June 22, 1961, p. 18.
116 King, Why We Can't Wait 54-55 (1964).
were to co-operate in release of all those jailed. Finally, a regular system of constant communication between Negroes and whites, something previously lacking in Birmingham, was to be set up. Although Martin Luther King frankly admits that the results of the Birmingham campaign left much to be desired, he also argues that the goal actually achieved was, "considering the strength of the fortress," a "towering achievement." This was so, he maintains, despite the violence of the white segregationists that led to the action of President Kennedy in sending 3,000 troops to overawe the provocateurs. Critics might ask whether non-violent direct action helped provoke segregationist violence, and whether disciplined non-violence was not, therefore, rather ironically, partly responsible for violence.

Even though questions of this kind might legitimately be raised, we should not forget that strict non-violence, whether in the form of civil disobedience or not, encouraged non-violent attitudes on the part of defenders of the status quo. Thus in Albany, Georgia, before the Birmingham affair, the police chief made a serious effort to overcome the integrationist direct actionists by instructing his men to be non-violent. And in Birmingham itself, any breach in the integrationists' discipline of non-violence would surely have provoked far more violence than actually occurred. The critic, to be sure, might allege that in the absence of any direct action campaign, no violence whatsoever would have occurred. Conceivably this might have been true, if by "violence" one means only immediate overt physical mistreatment. But integrationists argued, and quite plausibly, that segregation customs themselves enshrined a kind of covert violence against human beings; a violence likely, moreover, to become overt at almost any moment. Negroes were kept down by threats of police violence as well as by a body of practices characterized by disrespect for human personality. In utilizing non-violent direct action, the men of Birmingham were attacking both the monumental violence of segregation and inequality, and the idea that they could, by using violence, eliminate the injustice of the status quo.

Efficacy of Direct Action, Conclusions

In general, we may say that direct action was remarkably effective, particularly in certain contexts. It helped not infrequently to implement what was already law and to create sentiment for what, in the eyes of egalitarians, ought to be law. It assisted greatly in undermining customs which sustained segregation, even though it may have been

117 Id. at 114.
only one element in a whole complex of factors responsible for change. It helped reinforce the attitude of those whites who were receptive to change, even though admittedly it may have antagonized other whites.

It was least successful when it attempted to do too much during a given campaign and most successful when its objectives were well-defined and relatively limited. Although it had important positive results in certain states of the Deep South, its major impact was in the border states or in those only partly affected by the mainstream of the Southern tradition. This did not mean that it did not have potentialities in states like Mississippi but rather that the struggle would be prolonged in proportion to the strength of segregationist customs.

Although direct actionists were almost always non-violent in spirit and deed, at points their actions appeared to furnish an excuse for, or to evoke violence by, segregationists and their sympathizers. This created a serious ethical issue in the minds of many proponents of non-violent direct action, and led them to examine more closely the context and possible consequences of their acts. There appeared to be no simple answer, as each proposed campaign had problems peculiar to itself.

While non-violent direct action was in part an expression of the “new Negro” of twentieth century conditions, it was also profoundly important in its psychological effects on participants. It helped promote solidarity and consciousness of common interests; it developed a new sense of dignity and self-confidence. It enabled Negroes to express long pent-up aggressive attitudes without developing the guilt feelings which might otherwise have been aroused. It mediated, as one student has put it, “between the conflicting traditions of the accommodating Negro and the militant Negro.”

The same observer remarks that the appeal of non-violence “looks in both directions, toward the suppression of hostility (the traditional approach), and toward its expression in a militantly aggressive social movement.” In sum, non-violence helped the Negro cease to be a slave.

**Civil Disobedience and the Struggle for Equality**

At several points we have encountered acts of deliberate and avowed civil disobedience, notably in the Birmingham affair in which protestors violated court injunctions. But we have not examined

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119 Id. at 549.
closely the meaning and defense of civil disobedience, except in an incidental way. In this section, we seek to define the term and to inquire into its justification.

Meaning

Civil disobedience occurs when individuals, according to their own admission, violate law publicly and non-violently in the name of a principle.\(^{120}\) Here we employ “law” to include only expressions of positive law: statutes, court orders, and administrative decrees or orders under the authority of statutes or the Constitution. Participants must believe that they are violating law; thus the freedom riders were not civilly disobedient for the most part, since they thought that the ordinances under which they were arrested were not positive law. The civilly disobedient publicly avow their defiance, expect and sometimes even hope for punishment, and usually notify the authorities; they are thus to be sharply differentiated from secretive law evaders. Their respect for life and personality places them in a category different from that of violent direct actionists.\(^{121}\) Finally, they act in the name of an ideal which is thought to involve the public weal, rather than a merely selfish interest.

Acts of civil disobedience may occur in various contexts. Sometimes the law or order disobeyed is the one identified directly with the grievance against which the protest is being made. On other occasions, however, a law or ordinance normally not deemed offensive may be violated in order to deal indirectly with a situation which apparently cannot be attacked directly. Thus direct actionists may deliberately occupy a legislative chamber illegally in order to protest absence of action by the city council on fair housing or other proposed legislation; or young men and women may chain themselves to the pillars of public buildings, hoping for arrest, in order to protest lack of federal action in Mississippi;\(^{122}\) or hundreds may deliberately occupy and block entrances to a large city hotel to force the hotel management to eliminate alleged discrimination in hiring practices.\(^{123}\) In cases of this kind, the law being violated had little if any direct connection with the condi-


\(^{121}\) Violent direct actionists have been called “anarchists of the deed.”

\(^{122}\) N.Y. Times, Oct. 15, 1964, p. 35.

The incident occurred on the portico of the United States Court House at Foley Square in New York City. Each chained demonstrator had a large letter affixed to his mid-section, and together they spelled “Freedom Now.” Expecting and hoping to be arrested, the demonstrators were disappointed.

\(^{123}\) N.Y. Times, March 19, 1964, p. 23.
tion deemed at fault; but actionists breached the law, nevertheless, in the hope of calling public attention to a grievance. What may be considered a "direct connection" is, of course, a relative matter and we must be wary of drawing hard and fast lines in classifying activities.

**In Support of Civil Disobedience**

Without attempting to trace out the whole history of attitudes to civil disobedience (or acts similar to it), we may remark that Saint Thomas Aquinas in the thirteenth century can be cited to sustain a version of it; for although a law is usually binding in conscience and must therefore be obeyed,\(^{124}\) if the law is evil intrinsically and either orders commission of an evil act or forbids performance of a good one, the citizen is under a moral obligation to disobey.\(^{125}\) Saint Thomas argues, moreover, that the right to disobey also arises when the ruler has gained his authority illegally or when he abuses the general authority he may legally possess.\(^{126}\) Earlier we have referred to the sixteenth century de la Boétie, whose general principles would certainly embrace the possibility of civil disobedience; and it is surely valid to argue that those who justify tyrannicide\(^{127}\) must also admit a right of non-violent defiance. In the seventeenth century, neither Baptists nor Quakers hesitated deliberately to disobey law under certain circumstances. And in the United States, the tradition stemming from Thoreau and others\(^{128}\) is well-known.

Despite the long history of the practice and theory of civil disobedience, however, many leaders of American opinion have questioned its legitimacy or efficacy or both during the integration struggle. Thus the late President Kennedy, in an address of September 30, 1962, stated: "Americans are free . . . to disagree with the law—but not to disobey it."\(^{129}\) And during Martin Luther King’s incarceration for civil disobedience in 1963, eight fellow clergymen from Alabama questioned the wisdom and timeliness of his activities in Birmingham.\(^{130}\) Even among ardent desegregation leaders, civil disobedience was looked upon with great suspicion, if not on grounds of alleged illegitimacy, then on those of claimed imprudence. Thus an NAACP

\(^{124}\) *Summa Theologica* I-II, Quest. 96, art. 4.

\(^{125}\) *Ibid.*

\(^{126}\) *Aquinas, Commentary on the Sentences of Peter Lombard*, II, Dist. 44, Quest. 2, Art. 2.

\(^{127}\) E.g., Jaszi & Lewis, *Against the Tyrant* (1957).

\(^{128}\) The authentic tradition stems from Jefferson.


\(^{130}\) *King, Why We Can’t Wait* 76-96 (1964).
official told a Negro journalist during the Birmingham episodes that "Negroes need to learn to respect the law, not to learn how to disrespect the law. Suppose white Americans refused en masse to respect antisegregation laws?"  

In view of the long history of justification for and practice of civil disobedience, it is difficult to understand the doubts expressed about its legitimacy and, under certain circumstances, its possible expediency. Here we summarize what appear to be the leading questions asked, together with the answers which the defender of civil disobedience, including the writer of this paper, would offer.

A basic attack on civil disobedience is grounded on the proposition that men have an unqualified obligation to obey all positive law. Law is so basic an ingredient in civilization and so essential for order, so this argument goes (and it was repeated at the level of partisan oratory by Senator Goldwater during the campaign of 1964), that the slightest deviation from obedience is in effect an attack on civilization itself and on the conditions which make culture possible.

A modified version of this absolutist principle—and perhaps the one most current in the United States—is that while civil disobedience may conceivably be justified in an “undemocratic” society, it cannot possibly be defended in a “democratic” one. In the latter, the argument goes, the machinery is open for change of the law; free speech and a free press guarantee the debate so essential to change, and the judicial tribunals are open to hear complaints. Civil disobedience is, therefore, a morally illegitimate method, since other legally permissible and efficacious remedies exist and the citizen has made an implicit agreement to utilize them. Some such argument would seem to underly statements like those of the late President Kennedy and certain officials of the NAACP. Martin Luther King attempts to state what many were undoubtedly thinking during the civil disobedience of 1963: “Since we so diligently urge people to obey the Supreme Court’s decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws.” How can these asseverations be answered?

First we can point out that unless one assumes rulers to be infallible, the laws and orders which they decree may on occasion be morally questionable, even though their ethnically dubious character

131 Booker, Black Man’s America 53 (1964).
133 King, Letter from Birmingham Jail, in Why We Can’t Wait 82 (1964).
may not in itself lead one to disobey them. Whatever one's position may be on the modern natural law controversy, both positivists and natural lawyers agree that laws may be morally unjust, whether they still retain the status of law (as with the positivists) or cease to be law (as with the natural lawyers).  

If, then, one admits that legislators may err and may command unjust acts or forbid just ones, there would seem to be no good reason for denying the possible legitimacy of civil disobedience. At the very least, one can say that it cannot be excluded. Once one grants that positive law and justice may not coincide, a conflict of loyalties arises, as Sophocles' Antigone well knew: should one obey the commands of "nature" or "morality," on the one hand, or of the political ruler, on the other? In answering the question, one must, of course, weigh one set of values and factual judgments against another, in the light of one's over-all world outlook; and this can be an extremely painful task. But however difficult the effort, it would surely have to consider civil disobedience as one alternative.

If civil disobedience is the choice, does the civilly disobedient person show disrespect for law, as is sometimes alleged? On the contrary, it may be weightily argued, he shows great respect for positive law. He disobeys publicly, accepts the penalty attached, and takes legal commands seriously. Far from showing contempt for the law, the very deliberation with which he violates it indicates his high regard for the legal order in general. His is an act of confrontation rather than evasion. When integration leaders have engaged in civil disobedience, they have done so only after long and serious self-examination in which the value of law observance has been given very high priority. It is no exaggeration to say that, for the most part, those who have committed civil disobedience have shown greater respect for the claims of law than the vast number of citizens (not to speak of administrators) who obey law rather mechanically and without thought or who disobey it for immediate personal advantage, e.g., in running traffic lights when no policemen are around, or as a result of social and class pressures.

Basic regard for law and order as important values of civilization cannot be developed unless and until men are willing constantly to criticize particular laws and even, on occasion, conscientiously to


disobey them. In the long run, fidelity to law can be assured only if given individual laws do not run counter to man's moral insights. The doctrine of "superior orders" enunciated by the Nuremberg defendants is calculated to produce an ethic of expediency rather than one of principle, of cynicism rather than seriousness about law; and fidelity is eroded by expediency and undermined by cynicism. Paradoxically, we may suggest, principled obedience to law will be strengthened only to the degree that principled disobedience is accepted, under certain circumstances, as a moral imperative. Automatic obedience is not the act of a human being having moral responsibility, but instead reflects a robot-like position of indifference to the law's substance and, like compulsive or irrational disobedience, repudiates important objectives of civilized life—the development of sensitivity in the realm of moral and political obligation and the encouragement of reason.

As for the objection that civil disobedience is not permissible in a democratic society, much depends, of course, on how one interprets "democratic." If one associates the term with the right and opportunity to vote, equality of opportunity, speedy justice, equitable distribution of power, freedom of expression, access to the material means of expression, constitutional government, and majority rule, it is almost superfluous to point out that no such regime is ever approximated in the actual historical situation. Even if one assume, in other words, that claims to the moral right of civil disobedience would be absent in a democratic society (and we shall not contest this assertion here, although it may well be 'questioned'), it is sufficient to point out that neither the United States nor any other modern nation can be said to be near the ideal. This is particularly true if one looks at the actual status of minorities like the Negroes in American society. Their relative economic power does not begin to compare with that of the whites, they have been until recently virtually excluded from the franchise, they are subjected to color discrimination in almost every area of collective existence, their churches have been bombed, their chances of being sent to prison or the electric chair are much greater than those of whites, and their subjection to police brutality has been...


137 Thus Myrdal, An American Dilemma, 554 n.b. (1962 ed.), quotes an unpublished study by Arthur Raper: "In 10 Southern states, for varying periods, 975 Negroes and 464 whites were sentenced to death. The Negro constitutes less than 30 per cent of the population in these states, but has more than twice as many death sentences imposed. Actual executions make the racial differential still greater, for 60.9 percent of the Negro death sentences were carried out as compared with 48.7 of the white."
In some parts of the United States, in fact, we have what the historian James W. Silver calls a “closed society.” As Silver has correctly pointed out, “for nearly ninety years Mississippi has grimly nullified the federal Constitution” and has centered its whole ideology on the notion of white supremacy. And Martin Luther King, in connection with the Birmingham civil disobedience, has remarked that the judicial injunction has been a favorite device in Southern states to forbid what would in other circumstances be perfectly legal forms of protest.

Under conditions of this kind, any criticism of civil disobedience on the ground that it is inadmissible under a “democracy” is surely invalid. A society which does not recognize a very high proportion of its population as full members cannot legitimately expect or demand recognition of a moral obligation to obey all its laws.

Even if one admit that in the long run the Negro will gain equality without use of “extreme” measures, what is to happen to the status of the Negro in the short run? In the long run, the present generation will be dead; and this provides a sense of urgency for the slogan “Freedom Now.” Rationalizations for inequality have persisted, both North and South, for some three hundred years and during this long period most Negroes have been astonishingly patient. From the viewpoint of this paper, they should have turned long ago to civil disobedience. Even now they are sometimes too loath to consider it.

Far from defending simply the moral right of civil disobedience, we should perhaps lay greater stress on the obligation to disobey. The notion of right seems to imply a claim against government or society. Obligation, by contrast, suggests a duty to others or to civilization: the accent is on the positive, the negation becoming merely incidental. Thus we may have an obligation to enhance the welfare of mankind and to promote equality and this may entail, in turn, the duty of civil disobedience: the disobedience appears negative but it is strictly subordinate to the broader and more comprehensive positive obliga-

138 1961 Comm’n on Civil Rights Rep., Justice 5-28. The Commission report concludes, at 27: “The statistics suggest that Negroes feel the brunt of official brutality proportionately more than any other group in American society. . . . [A]mong the complaints of police brutality received by the Department of Justice in the two and one half year period ending June 30, 1960, the alleged victims were Negroes (who constitute approximately 10 percent of the total population) in 35 percent of the cases and whites 38 percent of the cases; in 27 percent of the cases the race of the victim was unknown.”


140 Id. at 11.

141 King, Why We Can’t Wait 70 (1964).
tion. The obligation to disobey under proper circumstances must be seen as having an ethical claim on us like the moral imperative of obedience. The obligation to disobey the earthly city flows from our duty to obey the heavenly community.

All this is not to say that civil disobedience is always desirable, expedient, or efficacious. The possibility of violence must certainly be weighed, as Martin Luther King did in Birmingham, when he is said to have remarked: "I want 5,000 supporters, not 10,000, because I don’t believe that there are that many non-violent Negroes in this city."\textsuperscript{142} It would also seem incumbent on us, following traditional natural law casuistry, to take into consideration the nature of the objective to be gained: means, particularly where they involve such issues as disobedience to law, must surely be proportionate to ends. Finally, it would appear reasonable to give the benefit of the doubt to the law; the burden of proof must rest on those who would deliberately violate the statute or order.\textsuperscript{143} This follows from the proposition that law observance ought to occupy a relatively high position in any system of civilized values.

It should be fully realized that even with these cautions observed, there may be those who utilize civil disobedience for ends which we may not approve. Thus during the autumn of 1964, large numbers of parents boycotted certain New York City schools or illegally occupied school buildings in protest against busing of their children to integrated schools.\textsuperscript{144} Once one accepts the notion that civil disobedience may be morally legitimate, it is evident that judgments as to when it is appropriate and prudent will vary. But this is in the nature of the problem. The alternative could only be absolutist or near absolutist positions, and these we have rejected. The absolutist attitude would entail far greater moral and prudential risks than the viewpoint defended here.

On the whole, the integration movement has not been rash in its use of civil disobedience. In instances where its employment might be seriously questioned, one will generally find that the leadership was not thoroughly familiar with the theory and practice of non-violence. Usually civil disobedience is most questionable when it involves dis-

\textsuperscript{142} Booker, \textit{Black Man’s America} 53 (1964).


obeying a law having virtually no connection with the goal of integration, e.g., violating a traffic law in New York or San Francisco. Those familiar with the principles of non-violence will recognize this; those, on the other hand, who are new to the movement often will not.\footnote{There can never be any guarantee, of course, that leaders familiar with the principles of non-violent direct action may not make serious errors of judgment in this as well as other matters.}

All this would seem to emphasize once more the need for careful study of the theory of non-violence before one attempts its practice.

The Future of Direct Action and Civil Rights

The burden of this paper has been that non-violent direct action theories, strategies, and tactics as used in the integration struggle have carried on a long tradition. This in itself does not justify them. Independently of their fitting into the tradition, however, they can be supported: most of them have been within the bounds of law, as usually understood; have been more in conformity with religious and humanitarian moral standards than many other methods of social struggle; and have had, with some exceptions, a fairly high degree of success. That success has been dual: it has helped move us closer to the ideal of equality and, of like importance, it has greatly assisted in overcoming inertia, apathy, and compulsive subordination in the Negro himself. Even where direct action has been expressed as avowed civil disobedience, there has usually been moral as well as prudential justification for it.

Although the critic of non-violent direct action will no doubt point out that its effectiveness depends in a measure on the existence of certain favorable factors in the objective situation, and that in some instances it had to be assisted by judicial and administrative decisions, the defender will emphasize that without direct action a number of the favorable factors might not have been present and that a proportion of the laws might have gone unimplemented. The defender does not see it as the only element in the struggle for integration but rather as one among many; and the many will assuredly include education, litigation, legislation, and others.\footnote{See Wilkins, \textit{Freedom Tactics for 18,000,000}, New South, Feb. 1964, p. 3; Cook, \textit{Revolution and Responsibility}, New South, Feb. 1964, p. 8. Cook says, at 11, "[W]e must use many methods: Conferences, informal conversations, negotiations, the courts, selective buying, education, political power, direct action, fire under the feet." King and others also stressed the multiplicity of approaches: within limits of the thoroughly non-violent ethic, it is never \textit{either}, or, but rather \textit{both}, and.}

Direct action will probably be very much needed in the future.
Despite achievement of the Civil Rights Act of 1964 and similar legislation, what Negroes increasingly call the white power structure is still firmly entrenched in some areas. Although formal statutory provisions are not to be minimized, their implementation may require continued use of direct action strategies, for the wheels of legal enforcement often move slowly and with great difficulty. Just as the freedom riders helped put into effect interstate bus desegregation, so future direct actionists may have to stimulate and supplement the sometimes sluggish labors of national and state administrators.\footnote{That sluggish administrators and apathetic citizens need to be and can be aroused through direct action was demonstrated anew in Selma, Alabama, where dramatic events from January to March, 1965 promised to help break up old patterns and develop new ones. These events occurred after the statement in the text was written and were the first startling exemplifications of direct action since the informal election truce of 1964.}

Although the slogan of the integration movement has been "Freedom Now," a realistic appraisal would seem to show that many years of work remain to be done. In accomplishing this, direct action, not excluding civil disobedience, can play an important role.

The Student Non-Violent Co-ordinating Committee had begun its voter registration drive in Selma in February, 1963, believing that the area was one of the most difficult in the South to "break open." In January, 1965, the efforts of SNCC were strengthened when the Southern Christian Leadership Conference decided to employ various forms of non-violent direct action and to wage an all-out campaign. The training of Negroes in methods of demanding electoral rights was stepped up and mass demonstrations were carefully planned. On February 16, a young Negro civil rights worker, Jimmie Lee Jackson, was murdered during a demonstration in Marion, a town near Selma. Early in March, scores of white and Negro sympathizers poured into Selma from all parts of the United States to reinforce the direct action and to stage a march from Selma to the state capital in Montgomery. The march was halted by the use of what many thought were extremely brutal methods. Another more limited demonstration took place on March 9. On the evening of that day, three white ministers who had taken part in the demonstration were beaten by four white men. One of the ministers, the Rev. James J. Reeb, died shortly after being taken to the hospital. His death evoked an international as well as a national wave of sympathy and strengthened the will of the non-violent resisters.

After the death of Reeb, it was almost certain that Selma's climate would be altered in many respects. As Dick Cunningham, a Minneapolis Tribune staff writer, observed: "The hope of Selma residents that they could return to 'just going about our business the way we want to' was dashed" by Reeb's murder, as well as by other episodes in Selma. Minneapolis Tribune, March 12, 1965, p. 1.

Direct action in Selma, with its consequences, exemplified many of the characteristics associated with non-violence at its best. Preparation was careful and the participants highly motivated and well disciplined. The objective—expanded voter registration—was relatively simple, widely understood, and fully accepted. Physical attacks on demonstrators, whether official or private, seemed to have even less justification than usual; and the non-retaliation of the non-violent resisters therefore stood out sharply by contrast. Finally, the martyrs of the struggle virtually epitomized the ideal of non-violence.
And in this judgment about the future, we have not implied more than raising the level of the Negro minority to full conventional "equality." We have not even called attention to such issues as over-all distribution of social and economic power. For the most part, the goals of the civil rights movement thus far have seemed to be formal desegregation and integration into the basic structure of an American society which remains very much what it is today. It has often been pointed out that the ethos of the movement has been a "middle class" one: give the Negro the same status as the white, so to speak, with class and income differentiation similar to that of the white community. Raise the average economic well-being of the Negro to that of the average white man, but do not touch the way in which economic power as a whole is distributed.

But is this goal, remote as it is today, comprehensive enough? Even assuming that racial discrimination were entirely removed, the average Negro income that of the average white, and the distribution of income in the Negro community about the same as among whites, economic discrimination would still exist: thus a man, Negro or white, with low income and six children would find himself discriminated against in housing as contrasted with a man, Negro or white, with high income and six children; yet the basic need might be roughly the same. Should one of the objectives of Negro direct action in the future be to show us the way to eliminate economic distinctions as well as racial ones? Should it attempt to point the way to an economy bottomed on distribution of basic essentials (like housing) in accordance with need rather than monetary income? These are questions which might well be asked, but they would take us beyond Negro-white segregation and discrimination into yet another field where men are alienated from one another in equally dramatic and arbitrary fashion.

Returning to the problem of race discrimination and segregation, we conclude by noting two important questions which must be faced by exponents of non-violence in the future. The first involves the indispensability of imagination and flexibility if direct action is to continue to be useful. The second concerns the danger that advocates of violence may come to dominate the integration movement.

If direct actionists in the future should simply build mechanically on the past and lose their flexibility, non-violence could easily cease to be effective. As new situations arise, novel expressions of non-violent resistance must be tried—and this requires great imagination. How, for example, can it be used in Northern Cities, where thus far it has been
only rarely tried on a large scale. How can it be employed effectively in helping to enlarge economic opportunity? Or can it? The lunch counters and buses will have been desegregated. Will advocates of non-violent direct action be able to move into other fields? The answers to questions of this kind are not wholly clear.

As for the second question, certain "revolutionary" critics in the integration movement increasingly seem to be maintaining that non-violence is tame and equivocating, whereas violence might be a tool for more rapid progress. This mood is described, even if not condoned, in the writings and other utterances of such men as James Baldwin and Louis Lomax. The latter has been quoted as saying: "Martin Luther King wrapped his dream in love, and while it was ricocheting between Lookout Mountain in Chattanooga, Tennessee, and the Gulf of Mexico, it turned into a nightmare. [Now] wild, new, strange voices have moved into the leadership vacuum and we are headed for bloodshed and chaos."

Conclusion

Actually, of course, it is non-violent resistance that is the revolutionary force. Violence is reactionary and stultifying. Even if we can

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148 One can, of course, cite examples of large-scale demonstrations in Northern cities. In San Francisco, "more than 1000 chanting, marching, sitting, door-blocking demonstrators carried out a tumultuous all-night siege of the Sheraton Palace Hotel," on March 8, 1964. Their objective was to change the alleged discriminatory hiring practices of the Palace and other hotels in San Francisco. Hundreds were arrested, and the demonstrations, along with several others, led to serious controversy over methods of civil rights demonstrations. N.Y. Times, March 19, 1964, p. 23. The San Francisco affair illustrates many problems which will inevitably confront advocates of direct action. One can ask, "Where does non-violence end and violence begin?" See also Peter Kihiss, Blockades in New York, in Westin, Freedom Now 275-76 (1964).

149 BALDWIN, ANOTHER COUNTRY (1962). The author sees the Negro as having an inevitable bitter hostility against the white man, however friendly their personal relations may seem. See also, BALDWIN, THE FIRE NEXT TIME (1963).

150 See also Jencks, Mississippi: From Conversion to Coercion, New Republic, Aug. 22, 1964, p. 17.

151 N.Y. Times, April 19, 1964, p. 9. See also BRINK & HARRIS, THE NEGRO REVOLUTION IN AMERICA 73 (1964), in which the authors point out, "nearly two-thirds of the rank and file and almost all of the leaders" of Negroes in the civil rights struggle are "pinning their hopes on nonviolence." But in the authors' judgment, the most significant response to their questionnaire was that 22% of rank-and-file Negroes and 25% of non-South slum dwellers think that some violence will be inevitable. Roughly five million followers of the Negro leadership "are resigned to the possibility that they may have to fight their way to freedom."
imagine a superficially “successful” military revolt of civil rights egalitarians, we must at the same time envision the problems which the new government would confront. It would be faced with the threat of revenge-seeking whites and would therefore be compelled to establish repressive measures of all kinds. In the frantic effort to retain power, it would have to establish a new and perhaps more onerous form of segregation—that between the militarily dominant ruling class, presumably largely Negro in leadership, and millions of whites bent on retaliation. The mutual trust which complete integration requires would thus be undercut from the beginning by violent revolution.

Non-violence, by contrast, provides methods which, while they may shock defenders of the status quo initially, in the long run help establish an atmosphere for the reconciliation so essential if integration is to be more than nominal. Although non-violence may indeed be coercive, as we have suggested, it also opens the way for improved communication and thus for the development of a community of interests and understanding.

From the viewpoint of immediate future strategy, moreover, we should remember that nothing would please desperate segregationists and some members of the white power structure more than to have Negroes repudiate non-violent direct action in favor of violence; for, in that event, all the repressive mechanisms of “law enforcement” could and probably would be turned against Negroes with an air of great moral justification.

It is to be hoped that integrationists, whether leaders or masses, will not fall prey to the false promises of violence, but instead will imaginatively develop the means of non-violent direct action. In so doing, they will undoubtedly best serve the cause of integration and equality; for non-violent direct action avoids the pitfalls of acquiescence and submission, on the one hand, and the equally great pitfall of violence, on the other. Already the civil rights movement has contributed enormously to our store of experience on the uses of non-violence, and its contributions in the future can be equally great.

At stake is not merely the future of civil rights and race equality in the United States but also, in some sense, the possibility of world peace. The civil rights movement, in its employment of non-violence, can help point the way to development of non-violent power as an alternative to military methods of national defense in a day when the latter are quite obviously virtually useless as well as immoral. Al-

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152 See Walter Millis, The Uselessness of Military Power, in America Armed 22-42
though the immediate concern must no doubt continue to be the hard and long road to equality in the United States, those who travel that road can be fortified for the struggle if they keep in mind the broader vision as well.

(Goldwin ed. 1983). That a leading student of military affairs should speak of the "uselessness" of military power is itself significant. To many observers, one of the puzzles of the American scene in the fifties and sixties of the twentieth century has been the absence of close working relations between the civil rights and peace movements.