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Moral Preemption Part II: The Natural Law and Conscience-Based Claims in Relation to Legitimate State Expectations

By JOSEPH J. FARRAHER, S.J.*

THE first amendment to the Constitution of the United States guarantees that "Congress shall make no law abridging the freedom of speech or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Does this include a right to call attention to one's cause by deliberate disobedience to civil laws? Some demonstrators may argue that such a right is included in the First Amendment; others appeal rather to a higher law, a moral or religious law. The latter is the subject of this article.

The appeal of demonstrators to a "higher law" or to conscience is not, strictly speaking, an appeal to preemption of a given area of conduct by a higher law, but rather an appeal to the prevalence of a higher law in a case of conflict of law. Strict preemption of an area of conduct by a religious law might be argued under the concept of the separation of church and state: that in certain areas where the church claims competence, the state should not legislate at all. This has been discussed widely, especially in past centuries.¹ However, even those who held for such preemption limited their claim to specific areas and admitted that there were areas which were "mixed"—generally areas of morality which also affected public order, such as murder, theft, and such.

Preemption in a broader sense may be taken to mean that in cases of conflict of laws, the higher law should prevail. It is in this sense that modern demonstrators appeal to a law higher than any merely human law, in claiming a right to disobey certain civil laws. The kinds

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¹ It has been most recently discussed in the Second Vatican Council's *Declaration on Religious Freedom*, found in the *National Catholic Reporter*, Dec. 15, 1965, p. 6; [hereinafter cited as *Declaration on Religious Freedom*]; *The Constitution on the Church in the Modern World*, in *THE DOCUMENTS OF VATICAN II* 14 (Abbott ed. 1966).

of demonstrations which involve such a claim may be classified in two major compartments: those claiming that their disobedience is against an unjust law, and those claiming a right to disobey even just laws in order to call attention to a just cause.

The Right to Disobey Unjust Laws

For those who believe in God as the First Cause and Creator of all things, all authority and all rights must in some way derive from God. For, if God is truly the ultimate cause of the existence of all things, He has radical or direct dominion over all things. Men, as creatures of God, can have dominion over certain things only as communicated to them by the Creator. These principles were acknowledged by the Founding Fathers of our country and expressly stated in the Declaration of Independence: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights"

To treat this matter fully would require far more space than any article could provide. A mere sketch or outline of the theology of authority will have to suffice. The theology is that of Roman Catholicism,² but its basic elements are common to Christian, Jewish and Islamic theologies,³ and to a lesser degree, all theistic religions with the exception of some pantheistic and deistic groups.

God is the all-perfect, self-sufficient First Cause and Creator of all other things. He has made man for everlasting happiness with Himself after this terrestrial life; but He has also made man with free will so that man may, in some sense, earn that happiness and so appreciate it more. This freedom implies that man may also fail to achieve his final destiny. To earn it, he must live this life in a way laid out for him by God. He must acknowledge his creaturehood by obeying the will of his Creator. This way is made known to man partly by the way in which God has created nature—the so-called natural law⁴—and

² The basic principles are contained in various papal encyclicals, e.g., Leo XIII, *Civil Government* (*Diuturnum*), in 1 SOCIAL WELLSPRINGS 47 (Husslein ed. 1940); Leo XIII, *Christian Constitution of States* (*Immortale Dei*), *id.* at 63; Pius XI, *Restoring Christian Social Order* (*Quadragesimo Anno*), in 2 SOCIAL WELLSPRINGS 174 (Husslein ed. 1942); John XXIII, *Peace on Earth* (*Pacem in Terris*), 9 THE POPE SPEAKS 13 (1963) [hereinafter cited as *Pacem in Terris*]. See generally *Declaration on Religious Freedom*; CRONIN, *THE CATHOLIC AS CITIZEN* (1963); MURRAY, *WE HOLD THESE TRUTHS* (1960); SHEED, *SOCIETY AND SANITY* (1953).

³ See *A Statement by the House of Bishops to the Church on Christian Obedience*, *The Episcopalian*, Dec. 1964, p. 31; BENNETT, *CHRISTIANS AND THE STATE* (1958); KAHN, *ISLAM—ITS MEANING FOR MODERN MAN* (1962); KIRK, *SOME PRINCIPLES OF MORAL THEOLOGY* (1920); MORTIMER, *THE ELEMENTS OF MORAL THEOLOGY* (1947).

⁴ See ROMMEN, *THE NATURAL LAW* (1947); *Declaration on Religious Freedom* § 14.

partly by the revelation of God through inspiration of those men whom we know as the human authors of the *Bible*. For Catholics, and to a lesser degree for other Christians, this revelation is interpreted and clarified by the teaching authority which God established through Christ in His Church.⁵

The Creator endows men with certain rights—basically the right to whatever is necessary to lead a normal human life: an absolute right to what is absolutely necessary to lead a human life; a relative right to those things without which it would be very difficult but not absolutely impossible to lead a human life.

God has created man as a social being, able to communicate and to cooperate with other men. To regulate the dealings of men with one another, some authority or some form of government is necessary. For primitive man, a patriarchal or tribal form was sufficient. As civilization developed and population increased and found new ways of easier communication and contact, the need for more complicated forms of government grew. This necessity for a governing authority for social groupings of men is a natural consequence of the way that God made man, and therefore the authority to govern has its origin in God. According to the Scriptures,⁶ all true civil authority is from God, even though the form of government may be arrived at by different means. This civil authority is limited to the purposes for which it exists; namely, to promote the material and physical welfare of its citizens. This will include both positive and negative aspects: promoting the well-being of its citizens, especially those most in need,⁷ and working against whatever would violate or endanger the rights of any of its citizens.⁸ In achieving these aims, much of civil law will overlap with divine law: prohibitions of murder, robbery, attack, and such. Strictly private matters of morality do not come under the competence of civil authority except as they may affect the rights of other persons or the common good.⁹

In this theistic concept of civil authority, it is evident that since all civil authority derives from God, the state has no authority to make

⁵ Reaffirmed for Catholics in the recent Vatican Council's *The Dogmatic Constitution on the Church (De Ecclesia)*, 10 THE POPE SPEAKS 359 (1965).

⁶ *Romans* 13:1-7; *1 Peter* 2:13-17. See generally *Pacem in Terris* § 46; *Declaration on Religious Freedom* § 11.

⁷ FARRAHER, CATHOLIC TEACHING ON RACE RELATIONS 13 (1964); *Pacem in Terris* § 56.

⁸ *Pacem in Terris* § 60; *Declaration on Religious Freedom* § 6.

⁹ *Pacem in Terris* § 48. See also ST. JOHN-STEVAS, LIFE, DEATH AND THE LAW (1961); *Declaration On Religious Freedom* § 3.

laws which contradict divine law¹⁰ Hence any law which contradicts divine law is null and void and need not be obeyed by the citizens; in fact if it commands an act which is clearly against God's law, or prohibits something clearly required by God's law, it should be disobeyed.¹¹

The obvious difficulty is to determine what is God's law. In a *de facto* pluralistic society, there will not be agreement on how to determine what is the law of God. It is hardly within the state's competence to make this determination. Still the state should recognize this limitation on its own authority and so should respect any reasonable claim to exemption from its law on the ground that the law contravenes God's law. But what constitutes a reasonable claim?

Claims to a right to act contrary to the laws of a country are usually attributed to "conscience." But what is this conscience to which appeal is so often made? The popular idea of conscience is of a strong interior feeling or inner "voice" which approves or disapproves one's actions. To Catholic theologians, moral conscience is an exercise of a man's judgment as to the morality of an action which he is contemplating performing or which he has already performed. To those theologians who would consider conscience in the more popular sense of the word, conscience is still to be trained or corrected to agree with the law of God as known by revelation and nature and the teaching of the Church.¹² Conscience can therefore be either correct or erroneous. A man is justified in following his conscience even when it is erroneous, if he has no suspicion that it is incorrect. But if he even suspects that it is incorrect, he is obliged to correct it as best he can before acting. Theologians, then, accept some extrinsic norms for judging whether certain actions are morally obligatory or morally permitted or morally forbidden. When it comes to particular actions, not all theologians are agreed among themselves, even within the same religious groups, but especially among the various faiths. Witness the present confusion on the question of contraceptive pills, therapeutic abortions, use of nuclear weapons even in a war of defense, and so on. For Roman Catholics, the authoritative teaching of the Pope or of all the bishops of the church, whether gathered in an ecumenical council

¹⁰ *Pacem in Terris* § 51; *Acts* 5:29; *Daniel* 3:13-18. See also McCormick, *When Laws Should be Broken*, *Ave Maria*, Nov. 30, 1963, pp. 11-15; *Declaration On Religious Freedom* § 9.

¹¹ There is a rebuttable presumption in favor of the legitimacy of a *de facto* civil power, the justice of the laws of a legitimate authority (including commands by military authorities), a clear law over a vague or obscure one.

¹² Kirk, *op. cit. supra* note 2, at 176; Mortimer, *op. cit. supra* note 2, at 75.

or not, is decisive.¹³ Most other faiths do not have such a decisive norm, and so confusion continues in even more questions among them than among Catholics.

What should be the attitude of the state when a citizen appeals to his conscience in refusing to obey a particular law? Since the state cannot take upon itself to decide which religion is right, nor which faction in a given religion is right, it should respect any reasonable claim of conscience. Nevertheless the state has the right to demand some evidence beyond the mere assertion of conflict with conscience when such assertion is in favor of the asserter and against existing laws of the state. Admittedly there can and will be difficulties in drawing fine lines as to what constitutes sufficient evidence. Certainly membership in a large, well-organized religion which publicly and officially teaches a doctrine at variance with the law in question should be sufficient evidence. This is accepted in this country with respect to bearing arms in combat, or taking an oath, or for Jehovah's Witnesses with regard to saluting the flag.

If the dissenter is not a member of such a religion but claims that he agrees with such teaching, the state would be justified in demanding some evidence that the man accepted this teaching at a time when it was not to his immediate self-interest or concern so to do.

But what of an individual person who claims conscientious objection but cannot support his claim with any recognized public teaching of any sizeable respectable group? Theologically speaking, if he is convinced that a particular law demands of him an action that is against the law of God, he must refuse that act. But the state cannot know a man's internal state of conscience. It can only judge by externally known matters. So, if no publicly known teaching of any kind supports the man's claim, the state need not accede to his claim.

Since the state has the right and obligation to defend its citizens against enemies foreign and domestic, it would seem to have the right to reject as a basis for conscientious objection against its laws, the teaching of any group or ideology which is actively and openly opposed to the basic principles on which the existing form of government is established; *e.g.*, the Communist Party, anarchists, totalitarians of any kind.

As for smaller groups, less than an organized religion but not opposed to our form of government as such, it might be an ideal policy for the government to exempt anyone claiming conscientious objec-

¹³ Vatican Council II, *The Dogmatic Constitution on the Church*, *op cit.* *supra* note 5, § 25.

tion from required performance of an act which would be against his conscience, especially if an equivalent service can be substituted for the required act, as is done in substituting medical corps work for combat duty, and as might be done for conscientious objectors against certain uses of their tax money¹⁴

Of peculiar interest in this respect is the appeal to conscience by an avowed atheist. In what sense can his appeal be based on the precedence of a higher law? He does not acknowledge any divine law since he rejects the existence of a personal divinity. In acceding to claims of conscientious objection not based on a claimed duty to a personal deity, the Supreme Court seemed to recognize that even an atheist might consider the demands of human nature as higher than those of civil law¹⁵. Perhaps theologians might consider rather that even an atheist has an innate recognition of the law of nature as of a higher power, even though he refuses to recognize this higher power as a personal divinity.

As was intimated above, the dictates of conscience may be obligatory, prohibitive, or merely permissive.¹⁶ The mere fact that one's conscience tells him that a given act is morally all right (permissive conscience), does not necessarily give him a right to do that act. In fact, the state may reasonably restrain any such act in public if it is offensive to most or many others. The fact that someone judges that it is not morally wrong to utter obscene language in public does not ipso facto give him a right to utter such language in public. If the law of God *demand*ed such language of him, then he might reasonably claim such a right; but he would have a hard time showing any reasonable support for such a claim.

The above theories about allegedly unjust laws would seem to apply analogously to the unjust exercise of jurisdiction under an otherwise just law. For example, the law guarantees the right to peaceable assembly. But local laws also rightly limit the exercise of this right when the assembly might interfere with ordinary traffic of other people, demanding advance notice and the obtaining of a permit. If proper application is made for a permit and the application is *unjustly* turned down, then the petitioner is in the same position as against an unjust law. An analogous situation occurred in the case of

¹⁴ BENNETT, *op. cit. supra* note 3, at 113.

¹⁵ United States v. Seeger, 380 U.S. 163 (1965).

¹⁶ Some writers and speakers seem to ignore the third possibility when they speak only of judgment in conscience that an act is morally either right or wrong. But what is morally right is certainly not always obligatory.

the Selma-to-Montgomery march where the Governor on his own motion prohibited the march.¹⁷

The same theories also apply to such matters of authority as court sentences and military commands. In the latter, there is not so much the question of a right to disobey an unjust command, as of an obligation to disobey a command to do something morally wrong, such as shooting innocent civilian hostages during a war, or indiscriminately destroying large civilian populations. The chief moral responsibility is on the one giving the commands. For the subject, as with laws, presumption favors the justice of a command; but the presumption yields to contrary evidence. And so the subject is morally obliged to disobey a command to do anything which is evidently immoral. The fact that he would be acting under orders would not justify his going against the laws of God. "We must obey God rather than men."¹⁸

The Right to Disobey Just Laws

The second form of civil disobedience concerns those who disobey civil laws without any claim that the laws are unjust, but merely as a means of attracting attention to a cause which is judged just. It should be safe to presume that all religious persons would disapprove the deliberate causing of physical damage to the persons or property of other human beings, and so omit any discussion of this type of action. The only kind of action in present demonstrations which seems to be of this type involves one or more of the following: the deliberate obstruction of traffic (such as the Chicago demonstrations of the past year); the physical prevention of carrying on of business (like the sit-ins, lie-ins and shop-ins of a year or so ago); or the deliberate violation of ordinances concerning assemblies and parades without making any attempt at obtaining the required permit.

Perhaps this section should be prefaced with an outline of Catholic and other Christian theology on the moral obligation of citizens to obey the laws of their country. All believers in the Gospel of Jesus

¹⁷ The federal district court held that the proclamation of the Governor banning any march, regardless of how conducted, was unreasonable. The court approved the plan submitted by the marchers and enjoined the State officials from interfering with the march. *Williams v. Wallace*, 240 F Supp. 100 (M.D. Ala. 1965).

¹⁸ *Acts* 5:29; See Address by Pius XII, "International Penal Law," *Sixth International Congress of Penal Law*, Oct. 3, 1953, in 52 *CATHOLIC MIND* 107, 114 (1954). "The moral principle in such cases is absolutely clear: no higher authority can validly command an immoral act; there exists no right, no obligation, no permission to accomplish an act, evil in itself, even if it is ordered, and even if the refusal to do the action involves the worst personal damages."

Christ as given in the New Testament accept the clear teaching contained therein that the state, once legitimately formed, has its authority from God and so can oblige its citizens in conscience to whatever is judged necessary for the common good.¹⁹ Catholic theologians pretty well agree that not everything labeled civil law binds in conscience; for example, most agree that the less serious laws do not bind directly in conscience to perform or omit the acts commanded or enjoined. Catholic theologians do not agree on why this is so, some holding that it is not the intention of modern legislators to multiply conscience obligations of their fellow citizens and so legislate for the most part with the hope that the threat of civil penalties like fines and imprisonment will suffice to ensure compliance with the law. However all theologians also agree that a citizen has an obligation in conscience to do his fair part for the common good, and that he will often sin in disobeying civil laws either because he shirks his ordinary duty as a citizen or because he violates the rights of others. Thus, most Catholic theologians would hold that traffic speed laws do not of themselves bind in conscience, but that many violations of speed laws involve sin by causing unnecessary risk to the life and property of the driver and others.²⁰

In these matters of demonstrations, then, Catholics would not easily see sin in the mere disobedience of the law itself, but would see the possibility of sin in causing unnecessary mental anguish or suffering or deliberate loss of business to others. Even unnecessary blocking of traffic causes, besides possible losses in business, inconvenience and feelings of anguish to those blocked. It is true that these inconveniences and losses are not violations of inalienable or absolute rights, but they can be violations of relative rights of others and hence must be justified by a necessity of a higher order.

However, even in cases in which by Catholic theology no sin would be involved, the question can still be posed: Has a person a *right* to disobey a law in order to call attention to some injustice not contained in the law to be disobeyed? Or, to put the question from the viewpoint

¹⁹ *Matthew* 22:21; *Romans* 13:1-7; *1 Peter* 2:13-17; *Pacem in Terris* § 46. It would exceed the scope of this article to consider the question of how civil authority is legitimately established. The religious aspect of the question is treated to some extent in Leo XIII, *Civil Government and Christian Constitution of States*, *op. cit. supra* note 2; Pius XI, *Position of the Church in Germany (Mit Brennender Sorge)*, in 2 SOCIAL WELLSPRINGS 316 (Husslein ed. 1942); Pius XI, *Atheistic Communism (Divini Redemptoris)*, in 2 SOCIAL WELLSPRINGS 339 (Husslein ed. 1942). Cf. *Pacem in Terris* § 61. "Thus any government which refused to recognize human rights or acted in violation of them, would not only fail in its duty; its decrees would be wholly lacking in binding force."

²⁰ Farragher, *Notes on Moral Theology*, 24 THEOLOGICAL STUDIES 53, 69 (1963).

of the state: has the state a right to enforce a just law when the violation is done in support of a just cause?

We have two types of case especially in mind in this section. The first is one in which the carrying on of business is deliberately obstructed physically, by sit-in, lie-in, shop-in, stand-in, and this not in protest against not being given service by the business, but in protest about some other alleged injustice by the business, such as discrimination in hiring practices. The second type will be that of causing disturbance to the general public in order to attract attention to a cause, such as by lying down in the middle of a busy thoroughfare.

The arguments used by the defenders of such procedures are somewhat similar. Citizens have a right to seek redress of evils; therefore they have the right to the means which are necessary to achieve the redress; but ordinary legal channels are too slow and clumsy to obtain redress for those now suffering injustices; therefore they have the right to use means which are contrary to the law. The effectiveness of some such illegal activities has been offered as proof.

Theologians would agree that a man who has the right to a certain end, has the right to the necessary means to that end. It does not follow that he has the right to *any* means which will achieve the end. And the success of the Selma-to-Montgomery march would seem to prove that legal means can also be effective in achieving very difficult ends, including quick action from Congress on a civil rights bill, even if the ordinary channels of court action would not achieve such ends.

Others who support such measures try to justify them on the grounds that the demonstrations are a form of defense against injustice. Just as a man has the right to protect himself against injustice, so his neighbors may help him in this defense. If the management of a hotel is unjustly refusing jobs to minority applicants, then others may help such minority persons to bring pressure on the management to correct his unjust practice. In this way they compare such sit-ins to the sit-ins in restaurants and lunch counters, where Negroes were unjustly denied their right to be served.

There is one important difference between the two cases: the lunch-counter sit-ins were directly against the alleged injustice while the other type is against an allegedly unjust man but not directly against the injustice itself. It is only a form of putting pressure on the management to correct evil practices in another matter. The fact that such demonstrations have been effective does not justify them. Threatening the owner with a pistol might also be effective. In the judgment of this theologian writer, such pressure, the physical preventing of the

carrying on of business, to correct an injustice in some other part of the business than that of serving customers, is never justified. On the other hand, means of persuasion, such as a peaceful picket line with placards or open letters or advertisements in the newspapers pointing out the injustices of the management and urging people to avoid business with him can be a legitimate form of pressure, provided that no physical force or threat of force is used and provided further that the demonstrators are certain of the truth of their accusations. This type of demonstration would usually be within the law, and should be.

The type of civil disobedience which consists of impeding traffic or causing other nuisance to the general public is defended by some of its proponents by a similar line of argumentation as indicated above for the previous type. The principal difference is that here pressure is brought to bear on the general public rather than on a particular manager or owner. They argue that the general public has an obligation to do something about the given situation and that therefore pressure may be brought to bear on the general public to correct the alleged evil. The answer of this theologian writer would be about the same as above, with the additional comment that it is very difficult to assess any obligation on the general public to take any decisive action in most cases. But even if it were certain that the voters of an area were under obligation to correct a given evil, the means of pressuring them should not include interference with their rights nor to cause them a loss of business or even to cause them mental and emotional suffering.

Further, there would be a dangerous consequence to the arguments of the proponents of the above two types of pressuring, fatal to the common good of law and order: since no one is perfect and since there are always some evils to be corrected, there would always exist reasons for such demonstrations against almost any employer or against the public. And here again there are means within the law to try to persuade the general public to correct public evils.

Some proponents of the latter type of pressuring the public appeal to the example of Gandhi and his movement of non-violent resistance in India. But the case is entirely different even if one concedes that Gandhi and his followers were justified. Gandhi's actions were against a government whose exercise of any governmental power in India he judged substantially unjust. India had become a nation capable of self-government and so had a right to be free of British domination.

There is not space here to go into the whole question of the conditions under which rebellion might be justified. Obviously Americans

believe that it can be justified at times; but also the vast majority of Americans believe in the substantial justice of our form of government and so have a right to resist those who would overthrow the government. Any assertion of parity between the right to rebel against tyranny and an alleged right to civil disobedience as a means to bring voters to action seems too far-fetched to merit a serious answer other than pointing out the lack of parity

Application of Principles to Cases

This theologian writer hereby submits his personal judgment of the application of the above principles to cases publicized in the press, with the warning note that the cases are judged as presented without any pretense that he has investigated the cases sufficiently to be certain of the facts. If the cases were as presented in the papers, this is his judgment.

Lunch-counter sit-ins in the South. Morally justified as against those who refused to serve Negroes, provided that the sitters were ready to accept service and pay for it if rendered, and that they were otherwise orderly and clean according to ordinary accepted custom for such an eating place. Reason: since a service was being offered to the public, Negroes had a right to be served. To deny that service merely because they were Negroes was a violation of a human right. The laws to the contrary were unjust laws. Theologians would agree on this with practical unanimity

Selma-Montgomery march. A justified form of expressing dissent and seeking redress for unjust laws of segregation and unjust practices of discrimination in voter registration. Legal means were sought: A public parade without violence on the part of the marchers was originally prohibited by the Governor, but a court held this prohibition to be unjust exercise of authority ²¹

San Francisco sit-ins at Palace Hotel and Cadillac agency and shop-ins at super-markets. As understood from newspaper reports these were all demonstrations to correct alleged injustices in hiring policies and not in service policies. There was effective hurting of business by physical obstruction rather than mere persuasion. Not justified even if the demonstrators were certain of the injustice of hiring procedures. The physical obstruction to business was not a result of refusal to give a publicly offered service. Furthermore, mere lack of Negro employees in certain categories is not of itself proof of unjust

²¹ Williams v. Wallace, 240 F Supp. 100 (M.D. Ala. 1965).

discrimination in hiring. It could be that qualified Negroes had not applied.

Chicago traffic blocking. As this theologian understood the case from sketchy reading of newspapers: Demonstrators tied up traffic by lying down in busy streets, to pressure the public into doing something about removing an allegedly unjustly inactive superintendent of public instruction. Unjustified; physical obstruction used against persons not certainly guilty of wrong, and even if guilty, physical means used against something not directly involved. It would seem especially difficult also in such a case to be certain of the cause in the first place, but if certain, the agitators should have publicized the cause, but not in such a manner as to cause mental anguish to the public or obstruct them from their daily business. If they felt some demonstration in the streets was necessary they should have applied for a permit for a parade or other show

Furthermore, in this case, there seems no justification for forcing the police to carry them into the patrol wagons when arrested. If they felt justified in such a demonstration, they should at least have been willing to take the consequences of their actions and cooperate with the arresting police who were only doing their duty²²

Vietnam tram blocking. Not justified. If the demonstrators sincerely judged the war unjust, they should take legal means to publicize their position, such as the later march with a parade permit. They should also realize that the soldiers; engineers and others were doing what they felt was their conscience obligation. Since they protested against being sent to a war against their consciences, they should have respected the consciences of others.

Draft-card burning. Not justified. It is legitimate to register dissent on war in general by filing notice for classification as a conscientious objector, or to express dissent with the carrying on of a given war, but by legal means. The state is within its rights in demanding registration of available manpower, and has the right to insist on substitute forms of service for those who have sincere conscientious objection against bearing arms.

²² Unless they judged that the arrests were unjust. Even then, many who justify disobedience to unjust laws advise accepting the consequences of their actions. Martin Luther King, in his letter from the Birmingham Jail, in KING, *WHY WE CAN'T WAIT* 83-84 (1963), stated: "One who breaks an unjust law must do so openly, lovingly and with a willingness to accept the penalty." Compare *A Statement by the House of Bishops to the Church on Christian Obedience*, *The Episcopalian*, Dec. 1964, p. 31; Bayard Rustin, Director of the War Resisters League, in a statement at the Center for the Study of Democratic Institutions, Santa Barbara, as cited in *The Center Diary*, Jan. 1966, p. 9.

Self-burning. Not justified. Christian theology has for centuries considered the deliberate killing of oneself to be against the law of God, even if the motive is a noble one. Some very recent theologians have questioned this, but not enough to constitute what systematic moral theologians would consider a solidly probable opinion.

In these last five cases, this theologian judges that the state was fully justified in taking police action against the violators of the law, and imposing fines or other penalties.

Summary

Civil disobedience demonstrators often appeal to a "higher law," to justify their actions. Theologians of most religious faiths agree that a higher law, the law of God, will preempt any contrary civil law because all authority comes from God. Nevertheless, conflicting divine law is to be proved, not presumed. Divine law is finally known by each man in the judgment of his conscience. The state cannot know a man's conscience and therefore is justified in demanding some outside evidence to support the individual's claim.

Just how much of such evidence should be required is difficult to decide. A pluralistic state should recognize any claim clearly based on known public teaching of a reputable religious organization not directly opposed to the entire American way of life and government. The same principles hold for military and court orders. Morally one must disobey an order to do an immoral act.

Appeals to conscience by atheists, although not claiming divine authority, should probably be treated similarly as based on some inner imperative which theological thought would see as a reflection of natural divine law

Civil disobedience against admittedly just laws is not considered justified. Intent to put pressure on those who can and should correct injustices does not justify the use of illegal means. General civil disobedience is only justified where rebellion would be justified—only when it is necessary self-defense against tyrannical oppression.

