

"The Problem Is Civil Obedience"

by Howard Zinn (November 1970)

In November 1970, after my arrest along with others who had engaged in a Boston protest at an army base to block soldiers from being sent to Vietnam, I flew to Johns Hopkins University in Baltimore to take part in a debate with the philosopher Charles Frankel on civil disobedience. I was supposed to appear in court that day in connection with the charges resulting from the army base protest. I had a choice: show up in court and miss this opportunity to explain—and practice—my commitment to civil disobedience, or face the consequences of defying the court order by going to Baltimore. I chose to go. The next day, when I returned to Boston, I went to teach my morning class at Boston University. Two detectives were waiting outside the classroom and hauled me off to court, where I was sentenced to a few days in jail. Here is the text of my speech¹ that night at Johns Hopkins.

From *Voices of A People's History*, edited by Zinn and Arnove

I start from the supposition that the world is topsy-turvy, that things are all wrong, that the wrong people are in jail and the wrong people are out of jail, that the wrong people are in power and the wrong people are out of power, that the wealth is distributed in this country and the world in such a way as not simply to require small reform but to require a drastic reallocation of wealth. I start from the supposition that we don't have to say too much about this because all we have to do is think about the state of the world today and realize that things are all upside down. Daniel Berrigan is in jail—a Catholic priest, a poet who opposes the war—and J. Edgar Hoover is free, you see. David Dellinger, who has opposed war ever since he was this high and who has used all of his energy and passion against it, is in danger of going to jail. The men who are responsible for the My Lai massacre are not on trial; they are in Washington serving various functions, primary and subordinate, that have to do with the unleashing of massacres, which surprise them when they occur. At Kent State University four students were killed by the National Guard and students were indicted. In every city in this country, when demonstrations take place, the protestors, whether they have demonstrated or not, whatever they have done, are assaulted and clubbed by police, and then they are arrested for assaulting a police officer.

Now, I have been studying very closely what happens every day in the courts in Boston, Massachusetts. You would be astounded—maybe you wouldn't, maybe you have been around, maybe you have lived, maybe you have thought, maybe you have been hit—at how the daily rounds of injustice make their way through this marvelous thing that we call due process. Well, that is my premise.

All you have to do is read the [Soledad Letters of George Jackson](#), who was sentenced to one year to life, of which he spent ten years, for a seventy-dollar robbery of a filling station. And then there is the U.S. Senator who is alleged to keep 185,000 dollars a year, or something like that, on the oil depletion allowance. One is theft; the other is legislation. Something is wrong, something is terribly wrong when we ship 10,000 bombs full of nerve gas across the country, and drop them in somebody else's swimming pool so as not to trouble our own. So you lose your perspective after a while. If you don't think, if you just listen to TV and read scholarly things, you actually begin to think that things are not so bad, or that just little things are wrong. But you have to get a little detached, and then come back and look at the world, and you are horrified. So we have to start from that supposition—that things are really topsy-turvy.

And our topic is topsy-turvy: civil disobedience. As soon as you say the topic is civil disobedience, you are saying our *problem* is civil disobedience. That is *not* our problem.... Our problem is civil *obedience*. Our problem is the numbers of people all over the world who have obeyed the dictates of the leaders of their government and have gone to war, and millions have been killed because of this obedience. And our problem is that scene in *All Quiet on the Western Front* where the schoolboys march off dutifully in a line to war. Our problem is that people are obedient all over the world, in the face of poverty and starvation and stupidity, and war and cruelty. Our problem is that people are obedient while the

jails are full of petty thieves, and all the while the grand thieves are running the country. That's our problem. We recognize this for Nazi Germany. We know that the problem there was obedience, that the people obeyed Hitler. People obeyed; that was wrong. They should have challenged, and they should have resisted; and if we were only there, we would have showed them. Even in Stalin's Russia we can understand that; people are obedient, all these herdlike people.

But America is different. That is what we've all been brought up on. From the time we are this high—and I still hear it resounding in Mr. Frankel's statement—you tick off, one, two, three, four, five lovely things about America that we don't want disturbed very much.

But if we have learned anything in the past ten years, it is that these lovely things about America were never lovely. We have been expansionist and aggressive and mean to other people from the beginning. And we've been aggressive and mean to people in this country, and we've allocated the wealth of this country in a very unjust way. We've never had justice in the courts for the poor people, for black people, for radicals. Now how can we boast that America is a very special place? It is not that special. It really isn't.

Well, that is our topic, that is our problem: civil obedience. Law is very important. We are talking about obedience to law—law, this marvelous invention of modern times, which we attribute to Western civilization, and which we talk about proudly. The rule of law, oh, how wonderful, all these courses in Western civilization all over the land. Remember those bad old days when people were exploited by feudalism? Everything was terrible in the Middle Ages—but now we have Western civilization, the rule of law. *The rule of law has regularized and maximized the injustice that existed before the rule of law, that is what the rule of law has done.* Let us start looking at the rule of law realistically, not with that metaphysical complacency with which we always examined it before.

When in all the nations of the world the rule of law is the darling of the leaders and the plague of the people, we ought to begin to recognize this. We have to transcend these national boundaries in our thinking. Nixon and [Leonid] Brezhnev have much more in common with one another than we have with Nixon, J. Edgar Hoover has far more in common with the head of the Soviet secret police than he has with us. It's the international dedication to law and order that binds the leaders of all countries in a comradely bond. That's why we are always surprised when they get together—they smile, they shake hands, they smoke cigars, they really like one another no matter what they say. It's like the Republican and Democratic parties, who claim that its going to make a terrible difference if one or the other wins, yet they are all the same. Basically, it is us against them.

Yossarian was right, remember, in *Catch-22*? He had been accused of giving aid and comfort to the enemy, which nobody should ever be accused of, and Yossarian said to his friend Clevinger: "The enemy is whoever is going to get you killed, whichever side they are on." But that didn't sink in, so he said to Clevinger "Now you remember that, or one of these days you'll be dead." And remember? Clevinger, after a while, was dead. And we must remember that our enemies are not divided along national lines, that enemies are not just people who speak different languages and occupy different territories. Enemies are people who want to get us killed.

We are asked, "What if everyone disobeyed the law?" But a better question is, "What if everyone obeyed the law?" And the answer to that question is much easier to come by, because we have a lot of empirical evidence about what happens if everyone obeys the law, or if even most people obey the law. What happens is what has happened, what is happening. Why do people revere the law? And we all do; even I have to fight it, for it was put into my bones at an early age when I was a Cub Scout. One reason we revere the law is its ambivalence. In the modern world we deal with phrases and words that have multiple meanings, like "national security." Oh, yes, we must do this for national security! Well, what does that mean? Whose national security? Where? When? Why? We don't bother to answer those questions, or even to ask them.

The law conceals many things. The law is the Bill of Rights. In fact, that is what we think of when we develop our reverence for the law. The law is something that protects us; the law is our right—the law is the Constitution. Bill of Rights Day, essay contests sponsored by the American Legion on our Bill of Rights, that is the law. And that is good.

But there is another part of the law that doesn't get ballyhooed—the legislation that has gone through month after month, year after year, from the beginning of the Republic, which allocates the resources of the country in such a way as to leave some people very rich and other people very poor, and still others scrambling like mad for what little is left. That is the law. If you go to law school you will see this. You can quantify it by counting the big, heavy law books that people carry around with them and see how many law books you count that say "Constitutional Rights" on them and how many that say "Property," "Contracts," "Torts," "Corporation Law." That is what the law is mostly about. The law is the oil depletion allowance—although we don't have Oil Depletion Allowance Day, we don't have essays written on behalf of the oil depletion allowance. So there are parts of the law that are publicized and played up to us—oh, this is the law, the Bill of Rights. And there are other parts of the law that just do their quiet work, and nobody says anything about them.

It started way back. When the Bill of Rights was first passed, remember, in the first administration of [George] Washington? Great thing. Bill of Rights passed! Big ballyhoo. At the same time [Alexander] Hamilton's economic program was passed. Nice, quiet, money to the rich—I'm simplifying it a little, but not too much. Hamilton's economic program started it off. You can draw a straight line from Hamilton's economic program to the oil depletion allowance to the tax writeoffs for corporations. All the way through—that is the history. The Bill of Rights publicized; economic legislation unpublicized.

You know the enforcement of different parts of the law is as important as the publicity attached to the different parts of the law. The Bill of Rights, is it enforced? Not very well. You'll find that freedom of speech in constitutional law is a very difficult, ambiguous, troubled concept. Nobody really knows when you can get up and speak and when you can't. Just check all of the Supreme Court decisions. Talk about predictability in a system—you can't predict what will happen to you when you get up on the street corner and speak. See if you can tell the difference between the Terminiello [*Terminiello v. Chicago*] case and the Feiner [*Feiner v. New York*] case, and see if you can figure out what is going to happen. By the way, there is one part of the law that is not very vague, and that involves the right to distribute leaflets on the street. The Supreme Court has been very clear on that. In decision after decision we are affirmed an absolute right to distribute leaflets on the street. Try it. Just go out on the street and start distributing leaflets. And a policeman comes up to you and he says, "Get out of here." And you say, "Aha! Do you know *Marsh v. Alabama*, 1946?" That is the reality of the Bill of Rights. That's the reality of the Constitution, that part of the law which is portrayed to us as a beautiful and marvelous thing. And seven years after the Bill of Rights was passed, which said that "Congress shall make no law abridging the freedom of speech," Congress made a law abridging the freedom of speech. Remember? The Sedition Act of 1798².

So the Bill of Rights was not enforced. Hamilton's program was enforced, because when the whisky farmers went out and rebelled you remember, in 1794 in Pennsylvania, Hamilton himself got on his horse and went out there to suppress the rebellion to make sure that the revenue tax was enforced. And you can trace the story right down to the present day, what laws are enforced, what laws are not enforced. So you have to be careful when you say, "I'm for the law, I revere the law." What part of the law are you talking about? I'm not against all law. But I think we ought to begin to make very important distinctions about what laws do what things to what people.

And there are other problems with the law. It's a strange thing, we think that law brings order. Law doesn't. How do we know that law does not bring order? Look around us. We live under the rules of law. Notice how much order we have? People say we have to worry about civil disobedience because it will lead to anarchy. Take a look at the present world in which the rule of law obtains. This is the closest to what is called anarchy in the popular mind—confusion, chaos, international banditry. The only order that is really worth anything does not come through the enforcement of law, it comes through the establishment of a society which is just and in which harmonious relationships are established and in which you need a minimum of regulation to create decent sets of arrangements among people. But the order based on law

and on the *force* of law is the order of the totalitarian state, and it inevitably leads either to total injustice or to rebellion—eventually, in other words, to very great disorder.

We all grow up with the notion that the law is holy. They asked Daniel Berrigan's mother what she thought of her son's breaking the law. He burned draft records—one of the most violent acts of this century—to protest the war, for which he was sentenced to prison, as criminals should be. They asked his mother who is in her eighties, what she thought of her son's breaking the law. And she looked straight into the interviewer's face, and she said, "It's not God's law." Now we forget that. There is nothing sacred about the law. Think of who makes laws. The law is not made by God, it is made by Strom Thurmond. If you have any notion about the sanctity and loveliness and reverence for the law, look at the legislators around the country who make the laws. Sit in on the sessions of the state legislatures. Sit in on Congress, for these are the people who make the laws which we are then supposed to revere.

All of this is done with such propriety as to fool us. This is the problem. In the old days, things were confused; you didn't know. Now you know. It is all down there in the books. Now we go through due process. Now the same things happen as happened before, except that we've gone through the right procedures. In Boston a policeman walked into a hospital ward and fired five times at a black man who had snapped a towel at his arm—and killed him. A hearing was held. The judge decided that the policeman was justified because if he didn't do it, he would lose the respect of his fellow officers. Well, that is what is known as due process—that is, the guy didn't get away with it. We went through the proper procedures, and everything was set up. The decorum, the propriety of the law fools us.

The nation then, was founded on disrespect for the law, and then came the Constitution and the notion of stability which [James] Madison and Hamilton liked. But then we found in certain crucial times in our history that the legal framework did not suffice, and in order to end slavery we had to go outside the legal framework, as we had to do at the time of the American Revolution or the Civil War. The union had to go outside the legal framework in order to establish certain rights in the 1930s. And in this time, which may be more critical than the Revolution or the Civil War, the problems are so horrendous as to require us to go outside the legal framework in order to make a statement, to resist, to begin to establish the kind of institutions and relationships which a decent society should have. No, not just tearing things down; building things up. But even if you build things up that you are not supposed to build up—you try to build up a peoples park, that's not tearing down a system; you are building something up, but you are doing it illegally—the militia comes in and drives you out. That is the form that civil disobedience is going to take more and more, people trying to build a new society in the midst of the old.

But what about voting and elections? Civil disobedience—we don't need that much of it, we are told, because we can go through the electoral system. And by now we should have learned, but maybe we haven't, for we grew up with the notion that the voting booth is a sacred place, almost like a confessional. You walk into the voting booth and you come out and they snap your picture and then put it in the papers with a beatific smile on your face. You've just voted; that is democracy. But if you even read what the political scientists say—although who can?—about the voting process, you find that the voting process is a sham. Totalitarian states love voting. You get people to the polls and they register their approval. I know there is a difference—they have one party and we have two parties. We have one more party than they have, you see.

What we are trying to do, I assume, is really to get back to the principles and aims and spirit of the Declaration of Independence. This spirit is resistance to illegitimate authority and to forces that deprive people of their life and liberty and right to pursue happiness, and therefore under these conditions, it urges the right to alter or abolish their current form of government—and the stress had been on abolish. But to establish the principles of the Declaration of Independence, we are going to need to go outside the law, to stop obeying the laws that demand killing or that allocate wealth the way it has been done, or that put people in jail for petty technical offenses and keep other people out of jail for enormous crimes. My hope is that this kind of spirit will take place not just in this country but in other countries because they all need it. People in all countries need the spirit of disobedience to the state, which is not a metaphysical thing but a thing of force and

wealth. And we need a kind of declaration of interdependence among people in all countries of the world who are striving for the same thing.