

# Law Quadrangle (formerly Law Quad Notes)

---

Volume 11 | Number 1

Article 3

---

Fall 1966

## Civil Disobedience

Francis A. Allen

*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/lqnotes>

---

### Recommended Citation

Francis A. Allen, *Civil Disobedience*, 11 *Law Quadrangle (formerly Law Quad Notes)* - (1966).

Available at: <https://repository.law.umich.edu/lqnotes/vol11/iss1/3>

This Article is brought to you for free and open access by University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Law Quadrangle (formerly Law Quad Notes) by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

# Civil Disobedience

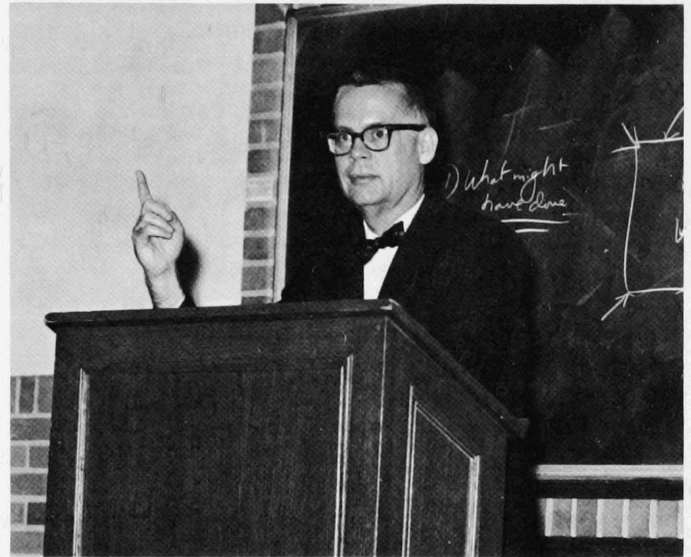
Excerpts from the Robert S. Marx Lectures by Dean Francis A. Allen  
at the University of Cincinnati, November 16–18

© 1966 by Francis A. Allen

Civil disobedience is a species of law violation, and it is from this point that any effort to define the concept must proceed. But civil disobedience is law violation characterized by certain kinds of motives and directed to the attaining of certain kinds of ends. It is moreover, law violation in which the means employed and the circumstances in which it occurs are subject to certain restrictions. Any useful definition must distinguish civil disobedience from lawful protest, even those forms of lawful protest that take place on the streets and involve large groups of persons. The definition should also be capable of distinguishing civil disobedience from what might be called ordinary criminal acts, on the one hand, and from acts of revolution, on the other.

Despite the obvious complexity of the civil disobedience concept and the intricacy encountered in resolving it into its component parts, one might reasonably assume that there are at least some elements of the definition that are clear and therefore unlikely to produce disagreements and ambiguity. The proposition that civil disobedience consists of acts of deliberate and purposeful law violation might be thought to be one of these. Yet even here difficult problems have emerged. The first of these difficulties stems from a widespread and surely mistaken popular tendency to label as civil disobedience all mass protest in public places, even in situations when the protesters threaten no unlawful violence but are themselves the objects of unlawful violence by police officials or by other private individuals or groups. The emergence of a right on behalf of protesting groups to employ the streets, highways, or parks as what Professor Harry Kalven has called "the public forum" and in this fashion communicate their grievances and solicit the support of the larger community, is one of the very significant developments in the law of the First Amendment. Despite limitations dictated by the necessities of public order, safety, and convenience, the right is one of the highest importance to protesting minorities; for it is characteristic of such groups that they lack direct access to other modes of communication effective to engage the attention and conscience of the general population.

It is important also that the larger community—understandably disturbed by the emergence of conscientious law violation—should avoid confusing the illegal activities of such groups with those that represent the exercise of constitutionally defined and protected rights. For a community whose respectable and influential members are unable to distinguish between legal and illegal protest is not likely to be effective in its attempts to persuade dissenting minorities of the virtues of legality.



The open violation of law, the use of non-violent means, the willing acceptance of penalties, are viewed in part as gestures of good faith by the civil resister to the larger community. Civil disobedience is a "terrifying synonym for suffering"; and in willingly undergoing such suffering the protester offers evidence to himself and to others of his conscientious motivation. In so doing he seeks to establish his claim that he is entitled to be regarded as other than a common criminal. Moreover in willingly suffering the law's sanctions he seeks to demonstrate his fundamental allegiance to the legal and social order of which he is a part, to reveal his concern for the community by eradicating its injustices, and to make clear that his desire is to reform, rather than to destroy, the structure of the constitutional order.

The distinction between civil disobedience and revolution however, presents substantial difficulties of theory and practice. This is true in part because the techniques of civil disobedience are capable of being employed by persons with unspoken objectives that are genuinely revolutionary. More important, the point at which civil disobedience may become truly subversive of the principle of majority rule will rarely be clearly perceptible, particularly to those caught up in a moral crusade involving the use of conscientious law violation. Nevertheless, the distinction between civil disobedience and revolution is ordinarily clear enough for practical purposes. Surely the larger community, whose interest lies in lessening rather than increasing the alienation of its dissentient minorities, harms chiefly itself by a too-precipitous identification of civil disobedience with treason and subversion.

"Civility is not simply a matter of etiquette; it is part of the essential strategy of the democratic way of life."

A landlord's efforts at token compliance with Civil Rights Laws, at preventing the fact of his violations from coming to the attention of the authorities, or at avoiding the legal consequences of his misbehavior by corrupting officials or through other means, reveal a consciousness of legal guilt and a perverse but genuine concession to the law's authority. The civil resister presents a very different case; for his conscious and deliberate law violation is founded upon a theory of right. The right asserted is not that ultimately derived from the state or the legal order; but, insofar as the individual is concerned, it proceeds from a higher source of obligation and transcends any imperatives arising solely from the legal or political institutions of the community.

We in the United States have unhappily had occasion to discover that some of the important objectives of a legal order can be achieved even when many laws are frequently and widely violated. But the serious issue that is raised (or many people believe to be raised) by the modern protest movements, is whether even our imperfect dedication to the rule of law can survive a widespread acceptance of the belief that the individual is morally licensed to withdraw his compliance from laws offensive to his own moral scruples, and (what is perhaps more important) the practical application of this belief by significantly large numbers of individuals and organized groups.

The difficult question seems to be, what lesson is being taught to the wider community by the precept and example of civil disobedience? Is it tutelage in nonviolence or in defiance of authority, in rational confrontation of social ills or in undisciplined activism? Here, as elsewhere, the teacher may discover that the lesson being learned is different from that which was intended or anticipated.

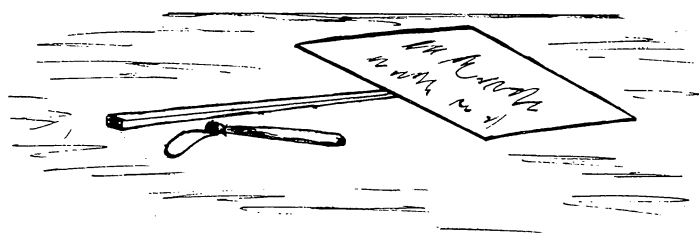
\* \* \* \* \*

The short of the matter is that the task of estimating the dangers of civil disobedience as a progenitor of widespread criminality and disorder involves levels of complexity that have only rarely been exposed in public discussions of the problem. But this is far from saying that no such dangers exist or that concerns about the social costs of civil disobedience are frivolous or mistaken. We know comparatively little about the stress levels a legal order can withstand, nor do we have secure knowledge of how far public defiance of the law can proceed without inflicting serious or even irreparable injuries on a democratic society. Such a confession of ignorance, it will be noted, encompasses the substantial possibility that the widespread practice of civil disobedience will at some point produce consequences both dangerous and unanticipated. A possibility of this sort surely demands the most sober consideration, not only of those invested with re-

sponsibilities for the administration of the law, but of those committed to achieving objectives of social reform.

\* \* \* \* \*

But the perils posed by reform movements admitting the use of conscientious law violation encompass some of less immediately devastating consequences: Even if events should prove that fears of a breakdown of public order or of a collapse of democratic procedures are overdrawn, there is a range of costs incurred by the practice of civil disobedience that cannot be dismissed as simply the product of speculative forecasts; for these latter exactions have already been made. I refer here to what may perhaps be best described as a loss of civility in the conduct of public controversies in the United States. These losses are clearly discernible, not only on the streets, but on the campuses of colleges and universities, and even in white middle-class neighborhoods of our cities. The loss of civility is revealed by a widespread tendency to assume that public or private action condemned by the protestors is to be combatted by direct, if passive, resistance as the ordinary and normal form of opposition, by a tendency to shirk the hard tasks of rational persuasion of those of opposing views, and by a deep suspicion of the usual devices through which a minority group may ultimately obtain a democratic consensus.



\* \* \* \* \*

In reviewing recent events in our colleges and universities the striking fact is not that there have been instances of student protest and disorder. On occasion student unrest has reflected genuine issues of policy arising out of efforts by American higher education, not always successful, to adapt itself to the new demands of the mid-twentieth-century world. But if the fact of student protest is understandable and in some sense salutary, there is much in the situation to inspire reflection and concern. What is perhaps most disquieting is the apparent ease and lack of tension displayed by the student activists in their decisions to employ the most extreme methods to express and enforce their demands.

(continued on page 12)

. . . Pervading many of these incidents is an insouciance bordering on irresponsibility, a failure to calculate the larger costs of the means employed, and an unwillingness fairly to test the availability of alternative remedies more consistent with the values of order and rationality. There is, after all, danger in a situation that appears to identify the cause of liberal reform with means that reject civility and rationality. It may be that there resides here the greatest peril of all.

. . . My conclusion is that the rise of reform movements admitting the propriety of civil disobedience provides ample basis for concern on the part of the larger community. Reflection and observation demonstrate that the task of identifying the character of these perils and estimating their imminence is more difficult and complex than popular discussion of these problems sometimes suggests. It is also true that the dangers, real or supposed, arising out of the practice of conscientious law violation have proved to be a convenient distraction for many who would rather deplore the means employed by the reformers than to confront the underlying social pathologies that have given rise to modern protest movements. But the perils of law violation as an instrumentality of

social amelioration are real, and neither the protestors nor their apologists have always given deserved weight to this fact in their calculations. •

---

## NEXT ISSUE

### **"Who Will Watch the Watchers?"**

A look at the television series on law enforcement coordinated by Professors Joseph R. Julin and Jerold Israel.

### **Review of Recent Faculty Publications**

"Basic Property Law," Olin L. Browder, Roger A. Cunningham, Joseph R. Julin

"Historical Introduction to the Legal System," Spencer Kimball

"Modern Criminal Procedure: Cases and Commentaries," Livingston Hall and Yale Kamisar

Return postage guaranteed  
LAW SCHOOL  
THE UNIVERSITY OF MICHIGAN  
Ann Arbor, Michigan

**michigan  
law  
quadrangle  
notes**