
Virtual nonviolence? Civil disobedience and political violence in the information age

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Abstract

Nonviolent civil disobedience is a vital and protected form of political communication in modern constitutional democracies. Reviews the idea of both demonstrating its continued relevance, and providing a basis for considering its uses as an information-age strategy of radical activism. The novelty of the forms of speech and action possible in cyberspace make it difficult to compare these new methods of expression easily. Whether in cyberspace or the real world, civil disobedience has historically specific connotations that should be sustained because the concept has special relevance to the political theory and practice of constitutional democracy. Civil disobedience is a unique means of political expression that is used to provoke democratic deliberation about important questions of just law and policy. Among the significant problems that new forms of radical political practice in cyberspace introduce is that their practitioners and advocates neglect the need to distinguish between violence and nonviolence. Examines that problem and others that are central to considering theoretical and political implications of radical activism in general, and civil disobedience in particular, in cyberspace.

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Nonviolent challenges to state power are an honored tradition in Western history, and so is their repression, with origins tracing back as far as the trial and conviction of Socrates on trumped-up charges of blaspheming the gods and corrupting the youth of Athens. Katz (1985, p. 915; see also *Columbia Law Review*, 1968, pp. 1109-17) characterizes as the principal aim of nonviolent civil disobedients in modern times “to communicate to others their concern over some social evil,” and for this reason they desire publicity, particularly in the form of press coverage, of their actions. Civil disobedience is, first and foremost, the public expression of the politics of shame. To shine light on injustice usually means exposing and embarrassing those who perpetuate it. And that can be a dangerous thing, not only for those who are shamed, but also for those who would use the means of publicity in such a manner. That is why acts of civil disobedience are often correctly understood to be acts of courage.

The right, and what for some is the duty, of nonviolent civil disobedience is a major focus of this essay. How is it possible to break the law and be civil? And why might one choose to do so? To convey objections to an injustice by breaking the law while doing it in what is generally accepted to be a civil manner is to commit an act of civil disobedience. It is also an act of political communication. I review the idea both to demonstrate its continued relevance, and as a preface to considering its uses and interpretation as an information-age strategy of political activism. I also argue for the need to distinguish the idea of civil disobedience from other forms of political activism.

American cyberlaw theorist Lessig has highlighted the challenge of translating legal concepts from the “real” world into cyberspace. Lessig puts a technological edge on an older discourse about the tensions between “originalism” in constitutional thought - thought that focuses on literal fidelity in interpreting what the framers of the US Constitution may have intended - and “translationism,” based on a belief that not only is a constitution a living doctrine, but that the spirit of law can only be preserved through conscious efforts to adapt to a changing world. For example, Lessig points out how interpretations of the Fourth Amendment have adjusted to new material conditions. The Fourth Amendment, originally designed to protect citizens from unlawful search and seizure, is the principal foundation of a right to privacy in the USA (Lessig, 1999, pp. 111-21)[1]. Is there a meaningful basis for translating the concept of civil disobedience from the real world to cyberspace?

Although it seems feasible, there also are good reasons for considering questions of the fidelity of the idea of “electronic civil disobedience” to the tradition made famous by Thoreau, Gandhi and Martin Luther King, Jr.

As new technologies are introduced into the range of possible means of political speech and action, radical political actors are testing the limits of their imaginations by inventing ways to use these technologies to further the causes they advocate. But the very novelty of the forms of speech and action that are possible through the uses of new media – particularly Internet-based – make it difficult to see easily how the new methods represent continuity (or discontinuity) with older traditions of nonviolent civil disobedience. For this reason, it is essential to have an understanding of the tradition, and of how it contrasts with other forms of radical engagement, particularly political violence.

Civil disobedience as political communication

The tradition of nonviolent civil disobedience has tended to be justified as a form of speech, or expression – as symbolic action – and has not been treated simply as criminal conduct. What the civil disobedient person depends on is that his or her actions will generate meaning beyond the mere fact of breaking a law and being punished for it, and instead that these actions will form the basis of a public discussion about a question of injustice. Furthermore, it is for this reason – because civil disobedience is an act of public communication – that those who perform such actions are accorded a different, sometimes elevated, status in the criminal justice system. In granting special status to those who deliberately break a law in order to provoke a discussion about questions of justice, we have recognized civil disobedience as a special form of speech or expression. But while expression is intrinsic to an act of civil disobedience, such acts are also judged as conduct, for example, trespassing on restricted property while protesting. However, in recognizing the primacy of the expressive content of the action, we accept not only that the speech-conduct dichotomy is sometimes not as clear as is supposed, but also that the scale we use to judge such speech-actions will tend to privilege the speech element. As Ledewitz points out, because speech and conduct are so intertwined in an act of civil disobedience, to issue an injunction against the act would imply imposing a prior restraint on free speech. Ledewitz (1990, pp. 122-4) explains from within the framework of American jurisprudence that punishing a civil

disobedient for a minor criminal offense after the fact is not a betrayal of the spirit of the First Amendment, while enjoining a would-be civil disobedient prior to such action, when there is no clear risk of harm to the public, defies that spirit.

Although many writers have endorsed the right to disobey the authority of the state, few have taken on the task of attempting to argue why we should not do so. One notable exception is Kant, who argued that it is logically impossible to justify such resistance because, in a democratic constitutional state, the sovereign is “the united will of the people,” and the sovereign cannot logically resist its own authority. Kant (1996, p. 93) argues that, under popular sovereignty, citizens cannot be both lawgivers and revolutionaries against their own laws. He maintains that when a constitution is defective, there is no right to rebellion or revolution, but only to legislative reform (Kant, 1996, p. 98). Ultimately, what Kant is arguing is that if we were to make it a maxim that there *is* a right to revolt (as the US Declaration of Independence asserts), then we render all constitutions “insecure,” and we create a lawless state of nature (Kant, 1991a, p. 82). Although Kant (1991b, p. 59) recognized no right to disobey, he argued vigorously in favor of the right to criticize a ruler, stating in his famous essay on the meaning of enlightenment, “Argue as much as you like and about whatever you like, but obey!”. Indeed, Kant (1991b, pp. 54-5) argued not only that criticism is a right, but also that in the name of enlightenment, citizens should exercise the courage and the will to express their criticism openly, as a means of promoting public reason. Although Kant clearly maintains that it is self-contradictory under popular sovereignty for the people to resist “the sovereign” (who, in a constitutional democracy, is “the people”) in the form of a revolution, he also argues that “negative resistance” is not inconsistent with this purpose, that is, “a refusal of the people to accede to every demand the government puts forth as necessary for administering the state” (Kant, 1996, p. 98). Schwarz (1977, p. 258) extrapolates from this distinction that while for Kant “coercive resistance” against state authority is always wrong, “some resistance is not coercive”. Reflecting a similar viewpoint, Habermas (1985, p. 112) captures and embraces the liminal status of this concept of resistance by stating: “The ‘right’ to civil disobedience remains suspended between legitimacy and legality for good reasons. But the constitutional state which prosecutes civil disobedience as a common crime falls under the spell of an authoritarian regime”.

In the USA, the legacy of civil disobedience is linked for many to the memory of essayist Henry

David Thoreau, who spent one night in jail in 1846 for refusing to pay the Massachusetts poll tax as a way of protesting the US war against Mexico (1846-1848). When Thoreau was visited in jail by his friend and mentor, Ralph Waldo Emerson, he reportedly was asked “What are you doing in there?” to which he replied, “What are you doing out there?” He was released from jail when his friends paid the tax without his consent (Zinn, 1995, p. 154). Two years later, Thoreau (1980), gave a lecture that was subsequently published as the essay “On the duty of civil disobedience.” In that essay, he expressed disgust toward the practice of citizens who, while privately professing to be opposed to injustice caused by a government, do nothing to register their dissent publicly to their government and their fellow citizens, and in so doing they tacitly support it:

Those who, while they disapprove of the character and measures of a government, yield to it their allegiance and support, are undoubtedly its most conscientious supporters, and so frequently the most serious obstacles to reform (Thoreau, 1980, p. 228).

Thoreau’s principled position has been a worldwide inspiration to practitioners of civil disobedience, which is evident in the writings and practices of Leo Tolstoy, Gandhi, and Martin Luther King, Jr, among many others. In the twentieth century, the person whose example comes closest to defining the ideals modern of civil disobedience is Mohandas K. Gandhi, whose sources of inspiration, in addition to Thoreau, also included *The Bhagavad-Gita* and Jesus Christ. Through speeches, writings, and by example, Gandhi articulated a set of principles and practices that reflect what seems to be an unimpeachable philosophy of nonviolent civil disobedience, which was put to the aim of ending British colonialism in India. Although Gandhi’s role was not the single determinant in bringing an end to British rule, no one would argue that his moral and spiritual leadership were not fundamental. The importance of the life of Gandhi was recognized by a younger generation, particularly outside of India, by way of the 1982 film *Gandhi*, directed by Richard Attenborough, and featuring the actor Ben Kingsley in the title role. What is perhaps the most disturbing scene in the film is the re-enactment of an important event in the symbolic decline of Britain’s empire in India. In 1930, about 2,500 Indian volunteers followed the example set by Gandhi, who had previously defied the British monopoly on the manufacture and sale of salt, and marched to the sea to make salt from seawater. According to the Salt Tax Act of 1882, no Indian was permitted to produce salt without British permission. The volunteers marched to the Dharasna Salt Works on May 21, and were met

and brutally beaten with batons and rifle butts by 400 police, resulting in the injury and hospitalization of more than 300 persons, and the deaths of two, but they held to the principle of nonviolence and did not fight back. This famous incident was a decisive moment in discrediting British rule in India in the eyes of the world (Brown, 1977; Beck, 1986). According to Brown’s (1977, pp. 113-14) account, the goal of the “Salt *Satyagraha*” [2] was to shame the British raj publicly:

More important from the satyagrahis’ point of view was the publicity value of the raids and the police methods their suppression elicited. The raids were not intended to get salt but to force the government into violent retaliation, even to the extent of firing on unarmed crowds, to show not just to local sightseers but to a world-wide public “the fangs and the claws of the Government in all its ugliness”.

The strategy of publicly shaming a government that perpetuates, or fails to discourage, injustice was practiced famously by the Reverend Martin Luther King, Jr, the Baptist minister and spiritual and symbolic leader of the American civil rights movement. In the spring of 1963, King was arrested for participating in a demonstration in Birmingham, Alabama. On April 16, he wrote, from his jail cell, a letter to fellow clergy members from Alabama, responding to their published statement that his activities were “unwise and untimely.” In his famous “Letter from Birmingham Jail,” King called for nonviolent civil disobedience *now* – that it cannot wait – because to wait and heed calls for greater patience is to accept and suffer injustice while clinging to the hope that history will right today’s wrongs:

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed . . . We must come to see, with one of our distinguished jurists, that “*justice too long delayed is justice denied*” (King, 1963, emphasis added).

In arguing in defense of when to practice civil disobedience, King distinguished between just and unjust laws, and he stated that just as one has a moral responsibility to obey just laws, one also is morally responsible to disobey unjust laws. He also articulated what are the accompanying duties of one engaged in such action, including reverence for just law:

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law (King, 1963).

In reflecting on when civil disobedience is justified, Rawls (1971, pp. 351-5) states that if a law is unjust, but “the basic structure of society is reasonably just,” then in most cases we should not engage in civil disobedience. However, he argues, civil disobedience may be required to transform or even overturn laws that exceed certain limits of injustice, and he admits that the norms he specifies are certainly arguable (Rawls, 1971, pp.351, 363). Consistent with the views of Gandhi and King, Rawls considers civil disobedience a mode of public address that is, by definition, nonviolent. If an act is violent, then it contradicts the duty of civility that underlies the concept of civil disobedience (Rawls, 1971, p. 366). It is also important to recognize that civil disobedience generally is not seen as a vague rejection of “the system,” but rather it is more focused. That is, it aims at a particular injustice, or type of injustice. In that sense, civil disobedience is generally distinguished from revolution. Rawls imposes a high threshold in arguing for when civil disobedience is justified because the practice is founded on the premise that a democratic regime should be preserved by fidelity to the rule of law. However, he also acknowledges the ambiguous status of civil disobedience. For Rawls (1971, p. 363): “the problem of civil disobedience is a crucial test for any theory of the moral basis of democracy”, a point that has been elaborated on by Habermas (1985, p. 103), who argues that “civil disobedience can only occur under conditions of a constitutional state that remains wholly intact”. Likewise, Dworkin (1985, p. 105) argues that those who practice civil disobedience appeal to, rather than oppose, constitutional legitimacy, and he notes that since the civil rights and antiwar movements of the 1960s, this form of dissent is generally accepted in the USA. The right to disobey also has been extended in limited ways to protect acts of “corporate disobedience,” as in the right to strike and the right to collective bargaining (Walzer, 1970).

The writings and actions of numerous authors illustrate certain common principles that constitute a fairly coherent doctrine that distinguishes civil disobedience from other sorts of political engagement. According to prevailing thought, an act of civil disobedience is committed under circumstances in which there is hope that relevant interlocutors will come together to reason publicly about what is just. The doctrine also generally specifies that persons who act as civil disobedients must be willing to present their bodies before the public. In his “Letter from Birmingham Jail,” King (1963) wrote about the presentation of protesters’ bodies “as a means of laying our case before the conscience of the local

and the national community”. In doing so, they agree to risk encountering imprisonment, physical harm, and even death. In the process, it is believed that the injustice to which they are opposed will weigh even more heavily upon those who bear responsibility for perpetuating it. Acting in secrecy instead of openly runs counter to the doctrine of nonviolent civil disobedience as a form of public address, and therefore of effective political communication (Sharp, 1973, pp. 609-11).

At the turn of the millennium, we have seen an increase in large-scale protest activity in the USA and many other countries, as illustrated in the worldwide campaign against neoliberal globalization policies and for global justice. While most of the people who participated in these demonstrations did so with the knowledge and grudging support of local authorities, some practised various forms of civil disobedience, and many were arrested. Still others stepped beyond the pale of law-breaking, that would be recognized as civil disobedience, sometimes destroying corporate and public property. Later in this essay, I explore the question of violence as a form of political communication. But before doing so, I turn my attention towards the emergence of claims made about new forms of civic engagement and civil disobedience.

Virtual nonviolence?

It has been argued that, in the age of the Internet, “nomadic power” can only be challenged effectively by nomadic forms of resistance (CAE, 1996). Not surprisingly, the Internet has become a focal point in the invention of such nomadic forms. As symbols and as material reality, computer networks are conduits of mobile capital, fluid expressions of identity and much more. No longer viewed as a passing fad, the Internet has become an indispensable tool for political activism, its uses including the dissemination of vital information about candidates and issues, fund-raising, the maintenance of networks and organizations of activists, and the mobilization and coordination of protest activity (Calabrese, 1999). Added to these uses is a set of activities that have become an intriguing subject for technologically-skilled activists. In January of 2001, an MIT graduate student made worldwide news by circulating on the Internet his correspondence with a customer service representative of the Nike corporation. The student, Jonah Peretti, played a poker-faced game with Nike by asking if they would kindly fulfill their offer that came with his new shoes and personalize them by stitching the word “sweatshop” next to the trademark Nike “swoosh.” In a series of e-mail

exchanges, the Nike representative tried to maintain the upper hand by justifying a refusal to fulfill the order, despite the company's offer to personalize this particular style of shoe. Not surprisingly, Peretti failed to get Nike to fulfill his request, but he probably brought far more negative publicity to the company than either he or Nike had imagined possible. After circulating the correspondence to ten people on January 17, 2001, Peretti became something of an international celebrity. According to his account in *The Nation*, the story hit the big time, with the correspondence between Peretti and Nike being posted on Web sites, and stories about it appeared in prominent Web sites and mainstream US newspapers and magazines, including the *Los Angeles Times*, *USA Today*, *Time*, the *Wall Street Journal*, and *Business Week*. The BBC also covered the story, and Peretti was flown to New York to appear on NBC's *Today Show* so that he could tell his David-versus-Goliath story to American viewers. There is no doubt that Peretti's story put smiles on the faces of many who share his view that the popularity and financial success of the Nike brand, with its image of "freedom, revolution and personal exuberance," rests on a foundation of labor practices that have not been legal in the USA since before the Great Depression. Regardless of whether the working conditions to which he alludes are better than what existed in many poor countries before the arrival of Nike and other global brands that subcontract there, using humor to bring these conditions to the attention of affluent consumers is no disservice. Although Nike suffered PR hassles for a brief period of time, what is remarkable is that a simple act of forwarding some e-mail could draw so much attention. In summing up the experience, Peretti correctly recognized that "in the long run this episode will have a larger impact on how people think about media than how they think about Nike and sweatshop labor." Peretti's "Nike Media Adventure" became noteworthy and widely publicized because of the novelty of it. However, who is to say that this type of activism, a high-tech expression of the politics of shame, has exhausted its potential? This sort of "culture jamming," as it is sometimes called, has been the basis of growing optimism about the potential of new media as tools of political empowerment (Peretti, 2001).

Peretti's adventure adds to a long list of stories that can be told about culture jamming, a set of practices that Klein (1999, p. 280) calls "semiotic Robin-Hoodism". It follows a tradition that includes Dadaism, street theater, and underground publishing. Among the most prominent of the culture jammers is Kalle Lasn, founder of Adbusters Media Foundation and

publisher of *Adbusters* magazine. *Adbusters* prints slick and provocative responses to the logo-saturated commercial media by creatively appropriating the familiar images of advertising and turning them against their sponsors. Among its more famous examples are its "Joe Chemo" spoof advertisements that depict the cool, cigarette-smoking cartoon character Joe Camel, now a chemo-therapy patient, bald and sunken-eyed, head drooping, and with an intravenous line to his arm. *Adbusters* (n.d.) takes the anthropomorphized Camel and makes him all the more human.

How do we make sense of the political significance of culture jamming? Borrowing from Umberto Eco, Dery (n.d.) describes culture jammers as "part artistic terrorists, part vernacular critics." In today's political culture, Dery's reference to terrorism is unfortunate, in that it offers some legitimacy to repressive attitudes toward peaceful dissent, but it is appropriate in that this sort of "semiological guerrilla warfare" is perceived as such by those who would put any sort of trespass, creative parody, and "subcultural bricolage" on a par with breaking into the Pentagon's computers (Dery, n.d.). Much of what is called culture jamming involves risking legal prosecution by playing with intellectual property, particularly corporate logos and ads. As an electronic form of graffiti, such defacement takes the advertiser's image of cool and one-ups it through public ridicule and criticism. Much of this activity reflects a playful sort of anti-rationalism in its treatment of widely recognized symbols of capitalism. Culture jammers mess with the images of powerful corporations, and corporations are wise in their own self-interest when they choose to keep a low profile in response. To respond with overwhelming force to criticism, as the McDonald's corporation did in its British lawsuit against two activists, may result in winning a legal battle but it can harm brand identity (Vidal, 1998). From a corporation's perspective, it seems ill-advised to go the litigious way of McDonald's corporation and end up under a harsh "McSpotlight" (McSpotlight, n.d.). Klein (1999, p. 288) notes that advertisers are generally not inclined to bring charges against "Adbusters" to trial, one big reason being that it would put them on the side of censorship in the eyes of the public. An ostensibly freedom-loving corporation like Nike would need to see the stakes as very high before it publicly engages with culture jammers.

By appropriating and manipulating corporate images, the *Adbusters* variety of culture jamming tests the limits of legality, although it does not seem to pose a threat to profits. But *Adbusters* does not define the limit of the practices. Moving along

a continuum from less to more invasive is when a culture jammer manages to hijack a corporate Web site and post messages or re-design pages to embarrass the company. This has also been done to government Web sites in the USA and other countries, and it is one expression of the culture jammer as so-called “hactivist.” Of course the risks are higher when an activist moves from creative spoof ads to trespassing and vandalism. Writing in 1998 in the radical environmental journal, *Earth First!*, Wray (1998), a New York University graduate student and self-proclaimed “hactivist,” described hacktivism as the electronic equivalent of civil disobedience:

We are witness to a convergence of the computerized activist and the politicized hacker. This coming together of forces will open up unforeseen doors and possibilities. As a way to envision what this hybridized activist-hacker might engage in, it is instructive to borrow the metaphor of civil disobedience with its tactics of trespass and blockade. When we apply this metaphor to cyberspace we imagine *electronic civil disobedience*.

This conception of hacktivism includes “virtual sit-ins,” involving people loading and re-loading their Internet browsers at a specific Web site, thus overloading the targeted server and disabling the site. As a technical advance beyond this practice, hacktivists now employ automated “ping engines,” computer programs that enable users to refresh a Web page automatically. Wray (1998) also highlights other hacktivist practices, including “offshore spam engines,” software that enables users “to automatically distribute massive quantities of e-mail to particular addresses,” which can overload a server or a targeted recipient’s e-mail account. Wray’s (1998) essay, “Virtual Luddites: monkeywrenching on the Web,” concludes by advocating that activists should “use computers to take political action that goes beyond political communication”.

Wray and his fellow practitioners of “electronic civil disobedience” who in the late 1990s referred to themselves as the “Electronic Disturbance Theater” (EDT), have been responsible for a number of actions intended to shut down government Web sites. Most notably, the EDT made the heady achievement of conducting a Web “sit-in” in support of the Mexican Zapatistas by using a ping engine it had developed, called “FloodNet.” This enabled a Web browser to re-load a targeted Web site automatically several times per minute, effectively denying access to Mexican President Zedillo’s Web site on April 10, 1998. Wray claims that the action was conducted by more than 8,000 participants. The EDT also attacked Pentagon Web sites, the stated reason being that the US Government has been a supporter of the Mexican Government, which is

oppressive in its treatment of Mexico’s indigenous populations. Other hacktivist actions have included attacks on Sri Lankan embassies and consulates in several countries, the US Department of Energy, the Frankfurt Stock Exchange, the City of London, and India’s Atomic Research Center (Harmon, 1998, p. A1). According to one report, the rate of hacktivist defacements of Web sites has grown dramatically in recent years, both because the practice brings publicity to the groups responsible, and because it is not difficult to do (Denning, 2003).

The hacktivist persona that Wray describes as a blend of “the computerized activist and the politicized hacker” is a curious one, in that few of the two groups whose identities are involved – progressive activists and computer hackers – endorse such an image or practice. For the legitimacy of the “hacker ethic” is threatened by the association made by law enforcement and the press between civil disobedients and the criminalized image of the “black hat” hacker. Not only is it the case that hacker culture tends to be libertarian, and therefore not inclined towards unified political action, but also there is nothing particularly skillful about the sort of methods that Wray describes, at least not sufficient to warrant the label “hacking.” Hacker culture affirms an intellectual project and a set of technical competencies that are far removed from the criminal association so familiar in the popular press construction of hacking. Instead, hacker traditions revolve around invention, innovation, and collaborative efforts at puzzle solving. For the most part, hacker culture tends to not have a high-profile and clearly articulated political agenda, at least when measured by the bold standards of radical protest[3]. That is not to say that hacker culture lacks political and economic influence. Hacking is best recognized in recent times by the so-called “open source movement,” which is largely aimed at finding alternatives to mega-corporate domination of the software industry. One of the open-source movement’s prominent spokespersons, Raymond (1999), describes hacker culture in its most positive light, emphasizing the anti-commercial ethos of “hackerdom,” its focus on peer-review, humility, professionalism, and a relatively non-hierarchical form of social organization for software development. By contrast, the “politicized hacker,” or “hactivist,” bears closer resemblance to what is generally considered a “cracker,” of whom Raymond (1999, p. 232) writes disparagingly: “Unfortunately, many journalists and writers have been fooled into using the word ‘hacker’ to describe crackers; this irritates real hackers no end. The basic difference is: hackers build things, crackers break them”. The

spreading of computer viruses, breaking into high security corporate and military servers, defacing government and corporate Web sites, causing financial losses to individuals, businesses, and governments through a variety of disabling and destructive tactics, and even threatening public safety and health, are more commonly what the police and the press instruct the public to associate with the term “hacker” (Burrough, 2000; Levy and Stone, 2000). The message that hackers are dedicated to a more innovative, collaborative, and responsive economic model of software development does not carry into the mainstream. The prevailing message to the public is that their property and their safety are threatened, and therefore that hacker culture must be destroyed, which is a felicitous message from the perspective of software giants. With this view constantly being reinforced by law enforcement and popular media, what is called “hacktivism” is susceptible to being categorized under the image of the hacker as criminal or terrorist[4].

One point that has been made about hacktivism that warrants attention is that it “goes beyond political communication” (Wray, 1998). This claim highlights the fact that some uses of computer networks can be more accurately described as “action” rather than “expression,” to use a dichotomy discussed above. Furthermore, some forms of action on computer networks – for example, the destruction of server files – would accurately be called acts of violence. Nevertheless, it is often quite easy to recognize the political significance of an act of violence. For example, suicide bombers typically are quite clear about communicating what they are opposed to and why they are committing such violent acts. We may not accept the political or moral justification for such an act, but that is a matter apart from whether we understand what the intended message was. To use a less dramatic example, during the late November-early December 1999 street protests of the ministerial meeting of the World Trade Organization (WTO) in Seattle, Washington, considerable damage was done to the property of certain targeted corporations. These acts of sabotage and vandalism were clearly meaningful to those who know about the Nike Corporation’s use of sweatshop labor, and about the Starbucks Corporation’s predatory business practices and reliance on coffee beans that are not produced according to “fair trade” labor standards. Regardless of whether one approves, anyone who follows protests against these companies had no difficulty understanding why the destruction took place, and therefore its symbolic significance was recognized by many who witnessed it live or on television.

Most familiar among the practices of hacktivists are denial of service attacks on corporate, government and military Web sites, sometimes referred to as “virtual sit-ins.” An overloaded Web site cannot be accessed by others, and in a sense this is what occurs when a group of protesters occupy a physical space (say, for instance, a sitting room outside a university president’s office) and refuse to move so that others may pass through. Student protesters who conduct such actions do so by presenting their bodies in physical space and allowing themselves to be identified, which of course makes it possible for police to come and arrest them, or for them to be identified for possible subsequent prosecution. By contrast, in cyberspace, a virtual protest aimed at crashing computer servers could in fact be the action of only one or a very small number of individuals. Granted, civil disobedience need not be done by many people at once in order to qualify as such, but the scale of “disobedience” that occurs when a vital Web site is disabled by a few clever hacktivists raises questions about the fidelity of translation from real space to cyberspace. And by remaining anonymous, the public dimension of their action is limited because, unlike civil disobedients, they did not stand with the courage of their convictions, and thus they may have done harm to the cause they claim to represent.

In defending the practices of “electronic civil disobedience” (ECD), a collective called the “Critical Art Ensemble” (CAE) claims that it is necessary for an avant-garde to exercise its superior political and technical knowledge and skills in cyberspace:

The only groups that will successfully confront power are those that locate the arena of contestation in cyberspace, and hence an *élite force* seems to be the best possibility. The increased success of local and regional resistant configurations, in part, depends upon the success of the *avant-garde* in the causal domain of the virtual (CAE, 1996, pp. 28-9).

The CAE (2001, p. 14) not only explicitly questions the broad egalitarian premises of the tradition of nonviolent civil disobedience in real space, but it also rejects another defining principle of that tradition, namely, public accountability, arguing that ECD:

... should be kept out of the public/popular sphere (as in the hacker tradition) and the eyes of the media ... Rather than attempting to create a mass movement of public objectors, CAE suggested a decentralized flow of particularized micro-organizations (cells) that would produce multiple currents and trajectories to slow the velocity of capitalist political economy.

Apart from this grandiose and self-important claim, the CAE (2001, pp. 26-7) also states that

“nearly all political as opposed to consciousness raising and pedagogical actions” share a common preference for covert action. Based on this self-image by a group that has articulated manifestos for the theory and practice of “electronic civil disobedience,” it is difficult to see much fidelity toward the tradition to which it claims a nominal heritage. Not only do its advocates reject the egalitarian and public nature of the tradition, but they also embrace violent alternatives:

For more radical cells ECD is only the first step. Electronic violence, such as data hostages and system crashes, are also an option. Are such strategies and tactics a misguided nihilism? CAE thinks not (CAE, 1996, p. 24).

In sum, the CAE distorts the idea of civil disobedience and misappropriates the label by rejecting the primary principles that define it. By eliding violent practices with the language of civil disobedience, the CAE offers greater justification for crackdowns against all uses of the Internet as a political tool for radical action, regardless of whether it is nonviolent.

As the Internet has become an increasingly vital tool of commerce, government and everyday life, we have seen a commensurate rise in security concerns over “hackers,” “anarchists” and “cyberterrorists” (Sinrod and Reilly, 2000; Stanton, 2002). According to researchers at the RAND National Defense Research Institute, a variety of groups, “be they criminals, terrorists, or peaceful social activists,” pose significant threats to state legitimacy and power. Included in their profile are ethnic, racial and tribal factions, transnational drug cartels, international terrorists, guerrilla fighters, and NGOs (Ronfeldt *et al.*, 1998, p. 18; see also Arquilla and Ronfeldt, 1993, 1997). And, these authors argue, governments must adapt to the network form in order to counter their increasingly effective network adversaries:

It takes networks to fight networks. Governments that would defend against *netwar* will, increasingly, have to adopt organizational designs and strategies like those of their adversaries (Ronfeldt *et al.*, 1998, pp. 17-18, emphasis in original)[5].

Furthermore, they argue that in order for “counternetwar” to be effective, governments “may require very effective interagency approaches, which by their nature involve networked structures” (Ronfeldt *et al.*, 1998, p. 18).

Ronfeldt *et al.* (1998, p. 18), in anticipating this move by governments, speculate that “By creating effective hybrids, governments may become better prepared to confront the new threats and challenges emerging in the information age, whether generated by terrorists, militias, criminals, or other actors”. In the wake of the attacks against

the USA on September 11, 2001, it has become clear that a hybrid of institutional hierarchy and the network form figures prominently in the government’s massive counter-terrorism initiative. But now, in addition to the ongoing worries of further terrorism, comes a new worry. Who are the “other actors” that must be combated, and at what cost? Will governments adapt to “the network form” not only in order to fulfill their legitimate missions of preserving peace, but also in order to monitor and disrupt legitimate speech and association? How far will governments go in embracing the network form, and at what point do such efforts subvert democratic expression?

Political violence and its rationales

The doctrine of nonviolent civil disobedience puts a tremendous burden on those who choose to abide by it. But what about conditions under which the system is so tyrannical and unjust that it would seem hopeless to try and reform it by an appeal to reason? Some of the leading intellectuals of the twentieth century, including Sartre and Arendt, have concluded that the use of violence is a rational choice under some circumstances (Sartre, Preface in Fanon, 1963a; Arendt, 1969; see also Wolff, 1969; Paust, 1983). Such are the circumstance when we are no longer talking about what Rawls calls a “nearly just” system. For Rawls, when a system cannot be called “nearly just,” that is, when the legal foundations of the system are not worthy of respect and obedience, violent opposition is a defensible course of action. Such conditions may also be seen as a justification for being secretive about one’s responsibility for breaking the law. In this case, Rawls (1971, p. 367, emphasis added) notes, “militant action is not within the bounds of fidelity to the law, but represents a more *profound opposition* to the legal order”.

In contrast to the Gandhian principle of nonviolence, other conceptions of justified disobedience do not reject the possible use of outright physical violence (Zinn, 1968, pp. 39-53; Bay, 1968, p. 474). Writing about French colonial rule in Algeria, Fanon (1963b, p. 61) argued that at a certain point it becomes convenient for oppressors to preach the doctrine of nonviolence “for the public good”: “Colonialism is not a thinking machine, nor a body endowed with reasoning facilities. It is violence in its natural state, and it will only yield when confronted with greater violence”. We will never know if Algerian liberation from French colonial domination would have been achieved, or if the French withdrawal would have taken longer, without violent

resistance. But there is no doubt that the French colonial domination of Algeria was widely considered a grossly unjust system of governance, not one that was “nearly just.” Lest Fanon’s views on justifiable violence be judged far too radical, any defender of American liberty should not forget the violent origins of the USA, and the justifications that were offered for it. We should also not forget that one of the key founding documents of the USA, the Declaration of Independence, argues that “the People” have the right and duty to abolish and replace a despotic government[6]. Thomas Jefferson, the man who penned that document, also is remembered for another statement he made in defense of political violence. In 1787, he famously reaffirmed his view in a private letter, written from Paris: “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure” (Jefferson, 1996)[7].

Certainly, nonviolence is always preferable to violence, but we may have greater difficulty in arguing that all forms of injustice and violent oppression can be dissolved nonviolently. Although some theorists of nonviolence argue that just ends can never be achieved by violent means, few would argue that violence was uncalled for in the belated efforts to bring about an end to the Nazi Holocaust. Noncooperation, obstruction, and circumvention by countless European Jews, and by many non-Jewish supporters, did not prevent or end the Holocaust. Since we cannot rewrite history, assertions by theorists that nonviolence could have worked, had it been given a chance, are nonsensical[8].

The choice between nonviolence and violence is made murkier by the historical co-presence in many instances of both types of direct action, leading us to question in retrospect whether nonviolence alone did in fact carry the day in cases in which an injustice was brought to an end. In 1930, the year of the Salt *Satyagraha* in India, the British Government was more concerned about violent attacks than about nonviolent demonstrations. According to historian Brown (1977), in Calcutta, “Terrorist ‘outrages’ jumped to thirty-six compared with four in 1929, causing nineteen deaths compared with one the previous year.” Among those killed were two high-ranking British officials (Brown, 1977, pp. 112, 38). In the USA in 1963 and 1964, there was growing unrest about the denial of civil rights to blacks, about grossly disproportionate rates of black unemployment and poverty, and about continued racist violence against nonviolent demonstrators. Despite the advances of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, many black activists found the pace of progress in official

efforts to undo deeply embedded racial inequality to be too slow, and the scope of change too limited. In 1967, black ghettos were sites of uprisings on an unprecedented scale (Zinn, 1995, p. 451). The Black Panther Party, which drew inspiration from Malcolm X and Frantz Fanon, alarmed many whites and middle-class blacks. This explains why black militant groups were primary targets of the FBI’s Counterintelligence Program (COINTELPRO), which went to great lengths to infiltrate, discredit and break up their activities (Zinn, 1995, p. 455; see also Jones and Jeffries, 1998; Singh, 1998; Churchill, 1998). In 1968, the National Advisory Commission on Civil Disorders, also known as the “Kerner Commission,” found that US society was moving further and further toward a separate, unequal, and racially divided society (Kerner Commission, 1968). After the assassination of Martin Luther King in 1968, the nonviolent Christian message of turning the other cheek had lost ground to the message of armed self-defense advanced by Malcolm X, whom Cornel West calls “the prophet of black rage” (West, 2001, p. 136). Speaking at an earlier time about nonviolence, Malcolm X (1992) said: “Black people shouldn’t be willing to bleed unless white people are willing to bleed. And black people shouldn’t be willing to be nonviolent unless white people are going to be nonviolent”. The historical context in which nonviolent civil disobedience occurred during the most active period of the civil rights movement in the USA was one in which the fear of violence by the caretakers of a structurally racist, white-dominated political and legal system cannot be discounted as a significant impetus for social reform (Churchill, 1998). Writing about fears in the 1960s of black militancy, Zinn (1968, p. 51) notes that it was only when black demonstrations began to become violent that civil rights legislation became a top priority, as the national government responded with alarm to the growing popularity of the idea of “Black Power”. Despite the fact that strict advocates of nonviolence do not welcome the threat or use of violent force, it is reasonable to assume that their message becomes more effective in a context in which the threat of violence looms as a clear alternative.

Complicating the picture is the question of whether we should distinguish between violence to persons, on the one hand, and aggression directed at property, on the other. The latter, as Zinn (1968, p. 121) notes, “might include depreciation (as in boycotts), damage, temporary occupation, and permanent appropriation”. Not surprisingly, some find it less problematic to justify property damage and destruction than harm to persons. In discussing the “trashing” of corporate property

that took place during the demonstrations that interrupted the meeting of the WTO in Seattle, Washington in 1999, Neumann (2000) defends some of these actions against a blanket rejection of all forms of political violence:

When speaking about “violence,” it’s important to distinguish the rock thrown through a window from the rock thrown at another human being. This is not a semantic distinction. All expression of anger is on a continuum, but historically property destruction doesn’t necessarily lead to violence toward other human beings.

The person-property distinction is well-developed among radical environmentalists. In the March-April 1998 issue of *Earth First!* journal, several contributors took part in a debate forum on “the cult of nonviolence” (*Earth First! The Radical Environmental Journal*, 1998). This forum was organized in response to an essay that was published in the journal in November-December 1997, in which some of the authors reject the view that nonviolence is the only acceptable code of activism:

What we [those who adhere to a strict code of nonviolence] have complicity created is a romantic backdrop for herd mentality. We build heroes, inflate martyrs and devalue the roles of other activists. People feel compelled to win approval by getting arrested, perhaps rejecting what they feel is right or effective (McFarlane and Echt, 1997, p. 17).

By contrast, there are a number of examples of arguably violent practices, including tree-spiking (which endangers the lives of loggers), and “monkeywrenching,” or rendering power equipment inoperable. In some cases, monkeywrenching can deprive an independent logging contractor of a livelihood in a rural area where there are no other jobs, an act one writer terms “a flagrant abuse of class privilege” (Arcky, 1998; see also Sarvis, 1998; Foreman 1993). In contrast, one defender of monkeywrenching concludes: “How can a creed fashioned with the ostensible aim of preserving the Earth even acknowledge the idea of ‘property?’” (Spike and Friends, 1998). Not surprisingly, such challenges to the sanctity of corporate property have been applied not only to environmental issues, but also to issues of civil rights, workers’ rights, and human rights in general. In either cyberspace or the real world, destruction of corporate or government property, including capital equipment, may be based on very rational grounds, reflecting opposition to the destruction of a way of life in all of its complexity, as in the case of the early nineteenth century Luddite movement (Bailey, 1998). Regardless of one’s views of these practices, in most cases, they cannot be simply dismissed as random, wanton or meaningless, but instead they

are often clearly motivated and highly symbolic acts of political communication.

Conclusion

Nonviolent civil disobedience has been criticized for being a predictable, domesticated, and sometimes disempowering form of civic action that imposes little pressure on corporate leaders and government officials to rectify injustices for which they are responsible. That is one reason why efforts to translate the spirit of nonviolent civil disobedience to cyberspace should be taken seriously. These new practices reflect innovation and adaptation beyond a fixed and normalized repertoire. The politics of shame, which are central to the practice of civil disobedience, constitute an appeal to public reason about what is morally just, and it should come as no surprise that such activities have migrated to the Internet, a medium that has fast become an indispensable and influential political tool in many levels and contexts. However, much of what is described under the label of “electronic civil disobedience” is not faithful to the tradition of Thoreau, Gandhi and King. Much is conducted anonymously, and yet public accountability is a defining characteristic of civil disobedience. For example, if the identities of those responsible for a computer attack are concealed, this may cloud the public perception of the purpose of the action, thereby impeding informed deliberation. This also lends greater legitimacy to police, media and public condemnations of it as an act of cowardice, and the subsequent treatment of suspects as common criminals, not civil disobedients. The concept of civil disobedience has historically specific connotations that should be sustained, if for no other reason than that the concept’s meaning has relevance to a system of political thought which, for better and for worse, has evolved to protect the rights of individuals and groups to nonviolently break the law as a way of publicly expressing opposition to injustice. To the extent that political activism in cyberspace can meet those standards, then it deserves to be called civil disobedience. Otherwise, its advocates undermine the meaning of this tradition. Not only is nonviolence intrinsically virtuous, it also lends moral authority to the effectiveness of civil disobedience as a form of strategic action.

In the post-9/11 context of heightened surveillance and apprehension of terrorism suspects by the governments of the USA and its allies in the “war on terrorism,” many examples have arisen of intensified scrutiny, infiltration and

repression of peaceful opponents of US foreign policy. This is manifested, for example, in unfair associations made between nonviolent civil disobedience and “terrorism” by critics and opponents of the global justice movement (Chang, 2002; Cole and Dempsey, 2002)[9]. The discourse on terrorism has become even more vital to civil society since that day, particularly as it relates to the freedom to dissent and the right not to be enjoined from practicing a form of political communication known as nonviolent civil disobedience. There historically have been and continue to be many cases to illustrate how martial law and police power have been used to counter legitimate and nonviolent resistance by inciting violence and creating polarizations within movements, and there is no reason to assume that cyber-activism is immune to such practices[10]. However, whether in cyberspace or the real world, disruptive but nonviolent strategies of dissent that are practised in order to insert marginalized voices into institutional politics ought to be understood and accommodated as much as possible by any government that professes democratic ideals.

Notes

- 1 Amendment IV of the US Constitution reads: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized” (Thomas Legislative Information on the Internet, n.d.).
- 2 The Sanskrit term “*satyagraha*” was used by Gandhi used to refer to the particular conception of nonviolent action he advocated, which aimed not only toward civil disobedience, but also toward the spiritual enlightenment of both oppressor and oppressed. It means pursuit of truth, but it also translates as “truth-force” or “the force that is generated through adherence to truth” (Shepard, 1990; see also Gandhi, 1999).
- 3 The term “hacker ethic” is said to have been first coined by Levy (1984). See particularly chapter two, in which Levy describes the hacker ethic in terms of the aesthetic elegance of writing parsimonious computer code, a libertarian mistrust of authority and egalitarian sentiment, and an optimistic appraisal towards the social benefits of computers. See also Himanen’s (2001) *The Hacker Ethic*, in which the author characterizes the “hacker ethic” as central to the cultural ethos of the information age.
- 4 For a good explanation of the shift towards the criminalization of the hacker image, see Ross (1991). Sterling’s (1993) *The Hacker Crackdown* is the best chronicle of the seeds of a criminal element in hacker culture, and of the eventual law enforcement crackdown. See also US Federal Bureau of Investigation director Freeh (2000).
- 5 The term “netwar” is defined by the RAND researchers as follows: “information-related conflict at a grand level between nations or societies . . . A netwar may focus on public or elite opinion, or both. It may involve public diplomacy measures, propaganda and psychological campaigns, political and cultural subversion, deception or interference with local media, infiltration of computer networks and databases, and efforts to promote dissident or opposition movements across computer networks” (Arquilla and Ronfeldt, 1993, p. 144).
- 6 In part, the Declaration of Independence reads: “But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security” (Second Continental Congress, 1776).
- 7 For a vigorous challenge to and exploration of the implications of Jefferson’s view, see O’Brien (1996a, b).
- 8 For arguments that nonviolence would have been an effective weapon in cases when it was not chosen, including against the Holocaust, see Lakey (2001) and McReynolds (n.d.).
- 9 To illustrate how peaceful activism and terrorism have been conflated by law enforcement officials, in December 2003, the American Civil Liberties Union (ACLU) released an October 2003 *FBI Intelligence Bulletin* to alarm law enforcement officials about “relevant terrorism information developed from counterterrorism investigations and analysis.” Actions that the FBI suggests are “extremist” include wearing gas masks for protection against the tear gas and pepper spray that is often used to disperse crowds, carrying shields and wearing body protection, and videotaping incidents of police brutality. The memorandum also states, “Post-demonstration activities can include fundraising in support of the legal defense of accused protestors and demonstrations of solidarity calling for the release of the accused” (FBI, 2003).
- 10 A recent example of federally funded efforts in the USA to repress civil disobedience is the case of police violence, infiltration, provocation and false arrest of protesters at the November 2003 Free Trade Area of the Americas (FTAA) Summit in Miami, Florida. President Bush added to an \$87 billion Congressional bill to fund post-war reconstruction in Iraq an \$8.5 million grant to the city of Miami, which is competing with other cities to become the location of FTAA headquarters, for law enforcement during the Summit. By many credible accounts, the level of police response in Miami was far out of proportion with the scale of protest activity. Not only were several hundred demonstrators gassed, beaten, shot indiscriminately with rubber bullets, and arrested, but so were many independent reporters who were documenting the scenes. Multiple incidents were reported of the police confiscation, destruction and failure to return video cameras and other equipment used by reporters. The Miami police gave privileged access and protection to “embedded” journalists who traveled with officers in armored vehicles and helicopters. The overwhelming force used against nonviolent protesters, involving cooperation from over 40 local, state and federal law enforcement agencies, was praised by Miami Mayor Manny Diaz as “a model for homeland defense.” The “Miami Model” of how to handle demonstrators was observed during the FTAA Summit by officials visiting from other US cities where future major political conventions and economic summits are scheduled to take place (Klein, 2003; Hanks, 2003; Ridriguez-Taseff, 2003; Goldberg, 2003).

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