

DISOBEDIENCE OR RESISTANCE

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The theory and practice of nonviolent direct action, disrupting the system enough to risk arrest, to challenge war and warmaking, are a living, evolving issue. Some frequent arrest-riskers have experienced a growing frustration with the inaccuracy of the still widely used wording "civil disobedience".

"Disobedience" means breaking a specific law which is or embodies the problem, such as African Americans breaking racist Jim Crow municipal ordinances by sitting in at lunch counters legally prohibited from serving them, or Indians processing their own salt from sea water or spinning thread and weaving khadi cloth instead of buying them as legally required from the occupying British. While challenging oppressive laws when possible is perfectly valid, the complex web of laws and policies governments use to prepare and perpetrate war do not lend themselves to direct breaking.

Peace and anti-war activists contend that what governments and corporations do to prepare and perpetrate war is illegal, and they consider their own actions of civil *resistance* to the governments or corporations as obeying higher laws, be they international treaties and human rights agreements, or national constitutions, or religious tenets, or all of those. Civil resistance actionists uphold the Nuremberg principals that citizens have responsibilities to resist illegal government crimes of aggression, act out of the necessity to technically break a minor trespass or municipal order rule to prevent a much more serious tragedy or crime, or obey such religious admonitions as "Love one another" and "Thou shalt not kill."

The issue is more important than just a semantic quibble for several reasons. Prosecutors have argued in court that, if the protesters were doing civil *disobedience*, then they already admitted they broke the law, when *civilresisters* contend they are responsibly pointing out and objecting to law-breaking by their government. Classic civil *disobedience* includes accepting draconian jail sentences and filling the jails.

Resistance includes legally challenging the government's behavior, and urging juries and judges to uphold the citizen right and responsibility to protest government wrongdoing by acquitting accused resisters. Juries are much more likely to be convinced by these arguments, since judges are usually beholden to the government officials who appointed them, so actions serious enough to get jury trials are necessary for activists working to establish legal precedent that resistance actions are legal.

Law professor John Alan Cohan, in his unfortunately-named but still useful 2007 law review article "Civil Disobedience and the Necessity Defense", details a series of legal

cases, many of which resulted in acquittal for the activists who argued necessity or Nuremberg defenses. During the 1980's, Latin America, South Africa and Central Intelligence Agency wrongdoing generated cases of blockading weapons plants and military bases and Congressional office sit-ins, many of which saw juries acquit the activists based on their necessity and Nuremberg arguments.

A more recent 2008 Maine case involving the occupation of Senator Susan Collins's local office to protest the Iraq and Afghanistan wars saw 6 of the 13 protesters go to trial and discuss their "state of mind" opposing war and trying to save lives when they acted, as their attorneys argued they had the right to do. The jury acquitted all of them, and noted in discussion afterward they had learned a lot about the wars and appreciated the activists challenging the state.

Even when acquittal does not happen, sentencing can show sympathy, as in a 2007 case where activists protesting the Iraq war occupied Colorado Representative Salazar's office after long trying to get a meeting with him. After the activists readily admitted on the witness stand they stayed past the closing time of the office, but argued they were trying to save lives, the jury convicted the protesters of trespass, but the judge suspended \$50 fines and court costs.

More serious actions involving destruction of weapons, called Plowshares (or Ploughshares in Europe) from the Biblical injunction to beat swords into plowshares, seldom see acquittal and can result in years of jail time and thousands of dollars of restitution. But even Plowshares actions have recently resulted in activists victories, at least outside the U.S.

After doing 2 million pounds damage to a US warplane refueling at Shannon, Ireland, Airport in 2003, 5 activists were acquitted by the jury at trial in 2006 after arguing that Ireland is a neutral country and U.S. troops and military cargo bound for Iraq should not be hosted there and paid for with Irish funds.

Three New Zealand (Aotearoa) activists were acquitted in March, 2010, after an April, 2008, action destroying the vinyl dome cover of a radio transmitter dish at the Waihopai Echelon spy base where messages are intercepted and transmitted to the U.S. National Security Agency to facilitate U.S. military activity in Iraq. The activists argued they had a "claim of right", like the U.S. necessity, to expose the spying and challenge Aotearoa's connection to the Iraq war.

In June 2010 five British activists were acquitted of doing 180,000 pounds of damage in January, 2009, during the Operation Cast Lead Israeli attack on Gaza, to a EDO MBM weapons factory in Brighton, England, manufacturing items to be sold to the Israeli military and used in the Palestinian occupied territories. The activists argued that the corporation was misusing export licenses to ship arms illegally, and they used a "lawful

excuse" defense of their actions, comparable to the U.S. necessity defense.

While occasional courtroom exoneration for activists the government wants to punish is satisfying, and "getting off" can encourage others to also act, the war machine mostly rolls on, perhaps slowed slightly by the activist grit in the cogs, but not much. An exciting recent development though, shows exactly what activists are working for. The actions damaging US warplanes at Shannon Airport to dramatize that neutral Ireland should not be hosting soldiers and facilitating transport of war materiel, and acquittal of the activists, seem to have helped the brand-new Irish government decide to uphold the 1907 Hague Convention which allows neutral countries to prevent the use of their territory for warmaking, as Switzerland has for years.

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