



Auckland Unitarian Church  
*Love beyond belief*

## Uncivil Civil Disobedience

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Like the vast majority of Kiwis I have been unimpressed by the behaviour of the anti-maskers, anti-vaccinators, anti-mandators, Trump wannabes, neo-Nazis, Jacinda haters, and miscellaneous malcontents creating chaos in Wellington for nearly two weeks. Protesting is a justifiable activity in a democracy. Sometimes that protesting leads to civil disobedience, which is an essential force for bending the arc of justice. The question I have been mulling over is: can what is happening in Wellington be considered civil disobedience or uncivil disruption of the peace?

I have to be careful about throwing too many stones. Five years ago this past week, Auckland Unitarians committed civil disobedience when we offered sanctuary to Indian students the government wanted to deport. Sanctuary was once common law. It prevented authorities from arresting anyone who claimed sanctuary in a church. Its intended purpose was to give time to negotiate a just resolution to the conflict. Sanctuary is no longer provided for in the law, so we acted in an illegal manner by protecting the students. The only reason police did not enter the premises as the law allowed to arrest the students is that it would have looked bad on TV.

The other reason I need to be careful in my stone tossing is that a short address by Unitarian transcendentalist, Henry David Thoreau, popularised the idea of civil disobedience, although it took seventy years before doing so. Embracing civil disobedience, ever since, has been a defining quality of our movement.

The address was the result of Thoreau walking into Concord from his cabin on Walden Pond to go to the cobbler. Seen by the local constable, he was stopped and arrested for failing to pay his poll tax for the previous three years. Not wanting to arrest Thoreau, the constable offered to lend him the money to pay it. Thoreau refused as he did not want to support a government that endorsed slavery and had dreams of fulfilling its manifest destiny by annexing Texas through war with Mexico. He only spent one night in jail as someone anonymously paid his tax for him. He was never sure but it is thought it was

his aunt Maria who was scandalised by having her nephew in jail. Thoreau demanded he not be released as he had not paid the tax. The constable disagreed and kicked him out when he refused to leave. Thoreau continued not paying the tax.

I should note that the tax supported civic functions and did not fund state or federal expenditures such as the Mexican–American War. For Thoreau, that was inconsequential. It was a symbolic political act of civil disobedience against governmental injustice and a call for action.

Thoreau's act of civil disobedience and his subsequent address on the subject has spawned a library of books, countless academic articles, university courses, and plays, while inspiring the Suffragettes, environmentalists, the LGBTQ community, indigenous peoples reclaiming their rights and land, French peasants, unionists, and, more specifically, Mahatma Ghandi's salt march that freed India from British rule, and Claudette Colvin.

At the age of 15, schoolgirl Claudette Colvin became the first African American to refuse to give up her seat to a white woman on a bus in Montgomery, Alabama.

Colvin stated she felt the hands of abolitionists Harriet Tubman and Sojourner Truth holding her down. She was dragged from the bus and subjected to sexist and racist behaviour before being arrested and held in an adult jail.

Following the arrest of Rosa Parks nine months later for the same action, the Women's Political Council (WPC), a group of black women working for civil rights, circulated 50,000 flyers calling for a boycott of the Montgomery bus system. As news spread of the boycott, African American leaders across Montgomery, including Dr Martin Luther King Jr, began to lend their support. And the American Civil Rights movement was born.

It is important to this discussion to understand the context motivating Thoreau not to pay his taxes. The two major issues being debated in the US during Thoreau's life were slavery and the Mexican–American War. By the late 1840s, slavery had driven a wedge in American society, with a growing number of Northerners expressing anti-slavery sentiments. In the 1850s, the country became even more polarised, with the introduction of slavery-friendly laws such as the Fugitive Slave Law.

In addition to this domestic conflict, the Mexican–American War (1846–1848) proved a point of much contention: precipitated by boundary disputes between the US and Mexico, the war was ultimately fought in order to expand American territory and, as a result, the US gained much of the present American Southwest, including California, Nevada and Utah. It also added Texas as another slave state to the Union. Thoreau and other opponents of the war argued that the campaign constituted an unnecessary act of aggression and that it was pursued on the basis of arrogance rather than any philosophically justifiable reasons.

At the time the vast majority of Americans expressed their support of slavery and the war by electing James Polk president. Polk was a proponent of both.

In justifying his civil disobedience to slavery and the war, Thoreau asserts “that government is best which governs least” or “governs not at all”. He argues that government should function as the will of the people dictates rather than in the interest of a powerful few. He calls not for an end to all government, but for a better government, and insists that changes toward that end be implemented immediately.

Thoreau then invites Americans to consider what kind of government would command respect and to insist on obtaining that ideal. He questions why people have consciences if they do not act on them but instead relegate moral authority to their legislators, as the government requires. People should not be subjects. They should object to such immoral government policies. If the government or companies are run by people of conscience, he continues, then they will become conscientious, responsible institutions.

Thoreau cautions against obeying the law for its own sake. People should not follow leaders blindly, but should instead question authority. It is more important to cultivate a respect for what is right than for the law. If the law or government action is unjust, citizens have a moral responsibility to oppose it.

Thoreau then questions the notion of majority rule, arguing that it does not ensure that the government will do what is “right,” but rather that it will do what is popular. In Thoreau’s view, people must be willing to do what is unpopular, to cast independent votes, and to act against injustice.

Thoreau ends the essay optimistically, saying that if individuals respect one another and are regarded by the State as her source of power rather than her slaves, true democracy will occur.

Whereas Thoreau understood the “civil” in civil disobedience to characterise the political relations between civilian subjects and their civil government, today most scholars and activists understand the “civil” to relate to *civility* — a kind of self-restraint necessary for concord under conditions of pluralism. The central features of Thoreau’s approach to civil disobedience as interpreted today are:

First, for an act to be civilly disobedient, it must involve some breach of law.

An act of lawbreaking must be deliberate, principled, and conscientious, if it is to be civil and, hence, distinguishable from ordinary criminal offences. Civil disobedience cannot be unintentional: it must be undertaken deliberately. Principled disobedience can be distinguished from ordinary criminal offending by examining the motives that underlie the disobedient act. The person must intend to protest laws, policies, institutions, or practices that they believe are unjust on the basis of their sincerely held moral or political commitments.

The deliberate and principled features of civil disobedience are often brought together under the umbrella of conscientiousness and equated with seriousness, sincerity, depth of conviction, and selflessness — again, in order to contrast civil disobedience with criminal lawbreaking.

What makes an act of disobedience *civil*? Scholars commonly consider all or some of these five features to define civil disobedience.

### *Communication*

Typically, a person who commits an offence has no wish to communicate with their government or society. In contrast, civil disobedience is understood as a communicative act — a kind of symbolic speech, which aims to convey a message to a certain audience, such as the government and public. Civil disobedients are thought to contribute arguments to the public sphere. Typically, their message is a call for reform or redress; and their audience is the majority.

### *Publicity*

On many accounts, civil disobedience must be not only communicative, but also public in a specific way. *Publicity* may designate different features: the openness of the act, non-anonymity of the agent, advance warning of planned action, responsibility-taking for the action, or an appeal based in publicly shared principles of justice.

### *Non-violence*

Like publicity, non-violence is supposed to be essential to the communicativeness of a civilly disobedient act, non-violence being part of its legibility as a mode of address. John Rawls put it this way, "To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act."

### *Non-evasion*

Civil disobedients are standardly expected to take responsibility for, and accept the legal consequences of, their lawbreaking. Their evading punishment would make their acts ordinary crimes or acts of rebellion; their willingness to invite punishment is supposed to demonstrate their endorsement of the legal system's legitimacy and their intense concern over the issue at hand.

### *Decorum*

In some views, being civil means that civil disobedients behave in a dignified and respectful manner by following the conventional social scripts that spell out displays of dignity and ways of showing respect in their society. Some theorists understand civility itself as respect for minimal civil norms. Decorum may be understood to prohibit conduct that would be seen as offensive, insulting, or obscene.

### *Fidelity to law*

What makes an act of civil disobedience special? On some accounts, an act that satisfies the criteria of civility, especially non-evasion, signals disobedients' respect for and fidelity to the legal system in which they carry out their protest, in contrast with ordinary offenders and revolutionary agents.

Thoreau opened a can of worms with his address. To this day there is considerable debate about these specific requirements for an act of disobedience to be civil, but they do provide a starting point for our musings

about what is happening in Wellington. The answer as to whether or not it constitutes civil disobedience is not as clear-cut as we might have thought.

**Meditation / Conversation Starter:**

Is what's happening in Wellington civil or uncivil disobedience.