

## The Constitutionality of Civil Disobedience in The World

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Civil disobedience has been in existence since the beginning of human civilization. In the governance of people, not all subjects rejoice under the rule of law and therefore protest. Civil disobedience can be defined as *the refusal to obey governmental demands or commands especially as a nonviolent and usually collective means of forcing concessions from the government*. In the history of many nations, for example, Gandhi led the resistance against British rule while Martin Luther King fought for civil rights in America. Acts of civil disobedience have actually established the foundations of governments and autonomy of nations.

Moreover, in more recent years, acts of civil disobedience are also done against the tyranny of one's government. Modern day actions have been made to check upon uncontrolled power and institutional corruption. Edward Snowden, a whistleblower, leaked top-secret information about NSA information-gathering programs to tell the public how the agency and the government exceeded its mandate and abused its power.

With respect to the legal contexts of their protests, the leaders of their movements were certainly acting against the law. Ultimately, however, why are these leaders considered heroes and why have their acts of civil disobedience created impact in today's society? Actions that even authorities today embrace and celebrate the civil disobedient acts. If not for justice, then are seemingly legitimate reasons such as transparency, security, stability, privacy, integrity, and autonomy justifiable? According to history, it can be seen that formerly rebellious acts can become nationalistically proud movements. Let us explore instances of the constitutionality of civil disobedience in the world. We delve into examples of initially disobedient actions that eventually served to transform systems of government or bring down corrupt institutional policies and laws that are unconstitutional.

Mohandas Karamchand Gandhi or better known as Mahatmai Gandhi can easily be considered the best-known figure for civil disobedience. His attempt to practice nonviolence, modesty, and self-sufficiency enabled him to employ civil disobedience in the nationwide movement for Britain to withdraw from India and achieve independence. In 1920, when Gandhi took leadership of the Indian National Congress (INC), one of India's two major political parties, he began steady escalations of demands for the independence of India. To briefly elaborate on the political control administered by the United Kingdom, we refer to Britain's rule between 1858 until India's independence in 1947 called the British Raj. The Raj brought down The Mughal dynasty, which had ruled India for 300 years and its emperor, was exiled. Control of India was put under direct administration in London via the Indian Councils Act 1861. This meant that Indian subjects were

put under British modes of thought and ultimately British imposed laws. If the Government of India needed to enact new laws, the Legislative Council (with half of its members consisting of British officials and the other half comprising Indians and domiciled Britons who served only in advisory functions) the final consent from the Secretary of State in London would still be required. Under such governance, any civil or constitutional rights for the Indian population would be severely withheld. Even when the Indian Statutory Commission had been dispatched to India in 1928 to study constitutional reform, its members did not include one single Indian person. Gandhi's perseverance and civil disobedience continued. The Salt March, also mainly known as the Salt Satyagraha on 12 March 1930 was an important factor in the Indian independence movement. It was a direct action campaign of tax resistance and nonviolent protest against the British salt monopoly in colonial India, and triggered the wider Civil Disobedience Movement. He marched 388 kilometers from Ahmedabad to Dandi, Gujarat to make salt himself. Thousands of Indians joined him on this march to the sea. This was the most significant organized challenge to British authority and Britain responded by imprisoning over 60,000 people including Gandhi himself.

In another movement, The Quit India Act or the August Movement movement was launched in August 1942 in response to Gandhi's call for Satyagraha- "insistence on truth" (satya 'truth'; agraha 'insistence') or "truth force". The All-India Congress Committee proclaimed a mass protest demanding what Gandhi called "an orderly British withdrawal" from India. Gandhi and Congress had withdrawn their support of the Raj when the Viceroy declared war on Germany in September 1939 without consulting India. Tensions escalated until Gandhi demanded immediate independence in 1942 and the British responded by imprisoning him and tens of thousands of Congress leaders for the duration. Almost the entire INC leadership, and not just at the national level, was imprisoned without trial within hours after Gandhi's speech. Finally, Britain gave in and after the end of World War II, the India Independence Act was declared on 15 August 1947. The Constitution of India came into effect on 16 January 1950 and has since been declared as Republic Day. It is evident that the once illegal civil disobedient movement culminated into the independence that Indians had lost to Europeans since the 18<sup>th</sup> century. Today, there are 3 national holidays that commemorate those events: Independence Day, Republic Day, and Mahatma Gandhi's birthday on 2 October.

Another stout practitioner of civil disobedience was Martin Luther King, a pastor and leader in the African American Civil Rights movement. King was deeply inspired by Gandhi's teachings and travelled to India to see for himself that the most effective weapon available to the people fighting for justice and human dignity was non-violent resistance. To briefly mention the legal background in the US at that time, laws that promoted civil rights for all citizens existed and include the Fifteenth Amendment of the US Constitution which prohibits federal and state governments from denying a citizen the right to vote based on that citizen's "race, color, or previous condition of servitude". However, there were racial segregation laws under the Jim Crow laws that were enacted between

1876 and 1965 that restricted the civil rights and civil liberties of African Americans.

There were many occasions in which King used civil disobedient acts to change the ongoing unfair treatment. An incident in 1955, which a 15 year-old girl refused to give up her bus seat to a white man in compliance with Jim Crow laws in Montgomery, Alabama, brought King's attention as he was on the committee from the African American community that looked into the case. Similarly later that year, in another incident, Rosa Parks, an African American woman was arrested for not giving up her seat. As a result, The Montgomery Bus Boycott was a campaign led by King to protest the policy of racial segregation on the local public transit system. The campaign lasted over a year and King was arrested. Consequently, a United States District Court ruling in the Browder vs Gayle case led to a Supreme Court decision to declare the Alabama and Montgomery laws to be unconstitutional. King's role in the incident transformed him into a national figure.

Another important event that further escalated his movement for civil rights was the March on Washington for Jobs and Freedom in 1963. The march, organized by a group of civil rights, labor, and religious organizations, brought hundreds of thousands of people to protest and call for civil and economic rights for African Americans. At the Lincoln Memorial, King delivered his I Have a Dream speech. It is strongly believed that the march was a turning factor in President John F. Kennedy to push for this bill (before his assassination on 22 November 1963) and the endorsement of the Civil Rights Act 1964 by President Lyndon B. Johnson. The legislation outlawed major forms of discrimination against racial, ethnic, national and religious minorities, and women. Congress asserted its authority to legislate under several different parts of the United States Constitution, mainly its power to regulate interstate commerce under Article One (section 8), its duty to guarantee all citizens equal protection of the laws under the Fourteenth Amendment and its duty to protect voting rights under the Fifteenth Amendment.

Not only have civil disobedient acts pushed for independence and civil rights but also to fight against corruption and abuse of power. In a modern-day act of disobedience, Edward Snowden, a former Central Intelligence Agency (CIA) employee and former National Security Agency (NSA) contractor revealed top-secret NSA documents to several media outlets. In his act of whistleblowing, Snowden's declared motive was to inform the public about NSA's global surveillance programs and tapping of telephone conversations. His actions brought to light issues related to mass government surveillance, secrecy, and the balance between national security and information privacy. Whether Snowden's civil disobedience has labeled him to be a patriot or a traitor can be debated. Nevertheless, a federal judge ruled that the government had "almost certainly" violated the US Constitution. On 16 December 2013, Justice Richard J. Leon ruled that bulk collection of American telephone metadata most likely violated the Fourth Amendment of the US Constitution (part of the Bill of Rights that prohibits unreasonable searches and seizures and requires any warrant to be judicially sanctioned and supported by probable cause). As another federal judge

ruled that the programs were legal, this indicated that the Supreme Court would most likely decide the constitutionality of this matter. On 28 December 2013, Justice William Pauley dismissed a lawsuit filed by the American Civil Liberties Union alleging that the NSA's phone records program was unconstitutional. The purpose of the program was within bounds of section 215 of the Patriot Act ((Access to records and other items under the Foreign Intelligence Surveillance Act) to allow the Director of the FBI (or an official designated by the Director, so long as that official's rank is no lower than Assistant Special Agent in Charge) to apply for an order to produce materials that assist in an investigation undertaken to protect against international terrorism or clandestine intelligence activities. The act specifically gives an example to clarify what it means by "tangible things": it includes "books, records, papers, documents, and other items".) Furthermore, it has caused an uncomfortable situation between US President Barack Obama and German Chancellor Angela Merkel following Snowden's revelation that Europeans were also targets of the surveillance program including Merkel's mobile phone.

The constitutionality of civil disobedient acts in the world can serve as precious case studies for the ongoing protests in Thailand. If not real world examples, respected philosophers such as John Rawls provide justification for civil disobedience as a public, non-violent and conscientious breach of law undertaken with the aim of bringing about a change in laws or government policies. However, his theory depends on the context of a nearly just society leaving uncertainty about the justification in a less just society.

Similarly, political scientist and scholar John Harvey Wheeler states that civil disobedience is as old as our species, as old as war and peace. Constitutionalism combines two elements: the rule of law and democracy. The two often appear to be incompatible; constitutionalism unifies them. Popular demand sometimes conflicts with the rule of law.

Charles H. McIlwain, the great authority on constitutionalism, gave a formula for the synthesis of the two in the form of a political equation:

*Constitutionalism is "the institutionalization of civil disobedience". Civil Disobedience is constitutional populism; the rule of law is constitutional order. The English and the Americans balanced this constitutional equation in characteristically different ways but for both, Civil Disobedience is central to constitutionalism. Civil Disobedience means that the people can nullify tyrannical governmental actions. Constitutionalism requires that the capability for doing so must be protected.*

In addition, American author and philosopher Henry David Thoreau argues that individuals should not permit governments to overrule or atrophy (waste away a part of their organ) their consciences, and that they have a duty to avoid allowing such acquiescence (knowingly stand by without raising any objection to the infringement of their rights) to enable the government to make them the agents of injustice.

Lastly, Thailand's Constitution of the Kingdom of Thailand 2007 permits peaceful protests as stated in Chapter III Rights and Liberties of the Thai People, Part 11 Liberties in connection with Assembly and Association, Section 63:

A person shall enjoy the liberty to assemble peacefully and without arms. The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the case of public assembling and for securing public convenience in the use of public places or for maintaining public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.