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I. INTRODUCTION

ALTHOUGH civil disobedience has only recently received widespread public attention in the civil rights movement, it is not a new experience in the history of America. From an early date the revenue laws gave rise to violent resistance, first by the colonists against tax laws passed by the English Parliament,[1] and then by citizens of the United States against tax laws passed by both state and federal governments.[2] Also, racial and religious convictions early produced resistance to laws which conflicted with those beliefs.[3] Later, the conflict between labor and capital gave rise to numerous civil disorders.[4]

It is readily apparent that the dominant theme running through the early civil disorders was violent resistance to law. This was evidenced in most instances by the use of federal troops to put down the resistance and enforce the laws.[5] Such conduct can be classified as civil disobedience in the sense that it violates a system of ordered laws, but it is also conduct that can find no constitutional protection or judicial sanction regardless of the ends it seeks or the unjustness of the laws it resists. The judiciary has made this clear through a long line of cases condemning violence.[6]

1. This resistance continued through the Stamp Act of 1765, and ended with the infamous tax imposed on colonial tea which gave rise to the "Boston Tea Party."

2. Examples include Shay's Rebellion which resisted customs laws imposed by Massachusetts, MINOT, HISTORY OF THE INSURRECTION IN MASSACHUSETTS (1810); the Whiskey Insurrection which resisted a federal tax on the process of distilling whiskey, BALDWIN, WHISKEY REBELS (1939); Fries Rebellion which resisted real property and slave taxes, DAVIS, THE FRIES REBELLION (1899); and the South Carolina nullification ordinance attempting to void a federal tariff law, OGG, THE REIGN OF ANDREW JACKSON (1919).

For comprehensive studies on other examples of mass resistance to law see RICH, THE PRESIDENTS AND CIVIL DISORDERS (1941); Office of the Judge Advocate General, *Federal Aid in Domestic Disturbances*, S. DOC. NO. 263, 67th Cong., 2d Sess. (1921-22).

3. SHEPHERD, HISTORY OF THE OBERLIN-WELLINGTON RESCUE (1859); Office of Judge Advocate General, *Federal Aid in Domestic Disturbances*, S. DOC. NO. 263, 67th Cong., 2d Sess. (1921-22).

4. See, *e.g.*, ADAMIC, DYNAMITE — THE STORY OF CLASS VIOLENCE IN AMERICA (1931); MCCABE, THE HISTORY OF THE GREAT RIOTS (1877); YELLEN, AMERICAN LABOR STRUGGLES (1936).

5. See note 2 *supra*.

6. See note 60 *infra*.

Although civil disobedience is not new on the American scene, the form of civil disobedience occurring in the civil rights movement is a relatively new approach. It is a non-violent defiance of some law or policy by persons who are attempting to challenge the validity of that law or policy, or are attempting to protest a wrong. There is no attempt to conceal the violation; rather, the disobedient individual is even willing and sometimes eager to submit to arrest and punishment. Specifically, two methods are employed: sit-ins and public demonstrations. While the sit-ins are generally conducted on private property, public demonstrations in the form of marches, meetings, and picketing are generally conducted on or near public property. In the sense that this conduct violates law, it can also be characterized as civil disobedience. However, it has been argued that such conduct is not disobedience to law at all, but is an outgrowth of a system of federalism wherein a national policy of equality for all people is asserted against a contrary state law;[7] or that it is in accord with a legal system affording individuals the opportunity to challenge laws;[8] or that it is merely incident to the exercise of some constitutional right.

However these two methods are characterized, two questions must be asked. Under what conditions and authority are their participants protected from punishment under the laws they violate; and, to what extent are these methods sanctioned, if at all, by the judiciary? This Note is primarily devoted to a search for answers to these questions through an examination of the decisions of the United States Supreme Court,[9] and the Civil Rights Act of 1964.[10]

II. SIT-INS

A. Pre-Civil Rights Act

The particular cases reviewing convictions of sit-in demonstrators decided prior to the Civil Rights Act of 1964 began in 1960 with *Boynton v. Virginia*,[11] continued through the 1963 Sit-In

7. Black, *The Problem of the Compatibility of Civil Disobedience with American Institutions of Government*, 43 TEXAS L. REV. 493, 500 (1965); see generally Keeton, *The Morality of Civil Disobedience*, 43 TEXAS L. REV. 507 (1965)

8. Tweed, Segal & Packer, *Civil Rights and Disobedience to Law: A Lawyers View*, 36 N.Y.S.B.J. 290, 291 (1964).

9. The decisions under review involve convictions under state laws of participants in sit-ins and public demonstrations.

10. 78 Stat. 241, 42 U.S.C.A. §§ 1971, 1975 a-d, 2000 a-a(6), 2000 b-b(3), 2000 c-c(9), 2000 d-d(4), 2000 e-e(15), 2000 f, 2000 g-g(3), 2000 h-h(6) (1964)

11. 364 U.S. 454 (1960)

Cases,[12] culminated in the 1964 sit-in cases.[13] In each case the Supreme Court consistently ruled in favor of the demonstrators. Factually, all of the cases involved persons who sought service in private eating establishments which served the general public, but followed a policy of refusing service to individuals solely because of color. Upon the individuals' refusal to leave the premises at the request of the owners or managers, they were arrested and convicted under state trespass laws.

Thus, in the principal case in the 1963 sit-in cases of *Peterson v. City of Greenville*,[14] the Court reversed the convictions of ten Negro boys and girls finding a denial by the state of equal protection of its laws. The Court found "state action" in the use of the state's trespass law to enforce the discrimination required by a Greenville city ordinance commanding segregation in restaurants, which ordinance, in effect, removed the decision to segregate from the realm of private choice.[15] Using the *Peterson* case as authority, the Supreme Court took two additional steps in finding significant state involvement in a restaurant owner's choice to follow a policy of segregation. In *Lombard v. Louisiana*,[16] although no ordinance commanding segregation was involved, statements of a city official that sit-ins would not be permitted were held to have the same effect as an ordinance prohibiting such conduct.[17] Later, in the 1964 Sit-In Cases, in *Robinson v. Florida*,[18] although no ordinance commanding segregation or official pronouncement forbidding sit-ins was present, the trespass convictions were nevertheless reversed because of the presence of a Florida state agency policy of separate toilet facilities in restaurants and a similar Florida Board of Health regulation. The Court reasoned that "while these Florida regulations do not directly and expressly forbid restaurants to serve both white and colored people together, they certainly embody a state policy putting burdens upon

12. Peterson v. City of Greenville, 373 U.S. 244 (1963); Lombard v. Louisiana, 373 U.S. 267 (1963); Avent v. North Carolina, 373 U.S. 375 (1963) (per curiam); Gober v. City of Birmingham, 373 U.S. 374 (1963) (per curiam). Shuttlesworth v. City of Birmingham, 373 U.S. 262 (1963), was also decided on the same day. Mr. Justice Harlan's concurring opinion in *Peterson* and dissenting opinions in the other cases appear at 373 U.S. 248.

13. Robinson v. Florida, 378 U.S. 153 (1964); Griffin v. Maryland, 378 U.S. 130 (1964); Bouie v. City of Columbia, 378 U.S. 347 (1964); Barr v. City of Columbia, 378 U.S. 146 (1964); Bell v. Maryland, 378 U.S. 226 (1964).

14. 373 U.S. 244 (1963).

15. *Id.* at 248.

16. 373 U.S. 267 (1963).

17. *Id.* at 273.

18. 378 U.S. 153 (1964).

any restaurant which serves both races, burdens bound to discourage the serving of the two races together."[19] It is clear from these cases that if punishment of sit-in demonstrators can be initiated by private discrimination and constitutionally enforced through state trespass laws, it is permissible only where the state has not coerced or unduly influenced the private choice through laws and policies commanding or advocating segregation in any manner.[20]

In another of the 1964 Sit-In Cases, the Court upset the trespass convictions of sit-in demonstrators where there was no evidence that the state coerced or unduly influenced private choice. In *Bell v Maryland*,[21] the convictions were reversed and remanded to the Maryland Court of Appeals to consider whether they should not be vacated in light of a recently enacted state public accommodations law prohibiting restaurants from denying service because of race.[22] Although presented in prior cases, the Court again avoided the question of whether the fourteenth amendment in itself prohibits a state from supporting a private choice to segregate through the enforcement of its trespass laws. Four dissenting Justices felt that the merits of the case should have been reached,[23] and they, along with two members of the majority,[24] expressed themselves on the question. Including the three Justices who did not comment,[25] a three-way split resulted with three Justices viewing the fourteenth amend-

19. Robinson v. Florida, 378 U.S. 153, 156 (1964)

20. Cases involving state action similar to that found in *Peterson*, *Lombard*, or *Robinson* would today be decided on the authority of § 202 of the Civil Rights Act of 1964 which provides that "all persons shall be free, at any establishment or place, from discrimination or segregation [which] is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a state or any agency or political subdivision thereof." 78 Stat. 244, 42 U.S.C.A. § 2000 a(b) (1964)

21. 378 U.S. 226 (1964) The Court reversed trespass convictions in Griffin v. Maryland, 378 U.S. 130 (1964), and Bouie v. City of Columbia, 378 U.S. 347 (1964), finding respectively, a state denial of equal protection and a violation of due process. Also, in Barr v. City of Columbia, 378 U.S. 146 (1964), trespass convictions were reversed per curiam for reasons given in *Bouie*.

22. Bell v. Maryland, 378 U.S. 226, 241 (1964) Mr. Justice Brennan writing for the majority went to considerable lengths to show that Maryland might very well reverse the convictions by applying "the universal common-law rule that when the legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct." *Id.* at 230.

23. See the concurring opinion of Justices Douglas and Goldberg, Bell v. Maryland, 378 U.S. 226, 242 (1964), and the dissenting opinion of Justice Black in Bell v. Maryland, *supra*, at 318, in which Justices Harlan and White joined.

24. The Chief Justice and Justice Goldberg, while not wishing to reach the merits of the case, did join to discuss the constitutional issue in Justice Goldberg s concurring opinion in Bell v. Maryland, *supra*, at 286.

25. Justices Brennan, Stewart, and Clark joined in the majority opinion not reaching the merits and did not offer or join in an opinion on the constitutional issue.

ment as forbidding such an application of a state's trespass laws,[26] and three taking a contrary position.[27]

B. *After the Civil Rights Act*

A great deal of the effect of the fourteenth amendment question was rendered moot by the Civil Rights Act of 1964. In *Hamn v City of Rock Hill*,[28] the Supreme Court, in a five to four decision, reversed convictions under state trespass statutes against Negro demonstrators for participating in sit-in demonstrations in the luncheon facilities of retail stores. The Court again found it unnecessary to pass on the fourteenth amendment question and held that the intervention of the Civil Rights Act abated the convictions. After finding that the luncheon facilities involved were "public accommodations" within the meaning of the act,[29] and citing section 201(a)[30] giving the right to equal enjoyment of those facilities, the Court held that the language of section 203(c), providing that "no person shall . punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202,"[31] on its face prohibited prosecution of persons seeking service in a covered establishment.[32] The convictions and the act's prohibition of the application of state laws to deprive a person of rights granted by it were in direct conflict and therefore held invalid under the supremacy clause. Further, upon finding that the act prohibited state or federal trespass convictions occurring *after* its enactment, the only remaining question was the effect of the act on trespass conviction judgments rendered *before* its passage, but not finalized because of appeals. This question was answered by finding first that the act would abate all federal prosecutions under federal law. The Court then reasoned that "it follows that the same rule must prevail under the Supremacy Clause which requires that a contrary

26. The Chief Justice and Justices Douglas and Goldberg. See the concurring opinions of Justice Douglas, Bell v. Maryland, *supra* note 25, at 242 and Justice Goldberg, Bell v. Maryland, *supra* note 25, at 286.

27. Justices Black, Harlan, and White. See Justice Black s dissenting opinion, Bell v. Maryland, 378 U.S. 226, 318 (1964).

28. 379 U.S. 306 (1964).

29. Civil Rights Act of 1964, § 201 (b), 78 Stat. 243, 42 U.S.C.A. § 2000 a-2(c). For a further discussion of the public accommodations section of the 1964 Act see Note, *Public Accommodations: A Justification of Title II of the Civil Rights Act of 1964*, 16 W RES. L. REV. 660 (1965).

30. 78 Stat. 243, 42 U.S.C.A. § 2000 a-2(c) (1964); Hamn v. City of Rock Hill, 379 U.S. 306, 311 (1964).

31. Section 203 (c), 78 Stat. 244, 42 U.S.C.A. § 2000 a-2(c) (1964)

32. Hamn v. City of Rock Hill, 379 U.S. 306, 311 (1964)

practice or state statute must give way."[33] Each of the four separate dissenting opinions had one objection in common with the majority holding: none could find a "scintilla of evidence" in the act or its legislative history to support the conclusion that Congress meant to abate outstanding judgments of state courts.[34]

In defense of its convictions, the state argued that victims of discrimination must use the act's exclusive remedies to challenge segregation and not resort to such "extralegal" means as sit-in demonstrations. The majority, however, refused to accept this argument; rather, they interpreted the act as a defense not limited solely to individuals who pursue its statutory remedies.[35] They reasoned that

> although the law generally condemns self-help, the language of § 203(c) supports a conclusion that non-forcible attempts to gain admittance to or remain in establishments covered by the Act, are immunized from prosecution for the statute speaks of exercising or attempting to exercise a "right or privilege" secured by its earlier provisions.[36]

Justices White and Black strongly dissented from this position. Justice White answered that if Congress intended to ratify "massive disobedience to the law," it would have done so in "unmistakable language," and certainly he could find none in the act.[37] In any event, he concluded that the courts should not give "wholesale sanction" to non-violent disobedience to laws with which people disagree.[38] Justice Black also could not understand how the majority interpreted the act as authorizing persons who are unlawfully refused service a "right" to take the law into their own hands.[39] On

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33. *Id.* at 315. Mr. Justice Harlan dissented finding: the doctrine of criminal abatement could not be applied to existing legislation of *another* jurisdiction; no evidence in the act of Congress s intention to displace past as well as prospective application of state laws; no evidence demonstrating how giving effect to past state trespass convictions would result in placing a burden on present interstate commerce. *Id.* at 322-26. However, in a concurring opinion Justices Douglas and Goldberg could find no validity in Justice Harlan s last objection stating that, "it is not difficult to see how Congress could conclude that all state interference with the exercise of this right [fourteenth amendment's right to be free from discriminatory treatment] should come to a halt on the passage of the Act " *Id.* at 317

34. Justices Harlan, White, Black, and Stewart dissented.

35. Hamn v. City of Rock Hill, 379 U.S. 306, 311 (1964).

36. *Ibid.* The Court also noted that "the legislative history specifically notes that the Act would be a defense to criminal trespass, breach of the peace, and similar prosecutions," citing Senator Humphrey s speech. *Id.* at 311.

37 *Id.* at 328 (dissenting opinion).

38. *Ibid.*

39. *Id.* at 318 (dissenting opinion)

the contrary, he felt that the chief purpose of the act was to bring disputes out of the streets and into the courts.[40]

C. *After Hamn*

Two separate and distinct questions remain after the *Hamn* case. First, granting that the Civil Rights Act protects sit-in demonstrators from state prosecution under its trespass laws, the question then arises as to what extent does it render moot the question of whether, absent any state coercion or undue influence, the fourteenth amendment in itself insulates demonstrators by prohibiting the state from enforcing private choice by criminal conviction? Second, to what extent has the Supreme Court by its language in *Hamn* sanctioned sit-in demonstrations under the act?

(1) Fourteenth Amendment Question.—Before the fourteenth amendment question can be avoided, the discriminating private establishment must be found to be a "public accommodation" within the meaning of section 201(b) of the act.[41] Section 201(b) makes it clear that only certain establishments specifically listed[42] are within the act, and then only if their operations "affect commerce," or if their policy of discrimination or segregation is supported by "state action" as those terms are defined by the act.[43] Basically, section 201(b) includes sleeping,[44] eating,[45] and entertainment accommodations,[46] in addition to gas stations[47] and those establishments in close proximity to the expressly covered establishments.[48] Thus, if an establishment is not one of those listed, or, if listed, neither affects commerce nor derives support for its policy of discrimination or segregation from state action, the Court must again face the constitutional question.

40. *Id.* at 318-19.

41. 78 Stat. 243, 42 U.S.C.A. § 2000 a(h) (1964). Title II affords injunctive relief against discrimination in places of public accommodation.

42. See § 201(h), 78 Stat. 243, 42 U.S.C.A. § 2000 a(h) (1964). The section provides that, *"each of the following establishments* which serves the public is a place of public accommodation within the meaning of this title if its operations *affect commerce,* or if discrimination or segregation by it is supported by *State action."* (Emphasis added.)

43. Sections 201(c)-(d), 78 Stat. 243, 42 U.S.C.A. §§ 2000 a(c)-(d) (1964). "Affect commerce" is broadly defined by § 201(c), and "state action" is broadly defined by § 201(d).

44. Section 201(b)(1), 78 Stat. 243, 42 U.S.C.A. § 2000 a(b)(1) (1964)

45. Section 201(b)(2), 78 Stat. 243, 42 U.S.C.A. § 2000 a(b)(2) (1964)

46. Section 201(b)(3), 78 Stat. 243, 42 U.S.C.A. § 2000 a(b)(3) (1964)

47. Section 201(b)(2), 78 Stat. 243, 42 U.S.C.A. § 2000 a(b)(2) (1964)

48. Section 201(b)(4), 78 Stat. 243, 42 U.S.C.A. § 2000 a(b)(4) (1964).

In the case of a listed establishment which is found not to affect commerce, the Court may be forced to answer the fourteenth amendment question, albeit through an interpretation of section 201(d) [49] Specifically, section 201(d)(3) provides that "segregation is supported by State action within the meaning of this title [Title II] if such segregation is required by action of the State. "[50] Thus, if a majority adopts the position of three Justices as expressed in *Bell v Maryland*[51] that state court enforcement of its trespass laws in support of private discrimination amounts to state action, the establishment will be within the act. However, it should be noted that three Justices took a contrary view in *Bell.*[52] In any event, because of the broad sweep of section 201(d) defining state action and because of the past reluctance by the Court to directly meet the constitutional question, the probable case for the Court to directly decide this question is one involving an establishment not listed in the act. Admittedly, the act's coverage is broad, but the question is not entirely moot.

(2) Sit-in Demonstration Sanction.—Notwithstanding the dissenting opinions of Justices White and Black in *Hamn v City of Rock Hill*,[53] the Court has sanctioned non-forcible sit-in demonstrations conducted for the purpose of exercising or attempting to exercise a right or privilege secured by the public accommodations section of the act. However, two limitations are apparent in this statement. First, although the Court cited legislative history in *Hamn* indicating that the act was intended to be a defense to "criminal trespass, breach of the peace and similar prosecutions,"[54] it is improbable that a conviction of sit-in demonstrators under an ordinance respecting a breach of the peace would be reversed in a case where the evidence indicated violence or an immediate threat of violence on the part of demonstrators or onlookers. From the language of the *Hamn* decision, it appears that conduct which goes beyond "non-forcible attempts" will not be tolerated regardless of the type of law under which it is punished. Second, in basing its reasoning in *Hamn* on the language of section 203(c) of the act, the Court has limited

49. Section 201(d), 78 Stat. 243, 42 U.S.C.A. § 2000 a(d) (1964)

50. 78 Stat. 243, 42 U.S.C.A. § 2000 a(d)(3) (1964)

51. 378 U.S. 226 (1964) (concurring opinions of Justices Douglas and Goldberg) See notes 24, 26 and accompanying text, *supra.*

52. See dissenting opinion of Justice Black, *Id.* at 318. See note 27 and accompanying text, *supra.*

53. 379 U.S. 306, 318, 327 (1964)

54. *Id.* at 311.

its sanction to cases involving establishments covered by the public accommodations title since the language of section 203(c) goes only to a "right or privilege secured by section 201 or 202 [of Title II]."[55] Thus, the trespass convictions of demonstrators conducting sit-ins in establishments not covered by the act will be reviewed on the authority of those applicable cases decided prior to the passage of the act wherein no clear sanction exists.[56] Although the convictions were reversed in each of the above cases dealing with sit-in demonstrations, and to that extent the Court tacitly sanctioned the conduct of the demonstrators, it is still unclear whether trespass convictions will be reversed in future cases not involving state involvement in the private choice to discriminate.

III. Public Demonstrations

As noted previously, the second method employed by the civil rights movement is the public demonstration in the form of marches, meetings, or picketing on or near public property. Like the sit-in demonstration, this method often results in the violation of state laws, such as breach of the peace ordinances, street and sidewalk obstruction statutes, or statutes prohibiting courthouse picketing. In addition to reversing the convictions of demonstrators under these laws, the Supreme Court has set out the bounds wherein the demonstrator may violate the laws and escape punishment.

A. Breach of the Peace

A number of the cases involving breach of the peace convictions are brought to the Court with typical fact situations. Large numbers of demonstrators (ranging from 100 to 2000 people) conduct marches on, and meetings at, seats of government or courthouses for the purpose of protesting some form of discrimination or drawing public attention to their objectives, or both. During the march or at its destination, the demonstrators stage songs, speeches, and prayers. There is usually no violence or threat of violence from either the demonstrators or the groups of onlookers that gather. After refusing requests by city officials to disperse, one or more of the demonstrators may be arrested, tried, and convicted under a breach of the peace ordinance.

Where these facts exist the Supreme Court has uniformly re-

55. Section 203(c), 78 Stat. 244, 42 U.S.C.A. § 2000 a-2(c).

56. See notes 11-20 and accompanying text, *supra*.

versed the convictions. In *Edwards v South Carolina*,[57] for example, the Court established that the fourteenth amendment does not permit a state to make criminal the peaceful expression of unpopular views, and the mere fact that a possibility of violence from onlookers exists is not enough to warrant punishment. Second, the Court has usually found the statute upon which the convictions were based to be unconstitutionally vague on its face or in its interpretation. This result is reached because the broad scope of these laws would allow persons to be punished for peacefully exercising their first amendment freedoms of speech and assembly.[58]

However, in each case the Court first looked to the record to determine if actual violence or an immediate threat of violence was present.[59] If such conduct is present, it is clear that a breach of the peace conviction would be sustained on a long line of authority holding that the first amendment freedoms are not absolutely immune from state action reasonably designed to protect society.[60] In the same vein, since picketing and congregating, although used to communicate ideas, are not pure speech and therefore not in themselves protected by the first amendment, they may be regulated by narrow, well-defined laws which are applied non-discriminatorily.[61] The Court will not interfere with convictions based on conduct which goes beyond the bounds of orderly, peaceful expression, or conduct which transgresses valid breach of the peace laws.

B. Obstructing Public Passages

Public demonstrations often have the effect of partially or completely obstructing public passage in streets and on sidewalks. The power of the state to regulate these public passages for the conven-

57 372 U.S. 229, 337 (1963) Convictions were also reversed on the same ground in Cox v. Louisiana, 379 U.S. 536 (1965); Henry v. City of Rock Hill, 376 U.S. 776 (1964), Wright v. Georgia, 373 U.S. 284 (1963)

58. Edwards v. South Carolina, 372 U.S. 229, 338 (1963), see also other cases cited in note 57 *supra*. The typical interpretation of "breach of the peace" as used in the statutes was given by the Louisiana Supreme Court which stated it meant, "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." Cox v. Louisiana, *supra* note 57, at 551.

59. Justice Clark dissented in Edwards v. South Carolina, 372 U.S. 229 (1963), finding an "imminence of danger at every stage of [the] proceeding." *Id.* at 244.

60. *E.g.*, Feiner v. New York, 340 U.S. 315 (1951); Cantwell v. Connecticut, 310 U.S. 296 (1940); Schneider v. State, 308 U.S. 147 (1939)

61. Cox v. Louisiana, 379 U.S. 536, 555 (1965); see also Justice Black's concurring opinion where he states that in his judgment a law prohibiting *all* crowds to congregate or picket in streets, or a law narrowly drawn to prohibit such conduct under clearly defined conditions is constitutional. *Id.* at 577

ience and safety of the people cannot seriously be questioned.[62] But, what of the civil rights demonstrator who violates a state law designed to regulate these passages and is convicted thereunder? Under what circumstances, if any, will that conviction be overturned and the law allowed to be violated?

The recent case of *Cox v. Louisiana*,[63] provides some answers to these questions. There, petitioner was convicted under a state statute prohibiting obstruction of public passages for his participation, along with 2000 students, in a demonstration near a local courthouse.[64] The Supreme Court reversed the conviction as a denial of equal protection of the law because the "completely uncontrolled discretion" of the local officials in applying and enforcing the statute permitted discrimination against the petitioner.[65] The basis for the reversal is not surprising since it is clear that a law vesting "unbridled discretion" in local officials to determine who shall disseminate ideas is unconstitutional; the situation in *Cox* amounted to the same thing.[66]

In reversing, however, the Court emphatically rejected the argument that the first and fourteenth amendments afford the same freedom to those who communicate ideas by conduct such as marching and picketing in streets, as the amendments afford to those who communicate ideas by pure speech. Thus, the Court again recognized that not "everyone with opinions or beliefs to express may address a group at any public place and at any time,"[67] and that a properly drawn statute giving limited discretion as to time, place, duration, or manner of use of streets and sidewalks for public assembly is constitutional provided it is exercised with uniformity.[68] In a dissenting opinion Justice Black went further in expressing the belief that a statute forbidding *all* access to streets and other public facilities for parades and meetings would be constitutional if uniformly

62. See *e.g.*, Poulos v. New Hampshire, 345 U.S. 395 (1953); Cox v. New Hampshire, 312 U.S. 569 (1941); Lovell v. Griffin, 303 U.S. 444 (1938).

63. 379 U.S. 536, 553 (1965).

64. The Louisiana statute provided that, "no person shall willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway providing however, nothing herein shall apply to a bona fide legitimate labor organization " *Id.* at 553.

65. *Id.* at 558. Justices White and Harlan dissented in the reversal of the conviction for obstruction of public passages finding no evidence of discriminatory enforcement of the statute by the local authorities. *Id.* at 591.

66. *E.g.*, Schneider v. State, 308 U.S. 147, 164 (1939)

67. Cox v. Louisiana, 379 U.S. 536, 554 (1965).

68. *Id.* at 558.

applied. The majority, after formulating this question, refused to pass on it.[69]

At the present it is questionable whether demonstrators would be protected in resisting a law which prohibits *all* access to public facilities. However, they clearly would not be protected in disregarding a uniformly applied law designed to promote the public convenience by regulating the time, place, duration, and manner of public demonstrations.

C. *Picketing Near a Courthouse*

The petitioner in *Cox v. Louisiana*,[70] was also convicted of violating a state statute prohibiting all picketing "in or near" a courthouse.[71] The record showed that petitioner and the other demonstrators were ordered by city officials to hold the meeting (which was conducted for the purpose of protesting an earlier arrest of other demonstrators and the evils of discrimination) a distance of 101 feet from the courthouse. Although in a separate opinion the Court found the statute to be valid on its face, it reversed the conviction because the statute as applied constituted a violation of due process. Because the highest official of the city gave petitioner express permission to hold the meeting 101 feet from the courthouse, he, in effect, told petitioner that the meeting would not be "near" the courthouse within the terms of the statute; thus, a later conviction under the statute was a violation of due process since it constituted a form of entrapment.[72]

The conviction was reversed on the peculiar facts of the case, but the opinion made it clear that resistance to uniformly applied laws prohibiting demonstrations near courthouses would not be tolerated. In meeting the argument that the statute was unconstitutional on its face the Court noted that it was modeled after an identical statute pertaining to the federal courthouses.[73] On the basis of the federal statute and past decisions there is no doubt that a precise and narrowly drawn statute prohibiting all picketing in or near a

69. *Id.* at 557 (concurring in part and dissenting in part) The majority cited cases in a footnote that would cast doubt on the validity of such a law. *Id.* at 555 n.13.

70. 379 U.S. 559 (1965)

71. The Louisiana statute provides: "whoever, with the intent of interfering with the administration of justice, or influencing any judge pickets or parades *in or near* a building housing a court" shall be in violation of the statute. *Id.* at 560. (Emphasis added.)

72. Justices Black and Clark separately dissented finding it impossible to justify reversing on such "subtle" ground. *Id.* at 575, 585.

73. 18 U.S.C. § 1507 (1958).

courthouse is a proper exercise of the state's police power to protect its judicial system from the pressure which such picketing might create, and that persons who violate such a statute will not be allowed to escape punishment.[74]

D. *A Final Note*

Although the Supreme Court reversed the convictions of public demonstrators in the above cases, it has clearly indicated the situations wherein it will allow such convictions to stand. In the last paragraphs of the *Cox* opinion, as if to be a warning to future civil rights demonstrators, the Court stated:

> Nothing we have said here [courthouse picketing conviction] or in [regards to the breach of peace and public obstruction convictions] is to be interpreted as *sanctioning riotous conduct in any form or demonstrations, however peaceful their conduct or commendable their motives*, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in *private and public property*, or protect the administration of justice and other essential governmental functions.[75]

Further, "there is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations."[76]

74. Section 301 (a) of the Civil Rights Act of 1964 authorizes the Attorney General to institute action against a state for denying an individual equal utilization of any "public facility" because of color. Basically, before the Attorney General can institute such action he must find that the claimed denial of equal use of the facility is meritorious, and that the individual is unable to initiate and maintain the action himself in that he is financially unable, or that by doing so would jeopardize him personally. Although the act itself does not define what is included within the term "public facility," the legislative history indicates that it is intended to cover three types of facilities: (1) public parks, playgrounds, and like facilities, (2) those used in the administration of justice, and (3) those suitable for use by demonstrators to petition and protest wrongs such as streets and sidewalks. H.R. REP. NO. 914, pt. 2, 88th Cong., 1st Sess. 233, 270, 271 (1963).

It is doubtful that the public facilities section of the act will have the same effect with respect to convictions of public demonstrators as the public accommodations section had on convictions of sit-in demonstrators since the former section has no provision similar to § 203(c) prohibiting attempted punishment of individuals exercising or attempting to exercise rights secured by the act. This is further borne out by the fact that the Supreme Court did not mention the act in the cases of *Cox v. Louisiana*, 379 U.S. 536, 379 U.S. 559 (1965), whereas in *Hamn v. City of Rockhill*, 379 U.S. 306 (1964), the Court dealt with the effect of the act in depth. More importantly, however, the public facilities section evidences the policy of the entire act of testing laws in the courts rather than in the streets. This is demonstrated by that section s provisions aiding an individual who is faced with a discriminatory law and unable to challenge it in the courts. Now, he need not violate the law to challenge its validity.

75. Cox v. Louisiana, 379 U.S. 559, 574 (1965). (Emphasis added.)

76. *Ibid.*

IV CONCLUSION

Historically, civil disobedience has been the object of judicial disfavor. But the civil disobedience associated with the civil rights movement does find some protection and judicial sanction. Specifically, on the authority of the Civil Rights Act of 1964, the Supreme Court has given an express, qualified sanction to sit-in demonstrations. Also, on the authority of the Constitution, the Court has tacitly sanctioned certain public demonstrations by reversing the convictions of participants. In this respect the form of civil disobedience witnessed today may be compatible with our legal system, although that system normally does not condone self help.

There are, however, limitations, the most important of which is that such conduct, whether it be a sit-in or a public demonstration, must be kept within the bounds of order; no matter what the method, violence is always condemned. And within the bounds of order, such conduct is limited by the state's power to regulate its thoroughfares and protect its judicial process. Although the Supreme Court expressly sanctioned one method of civil disobedience in *Hamn v City of Rock Hill*,[77] that case, as well as other cases such as *Cox v Louisiana*,[78] demonstrate the limits of that sanction. However, it is hoped that the limited context in which this sanction was given is recognized and not taken as a license for wholesale civil disobedience.

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77 379 U.S. 306 (1964)
78. 379 U.S. 536, 379 U.S. 559 (1965)