David Lewis **Schaefer**, Illiberal Justice: John Rawls vs. the American Political Tradition, **2007**.

The very notion of civil disobedience, as such scholars as Herbert Storing and Steven Schlesinger have argued, is a theoretically confused half-way house between outright revolution and lawful democratic change.15 Its chief tactical successes—notably, those of Gandhi's followers in India and civil rights demonstrators in America during the 1950s and early1960s—occurred in dealing with regimes so structured that the moral scruples of the people as a whole generally constrained the government's response and ultimately dictated its surrender to the demonstrators' just demands.16 But those scruples need to be seen as themselves the fruit of long traditions of constitutional governance and popular law-abidingness, which even peaceful resistance to law can have the effect of eroding. In both cases the protesters were driven to nonlegal methods because they were excluded from the full rights of citizenship (in the American South, by racial discrimination, including the denial of constitutionally authorized voting rights, and in India, by the refusal of the British to grant independence) that are the ordinary mode of democratic political change. (Indeed, since the goal of the Indian movement was to overthrow British rule entirely, it was a tactical variant of the Lockean right of resistance.) By contrast, civil disobedience, understood as a generalized right to disobey whatever laws one finds "sufficiently" unjust, threatens to erode the moral capital built up over centuries that not only causes people normally to be law-abiding but also underlies the tolerance and respect for other people's rights that a liberal society presupposes.17 Greater historical and philosophic reflection might have caused Rawls to consider why none of the great liberal thinkers or statesmen ever enunciated such a doctrine.18

Not only does Rawls underestimate the difficulty of resolving disagreements among alternative views of just policy (such that nobody will ever be fully satisfied with all of his government's policies), it apparently never occurs to him that someone might challenge the laws on the basis of a fundamentally mistaken, not to say pernicious, view of justice. Why assume as Rawls apparently does that whenever a minority undertakes to challenge a majority decision, the minority's judgment must be at least partly right? 19

15 Storing, "The Case against Civil Disobedience," in Toward a More Perfect Union, 236-58; Steven K. Schlesinger, "Civil Disobedience"

16 Analogously, the "Velvet Revolution" that overthrew the Czechoslovak Communist dictatorship succeeded (in contrast to the failure of the "Prague Spring" two decades earlier) only because the Soviet occupying regime had already been persuaded, thanks to its inability to compete militarily and economically with the United States, to end its military support for Central European satellite regimes. The wide-spread, peaceful demonstrations against the unpopular Iranian theocracy in 2003 failed to engender any significant change in that regime. But in both the Czech and Iranian cases, as in the Indian one (and in subsequent peaceful uprisings against despotisms in Georgia, Ukraine, and Kyrgyzstan), the protestors' goal was regime change, not merely a selective change in the laws, and the nondemocratic character of those various regimes offered no effectual, legal means of change.

17 Even in the case of American civil rights demonstrators, despite the justness of their cause and the honorableness and prudence of Martin Luther King Jr.'s leadership, the evolution from the peaceful protests of the King years to the race riots and sometimes violent antiwar protests of the 1960s serves as a cautionary tale about the dangerous precedent-setting effect of disobedience to law—as foreseen in Lincoln's Lyceum address. (Cf. Rawls's own cautionary remarks about the fragility of a constitutional democratic consensus in PL, 228 and 316, cited in chapter 11 below.)

18 When it comes to defiance of the law on behalf of a cause that is less attractive to him—opposition to abortion—Rawls sings in a different key, urging opponents that "forceful resistance is unreasonable" since "it would mean attempting to impose by force their own comprehensive doctrine that a majority of other citizens who follow  
public reason, not unreasonably, do not accept" (IPRR, 170). Presumably, "forceful resistance" here includes the attempted obstruction of abortion clinics, a tactic that is no more forcible than some of the methods used by civil rights and antiwar protestors of the 1960s whose goals and, apparently, their tactics Rawls approved.

19 It is worth recalling that during the same era in which Henry David Thoreau first enunciated the doctrine of civil disobedience, based on his denial of the authority of law to override his personal conception of just conduct, South Carolina senator John C. Calhoun was propounding his own doctrine of the "concurrent majority" as a necessary means of "peaceably" resisting governmental abridgements of the rights of "minorities"—his core concern being the defense of the interests of southern slave owners against federal interference with their "peculiar institution" (Calhoun, A Disquisition on Government, in Union and Liberty, 12-14, 28-30). While on opposite sides of the slavery controversy, Calhoun and Thoreau agreed in their essentially illiberal challenge to the legitimacy of constitutional, democratic government.