Phil 324: Law and Morality

Module 6 Reading Guide

## **Walker v. City of Birmingham (1967)**

## Opinion of the Court

1. What did the city allege?
2. What did the circuit court do?
3. How did the petitioners respond?
4. What did the city officials do? What were the petitioners’ arguments for why they should not be held in contempt of court for violating the injunction issued by the circuit court?
5. What was the circuit court’s ruling? And the Alabama Supreme Court?
6. What was *Howat v. Kansas* about? What was the Court’s holding in that case? (Don’t worry about what the Court meant by “equity power.”)
7. What are the petitioners asking this Court to hold?
8. **On what grounds does the Court disagree with the petitioners? What does the Court think the petitioners *should* have done?**
9. Top of p. 319: An *ex parte* injunction is issued without prior notice to the opposing party.
10. Read the block quote on p. 320 carefully. On what grounds might someone be held legally responsible for disobeying “an absolute nullity,” just because the court hasn’t said the statute is a nullity?
11. How does this Court construe the petitioners’ readiness to go to jail?
12. Does the first sentence of the last paragraph seem to be invoking a principle in Dworkin’s sense?
13. Skip the two appendices.

## Chief Justice Warren’s Dissent

1. Chief Justice Warren starts with a summary of the petitioners’ arguments, and the majority’s reasoning and holding. He then introduces his reason for disagreeing with the majority.
2. Skim Warren’s description of the facts, but note the different aspects of the facts that he finds “salient.”
3. In the last paragraph on p. 327, Warren claims that the petitioners are in the same shoes as someone who intentionally violates a law in order to challenge its validity in court, and that doing so is not to show disrespect for the law.
4. Why does Warren think the city ordinance is unconstitutional?
5. Skip the rest of the Warren dissent.

## Justice Douglas’s Dissent

1. Skim pp. 334­–36.
2. Why does Justice Douglas disagree with the majority?
3. How does Douglas distinguish the present case from *Howat*?
4. **Why does Douglas think the petitioners were denied a permit?**
5. Douglas then arguesa second unconstitutional act (by the state circuit court) added to the first (by the city) does not suddenly make convicting the petitioners constitutional.

## Justice Brennan’s Dissent

1. Skim or skip Justice Brennan’s dissent.

# Martin Luther King, Jr., ‘‘Letter from Birmingham Jail’’

1. Why is Dr. King in Birmingham?
2. In what sense might “injustice anywhere [be] a threat to justice everywhere”?
3. One of King’s defenses of the demonstrations seems to be that there is “no alternative.” Pause a bit here and think about this with the hindsight of the Court’s decision four years later in *Walker* to uphold King and other activists’ contempt conviction: what counts as no alternative?
4. What are the four basic steps in a nonviolent campaign?
5. Why direct action?
6. **How does King respond to the untimeliness criticism?**
7. How does King respond to the “you’re breaking the law!” criticism?
8. **When does King think a law is just? When does he think a law is unjust? And what does a law’s being just or unjust imply about our obligation to obey it?**
9. On what grounds does King argue segregation laws are unjust?
10. King then gives two examples that seem to illustrate *procedural* morality.
11. **What is the difference between unjust *on its face* and unjust *as applied*?**
12. King says, “One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty.” Do you think this mandate might be in some tension with the “an unjust law is no law at all” slogan which King cites earlier?
13. In what sense might someone who breaks a law still “express[] the highest respect for law”?
14. Note what King says about Nazi laws. How would you think he might handle the grudge informer case?
15. **What is King’s distinction** **between negative and positive peace?**
16. For the purpose of what do law and order exist according to King?
17. In what sense are protestors not the “creators of tension”?
18. What is King’s response to the objection that the demonstrations “precipitate violence”?
19. Skim pp. 223–26, but note especially King’s discussion of police violence in relation to demonstrations on p. 226.

# II. John Rawls, Selections from *A Theory of Justice*

## § 55: The Definition of Civil Disobedience

1. **What are Rawls’ assumptions about the kind of society he is discussing?**
2. **What does Rawls think is the nature of the “problem of civil disobedience”?**
3. What are the three parts of a theory of civil disobedience?
4. What can we expect of a theory of civil disobedience?
5. **What is Rawls’ definition of civil disobedience?**
6. What, according to Rawls, are the two goals a person who engages in civil disobedience tries to achieve?
7. Rawls then goes on to make five claims/clarifications. Try to identify the relevant passages, and track down Rawls’ reasons for attributing these features to civil disobedience:
   1. Civil disobedience can be direct or indirect;
   2. The civilly disobedient act only needs to be thought to violate the law, not in fact violates the law;
   3. Civil disobedience is political, in two ways;
   4. Civil disobedience is public, again in two ways;
   5. Civil disobedience is nonviolent.
8. Focus on the last paragraph on p. 322: Why does Rawls define civil disobedience the way he does?

## § 56: The Definition of Conscientious Refusal

1. Skim this section, but note some examples of conscientious refusal in Rawls’s sense, and explain to yourself why they count as cases of conscientious refusal.

## § 57: The Justification of Civil Disobedience

1. **What is Rawls’ first presumptive condition for civil disobedience?**
2. Skip the discussion of the difference principle.
3. **What is Rawls’ second condition for civil disobedience?**
4. Do legal means have to be exhausted before one can engage in civil disobedience according to Rawls?
5. **What is Rawls’ third condition for civil disobedience?**
6. What is Rawls’ solution to the overall level of dissent problem?
7. Skip the discussion of the principle of fairness.