

- 5 „(U)nsere Komplizenschaft“, schreiben Antonio Negri und Michael Hardt, „ist eine Bedingung unserer gesellschaftlichen Existenz.“ (Negri/Hardt 1997: 156) Im Anschluss an Foucaults Idee einer „Anarchologie“, die keine Macht als notwendiger Weise akzeptabel oder inakzeptabel ansieht, und in Anlehnung an Walter Benjamins Vorstellung einer reinen oder revolutionären Gewalt, die in ihren Wirkungen auf nichts ihr Außerliches zielt, also keinen Repräsentationsanspruch hat (und auch die Macht nicht übernehmen will), entwickeln Negri/Hardt ihr Konzept der „konstituierenden Macht“. Diese enthält keine Botenschaft, keine Darstellung, keine Stellvertretung: Für den sozialen Ungehorsam ist sie eine Möglichkeit, denn sie ist, laut Negri/Hardt, besetzt von produktiver Kooperation und der immateriellen und affektiven Arbeit, die ein „Netzwerk der Selbstverwertung“ (Negri/Hardt 1997: 159) schafft.
- 6 Hier, stellt Virno fest, erhalte der alte Ausdruck der Staatsräson erstmals eine nicht-metaphorische Bedeutung.

Offensive Flight instead of Breaking the Law

On Civil Disobedience in View of the Thoreauvian Imperative

Jens Kastner and Gerald Raunig

“Civil disobedience” represents, perhaps, the fundamental form of political action of the multitude, provided that the multitude is emancipated from the liberal tradition within which it is encapsulated. It is not a matter of ignoring a specific law because it appears incoherent or contradictory to other fundamental norms, for example to the constitutional charter. In such case, in fact, reluctance would signal only a deeper loyalty to state control. Conversely, the radical disobedience which concerns us here casts doubt on the State’s actual ability to control.

Paolo Virno, *A Grammar of the Multitude* (2004: 69)

If the law is structured in such a way that it turns its subjects into accomplices to injustice toward others, then the Thoreauvian imperative is “break the law.” So far, so good, apparently. On closer inspection, however, this picture and its conditions become gray to the point of complete opacity. The both great and apparently clear motto of Henry David Thoreau (1817–62) for the civil disobedience of the past is no solution for the present.

Henry David Thoreau’s famous pamphlet against “civil government” was written as a justification. In July 1846 he was arrested and jailed in Concord, Massachusetts (he was, however, released the following day when, against his will, his aunt paid his bail). The reason for his arrest was unpaid taxes. In order to make it

clear that this act of omission was by no means due to a whim or negligence but on the contrary to profound conviction, Thoreau wrote the text known as "Civil Disobedience," though first published under the title "Resistance to Civil Government" in 1849, which would become so important for social movements of the next hundred and fifty years. In it Thoreau developed his radically individualistic conception of disobedience in resistance to two specific forms that were legitimated and/or practiced by the state. The first was slavery, which in Thoreau's lifetime was still legal in the United States. The second was war, specifically the one that the United States was fighting against Mexico between 1846 and 1848 as a war of conquest: "[W]hen a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize." (Thoreau 1986: 389)

Although Thoreau's explanation referred to the specific situation in which he found himself, both reasons for his decisions represent structural phenomena of societies organized as states: the deprivation of rights or dehumanization of individuals and war. When he explained these structural conditions as motives and motivations for disobedient behavior, he also ceased to link the question which law is affirmed by the individual no longer the direct affection by this law. Not only making or obeying a law but also not taking action against it can make individuals responsible for the injustice done to many. Even though he is speaking of the reasons for a rebellion, Thoreau is thinking here in moral terms. He is concerned with the moral decisions of individuals. This dimension was later expanded by figures as different as Leo Tolstoy and the English Suffragette movement and turned into a means of social and political struggle by introducing the concept of "passive resistance."

The fact that Thoreau's conception from the nineteenth century is very much derived from the position of the individual, and hence contrasts with collective ideas of disobedience, is not the focus of our critique. A contemporary discussion of the problems of civil disobedience will shed light on precisely the kinds of subjection that try to thwart the apparent contradiction between individual moral problems and collective politicizing. What follows beyond that are four aspects of taking Thoreau's imperative to break the law further in productive ways, all of which we see, both theoretically and practically, as central components of any contemporary idea of disobedience.

1. First, any critical updating of this imperative must recognize that it appears to work on a structure that is no longer the sole center of power—or perhaps never was. Its fixation on the legal apparatus homogenizes power relationships and hence in no small measure the strategic possibilities of resistance. (Cf. Foucault 1990: 102; Lorey 1996: 49–70.)¹ Justice and law (and their constant connection to the form of the state) should be understood, and not only in the evolution of neoliberal capitalism, as functions of a broader power structure that Foucault has

aptly labeled "governmentality." Already in the eighteenth and nineteenth centuries, a form of government had gained acceptance that did not function solely by means of the ruler's repression and sovereignty. This government used the logic of autonomy and property to implement a relationship of individuals vis-à-vis themselves that turns entire populations into "biopolitical" subjects. (Cf. Foucault 2004; Lemke 1997: 126ff.; Bröckling, Krasmann, and Lemke 2000; Pieper and Gutiérrez Rodríguez 2003; Lorey 2007: 125–26.) That means that in addition to legal and political structures and the legal status of the subject (as at once sovereign and subjugated), a machinic form of self-exploitation evolved that permeates the living and working conditions of the subjects and makes them all the more governable (cf. Raunig 2008, Lazzarato 2008). Within the setting of neoliberal governmentality, this interwoven quality of social subjugation and machinic self-exploitation should be understood equally as a multiple complicity and as a source of new forms for what Foucault labeled counter-conduct rather than resistance (cf. Kasner 2008). In this context, the concept of disobedience becomes fruitful again—and we will return to this later. Here, however, it should first be noted that a reduced focus on the law, justice, and the state appears to be neither theoretically sufficient nor relevant to current practices of disobedience.

2. But first let's interpret the terms "the law" and "justice" more fundamentally than as the legal constitution of a state. Let's attempt to break open Foucault's juridical dispositive to the point where it touches on the field that for Foucault embraces the strategic and productive aspect of power. Let's view "the law" as a grammar, on which all social and linguistic, discursive and nondiscursive relationships are based. If we pursue such an expansion of the legal apparatus, we first run into the problem of the metaphor of breaking the law, which Thoreau proposed as a solution.

A grammar cannot be "broken." As Paolo Virno has shown in *A Grammar of the Multitude* (2004), the way out lies not in breaking as a negation or a dialectical form of resistance but precisely in a combination of radical disobedience and exodus—that is, as offensive, collective flight. In his most recent text on jokes and innovation, Virno (2005)² makes an analogy between this figure of the exodus and the linguistic-communicative strategies of the sudden change of subject in a conversation that follows well-structured paths such as, above all, the joke that makes use of a linguistic ambiguity. In the political field, this deviation is manifested as a collective defection from the state, as secession, as exodus. Hence it is matter of a nondialectical form of negation and resistance, or better: of defection and fleeing. It is not only about designing new moves, tactics to outplay the opponent, but about an attack on the rules, on faith in the game itself.³ Or, as Virno puts it, about an invention that "alters the rules of the game and throws the adversary completely off balance" (2004: 70).

The postworkerist line of the concept of exodus, even though it does no longer dream of an entirely other outside, should by no means be understood as harm-

less, individualistic, or escapist and esoteric. This exodic form of resistance is a positive, offensive, dangerous form of defection (cf. Virno 2007).⁴ Rather than presuming that power relationships represent an unshakable horizon and nevertheless struggling against them, flight alters the conditions under which the presumption is made. The exodus, as A Grammar of the Multitude explains, transforms the context in which a problem emerged rather than addressing the problem by choosing between predetermined alternatives. As the nonpassive, nondialectical, nonindividualist form of defection, it opens up a way out not shown on the maps of the legal apparatus that can “modify the very ‘grammar’ which determines the selection of all possible choices” (Virno 2008). In flight, which also constitutes something new, a modification of the grammar results. Not law but grammar, not breaking the law but flight “from the law.”

3. Against this backdrop, after all, it is possible to reformulate the problem that, as a dichotomous figure of violence and nonviolence has unproductively dominated many historical and current discussions of activism and social movements.

Thoreau himself did not raise the question of violence because he did not think of civil disobedience as a collective and/or political strategy. The revolution will have won, in his view, if the subjects refuse to obey and the civil servants resign their offices. “But even suppose,” Thoreau wrote, “blood should flow. Is there not a sort of blood shed when the conscience is wounded?” (Thoreau 1986: 399). Apparently it seemed to him here quite possible to get caught up in the dilemma of using violence to achieve an action on a moral basis. It is, however, no coincidence that most of the action groups that later referred to Thoreau (cf. Komitee für Grundrechte und Demokratie 1992) were nonviolent, and nonviolence certainly accords with the basic ideas of his text. In the conflict with a violent superior or power, he saw only raw violence but also human power and therefore noted that “appeal is possible” (Thoreau 1986: 408). Refusal to pay taxes and refusal in general can more easily be understood as peaceful reactions than as militant actions. There is an almost cheerfully philanthropic tone running through Thoreau’s text—for example, when he emphasizes that he refused to pay taxes because “I am as desirous of being a good neighbor as I am of being a bad subject” (Thoreau 1986: 407).

In this context Thoreau represents above all a genealogical point of reference for one pole, for the discourse on nonviolent action that runs, though for example, the thought of M. K. Gandhi or Martin Luther King. The last thing we wish to do is glorify the opposite pole, that of terror. And yet it seems to us that an immanent, involved, and yet distanced attitude to this dichotomous structure is desirable; not only on the basis of the experience of the rituals—usually in the media—of distinguishing “nonviolent” activists from those who see themselves as violent, such as Black Blocks, but also because it is suggested by the theoretical inadequacy of a dichotomous distinction between nonviolence and terrorism.

This dichotomy is theoretically inadequate, first, because nonviolent action not infrequently derives its power—its motivation and effectiveness—from a politics of victimization that is highly ambivalent: the self-depiction of activists as victims of certain structures or, even worse, as activist representatives of other victims who serve as moral legitimization, is immanent in many nonviolent actions. Second, from this moral position follows a fundamental equation of nonviolence and justice. Even from the perspective of positions that understand the moral as a dimension of the political, the nonviolent position is by no means *per se* the most just. However, representatives of nonviolent action often operate from a position of moral superiority that has no basis. It has no basis because the standpoint outside of violence that it necessarily presupposes does not exist.⁵

4. Setting out from Virno, however, it becomes necessary to argue beyond him: every civil disobedience that becomes radical, “provided that [it] is emancipated from the liberal tradition within which it is encapsulated,” casts doubt “on the State’s actual ability to control”; this sort of radical disobedience has to be understood as social disobedience, and in two respects. First, the point is to take aim at social relationships for motives and motivation. Social disobedience can be conceived of independently of the anthropological constants to which Virno believes he has to trace them back. For the central aspects of his diagnosis of the present can get by without embedding them in anthropology as he does: in addition to the present crisis of the division of human experience into labor, political action, and intellect, Virno sees a crisis of “substantial communities.” Against the backdrop of this multiple crisis, people are necessarily thrown back on their basic competence, on their linguistic and cognitive abilities. (Cf. Virno 2004: 41.) Virno sees one of the main characteristics of today’s multitude in this increased significance of what he calls “public intellect” or, following Marx, general intellect. That is the ambivalent background against which Virno argues for civil disobedience and exodus: the new role of the intellectualism in social struggles. In post-Fordist social conflicts, the rationalization of the state is replaced by a “statization [statizzazione] of the intellect” (Virno 2004: 67).⁶ The latter has to be resisted—or fled. The positive turn that Virno gives to the theoretically diagnosed, new social significance of the general intellect is also an activist perspective.

Second, it is necessary to break open the class dimension implicit in the conception of social disobedience and not longer understand it as civil in the sense of bourgeois disobedience, which refers to the legal force and grammar of the civil society and hence to the power relationships based on property and heteronormativity that it guarantees. That is not an abstract objection directed only at the concept; rather, it also refers to one aspect of the historical practices that have come to pass in that context. For although it was originally applied in the context of deprivation of rights—specifically, against slavery and later in the civil rights movement for black in the United States—there is an exclusive dimension inherent in civil disobedience: many of the actions in the history of civil disobedience had an

undiminished legalist character. Not infrequently, they were aimed at preserving existing laws or putting through new ones. In order to demonstrate the ethical and legal legitimacy of their disobedience, the activists often allowed themselves to be arrested following their action—a common occurrence both in the independence movement in India and in the transnational Ploughshare movement.

The various potential participants are, however, affected differently by the consequences of this: something that for middle-class participants can represent an act of conscience with a heroic ending can lead to a life-threatening situation for people who are not legal residents. Disobedience thus becomes a privilege. Once again this demonstrates how definitely relational actions of civil or social disobedience should not simply be set but also reflected on. The different social statuses of the participants and hence their different starting positions are crucial in both respects.

A social disobedience that is not adapted to the current relationships of governmental rule or does not adapt to it and is able to flee it is ultimately always concrete, situational, and relational. What was once disobedient can in another situation and within other social relationships be conformist, and vice versa. And why should it be fundamentally different for present, ephemeral forms than for the once dissident conducts of the 1960s and 1970s whose “self-precarization” (Lorey 2007) is obvious today? Even “the surplus of knowledge, communication, virtuosic acting in concert” (Virno 2004: 71), which for Virno is the basis for exodus, is not immune to managerial conformity and/or machinic (self-)exploitation.

Translated from the German by Steven Lindberg

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- 1 In a critical analysis of Judith Butler's early theory, Lorey discusses her reductively juridical model of power.
- 2 “Wit and Innovative Action,” published in Virno 2008.
- 3 On a similar figure, see also Pierre Bourdieu (1996: 68): According to Bourdieu, social fields function because faith in their functioning is inscribed in the behavior of their participants. Bourdieu calls this faith in the game the *illusio*. Refusing the *illusio* of social fields is thus an attack on the faith in the game.
- 4 “The dangerousness of our species is coextensive with its capacity to accomplish innovative actions, that is actions which are capable of modifying established habits and norms.”
- 5 “[O]ur complicity,” write Antonio Negri and Michael Hardt, “is a condition of our social existence” (Negri and Hardt 1994: 291). Taking up Foucault's idea of an “anarchaeology,” which does not consider any power as necessarily acceptable or unacceptable, and Benjamin's idea of a pure or revolutionary violence whose effects are not aimed at anything outside itself, and hence has not claim to representation (and also has no desire to take over power), Negri and Hardt developed their concept of “constitutive power.” It has no message, no depiction, no representation. It represents an opportunity for social disobedience because it is, according to Negri and Hardt, brought to life by productive cooperation and immaterial affective work that creates a “network of self-valorization” (Negri and Hardt 1994: 294).
- 6 Virno notes that the old expression of *raison d'état* acquires here for the first time a nonmetaphorical meaning.

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at the interfaces between art, radical politics, and technology

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17 **cannot do everything**

Civil/social disobedience and art
Jens Kastner and Elisabeth Bettina Spörr

35 **On Poetry and Revolution**

John Holloway

61 **One Century of Revolutionary Civil Disobedience**

A brief sketch of activist civil disobedience
from a nonviolent-anarchist perspective
Lou Marin

87 **Civil and social Disobedience =
Refusal plus Utopia?**

Ulrike Laubenthal

107 **From Civil to Social Disobedience and Back Again**

On the Conceptual Politics of Alter-Globalization Protest
Andrea Pabst

131 **The Serpent's Coils**

Minoritarian Tactics in the Age of Transparency
Inke Arns

151 **Offensive Flight instead of Breaking the Law**

On Civil Disobedience in View of the Thoreauvian Imperative
Jens Kastner and Gerald Raunig

9 **nicht alles tun**

Ziviler/sozialer Ungehorsam und Kunst
Jens Kastner und Elisabeth Bettina Spörr

25 **Über Poesie und Revolution**

John Holloway

43 **Ein Jahrhundert des Revolutionären Zivilen Ungehorsams**

Kurzer Abriss des aktivistischen Zivilen Ungehorsams
aus gewaltfrei-anarchistischer Sicht
Lou Marin

77 **Ziviler und Sozialer Ungehorsam
gleich Verweigerung plus Utopie?**

Ulrike Laubenthal

97 **Vom zivilen zum sozialen Ungehorsam und zurück**

Zur Begriffspolitik globalisierungskritischer Proteste
Andrea Pabst

117 **Die Windungen der Schlange**

Minoritäre Taktiken im Zeitalter der Transparenz
Inke Arns

143 **Offensive Flucht statt Gesetzesbruch**

Zum Ungehorsam angesichts des Thoreau'schen Imperativs
Jens Kastner und Gerald Raunig

KünstlerInnen/Artists

160	Zanny Begg	178	fran meana
162	Heath Bunting	180	Mujeres Creando
164	Bureau of Inverse Technology	182	Oliver Ressler/Dario Azzellini
166	Büro Bildwechsel	184	Allan Sekula
	(Sandy Kaltenborn/Pierre Maite)	186	Surveillance Camera Players NYC
168	Critical Art Ensemble	188	Nasan Tur
170	Coco Fusco	190	Videogruppe Bürgerinitiative
172	Andrea Geyer/Sharon Hayes		Umweltschutz Luchow Dannenberg
174	h.arta	192	Christoph Wachter/Mathias Jud
176	Christopher LaMarca		