GANDHI, THE BOSTON TEA PARTY AND FLAG BURNING: THE RIGHT TO REBEL AGAINST UNJUST LAWS IN AMERICA

> *"If the injustice is part of the necessary friction of the machine of government, let it go, let it go: perchance it will wear smooth–certainly the machine will wear out… but if it is of such a nature that it requires you to be the agent of injustice to another, then I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn."* – Henry David Thoreau, Civil Disobedience

> *"An individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law"* – Martin Luther King, Jr.

Congress and Purchase Streets in Boston, Massachusetts was once under water but today is now a busy intersection. However, on December 16, 1773 a group of approximately 116 (the number is necessarily an estimate since some participants held their secret to the grave) men boarded three British tea ships, the Beaver, Dartmouth, and Eleanor (the William ran aground off Cape Cod on December 10, 1773 in a violent storm). The vast majority were of English descent, but many of the men were immigrants of Irish, Scottish, French, Portuguese, and African ancestry. Sixteen participants were teenagers, and only nine men were above the age of forty.

The men were led by Samuel Adams (who Thomas Jefferson once described as the helmsman of the American Revolution) and disguised as Mohawk or Narragansett Indians to avoid punishment. They boarded the three ships and 340 chests of British East India Company tea, weighing over 92,000 pounds (roughly 46 tons), onboard the Beaver, Dartmouth, and Eleanor were smashed open with axes and dumped into Boston Harbor. In today's money, this destruction of property was worth one million dollars. The midnight raid, popularly known since the 1820's as the "Boston Tea Party," was in protest of the British Parliament's Tea Act of 1773, a bill designed to save the faltering East India Company by greatly lowering its tea tax and granting it a virtual monopoly on the American tea trade. Samuel Adams considered the British tea monopoly to be "equal to a tax" and to raise the same representation issue whether or not a tax was applied to it. However, the protest movement that culminated with the Boston Tea Party was not a dispute about high taxes. The price of legally imported tea was actually reduced by the Tea Act of 1773. Protesters were instead concerned with a variety of other issues. The familiar "no taxation without representation" argument, along with the question of the extent of Parliament's authority in the colonies, remained prominent.

One participant tried to steal some tea but was reprimanded and stopped. The Sons of Liberty were very careful about how the action was carried out and made sure nothing besides the tea was damaged. After the destruction of the tea, the participants swept the decks of the ships clean, and anything that was moved was put back in its proper place. The crews of the ships attested to the fact there had been no damage to any of the ships except for the destruction of their cargoes of tea.

Many of the Boston Tea Party participants fled Boston immediately after the destruction of the tea to avoid arrest. In fact, only one member of the Sons of Liberty, Francis Akeley, was caught and imprisoned for his participation. He was the only person ever to be arrested for the Boston

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Tea Party. The Boston Tea Party was non-violent. There was no violence and no confrontation between the Patriots, the Tories and the British soldiers garrisoned in Boston. No members of the crews of the Beaver, Dartmouth, or Eleanor were harmed.

However, there was deliberate destruction of property. For this reason, George Washington did not approve of the Boston Tea Party. It was against his beliefs about property ownership. But the tradition of non-violent civil disobedience continued to develop in the new country. Samuel Adams believed that the Tea Party was not the act of a lawless mob, but was instead a principled protest and the only remaining option the people had to defend their constitutional rights. By "constitution," Adams referred to the idea that all governments have a constitution, written or not, and that the constitution of Great Britain could be interpreted as banning the levying of taxes without representation. For example, the Bill of Rights of 1689 established that long-term taxes could not be levied without Parliament, and other precedents said that Parliament must actually represent the people it ruled over, in order to "count".

The English Parliament responded to the Boston Tea Party in 1774 with the Coercive Acts, or Intolerable Acts, which, among other provisions, ended local self-government in Massachusetts and closed Boston's commerce. Colonists up and down the Thirteen Colonies in turn responded to the Coercive Acts with additional acts of protest, and by convening the First Continental Congress, which petitioned the British monarch for repeal of the acts and coordinated colonial resistance to them. The crisis escalated, and the American Revolutionary War began near Boston in 1775.

The Boston Tea Party has often been referenced in other political protests. When Mohandas K. Gandhi led a mass burning of Indian registration cards in South Africa in 1908, a British newspaper compared the event to the Boston Tea Party. When Gandhi met with the British viceroy in 1930 after the Indian salt protest campaign, Gandhi took some duty-free salt from his shawl and said, with a smile, that the salt was "to remind us of the famous Boston Tea Party."

Gandhi was inspired by Henry David Thoreau. In 1849, Henry David Thoreau famously argued for the power of citizens to demand better government and policies in his essay "Civil Disobedience" (originally titled "Resistance to Civil Government"). "...I ask for, not at once no government, but at once a better government. Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it." "Civil Disobedience" was inspired by Thoreau's arrest in 1846 for refusing for six years to pay a poll tax in protest of both slavery and the Mexican-American War. Thoreau called for the use of what we now call "passive resistance" to laws perceived to be unjust, and predicted that individual resistance to unjust laws could have a significant effect on government and its policies. Thoreau believed that individuals could be free only if their actions were true to their own beliefs, with or without the support or approval of the community, or of friends and family. His thoughts tapped into the vein of resistance that runs through American culture, but it also reflected his own strong individualism.

The right to protest has been recognized by the United States Supreme Court in perhaps the most famous right-to-protest case of them all, *Texas v. Johnson*, 491 U.S. 397 (1989). In protest of President Ronald Reagan's administrative policies, Gregory Lee Johnson burned a flag outside

the City Hall building in Dallas, Texas, in 1984. Many onlookers said the scene was deeply offensive, a sentiment that represented the popular majority's view on the matter. Texas arrested Johnson and convicted him of breaking a Texas state law that prohibited desecration of the flag of the United States. Johnson was sentenced to one year in prison and ordered to pay a $2,000 fine.

Johnson appealed his conviction, claiming First Amendment protection, and the Texas Court of Criminal Appeals stated that Johnson's speech was symbolic and ruled in his favor. The Supreme Court took the case, and voted 5-4 in favor of Johnson. Prior to ***Johnson,*** in ***Street v. New York***, 394 U.S. 576 (1969) the Court overturned a state conviction for flag-burning, holding that the flag-burner was prosecuted for his words rather than his acts. In 1974, the Court overturned a prosecution by finding that the state statute was vague. ***Smith v. Goguen,*** 415 U.S. 566 (1974). Finally, in ***Spence v. Washington,*** 418 U.S. 405 (1975) the Court held that the taping of a peace symbol to a flag was expressive conduct and thus protected by the First Amendment. In both of these later cases the Court expressly referred to the federal statute in a positive manner. ***Goguen,*** at 582 and ***Spence*** at 415.

Reviewing Johnson's actions, the majority decided he was engaged in symbolic speech which was political in nature. That speech could be expressed even at the affront of those who disagreed with him. "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable," said Justice William Brennan. The opinion emphasizes the communicative nature of flags as previously recognized by the Court. ***West Virginia Bd. of Ed. v. Barnette,*** 319 U.S. 624 (1943) (pledge of allegiance), ***Spence v. Washington,*** 418 U.S. 405 (1974) (attaching a peace sign to the flag), ***Stromberg v. California,*** 283 U.S. 359 (1931) (displaying a red flag), and ***Smith v. Goguen,*** 415 U.S. 566 (1974) (wearing a flag on the seat of one's pants). The government may not prohibit expression of an idea merely because society finds the idea offensive, even when the destruction of the flag is involved. The flag is so revered because it represents the land of the free, and that freedom includes the ability to use or abuse that flag in protest.

Justice Anthony Kennedy, writing in his concurrence, spelled out the reasoning for this conclusion succinctly:

> "The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result," Kennedy said. "And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases.
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> "Though symbols often are what we ourselves make of them, the flag is constant in expressing beliefs Americans share, beliefs in law and peace and that freedom which sustains the human spirit. The case here today forces recognition of the costs to which those beliefs commit us. It is poignant but fundamental that the flag protects those who hold it in contempt."

In reaction to the ***Johnson*** decision, which only applied to the state of Texas, Congress passed an anti-flag burning law called the Flag Protection Act of 1989. On June 11, 1990, the Supreme Court in the case of ***United States v. Eichman***, 496 U.S. 310 (1990) struck down the Flag

Protection Act, ruling again that the government's interest in preserving the flag as a symbol does not outweigh the individual's First Amendment right to disparage that symbol through expressive conduct. It should be noted that both ***Johnson*** and ***Eichman*** were 5 to 4 decisions with the division of the Court identical. Justice Brennan delivered the opinion of the Court, in which Justices Marshall, Blackmun, Scalia, and Kennedy, joined. The dissenting justices were Chief Justice Rehnquist, Justices Stevens, White, and O'Connor.

The ***Eichman*** majority also declined to reassess Johnson in light of Congress' recognition of a "national consensus" favoring a prohibition on flag-burning, stating:

> Even assuming such a consensus exists, any suggestion that the Government's interest in suppressing speech becomes more weighty as popular opposition to that speech grows is foreign to the First Amendment. Id. at 318.

The government argued that the governmental interest served by the act was protection of the physical integrity of the flag. This interest, it was asserted, was not related to the suppression of expression and the act contained no explicit content based limitations on the scope of the prohibited conduct. Therefore the government should only need to show that the statute furthers an important or substantial governmental interest, and that the restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest. ***United States v. O'Brien,*** 391 U.S. 367, 377 (1968).

The majority, while accepting that the act contained no explicit content-based limitations, rejected the claim that the governmental interest was unrelated to the suppression of expression. The Court stated:

> The Government's interest in protecting the "physical integrity" of a privately owned flag rests upon a perceived need to preserve the flag's status as a symbol of our Nation and certain national ideals. But the mere destruction or disfigurement of a particular physical manifestation of the symbol, without more, does not diminish or otherwise affect the symbol itself in any way. For example, the secret destruction of a flag in one's own basement would not threaten the flag's recognized meaning. Rather, the Government's desire to preserve the flag as a symbol for certain national ideals is implicated "only when a person's treatment of the flag communicates [a] message" to others that is inconsistent with those ideals. ***Eichman***, at 315-316.

In essence the Court said that the interest protected by the act was the same interest which had been put forth to support the Texas statute and rejected in ***Johnson***.