

# Migratorial Disobedience

The Fetishization of Immigration Law

by **Grant J Silva** January 18, 2019

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The United States-Mexican border bears witness to the legacy of civil rights protests. This time, however, rather than confronting unequal access to jobs, education, and public spaces, we're confronted with the more general "right of free movement of people on the face of the earth." In 1971, **Roger Nett** suggested this is "the civil right we are not ready for." He wrote, "Just as the Old South—and much of the United States until very recently—was not ready to share opportunities with the Negro, so the advantaged of the present world may not be ready to share anything like equal opportunities with the disadvantaged."

Nett had in mind the globally disadvantaged and poor, those persons unlucky enough to be born outside of the United States and without the privileges of first-world citizenship. National borders and naked appeals to "the law" protect these privileges. As such, the Central American asylum-seekers currently at the border stand in similar relation to the law as those African Americans who disobeyed segregation statutes during Jim Crow. Their **coordinated mass movement across international divides, vociferous protests, hunger strikes, and even the actions of allies on this side of "the line"** resemble those acts of defiance and resistance that protested the injustice of, what was then, an internal border: segregation.

I call this form of protest "migratorial disobedience." By this I am not asking whether "undocumented migrants have a duty to follow the law in the United States?" or some other intellectually stimulating question. Instead, I mean to suggest that crossing a border without the permission of the federal government is an

act of disobedience and defiance against the racism, jingoism, selfishness, and fundamental injustice at the heart of immigration law. The blatant disregard of those laws securing first-world privilege.

*Migratorial disobedience* depends upon the distinction between lawfulness and justice. In jurisprudence, lawfulness refers to law coming from the proper legal authority (often referred to as “pedigree”). Based on the [Plenary Power Doctrine](#), immigration law resides in the hands of the federal government, especially Congress. Law is also expected to have the proper form, which, in the case of immigration law means that it must adhere to the basic legal norms and principles that undergird all law in the United States (i.e., the Constitution).

Justice, on the other hand, pertains to the rightness or wrongness of law; holding law to standards of morality or righteousness. As Dr. King explained in his famous [Letter from Birmingham Jail](#), law that uplifts a person is just; that which denigrates an individual and renders them an object, is unjust. Law that squares with “God’s law” is just. That which violates the central tenants of political liberalism (the philosophy undergirding our political system), is also unjust.

Examining immigration restrictions and national borders from a justice-based perspective departs from the typical appeals to lawfulness that arise in the immigration debate. Pro-border advocates view “law” as this monolithic entity meant to keep their privilege safe. For these individuals, the immigration debate is essentially about migrants refusing to “wait in line,” disrespecting their property. Never is this “line” itself critically examined. Instead, fetishizing lawfulness and captivated by the semiotics of the word “illegal,” many people take blind adherence to the law as their default moral starting point. In so doing, they place the burden on the unlawful to justify their disobedience, while the law itself requires no justification.

This should, at the very least, strike one as odd. Segregation statutes against African American were valid laws. The Fugitive Slave Law, part of the 1850 Com-

promise and one of the most egregious laws ever passed in the U.S., was at one time the law of the land. Everything Hitler and the Nazis did fell within the bounds of German law. Today, however, it is commonplace to view segregation, the viciousness of fugitive slave law, and the atrocities performed by the Nazi's as morally wrong.

Might borders one day share the same fate? One day, might crossing them without permission be seen as akin to African Americans sitting in the front of the bus when they were legally expected to sit in back? Or as illegal as “parading without a permit” (one of the trumped-up charges against Dr. King)? Maybe as illegal as a slave escaping her bondage in the dark of night, heading north in the hopes of a better life, a better future? Or perhaps as “illegal” as hiding Jews?

I think we know the answer, and it reveals the real reason behind the symbolic value of “the wall”: not only is it an homage to racism passing itself off as “patriotism” and a means of pandering to a morally bankrupt base, but it also is an attempt to regain control of the future of this country (“take America back!” and “make it great again!”). In this sense, the immigration debate and the fight over the border wall is less a debate about space and more about time. The wall, like much reality TV, is a red-herring.

I am sure the claim that “illegal” immigration should be seen as an act of *migratorial disobedience* is bound to be contentious. Some will argue that it rests on a false analogy. Segregation was our problem, these “migrants” are someone else's. Others will claim that it dilutes the meaning of “civil rights.” Still others, such as philosophers, will ponder whether or not the caravan movement satisfies the “necessary and sufficient conditions” for pronouncing it an act of civil disobedience.

These are good questions to which I respond: migration does not occur in an ahistorical vacuum. Although our current administration wishes to treat asylum-seekers as criminals, seeking asylum is not a crime. These people have legitimate

concerns for their lives, fears that we as a nation are implicated in: from the Contras and the U.S. demand for illegal drugs to the deportation/exportation of MS13 and neoliberal economic policies, the U.S. contributed to the destabilization of many Central American nations. Because of this, migrants are forced to move. Try as we might to shirk this responsibility, they are in effect our problem.

And while there are obvious differences between the nonviolent direct-action that defined the Civil Rights movement and that “unlawfulness” taking place at the border, they arrive at the same end. The purpose of nonviolent direct-action was to create a crisis-filled moment. Dr. King was aware that he needed to jumpstart the moral conscience of America, white America in particular. He knew that he would not win everyone; he just needed to win enough. Does not the plight of asylum-seekers (or the reality of family-separation for the matter) achieve the same end?

Migrants do not wake up one morning and randomly decide to leave home. Most irregular migrants recognize that borders and immigration restrictions are the law of man. They increasingly find themselves in a predicament, however, in which “a higher law” compels them to move: *si Dios quiere, nos movemos* (“If God wills it, we move”). Like many of us in the United States, most migrants feel a moral duty towards their family and community. If life-prospects and opportunity are bleak at home, this duty compels them to move. Ultimately, they don’t find the commands of legislators—the same politicians we often label “corrupt”—to be enough to suspend their parental or familial obligations. Would you?

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