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From Labor Sit-Downs to Civil Rights Sit-Ins: A Genealogy of Liberal Civil Disobedience

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Abstract: Liberal views of civil disobedience that emerged in the 1960s and '70s can only be properly interpreted with recourse to the complicated history of the early civil rights movement's selective appropriation of the labor sit-downs of the 1930s. This essay addresses the messy but basically successful effort by civil rights sit-inners and the lawyers who defended them to circumvent the repressive state and legal response—especially the US Supreme Court ruling in *National Labor Relations Board v. Fansteel Metallurgical Corporation* (1939)—that the 1930s sit-downers garnered. My reexamination of the sit-ins places influential liberal ideas about civil disobedience in a fresh light. In his influential theory of civil disobedience, John Rawls mirrored key features of the politically and legally savvy strategy of delinking the lunch counter sit-ins from the workplace sit-downs. The result was a somewhat restrictive view of civil disobedience that sidelined matters of economic justice.

Addressing the twenty-fifth anniversary convention of the United Automobile Workers (UAW) on April 27, 1961, in Detroit, Dr. Martin Luther King drew a direct line from the militant auto worker sit-down strikes of the mid-1930s to the recent wave of civil rights sit-ins at southern lunch counters. King praised the young activists for their "nonviolent and courageous struggles" against racial segregation, underscoring the kinship between their efforts and those of automobile worker sit-downers at Flint, Michigan, and elsewhere. The UAW strikers had been forced to confront "recalcitrant antagonists," many of "which said to you the same words we as Negroes now hear: 'Never. . . You are not ready. . . You are really seeking to change our form of society. . . You are Reds. . . You are

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troublemakers . . . You are stirring up discontent and discord where none exists . . . You are interfering with our property rights . . . You are captives of sinister elements who exploit you.'"[1] King lauded the trade unionists for forging "new weapons" that had inspired the civil rights activists engaging in nonviolent direct action: "in part of your industry you creatively stood up for your rights by sitting down at your machines, just as our courageous students are sitting down at lunch counters across the South."[2] Despite detractors' claims that the original sit-downers "were destroying property rights," the automobile industry had remained "in the hands of its stockholders and the value of its shares has multiplied manifold, producing profits of awesome size." Sit-inners now faced the same groundless accusation that they threatened property rights. Nonetheless, King concluded, "we are proudly borrowing your techniques, and though the same old and tired threats and charges have been dusted off for us, we doubt that we shall collectivize a single lunch counter or nationalize the consumption of sandwiches and coffee." Just as labor sit-downs that rippled across the country in the 1930s had resulted in a "better life" for workers and, indeed, "the whole nation," so too would the lunch counter sit-ins improve the situation of black Americans and the entire country.[3] Neither movement constituted a violent attack aimed at dismantling private property.

Aware of the sit-inners' debts to the 1930s sit-downs, King was reminding its overwhelmingly white, male delegates of their influence on a new generation of young black activists. Historians have corroborated King's attempt to draw links between the civil rights movement and organized labor, in part by acknowledging the role of unions such as the UAW in supporting—and sometimes bankrolling—their efforts.[4] They have also observed that the 1930s sit-downs inspired midcentury political activists affiliated with the Fellowship of Reconciliation (FOR), Congress of Racial Equality (CORE), and related organizations, some of whose leading figures (e.g., James Famer, James Lawson) served as mentors to the young activists responsible for the wave of lunch counter sit-ins that swept the South in 1960.[5]

With the exception of Marc Stears,[6] political theorists and historians of US political thought have neglected those links. Despite her impressive recent

[1]Martin Luther King Jr., "Address to United Automobile Workers, April 27, 1961," in *"All Labor Has Dignity,"* ed. Michael K. Honey (Boston: Beacon, 1986), 27.

[2]Ibid., 27–28.

[3]Ibid., 28.

[4]Nelson Lichtenstein, *The Most Dangerous Man in Detroit: Walter Reuther and the Fate of American Labor* (New York: Basic Books, 1995), 381–95.

[5]August Meier and Elliott Rudwick, *CORE: A Study in the Civil Rights Movement* (New York: Oxford University Press, 1973), 13–39; Lewis Perry, *Civil Disobedience: An American Tradition* (New Haven, CT: Yale University Press, 2013), 175–212.

[6]Marc Stears, *Demanding Democracy: American Radicals in Search of a New Politics* (Princeton: Princeton University Press, 2010), 145–73. Stears exaggerates the "moralism" of 1960s liberal theories of civil disobedience.

discussion, Erin Pineda ignores the origins not only of the sit-ins, but also of the liberal theories they inspired, in 1930s US labor struggles.[7] To correct for this oversight, I argue that Rawlsian ideas of civil disobedience that emerged in the 1960s and early '70s can only be properly interpreted with recourse to the complicated history of the early civil rights movement's appropriation of the labor sit-down strike. In the spirit of Pineda's call for scholars of civil disobedience to read "political theory texts in context,"[8] I reinterpret Rawls in the context of a messy but basically successful effort by civil rights activists, sympathizers, and especially the lawyers who defended sit-inners in the courts to circumvent the repressive, ultimately disastrous state and legal response that the 1930s sit-downers had garnered.

Although the story is a complicated one, a key problem faced by the 1960 sit-inners was clear enough: in *National Labor Relations Board v. Fansteel Metallurgical Corporation* (1939), the US Supreme Court had neutered the sit-down strike which had been one of organized labor's most efficacious political tools during its 1930s New Deal–era resurgence.[9] In a controversial ruling, the Court majority reversed a National Labor Relations Board (NLRB) order requiring Fansteel, a Chicago-area steel firm, to rehire dismissed sit-down strikers. The justices characterized the sit-down against Fansteel as a violent, lawless seizure of property incongruent with the rule of law and property rights. Predictably, when civil rights activists subsequently borrowed from militant labor's toolkit, they faced hostile voices that reproduced this take on the sit-down. Even former president Truman, in April 1960 comments at Cornell University widely reported by the media, accused the young sit-inners of simply imitating the (supposedly) "Red" sit-downs of the 1930s.[10] When arrested and charged, sit-in activists soon faced state and legal action that deployed *Fansteel* to discredit them: hostile voices followed the Court majority by characterizing the sit-ins as illegal and also disruptive, violent, and destructive of property. Activists and their lawyers—in particular, the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund (LDF)—successfully responded by highlighting not just the sit-in movement's principled commitment to nonviolence, but also its focus on basic civil and political

[7]Erin Pineda, *Seeing Like an Activist: Civil Disobedience and the Civil Rights Movement* (New York: Oxford University Press, 2021).

[8]Ibid., 18.

[9]National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U.S. 240 (1939).

[10]Clayton Knowles, "Truman Believes Reds Lead Sit-Ins," *New York Times*, April 19, 1960, 21. Communists were among the labor militants who organized sit-downs. Yet like their noncommunist colleagues they usually focused on securing union rights: Michael Torigian, "The Occupations of the Factories: Paris 1936, Flint 1937," *Comparative Studies in Society and History* 41, no. 2 (1999): 344–46.

rights. The sit-ins, they emphasized, entailed no principled challenge to private property.

My retelling of the familiar story of the sit-ins refocuses attention on the nexus between the labor and civil rights movements[11] and resituates influential 1960s debates about civil disobedience. I argue that the Rawlsian interpretation of civil disobedience implicitly followed vital strands of the strategy of delinking the lunch counter sit-ins from the workplace sit-downs. David Lyons repeats a commonplace criticism of Rawls's model of civil disobedience as offering a philosophical codification of a distorted, sanitized interpretation of the civil rights movement.[12] One immediate result, as critics such as Robin Celikates argue, has been an influential yet overly restrictive notion of civil disobedience.[13] Although this article ultimately endorses elements of these views, Rawls built on a significant, politically as well as legally savvy, discursive strategy that emerged within the early civil rights movement itself. The move to distinguish civil rights struggles from those relating to economic justice was not foisted upon activists by ivory tower racial liberals; rather, it was a key component of the movement's own strategy. Those critical of Rawls downplay that crucial part of the story because their contextualization of the 1960s sit-inners misses major pieces of the puzzle.

I begin by briefly revisiting the 1930s sit-down strikes, their impact on mid-century antiracist activists, and the legacy of *Fansteel* (section 1), before turning to the 1960s sit-inners and the exacting political and legal challenges they faced (section 2). After examining how one of the sit-in movement's key institutional players, the NAACP LDF, responded to those challenges (section 3), I revisit the 1960s and early '70s debate about civil disobedience. As I hope to show, the NAACP legal strategy is absolutely essential if we are to make sense of that debate. By focusing on Rawls's liberal account and Michael Walzer's astute critique (sections 4–5), I offer a reinterpretation of the debate that properly foregrounds the civil rights movement's complicated relationship to the 1930s sit-downs.

1. Workers and Justices

Between 1936 and 1939, US workers staged 583 sit-down strikes in which they occupied workplaces for at least one day; they also engaged in briefer slow-

[11]An insightful essay by Alex Gourevitch focuses on a later moment in the civil rights movement and the repressive role of court injunctions ("Strikes, Civil Rights, and Radical Disobedience: From King to Debs and Back," *Contemporary Political Theory* 22 [2023]: 143–64). I discuss an earlier juncture and provide a more appreciative, yet critical, reading of Rawls.

[12]David Lyons, *Confronting Injustice: Moral History and Political Theory* (New York: Oxford University Press, 2013), 112–45.

[13]Robin Celikates, "Rethinking Civil Disobedience as a Practice of Contestation: Beyond the Liberal Paradigm," *Constellations* 23, no. 1 (2016): 37–45.

downs and so-called "quickie" sit-downs.[14] During this period of labor militancy, sit-downs grew in popularity: in 1936, they involved 88,000 workers; in 1937, 400,000 workers occupied the General Motors plant in Flint. According to Sidney Fine, the sit-down wave "involved every conceivable type of worker—kitchen and laundry workers in the Israel-Zion Hospital in Brooklyn, pencil makers, janitors, dog catchers, newspaper pressmen, sailors, tobacco workers, Woolworth girls, rug weavers, hotel and restaurant employees, pie bakers, watchmakers, garbage collectors, Western Union messengers, opticians and lumbermen."[15] The largest number took place in the textile industry (80), followed by the automobile industry (45).[16] Typically, sit-downers aimed at gaining union recognition where employers had refused to grant collective bargaining rights. Unlike workers elsewhere who sometimes occupied factories as a stepping-stone towards socialization, their US peers—even when communists and socialists—typically envisioned sit-downs as temporary occupations aimed at forcing businesses to recognize and negotiate with labor unions.[17]

Although the 1935 Wagner Act had guaranteed workers the right to organize unions and engage in collective bargaining, attempts to do so faced an "extraordinary campaign of lawlessness and opposition to the statute" from many businesses.[18] Business owners generally viewed the Wagner Act as illegitimate; they did whatever they could to resist unionization. For workers, the sit-down provided an appealing antidote. By occupying the workplace, pro-union workers could circumvent their replacement with "scabs" willing to cross picket lines and keep businesses operating. Many workers also seem to have viewed sit-downs as a legal tool to realize, in opposition to corporate intransigence, the Wagner Act and its promise of collective bargaining. On their view, it was the sit-downers, not the business owners, who were acting with proper respect for legality.[19] According to Fine, "since the sit-downers were pursuing objectives sanctioned by law but denied them by their employer, their unconventional behavior was [also] tolerated by large sections of the public."[20] Prominent labor lawyers and elected officials interpreted them as, in principle, a legitimate path to union recognition.[21] Business

[14]Jim Pope, "Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations," *Law and History Review* 24, no. 1 (2006): 46.

[15]Sidney Fine, *Sit-Down: The General Motors Strike of 1936–1937* (Ann Arbor: University of Michigan Press, 1970), 331.

[16]Ibid.

[17]Torigian, "Occupations of the Factories," 344–46. On the complicated role played by communists, see Lichtenstein, *Most Dangerous Man*, 25–153.

[18]Karl E. Klare, "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937–41," *University of Minnesota Law Review* 62 (1978): 287.

[19]Pope, "Worker Lawmaking," 72–76.

[20]Fine, *Sit-Down*, 339.

[21]Pope, "Worker Lawmaking," 77.

owners, by contrast, considered the sit-downs violent insurrections against private property secretly orchestrated, as King would remind his 1961 UAW audience, by "Reds."

According to some participants, the sit-downs strengthened worker solidarity; at the very least, sit-downers engaged in highly creative modes of communal self-government and self-regulation.[22] In a range of industries, and against some of the country's major antiunion firms (e.g., General Motors), the sit-downs resulted in victories. Workers embraced them for the same reason business owners detested them: the sit-downs often worked.

As defenders of the sit-downs noted, labor-related violence in the US usually occurred on picket lines in confrontations between replacement workers and state officials or private security forces. In principle, sit-down strikes could be expected to reduce such violence; businesses might hesitate before calling in the police or private security guards when doing so risked harming property. The sit-downers were by no means committed to principled nonviolence, an observation immediately made even by those, including the radical pacifist and socialist A. J. Muste, who embraced their cause.[23] When police or national guardsmen tried to remove them, at Flint and elsewhere, workers fiercely resisted. Nonetheless, in the massive sit-down wave of 1936–38, "no deaths and little property damage" occurred.[24] Though vandalism and violence occurred, some evidence suggests that sit-downers conscientiously minimized damage to what they revealingly described as "their" workplaces. On one interpretation advanced by sit-down defenders, participants sometimes endorsed an inchoate yet consequential idea of "property" in their jobs and fair compensation for their work: property rights to a job and humane work conditions deserved recognition alongside capital's traditional prerogatives.[25]

The sit-down's popularity quickly placed it in the crosshairs of businesses hoping to roll back labor's New Deal achievements. This part of the story is also complicated. Yet *Fansteel* (1939) constituted the successful culmination —and most consequential legal accomplishment—of a concerted corporate counteroffensive. *Fansteel* neutralized the sit-down and decisively reshaped US labor relations for decades to come.

The Fansteel Corp. case was opportune for antiunion businesses and those on the US Supreme Court who sympathized with them. It concerned a 1938

[22]Ibid., 49–61.

[23]A. J. Muste, "Sit Downs and Lie Downs," *Fellowship*, March 1937, 5–6.

[24]Klare, "Judicial Deradicalization," 324. See also Philip Taft and Philip Ross, "American Labor Violence: Its Causes, Character, and Outcome," in *The History of Violence in America*, ed. Hugh Davis Graham and Ted Robert Gurr (New York: Praeger, 1969), 384, who describe the sit-downs as "exceptionally peaceful."

[25]Muste, "Sit Downs and Lie Downs"; Joel Seidman, *"Sit-Down"* (Chicago: Socialist Party / League for Industrial Democracy, 1937), 4, 30–31; Pope, "Worker Lawmaking," 71.

sit-down strike that had involved fierce battles and property damage. According to the Court's majority, the NLRB had been correct in its determination that Fansteel had regularly engaged in illegal antiunion practices as defined by the Wagner Act. Nonetheless, accepting the NLRB's demand that the company reinstate strikers who had engaged in or abetted sit-down activities, Fansteel's representatives claimed to the Court, would amount to condoning "lynch law," a view with which the Court majority ultimately sympathized.[26] Many sit-downers had paid fines and faced legal penalties for their actions; the previous NLRB decision merely challenged the right of an employer to deny sit-downers reinstatement. According to the Court majority, however, the employer was free to do so. The Court's correction to the NLRB order narrowly delimited the scope of responsible, legally acceptable labor activities by providing a wide berth to business owners to fire and rehire sit-downers.[27] Activities for which militant workers had previously claimed the mantle of legality were rendered, for all intents and purposes, illegal and massively risky. In the aftermath of *Fansteel*, sit-downers faced not only the prospect of civil and criminal charges (e.g., disorderly conduct, trespassing, disturbing the peace) but also job losses.

The majority decision, penned by Chief Justice Charles Evan Hughes, reproduced antiunion business opinion. Ignoring the generally nonviolent facts of most sit-downs, Hughes tarred the workers with accusations of lawlessness, vandalism, and violence: theirs was a seizure of an industrial plant that violated rudimentary protections for private property. Hughes conflated property damage with violence against persons; he also claimed that the occupation was "not essentially different from an assault upon the officers of an employing company."[28] Even a temporary seizure of the owner's property could not, in principle, be distinguished from a physical assault on management. The sit-down constituted "an illegal seizure of . . . buildings in order to prevent their use by the employer in a lawful manner and thus by acts of force and violence to compel the employer to submit."[29]

In a pointed dissent, Justice Stanley Reed took Hughes and the Court majority to task for their failure to offer a sufficiently "objective appraisal."[30] Reed presciently predicted that the majority ruling would undermine key protections outlined in the Wagner Act by giving employers discretion to fire workers in the context of labor disputes in which "friction easily engendered" would inevitably "give rise to conduct, from nose-thumbing to sabotage, which will [now] give fair occasion" for employers to discharge workers.[31]

[26]Certiorari to the Circuit Court of Appeals, NLRB v. Fansteel Metallurgical 306 U.S. 240, 245 (1939).
[27]Klare, "Judicial Deradicalization," 319–22.
[28]*Fansteel*, 306 U.S. at 253.
[29]*Id.* at 256.
[30]*Id.*
[31]*Id.* at 256, 266–67.

Justice Hugo Black, who would later play a very different role in the Supreme Court's sit-in cases, joined Reed in a concurrence. Despite their dissent, the *Fansteel* ruling held: massive legal and practical impediments to workers hoping to engage in sit-downs became a centerpiece of US labor relations.[32]

2. Students and Mentors

Ignited by four college students who politely requested service at a segregated Greensboro, NC, Woolworth lunch counter on February 1, 1960, copycat sit-ins—involving approximately seven thousand mostly student participants in over one hundred localities—soon rippled across the South.[33] What we have come to dub "the sit-in movement" is now commonly viewed as crucial to the revitalization of a civil rights struggle that some of its leading figures feared had become perilously ineffective by 1959. Although theirs was not the first lunch counter sit-in targeting racism, the Greensboro Four immediately grabbed the national media spotlight, launching a wave of similar protests. The sit-in movement seemed to many observers to have come out of thin air. Yet, as King accurately observed in in his 1961 Detroit speech, its roots could be traced to the 1930s sit-downs.

Beginning with the Montgomery Bus Boycotts, King had been tutored in nonviolent methods by Bayard Rustin and Glenn Smiley, veteran figures in the Fellowship of Reconciliation (FOR), an organization that played a decisive role in transmitting labor's militant tactics to the black freedom struggle.[34] King also had cordial ties to Muste, one of FOR's founders. To better understand the ties between the sit-downs and the civil rights movements, we need to turn back the clock about two decades.

The *Fansteel* ruling notwithstanding, the sit-downs mesmerized a generation of pacifist and (often) social democratic or socialist activists, many affiliated with the left-wing, religiously oriented FOR and influenced by Muste, its leading figure. Although irritated by the worker sit-downs' lack of a strict commitment to nonviolence, Muste tried to impress on his colleagues their tactical advantages as early as 1937.[35] Emerging directly out of FOR, a

[32]James A. Gross, *The Reshaping of the National Labor Relations Board: National Labor Policy in Transition, 1937–1947* (Albany: State University of New York Press, 1981).

[33]George Lewis, *Massive Resistance: The White Response to the Civil Rights Movement* (New York: Hodder Arnold, 2006), 131; Christopher W. Schmidt, *The Sit-Ins: Protest and Legal Challenge in the Civil Rights Era* (Chicago: University of Chicago Press, 2018), 10–13; see also Martin Oppenheimer, *The Sit-In Movement of 1960* (Brooklyn: Carlson, 1989), 42–43.

[34]Martin Luther King Jr., *Stride toward Freedom: The Montgomery Story* (Boston: Beacon, 2010 [1958]).

[35]Muste, "Sit Downs and Lie Downs"; on Muste, see Leilah Danielson, *American Gandhi: A. J. Muste and the History of Radicalism in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2014).

closely related organization, the Committee (later: Congress) for Racial Equality (CORE), and its founders, Rustin and James Farmer, were among the first to apply sit-down techniques in 1943 wartime Chicago to an upscale restaurant, Stoner's, that regularly refused service to blacks. An interracial organization taking direct aim at racism, CORE and its founders shared Muste's admiration for the Congress of Industrial Organizations (CIO) "industrial unions and the direct-action techniques of the sit-down strikers."[36] Scattered occupations targeting segregation and similarly racist practices had taken place prior to the labor sit-downs and World War II.[37] However, there is no clear evidence that FOR or CORE activists were aware of such forerunners.

In contrast, Muste, Farmer, Rustin, and their colleagues were not only versed in the worker sit-downs; they also tried to figure out how they could be tweaked according to nonviolent and Gandhian lines and redeployed against racism.[38] Given the success of the business community and the Supreme Court in linking the sit-downs to violence, the activists' embrace of Gandhi possessed clear strategic as well as moral advantages. A major intellectual inspiration for their efforts was Krishnalal Shridharani's *War without Violence: A Study of Gandhi's Method and Its Accomplishment* (1939), a revised version of a Columbia University dissertation mentored by the sociologist Robert Lynd. Shridharani's book served as a handbook for early members of FOR and CORE and countless later civil rights activists. Farmer and Rustin appear to have known and personally interacted with Shridharani.[39] Describing sit-downs as the "most dramatic way of influencing public opinion both when the effort is successful and when it is crushed," Shridharani provided them with Gandhian credentials.[40] Farmer would go on to serve as CORE National Director, a capacity in which he mentored young activists committed to nonviolent direct action, just as the civil rights sit-ins swept the South.

[36]Meier and Rudwick, *CORE: A Study*, 6.

[37]Sean Patrick O'Rourke and Lesli K. Pace, eds., *On Fire: Civil Rights Sit-Ins and the Rhetoric of Protest* (Columbia: University of South Carolina Press, 2021).

[38]On these and other figures, see Anthony Siracusa, *Nonviolence before King: The Politics of Being and the Black Freedom Struggle* (Chapel Hill: University of North Carolina Press, 2021).

[39]Victoria W. Wolcott, "Radical Nonviolence, Interracial Utopias, and the Congress for Racial Equality in the Early Civil Rights Movement," *Journal of Civil and Human Rights* 4, no. 2 (2018): 34.

[40]Krishnalal Shridharani, *War without Violence: A Study of Gandhi's Method and Its Accomplishments* (New York: Garland, 1972 [1939]), 20. Farmer discussed the book in a memo to Muste arguing for the need to found CORE (Farmer, "Memorandum to A. J. Muste on Provisional Plans for Brotherhood Mobilization" [February 19, 1942], in *Negro Protest in the Twentieth Century*, ed. Francis L. Broderick and August Meier [Indianapolis, IN: Bobbs-Merrill, 1965], 211).

Another link between the 1930s labor and 1960s civil rights movement, A. Philip Randolph, worked alongside Muste and Rustin in 1941 in the March on Washington Movement and its push for the federal government to desegregate the military and guarantee equal employment.[41] Randolph shared their enthusiasm for borrowing from labor's militant practices, as did Pauli Murray, a Muste associate who deployed sit-down techniques to desegregate restaurants during World War II in Washington, DC. She later acknowledged the inspirational role the 1937 automobile sit-down strikes had played for her and other activists.[42]

In lively political exchanges among activists and sympathetic intellectuals beginning in the 1940s, the terms "sit-down," "sit-in," "civil disobedience," and "direct action" were employed more or less interchangeably.[43] Even in the early '60s, sit-ins were often described, by sympathizers and opponents, as sit-downs. This terminological overlap soon became a problem for the civil rights movement as it struggled to differentiate its efforts from worker sit-downs viewed by significant swaths of public opinion—and state officials and judges—as dangerously radical and thus politically and legally out of bounds. In the context of an anticommunist political climate, it would become imperative for the civil rights movement to distinguish its efforts from those of the 1930s sit-downers.

The long story of how these modest initial wartime protests culminated in the revitalization of the civil rights movement and related features—concerning, for example, economic boycotts as a political tool—cannot be recounted here. Yet there is no question that FOR and its sibling organization CORE served as key transmission belts between the labor radicalism of the '30s and the 1960s sit-in wave. James Lawson (born 1928), for example, was too young to have been directly influenced by the worker sit-downs. Yet as a longstanding FOR activist, he imbibed their lessons. During 1958 and 1959 he traveled throughout the South, offering workshops on nonviolent direct action "in the months leading up to the sit-down revolution of 1960."[44] A

[41]Rosa Parks's Montgomery colleague, E. D. Nixon, was a member of Randolph's Brotherhood of Sleeping Car Porters; Ella Baker was involved in organizing efforts by the CIO among shipyard workers during World War II. Barbara Ransby, *Ella Baker and the Black Freedom Struggle* (Chapel Hill: University of North Carolina Press, 2003), 133.

[42]Pauli Murray, *The Autobiography of a Black Activist, Feminist, Lawyer, Priest and Poet* (Knoxville: University of Tennessee Press, 1987), 105–6; Troy R. Saxby, *Pauli Murray: A Personal and Political Life* (Chapel Hill: University of North Carolina Press, 2020), 12.

[43]See, for example, "Civil Disobedience: Is It the Answer to Jim Crow?," *Non-Violent Direct Action Newsbulletin* 2, no. 3 (1943). On the terminological conflations, see David Miguel Molina, "Our Boys, Our Bodies, Our Brothers: Pauli Murray and the Washington, D.C. Sit-Ins, 1943–44," in *Like Wildfire: The Rhetoric of Civil Rights Sit-Ins*, ed. Sean Patrick O'Rourke and Lesli K. Pace (Columbia: University of South Carolina Press, 2020), 35–54.

[44]Siracusa, *Nonviolence before King*, 159.

friend and close ally of King's beginning in 1957, Lawson was the same age and shared with King overlapping theological and political interests. While at Vanderbilt Divinity School Lawson took over a weekly workshop—previously coordinated by Smiley—that ultimately triggered the important Nashville lunch counter sit-ins.[45]

Even if the lunch counter sit-ins appeared spontaneous, the ground had been well prepared by Lawson and others in FOR and CORE. The latter played a key role in organizing sit-ins in Miami in the summer of 1959, an immediate warm-up for the 1960 sit-in wave with which some of its leading activists seem to have been familiar.[46] When the student sit-in movement took off, CORE published pamphlets not only publicizing its efforts but also aiming to provide practical guidance to students.[47] Joseph Kip Kosek correctly points out that the "sit-ins that began in 1960 used the same method that CORE had employed as early as World War II."[48] The direct inspiration for those earlier sit-ins was the 1930s worker sit-downs.

Given this prehistory, the parallels between the two protest waves should hardly come as a surprise. Of course, the 1960s sit-in activists followed, as FOR and CORE had recommended, a more nonviolent, sometimes Gandhian template. When arrested and removed by the police or other officials, the sit-inners did not, in contrast to some earlier working-class sit-downers, resist. In both movements, however, the resulting violence or vandalism usually occurred in the context of harassment and violent assaults against activists.[49] Both the sit-downers and later sit-inners were frustrated by what they viewed as the insufficient efforts of mainstream labor (i.e., the American Federation of Labor) and civil rights organizations (NAACP), respectively. Both organizations initially greeted the new militants with skepticism and sometimes open hostility.

Just as the sit-downers interpreted their acts as congruent with federal labor legislation whose implementation had been stymied by intransigent

[45]Adam Fairclough, *To Redeem the Soul of America: The Southern Christian Leadership Conference and Martin Luther King, Jr.* (Athens: University of Georgia Press, 2001), 59–60.

[46]J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham and Selma* (Tuscaloosa: University of Alabama Press, 2021), 113–14.

[47]*Sit-Ins: The Students Report* (New York: CORE, 1960); *Cracking the Color Line: Nonviolent Direct Action Methods of Eliminating Racial Discrimination* (New York: CORE, 1961).

[48]Joseph Kip Kosek, *Acts of Conscience: Christian Nonviolence and Modern American Democracy* (New York: Columbia University Press, 2011), 229.

[49]Clive Webb, "Breaching the Wall of Resistance: White Southern Reactions to the Sit-Ins," in *From Sit-Ins to SNCC: The Student Civil Rights Movement in the 1960s*, ed. Iwan Morgan and Philip Davies (Tallahassee: University of Florida Press, 2012), 60–64; Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 274.

businesses, so were the sit-inners motivated partly by a sense that the promise of *Brown v. Board of Education* (1954) had been unfairly blocked by southern segregationists. Christopher W. Schmidt reports that many of them were frustrated with the limited progress made towards desegregation since *Brown*.[50] In 1960, as during the late 1930s, activists interpreted their temporary occupations of private property as, in principle, legally justified: those who resisted the implementation of *Brown* were the real lawbreakers. Sit-inners expressed disdain for what they viewed as the NAACP's excessively legalistic approach to social change and rejected efforts to limit their protests to carefully selected "test cases" for NAACP lawyers to use to undermine segregation. Famously, they opted for "jail no bail" rather than follow the NAACP's initial advice to pay bail, go home, and leave the rest to the lawyers and the courts.[51] Yet, again like the worker sit-downers, they envisioned their protests as a way to secure the belated enforcement of existing legal norms that had been illegitimately violated.

Both the sit-downers and sit-inners occupied private property. However, neither aimed at a frontal assault on American capitalism, though both challenged traditional prerogatives of property ownership, i.e., the business owner's right to refuse recognition to labor unions or to discriminate against racial minorities. If only implicitly, they pushed back against absolutist ideas about property. Admittedly, the labor sit-downs may have posed a more far-reaching challenge to economic injustice and material inequality than the lunch counter sit-ins; the latter arguably rested on some implicit idea of a "consumer's republic"[52] in which the right to spend one's money as one likes becomes central to "liberty."[53] Even with that caveat, one should not overstate the differences. Both sit-downers and sit-inners were motivated by a keen sense that fundamental denials of legitimate rights by business owners invited unacceptable forms of degradation and humiliation.[54]

Many sit-downers sought union rights chiefly to gain a bigger piece of the economic pie. Lunch counter sit-inners, at first glance, wanted nothing more than for blacks to have the same rights as whites to participate in the consumer marketplace. However, both movements raised broader questions about the meaning of political and social citizenship amid egregious inequalities and injustices. For organized labor, the sit-down aimed at guaranteeing employees a say in the workplace and government, along with a measure of respect in a society that worshiped hard work but tended to look down at those who in fact worked hardest. As King analogously observed, the sit-

[50]Schmidt, *The Sit-Ins*, 29.
[51]Ibid., 32.
[52]Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America* (New York: Vintage Books, 2003), 167.
[53]Ibid., 174.
[54]Schmidt, *The Sit-Ins*, 35–37.

ins "represent[ed] more than a demand for service; they represent[ed] a demand for respect."[55] Their protests "drew upon one of the most foundational of constitutional principles—the right to equal protection of the law."[56] Despite the sit-inners' differences with the NAACP lawyers, the students accepted the LDF's efforts on their behalf: on a "day-to-day basis the civil rights lawyer was crucial to the movement of direct action advocates."[57] Essential to this alliance was that the lawyers, as we will see, were able to translate the sit-inners' political aims into the requisite legal and constitutional terms.

By treating the worker sit-downs as essentially violent attacks on property and its owners, the *Fansteel* ruling had not only undermined labor's organizational prowess but also marginalized the larger questions about citizenship they raised. The sit-inners, in striking contrast, garnered a more favorable Court response. In a series of sympathetic rulings made on narrow legal grounds, the Warren Court discounted *Fansteel*'s relevance to the civil rights sit-ins.[58] One source of this shift was that both the activists and their lawyers—in particular, the NAACP LDF—depicted the sit-ins as a cry for equal civil and political rights, a position that resonated with the Court majority and many white Americans. The sit-ins, on this view, did not aim at fundamentally challenging the economic order or undermining private property. By marginalizing parallels to the worker sit-downs, the NAACP LDF gained victories in the courtroom but at the cost of sidelining questions about economic justice.

3. Segregationists and Jurists

If as respectable a figure as former president Truman could discredit the sit-ins by recalling their links to the 1930s labor sit-downs, segregationists thought it fair game to do so as well. Segregationists regularly exploited the terminological ambiguities: southern citizens' councils dubbed the student sit-ins "seditious sit-downs" as a way of tarring them with the specter of radicalism and claiming that they posed a principled threat to private property.[59] Despite the sit-ins' nonviolent credentials and little evidence of communist influence, tying them to the worker sit-downs of the

[55]King, quoted in Schmidt, *The Sit-Ins*, 36.

[56]Schmidt, *The Sit-Ins*, 46.

[57]Leroy D. Clark, "The Lawyer in the Civil Rights Movement—Catalytic Agent or Counter-Revolutionary?," *University of Kansas Law Review* 19 (1970): 465.

[58]Among eighty-one sit-in cases all but four were decided in favor of sit-inners: Joel B. Grossman, "A Model for Judicial Policy Analysis: The Supreme Court and the Sit-In Cases," in *Frontiers of Judicial Research*, ed. Joel B. Grossman and Joseph Tanenhaus (New York: Wiley, 1969), 424.

[59]"Seditious Sit-Downs," *The Citizens' Council*, March 1960, 1–2. FOR and CORE did include many social democrats and socialists. Unsurprisingly given their Gandhian

1930s was a smart strategy for segregationists. Crucially, it allowed white supremacists to reposition themselves as defenders of individual property rights. As the Virginia Commission on Constitutional Government announced, "the conflict here is between one individual and another individual—between the rights of the customer and the rights of the restaurateur. . . . The right of a property owner to peaceful control and management of his property surely ranks among the most vital human rights or civil rights that the American citizen enjoys. . . . It is one of the great individual rights upon which a free society rests."[60] Thus, the Fourteenth Amendment's prohibition on state action that deprived citizens of equal protection of the law was moot since sit-ins amounted to a clear-cut challenge to the private restaurant or lunch counter owner's constitutionally secure right to serve—and discriminate against—whomever he or she deemed appropriate. Like the sit-down strikes of the 1930s, sit-inners were attacking sacrosanct property rights: if they succeeded in reshaping policy and jurisprudence, their actions invited far-reaching government restrictions on property and, prospectively, socialism or communism.[61] In this vein, North Carolina officials noted in a brief for a US Supreme Court case focused on a 1962 Durham sit-in, the protests had opened the door to "the abridgement of property" and a "completely socialized state."[62]

In response to this genre of criticism, the Southern Regional Council, an organization sympathetic to the student protesters, urged them to abandon any use of the term "sit-down" in favor of "sit-in" as a way to differentiate their efforts from those of 1930s militants.[63] Despite such efforts, the *Fansteel* ruling soon served as a point of reference for segregationists. The Supreme Court had, after all, conflated the sit-downs with violent assaults against management and its prerogatives. Similarly, those opposing the 1960 sit-ins characterized them as violent mob rule that unjustly targeted lunch counter owners and their property rights.[64] In sit-in cases that made their way into the courts, segregation's defenders frequently cited *Fansteel*. In *Garner v. Louisiana* (1961), a case involving Baton Rouge student sit-inners charged and found guilty of disturbing the peace, the NAACP LDF appealed the Louisiana Supreme Court's denial of relief to the protesters. Louisiana officials described the sit-in as "an illegal seizure of the property

provenance, however, they were anticommunist. Segregationists, like earlier right-wing critics of the sit-downs, ignored such nuances.

[60]Virginia Commission on Constitutional Government, *Races and Restaurants: Two Opinions* (April 20, 1960), 1.

[61]Lewis, *Massive Resistance*, 130–37; Schmidt, *The Sit-Ins*, 91–113; see also Morgan and Davies, *From Sit-Ins to SNCC*.

[62]Brief of the State of North Carolina, Avent v. North Carolina, 373 U.S. 375, 47–48 (1963).

[63]Schmidt, *The Sit-Downs*, 82.

[64]"Seditious Sit-Downs," 2; Schmidt, *The Sit-Ins*, 108.

of another which this Court has long held unlawful," directly "comparable to the action of employees in the 'sit-down strikes' of the late 1930s."[65] The purpose of the sit-ins was "to coerce the lawful owner of the property, by refusing to give up possession of his property, into what the 'sit-downers' or 'sit-inners' wanted him to do." The sit-inners sought to "club such owner into submission."[66] In oral arguments before the court, Louisiana officials asserted that sit-ins had regularly resulted in fist fights and thus were effectively riots in the making.[67] In another Louisiana case involving a New Orleans sit-in, *Lombard v. Louisiana* (1963), state officials argued that *Fansteel* was pertinent since protesters had illegally occupied a chain store lunch counter, an act equivalent to the seizure of Fansteel buildings that had prevented its "use by the employer in a lawful manner and to compel the employer by force to submit to their demands."[68]

Shuttlesworth v. Birmingham (1962) concerned charges against the civil rights leader Revered Fred Shuttlesworth for aiding and abetting sit-inners subsequently charged with criminal trespassing. According to Alabama officials, the pertinent constitutional precedent was *Fansteel*, which "seems so patently applicable [to the present case] as to warrant no argument . . . except to say that nothing has heretofore been before the courts [that] offers a better parallel."[69] Because of the sit-down's illegality, and the fact that Shuttlesworth understood what he was advocating, he had incited criminal acts. In *Peterson v. Greenville* (1962), the South Carolina city's legal representatives equated a recent sit-in with a "silent and forceful occupation" that "smacks of coercion. It is a demonstration of force, not reason," and thus unacceptable as found in *Fansteel*.[70] In another case involving a sit-in by teenagers at a segregated playground in Savannah, Georgia authorities associated "taking over the playground" with the sit-down strikes. Thus, they concluded, the reasoning employed by the justices in *Fansteel* condemning such protests "expresses the feeling that is applicable in this case."[71]

Such legal claims notwithstanding, the segregationist redeployment of *Fansteel* made little headway with the justices, despite the fact that the sit-in cases frequently posed tough questions about property rights; this seems to have been one reason why the LDF—and especially Thurgood Marshall—had initially been hesitant to take up the students' cause.[72] In a complicated

[65]Supplemental Brief on Behalf of Respondent, Garner v. Louisiana, 368 U.S. 157, 1–2 (1961).

[66]*Id.* at 2–3.

[67]Schmidt, *The Sit-Ins*, 125.

[68]On Writ of Certiorari to the Supreme Court of the State of Louisiana, Lombard v. Louisiana, 373 U.S. 267, 18 (1963).

[69]Brief for Respondent, Shuttlesworth v. Birmingham, 373 U.S. 267, 10 (1962).

[70]Brief of Respondent, Peterson v. Greenville, 373 U.S. 244, 20 (1963).

[71]Brief for Respondent, Wright v. Georgia, 373 U.S. 284, 11 (1963).

[72]Schmidt, *The Sit-Ins*, 51–56.

series of rulings, an increasingly divided Court sided with elements of the LDF strategy, as masterminded by Jack Greenberg, Marshall's successor as LDF director counsel. First, in defending the sit-inners the LDF exploited a range of legal technicalities and emphasized the unacceptable vagueness of the statutes used to charge them. Second, Greenberg and his colleagues highlighted the sit-inners' nonviolence to counter legal charges (e.g., disturbing the peace) that linked them to mob violence. Third, when state or local segregation laws were deployed against sit-inners, the LDF appealed to the Fourteenth Amendment's equal protection clause and its prohibition on discriminatory state action. Fourth (and most controversially), even when nothing more than a private business owner's right to discriminate appeared to be at stake, the LDF lawyers sought to prove that such incidents implied some state intervention and thus fell under the auspices of the Fourteenth Amendment.[73] As Greenberg later asked, "to be realistic, weren't the police, courts, and prison systems in the sit-in cases enforcing private discrimination" even when private businesses simply refused service to blacks?[74] When the authorities enforced or policed the property owner's "individual" discriminatory preferences, the Fourteenth Amendment's equal protection clause still obtained.

The Supreme Court never provided the LDF with a broad constitutional ruling categorically prohibiting discrimination by property owners. Nevertheless, the sit-inners' political—and intertwined courtroom—challenges paved the way for the Civil Rights Act of 1964 and its landmark public accommodations provisions, which banned discrimination by private businesses serving the public.[75] I focus on a consequential set of arguments LDF lawyers employed to neuter their opponents' appeals to *Fansteel*. Their account of the sit-ins would soon gain the imprimatur of liberal philosophers paying careful attention to the protests.

In *Shuttlesworth* Greenberg and the LDF team directly took on the legacy of *Fansteel*. They admitted that the analogy to worker sit-downs "may very well be true," before adding the caveat that "sit-down demonstrations have taken many forms." Not all sit-down (or -in) protests were equivalent: the civil rights sit-ins were different from worker sit-downs. One distinction was that the Birmingham sit-inners whom Reverend Shuttlesworth had encouraged "did not violate any valid ordinance" since the local statute they had broken required racial segregation and was thus "unconstitutional on its face."[76] In contrast, LDF lawyers implied, the labor sit-downers had broken some valid statutes.

[73]Greenberg, *Crusaders*, 274–76, 306–17; Grossman, "Model for Judicial Policy Analysis."

[74]Greenberg, *Crusaders*, 276.

[75]Schmidt, *The Sit-Ins*, 152–79.

[76]Brief for Petitioners, 373 U.S. 267, 8 (1962).

More significantly, at stake in this and related sit-in cases were basic rights to free expression guaranteed by the Fourteenth Amendment. The LDF lawyers pointed out in *Barr v. Columbia* (1961) that precedent supported the view that "the free expression issue is not resolved merely by the fact that private property rights are involved."[77] In making this claim, Greenberg and his colleagues drew on one of the Court's more conservative members, Justice Harlan, whose concurring opinion in *Garner v. Louisiana* asserted that the sit-inners warranted protection under long-standing free speech rights.[78] According to the LDF, the Fourteenth Amendment and subsequent constitutional rulings did not secure a right "to free expression on private property to all cases or circumstances."[79] Nevertheless, under some circumstances, and depending on the specific "nature of the property rights asserted," the Supreme Court had sided with parties, e.g., "Jehovah's Witnesses who went upon the privately owned streets of a company town to proselytize for their faith," who employed rights to free expression even when seemingly in conflict with property rights. Free speech was deserving of protection even in contexts where affected property owners opposed it; whether its use was constitutionally permissible required "consideration of the totality of the circumstances."[80] Restrictions on free expression were legitimate only where imminent threats to public order existed; southern officials had failed to demonstrate the existence of such dangers.[81] In effect, the sit-inners were simply participating in the "free trade in ideas" essential to democracy.[82] In *Avent v. North Carolina* (1962) the LDF lawyers noted: "What has become known as a 'sit in' is a . . . well understood symbol, a meaningful method of communication and protest."[83]

This interpretation of the sit-ins as exemplars of free expression allowed the LDF to tap key Court decisions that had favored labor unions. Not *Fansteel*, but other judicial precedents protecting organized labor's right to organize and picket peacefully, were relevant. In *Republic Aviation Corp. v. NLRB* (1945), the Court had upheld an NLRB ruling that found employer regulations prohibiting union solicitation on company grounds to be illegal.[84] In that case, the LDF lawyers recalled in *Boynton v. Virginia* (1960), the Supreme Court had determined that the employee's right to organize had

[77]Petition for Writ of Certiorari to the Supreme Court of South Carolina, Barr v. Columbia, 378 U.S. 146, 20 (1964). Also, Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia, Thompson v. Virginia, 374 U.S. 99, 21–23 (1962).

[78]368 U.S. 157, 201 (1961).

[79]378 U.S. 146, 19–20 (1964).

[80]*Id.* at 21.

[81]Brief for Petitioners, 373 U.S. 375, 49–50 (1963).

[82]Petition for Writ of Certiorari to the Court of Appeals of Maryland, Bell v. Maryland, 378 U.S. 226, 14 (1964).

[83]Brief for Petitioners, 373 U.S. 375, 49 (1963).

[84]Republic Aviation Corp. v. National Labor Relations Board, 324 U.S. 793 (1945).

to be weighed against "the employer's right to maintain discipline."[85] Even if identifying the proper constitutional balance posed complicated questions, they argued, property rights did not trump free speech. The sit-ins, on this view, were analogous to peaceful, responsible union organizing tactics the Court had previously protected. Although the LDF lawyers said almost nothing about the realities of the worker sit-downs or the complexities of *Fansteel*, their main point was that the nonviolent sit-ins should be viewed as constitutionally protected free speech, not violent attempts to seize private property. In the sit-ins, no "essential property right . . . is infringed."[86] *Pace* critics, the sit-ins were not coercive assaults on property but communicative acts directed at public opinion.

In contradistinction to King's UAW speech, the LDF lawyers drew no parallels between the worker sit-downs and civil rights sit-ins: doing so made no sense in light of *Fansteel*. Although the lawyers may have overstated the contrasts, they did identify one key difference. Sit-inners were seeking equal civil and political liberties: placing their protests under the rubric of the Fourteenth Amendment's free expression protections meshed well with that goal. Even if the sit-downs raised broader questions about citizenship, their efforts focused chiefly on strengthening organized labor as a check on business's privileged status. Theirs was not primarily an appeal to basic liberal ideals of political and legal equality.

The LDF's politically and legally savvy interpretation of the sit-ins failed to persuade every justice. Justice Black, despite his earlier dissenting position on *Fansteel*, emerged as one of the sit-inners' harshest critics, reiterating in a forceful dissent to *Bell v. Maryland* (1964) the hostile view commonplace among segregationists that the sit-ins constituted violent incidents of mob rule aimed at decimating property rights.[87] Nor did the strategy convince southerners who responded to the path-breaking Civil Rights Act by doing whatever they could to minimize its scope.

4. John Rawls: Seeing Like Some Activists?

As Katrina Forrester has shown, liberal philosophers closely followed the sit-ins as well as the Supreme Court's response.[88] For liberals in the late 1950s and early '60s, what transpired in the Supreme Court "determined what counted as a political problem worthy of philosophical focus."[89] Hugo Bedau organized a panel devoted to civil disobedience at the 1961 meeting of the American Philosophical Association and would go on to write extensively

[85]Brief for Petitioner, Boynton v. Virginia, 364 U.S. 454, 11–12 (1960).
[86]Brief for Petitioners, Gober v. Birmingham, 373 U.S. 374, 29, 31 (1963).
[87]Bell v. Maryland, 378 U.S. 226 (1964).
[88]Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton: Princeton University Press, 2019), 44–48, 64–71.
[89]Ibid., 43.

about it and edit a "reader" widely used in college classrooms.[90] John Rawls sympathized with the sit-inners and soon began outlining his own theory, taking a first stab at a "Law and Philosophy" symposium in New York.[91] *A Theory of Justice* would offer the most developed version of his defense. In contrast to Justice Black and southern segregationists, Rawls and others appear to have been persuaded by the LDF's courtroom defense. At the very least, liberal ideas about civil disobedience reproduced some of its core traits. In the process, liberals sidelined the sit-inners' debts to the worker sit-downers along with questions about material inequality and economic justice that the latter had pointedly raised.

Because of his massive influence and canonical status, I focus on Rawls. He defined civil disobedience as lawbreaking that was a "public, nonviolent, conscientious yet political act."[92] Its "civil" character stemmed especially from its noncoercive and nonviolent contours. Civil disobedients should be expected to provide evidence of respect for or fidelity to law, which in a basically liberal order meshed with the community's shared sense of political justice, as ensconced in the constitution and its core principles. Typically, demonstrating such fidelity meant accepting legal penalties, e.g., appearing in court and facing the prospect of sanctions. This is what Rawls discovered among the sit-inners. As he noted in unpublished remarks, their

> aim was to have the higher agencies correct the local ordinances thought to be at variance with the [Constitution] or other higher laws—at any rate as these would be interpreted by the Supreme Court. They were not upheld by the Court, but they did eventually gain their end in Congress by Title II of the Civil Rights Act of 1964, which does provide for equal accommodation for equal service in places of public accommodation. Thus, because our Constitution is just, much CD [civil disobedience] can be interpreted . . . as an appeal to the Constitution itself—or to the ideal which it expresses [and] which it is believed would dictate repeal and reform of existing lower (or local) statutes.[93]

With some parallels to the views of some sit-inners and certainly the LDF lawyers, Rawls thought it made sense to describe civil disobedience as politically motivated illegality that evinced fidelity to the US Constitution and its "higher laws." He plausibly interpreted the sit-inners as endeavoring to tap the Constitution to transform the American polity into a more just political

[90]Hugo Bedau, "On Civil Disobedience," *Journal of Philosophy* 58 (1961): 653–65; Bedau, ed., *Civil Disobedience: Theory and Practice* (Indianapolis, IN: Bobbs-Merrill, 1969).

[91]John Rawls, "Legal Obligation and the Duty of Fair Play" (1964), in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 117–29.

[92]John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 364.

[93]Quoted in Forrester, *In the Shadow of Justice*, 66.

order. Rawls did not here describe the United States as a "nearly just" society; the Constitution was just—and thus a launching pad for reform. As he later formulated that intuition in *A Theory of Justice*, civil disobedience should entail "disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof."[94]

A Theory of Justice also noted that civil disobedience might include scenarios where protesters faced "some uncertainty as to whether their" actions "will be held illegal." They were "not simply presenting a test case for a constitutional decision: they are prepared to oppose the statute" and might refuse to desist in their protests even "should the courts eventually disagree with them."[95] This is how some sit-inners appear to have interpreted their activities: while relying on LDF legal support, they opposed attempts to restrict protests to a handful of carefully selected "test cases" to be tried in courts. As we have seen, the LDF eventually acknowledged the virtues of a mass sit-in movement.[96]

Rawls tracked the LDF interpretation in two additional respects. First, he argued that civil disobedience was best conceived as akin to free expression: "One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum."[97] An appeal to a shared sense of justice and common constitutional principles, civil disobedience represented a noncoercive and communicative act intended to sway or persuade others for the sake of advancing political reform. Rawls offered a philosophical version of the argument made in court on the activists' behalf by the LDF that their protests were exemplars of free expression. He never posited a legal right to civil disobedience; by definition it entailed some political act akin to public speech yet "thought to be contrary to law."[98] In some contrast, the LDF lawyers regularly challenged the alleged illegality of their plaintiffs' acts. Yet they never defended a general right to break the law on political grounds either, a position that would have immediately discredited them before the nation's highest court.

Second, Rawls disconnected the civil rights sit-ins from their prehistory in the labor struggles of the 1930s. Though a left-liberal with egalitarian economic views, he unhooked issues of material inequality from civil disobedience, which should generally be restricted "to serious infringements of the first principle of justice, the principle of equal liberty," and thus to matters concerning basic civil and political liberties, not economic justice.[99] Rawls's position was a complex one, but in part he doubted that the intricacies of

[94]Rawls, *Theory of Justice*, 366.
[95]Ibid., 365.
[96]Greenberg, *Crusaders for Justice*, 267, 270–79, 306–17.
[97]Rawls, *Theory of Justice*, 366.
[98]Ibid., 365.
[99]Ibid., 372.

social and economic policy were consistent with formulating clear public appeals based on some shared sense of justice. Civil disobedience was justifiable when focused on violations of civil and political but not social or economic rights. Rawls provided a theoretical grounding for civil disobedience as primarily political but not economic—a position with some clear affinities to the LDF legal defense, even if differences remained.

The LDF lawyers, for example, were cognizant of the threats posed by the *Fansteel* precedent and likely familiar with some of the 1930s prehistory. In contrast, there is no evidence that Rawls was similarly informed or interested in the sit-downs: he simply presupposed their theoretical irrelevance. Even if this move paralleled a broader shift in postwar US liberalism from questions of economic equity to those concerning political and legal inclusion, it was soon widely—and accurately—viewed as marginalizing politically motivated lawbreaking aimed at changing property relations or generating redistribution.[100] It sidelined thorny questions about economically oriented protests or those resulting in property damage, which 1960s liberals usually viewed as incongruent with justifiable civil disobedience.[101] It also meant that the influential liberal debate about civil disobedience—and its cousin, conscientious objection—had nothing to say about worker sit-downs and factory occupations.

The outlines of my argument will seem familiar to those who have rightly emphasized the early civil rights movement's impact on Rawls and other liberals. Yet some necessary refinements can now be made. The tendency in recent literature to interpret Rawls and his theory as badly out of step with the civil rights movement sometimes goes too far: his account of civil disobedience built on a credible interpretation of both the sit-in movement and the LDF legal strategy, which selectively highlighted some of the movement's traits to win courtroom cases.[102] Even if Rawls sanitized the messier and more radical features of the 1960 black freedom struggle, he reproduced key traits of an influential, politically astute strategy that was pursued by some early civil rights movement participants and especially their lawyers.[103] Participants in the struggle for desegregation understandably thought it smart to differentiate the 1960 sit-ins from earlier worker sit-downs, in part to protect student lunch counter sit-inners from the ominous legal specter of *Fansteel*, but also because their protests could be viewed as more strictly nonviolent and focused on basic civil and political rights.

If we find Rawls guilty of implicitly downplaying the civil rights movement's broader political and economic aspirations, we need to level the

[100]For example, Howard Zinn, *Disobedience and Democracy: Nine Fallacies on Law and Order* (Boston: South End, 2002 [1968]), 112.

[101]Bedau, "On Civil Disobedience," 653–65.

[102]Pineda, *Seeing Like an Activist*, 11, 30–40, 48.

[103]Brandon Terry similarly interprets Rawls as very much attuned to the struggles of the 1960s. "Conscription and the Color Line: Rawls, Race, and Vietnam," *Modern Intellectual History* 18, no. 4 (2021): 960–83.

same charge against the LDF and some movement activists as well. Even among sympathizers aware of the sit-inners' debts to the 1930s sit-downs, many appreciated that it was sometimes politically and legally opportune to deemphasize that prehistory. Rawls's account of civil disobedience provided a philosophical crystallization of that political move. That crystallization was anything but "abstract" or disconnected from political life; it mirrored one of the movement's main strategies.

Whatever its benefits, this disconnection of the sit-ins from the legacy of the worker sit-downs came at a price. Most obviously, it risked marginalizing calls within the civil rights movement for far-reaching economic reform. Even today, Americans celebrate King the supposedly saintly civil rights leader, not King the radical critic of American capitalism. Even as King embraced the sit-inners and worked with the LDF lawyers, he recognized the limitations of interpreting their protests exclusively as aiming to realize equal protection under the law. Sometimes he clearly embraced a more expansive and potentially radical view of civil disobedience than that suggested either by the LDF legal strategy or by liberal philosophers. During a March 18, 1968, speech at the annual convention of the American Federation of State, County, and Municipal Employees (AFSCME), King declared that "our struggle is for genuine equality, which means economic equality. For we now know it that it isn't enough to integrate lunch counters. What does it profit a man to be able to eat at an integrated lunch counter if he doesn't earn enough money to buy a hamburger and a cup of coffee?"[104] For King, inclusion on equal terms in the US polity was a first step towards freedom; the second would entail changes to the existing system of private property. Unlike the LDF lawyers making their case before a divided Supreme Court, King reminded audiences at the UAW convention of the links between the sit-inners and sit-downers, recognizing that the sit-downers had raised questions about economic injustice and material inequality that the civil rights movement would need to take up.

More remains to be said about the complex relationship between King and both the LDF strategy and related liberal theories. Yet Alex Gourevitch goes too far when he reinterprets King as a proponent not of civil but instead radical disobedience premised on challenging the authority of the legal order as a whole.[105] Whatever King's disagreements with LDF lawyers, he shared their general view that "the magnificent words" of the Declaration of Independence and US Constitution offered "a promissory note to which every American was to fall heir."[106] King's speeches and writings are

[104]Martin Luther King, "Address to American Federation of State, County, and Municipal Employees" (March 18, 1968), in Honey, *"All Labor Has Dignity,"* 175.

[105]Gourevitch, "Strikes, Civil Rights, and Radical Disobedience."

[106]Martin Luther King, "I Have a Dream" (1963), in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James M. Washington (New York: Harper & Row, 1986), 217.

replete with legal and constitutional appeals, not because he sought modest reforms along the lines advocated by Rawls and other liberals, but because the US Constitution offered, in his eyes, a dynamic starting point for potentially far-reaching radical as well as economic transformation. Those engaging in nonviolent direct action, he believed, could show the "very highest respect for the law" by creatively tapping and sometimes reinterpreting those legal sources.[107]

We have already observed what the disconnect from the sit-downs meant for political theory and philosophy. Rawls restricted justifiable civil disobedience to illegal protests that were public and nonviolent, noncoercive, communicative or deliberative, directed at political but not economic injustices, and expected to demonstrate fidelity to law. He and other liberals suppressed the hidden origins, in the labor upheavals of the 1930s, of the sit-ins and the theories of civil disobedience inspired by them. That neglect contributed to some theoretical lacunae, e.g., civil disobedience as a possible tool against economic injustice, or the potentially constructive political role of "violent" property damage inconsistent with strict notions of nonviolence.

5. Back to the Sit-Downs?

The 1930s sit-downs did not fully disappear from the philosophical debate, however. To challenge liberalism's restrictive account of civil disobedience, Michael Walzer—then a young political theorist based, like Rawls, at Harvard—recalled the UAW sit-down strikes of 1936–37. Walzer had covered the 1960 sit-ins for the social democratic *Dissent*.[108] His astute 1969 essay "Civil Disobedience and Corporate Authority" suggests how the sit-downs might justify a more expansive understanding of civil disobedience; this discussion poses some still pertinent questions. Although Pineda groups Walzer with Rawls and other liberals accused of harnessing the messy realities of the civil rights struggle to a truncated liberalism,[109] Walzer argued that the UAW sit-downs, their coercive and sometimes violent contours notwithstanding, might be described as an exemplar of an alternative, revolutionary type of identifiably democratic civil disobedience potentially legitimate in some institutional contexts. Mainstream liberal accounts neglected the harsh realities of autocratic corporate authority in otherwise liberal states. Crucially, liberal theories presupposed a basically democratic polity. Yet corporate decision-making structures were anything but

[107]Martin Luther King Jr., "Letter from Birmingham City Jail" (1963), in *Civil Disobedience In Focus*, ed. Hugo Bedau (New York: Routledge, 1991), 74. On my reading, King never abandoned the idea that lawbreaking should evince respect for or fidelity to law, though he interpreted this intuition quite differently from Rawls and most liberals.

[108]Michael Walzer, "A Cup of Coffee and a Seat," *Dissent* 7 (April 1960): 111–20.

[109]Pineda, *Seeing Like An Activist*, 6, 54–55, 88–89.

democratic. Recalling the despotic conditions workers faced at General Motors prior to successful unionization, Walzer interpreted the auto worker sit-downers' efforts as akin to illegal protests in authoritarian states. Like those doing battle with autocrats, the sit-downers sought union rights to limit hitherto unchecked managerial prerogatives.

For Walzer, the UAW sit-downers met a series of demanding conditions that qualified their actions as "civil." First, they made a persuasive case that work conditions were repressive. Second, they offered tangible evidence, by means of proposals to reorganize decision making at work, that their intentions were basically democratic in character. Third, they had exhausted formal channels and possibilities for redress. Fourth, they minimized coercion: sit-downer violence was typically defensive and usually only transpired when oppression was "palpable and severe."[110] Fifth, sit-downers "repeatedly stressed their willingness to negotiate a settlement."[111]

Like increasingly influential liberal notions, Walzer's revisionist interpretation of the sit-downs as an alternative mode of civil disobedience, "in which the [democratic] state is not challenged . . . but only those corporate authorities that the state (sometimes) protects,"[112] demanded that lawbreakers pass some tests. Even under the conditions of corporate autocracy, civil disobedience required responsibility and good faith efforts to minimize harm. To the extent that the UAW sit-downers had acted accordingly, they had intimated a broader notion of "civility" than that endorsed by competing liberal theorists of political obligation.

Walzer's account rested on contested views about corporate authority I cannot defend here. Yet, his contribution is illuminating for two reasons. First, by recalling the sit-downs, he had identified how their transfiguration into civil rights sit-ins—and the liberal theories inspired by them—had distorted some of their original contours. The sit-downers helped birth liberal theories of civil disobedience. However, the resulting liberal theories offered a poor framework for understanding the sit-downs. An astute student of the history of the American Left, Walzer surely appreciated the irony of this peculiar historical trajectory. Second, Walzer's analysis raised questions that remain unanswered. Most importantly, under what conditions might more expansive understandings of disobedience and resistance be justified, even in the context of more or less liberal societies?[113] When, if ever, can

[110]Michael Walzer, "Civil Disobedience and Corporate Authority" (1969), in *Obligations: Essays on Disobedience, War, and Citizenship* (New York: Simon & Schuster, 1970), 44.

[111]Ibid., 41.

[112]Ibid., 43.

[113]Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (New York: Oxford University Press, 2018); William E. Scheuerman, "Why Not Uncivil Disobedience?," *Critical Review of International Social and Political Philosophy* 25, no. 7 (2022): 980–99.

we identify reasons for protesters to step outside the boundaries of stringent liberal models of civil disobedience? Can coercive or violent protest ever be acceptable in democratic societies? Might "civility" be understood differently from how Rawls and other liberal theorists of civil disobedience asserted?[114] In response to a resurgence of militant, oftentimes unconventional political lawbreaking, scholars are debating these matters. The fact that they are doing so suggests that Walzer was right that many "questions raised in 1936–1937 still have to be answered."[115]

In 1961, King highlighted the links between the sit-downs and sit-ins. Scholars should follow his lead by paying closer attention to recent thinking about the forgotten sources of political disobedience in the tumultuous labor upheavals of the last century. Without careful attention to the 1930s worker sit-downs and their legacy we cannot fully understand either the 1960s civil rights sit-ins or the liberal theories of civil disobedience they spawned. Only by following King's example are we likely to get a better handle on the genealogy of contemporary theories of political obligation along with their strengths and weaknesses.

[114]Aurélia Bardon et al., "Disaggregating Civility: Politeness, Public-Mindedness and Their Connection," *British Journal of Political Science* 53, no. 1 (2023): 308–25.

[115]Walzer, "Civil Disobedience," 36.