6. SEMIOTICS AND MARTIN LUTHER KING’S
LETTER FROM BIRMINGHAM JAIL*

I. INTRODUCTION: THE LETTER

Many literary works have been written about legal issues as lofty as civil disobedience. The Letter from Birmingham Jail (Letter) by Martin Luther King, Jr.1 is one of the classics in the literature of civil disobedience,2 which belongs on the shelf next to Sophocles’ Antigone, Henry David Thoreau’s Walden and Civil Disobedience,3 Gandhi’s writings, and Jean Anouilh’s Antigone. One of the many black men suffering in “the prison of segregation,”4 King wrote the Letter from his prison cell on the margins of a newspaper. King was jailed on Good Friday, April 12, 1963, for failing to obtain a parade permit from the Birmingham city commission and for disobeying a court order forbidding civil rights leaders from taking part in or encouraging demonstrations.5 What emerges from these scraps of paper is a

* This chapter first appeared as an article in 2 Cardozo Studies in Law and Literature 255–87 (1992). It has been revised, updated, and adapted to the themes investigated in this book.

3. Thoreau’s views on civil disobedience and the existence of unjust laws are similar to those of King. See Henry David Thoreau, On the Duty of Civil Disobedience 223 (1960) (“It is not desirable to cultivate a respect for the law, so much as for the right . . . Law never made men a whit more just”). Thoreau discusses unjust laws and King defines them. Thoreau says, “Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once: men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. It makes it worse . . . If the injustice is part of the necessary friction of the machine of government, let it go, let it go.” Id. at 228–29.
5. See Luban, supra note 2, at 2162 for a detailed analysis of the Supreme Court majority opinion in Walker v. City of Birmingham, 388 U.S. 307 (1967), sustaining King’s conviction. Despite his failure to obtain a parade permit, and in defiance of the ex parte injunction from Alabama Circuit Court that Judge W. A. Jenkins, Jr. served on Thursday April 11, 1963 at 1:00 AM, King went ahead with his planned demonstration on Good Friday and was arrested. A second demonstration took place on Easter Sunday, with several demonstrators being arrested and found guilty of criminal contempt by Judge Jenkins.
literary, legal, and religious masterpiece, an apology for civil disobedience, via a letter written personally to the eight white moderate clergymen who attacked civil rights protesters publicly. The Letter ranks high among the masterpieces of prison literature, like the philosophy of Gramsci and the poems of Verlaine. The Letter is a call to arms without violence, a plea for freedom, and a cry for communal brotherhood. But King’s epistolary message comes in a strange envelope: a medium designed to shock and disturb its readers by creating a crisis in order to cause constructive tension. King’s Letter stands the world on its head when in it he proclaims that man’s failure to disobey an unjust law is as evil as his resisting justice.7

King’s goal in the Letter is to create publicity, to cause a reaction, and to shock his white moderate readers out of the “dark dungeons of complacency to the bright hills of creative protest.”8 King uses the force of language to accomplish his goal. The philosophy of the Letter and its soul-stirring language lift the spirit, jostle the mind, and cause the reader to become a creative mediator as King wrestles with the question of man’s obligation to obey unjust laws. The Letter is more than just a defense of nonviolent direct action—it is a debunking of the American dream of equality and freedom. Poetic, persuasive, and passionate, the Letter is designed to disturb its readers and to reverse their expectations by King’s calculated use of contradiction.9 “One who breaks an unjust law . . . is in reality expressing the highest respect for law.”10 At first blush this hyperbolic metaphor contradicts a generally accepted norm that laws must be obeyed. The affirmation reverses the reader’s expectation and causes what King called a “constructive non-violent tension”11 through creative wordplay.

These demonstrators, including King, were sentenced to five days in jail and a $50 fine. The Walker Court upheld this conviction. While King was in jail, eight white clergymen took out a full-page advertisement in the Birmingham News denouncing the demonstrators’ actions. It was to this public denunciation that King responded from his prison cell.

6. Anthony Cook, Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr., 103 Harv. L. Rev. 985, 1013 (1990). Cook discusses Gramsci’s conception of the organic intellectual that he claims provides a useful framework for understanding the thought of King. “Gramsci’s organic intellectual struggles to transform those who are oppressed as a means of transforming the conditions under which they are oppressed.” Antonio Gramsci, Selections from the Prison Notebooks of Antonio Gramsci 332–33 (Q. Hoare & G. Smith eds., 1971).

7. See King, Jr., supra note 1, at 86 (“One who breaks an unjust law . . . is in reality expressing the highest respect for law”).

8. Id. at 95.


10. See King, supra note 1, at 86.

11. Id. at 81.
King’s wordplay is structured on the principles of similarity and difference. Stated simply, the message contained in the Letter is that racial difference is nothing more than similarity disguised. The Letter deconstructs \(^\text{12}\) the myth that racial equality exists in America by first confirming the existence of racial differences, then rejecting the notion of “difference made legal,” a concept King considered to be the basis of unjust laws. \(^\text{13}\) King accomplished this deconstruction by playing a highly sophisticated structural and stylistic game of semiotics. As discussed in Chapter 2, semiotics is the aesthetic metalanguage that when applied to a literary text can penetrate the surface of its specialized discourse and uncover deeply embedded meanings. In the case before us today, the discourse to which we shall apply semiotic theory is the Letter by Martin Luther King, Jr., which has both literary and legal significance.

II. SEMIOTICS

A. Codes

In literary discourse, messages are often concealed in a coded form, embedded in a symbolic language containing the essence of a referent. In semiotic parlance, a code refers to words that belong to the same metaphoric or metonymic semantic field, with these words being related to each other either by contiguity or similarity. \(^\text{14}\) For example, King’s choice of the words dark dungeons of complacency \(^\text{15}\)

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\(^{13}\) See King, *supra* note 1, at 85 (“An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.”).

\(^{14}\) See Susan Tiefenbrun, *Legal Semiotics*, 5 Cardozo Arts & Ent. L.J. 89 (1986) reviewing the history of semiotics as it developed in France and in the United States as well as the relationship of semiotics to other disciplines such as the law; see *supra* Chapter 2 of this book.

\(^{15}\) See King, *supra* note 1, at 95.
is an expressive metaphor based on color and relative height. This metaphor is related by similarity to several others in the *Letter*, as for example the “dark depths of prejudice”\(^{16}\) and the “dark mountain of disappointment.”\(^{17}\) Structural semioticians\(^ {18}\) analyze these metaphors as variants of a basic pattern that is more or less concealed in the symbolic and literary representation.

Literary language is characterized by the high frequency of coded symbols, which attract the reader’s\(^ {19}\) attention because the symbols emphasize form rather than content. The reader who sees the form (e.g., a metaphor, a metonymy, an understatement, etc.) may be a bit puzzled by its meaning, then become naturally moved to figure out the significance of the coded message. Readers of the *Letter* are immediately captured by its persuasive and poetic style. The style of the *Letter* is the symbolic *signifier* conveying messages or *signifieds* about legal issues of significance.

**B. Decoding the Messages**

How does the reader know when an important message is hidden between the lines? Issues having significance are signaled by repetition, emphatic language, and clustering of rhetorical tropes and figures such as metaphor, metonymy, comparison, antithesis, allusion, irony, and a myriad of literary conventions, all of which King used in his *Letter* and which are the author’s vehicles for the communication of his messages. In other words, King’s messages, which have legal significance, are transmitted indirectly through a literary and rhetorical communication system requiring *decoding* or interpretation to understand their significance. When the reader sees a cluster of rhetorical figures or literary devices in the *Letter*, she usually slows down the reading in an attempt to decipher the hidden meaning. In the language of communication theory, the reader attempts to perceive a set of equivalents existing between the symbolic system and the referential system. These equivalents or variants of a structure or pattern\(^ {20}\) constitute the textual material to be decoded. Once the reader has determined what the symbols actually refer to, then meaningful communication among the author, the reader, and the text takes place.

\(^{16}\) Id. at 81.

\(^{17}\) Id. at 97.

\(^{18}\) See Bernard S. Jackson, **Semiotics and Legal Theory** 3 (1985), on the range of semiotic theories and the differences between Peircian (pragmatic) and Saussurian (structuralist) semiotics.

\(^ {19}\) For a more detailed discussion of the nature of King’s audience and the role of the reader, see infra text at Section III.

C. Interpretation and Decoding

Most readers engage in this process of decoding without even knowing it. They become keenly aware of the process when they are confronted with a text that is hard to understand or interpret. How does a reader know his interpretation is valid? Because literary language is indirect and symbolic, it is conceivable that a string of symbolic words might have several different meanings or interpretations. In fact, the use of symbolic language encourages multiplicity of meaning. This is why law students are very quickly cautioned not to use “poetic” language in their briefs, but rather to develop what Roland Barthes referred to as a “degree zero” style, a “colourless writing . . . a neutral writing . . . which deliberately foregoes any elegance or ornament” and which is clear, univalent, and not subject to varying interpretations. Stated differently, law students should develop a writing style that does not invite indeterminacy of interpretation or meaning.

Literary language may be interpretable, but there are limits to the interpretations possible. Just as the imposition of a code limits the entropy of a system (be it aesthetic, legal, or other), so the semantic context of a text limits and controls the interpretation of its coded message. Thus, the meaning of the literary text having legal significance is not entirely indeterminate.

An aesthetic text, such as the Letter, conveys messages in a symbolic language. The text carries within it the seeds of its own constructive deconstruction by the reader. Intent on deciphering the hidden messages of the text, the reader engages in an analytical quest of decoding and creating meanings that may be unknown even to the author. The nature of this analytical quest is semiotics.

Stated otherwise, decoding is a process semioticians use to penetrate the surface of a text and excavate meanings buried below the signs of its written language. This process of uncovering meaning is the basis of semiotics and is best expressed by the equation \( \text{sign} = \text{signifier}/\text{signified} \), where the line above the signified represents the surface of the text. One of the central principles of Ferdinand de Saussure’s work in semiology is that signs (words, legal concepts,
theories, etc.) derive their meaning from mutual relationships in a system of signification. Decoding is the determination of the mutual relationship between signifier and signified. In this chapter, I shall engage in this process of decoding to tease out of the Letter King’s stated and hidden messages about racial discrimination and civil disobedience. The goal is not only to uncover the legal issues in a literary text but to appreciate the artful and persuasive manner in which King communicated his messages.

III. ROLE OF THE READER

Who are King’s readers? Initially the readers are eight white moderate clergymen of different religious backgrounds. Eventually through publicity, King’s readership expanded to include the public at large and anyone concerned about human rights. King’s language is imbued with religious imagery (mainly from the New Testament), and his Letter is an apology for the values of the Christian religion. Nevertheless, the Letter addresses Christians, Jews, and people of any faith because he firmly believed in the essential similarity of all human beings regardless of faith and color.

King’s Letter is disturbing! He tries to shake middle class whites into the realization that blacks are victims of discrimination and racial inequality. But he launches his nonviolent attack on complacency persuasively through subtlety and the art of understatement. King plays a clever game with his readers, the name of which I call differentiation and equalization. The game is based on the principles of similarity and difference. Although the game is subtle and enticing, it requires active participation by the readers. King initially sets up thematic oppositions based on the structure of difference, the logic of which the reader has no trouble understanding, but then he equalizes these oppositions and destroys them, much to the dismay of the reader.

For example, at the very beginning of the Letter, King addresses the reader’s attention to the clergymen’s claim that King is an “outsider” and does not belong in Birmingham, Alabama. First, King admits that he is an outsider, but he argues that he has the right to be in Birmingham because he was invited there and because he has organizational ties with the Southern Christian Leadership

27. See, e.g., King, supra note 1, at 98. After vividly describing such brutal police tactics as “dogs sinking their teeth into unarmed, nonviolent Negroes” and the “ugly and inhumane treatment of Negroes here in the city jail” where the police “refuse to give us food because we wanted to sing our grace together,” King then states ironically in a classical understatement: “I cannot join you in your praise of the Birmingham police department.”
Conference whose affiliated organization is in Alabama. Second, although King admits he is an “outsider,” he claims that he belongs in Birmingham because injustice is there. Like the prophets of the eighth century and like St. Paul, King must leave home and respond to the call for aid. Third, King claims that he is not really an “outsider” because all communities and states are interrelated. He says, “I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere.” Thus, King reverses his initial premise that he is an outsider and, through the force of language and the rhetorical figures of opposition (“justice,” “injustice”) and hyperbole (“anywhere,” “everywhere”), he proves that the concept of an outsider does not exist. “Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.”

Another example of King’s linguistic gymnastics and his depolarization of opposition is seen in his initial, understated claim that he is not an extremist. “You speak of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of an extremist.” King then affirms his opposition to extremism by contrasting himself to the extreme black nationalists. He then modifies his non-extremist position by stating that he is a mediator between the two forces of extremism and non-extremism. “I have tried to stand between these two forces, saying that we need emulate neither the ‘do-nothingism’ of the complacent nor the ‘hatred and despair’ of the black nationalist.” Finally, King reverses his initial claim of non-extremism, contradicts himself, and admits that he is an extremist like Christ (“the extremist for love”); like St. Paul (“the extremist for the Christian gospel”); and like Martin Luther, John Bunyan, Abraham Lincoln, and Thomas Jefferson. King identifies himself with Biblical figures (prophets such as Paul, Amos, Jesus, Shadrach, Meshach, and Abednego); with Christian dissidents (martyrs, Luther, Bunyan); with theological philosophers (Augustine, Aquinas, Buber, Tillich); with American egalitarians (Jefferson, Lincoln); and finally with the greatest of all civil disobedients, Socrates. He identifies himself with these unimpeachable figures whom he calls “extremists” to encourage the readers to see the similarity between these praiseworthy men and King himself.

The reader, caught in the middle of this depolarization process, is left with a sense of ambiguity and disturbance that causes her to read and reread the Letter

28. Id. at 78.
29. Id.
30. Id. at 79.
31. Id.
32. Id. at 91.
33. Id. at 90.
34. Id. at 92.
35. Id.
more deeply and more creatively in an attempt to make sense out of what appears to be nonsense or contradiction. The act of slowing down the reading process is the reader’s attempt at uncovering “the meaning between the lines,” as the saying usually goes, but which is more accurately described as “the meaning below the words” and “behind” the stylistic device of contradiction. Contradiction teases and tempts the reader into taking a closer look at what is really meant by the author. Like fine-tuning a microscope, this closer look has the beneficial and pleasurable effect of producing a discovery by the reader of the minute and often invisible secrets of the text.

But the reader’s role in this game is assisted by the author. As do his readers who act as mediators reconciling the author’s contradictory ideas in the Letter, King mediates somewhere between believing the illusory evidence of racial difference (which he presents and confirms), and believing the more convincing evidence of hidden human similarity that is synthesized in his philosophy of communal brotherhood. In short, King plays a sameness/difference game, and the reader’s failure to participate in it will result in confusion and misreading.

Thus, there is active complicity among the author, the readers, and the text that results in an intellectually challenging game called reading and interpreting. The signal to start the game is located on the surface of the text, visible for all to see, but the target of the game is not always apparent; rather it is deeply embedded in a region somewhere between the signifier and the signified located in the mind of the reader. The reader’s role in this game is to determine the relationship between the signifier and signified to identify and better understand the hidden meanings. The interplay of similarity and difference, triggered by the author King and actualized by the reader, results in the reader’s ultimate sense of pleasure that comes from his creative participation in the game. Like King, the reader is the mediator who teases meaning out of the linguistic fabric of the Letter.

King actually encourages all men and women to engage in creative participation and protest. Ironically, by enticing his readers into playing the game of reading and interpretation, King has momentarily transformed the readers of the literary Letter into the kind of creative participant he wishes the moderate whites to become. King’s medium cleverly fulfills his message that all men are the same, interrelated, and connected in a “World House” of brotherhood.

37. See Balkin, supra note 12, at 743.
38. E.g., “We must use time creatively in the knowledge that the time is always ripe to do right.” See King, supra note 1, at 89. “Now is the time to make real the promise of democracy and transform our pending national elegy into a creative psalm of brotherhood.” Id. at 90. “Perhaps the South, the nation and the world are in dire need of creative extremists.” Id. at 92.
Echoing King’s hope and faith in the ultimate success of the blacks, the reader is hopeful by the end of the Letter and has shaken off all doubts and fears inspired by its ambiguities and by King’s desperate cries for help. The reader is left with a deeper sense of satisfaction in the knowledge that King’s alternations between despair and optimism are synthesized in his utopian vision of equality in brotherhood. The reader’s interpretive role in the unraveling of King’s network of Hegelian dialectics is an essential part of King’s message, but it is a difficult role that is greatly enhanced by the magnifying lens of semiotics.

**IV. GENRE OF THE LETTER**

The Letter resembles a legal brief. King presents arguments convincingly for and against immediate nonviolent direct action to protest racial discrimination and enforce the right of equality. But unlike a good legal brief that is clear and persuasive, King’s Letter is contradictory and ambiguous. This semantic and stylistic dissonance (which is designed to wrench conservative white moderates out of their political and legal indifference) does not go unnoticed by the readers who are more than just the eight clergymen to whom the Letter is addressed.

King’s Letter is both personal and public. It is a personal letter written to only eight clergymen who criticized the civil rights protesters for causing trouble in Birmingham. However, the Letter is not unlike the Epistles of Paul, and we are reminded that Paul often used to write letters from jail. The literary prototype of King’s Letter is Paul’s Epistle to the Galatians, which became public. The Letter is also public in the tradition of Emile Zola’s 1898 letter written to the president of France denouncing Dreyfus.

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39. *Id.* at 97 (“I have no despair about the future... We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom”).

40. See Cook, *supra* note 6, at 985 for a discussion of how King synthesized disparate strands of theological and political thought and created a prophetic vision of a reconstructed society.

41. See supra at Section III for a discussion of King’s audience. See Keith D. Miller, *Voice of Deliverance: The Language of Martin Luther King, Jr. and its Sources of Liberation* 163 (1992). The Letter was King’s response to eight moderate clergy, and it first appeared in *Christian Century, Liberation,* and *Christianity and Crisis,* three left-of-center journals and in pamphlets disseminated by the Fellowship of Reconciliation and another leftist, pacifist organization, the American Friends Service Committee. It appeared later in other liberal periodicals. Publication in the *New York Post* and in the *San Francisco Chronicle* further expanded King’s readership.

42. See Miller, *supra* note 41, at 161.

43. See infra at Section V for a discussion of St. Paul’s *Epistles to the Galatians.*

King’s Letter can also be classified as a modern version of an oration from ancient Greece or Rome. The Letter seems to follow the steps of a typical classical speech: introduction, proposition, division, confirmation, refutation, and peroration. King extends his arguments through short digressions and repetition, a standard classical strategy. King wrote the greater part of his argument in the form of a refutation. Thus, the Letter constitutes the development of an extended refutation of the major and minor premises of the eight clergymen’s implicit syllogisms.

V. INTERTEXTUALITY AND THE LETTER: BIBLICAL ALLUSIONS

The Letter is deceptively simple and covers a complex system of intertextuality (textual references and allusions to other texts) whose meanings require the assistance of a learned and cultivated reader to unravel. King makes explicit Biblical allusions to the Apostle Paul, Amos, Jesus, Shadrach, Meshach, and Abednego, and implicit allusions to unnamed Biblical passages from the Book of Acts, the Book of Amos, St. Paul’s Epistle to the Galatians, the Sermon on the Mount, and the Book of Daniel, all of which are designed to defend the principles of the Christian religion and to condemn white moderates and the inactive religious leadership of the Southern churches. Through these allusions King hopes to rekindle the spirit of the early authentic Church, the Church full of sacrifice and martyrdom, the “inner spiritual church, the church within the church . . . the true ekklesia and the hope of the world,” the Church that is ready to fight and die for just causes, in contrast to the contemporary Southern white churches that are beautiful but ineffectual.

45. See Miller, supra note 41, at 167.
46. See infra at Sections VI–IX for an analysis of King’s refutation.
47. See Miller, supra note 41, at 167.
48. “And a vision appeared to Paul in the night: a man of Macedonia was standing beseeching him and saying: Come over to Macedonia, and help us.” (Acts 16:9).
49. “Let justice roll down like waters and righteousness like an ever-flowing stream.” See King, supra note 1, at 92.
50. “I bear in my body the marks of the Lord Jesus.” Id. at 92 quoting Galatians 6:17. This passage is a New Testament declaration that love and community stand above the law. See Luban, supra note 2, at 2196.
51. King quotes the “love your enemies” verse from the Sermon on the Mount. (Matthew 5:44): “The Sermon on the Mount radicalizes the message of love by extending it to those unlike oneself. This message is in consonance with King’s rejection of difference and his proposal of universal community.” See Luban, supra note 2, at 2197.
52. See King, supra note 1, at 96–97.
VI. BIBLICAL UNDERPINNINGS OF MARTIN LUTHER KING’S ANTI-LAW STANCE

Characteristic of King’s duality, the Letter is both reverent and irreverent toward the law. The source of King’s anti-law position is in the writings of St. Augustine, St. Paul, Jesus Christ, and the natural law theory of St. Thomas Aquinas, whom King cites throughout the Letter. King shared St. Augustine’s view that unjust laws are not laws at all, and therefore, man may and should disobey them. The civil disobedient should welcome imprisonment as did the Christian martyrs who welcomed sacrifice.

Despite the Biblical underpinnings of King’s view on civil disobedience, the eight clergymen accused King of an inherent contradiction in his logic. They could not reconcile King’s own willingness to disobey an Alabama court order prohibiting demonstration and protest and his continued appeal to the whites to obey the Supreme Court’s desegregation orders. King’s views on civil disobedience emerge from his refutation of that accusation.

King’s belief that love and community stand above the law are not unlike those of St. Paul expressed in the Epistle to the Galatians. Community and brotherhood in faith were more important to Paul than fidelity to established law. Paul’s Epistle to the Galatians, which is the prototype of King’s Letter, was taken from Christ’s Sermon on the Mount, which rejected the Mosaic law.

53. “I would agree with St. Augustine that ‘an unjust law is no law at all.’” Id. at 84.
54. “To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.” Id. at 85. See St. Thomas Aquinas, The Summa Theologica, in GREAT BOOKS OF THE WESTERN WORLD 11, Part I, Second Part Q. 97, Art. 6 (Robert Maynard Hutchins ed., 1952). St. Thomas Aquinas grapples with the basic question of civil disobedience: “Whether he who is under a law may act beside the letter of the law?”
55. “There was a time when the church was very powerful—in the time when the early Christians rejoiced at being deemed worthy to suffer for what they believed.” See King, supra note 1, at 96. “They have left their secure congregations and walked the streets of Albany, Georgia, with us. They have gone down the highways of the South on tortuous rides for freedom. Yes, they have gone to jail with us.” Id. at 97.
56. “You express a great deal of anxiety over our willingness to break laws . . . One may well ask: “How can you advocate breaking some laws and obeying others?” Id. at 84.
57. “Christ redeemed us from the curse of the law . . .” (Galatians 3:13). “Now before faith came, we were confined under the law, kept under restraint until faith should be revealed. So that the law was our custodian until Christ came, that we might be justified by faith. But now that faith has come, we are no longer under a custodian.”(Galatians 3:23–25).
59. “Christ redeemed us from the curse of the law . . . For the whole law is fulfilled in one word: You shall love your neighbor as yourself.” (Galatians 3:13; 5:14).
Christ’s anti-law positions are as ambivalent and contradictory as King’s. Just as Paul understood the Sermon on the Mount to be Christ’s reevaluation and rejection of the Mosaic law, King’s Letter is a reevaluation and rejection of the laws on racial discrimination. King’s Biblical reference to Shadrach, Meshach, and Abednego creates an identity between the Alabama demonstrators’ form of civil disobedience and “the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake.”

King states his views on law in a classically contradictory fashion, but his words are musical as they resonate with the wisdom of Christ, the anti-law theory of St. Paul, and the natural law theory of St. Thomas Aquinas: “One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that 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 law.”

VII. PLATO’S ALLEGORY OF THE CAVE

Besides King’s biblical allusions, which bring credibility and validity to his controversial views on the law, King’s Letter is full of literary and philosophical references to Sophocles, Socrates, Plato, and many others. Plato’s Allegory of the Cave

60. “Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfill them.” (Matthew 5:17–18).
61. See King, supra note 1, at 86–87. See Luban, supra note 2, at 2199 for a detailed discussion of the biblical allusions in the Letter and the religious sources of King’s anti-law position.
62. See King, supra note 1, at 86.
63. Plato, Republic, in Great Dialogues of Plato (W.H.D. Rouse trans. 1956). The Allegory of the Cave is in Book VII of Plato’s Republic. Socrates tells the story of the cave that illustrates the escape of the philosopher from the fetters and darkness of the physical world of the senses to the freedom and dazzling radiance of the world of the mind (Id. at 122). However, the philosopher must eventually return to the cave to enlighten and set free those still imprisoned there. For Socrates the world of the senses, as expressed by man’s existence in the cave, is constantly changing. The world of the mind is unchanging and is expressed by the light. King utilizes the metaphors of darkness, shadows, and a variant of these (clouds) to express his despair about persistent prejudice and the myth of equality. E.g., “As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us.” See King, supra note 1, at 80. “Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.” Id. at 81. “... Funtown is closed to colored
is a recurring leitmotif throughout the *Letter*. The “cave” is a metaphor of the very essence of semiotic theory, which seeks to find truth behind the shadows and demystifies hidden antinomies of language and thought. As did Plato, King believed that whatever is visible on the surface of things is only a shadow of the true reality, a mere representation of the truth hidden below. As with the semiotician, King’s goal is to uncover hidden realities and to deconstruct myths that keep men complacent and uncommitted about the goals of racial equality.

King undertook this process of deconstruction by making use of a literary technique designed to create a mere illusion of difference: the myth. Once King establishes the myth of difference, he then destroys it by pointing out the inherent similarities in the opposed entities. To create the illusion of difference, King also resorts to comparisons, antitheses, contrasts, contradictions, and reversals of his point of view that all constitute the fabric of a complex network of binary oppositions. These illusions of difference are the equivalents of Plato’s shadows on the walls of the cave. King gently and creatively equalizes and inevitably destroys these oppositions by creating yet another illusion of similarity through the use of similes, parallelisms, repetition, coupling, identities, and a sophisticated system of intertextuality.

**VIII. HISTORICAL AND LEGAL CONTEXT OF THE LETTER**

The *Letter* was composed in April 1963, a turning point in the black struggle for racial equality. To establish the immediate historical context of the *Letter*, let us go back only as far as 1948 when there was a strong civil rights platform in the Democratic convention echoing Truman’s civil rights program begun in 1947.

children, and see ominous clouds of inferiority beginning to form in her little mental sky.” *Id.* at 83. The Allegory of the Cave represents two states of mind: belief and illusion and the ascent of the mind from illusion to pure philosophy. Socrates refers to the difference between substance and shadow. Like the blacks who are imprisoned in racial segregation, the men in the cave have been prisoners there since they were children, “their legs and necks being so fastened that they can only look straight ahead of them and cannot turn their heads.” *Plato, The Republic* 278 (H.D. Lee trans., 1955) (“A fire is burning behind and above the prisoners in the cave. A curtain wall and a road separates the prisoners from the fire. Prisoners see only shadows of the real objects outside the cave”). 64. See Balkin, *supra* note 12, at 748 on the role of identity in Derridean deconstructive theory to reverse oppositional hierarchies. “Philosophers have regarded identity as a basic ground for metaphysical thought: Anything that exists is identical to itself. Difference is a derivative concept based upon identity . . . The deconstructionist wants to show that the notion of identity, which seems so basic, so ‘present’ actually depends upon the notion of difference.” 65. For a historical and legal analysis of the period, see Randall Kennedy, *Martin Luther King’s Constitution: A Legal History of the Montgomery Bus Boycott*, 98 Yale L.J. 999 (1989).
In 1954, the landmark case Brown v. Board of Education66 overturned Plessy v. Ferguson (1896) that had established separate but equal public facilities. In 1955–56, the Montgomery Alabama bus boycotts protested inequality in transportation facilities, which were not protected under Brown. In 1957 and 1960, civil rights acts were passed. In 1960, the era of the sit-ins and freedom rides, and voter education programs began. The South was systematically failing to enforce the rights provided in Brown and various civil rights acts.

Protests continued, and King was arrested along with other demonstrators in April 1963 when he wrote the Letter. In August 1963, King marched on Washington in a plea for jobs and for freedom, and it is there that he delivered his famous “I Have a Dream” speech. In 1964, the comprehensive Civil Rights Act was passed, and in 1965 a Voting Rights Act was passed. The Selma March took place in 1965, and in 1968 another civil rights act was passed. However, King was assassinated on April 4, 1968 in a Memphis hotel.

Birmingham, Alabama was the seat of Southern racial discrimination in the 1960s. Eugene Bull Connor was the ominous political leader of Birmingham who perpetuated racial inequality. A group of whites campaigned to alter Birmingham’s municipal government by abolishing the offices of three segregationist commissioners who ran the city, including Connor. Connor went to court to demand that he be allowed to finish his term; during the pending case, Birmingham was governed by two city governments.

The leaders of the Southern Christian Leadership Conference (SCLC) had been planning since January 1963 in the famous Project C to hold two demonstrations in Birmingham in 1963 that eventually led to King’s arrest and incarceration.67 Birmingham whites wanted the SCLC to cancel the Easter demonstrations to give the new government a chance to show what it could do in its support of racial equality. But the SCLC wanted to proceed with its demonstration as part of a concerted attack on segregation in Birmingham.68

A Birmingham city ordinance required demonstrators to obtain a parade permit from the city commission to protest or demonstrate. When on April 3, 1963, Mrs. Lola Hendricks (representing the demonstrators) approached the infamous Eugene Bull Connor to request a permit, Connor refused. He also refused a second request for a parade permit. Out of frustration and respect for their principles, the demonstrators proceeded to protest without a permit. It is important to note that Project C included plans for King to place himself in a position to be arrested on Good Friday, April 12, 1963.

67. See Luban, supra note 2, at 2156 for an account of Walker v. City of Birmingham. King and other demonstrators were convicted of criminal contempt for violating an ex parte injunction.
68. Id. at 2162.
On April 10, Connor obtained an ex parte injunction from Alabama Circuit Court Judge W.A. Jenkins, Jr. that forbid civil rights leaders (including all the leaders of Project C) from taking part in or encouraging demonstrations. After the injunction was served at 1 a.m. on Thursday, the SCLC leadership debated how to respond. They felt that compliance with the injunction and delay in demonstrating would deflate the protest.\(^69\)

King went ahead with the planned demonstration the following day, and was arrested and thrown into the Birmingham jail. A second demonstration took place on Easter Sunday, April 14, 1963. Subsequently, Judge Jenkins found several of the demonstrators guilty of criminal contempt and sentenced each of them including King to five days in jail and a $50 fine.\(^70\)

While King was in jail, eight white clergymen, “liberals” who had publicly opposed Governor George Wallace’s “Segregation Forever” speech, took out a full-page advertisement in the *Birmingham News* denouncing the demonstrators’ actions. King responded to that denunciation by writing a letter on scraps of newspaper he found in his prison cell. When King was permitted visitors, he gave his manuscript to friends who typed it and returned it to him in jail for revisions. The reception of the Letter was initially cool, but later it was printed by the American Friends Service Committee and reprinted in numerous periodicals. It is considered by many today to be one of the most famous documents to emerge from the civil rights movement.

At the contempt hearing, the civil rights leaders averred that the parade permit ordinance and the ex parte injunction were unconstitutional. The judge refused to consider the issue because the demonstrators had never attempted to get the injunction dissolved. Later the U.S. Supreme Court agreed that the ordinance on which the injunction rested was unconstitutional.\(^71\) But the Court in *Walker v. City of Birmingham* declined to overturn the demonstrators’ convictions for criminal contempt, holding that even a constitutionally questionable court order must be obeyed. This decision is the so-called “Mine Workers Rule” derived from the 1947 case *United States v. United Mine Workers*.\(^72\)

**IX. NARRATIVE STRUCTURE OF THE LETTER**

King’s *Letter* is a prophetic appeal to the ideals of brotherhood, freedom for all, and equality for all, encoded alternately in secular and religious imagery. The *Letter* is also an apology for the values of the Christian religion.

\(^69\). *Id.* at 2163.
\(^70\). See A. Westin & B. Mahoney, *The Trial of Martin Luther King* (1974).
The Letter begins on an ironic note as King greets his “dear fellow clergymen”\textsuperscript{73} with whom King (the clergyman) identifies, and from whom King (the prisoner and civil disobedient) wishes to disassociate himself. Throughout the Letter, King refutes specific allegations made against him by the clergymen. Towards the end of the Letter, King makes his own accusations against the clergymen and all indifferent white moderates. He then resumes his defensive, negative tone by refuting several other specific allegations.

King defends himself eloquently, persuasively, and above all reasonably against the following accusations published in a newspaper advertisement:

First, King and his fellow organizers are outside agitators who do not belong in Birmingham at all. King gives three reasons why he belongs in Birmingham.\textsuperscript{74} He denies he is different from any other man, and he communicates his vision of a utopian world of human connectedness through two metaphoric codes that are quite familiar to semioticians: network and fabric. “We are caught in an inescapable network of mutuality, tied in a single garment of destiny”\textsuperscript{75} (emphasis added). It is significant that King identifies with the prophet Paul “who left his little village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world . . . to respond to the Macedonian call for aid.”\textsuperscript{76} The prophet Paul and the Book of Acts reflect a utopian appeal to a world community that is not unlike King’s own vision of a community united in peace and brotherhood. Like King, Paul tried to weld the people of many nations into a City of God.\textsuperscript{77}

Second, to the charge that the demonstrations are “unwise and untimely”, King retorts that the clergymen are simply blind to reality. They have only a superficial understanding of the black man’s plight, and they are responsive only to the publicized and illusory effects of demonstration. They fail to see the conditions that brought about the need to protest.\textsuperscript{78} King reviews Birmingham’s long history of racism and the unfulfilled promises given to the members of the civil rights movement. He concludes that Blacks had no other alternative but to demonstrate at this time because the white power structure gave them no options. King further demonstrates the systematic steps (including information gathering, negotiation, self-purification, and direct action) taken by the civil rights movement to prepare itself for nonviolence.\textsuperscript{79}

Third, the clergymen claim that the demonstrators have consistently preferred confrontation to negotiation. King rejoins that negotiation cannot take place

\textsuperscript{73} See King, supra note 1, at 77.
\textsuperscript{74} See analysis of these three reasons supra Section III.
\textsuperscript{75} See King, supra note 1, at 79.
\textsuperscript{76} Id. at 81–82.
\textsuperscript{77} See Luban, supra note 2, at 2194 for a discussion of St. Paul and the City of God.
\textsuperscript{78} See King, supra note 1, at 79.
\textsuperscript{79} Id. at 79–81.
until the white community perceives that there is a problem of racial inequality. The white community must be “forced to confront the issue.”\textsuperscript{80} King believed that negotiation would never take place unless the demonstrators forced it to happen by creating a “tension” producing a crisis in the community.\textsuperscript{81} In short, King, like Socrates, wanted to create dramatic tension in order to bring men out of the darkness of the cave and into the light of truth. He wanted to force individuals to rise from the bondage of myth to the “unfettered realm of creative analysis,” to “rise from the dark depths of prejudice” to the “majestic heights” of brotherhood.\textsuperscript{82}

Fourth, the clergymen claim that the demonstrators should wait so as to give the new administration time to solve the problem of inequality in race relations.\textsuperscript{83} King was a man of action and thought, and he knew that the legendary curative power of time was a myth.\textsuperscript{84} In his Letter, King suggests that Boutwell and Connor are both segregationists dedicated to maintaining the status quo. King refuses to wait because “freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”\textsuperscript{85}

At this point in the Letter, the reader is faced with a cluster of literary devices that appear in a highly emotional and moving passage describing the evils of segregation. Here King contrasts his own prophetic vision with the clergymen’s blindness. The accelerating rhythm of the passage, its classical symmetry, use of vivid imagery and alliterations, and general musicality make it a soul-stirring example of King’s literary talents:

Perhaps it is easy for those who have never felt the stinging darts of segregation to say, “Wait.” But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can’t go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to

\textsuperscript{80} Id. at 81.
\textsuperscript{81} Id. at 81–82.
\textsuperscript{82} Id. at 81.
\textsuperscript{83} Id. at 82.
\textsuperscript{84} “I had also hoped that the white moderate would reject the myth concerning time in relation to the struggle for freedom.” Id. at 89.
\textsuperscript{85} Id. at 82.
concoct an answer for a five-year-old son who is asking: “Daddy, why do white people treat colored people so mean?”; when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading “white” and “colored”; when your first name becomes “nigger,” your middle name becomes “boy” (however old you are) and your last name becomes “John,” and your wife and mother are never given the respected title “Mrs”; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of “nobodiness” then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair.  

In this memorable passage, King plays with words. He deconstructs the conventional meaning of the term *wait* and supports his redefinition by citing the concurring view of a distinguished jurist: “For years now I have heard the word ‘wait’! This ‘Wait’ has almost always meant ‘Never.’ We must come to see, with one of our distinguished jurists, that ‘justice too long delayed is justice denied.’” For King, change is inevitable, and therefore, patience is merely the postponement of the unavoidable. “Oppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself, and that is what has happened to the American Negro.”

Fifth, the clergymen object to the civil rights movement because the protesters are willing to break laws. King’s initial response is indirect and comes in the form of a rhetorical question: How can he request whites to comply with *Brown v. Board of Education* if he himself is suggesting the legitimacy of disobedience? King’s reply is an ironic response to the systematic disobedience by the Southern whites who from 1954 to 1963 refused to enforce *Brown*.

King defends the right to break the law. This defense is based on a series of distinctions drawn between just and unjust laws—distinctions that take their source from the natural law tradition. King espouses a radical view of civil disobedience. Because man has a legal and moral duty to obey just laws, man has the right and the duty to disobey unjust laws.

In the second half of the *Letter*, King temporarily moves out of the refutation section and accuses the leaders of the church of shallowness, blindness, and lack

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86. *Id.* at 83–84.
87. *Id.* at 83.
88. *Id.* at 91.
89. *Id.* at 84 (“How can you advocate breaking some laws and obeying others?”).
90. See *infra* Section XII for a discussion of civil disobedience.
of understanding of the black man’s plight. Then he tones down his attack by referring to his deeply-felt emotion as “disappointment” with the church itself, comparing its weakness and otherworldly brand of religion to the ancient and powerful church that transformed the mores of society by its sacrificial acts and direct responsiveness to real issues. King encodes this comparison of the old and new church in an interesting metaphor. The new church is more like a thermometer that merely records “the ideas and principles of popular opinion” while the old church is like a “thermostat that transformed the mores of society.”

King’s condemnation of the powerlessness of the church is strident, personal, and even dangerous coming from the pen of a “minister of the gospel.” He predicts that the church will “lose its authenticity, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no meaning for the twentieth century.” There is no wonder that after such blasphemous accusations King felt the need to defend himself: “In deep disappointment I have wept over the laxity of the church. But be assured that my tears have been tears of love. There can be no deep disappointment where there is not deep love. Yes, I love the church.”

King’s admitted disappointment in the church occasionally masks his anger and scorn that he translates into rhetorical questions dripping with irony and sarcasm: “I have traveled the length and breadth of Alabama, Mississippi and all the other southern states. . . . I have beheld the impressive outlines of her massive religious-education buildings. Over and over I have found myself asking: ‘What kind of people worship here? Who is their God? Where were their voices when the lips of Governor Barnett dripped with words of interposition and nullification? Where were they when Governor Wallace gave a clarion call for defiance and hatred?’”

King also accuses contemporary white moderates of being “archdefenders of the status quo,” more devoted to law and order than to justice. Like Antigone who defies orders by burying her brother contrary to the authority of the King

91. “I had hoped that the white moderate would see this need. Perhaps I was too optimistic; perhaps I expected too much. I suppose I should have realized that few members of the oppressor race can understand the deep groans and passionate yearnings of the oppressed race, and still fewer have the vision to see that injustice must be rooted out by strong, persistent and determined action.” See King, supra note 1, at 93.

92. Id.
93. Id. at 94–95.
94. Id. at 96.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id.
of Thebes, King also feels it necessary to upset the existing order and create chaos in order to bring about a sense of real community and brotherhood, a greater order, and a true justice.

King contrasts the notion of an illusive negative peace that exists in the South to the real positive peace he seeks to establish by creating constructive chaos. In the South, there is an obnoxious “negative peace,” a myth, whereby the black passively accepts his “unjust plight.” King deconstructs this myth and advocates the creation of tension to bring about a positive peace “in which all men will respect the dignity and worth of the human personality.”

After this digression King then returns to the refutation of several other claims made by the clergymen:

Sixth, to the claim that the demonstrators’ actions, though peaceful, must be condemned because they precipitate violence, King responds that the clergymen are confusing cause for effect and condemning the victim and not the criminal.

Seventh, to the claim that King’s activity is extreme, he responds by shaming the clergymen. He also points out the illogical connection between the terms nonviolent and extreme. King follows a typical dialectical pattern in his refutation of the extremism allegation.

Finally, King attacks the beautiful Southern white churches for their failure to embrace Christian principles and the cause of civil rights, which King calls a fundamental moral issue. He argues that the church merely urges compliance with civil rights laws as a matter of prudence. Embracing Emersonian principles of nonconformity, King bemoans the fact that the church is simply afraid to be different. “Far from being disturbed by the presence of the church, the power structure of the average community is consoled by the church’s silent and often even vocal sanction of things as they are.”

King concludes his Letter by reversing his negative tone and affirming optimistically that blacks will eventually win. Here, King identifies the black man’s plight with both the goals of our nation and the eternal will of God.

100. See Chapter 7 of this book discussing Sophocles’ Antigone and comparing it to Jean Anouilh’s more modern Antigone.
101. See King, supra note 1, at 88.
102. Id.
103. Id.
104. Id. at 90.
105. See discussion of this dialectic in the section devoted to extremism supra Section III.
106. See King, supra note 1, at 93–98.
107. Id. at 94.
108. Id. at 96.
109. Id. at 98.
Before ending his Letter, King adds a short digression to humiliate the eight clergymen for having congratulated the Birmingham police on their so-called humane prevention of violence.\textsuperscript{110} He resorts to a semiotic display of surface appearances and hidden realities when he declares the Birmingham police are publicly compliant, but privately brutal. The police bring out their dogs that sink “their teeth into unarmed, nonviolent Negroes,\textsuperscript{111} and they commit unrelenting violence on innocent men, women, and children.”\textsuperscript{112}

King declares that the real heroes are not the policemen but the meek, the Rosa Parks, the James Merediths, the “old, the oppressed, battered Negro women, symbolized in a seventy-two year old woman in Montgomery, Alabama, who rose up with a sense of dignity, and with her people decided not to ride segregated buses, and who responded with ungrammatical profundity to one who inquired about her weariness: ‘My feets is tired, but my soul is at rest.’”\textsuperscript{113}

King ends the Letter politely and formally, with tongue in cheek, by wishing that the Letter “finds these clergymen strong in the Christian faith.”\textsuperscript{114}

\section*{X. The Notion of Difference and “Différence”}

King’s Letter is a demonstration of Jacques Derrida’s notion of difference and deconstruction.\textsuperscript{115} King sets up hierarchical oppositions based on a relationship of difference that he proceeds to cancel by the subsequent establishment of an identity between these opposing entities. Throughout the Letter, the reader will be confronted with variants of the following structural antinomies: friend/enemy, patience/impatience, clergymen/secular men, jail/freedom, waiting/action, reason/emotion, dark/light, outsider/insider, theory/practice, blindness/vision, separation/community, order/chaos, unjust laws/just laws, extremism/indifference, I/we, and cause/effect. All these antinomies are linked by the overriding theme of difference.

Like Derrida, King shows that racial difference is a derivative concept based upon the fundamental notion of man’s identity to other men. “We are caught in an inescapable network of mutuality.”\textsuperscript{116} “Whatever affects one directly, affects all indirectly.”\textsuperscript{117} As Derrida put it, identity is only comprehensible in terms of difference, just as difference can only be understood in terms of identity because

\textsuperscript{110} Id. at 97.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Id. at 99.
\textsuperscript{114} Id. at 100.
\textsuperscript{115} See Cook, supra note 6, at 985 on deconstruction.
\textsuperscript{116} See King, supra note 1, at 78–79.
\textsuperscript{117} Id. at 79.
each is mutually dependent upon the other. Both terms of the hierarchical opposition rely for their coherence on the differentiation between them. Thus, the relation between similarity and difference or between white and black is one of mutual dependence and difference or what Derrida calls différance. Derrida’s term différance is actually a pun based upon the French word différer, which means both to differ and to defer. Différance simultaneously indicates that (1) the terms of an oppositional hierarchy are differentiated from each other, (2) each term in the hierarchy defers the other (in the sense of making the other term wait for the first), and (3) each term in the hierarchy defers to the other (in the sense of being fundamentally dependent upon the other).

The best illustration of King’s use of différance and deconstruction of accepted realities is his refutation of the allegation of extremism. King first sets up a thesis structured on negation and contrast: Martin Luther King, Jr. is not an extremist. He is neither complacent nor violent. “At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of an extremist.” King then contrasts his nonviolent efforts to those of the complacent, “the demoralized Negroes and a few middle-class Negroes who profit from segregation, and are insensitive to problems of the masses . . . Negroes who, as a result of long years of oppression are so drained of self-respect and a sense of somebodiness that they have adjusted to segregation.” It is ironic and in perfect keeping with the Derridean notion of différance, which is dependent on identity, that King should here contrast himself to other black men. He then further differentiates himself from what he refers to as “the forces of bitterness and hatred, the Black nationalists, Elijah Muhammad’s Muslim movement.” “This movement is made up of people who have lost faith in America, who have absolutely repudiated Christianity, and who have concluded that the white man is an incorrigible devil.” It is also ironic and in perfect harmony with the Derridean notion of deconstruction that King later in the Letter identifies himself (by means of a simile) with the Black nationalists, and says that although he has not lost faith, his dreams, like those of the Black nationalists, have been shattered.

King then draws a parallel between himself and the two opposed Black groups by identifying himself as a middle of the roader: “I stand in the middle of two opposing forces in the Negro community.”

118. See Balkin, supra note 12, at 748 for a discussion of this Derridean concept.
119. Id. at 751.
120. See King, supra note 1, at 90.
121. Id.
122. Id.
123. Id. at 94.
124. Id. at 90.
grateful to God that, through the influence of the Negro church, the way of non-violence became an integral part of our struggle.”

King’s antithesis, which follows directly from his thesis, is structured positively on a series of identities. He is like Jesus “an extremist for love.” Like Amos, King is an extremist for justice: “Let justice roll down like waters and righteousness like an ever-flowing stream.” Like Paul, he is an extremist for the Christian Gospel: “I bear in my body the marks of the Lord Jesus.” He is also like the extremist Martin Luther, who “cannot do otherwise” and who inaugurated the Protestant reformation. He is like John Bunyan, who was jailed for his Puritan preaching and who vowed to “stay in jail to the end of my days before I make a butchery of my conscience.” He is an extremist like Abraham Lincoln, who said “this nation cannot survive half slave and half free.” He is an extremist like Thomas Jefferson, whose Declaration of Independence established the principle that “all men are created equal” as a self-evident truth. King likens himself to the three men on Calvary who were all crucified for the same crime of extremism, adding that “two were extremists for immorality, and thus fell below their environment. The other, Jesus Christ, was an extremist for love, truth and goodness, and thereby rose above his environment.” Thus, by a series of identities between King and respected religious and political heroes, King validates the necessity of extremism in the cause of racial equality.

King’s synthesis is found in the proposal of a new form of extremist: the creative extremist with whom he identifies: “Perhaps the South, the nation and the world are in dire need of creative extremists.” Creative extremists create drama and the constructive tension necessary to bring about a “world house,” a community of brotherhood, and a global mutual interdependence based on the recognition of man’s fundamental similarity and difference.

**XI. NATURAL LAW THEORY AND CIVIL DISOBEDIENCE**

King is ambivalent about the law. Like St. Thomas Aquinas, he advocates a natural law legalism and considers obedience to God to be above obedience to the law. King sees no real contradiction in his own willingness to disobey a court order.

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125. *Id.* at 91.
126. *Id.* at 92.
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
while urging others to obey the ruling in Brown v. Board of Education because he believes in the existence of just and unjust laws and in man’s duty to obey only just laws. He encodes his philosophy in religious and secular terminology. “One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws.”\(^{134}\) He radically rejects the validity of an unjust law by identifying with the respected religious figure of St. Augustine: “I would agree with St. Augustine that ‘an unjust law is no law at all.’”\(^{135}\)

King defines just and unjust laws by the use of several different metaphoric codes, including religious, psychological, and legal. Firstly, he offers the strictly theological explanation citing St. Thomas Aquinas, Martin Buber, and Paul Tillich: “A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.”\(^{136}\)

King further couches his theological definition of unjust and just laws in psychological terms derived from a theory of the personality: “Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.”\(^{137}\)

King returns to the theological definition of an unjust law by further describing segregation as a form of dehumanization, an objectification of the human being: “Segregation, to use the terminology of the Jewish philosopher, Martin Buber, substitutes an ‘I-it’ relationship for an ‘I-thou’ relationship and ends up relegating persons to the status of things. Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and sinful.”\(^{138}\)

King explains that segregation is sinful because it is a form of separation. “Paul Tillich has said that sin is separation. Is not segregation an existential expression of man’s tragic separation, his awful estrangement, his terrible sinfulness? Thus, it is that I can urge men to obey the 1954 decision of the Supreme

\(^{134}\) Id. at 84.

\(^{135}\) Id.

\(^{136}\) Id. See also, Martin Luther King, Jr., Love, Law, and Civil Disobedience, in A Testament of Hope: The Essential Writings of Martin Luther King, Jr. 43, 49 (James M. Washington ed., 1986) (This essay contains a shorter version of the same definition of just and unjust laws proposed in the Letter).

\(^{137}\) See King, supra note 1, at 84.

\(^{138}\) Id. at 85.
Court, for it is morally right; and I can urge them to disobey segregation ordinances, for they are morally wrong.”

For King the eternal law and natural law will be fulfilled when sinful separation of human beings in the act of segregation finally ends. King sees the future in a communitarianism, a “World House” of brothers united in peace and equality.

King then offers a purely secular argument for civil disobedience based on his distinction between an unjust and just law and the notion of fairness. King defines an *unjust law* as “difference made legal.” “An unjust law is a code that a numerical or powerful majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow that it is willing to follow itself. This is sameness made legal. . . .” King’s notion of justice is inseparable from the concept of evenhandedness and is reminiscent of the theory of Hart and Rawls.

King links injustice to values, democratic process, and voting practices: “A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law . . . Can any law enacted under such circumstances be considered democratically structured?”

King further refines his definition of an unjust law by using strictly legal language: “Sometimes a law is just on its face and unjust in its application. For instance, I have been arrested on a charge of parading without a permit. Now there is nothing wrong in having an ordinance which requires a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First Amendment privilege of peaceful assembly and protest.”

King’s view of natural law as “sameness made legal” is similar to the fair play concept elaborated by Hart and Rawls, in which man must obey the law only if the law is a cooperative enterprise requiring widespread compliance to achieve its beneficial aims. An unfair law is one that is not cooperative and not generally beneficial. This is what King called “difference made legal.” King’s *Letter* not only establishes the right of civil disobedience, but a moral duty to disobey unjust laws. This is based on King’s acceptance of St. Augustine’s view that “an unjust law is no law at all.”

139. *Id.*

140. *Id.*

141. See discussion of Rawls and Hart *infra* at note 144.

142. See King, *supra* note 1, at 173.

143. *Id.* at 85–86.

To persuade his readers of the wisdom of this radical point of view that denies the legality of an unjust law and asserts a duty for its disobedience, King resorts to yet another identification with a philosopher of unimpeachable integrity. He compares himself to Socrates, the patron saint of civil disobedience.\textsuperscript{145} King points out the similarity between his own actions and those of his fellow demonstrators in Birmingham, then their similarity to those of Socrates who “felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal.”\textsuperscript{146} King calls the Birmingham demonstrators “nonviolent gadflies,” which is the same description Socrates used for himself in the \textit{Apology}. King again alludes to Socrates when he points out the illogical reasoning of the clergymen to condemn the demonstrators for provoking violence by their protest. “Isn’t [condemning the Birmingham demonstrators for provoking violence] like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries precipitated the act by the misguided populace in which they made him drink hemlock?”\textsuperscript{147} King reminds us that Socrates’ conscientious disobedience of the order to stop teaching protected academic freedom for all.\textsuperscript{148}

Thus, King goes beyond the establishment of a right of civil disobedience—he refers to it as a duty. As Anthony Cook put it, “King balanced pragmatic and revolutionary Christianity, as well as rights and duties. King’s prophetic Christianity recognized the importance of both rights and duty as a practical matter. Rights were prerequisites to survival; nonviolent civil disobedience was the heart of duty. Duty was consistent with rights because through civil disobedience one could simultaneously demonstrate respect for the rule of law in preserving social order while opposing laws supportive of unjust social orders. Thus, King envisioned a rule of law rooted in experience and responsive to the conditions of oppression that denied the humanity of so many.”\textsuperscript{149}

\section*{XII. FOR AND AGAINST CIVIL DISOBEDIENCE: DWORFIN AND BORK}

King’s views on civil disobedience are not as clear-cut as I have made them sound. He encodes his point of view in contradictory language that states one

\begin{itemize}
\item \textsuperscript{145} \textit{See} Luban’s discussion \textit{supra} note 2, at 2207 of Socrates’ contradictory views of civil disobedience in the \textit{Apology} and the \textit{Crito}.
\item \textsuperscript{146} \textit{See} King, \textit{supra} note 1, at 81.
\item \textsuperscript{147} \textit{Id.} at 88–89.
\item \textsuperscript{148} \textit{See} Richard Kraut, \textit{Socrates and the State} (1984) for a distinction between Socratic conscientious disobedience and civil disobedience for expressive and political purposes.
\item \textsuperscript{149} \textit{See} Cook, \textit{supra} note 6, at 1037.
\end{itemize}
This process of synthesis is similar to the German notion of Aufhebung, which involves adopting a statement and then subsequently cancelling and preserving the statement all in one. The notion of Aufhebung is very dear to the deconstructionists and constitutes a procedure frequently adopted by King. For example, King elaborates a theory on just and unjust laws in answer to the question “How can you advocate breaking some laws and obeying others?” He states categorically and unequivocally that people must obey just laws and disobey unjust laws: People have not only a “legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws.” But then two pages later he contradicts that statement: “In no sense do I advocate evading or defying the law, as would the rabid segregationists. That would lead to anarchy.”

This facet of King’s point of view on civil disobedience is similar to the conservative view espoused by Robert H. Bork in The Tempting of America. Bork cites and comments upon King and his Letter. Bork believes that civil disobedience is lawlessness. He states that King rarely “advocated lawbreaking except in an effort to challenge the constitutionality of the law. When he himself violated a law, he accepted the punishment that ensued. . . .” “There is surely no reason to think it is proper to punish those who violate the law but improper to punish the person who persuades them to do so.” Bork goes on to suggest “that there is no reason for courts to protect any advocacy of law violation since that is merely advocacy of a piecemeal overthrow of the democratic system.” For Bork, civil disobedience is tantamount to political anarchy, and King very briefly espouses this radical position only to reject it defiantly in one of his stunning reversals.

King more than advocates breaking an unjust law; he establishes a duty to disobey unjust laws. King’s view of civil disobedience includes penalty, but penalty for King does not mean punishment. King considers penalty not as a punishment for the civil disobedient, but as an educative experience for the majority. Penalty has the purpose of arousing the conscience of the community to the injustices of racial discrimination. Like Gandhi, King actually believed in

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150. See King, supra note 1, at 84.
151. Id.
152. Id. at 86. See King’s original discussion of this issue in Love, Law and Civil Disobedience, in A Testament of Hope: The Essential Writings of Martin Luther King, Jr., supra note 136, at 49, a speech he gave in 1961 and from which he rewrote and condensed his thoughts on civil disobedience in the Letter.
154. Id.
155. Id. at 335.
the beneficial effects of imprisonment, which was a symbol of the desperate fight for justice. Imprisonment for King did not have the negative connotations traditionally associated with the referent of jail. In King's lexicon, imprisonment was not associated with evil, but with goodness, purity, and nobility. Thus, imprisonment came to mean its opposite in King's mind for he had undergone a revaluation and deconstruction of the very myth of this concept. “I submit that 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 law.”

He then cites Biblical examples of civil disobedients such as Shadrach, Meshach, and Abednego who disobeyed laws on the grounds that a higher moral law was at stake. He cites early Christian martyrs who were “willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire.” Finally he cites Socrates, deifying him forever in the minds of all law professors in American law schools: “To a degree, academic freedom is a reality today because Socrates practiced civil disobedience.” Unlike Jean Anouilh for whom the heroic act of Antigone’s civil disobedience was fraught with despair and futility, King had the sense of accomplishing a real purpose in the act of defying authority. He cites the Boston Tea Party, which represented a massive act of civil disobedience and which was one of the early important steps in the establishment of freedom for all Americans.

King’s notion of civil disobedience appears to be rooted in a curious theory of legal relativity in which one man’s crime is another man’s law. He further persuades his audience of the righteousness of the duty of civil disobedience to unjust laws by pointing to the example of Nazi Germany. “Everything Adolf Hitler did in Germany was ‘legal’ and everything the Hungarian freedom fighters did in Hungary was ‘illegal.’” “It was ‘illegal’ to aid and comfort a Jew in Hitler’s Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers.”

156. See King, supra note 1, at 86.
157. Id. at 87.
158. Id.
159. See Chapter 7 of this book comparing Sophocles’ Antigone to Jean Anouilh’s Antigone. The latter’s pessimism and despair reflects the desperation felt by all those in France and in Europe who were suffering during World War II from the German occupation and oppression.
160. See King, supra note 1, at 86.
161. Id.
162. Id.
King’s point of view of civil disobedience, which the reader has to piece together by reconciling King’s contradictory statements that constitute a rather typical reversal pattern, is a more radical view than Bork’s and one closer to that proposed by Ronald Dworkin in *Taking Rights Seriously:* “Some people reach this conclusion [that the government must prosecute the dissenters, and if they are convicted it must punish them] because they hold the mindless view that conscientious disobedience is the same as lawlessness. They think that the dissenters are anarchists who must be punished before their corruption spreads.” Dworkin recognizes that disobedience to the law may be morally justified. He objects to those who accept only the moral justification for civil disobedience but who reject a legal justification. “It is of the essence of law, said Erwin Griswold, that it is equally applied to all, that it binds all alike, irrespective of personal motive. For this reason, one who contemplates civil disobedience out of moral conviction should not be surprised and must not be bitter if a criminal conviction ensues . . . organized society cannot endure on any other basis.”

Dworkin believes that we must take into consideration the motives of the dissenter. In addition, when the law is uncertain and a plausible case can be made on both sides of an issue, a citizen who follows his own judgment is not behaving unfairly. “The path of justice is in tolerance. The popular view that the law is the law and must always be enforced refuses to distinguish the man who acts on his own judgment of a doubtful law.” Dworkin holds the view that the government has a special responsibility to those who act on a reasonable judgment that a law is invalid.

For Dworkin, leniency depends on whether the law in question rests on a moral right. The civil rights laws clearly “embody the view that Negroes, as individuals, have a right not to be segregated . . . If we take no action against the man who blocks the school house door, therefore, we violate the moral rights, confirmed by law, of the schoolgirl he blocks. The responsibility of leniency cannot go this far.” This view seems to be in sync with King’s view on civil disobedience. Dworkin advocates allowing the greatest possible tolerance of conscientious dissent while minimizing its impact on policy.

Dworkin would advocate fulfilling a legal responsibility toward those who disobey laws out of conscience by not prosecuting them, but by changing laws or adjusting sentencing procedures to accommodate them. “The simple Draconian propositions, that crime must be punished, and that he who misjudges the law must take the consequences, have an extraordinary hold on the professional as

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164. Id.
165. Id.
166. Id. at 216.
167. Id. at 217.
168. Id. at 218.
well as the popular imagination. But the rule of law is more complex and more intelligent than that, and it is important that it survive." 169

**XIII. CONCLUSION**

King was ahead of his time. His goal of a utopian community of brothers based on human dignity and respect was not fulfilled before his assassination and may never be. In his soul-stirring *Letter from Birmingham Jail*, King attempted to jolt the conservative White community out of its state of indifference to the obvious injustices suffered by Blacks. He deconstructed certain myths that drug people into complacency and corrupt society into the false belief in an illusory negative peace. He criticized conservative Christianity’s preference for law and order over justice and freedom. Hopeful and optimistic, King replaced the conservative evangelical conception of a fundamentally evil human nature with the view of man as fundamentally good. King synthesized opposites and embraced a Christian existentialism that advocated individual nonviolent direct action and permitted a struggle for the goal of community. He believed that an alternative social order was both desirable and obtainable; he envisioned a community that respected the need for individual freedom, yet realized the need for a state that protected and legally promoted that freedom. He also had a firm belief in the essential similarity of all human beings who could be united in a world house of brotherhood through creative participation and protest.

King invites his readers to participate creatively in the unraveling of these messages hidden in the symbolic language of the *Letter*. The subtle complicity of the author, the readers, and the text that takes place during the act of reading and interpreting the *Letter* actually illustrates the interconnectedness of mankind. King encourages his readers to participate in a sameness/difference game that is based on the frequent use of identity and contradiction. In the course of playing this game, King’s legal theories about civil disobedience and racial inequality (which are expressed throughout his earlier writings) are never more poetically and persuasively revealed to the readers than in the *Letter from Birmingham Jail*. 169. *Id.*