Lessons from Malcolm X: Freedom by Any Means Necessary

Ali Khan, Washburn University
Lessons From Malcolm X: Freedom by Any Means Necessary

ALI KHAN*

I. INTRODUCTION

Malcolm X is an American hero who advanced a militant message in the struggle for human rights. Thirty years after his assassination, there is a renewed interest in the life and ideas of Malcolm X.\(^1\) Much of this interest has stemmed from Malcolm's transformation from a petty criminal to a moral revolutionary. It was this change in Malcolm's life that prompted me to learn more about this revolutionary. I was particularly interested in his view of law, his militancy, and the relationship between the two. Thus, I began reading The Autobiography of Malcolm X.\(^2\)

\* Professor of Law, Washburn University; M.A., 1972, LL.B., 1976, Punjab University; LL.M., J.S.D., 1983, New York University. A version of this paper was presented at the Fifth Annual Midwestern People of Color Legal Scholarship Conference held at University of Missouri-Columbia School of Law on March 24-26, 1994, and at the Washburn University International Center on April 7, 1994. I wish to particularly thank Professor Ron Griffin who prompted this article, Professors John Delaney, Banks McDowell, Michael Middelton, Norman Amaker, Bill Rich, John Christensen, Roberta Harding, Justice Harold Herd, and Attorneys Pedro Irogenagary and Rebecca Woodman, who commented on the initial drafts. Special thanks to Evan Chang, class of 1995 of Washburn University School of Law, for doing a superb job in developing many of the footnotes.

1. "X" hats, a PBS documentary on Malcolm, as well as the Spike Lee movie entitled “Malcolm X,” demonstrate a renewed interest in the life and ideas of Malcolm X. Tourists are flocking to Malcolm's birthplace in Omaha, Nebraska, and to the Audubon Ballroom in Harlem where Malcolm was assassinated on February 21, 1965. For many African Americans, Malcolm is the resurrected hero who represents the indomitable will of defiance, identity, and self-respect. The liberation messages of musical artists such as Public Enemy, KRS-One, Ice-T, and Sister Souljah reinforce Malcolm’s message of “by any means necessary.” See Isabel Wilkerson, 27 Years Later, the Young Clearly Hear Malcolm X, N.Y. TIMES, Nov. 18, 1992, at A1, B7. But see Jon Nordheimer, Farrakhan Softens Tone But Sticks to Message, N.Y. TIMES, Mar. 30, 1994, at C19 (reporting that Louis Farrakhan, the Nation of Islam leader, demanded that “young blacks regain their pride and turn their backs on a violent and hedonistic popular culture” consisting of sex, rap music, and drugs).

2. ALEX HALEY & MALCOLM X, THE AUTOBIOGRAPHY OF MALCOLM X: SPEECHES INTERVIEWS AND A LETTER BY MALCOLM X (1964) [hereinafter AUTOBIOGRAPHY].
I discovered, not to my great surprise, that Malcolm was not a legal positivist. Malcolm recognized that when law carries out the will of the oppressor, law perpetuates an unjust and cruel society. I also discovered, however, that Malcolm was not a cynic who, in a sustained fit of disenchantment, proposed complete disregard for systemic responsibility. Malcolm was a freedom fighter who wished to liberate an oppressed people. He was a religious man who believed that emancipation was possible. He was a human rights activist who argued that the human dignity of the oppressed had to be restored by any means necessary.3

It is no secret that Malcolm's doctrine of freedom by any means necessary generates fear. It advocates the use of force in an attempt to gain social justice which poses a threat to law and order of the society.4 This concept is particularly disturbing to those who control the means of change. This idea, however, is also disturbing to those who prefer non-violence even when they are subjected to injustice,5 to

3. MALCOLM X, BY ANY MEANS NECESSARY 37 (1970) [hereinafter BY ANY MEANS NECESSARY]. "That's our motto. We want freedom by any means necessary. We want justice by any means necessary. We want equality by any means necessary. We want happiness by any means necessary." Id. "My reason for believing in extremism, intelligently directed extremism, extremism in defense of liberty, extremism in quest of liberty, is because I firmly believe in my heart that the day the black man takes an uncompromising step and realizes that he's within his rights, when his own freedom is being jeopardized, to use any means necessary to bring about his freedom or put a halt to that injustice, I don't think he'll be by himself." MALCOLM X, MALCOLM X TALKS TO YOUNG PEOPLE 21 (Steve Clark ed., 1991) [hereinafter MALCOLM X TALKS].

4. Malcolm was not an aggressive advocate for the use of violence. In one speech, Malcolm stated, "I do not advocate violence; in fact[,] the violence that exists in the United States is the violence that the Negro in America has been a victim of . . . . I have never advocated our people going out and initiating any acts of aggression against whites indiscriminately." BY ANY MEANS NECESSARY, supra note 3, at 170. Malcolm did suggest, however, that the use of force to fight oppression was an option to the oppressed which for Malcolm meant "load your gun . . . . Just because you load it doesn't mean you have to shoot it." BY ANY MEANS NECESSARY, supra note 3, at 23. Malcolm stated, "The black man in this country is within his constitutional rights to have a rifle. The white man is, too . . . . You shouldn't go out shooting people with it; you shouldn't become involved in acts of aggression that you initiate." BY ANY MEANS NECESSARY, supra note 3, at 29.

Malcolm did believe, however, in the right of the oppressed to protect themselves:

"That's why I am a Muslim, because it's a religion that teaches you an eye for an eye and a tooth for a tooth. It teaches you to respect everybody, and treat everybody right. But it also teaches you if someone steps on your toe, chop off their foot. And I carry my religious axe with me all the time."

BY ANY MEANS NECESSARY, supra note 3, at 140. "We are nonviolent only with nonviolent people. I'm nonviolent as long as somebody else is nonviolent—as soon as they get violent they nullify my nonviolence." BY ANY MEANS NECESSARY, supra note 3, at 10.

5. AUTOBIOGRAPHY, supra note 2, at 296.
Lessons From Malcolm X

those who have resigned themselves to failure, and to those who have been filled with fear “ever since they were babies.”

Malcolm understood the impact of his militancy, and he used the effects of his messages to effectuate social change. His robust rhetoric, composed of ordinary words, exposed with ruthless honesty the faces of oppression, the power structure which perpetrates oppression, and the poverty culture which cultivates oppression. Malcolm challenged and admonished both oppressors and the oppressed, urging them to change and bring an end to injustice. Malcolm learned to address both the oppressors and the oppressed in the same speech, often at the same time. In doing so, he would instill fear in the hearts of the powerful and erase it from the psyche of the powerless. Malcolm chose phrases such as “freedom by any means necessary” to empower the audience while simultaneously threatening the perpetrators of oppression.

Malcolm’s message of liberation is pragmatic: it aims at changing the concrete conditions that cause subjugation and helplessness. Malcolm challenges the oppressed to clean up their communities by using their own political, economic, moral, and intellectual resources.

7. Autobiography, supra note 2, at 291. This statement reminded me of a moral instruction that my grandmother (who is 92 years old and lives in Pakistan) gave me when I was young. She said: “Be nice to those who are nice to you. Be good to those who are good to you. If they are nasty to you, forgive them. But if they are out to get you, then, my son, you have to fight!” As a consequence, I have noticed that I am not afraid to make friends and be loyal to them. And I am not afraid to fight with my enemies. In fact, when I started reading Malcolm’s autobiography, I discovered that Malcolm reaffirmed what my grandmother told me.
9. But see Celeste Condit, Malcolm X and the Limits of the Rhetoric of Revolutionary Dissent, 23 J. Black Stud. 291 (1993) (arguing that Malcolm’s rhetoric failed to produce a concrete action plan for changing the social structure). I disagree with Celeste Condit, and this article is designed to show that Malcolm did not give details to fight oppression, but his concept of liberation is coherent and humanistic.
12. Malcolm X Talks, supra note 3, at 38. “And because we felt so inferior and so inadequate and so helpless, instead of trying to stand on our own feet and do something for ourselves, we turned to the white man, thinking he was the only one who could do it for us because we were taught . . . that he was the personification of beauty and the personification of success.” Malcolm X Talks, supra note 3, at 38. For an analysis of why the black community failed to evolve into an internally sustainable entity, see Norman L. Crockett, The Black Towns
Malcolm believed that this change was the responsibility of each community that suffered "the effects of years of exploitation, neglect and apathy."13 This self-help mentality unleashes new energy in oppressed communities, minimizing dependence upon a system that has been unjust.14 This commitment to change from within, however, does not make the oppressor less menacing. The threat from the outside is not minimized. The fight against oppression takes on a new meaning: it is now rooted in the moral militancy of an organized and disciplined community.

There is a spiritual layer of Malcolm's message as well which goes beyond restoring the material welfare of oppressed communities. It is a message that instills human dignity which oppressors have systematically besieged through a spiritually deficient legal system. It restores the confidence of a people who have been invaded, colonized, enslaved, segregated, and made inferior by force, manipulation, fraud, and miseducation.15 Malcolm emphasizes the restoration of human dignity—the birthright of every man and woman without any distinction as to race, color, language, religion, political opinion, social origin, property, birth, or any other status.16 To assert their human dignity, Malcolm argues, the oppressed need not leave their own communities, nor need they be timid, overly-friendly, or apologetic in

(1979) (noting that black leaders followed several approaches including concentration on economic self-help, moral uplift, and racial solidarity).
14. By Any Means Necessary, supra note 3, at 59. "This is why Garvey was able to be more militant. Garvey didn't ask them for help. He asked our people for help. And this is what we're going to do." By Any Means Necessary, supra note 3, at 59.
16. Universal Declaration of Human Rights, Dec. 10, 1948, arts. 1 & 2. The international human rights instruments emphasize the inherent human dignity as the fundamental source from which these rights are derived. The Universal Declaration of Human Rights states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Id. at pmbl. Likewise, the International Covenant on Civil and Political Rights states that "recognizing that these rights derive from the inherent dignity of the human person . . . ." The International Covenant on Economic, Social and Cultural Rights, in its preamble, recognizes the inherent dignity of the human person as the source of economic, social, and cultural rights. For legal scholarship on the concept of human dignity, see Scott Howe, Human Dignity as the Polestar for Rights Decision Making, 73 B.U. L. Rev. 695 (1993); George P. Fletcher, Human Dignity as a Constitutional Value, 22 U. W. Ont. L. Rev. 171 (1984); Jordan J. Paukt, Human Dignity, Remedies and Limitations in the Convention, 7 N.Y.L. Sch. J. Hum. Rts. 116 (1989); Jordan Paust, Human Dignity as a Constitutional Right: A Jurisprudentially Based Inquiry into Criteria and Content, 27 How. L.J. 145 (1984); Myers McArthur et al., Human Rights and World Public Order: The Basic Policies of an Intentional Law of Human Dignity (1980).
Lessons From Malcolm X

their dealings with the oppressor. Some distance from the oppressor is good for the soul, and perhaps necessary for maintaining a spiritual balance.

Malcolm aspired to change the nature of discourse about oppression. He knew that historically, those who were oppressed did not limit themselves to the language of the oppressor. In the United States, for example, the subjects of oppression created new forms of communication first through slave songs then through jazz. Thus, Malcolm invented a new language of liberation, encouraging others not to be limited by the conversation of that time. For Malcolm, the concepts of formal equality, desegregation, and civil rights were the language of acquiescence, not liberation; for him, the concepts of identity, self-reliance, and human rights were the language of liberation.

By any means necessary is a defiant phrase that threatens the establishment, opposes the notion of law and order, and exposes the failure of the legal system to provide justice. It empowers the oppressed by sowing seeds of militancy, forcing them to reflect upon their condition of oppression and daring to change the system. By any means necessary is also an intimidating utterance that fright-

17. MALCOLM X Talks, supra note 3, at 76. "So don't you run around here trying to make friends with somebody who's depriving you of your rights. They're not your friends." MALCOLM X Talks, supra note 3, at 76.

18. This spiritual distance from the oppressor can be achieved by teaching children the historical past of oppression so that they may understand the dynamics of injustice. Multicultural education could play a critical role in dismantling the dominant paradigms of social, political, and economic thinking. This approach to seeking identity, however, may not be acceptable to the dominant group. See ALLAN BLOOM, THE CLOSING OF AMERICAN MIND 95-97 (1987) (arguing that black studies program does not contribute towards bringing the races together); National Association of Scholars, Is the Curriculum Biased?, 52 Pol'y Rev. 49 (1990) (stating that the truths of mathematics, the sciences, and history are the same for everyone, nor should Western values be diminished since they are attaining universal acceptance). But see Frances L. Ansley, Race And The Core Curriculum In Legal Education, 79 CAL. L. REV. 1511 (1991) (examining the controversy regarding the meaning of a canon in legal education and arguing that matters of racial justice, both past and present, constitute an essential part of minimal cultural literacy for American lawyers and legal scholars).

19. See LEROI JONES, BLACK MUSIC 13 (1967) (stating African American music expresses an attitude about the world); ROB BACKUS, FIRE MUSIC: A POLITICAL HISTORY OF JAZZ 92-93 (1976) (suggesting that music can transform consciousness); Robin D.G. Kelle, Straight From Underground, The Nation, June 8, 1992 at 793 (stating local rap music portrays the tough life of young blacks in Los Angeles and recalling the abusive nature of the Los Angeles Police toward blacks); Arthur Pressley, Rap Music By Black Male Artists: A Psychotheological Interpretation, 16 W. J. BLACK STUD. (1992) at 92 (asserting that rap music serves as a means to express black sentiments and ill-feeling toward certain black institutions such as the church, reassuring individuals that they can prosper in a highly competitive society). Yet, many people believe that rap music appeals to angry and unloved kids and tells them it is "okay to beat people up." Michael E. Dyson, Federal Document Clearing House Congressional Testimony, Feb. 23, 1994.
ens many citizens, instituting a state of terror in which their life, liberty, and property seem no longer secure. Taken in its total effect, Malcolm’s phrase offers a complex mix of defiance, fearlessness, and militancy with insurgence, fright and anarchy.

Malcolm articulated simple truths in a feisty language meant to reach and inspire ordinary people. One should not conclude from this approach that Malcolm was without intellect. Learning from his own existential predicament, Malcolm appreciated a measured language and the significance of reading books, for there is no freedom without knowledge, particularly in a prison. Beneath his fiery rhetoric, humor, and sarcasm lay a coherent and reflective viewpoint derived from “almost mathematically analyzed cold facts.” Malcolm often stated that quick learning is the best rule of survival, and he always believed that “there is nothing more frightening than ignorance in action.”

Because Malcolm’s life experiences were deeply rooted in the United States, his main moral mission was to seek liberation for the black people in this country. Nonetheless, Malcolm was a powerful thinker whose conception of oppression applies to many situations in the world including foreign occupation, caste systems, and blatant discrimination. In laying out a course of action to fight oppression, Malcolm refused to put his faith in the legal system of any particular

20. AUTOBIOGRAPHY, supra note 2, at 199.
21. AUTOBIOGRAPHY, supra note 2, at 357.
22. AUTOBIOGRAPHY, supra note 2, at 273.
23. AUTOBIOGRAPHY, supra note 2, at 472.
24. Although Malcolm spent the majority of his life in the United States, he was significantly influenced by his trip to Mecca, the Islamic holy place located in Saudi Arabia where Muslims of the world gather every year to take part in the pilgrimage known as Haj. “True, sir! My trip to Mecca has opened my eyes. I no longer subscribe to racism. I have adjusted my thinking to the point where I believe that whites are human beings . . . . as long as this is born out by their humane attitude toward Negroes.” AUTOBIOGRAPHY, supra note 2, at 474-75. “My pilgrimage broadened my scope. It blessed me with new insight . . . . I saw all races, all colors - blue-eyed blonds to black-skinned Africans - in true brotherhood! In unity! Living as one! Worshipping as one. No segregationists - no liberals; they would not have known how to interpret the meaning of those words.” AUTOBIOGRAPHY, supra note 2, at 416. “In the past, yes, I have made sweeping indictments of all white people . . . . The true Islam has shown me that a blanket indictment of all white people is as wrong as when whites make blanket indictments against blacks.” AUTOBIOGRAPHY, supra note 2, at 416.
25. For an overview of minority oppression around the world, see BEN WHITAKER, THE FOURTH WORLD: VICTIMS OF GROUP OPPRESSION (Ben Whitaker ed., 1973). Chapter 1 deals with the Asian minorities in East and Central Africa; chapter 5 discusses the two Irelands; chapter 6 speaks to religions in the Soviet Union and chapter 8 speaks to Japan’s outcasts. See also JAMES CONE, MARTIN & MALCOLM & AMERICA, 93 (1972) (stating “Malcolm was a gifted thinker whose perspective [shared an] . . . uncompromising solidarity with the victims of history”) Id. at 93.

84 [VOL. 38:79
Lessons From Malcolm X

country. Alternatively, Malcolm relied upon universal human rights to demand justice and changes in the oppressive system. This shift from national to global standards for defining, as well as, fighting oppression makes Malcolm a powerful leader in the still emerging movement of human rights.

This article constructs a theory of freedom for oppressed peoples of the world based on ideas scattered through Malcolm's speeches, interviews, and his autobiography. This theory is rooted in the normative regime of human rights. It defines oppression as a violation of human dignity and suggests that oppression be fought consistent with universally recognized human rights standards.

In addition, this article explores legal mechanisms through which oppression is perpetrated. The underlying thesis is that, when the oppressor controls the legislative, judicial, and enforcement machinery of the legal system a direct relationship is established between law and oppression. Lawrence Tribe has noted that law is no longer the embodiment of virtue or justice—at least not for the oppressed. It becomes a state-sponsored instrument of oppression.

Malcolm believed that oppressors in control of the legal machinery are morally unteachable, and it would be a waste of time to seek liberation through legal means. Thus, relying upon universal human rights principles, Malcolm invoked the concept of by any means necessary to confront the legal means which initiate, entrench, and prolong the oppressive system. Malcolm's message, however, neither fully explains the interaction between legal means and oppression nor does it explain, in any systematic way, the conditions under which the oppressed may reject legal means as a reliable vehicle for social change.

Thus, this article examines the failure of legal means to protect the freedom of the oppressed. I use examples from the United States to highlight the main points. The thesis of oppression, however, is not confined to any one country. This piece discusses the inherent univer-

26. The control over legal means may be distinguished from the control over the means of production. According to Karl Marx, those who control the means of production determine the social, cultural, and class values. My theory is not limited to Marxism. Those who control the legal means may perpetrate many forms of oppression, ranging from racial to religious oppression. If those who control the legal means are racist, they will perpetrate oppression against disfavored racial groups. If those who control the legal means are religious fanatics, they will institute oppression against disfavored religious groups. I do not, however, argue that whoever controls the legal means will always perpetrate some form of oppression. See also Walter J. Walsh, Redefining Radicalism: A Historical Perspective, 59 GEO. WASH. L. REV. 636 (1991) (maintaining that whether law emancipates or enslaves depends on who is in charge).
salicy of Malcolm’s ideas so that the oppressed anywhere in the world, now or in the future, may relate to them and seek guidance.27

This article consolidates Malcolm’s ideas into a morally and legally defensible concept of liberation. It examines the concept of any means necessary—a universal doctrine which can no longer be dismissed as the violent obsession of an angry man.28 Part II describes Malcolm’s concept of oppression and its consequences. Part III provides a detailed analysis of the legal means through which oppression is perpetrated and maintained. It discusses the legislative, judicial, and enforcement means to examine their unique contribution to the enterprise of oppression. The author first demonstrates how in an ordered society, social change is effected through legal means. The article then explains the circumstances under which the legal means may fail to alleviate the conditions of oppression. This section is important to the understanding of the direct correlation between legal means and oppression. Part IV examines the concept of law and order and its relationship with oppression. This section supplies a basis to distinguish legal means from “any means necessary.” Part V suggests that if the legal means fail to remove grave injustice from the society, Malcolm’s doctrine of freedom by any means necessary is of critical significance.

It must be noted that Malcolm’s concept of any means necessary includes, but is not limited to non-violent civil disobedience.29 If non-violent civil disobedience does not change the system, then any means necessary allows the oppressed to consider armed resistance. The oppressed may use multiple strategies. One group among the oppressed, for example, may use non-violent means to fight oppression; another may advocate more radical methods to change the system. This multi-faceted approach creates more pressure on the oppressor to lift oppression. In order for such a movement to be effective, however, the oppressor must believe that those who are involved are serious about

27. “I’m for truth, no matter who tells it. I’m for justice, no matter who it is for or against. I’m a human being first and foremost, and as such I’m for whoever and whatever benefits humanity as a whole.” Autobiography, supra note 2, at 366 (emphasis omitted).
28. Autobiography, supra note 2, at 421. See also Archie Epps, Malcolm X: Speeches at Harvard 2 (1991) (explaining why Malcolm was so angry and articulating the reasons for the growing threat of black anger against the privileged).
29. Although many believe that the messages of Malcolm X and Martin Luther King have nothing in common, Martin Luther King’s non-violent tactics are included in the concept of “any means necessary.” Malcolm said: “Now I’m not criticizing those here who are nonviolent. I think everybody should do it the way they feel is best . . . .” Malcolm X Talks, supra note 3, at 51.
their cause. Those who are oppressed must be willing to sacrifice their lives to abolish the state of subjugation.30 It is also important that the oppressed maintain their underlying solidarity because it is inevitable that they will encounter efforts to divide them and turn them against each other.

II. MALCOLM'S VIEW OF OPPRESSION

Malcolm identifies two distinct aspects of oppression: lack of control and denigration of human dignity. When a group of people lose control over such essentials of their life as who they are, how they live, where they live, whether they work, and the type of work they do, the results are feelings of disability and oppression.31 This feeling of helplessness occurs when the means of control are in the oppressors' hands. The oppressors use the media to manipulate the public perception of a target group giving the impression "that everyone in that community is a criminal."32 Once the negative image has been established, it becomes easier for the police to execute and for the public to accept even brutal measures against the oppressed.33

This feeling of defenselessness is not limited to encounters with the police. It permeates many other aspects of life when the oppressed lack control over economic, social, and political means. The oppressed experience a shared powerlessness when someone else runs the businesses for which they work, and someone else owns the buildings in which they live.34 The level of frustration increases when the

30. By Any Means Necessary, supra note 3, 86-87 (2d ed. 1992). “The price to make others respect your human rights is death . . . . This is what you have to say. Respect me, or put me to death. But when you start to put me to death, we're both going to die together. You have to say that.” Malcolm X, By Any Means Necessary, supra note 3, at 86-87.

31. Kenneth B. Clark, Dark Ghetto: Dilemmas of Social Power (2d ed. 1965). “Human beings who are forced to live under ghetto conditions and whose daily experience tells them that almost nowhere in society are they respected and granted the ordinary dignity and courtesy accorded to others will, as a matter of course, begin to doubt their own worth. Since every human being depends upon his cumulative experiences with others for clues as to how he should view and value himself, children who are consistently rejected understandably begin to question and doubt whether they, their family, and their group really deserve no more respect from the larger society than they receive. These doubts become the seeds of a pernicious self- and group-hatred . . . .” Id. at 63-64.

32. Malcolm X Talks, supra note 3, at 28.

33. Malcolm X Talks, supra note 3, at 28. See also Dennis Hayes, Police Brutality: What Can We Do?, 100 The Crisis 42, 42 (1993) (suggesting that the public must be educated and that blacks must be encouraged to bring lawsuits to protest discrimination against blacks by the police who arrest them without any cause and abuse them physically and verbally).

34. By Any Means Necessary, supra note 3, at 47. “The economic exploitation in the Afro-American community is the most vicious form practiced on any people in America.” By Any Means Necessary, supra note 3, at 47. See also Housing and Income, 30 Soc'y 3 (1993)
economic resources of their communities are drained for the benefit of others. As extensive joblessness prevails among the oppressed, their image as a community is further stained. Myths and stereotypes are spun to exonerate the system from responsibility, labelling the oppressed "stupid, lazy, dirty, or untrustworthy."

In addition to disabling the disadvantaged, oppression simultaneously empowers the oppressor. It transfers power from the oppressed to the oppressor, establishing a relationship of direct subjugation.

Under slavery, one of the most extreme forms of oppression, the labor of the enslaved is directly consigned to the master. The powerlessness of the enslaved is indeed the power of the master.

On a larger social scale, oppression provides a conduit to drain power from the op-

(footnotes)

35. Moon H. Jo, Korean Merchants in the Black Community: Prejudice Among the Victims of Prejudice, 15 ETHNIC & RACIAL STUD. 395 (1992) (recognizing the Korean-Black conflict as an example of the exploitation of one group by the other. In black communities, Korean merchants engage in small businesses, but there is a common complaint that they do not hire blacks. There is a further perception that these merchants drain the resources of the community without much return.). Some black communities have expressed similar grievances against Jews. See Cornel West, Black Anti-Semitism and the Rhetoric of Resentment, 15 Tikkun 15 (1992) (suggesting the growth of black anti-semitism indicates the desperation of blacks in their struggle against racism). The influx of both white and Asian businesses into black communities might be helpful in promoting economic activity in these communities. Yet, the presence of these businesses prevents empowerment of these communities. Malcolm advocated self-help as a principle of liberation perhaps because his own life was built on self-reliance. See James Stewart, Malcolm X and the Economic Salvation of African Americans, 17 W. J. BLACK STUD. 17 (1993) (arguing that Malcolm's ideas about economic liberation can be traced to his development of survival strategies during his formative years).

36. Paul M. Sniderman et al., The New Racism, 35 AM. J. POL. SCI. 423 (1991) (showing how contemporary racial prejudice relies upon the negative images of blacks as lazy and irresponsible); Richard Delgado, Words that Wound: A Tort Action for Racial Insults, Epithets and Name-Calling, 17 HARV. C.R.-C.L. L. REV. 133, 146-47 (1982). These stereotypes are often communicated either explicitly or implicitly through racial insults. Id. See, e.g., MARTIN DEUTSCH ET AL., SOCIAL CLASS, RACE AND PSYCHOLOGICAL DEVELOPMENT 175 (1968). See also UNITED STATES COMMISSION ON CIVIL RIGHTS, UNEMPLOYMENT AND UNDEREMPLOYMENT AMONG BLACKS, HISPANICS, AND WOMEN 55-56 (November 1982) (suggesting extensive disparities in the labor market). There is higher unemployment among black and Hispanic males and females than there is in the white community. Id. at 55. "This [commission] report makes clear historically disadvantaged groups should not be blamed for lacking a strong work ethic or for having a different outlook on education." Id. at 59.

37. See IRIS M. YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 32 (1990) (arguing that racial oppression occurs through a steady process of the transfer of the results of the labor of one racial group to benefit another). See also Judith A. Carney, From Hands To Tutors: African Expertise In The South Carolina Rice Economy, AGRIC. HIST., Summer 1993, at 1 (disputing the notion that West African slaves provided only physical labor and arguing that these slaves had useful agricultural knowledge for the planting and irrigation of rice).
pressed to building the economic, social, and political strength of the oppressors. 38

Foreign occupation, caste-system, apartheid, segregation, and other forms of oppression are powerful barricades to control the flow of social goods 39 to the oppressed. In a duplicitous democracy, 40 however, the acquisition of control is derived from more sophisticated forms of oppression. Overt methods of oppression are no longer used because the legal system has adopted formal equality renouncing oppression in the written law. Recognition of formal equality in the law, however, does not end oppression. In order to retain the best available benefits and opportunities, the oppressors develop new, more subtle sub-structural ways and means to carry on the enterprise of oppression. 41

These overt and covert modes identify the oppressed “as a separate class of persons.” 42 Moreover, they serve to disconnect the oppressed from the oppressors, creating two sets of residential areas, two sets of schools, and two sets of jobs — two sets of almost everything that matters in life. Sophisticated forms of oppression continue to exist so long as the oppressors are unwilling to share benefits of the system on a fair and equitable basis. 43 Consequently, the formal system changes but the bottom-line for the oppressed does not. The oppressed remain on the margins of social life. 44 Malcolm recognized

38. See Young, supra note 37, at 30-33 (suggesting that groups in the United States participate in a segmented labor market in which high-paying jobs are reserved for the whites).
39. I use the term “social goods” in the Rawlsian sense, which includes not only material goods essential for survival but also self-respect. See John Rawls, A Theory of Justice 395-452 (1971) (setting forth a comprehensive theory of justice in a sociological, political, and philosophical context).
40. See infra footnote 81 and accompanying text for a discussion of maintaining control of oppressed groups through gerrymandering.
41. Former President Reagan’s slogan to “get the government off the backs of the people” and the political ideology of “colorblind constitution” are code words to gut affirmative action programs. See Kenneth Nunn, Rights Held Hostage: Race, Ideology and the Peremptory Challenge, 28 HARV. C.R.-C.L.L. REV. 63, 112 n. 258 (1993); Robert Detlefsen, Civil Rights Under Reagan 3-4 (1991).
43. Derrick Bell, Race, Racism and American Law 87-89 (2d ed. 1980) (arguing that whites hold on to policies and behavior that deprive blacks of rights and opportunities). See also Cong. Budget Off., Income Disparities Between Black and White Americans 2-10 (1977) (reporting substantial differences exist between the incomes of white and black Americans).
44. Clark, supra note 31.

The roots of the multiple pathology in the dark ghetto are not easy to isolate. They do not lie primarily in unemployment. In fact, if all of its residents were employed it would not materially alter the pathology of the community. More relevant is the status of the jobs held. Nor do the primary roots lie in the frustrations of bad housing. There is correlation between social pathology and housing, apparently confirming the earlier
Howard Law Journal

this phenomenon stating, "the same things are happening to us in 1964 that happened in 1954, 1924, and in 1884."45

The second aspect of oppression is a systematic assault on the inherent human dignity of the oppressed.46 Dehumanization of the oppressed and lack of control over basic decisions in life work in tandem and are inseverable attributes of oppression. The oppressors create, defend, and reinforce social assumptions which portray the oppressed as inferior human beings lacking intelligence, virtue, and social skills.47 This attack on the human dignity of the oppressed is made to defend an uneven and unfair distribution of social goods, economic benefits, political power, and constitutional values.48 By alleging the inherent inferiority of the oppressed,49 the oppressors can claim, without guilt, a superior position in the social hierarchy.50

Such an assault on human dignity has a devastating effect on the oppressed. According to Malcolm, the oppressors begin to control the minds of the oppressed,51 and the oppressed begin to think about

---

hypothesis that while better housing heightens morale, it does not affect the more fundamental variables of economic status, broken homes, and lowered aspirations; that more important than merely having a job, is the kind of job it is. And more important than merely housing-once human beings are removed from substandard housing-is fundamental social change.

Clark, supra note 31, at 106.

45. Malcolm X Talks, supra note 3, at 22.

46. In 1902, the American Economic Association published a study suggesting that the attributes associated with blacks such as indolence, carelessness, brutality, deception and passion were not the products of slavery but were ineradicable elements of African culture and nature. See Joseph Tillinghast, The Negro in Africa and America, Am. Econ. Ass'n, Publications III, May, 1902, at 132.

47. Cultural stereotypes express the fear that black men are angry and hostile. See William Grier & Price Cobbs, Black Rage 65 (1968). American movies also participate in re-anchoring social myths that blacks are violent, oversexed, and savage. See Donald Bogle, Toms, Coons, Mulattoes, Mammy's & Bucks: An Interpretive History of Blacks in American Film (2d ed. 1989).

48. John R. Howard, Awakening Minorities: American Indians, Mexican Americans, Puerto Ricans 1 (1970). Hierarchical ordering of people reflects unequal access to goods, services, pleasures, and power. In the United States, social stratification is created on the basis of race and national origin. It is rationalized by a system that suggests that certain groups lack the skills to be productive members of society. Id. This prejudice results in social exclusion, economic oppression, and political powerlessness. Id. at 3.

49. "There are psychic rewards in self-flattering generalizations . . . . The easiest idea to sell anyone is that he is better than someone else." Gordon W. Allport, The Nature of Prejudice 372 (1954).

50. Ethnic groups in this country have historically been discriminated against and depicted as inferior. See John S. Haller, Outcasts From Evolution: Scientific Attitudes of Racial Inferiority, 1859-1900 (1971); Johann Blumenbach, On the Natural Variety of Mankind (1781); John Van Evrie, White Supremacy and Negro Subordination (1868); Jack Forbes, Envelopment, Proletarianization and Inferiorization: Aspects of Colonialism's Impact Upon Native Americans and Other People of Color in Eastern North America, 18 J. Ethnic Stud. 95 (1991).

51. Malcolm X Talks, supra note 3, at 29.
themselves just as the oppressors characterize them. Consequently, the oppressed internalize self-hatred manifested by hating their skin, hating their caste, hating their language, hating their religion, and indeed hating who they are and what they are. This hatred leads the oppressed to turn upon themselves blaming their own kind, and killing their own children, brothers, and sisters, as if it is their own race, their own caste, their own religion, and their own community had trapped them and brought them down. Thus, deep and enduring marks of inferiority and degradation eliminate the dignity of the entire group.

III. OPPRESSION THROUGH LEGAL MEANS

When the oppressor controls the legal means, law is a direct source of oppression. A legal system may formally embrace princi-
ples of justice such as the equal protection of laws, due process, and fundamental civil rights and liberties, yet these formal notions of justice, do not assure that oppression against disfavored groups will cease to exist. If legal means remain in the oppressor's hands, particularly one with a historical record for perpetuating oppression, the formal legal system may not tell the whole story of oppression. Hence, in every situation, the critical question will be: who controls the legal means? This simple question may unravel the secrets of oppression.

Most systems of government have three branches all of which are involved in the law making process to some extent. These branches comprise the legal means. If the oppressor is in charge of the legislature, the judiciary, and the enforcement agencies, the oppressor has absolute control over the legal means. In other words, any legal challenge to oppression can be preempted since the oppressor is the one who makes the law when the law is needed, interprets the law when the law is challenged, and enforces the law when the law is breached. From the viewpoint of the oppressed, the state of oppression is complete when the oppressed have no access to the legislature, no influence with the judiciary, and no bond with the enforcement agencies. For example, in South Africa, the white minority opposed the inclusion of the majority into the legal system because the white minority feared that it would lose control over the legal means by which apartheid was created and maintained. Likewise, years ago when the slave owner's control over the legal means to maintain slavery was challenged in the United States, the slave-owners took up arms to resist change.

I do not maintain that anyone who controls the legal means is an oppressor. Nor do I assert that social, political, and economic means of oppression are secondary in nature or effect. I simply suggest that oppression is more effectively carried out when the oppressor gains exclusive authority over the legal means. There are many reasons for the establishment to perpetuate oppressive policies, ranging from moral failure to irrational prejudice. The methods by which the oppressor implements oppression also are varied ranging from slavery, to caste systems, and then to socioeconomic discrimination. In order for state-sponsored oppression to exist, however, the oppressor must

58. "In behavioral terms, the so-called law of slavery was the work, not only of those persons who drafted it but also of everyone charged with enforcing it—including sheriffs, constables, patrols, judges, jailers, masters and overseers." DON E. FERRENBACKER, THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS 32-33 (1978).
gain control over the legal means. Once the oppressor has the legislative, judicial, and enforcement means at his disposal, the economic, social, and political means of oppression can be easily harnessed.

In studying the nature and dynamics of oppression, one must ask the critical question: how does the oppressor disable the oppressed from having any authority over the legal means? Subjugation is the most effective way to prevent the oppressed from having any influence over the legal means. The enslaved are shut out from the legislature, the judiciary, and the executive where there are no rights to participate in the government. They cannot make or repeal any statutes; they cannot decide cases; they cannot participate in any enforcement agency. There is absolute incapacitation.

Despite this lack of access to the legal means, the legal system still functions against the enslaved. Bills passed in the legislature, the cases decided in the courts, and the decisions taken in the enforcement agencies continue to affect directly the lives and families of the enslaved. Where this is the case, those who are enslaved have very few reasons to respect the legal means.

In an authoritarian regime headed by one person, a clique, or a junta, it is easier to determine who controls the legal means.\textsuperscript{59} Oppression in such regimes is often pyramidal, flowing from the top to the bottom. In a complex democratic society such as the United States, however, authority over the legal means is dispersed among various levels of administration extending from the local to the federal system. The jurisdictional distribution of legislative, judicial, and enforcement power and the hierarchical interaction among these layers makes it difficult to ascertain where authority over the legal means lies and what the scope of that authority is. Accordingly, oppression perpetrated through a highly stratified system lacks a visible nucleus and complexity blurs the focus of responsibility. Thus, the system of oppression continues to function without anyone having to take responsibility for it.

This pathology of legal means is more difficult to diagnose when oppression is practiced in a duplicitous democracy. A duplicitous democracy must be distinguished from a majoritarian democracy with respect to control of the legal means. In a majoritarian democracy, the majority controls the legal means. Accordingly, laws reflect the

\textsuperscript{59} In a military regime, the legal means are usurped by the military leadership. In a monarchy, the legal means might be under the exclusive control of the monarch.
wishes of the majority, which may or may not be detrimental to the interests of political minorities. In a duplicitous democracy, however, the majority may or may not constitute the dominant group in control of legal means. Even a minority could establish a duplicitous democracy. Apartheid South Africa, under which a minority constituted the dominant group, is an example of duplicitous democracy. The chief attribute of a duplicitous democracy is its normative failure to treat all groups with equal respect. In fact, the dominant group in a duplicitous democracy will single out target groups from which it will withold the rights and benefits enjoyed by the dominant group.

A duplicitous democracy may retain its essential character even if the system grants formal equality and rejects any oppressive discrimination in law. The normative flawlessness of the system in theory blinds the observer from seeing oppression in reality. In a duplicitous democracy, the observer must look at functional outcomes rather than formal opportunities available to all. A sociological study of oppression would reveal more than a legal study of statutes and cases which might extol only paper credentials of the legal system.

All members of the dominant group may or may not directly participate in the enterprise of oppression. In most cases, however, the prejudice against the oppressed runs through the entire group. Even those members of the dominant group who morally reject oppression often do nothing beyond verbal condemnation. Their moral inaction to fight injustice has complex motives. They do nothing because their lives are bound to the dominant group in ways they cannot sever. Some are unwilling to give up the social, political, and economic benefits they draw from the prevailing system.

Yet, no concept of freedom requires that every member of the dominant group be dehumanized. Such dehumanization is unnecessary, even counter-productive, in the fight against oppression. The oppressed should welcome those among the dominant group who gather the moral courage to rebel against their own kind and fight for the sake of justice.60

60. Malcolm, however, cautioned against unguarded acceptance of supporters from the oppressor group.

So by and large, I think the only way of solving our problems is to realize that people we think are liberal are not as liberal as they profess; and people we think are with us, when we put them to test, they are not really with us, they are not really for the oppressed people we think.

By ANY MEANS NECESSARY, supra note 3, at 171.
Lessons From Malcolm X

In an ordered society, changes in the economic, political, moral, or social aspects of life may be brought about by the legal means. The legal means by which these laws are made and modified acquire critical significance in the removal of oppression. Legislation can be made to outlaw slavery, segregation, discrimination, and other forms of oppression. Judges can play an active role in shaping rules of law that meet high standards of justice and fairness. Enforcement agencies can fight oppression by protecting the life, liberty, and property of the oppressed. If all the legal means within a system are coordinated to eradicate public and private oppression, then law approximates justice. In such a system, there is no defensible basis to argue that the oppressed must rebel and use force to change the system.

Nonetheless, one need not assume that the legal means will function to the advantage of the oppressed. Nor should it be taken for granted that law in essence promotes justice. Such mythical notions about the nature and purpose of law might have a place in academia where legal scholars—influenced by their own noble naivety—inject intrinsic virtue in the definition of law.

To understand oppression, one must not confuse the distinction between what law does and what law should do. What law should do is wishful thinking that may or may not be actualized. What law does is reality as it exists. In an unjust society, oppression is often perpetrated and institutionalized through the use of legal means at the legislative, judicial, and enforcement levels. The prevailing injustice cannot be separated from what law does. This alliance between oppression and the legal means provides a legal framework to institute even the most extreme forms of subjugation such as slavery in the United States and apartheid in South Africa.

Furthermore, it is important to examine how oppression is perpetrated without the use of legal means. This occurs when the legal

61. Ordinarily, the people resent an overly-regulated society and prefer freedom to conduct their lives. Nonetheless, laws are needed to clarify rules of behavior, to maximize cooperation among members of the community and to prevent and resolve disputes.
62. Note that Malcolm X was often quite critical of intellectuals and contrasted them with the people who have real knowledge.
63. This distinction should not be confused with positive law/natural law dichotomy. Under this dichotomy, positive law represents law as it is, natural law represents law as it ought to be. Natural law is thus a normative order that provides a basis to evaluate and criticize the existing positive law. With respect to oppression, some form of natural law may be used to criticize the existing oppressive system. If the oppressor's control over legal means remains intact, however, the positive law/natural law debate may not be useful. Such a debate presupposes that the oppressor is morally teachable, an assumption that Malcolm rejected.

1994] 95
means are not used to intervene in private oppression perpetrated by members of the dominant group. The legal means may not require ordinary citizens to practice slavery, apartheid, caste-system, lynching, and hate-speech, but such conduct may not be prohibited either. This lack of intervention by the legal means results in oppression.

The legal means assume the role of a co-conspirator who either by his moral indifference or deliberate inaction advances the commission of a crime. Therefore, one must examine what the legal means can do to play an active role in abolishing oppression where it exists.

A. Legislative Means

The first means to alleviate oppression is legislation. At the local, state, and federal levels, people lobby for needed legislation through their elected representatives. A constitutional amendment, transforming a fundamental norm of social structure, is a form of “supreme legislation” brought about by a collaborative effort of the peoples’ representatives at the state and federal level. It is the highest means of social change which establishes a uniform norm for the entire nation, invalidating any contrary local or state legislation.

64. In the United States, hate speech is protected under the First Amendment of the Constitution. Professor Mari Matsuda argues that hate speech causes real damage. To avoid hate messages, the victims quit their jobs, avoid certain public places, and forgo education; subconsciously, they begin to reject their identity. See Mari Matsuda, Public Response to Racist Speech: Considering the Victim’s Story, 87 Mich. L. Rev. 2320, 2337 (1989). Professor Richard Delgado invokes the studies of social scientists to show that racist speech tends to create in the victim the traits of inferiority. See Delgado, supra note 36, at 133. See also Ronnie Priest, Racism and Prejudice as Negative Impacts on African American Clients in Therapy, 70 J. Counseling & Dev., 213 (Sept.-Oct. 1991) (observing that racism may have deleterious consequences that forces the victims to seek counseling); Brian Owsey, Racist Speech and ‘Reasonable People’: A Proposal For A Tort Remedy, 24 Colum. Hum. Rts. L. Rev. 323 (1993) (noting victims of racist speech suffer devastating physical and emotional pain); Shawna H. Yen, Redressing the Victims of Racist Speech After R.A.V. v. St. Paul: A Proposal to Permit Recovery in Tort, 26 Colum. J. L. & Soc. Probs. 589 (1993) (stating studies show that victims of racist speech and other acts of racism experience high blood pressure, stress disorders, low self-esteem, depression, and psychological problems).

65. Consider the following note that I received from my research assistant: Professor Khan: After reviewing the literature on the harmful effects of racist speech, I am convinced that racist speech is indeed a form of oppression. This is the type of non-legal oppression you refer to in your article in that law does not provide a remedy for a private act of oppression. Even though I have not been the victim of blatant racism as an adult, I think that the few racial instances that I had as a child and teenager remain vivid and have impacted on my personality significantly. Evan Chang.


67. The Constitution of Arkansas at the time of its admission to statehood in 1836 stated that the state legislature would have no power to pass laws for the emancipation of slaves without the consent of the owners. Fehrenbacher, supra note 58.
Lessons From Malcolm X

die, the Thirteenth Amendment, enacted in 1865, outlawed the existence of slavery and involuntary servitude except as a punishment for crime.68 This amendment invalidated, automatically, any federal, state, or local statute that allowed slavery.69

Although a constitutional amendment is the most effective means to make a durable social change, it is also the most difficult to procure. Combining political forces at the state and federal level to obtain the required majority needed for a constitutional amendment is possible only if the nation as a whole is already prepared to change.70 In many ways, therefore, a constitutional change occurs only after a substantial reformation has taken place in society. Rarely does a constitutional means of change rescue the oppressed when the majority of the electorate has a vested interest in continuing the status quo or when it is unsympathetic to the condition of the oppressed. Thus, a constitutional change, when most needed, may not be available.

As compared to a constitutional amendment, a federal statute is easier to process, requiring a lesser political consensus.71 Federal statutes can also effect a national social change.72 In the past few decades, important federal legislation has been passed in the United States to remove unacceptable encumbrances on the right to political participation in the affairs of the state, to discourage employment discrimination on the basis of race and color, and to strengthen civil and political liberties of the disadvantaged groups.

Yet, even federal legislation as a means of change does not always work to the advantage of politically weak groups. In addition to prejudice and lack of sympathy that national representatives might have against an oppressed group, the process of legislating is dependent upon wealthy and politically influential interest groups. Due to the excessive cost of getting elected, the lawmakers pay special attention to campaign contributors who may have no interest in fighting injustice in the society. Consequently, oppression will continue to exist if

68. U.S. Const. amend. XIII.
69. Under the supremacy clause, the Constitution, federal laws, and treaties are the supreme law of the land. U.S. Const. art. VI, § 2.
70. James Sundquist, Constitutional Reform and Effective Government 16-17 (1992) (noting the process of constitutional amendment requires two-thirds of both houses of Congress, followed by its ratification by three-fourths of the states. These barriers require extraordinary majorities and any significant political bloc can effectively veto the entire process).
72. Compared to a constitutional amendment, federal legislation is easier to obtain; however, it is also easier to repeal.
the oppressed group lacks the resources to "purchase" a piece of national legislation.73

At local and state levels, legislation offers the most effective means of social change. Since local and state laws affect daily life in prosaic details, they may determine, limit, and even frustrate the choices of an oppressed group with respect to employment, education, marriage, and housing.74 In the eighteenth and nineteenth centuries, local and state laws established, maintained, and defended an intricate network of slavery.75 In the not too distant past, local and state laws segregated schools, beaches, cemeteries, toilets, drinking fountains, seating in public transportation and restaurants, and prohibited interracial marriage.

Historically, local and state laws have been the main instrument of oppression, sometimes challenging the authority of the federal legal order to intervene in the domestic affairs of the state.76 The momentous cleavage in racial matters between the South and the North might

73. In the economists' version of the interest group theory of government, groups compete for favorable legislation. To win, a group must pay the price. Payments are made in the form of campaign contributions, votes, and sometimes outright bribe. In the final analysis, Richard Posner argues, there is a contract between the legislature and the winning interest group. The legislature sells and the interest group buys the legislation. See Richard Posner & William Landes, The Independent Judiciary in an Interest Group Perspective, 18 J.L. & ECON. 875, 877, 879 (1975).

74. See ALPHONSO PINKNEY, BLACK AMERICANS 2 (1987). The author explains how slavery laws covered every aspect of a slave's life. In 1661, Virginia became the first colony in North America to use a statutory regime to recognize slavery. Other colonies soon enacted similar statutes to formalize slavery. The fundamental concept underlying these statutes was the status of slaves, who were treated as property, not persons; thus, slaveholders could exercise absolute power over the slaves they owned. The greatest impact of this was on the family relationships of slaves. Since slaves could not enter into contractual relationships, their marriages had no legal status. Husbands, wives, and children were separated from each other at the discretion of the slaveholder. Id.

75. The slave codes of the South varied from state to state and underwent frequent legislative revision. The State laws, moreover, were supplemented by a large body of local regulations, and of course for the average slave the most important law was likely to be the set of rules laid down and enforced by the master on the plantation. FEHRENBACKER, supra Note 58, at 31; but see Jonathan A. Bush, Free To Enslave: The Foundations of Colonial American Slave Law, 5 YALE J.L. & HUMAN. 417 (1993) (explaining that law did not play a significant role in the establishment of slavery in the first few decades of colonization and that slavery grew as a practice, which was later legislated). See also Raymond T. Diamond, No Call to Glory: Thurgood Marshall's Thesis on the Intent of a Pro-Slave Constitution, 42 VAND. L. REV. 93 (1989) (discussing Justice Marshall's thesis that the framers of the Constitution lacked wisdom, foresight, and a sense of justice, as they protected the institution of slavery due to economic interests).

76. MARY F. BERRY, BLACK RESISTANCE/WHITE LAW 190-94 (1971) (reporting how the Governor of Mississippi attempted to block federally-mandated integration of the University of Mississippi).
Lessons From Malcolm X

be documented in terms of local and state laws, which were much more cruel in the South than in the North.77

Ranging from the Constitution to local laws, the scope of legislation is formidable. In one sense, the oppressed group has many hierarchical alternatives to procure favorable legislation. To counter local and state laws, the oppressed group may appeal to the federal legislature. The Civil Rights Acts, enacted by Congress, for example, preempted many local and state laws prejudicial to the civil liberties of disadvantaged groups.78 Over time, constitutional amendments also have corrected serious normative flaws in the basic structure of society. Recently, many states—even local and state laws—have taken the lead in providing additional rights to the people that the federal legal order declined to protect.

In this complicated legal structure, however, an oppressed group is vulnerable at all levels. It is axiomatic that each piece of legislation enacted at any level is a political product. A statute comes into exist-

77. KELLY MILLER, AN APPEAL TO CONSCIENCE (1918). The author reports the mistreatment of blacks in the South in the following words:
To mistreat a Negro is not deemed a violation of the moral code. Even to kill a Negro is not considered a serious offence on the part of the white man in many sections of the country. So general has become this attitude and practice that the governor of a southern state in a notable proclamation stated that the open season for killing Negroes has closed in his state. Of the thousands and scores of thousands of Negroes who have been murdered in the South, few indeed are the instances where the perpetrator has been brought to justice. But where the race relation is reversed and the Negro kills a white man, condign punishment is swift and sure. That murder is murder by whomever committed ought to be an axiomatic assertion. But in actual experience murder is not murder where the perpetrator is white and the victim is black.

Id. at 91. Cf. Cone, supra note 25, at 90 (stating the quality of life for blacks in the Northern ghettos was worse than that in the South). Malcolm resented the relatively egalitarian attitudes in the North. He believed that such attitudes engendered hypocrisy among many whites whose duplicitous behavior caused confusion and disguised the core issue of oppression. See Autobiography, supra note 2, at 312-13.

78. PINKNEY, supra note 74, at 109.

Three civil rights acts were enacted between 1866 and 1875 as a means of assuring equality of treatment (including the right to vote) to America’s blacks. These acts—the Civil Rights Act of 1866, the Civil Rights Act of 1870, and the Civil Rights Act of 1875—together with constitutional guarantees, served to permit black people in the South to exercise the right to vote with relative ease during the Reconstruction. After the Reconstruction, however, several states adopted so-called grandfather clauses, which restricted registration and voting to persons who had voted prior to emancipation. This practice was finally declared unconstitutional by the Supreme Court in 1915. With this defeat southerners adopted the ‘white primary,’ in which the Democratic party prohibited blacks from participating in primary elections in nine states. When the white primary was outlawed, many southern states resorted to the gerrymander as a means of disfranchising blacks. In a long series of cases the Supreme Court eventually curbed this practice also. In addition to the above techniques, the poll tax, property, educational, and ‘character’ requirements were used to keep black citizens from voting. Perhaps the most effective means of disfranchising blacks, however, were those of intimidation and violence.

PINKNEY, supra note 74, at 109.
ence only when supportive political forces have a majority in the legislature. A legislative social change is in essence a political change brought about by politicians whose mixed motives are not simply driven by the will to do good. Since political considerations rather than concerns for justice may dominate the domain of legislation, politically weak groups may lose at any tier of the legislative hierarchy. The mere presence of more than one legislative means to initiate social change does not mean necessarily that the oppressed group has more than one alternative. If the political establishment is determined to resist change, each legislative level acts as a distinct impediment.

Total subjugation is not the only way to prevent the oppressed from having access to the legal means. Lesser legal strategies might be practiced to achieve a similar purpose. The right to vote is an effective democratic tool to influence the legislative means by which laws are passed and repealed. By denying the oppressed the right to vote, the oppressor continues to remain in charge of the legislative means. Even when the right to vote grudgingly is granted to the oppressed, the oppressor may design new legal devices to maintain complete control of the legislative means. The oppressor may gerrymander the districts to abridge or dilute the collective voting power of the oppressed. When the oppressed are poor, the oppressor may require the payment of a poll tax before casting a vote. When the oppressed are uneducated, the oppressor may require the passing of a literacy test to limit the franchise.

79. See, e.g., Wesberry v. Sanders, 376 U.S. 1, 17 (1964) (stating "No right is more precious in a free country than that of having a voice in the election of those who make laws under which, as good citizens we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.").

80. See Reynolds v. Sims, 377 U.S. 533, 565 (1964) (holding that each citizen has an inalienable right to participate in the political process by which legislative bodies are elected).

81. Gerrymandering is intended to limit the voting power of an oppressed group by drawing unfair district lines. There are two strategies to exclude a group from having a meaningful impact on choosing representatives. The first strategy involves the drawing of districts in a manner that packs the oppressed in one or a few districts. Thus, disadvantaged groups will have no leverage on the choice of representatives outside their districts. The second strategy is to draw the districts in a manner that will disperse the oppressed in many different districts. In this way, their influence in each district is minimized. The first method reduces the voting power of the oppressed by concentration, the second by dilution. Laurence H. Tribe, American Constitutional Law 756 (1978); Armand Derfner, Racial Discrimination and the Right to Vote, 26 Vand. L. Rev. 523, 552-60 (1983); Frank R. Parker, Black Votes Count: Political Disempowerment in Mississippi After 1965, at 63-64 (1990).

82. U.S. Const. amend. XXIV (prohibiting the payment of a poll tax as a precondition to voting in federal elections); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (reversing the scope of its previous holding that allowed states to charge a poll tax in state elections).

83. Lassiter v. Northampton Election Bd., 360 U.S. 45 (1959) (upholding a state provision that restricted the franchise to those who passed a literacy test, on the basis that the state may
Lessons From Malcolm X

Whatever reasons the oppressor might give to justify restrictions on voting rights of the oppressed, the underlying mischief is to deny the oppressed, as much as possible, meaningful access to the legislative means.\textsuperscript{84} Even when formal restrictions on the right to vote are removed, the oppressor will refuse to vote for the candidates of the oppressed. The reason is simple. If the oppressed gain the legislative power to make and repeal laws, then oppression will cease to exist. This is an outcome that the oppressor does not desire.\textsuperscript{85}

B. Judicial Means

The second distinct legal means to erase oppression is the judiciary. When the legislature imposes a questionable policy or fails to address a prevailing social problem, an oppressed group may resort to the court system to seek relief.\textsuperscript{86} Not every legal system vests judges with the power to make new rules of behavior and to review acts of the legislature on the basis of constitutionality. In the United States, state and federal judges enjoy a considerable amount of independence. The federal constitution protects the independence of the federal judiciary by granting them life tenure and by making their removal quite difficult.\textsuperscript{87} Consequently, they wield awesome author-

\textsuperscript{84} Pamela S. Karlan, \textit{Undoing the Right Thing: Single-Member Offices and the Voting Rights Act}, 77 Va. L. Rev. 1 (1991) (explaining the distinction between formal and functional importance of the right to vote: the formal aspect of the right opens up the political process to all, regardless of their race and political opinion; the functional importance of the right, however, depends upon whether the voters influence government). Professor Karlan further shows how the majoritarian notion of winner-take-all submerges the political preferences of minorities. \textit{Id.} at 9. See also Richard Niemi, \textit{“Bizarre Districts,” and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno}, 92 Mich. L. Rev. 483 (1993).


\textsuperscript{86} Calmore, supra note 55, at 2229 (noting that although the judicial system is an alternative, the legal doctrine developed by the judiciary is divorced from the needs and aspirations of the oppressed).

\textsuperscript{87} Tribe, supra note 81, at 49.
ity to invalidate state and federal legislation. Moreover, the text of the Constitution gives judges an extensive interpretive discretion. Rooted in the common law tradition, the judiciary has always been at the forefront in shaping innovative rules and providing new solutions to old problems. Thus, judicial means for shaping society are available to both the oppressed and the oppressor.

Judicial means for social change may be distinguished from the legislative means even though these mechanisms may serve the same social prejudice. There are, however, institutional as well as orientational differences between the two. Institutionally, the legislative means are persuaded by sociopolitical forces to make statutory law whereas the judicial means uses existing law to create or to reaffirm social customs and practices. The concept of judicial review empowers judges to preserve constitutional values while the political process attempts to undermine them through legislation. Theoretically, therefore, the judiciary will uphold a constitutional value even under adverse political pressure. This role of scrutinizing politically­processed law gives the judiciary a different orientation to the legal system by empowering the judiciary—as an independent legal means—to oversee, to cause, and even to resist social change.

Although courts at all levels participate in social engineering, the United States Supreme Court, the highest court of judicial review, has the most respected institutional authority in dealing with questions of oppression and injustice. Despite political and philosophical attacks on the concept of judicial review, the Court over the last two hundred years has provided a powerful legal vehicle to initiate profound social change which would have been difficult to secure through legislative

88. Marbury v. Madison, 5 U.S. 137 (1803) was the first case in which the Supreme Court stated that a federal court may review and refuse to give effect to congressional legislation if found incompatible with the Constitution. Over the decades, legal scholars have engaged in extensive debates over the systemic and normative validity of judicial review, and the amount of legal literature on the topic is extensive. See Herbert Wechsler, Toward Neutral Principles of Constitutional Law, 73 Harv. L. Rev. 1 (1959) (arguing that the supremacy clause of the Constitution authorizes federal courts to engage in judicial review); Alexander Bickel, The Least Dangerous Branch (1962) (arguing that the supremacy clause upholds the view that congressional enactments are intrinsically constitutional); John Ely, Democracy and Distrust: Theory of Judicial Review (1980), Robert H. Bork, The Tempting of America: The Political Seduction of the Law 194-99 (1990).

89. Although the civil rights movement was political in nature in its demands for equal rights for the oppressed, it was initially oriented toward the judiciary for seeking relief. Many civil rights victories, such as outlawing segregated schools, were won in the courts. Indeed, there is a common belief that the United States Supreme Court has done much to recognize and protect the rights of the oppressed. See Michael D. Smith, Race Versus Robe: The Dilemma of Black Judges 76 (1983).
Lessons From Malcolm X

institutions. The Court's historic decision in Brown v. Board of Education to reject its own "separate but equal" doctrine opened the way for the dismantling of segregation in public places. In Loving v. Virginia, the Court further spurned racial separateness by invalidating a law which made it illegal for any white person in Virginia to marry a non-white person.

Many in the dominant group viewed desegregation as the end of oppression. Most among the oppressed considered it no more than just a beginning. Integration per se did not solve the real questions of oppression. Many decades after the judicial dismantling of racial separateness, de facto segregation of races still exists, and the condition of oppression for many in the ghettos has not changed. Nonetheless, judicial decisions such as Brown and Loving have at least altered the legal landscape of American society, opening up the theoretical possibility of racial intermingling, marriage, and a voluntary fusion of the races.

It would be a serious mistake to conclude that judicial means for social transformation always work to the advantage of the oppressed. There is enough historical evidence to show that judicial means fail to

92. Malcolm distinguished between segregation and separation. Segregation is imposed; separation is voluntary. Malcolm condemned segregation but advocated for separation. See Cone, supra note 25, at 110; Autobiography, supra note 2, at 282-83. See also By Any Means Necessary, supra note 3 (stating "So, what the integrationists, in my opinion, are saying, when they say that whites and blacks must go to school together, is that the whites are so much superior that just their presence in a black classroom balances it out. I can't go along with that.") By Any Means Necessary, supra note 3, at 17. Malcolm argues that integration is unpopular both among blacks and whites and that token integration does not solve racial problems. By Any Means Necessary, supra note 3, at 282. See also Stokely Carmichael & Charles V. Hamilton, Black Power: The Politics of Liberation in America 54-55 (1967) (arguing that integration as a social goal reinforces among both blacks and whites that white schools and residential areas are superior and that the black people should relinquish their identity and heritage). Robert Brown explained the two distinct aspects of integration as a social policy. First, there is a general skepticism that the integration will take place. Second, if integration does take place, the price might be high, resulting in the total absorption and disappearance of the race—a sort of painless genocide. Robert Brown, A Case for Separation in, Separatism or Integration: Which Way for America: A Dialogue 7-15 (1968).
alleviate egregious social evils and at times have become an active source for the entrenchment of prejudice and discrimination. State courts frequently reaffirm statutes that violate the rights of the oppressed, providing judicial respectability to legislative injustice perpetrated by sociopolitical forces within the state. Yet, even at the federal level, theoretically removed from the local bias of individual states, the judiciary may support the oppressor rather than the oppressed.

One need only read the opinions rendered in cases such as *Plessy v. Ferguson*95 and *Dred Scott v. Sandford*96 to understand the extent of hateful racism which the judges of the Court have openly expressed. After reading such cases, one cannot assume that the judicial means in an unjust society will safeguard the victims of oppression.

Just as control over the legislative means is crucial to subjugating the oppressed, some dominion over the judicial means is also necessary to save laws from any judicial damage. The most effective method to control the judiciary is to appoint judges who will share the

---

95. *Plessy v. Ferguson*, 163 U.S. 537 (1896) (Brown, J., delivering the opinion of the Court upholding racial segregation of railroad passengers).

We consider the underlying fallacy of the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption.

96. Such attitudes have been exhibited by justices in their opinions.

The words 'people of the United States' and 'citizens' are synonymous terms and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at the time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them. ... They had for more than a century before been regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race.

*Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) (Justice Taney delivered the opinion of the Court holding that United States citizenship does not extend to a freed slave).
Lessons From Malcolm X

ideology of oppression and will promote it. If ideological judges are unavailable, the oppressor may appoint or elect those who at least take an oath to defend the existing system. The oppressor may not spend time and resources to verify the "ideological credentials" of judges placed in minor courts because they have little or no authority to tinker with the system. For judges in high courts who possess an institutional authority to alter the law, however, the oppressor takes extraordinary steps to check the credentials of candidates seeking high judicial office, making sure that if appointed they will uphold the legislative system.97 The exclusion of the oppressed from the judiciary is as essential to the oppressor as is the exclusion of the oppressed from the legislature.98

The methods to prevent the oppressed from gaining even a limited control over the judicial means vary.99 An absolute ban on the oppressed joining the judiciary is simple, and it is the most effective way. When a complete exclusion becomes increasingly difficult to maintain, the oppressor will relax the system to allow members of the oppressed groups, or those who represent them, to join the minor courts. This may be done to minimize any threat to the system as a whole. The oppressor may even recruit a few token members of the oppressed group into high judicial echelons. Often, these token members have their own existential crises in failing to fully identify either with the oppressor or with the oppressed.100 If the oppressed gain some control over the judicial means, the oppressor may launch a spirited campaign to undermine their credibility, arguing that these judges are not qualified to be appointed, that they are incompetent to do their professional work, or that they are unethical or simply corrupt.101 The bottom line is that the oppressor does not want to give up

97. See Franz Neumann, The Terror of Nazi Law, in COMPARATIVE CONCEPTS OF LAW AND ORDER 55, S8 (Jon Sutherland & Michael Werthman eds., 1971). In Nazi Germany, for example, judges could be retired or suspended if there was doubt with respect to their loyalty to the National Socialist state.


99. Richard Posner, The Problems of Jurisprudence 458 (1990) (arguing that diversity in the judiciary should be based upon criteria such as religion, health backgrounds, and hobbies, but not on racial and sexual politics).

100. See E. Franklin Frazier, Black Bourgeoisie 213-16 (1957).

Howard Law Journal

control over the judicial means. If the oppressed begin to interpret
laws and decide important cases at the highest level, the oppressive
system will become vulnerable.

To maintain an oppressive legal system, the oppressed must be
blocked from joining the legal profession. If the oppressed have no
access to legal education, they will neither understand how the legal
system works nor become attorneys and judges. Accordingly, many
methods are used to make it difficult for the oppressed to obtain legal
education. The law schools may flatly refuse to open their doors to
the oppressed. They will adopt admission standards that the op­
pressed cannot meet. They will require high tuition fees that the
oppressed cannot pay. Even when admitted, the oppressed will find
that the law school culture is unfriendly and not conducive to receiv­
ing a good legal education. Even when the oppressed successfully
go through the ordeal of obtaining a legal education, the system may
still bar them from having any control. They will not be hired in
influential law firms, in key jobs in the government, or in the judici­
ary. They often fail to establish their own law practices because they
are unable to attract clientele who can afford legal services. Thus,
the oppressed—even when admitted to the legal profession—will re­
main on the periphery, away from the center of power, and with no
control over the means of change.

102. Linda F. Wightman & David G. Muller, An Analysis of Differential Validity
and Differential Prediction for Black, Mexican American, Hispanic, and White Law
School Students 3 (1990) (reporting that the proportion of black, Mexican American, and
Hispanic law students has remained relatively unchanged during recent years).

103. John Kramer, Symposium: Legal Education in an Era of Change: Will Legal Education

104. Duncan Kennedy, Legal Education and the Reproduction of Hierarchy, 32 J. Legal
Legal Educ. 336 (1982); Michael Burns, The Law School as a Model for Community, 10 Nova
L. Rev. 329 (1986).

105. See generally Ken Myers, Studies Suggest That Minorities Still Lag in Admissions, Tests,
Nat'l L.J., Feb. 24, 1992, at 4 (reporting that minorities still lag behind whites in law school
admissions and bar exam passage rates).

106. Claudia MacLachlan & Rita H. Jensen, Progress Glacial For Women, Minorities; But the
Recession Hits White Male Associates the Hardest, Nat'l L.J., Jan. 27, 1992, at 1 (reporting
that despite changes in recruitment priorities in major law firms, "[n] 1991, men held 89% of the
partnerships . . . 97.6% of the partners [were] white").

107. Steven Kevea, Unequal Partners: It's Tough At The Top For Minority Lawyers, A.B.A.
J., Feb. 1993, at 50 (noting that minority lawyers face difficulty in client development since they
do not have the social connections that white lawyers have).

108. Judith Resnik, Ambivalence: The Resiliency of Legal Culture in the United States, 45
Stan. L. Rev. 1525 (1993) (arguing that despite a strong academic criticism, the legal culture in
both law schools and courts has been quite resilient).
Lessons From Malcolm X

To further tighten control over the system, the oppressor may institute a jurisprudence of oppression. Even though judges commit serious mistakes in deciding cases and may render biased, even cruel judgments, there is, nonetheless, a popular yearning for judges to do justice. Against this normative longing for justice, the jurisprudence of oppression creates an alternative theory under which a judge must uphold the law even if the law is unjust. Known as legal positivism, the theory separates law from morals, notions of justice, basic human compassion, and even from common sense fairness. If laws are inherently just, legal positivism might be defensible as a theory that protects the sanctity of law from judicial intervention. If laws are made to institute slavery, segregation, and blatant discrimination, however, any theory that restricts judicial discretion and compels judges to apply these laws as it is assumes an oppressive character.

Legal positivism has served well the oppressors in Nazi Germany, South Africa, and the United States. It is important to understand how legal positivism works as a jurisprudence of oppression. When the oppressor gains control of the legislative means, he assumes the authority to make, modify, and repeal laws. To remain in charge of the laws, the oppressor abhors sharing his power with anyone, particularly those individuals who feel that their job is to do justice. Of course, the oppressor may appoint judges who share the ideology of oppression. To strike deeply into the normative role of the judiciary, however, the oppressor must restrain all judges from tinkering with the legal system. Legal positivism does just that. It fortifies the legislative means under the oppressor’s command, assuring that judges will enforce the laws as they are.

C. Enforcement Means

The third legal means of social change is enforcement agencies. Even though enforcement agencies possess some rule-making authority having a direct and substantial effect on people, their primary function is the enforcement of laws and court orders. Such enforcement, however, may not be considered an independent means of social change because the change is initiated by the legislature or the judiciary and not by the enforcement agency, itself.

While most court orders are enforced, many cases exist in which enforcement agencies have blocked change by defying court orders. Under some social conditions, legislation is not enforced because it is no longer practical to enforce it or because the legislation is not relevant to the social conditions of the day. This lack of enforcement of legislation occurs without any protest from the legislature or the judiciary. In fact, there may even be a tacit social expectation that a certain statute not be enforced. This failure to enforce the law, called desuetude, may constitute an independent legal means of social change by reversing the change that the legislature intended. If legislation is oppressive in its effect, its dormancy will most certainly benefit the group directly harmed by such legislation.\(^\text{110}\) Desuetude is not a powerful legal means of social change, however, because non-use of oppressive statutes is tenuous. Even when a statute is not enforced, the target group remains under a constant threat that the defunct statute might come alive again without notice.\(^\text{111}\)

No system of oppression can function unless the oppressor has full control over the enforcement means. It is necessary that the oppressor govern the legislature and the judiciary. For the oppressor to maintain complete control of the legal system, however, control of the enforcement means is indispensable. For the system to work, it is necessary that the enforcement agencies share the ideology of oppression. No overt training in the ideology of oppression is necessary. If en-

\(^\text{110}\) See Henry D. Thoreau, *On Civil Disobedience*, in *Walden and Civil Disobedience* 224 (Owen Thomas ed., 1966) (noting the first major essay in civil disobedience was written when the United States invaded Mexico. Thoreau considered the invasion immoral and refused to pay taxes to support it).

\(^\text{111}\) The legal means of change function within the parameters of "law and order." Ordinarily, the concept of law and order is the paramount value which mandates that social change be effected in a legal and peaceful manner. The legislative means of change provide an institutional and methodical framework within which social conflicts can be debated, processed, and resolved without posing any threat to law and order. A democratic legislature, in which major partisan interests and social grievances are fully represented, promotes a civil society instructing the people to process their legitimate demands through legal means without challenging law and order.
Lessons From Malcolm X

Enforcement agencies create a culture of law and order and officers are trained to uphold the law without any leniency for the law-breaker, the system of oppression works quite smoothly.112

In almost every legal system, some gap between law as written and law as enforced is inevitable. In a system of oppression, however, many discriminatory exceptions to the written law operate to deal with the oppressed. In an extreme case, it is quite possible that two distinct (formal) systems exist side by side: one for the oppressor and the other for the oppressed. In any discriminatory system the police will stop, search, or arrest members of the oppressed group more frequently and on a lower standard of suspicion.113 The police will also coerce them to confess or supply the incriminating evidence. Government prosecutors will be more prone to indict them, charge them with serious crimes, and bargain an uncompromising plea.114 Juries will be more inclined to convict them.115 Judges will give them harsher sentences.116 The oppressed face similarly degrading treatment in prisons. To further support the enforcement of oppressive laws, sociological myths will be created to label the oppressed, such as they have

112. Robert J. Kaminski, Police Minority Recruitment: Predicting Who Will Say Yes To An Offer For A Job As A Cop, 21 J. CRIM. JUST. 313, 395 (1993) (stating “only limited support was found for the assertion that blacks' negative attitudes toward the police preclude their consideration of a career in law enforcement”).

113. Clive Norris et al., Black and Blue: An Analysis of the Influence of Race on Being Stopped by the Police, 43 Brit. J. SOC. 207 (1992) (studying the police behavior in inner city London, the authors explain the influence of race on the actions taken by the police in initiating, processing, and terminating a stop and on the debate over the disproportionate representation of black people in the criminal justice system). See also Curt T. Griffiths & Simon N. Verdun-Jones, Canadian Criminal Justice 551 (1989) (reporting “native Indian Winnipeg were arrested far more often than whites, due to their visibility in the city and to over-surveillance by the police”). Id. at 207-08.

114. Samuel R. Gross & Robert Mauro, Death & Discrimination: Racial Disparities in Capital Sentencing 17 (1989) (showing the racial pattern over the decades in the imposition of the death penalty in the United States). “Of 3,984 people lawfully executed since 1930, 2,113 were black, over half the total and almost five times the proportion of blacks in the population as a whole.” Id. at 17. “The discrimination is based on the race of the victim, and it is a remarkably stable and consistent phenomenon.” Id. at 109.

115. Sheri L. Johnson, Black Innocence and the White Jury, 83 Mich. L. Rev. 1611, 1616-49 (1985) (analyzing data from criminal trials to illustrate the harsh level of scrutiny imposed upon black defendants); see also Sheri L. Johnson, Unconscious Racism and the Criminal Law, 73 Cornell L. Rev. 1016 (1988) (commenting on the Supreme Court's decision to sanction the execution of a man despite his presentation of evidence that establishes a constitutionally intolerable level of scrutiny); Charles Lawrence III, The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987) (analyzing the doctrine of discriminatory purpose which requires plaintiffs challenging the constitutionality of facially neutral laws to prove a racially discriminatory purpose to invalidate the statute).

less regard for the law; they are violent by nature; or they pose a threat to public safety.117

The system of oppression works without any internal threat if members of the oppressed group are excluded from enforcement agencies.118 Furthermore, the fear of law is more seriously grounded in the psyche of the oppressed when the police, prosecutors, magistrates, and prison officials share the same mentality derived from the ruling class. A total exclusion of the oppressed from the enforcement agencies, however, is not absolutely necessary to operate a system of oppression.

The members of the oppressed group may be recruited in the lower ranks, vesting them with some visibility but little or no authority. Even when recruited for more influential jobs in enforcement agencies, members of the oppressed group will be trained in the psychology of law and order, which would effectively seal them from any improper compassion for their own group. Given the institutional role of enforcement agencies, which is to enforce laws as they are without evaluating their intrinsic justness, officers recruited from the oppressed group begin to identify more with their jobs than with their condition of oppression. Ultimately the oppressor will do anything possible to remain in charge of enforcement policy and its execution.

IV. A CRITIQUE OF LAW AND ORDER

The concept of law and order119 is critical in distinguishing legal means from any means necessary. In popular discourse, law and order signifies systemic toughness against law-breakers. For some citizens, the phrase carries a pejorative connotation implying police brutality and a lack of sympathy for the downtrodden. From a jurisprudential viewpoint, however, the concept of law and order has three distinct implications.

117. GEORGE B. VOLD & THOMAS J. BERNARD, THEORETICAL CRIMINOLOGY 74 (1986) (noting that blacks on average score approximately 15 points lower than whites on IQ tests; some scholars use this difference in IQ scores to link race with crime and delinquency).

118. ELLIS CASIMORE & EUGENE MC LAUGHLIN, OUT OF ORDER? POLICING BLACK PEOPLE (1991). Even in multi-ethnic communities, minorities are under-represented in enforcement agencies. In Newark, blacks amounted to 34% of the population in 1960; yet blacks made up only 7% of its police force. Houston's force was less than 1% black even though blacks constituted 28% of the population. The Alabama state troopers had not hired a single black officer in 37 years until 1972, when a federal court instructed them to do so. Id. at 94.

119. In this article, I use law and order as a singular concept. See supra note 111 and accompanying text.
Lessons From Malcolm X

First, a law should be obeyed even if it is unfair, immoral, or unjust. The reason for this is that if people begin to pick and choose which law they will obey, the legal system will fail to function. Second, an ordered society is a supreme value; any change in the system must be brought about by legal means. Third, the people may protest against unjust laws, but in doing so, they should not resort to violence or threaten the legislature, the judiciary, or the enforcement agencies.

In a democratic society, the notion of law and order is further defended by pointing out the difference between democracy and other forms of government. In authoritarian and totalitarian regimes, under which citizens do not have fundamental rights—such as the freedom of speech, the right to petition, and the right to vote—law and order might be condemned as a coercive tool to enforce an unfair and unchangeable system. In a democratic society, however, since the people have the right to lawfully express their grievances and petition the government to bring about a change, law and order is a basic civil right. Moreover, if the legislature and the executive do not change the law, the people have the ultimate right to vote them out of office and bring in a new government more sympathetic to their cause. As the argument goes, the people in a democratic society have tremendous authority both to demand and to bring about change; thus law and order is a supreme democratic value which must not be sacrificed for violence or any other extra-legal means.

120. Howard Zinn, Disobedience and Democracy 9-10 (1968) (arguing that even those who allow civil disobedience against profoundly immoral laws define law and order in such a manner that the rule of law in itself constitutes a supreme value). See Bernard Davenhaver, On Strengthening the Law's Obligatory Character, 18 Ga. L. Rev. 821 (1984) (arguing that the duty to obey law is not absolute, but it is strengthened if law is sensible).
121. Abe Fortas, Concerning Disent and Civil Disobedience 65 (1968) (asserting that individuals are bound by all laws under the constitution and they cannot pick and choose which laws will apply).
122. Id. at 64-65.
123. Id. at 106-07.
124. See Walter Ullmann, The Principles of Government and Politics in the Middle Ages 19-26 (1966). Walter Ullmann makes a powerful distinction between "ascending" and "descending" conceptions of government and law. According to the ascending conception, governing authority and the law ascend upwards from the broad base of the people, who for reasons of practical efficiency hand over specific powers to specific institutions for a specified time. According to the descending conception, the law-creating authority descends from the top downwards, and power at the base of the pyramid is derived from above. Democracy is a form of government and laws that fall under the ascending conception. Theocratic regimes and other authoritarian forms fall under the second conception. Id.
125. A.M. Rosenthal, The Basic Rights, N.Y. Times, Feb 25, 1994 (asserting that law and order are basic civil rights in a democratic society, and the liberals made the mistake of abandoning law and order).
This argument loses its moral force in a duplicitous democracy which retains a vigorous democratic process conferring fundamental rights and freedoms, but only with regard to the dominant group.\textsuperscript{126} The subjugated groups do not enjoy these benefits. There are two distinct kinds of duplicitous democracies: exclusionary and token. In an exclusionary democracy, the right to vote is not available to the entire population and certain identifiable groups are excluded from participating in the democratic process.\textsuperscript{127} Not only are such groups denied the right to vote, but they cannot run for any legislative, judicial, or executive office. Any systematic exclusion from the democratic process on the basis of a characteristic such as race and gender is inherently unjust. Nonetheless, mere exclusion from the democratic process must not be confused with oppression. It is quite possible that an excluded group may receive some basic rights and benefits from the system. If so, it might be argued that law and order retains at least some normative force, binding the excluded group to the use of lawful means to obtain political rights.\textsuperscript{128} Nonetheless, an exclusionary democracy may forfeit any normative claim to law and order.

An exclusionary democracy has unlimited potential to perpetuate oppression because it can sustain even the most cruel forms of oppression such as slavery and apartheid. In the case of slavery, the source of oppression is twofold: first, those who have control over the democratic process enact laws to enslave the excluded group; second, the

\textsuperscript{126} Edward J. Saunders et al., \textit{Racial Inequality and Child Neglect: Findings In A Metropolitan Area,} 72 \textit{Child Welfare} 341 (1993) (stating that many problems of African American families grow out of poverty and ghettoization). Kathryn M. Neckerman & Joleen Kirschenman, \textit{Hiring Strategies, Racial Bias, and Inner-City Workers,} 38 \textit{Soc. Probs.} 433 (1991) (exploring employers' hiring strategies that reduce the employment chances of inner-city blacks). Geoffrey Smith, \textit{There's No 'Whites Only' Sign, But . . .,} \textit{Bus. Wk.,} Oct. 26, 1992, at 78 (suggesting that African Americans and Hispanics are 60\% more likely than whites to be rejected for mortgages). See David Hatchett, \textit{Harassment of Black Politicians,} \textit{The Crisis,} June-July 1992, at 49 (noting that both the media and enforcement agencies harass black politicians whose phones are bugged and who are good targets for investigations). See also Jose J. Escarce et al., \textit{Racial Differences in the Elderly's Use of Medical Procedures and Diagnostic Tests,} 83 \textit{AM. J. PUB. Health} 948 (July 1993) (asserting that whites were more likely than blacks to receive medically sophisticated services); Jay C. Wade, \textit{Institutional Racism: An Analysis of the Mental Health System,} 63 \textit{AM. J. Orthopsychiatry} 536 (Oct. 1993) (recognizing that mental health policy, diagnostic and treatment issues are identified as areas in which institutional racism affects minority groups).


"A country is an inclusionary democracy if it has no a prior vision of which peoples are entitled to qualify as citizens. A country is an exclusionary democracy if it limits citizenship eligibility on the basis of religion, creed, race or other identifying characteristics." \textit{Id.} at 290.

\textsuperscript{128} Nonetheless, law and order in a fully inclusionary democracy has much stronger normative roots than an exclusionary democracy cannot claim.
Lessons From Malcolm X

enslaved group is excluded from the democratic process, depriving them of the political power to change their condition. Thus, even though exclusion from the political process in itself is a source of extreme vulnerability, another source is the legally sanctioned oppression that flows directly from the authority of those who control the democratic process and the legal means. An exclusionary democracy in which the excluded group loses the right even to basic human dignity does not have a sound moral basis to demand from the oppressed an unequivocal respect for law and order.

A token democracy allows the oppressed group to participate in the political process. Their participation, however, does not alter their condition of oppression because those who control the legal means continue to use the system to oppress the group as a whole. A token democracy, in the absence of moral and constitutional constraints, has formidable potential to perpetrate injustice and inflict indignity on the oppressed. For example, legally mandated segregation in the United States was widely practiced despite the fact that the right to vote had been extended to all citizens. Thus, the mere fact that an oppressed group participates in the political process might not be a sufficient basis to conclude that oppression has ceased to exist. Those who control the legal means in a token democracy must do more to earn an unwa­vering, universal respect, for if oppression persists and moral abuse of the legal means continues, even a democracy loses its normative foundation. Hence, a simplistic assertion that law and order in any democracy is sacrosanct cannot be defended. The oppressed will not respect law and order if the system continues to disregard their basic dignity as human beings.

In a democracy in which the inherent dignity of every person is fully respected, law and order should indeed be a paramount value. A system that respects law and order maintains a civil society in which individual activity and social behavior conform to legal norms which protects the cultural and economic assets of the community. The benefits that a civil society confers on the people legitimize the need to preserve the legal means through which mutually advantageous laws are made, applied, and enforced. Furthermore, law and order guarantees an orderly resolution of individual and social disputes without disturbing the peace and normal conditions of civil society. Thus, law and order is a normative concept upholding the very existence of a legal system that makes social life possible and allows people to conduct their affairs without fear and uncertainty.
Individuals are not likely to challenge law and order if they have a stake in the system. If the system confers rights and benefits upon all without any unjust discrimination, the entire community will consider law and order a necessary precondition for maintaining a civil society. If the system protects life, liberty, and property on a selective basis, however, only those who benefit from the system will respect and demand law and order. For these citizens, law and order is still the essential condition for preserving a civil society.

Those who are denied the benefits of the system, however, have a different perspective on the importance of this concept. For them, law and order represents misery, lack of liberty, and defenselessness. For these people, law and order is a coercive force used to keep them down. Thus, law and order acquires two different meanings within the same system—a positive definition for those who profit from its dictates and a negative one for those who suffer under its dictates.

For those who suffer, law and order loses its normative force and becomes a tool of oppression. The system may provide some security to the oppressed in terms of protecting their lives, but the chief purpose of law and order is to maintain the oppressor's control over the legal means. Law and order is then reduced to a simple proposition that the oppressed should not break the law which is similar to the premise that a slave should not flee even if the master is cruel.

There is extensive literature on civil disobedience which provides that individuals may disobey the law if the law is immoral, unconstitutional, or sacrilegious. This philosophy, however, is distinguished from revolutionary disobedience. Civil disobedience presupposes a general obligation to obey the system, whereas revolutionary disobedience presumes the system as a whole is oppressive and as such deserves no general obligation on the part of the oppressed to obey. In this sense, Malcolm advances a concept of resistance that does not fit into the conventional meaning of civil disobedience. For a contextual analysis of traditional civil obedience, see John Rawls, *The Justification of Civil Disobedience*, in *Civil Disobedience: Theory and Practice* (1969); Michael Walzer, *The Obligation to Disobey*, ETHICS (April 1967); Abe Fortas, *Concerning Dissent and Civil Obedience* (1968); Harold Laski, *The Dangers of Disobedience* (1930); Mohandas Gandhi, *Non-Violent Resistance* (1964).


In the fall of 1850 President Millard Fillmore, a native of Buffalo, New York, signed into law the strictest fugitive slave measure ever enacted. The President was not totally comfortable with the law and wondered aloud about its constitutionality. He signed it into law as part of a broad compromise which he hoped would satisfy the Southern states and forestall a mounting sectional crisis. The Fugitive Slave Law of 1850 expanded the power of slavery to reach into any state to retrieve those accused of fleeing from bondage. It provided that commissioners of federal circuit courts, or those acting under the authority of the federal superior court in the territories, could issue warrants under which a fugitive could be held and turned over to any claimant who could present convincing evidence that the prisoner was a runaway slave . . . . The law further assisted in the capture of a fugitive, allowing federal marshals 'to summon and call to
Consequently, the oppressed lose faith in the legal system. They know that they have no control over the legislative means to undo the laws that oppress them. They anticipate that the judges will not or cannot demolish the system of oppression. They understand and fear the awesome power of the enforcement agencies trained to sustain the network of oppression. Such a context of helplessness commands the oppressed not to break the law or disturb the peace of the community. For the oppressed, law and order loses its value precisely because it preserves the system as it is. Furthermore, law and order forecloses non-legal means to change the system. It forbids any resort to armed struggle. It prohibits any conspiracy to overthrow the system. It proscribes any commission of violence against the life, liberty, and property of the holders of authority or members of the ruling class. Consequently, the oppressed are fully trapped. They cannot obtain freedom through legal means over which the oppressor has full control. They cannot change the system through non-legal means because law and order will not let them. Thus, from the viewpoint of the oppressed, law and order is no longer distinguishable from oppression. The two notions become synonymous and a fight against one turns into a fight against the other. Thus, the question becomes what can or should be done by those who are faced with such daunting circumstances.

The oppressed may choose to obey the oppressive system, or they may launch a moral crusade in the hope that someday they will overcome and the oppressor will morally mature and change his ways. The oppressor would of course prefer that the oppressed do nothing or embrace a policy of non-violence. Under either of these scenarios the oppressor remains in control of the situation and can lower the degree of oppression when absolutely necessary to accommodate a small change. Suffering and pacifism, however, make the cruelest...
combination to perpetuate a wrong. This is exactly what the oppressor wants.

Thus, a third alternative is that the oppressed fight on the presumption that the oppressor is untrustworthy and will not change voluntarily. Paraphrasing Shakespeare, Malcolm put the dilemma in the words of Hamlet: "Whether it was nobler in the mind of man to suffer the slings and arrows of outrageous fortune—moderation—or to take up arms against a sea of troubles and by opposing end them." Malcolm suggests that the oppressed adopt a more militant approach.

The concept of by any means necessary unravels the normative pretense of the oppressive system and rejects the moral claims of those who argue that law and order must remain a supreme value even in the most unjust system. When a system refuses to recognize the fundamental rights of a group of citizens, the moral imperative to challenge the oppressor gains momentum and arguments for the maintenance of law and order lose merit. If obedience to the system does not change the condition of subjugation, a new attitude among the subjugated begins to develop. The yearning to break away from oppression illicits a militant and defiant attitude against those who deny even such fundamental rights.

Any means necessary does not, however, repudiate the concept of social order. It is not a theory of anarchy. Nor is it a license for unlimited and arbitrary violence. It is a moral concept of freedom, acceptable only when the oppressor is unwilling to dismantle oppressive structures. Several constraints, therefore, must be placed on the use of any means necessary.

For example, the oppressed should never overestimate the effectiveness of non-legal means. Any means necessary is an act of defiance, but it is easier said than done. Most oppressed groups lack the resources to present a serious challenge to a system of oppression. They may engage in criminal activity endangering the life, liberty, and

132. MALCOLM X TALKS, supra note 3, at 25. Malcolm changed the words slightly. The actual words are: "Whether 'tis nobler in the mind to suffer the slings and arrows of outrageous fortune, or to take arms against a sea of troubles, and by opposing end them?" WILLIAM SHAKESPEARE, HAMLET, PRINCE OF DENMARK act 3, sc. 1.

133. In their armed struggle, the oppressed should not use force indiscriminately. The oppressors should not be dehumanized in a way which legitimizes even the killing of innocent children.
Lessons From Malcolm X

property of the oppressor. They may not, however, have the means to strike at the heart of oppression. In contrast, the oppressor will have several weapons to fight any rebellion against the system. Most frequently, the oppressed will lose the opening battles and may have to engage in a protracted armed struggle to wear down the oppressor. Thus, without caution and calculation, the doctrine of any means necessary is a suicidal pact prompting the weak to ask for a quick annihilation.

Furthermore, any theory that diminishes the significance of social order and respect for law must be viewed with great skepticism. In order for a legal system to exist and function, it is essential that the people attempt to use the legal means for change. They must respect law and order while the struggle for change is under way. Most human societies value social order and suppress militant groups who use force as a vehicle for social change. The Universal Declaration of Human Rights states that the realization of fundamental rights is not possible without social order. Thus, each state has a human rights obligation to preserve social order.

There is a great danger to social order if each group is entitled to invoke any means necessary to demand change that it has failed to bring about through the legal means. Moral discourse among groups within a community will cease to exist and violence will escalate if every dominant group is cast as an oppressor and every weak group labels itself as the oppressed. No legal system can function peacefully if the definition of oppression is open-ended. Not every disfavored or politically disadvantaged group is licensed to define what oppression is, who is responsible for oppression, and what measures should be taken to bring change. The purpose of moral outrage against oppression is not to maximize violence in the community; it is to expose the oppressor. There will be total anarchy if every group

---

134. When oppressive laws violate the human spirit, and the oppressed lack an effective organization to change the laws, "some will be spurred to ordinary crimes as a release for their suppressed needs." Zinn, supra note 120, at 13.

135. No, I hope that all of us can sit down with a cool head and a clear mind and analyze the situation, in the back room, anywhere, analyze the situation; and after we give the proper analysis of what we're confronted by, then let us be bold enough to take whatever steps that analysis says must be taken.

By Any Means Necessary, supra note 3, at 155.


137. Richard K. Sherwin, Law, Violence, and Illiberal Belief, 78 Geo. L.J. 1785 (1990). Violence creates a world of turmoil where discourse is no longer possible, and a society that stands helpless in the face of violence which threatens its existence cannot long endure. Id. at 1833.
which perceives itself to be oppressed goes outside the legal system to teach a lesson to the oppressor. In such a community, nobody is safe.

Conversely, some argue that the doctrine of any means necessary should not be available even under extreme conditions of subjugation. These people suggest it is better for the oppressed to suffer grinding oppression than to resort to non-legal means to change their condition. By any means necessary, however, is a doctrine of freedom. It rejects the idea that legal means should never be challenged.

In an oppressive system, any means necessary is an antithesis to legal means. This antithesis steps forward when law and order has become synonymous with oppression. The contrast between the two concepts is vivid. Law and order upholds oppressive laws as they are; any means necessary challenges these laws. Law and order proposes that any change in the system must be effectuated through the legal means; any means necessary argues that when the oppressor controls the legal means, freedom through law is impossible.

With respect to the use of force, however, law and order will allow enforcement agencies to use force if necessary against those who defy the laws of occupation, slavery, apartheid, segregation, caste system, and blatant discrimination. Consequently, any means necessary allows the oppressed to use force if necessary against those who institute occupation, slavery, apartheid, segregation, caste systems, and blatant discrimination.

Each form of oppression is unique. Therefore, no rigid formula exists defining the scope of any means necessary. The methods for fighting one form of oppression may or may not be useful for fighting another form of oppression. What might work to combat foreign occupation (such as the Soviet invasion of Afghanistan) may not work to dismantle a deeply entrenched caste system (such as the religiously-based difference between Brahmans and the untouchables). Each oppressed group must analyze the nature of their oppression to design appropriate means to reject and erase oppression.

Regardless of the form the oppression takes, Malcolm's message is the same: rise up and fight it by any means necessary. Once the oppressed become conscious of their predicament and are empowered to do something about it, they will choose freedom, independence, and self-help. Any means necessary teaches the oppressed to lose respect for the oppressor. They no longer surrender their offspring to oppression in the hope that the oppressor will mature morally; nor do they take a moral high ground to civilize the oppressor at the cost of
their own suffering. Active resistance to save honor and human dignity preempts the fear of losing one's life to the grip of oppression.

V. A HUMAN RIGHTS CONCEPT OF ANY MEANS NECESSARY

This section explains the concept of any means necessary in the normative realm of universal human rights. Malcolm’s concept of freedom restores the human dignity of the oppressed. The global movement for human rights was still in its formative stage when Malcolm launched his campaign for the freedom of blacks in the United States. Nevertheless, Malcolm refused to seek liberation through the internal legal order of an oppressive system. He argued that the oppressed must make their case before the international community. The process of seeking freedom from oppression, however, is not limited to the international community’s recognition of the human rights of the oppressed. This process must begin at home in the oppressed communities which breed disappointment, self-hatred, and violence.

In the struggle for freedom, any means necessary sets up several distinct goals. First, the oppressed must cleanse their minds of all vestiges of oppression. This self-cleansing erases the interior effects of oppression, liberates the soul, and emphasizes honor and identity. Second, they must reject all forms of dependence on the oppressor. This notion of self-help mandates that the oppressed do their best to protect and advance their communities. Third, the oppressed must be willing to use force to preserve their human dignity. Once these strategies are implemented, the oppressors will be forced to change the policies that result in subjugation; otherwise, the oppressed will use force to seek their freedom. Thus, any means necessary places an onerous burden on both the oppressed and the oppressors to change the system.

In pursuing these goals, the oppressed undergo a profound psychological transformation, and instead of begging favor from the oppressor, they demand justice. They acquire a new sense of identity;
and a new sense of dignity; and a new sense of urgency. These traits support self-cleansing, self-help, and self-defense. More importantly, they demand that the oppressed accept responsibility for their oppression and require them to do something to change their situation.

A. Psychological Transformation

The process of freedom begins with self-cleansing. The oppressed cleanse their inner beings to restore a spiritual balance. Self-cleansing empowers the oppressed to challenge their social status. It gives them a new identity. No longer are they afraid of those who have kept them down.

Malcolm suggested that fear is man's greatest enemy. Fear disables people from comprehending the condition of their oppression; more importantly, it prevents them from taking action to change their condition. Malcolm believed that education plays a critical role in overcoming fear, and it helps the oppressed rediscover "their identity and thereby increase their self-respect." Thus, Malcolm believed it was crucial for the oppressed to become educated, for when a slave is educated, he will no longer fear his master and will soon begin to demand equality.

With this new sense of identity, the oppressed begin to treat each other with kindness. A feeling of solidarity permeates the group, creating bonds of mutual affection, care, and belonging. They align themselves with similarly situated oppressed groups of the world to fortify their sense of identity. They adopt constructive attitudes to

139. MALCOLM X TALKS, supra note 3, at 46.
140. AUTOBIOGRAPHY, supra note 2, at 291. Malcolm seems to have embraced his sense of fearlessness from Islam. The Quran repeatedly teaches Muslims not to be afraid of the oppressor, as the only fear is that of God. See QURAN 3:75 (stating "It is only the Evil one that suggests to you the fear of his votaries: Be ye not afraid of them, but fear me, if ye have Faith"); see also QURAN 4:75 (stating And why should ye not fight in the cause of God and of those who, being weak, are ill-treated (and oppressed)?—Men, women, and children, whose cry is: 'Our Lord! Rescue us from this town, whose people are oppressors; and raise for us from thee one who will protect; and raise for us from thee one who will help!')
141. By ANY MEANS NECESSARY, supra note 3, at 42-44.
142. By ANY MEANS NECESSARY, supra note 3, at 43. "[T]he textbooks tell our children nothing about the great contributions of Afro-Americans to the growth and development of this country." By ANY MEANS NECESSARY, supra note 3, at 43-44. See also John Posey, WINDS OF CHANGE: BLACK LITERATURE SWEET ACROSS PUBLISHING WORLD, DALLAS MORNING NEWS, Feb. 13, 1994, at 13 (reporting that African Americans are reclaiming their literary heritage).
143. AUTOBIOGRAPHY, supra note 2, at 309.
144. MALCOLM X TALKS, supra note 3, at 45-46.
Lessons From Malcolm X

straighten out their neighborhoods, to take care of their children, and to remove drugs from their alleys and avenues. The oppressed now shun violence against their own kind and become protectors of their communities. They take matters into their own hands, for no outsider can look after their needs as well as they can; no outsider can solve their problems as well as they can.

This internal revolution within the psyche of the oppressed endows them with a new sense of dignity. The oppressed now begin to feel a deep sense of the community in terms of responsibility as well as inherent dignity. They reject the psychology of oppression which has caused self-hatred. A new sense of self-respect wakes up the oppressed "to their own humanity, to their own worth." The oppressed realize that there is nothing wrong with them as a group. They are endowed with reason and conscience, in no way inferior to anyone else—including the oppressors. They reject all theories that suggest that talents, intelligence, social skills, and physical beauty are vested in some but not others. The oppressed begin to assert themselves in all aspects of life, seeking excellence and repudiating myths and stereotypes. To further fight the effects of oppression, the oppressed reject dependence—the opium of oppression. They refuse hand-outs, charity, food stamps, temporary shelters, and emergency aid that the oppressor provides.

145. MALCOLM X TALKS, supra note 3, at 49-50. See also George C. Fraser, Excellence, Education and Perceptions: An African American Crisis, 58 VITAL SPEECHES, Nov. 15, 1991, at 74 (suggesting that race identity, self-respect, responsibility, and intellectual capital are the keys to a successful life).

146. MALCOLM X TALKS, supra note 3, at 48. See also DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992) (exploring the possibilities and ramifications of independence of white America, like building more effective all-black schools rather than integrating them); DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987). Derrick Bell's philosophy on race relations is similar to that of Malcolm X. Both blame white America in unforgiving terms. Malcolm, however, was more emphatic in placing responsibility on the oppressed, urging them to take matters into their own hands.

147. African American jazz music is an art form by which black artists have traditionally expressed and "best dealt with their humanity, their complexity, their good and bad, negative and positive aspects, without being excessively occupied with whites." Cornel West, Charlie Parker Didn't Give a Damn, 8 NEW PERSP. Q., Summer 1991, at 60.


149. Universal Declaration of Human Rights, art. 1.

150. The following passage demonstrates the need for oppressed groups to take charge of their communities and culture and express themselves in a way in which they experience life and reality. "Tired of reading about ourselves in the social science literature written by non-minorities, we want to speak for ourselves, to define, label, describe, and interpret our own condition from the 'inside out.' We feel strongly about providing a balance to the existing literature and research on Chicanos." María de la Luz Reyes & John J. Halcon, Racism in Academia: The Old Wolf Revisited, 58 HARV. EDUC. REV. 299, 306 (1988).
Self-help changes the dynamics of the struggle for freedom. It alters the psychology of the oppressed by rearranging their moral priorities. New goals are established to use all resources within the oppressed community for the benefit of the oppressed. Self-help reduces the oppressor to a formidable but not omnipotent enemy. The oppressed no longer expect the enemy to alleviate their condition of poverty, crime, lack of education, and unemployment. Instead, the will to seek freedom turns inward, marshalling inner strength to build a strong cultural and socioeconomic infrastructure, which would sustain the community, provide jobs, impart education, and preserve artistic, intellectual, and cultural resources.

The effectiveness of self-help, however, should not be exaggerated. It is a principle easy to articulate but difficult to implement. In extreme cases of subjugation, such as slavery, self-help of the oppressed is appropriated to the oppressor. If the oppressor controls the economic and legal means, the oppressed may lack the resources to build their communities. To augment their own economic and political power, oppressors exploit the resources of the oppressed. Often, oppressors will have no interest in promoting the principle of self-help. In fact, to maintain control of the legal means, they will further entrench real and psychological helplessness among the oppressed.

A new sense of urgency is the most important element of self-defense against this form of oppression. It summons the oppressed to rise up and fight to improve their circumstances. Malcolm disagreed with those "who actually believed that you could negotiate, negotiate,

151. Sharon Nelton, *Black Businesses Create A Legacy*, Nation's Bus., Aug. 1992, at 45 (noting that annual sales of the top 100 businesses owned by African Americans have increased from $500 million to $8 billion in 20 years). See also Julia Wilson, *The 'Black Gold' Rush*, Black Enterprise, Mar. 1992, at 20 (noting Oklahoma's 'Black Gold' program offers tax incentives and funding to black business enterprises that relocate in the state); Elizabeth Lesly, *Inside The Black Business Network*, Bus. Wk., Nov. 29, 1993, at 70 (demonstrating how African American business executives are investing in each other's companies to give them extra capital and a competitive edge in the marketplace); Caroline V. Clarke, *Giant Steps For Black Franchises: Savvy Entrepreneurs Are Moving Beyond One-Outlet Status To Develop Megafanchise Businesses*, Black Enterprise, Sept. 1993, at 44 (stating 26% of the franchises in the fast food industry are black owned; automobile services make up 18%; other categories include business, cleaning, personal, employment, specialty foods, travel, and car rental services). But see Earl O. Hutchinson, *The Continuing Myth of Black Capitalism*, The Black Scholar, Winter-Spring 1993, at 16 (asserting immigrants such as Koreans, Cubans, and various corporate entities and industries have received massive help from the U.S. government which has boosted them to economic success, but the black community suffers from government neglect).

152. *Have Capital, Will Flourish: Black Entrepreneurs*, The Economist, Feb. 27, 1993, at A33 (suggesting that African Americans start fewer businesses than other minorities, perhaps because they are denied access to capital due to banks' strict lending policies).
Lessons From Malcolm X

negotiate and eventually get some kind of independence." Malcom X

Moreover, he attempted to eliminate any notion of failure that might exist in the minds of those who believe that it is impossible to change their conditions. Malcolm advised that the only odds against the oppressed are their scared minds: "[w]hen you get all of that fright off of you, there is no such thing as odds against you."154 Malcolm was unwilling to compromise a sense of urgency on the ground that "things are getting better" or that "old customs die hard."155

In advocating a sense of urgency, Malcolm also rejected the idea that oppressors are morally reformable.156 For him, the very existence of oppression was sufficient proof of moral bankruptcy in those who practice it.157 Oppression is not a moral oversight or a good faith mistake that needs to be pointed out. It is a deliberate act perpetrated with premeditation and even malice. Hence, Malcolm did not see the need to engage in a drawn-out dialogue with the oppressors in an effort to point out the moral flaws of their laws and their actions.158

153. MALCOLM X TALKS, supra note 3, at 35.
154. By ANY MEANS NECESSARY, supra note 3, at 154.
155. AUTOBIOGRAPHY, supra note 2, at 422. See also Stephen Feldman, Whose Common Good? Racism in the Political Community, 80 GEO. L.J. 1835, 1837 (1992) (arguing that modern racism denies its own existence by insisting that social equality has already been achieved); see also William R. Jones, Oppression, Race and Humanism, 52 THE HUMANIST 7, 7 (1992) (maintaining that racism in the United States is caused by an imbalance of power which leads to the oppression of minorities).
156. MALCOLM X TALKS, supra note 3, at 71. “That’s why I say, in Mississippi you can love all you want. They don’t recognize love, they recognize power. Power.” MALCOLM X TALKS, supra note 3, at 71; see also QURAN 2:10 (stating “In their hearts is a disease; And God has increased their disease; and grievous is the penalty they [incur]: because they are false to themselves”) QURAN 2:18 (stating “Also, deaf, dumb and blind, they will not return [to the path]”). These verses show that certain people do not change through a moral dialogue, particularly if they are false to themselves. But cf. Mohandas Gandhi, Non-Violence, in CIVIL DISOBEDIENCE AND VIOLENCE 93, 96 (Jeffrie Murphy ed., 1971) (asserting that oppressors should be reformed through “loving ways”); Martin L. King, Jr., Love, Law and Civil Disobedience, 16 NEW SOUTH 1961 (adhering to reformist attitudes similar to Ghandi’s).
157. By ANY MEANS NECESSARY, supra note 3, at 42. “Tactics based solely on morality can only succeed when you are dealing with people who are moral or a system that is moral. A man or a system which oppresses a man is not moral.” By ANY MEANS NECESSARY, supra note 3, at 42.
158. MALCOLM X, MALCOLM X SPEAKS 40 (George Breitman ed., 1965) “Uncle Sam has no conscience. They don’t know what morals are. They don’t try and eliminate an evil because it’s evil, or because it’s illegal, or because it’s immoral; they eliminate it only when it threatens their existence.” Id. See also DERRICK BELL, RACE, RACISM AND AMERICAN LAW 39 (2d ed. 1980) (arguing that the condition of oppression against blacks changes only when it is in the interest of white society) Derrick Bell, Brown v. Board of Education and the Interest-Convergence Dilemma, 93 HARV. L. REV. 518 (1980) (contending that the 1954 desegregation decision, Brown v. Board of Education, was not a moral act but was done to promote white self-interest). See also Amartya K. Sen, Rational Fools: A Critique of the Behavioral Foundations of Economic Theory, in BEYOND SELF-INTEREST 25-43 (Jane Mansbridge ed., 1990) (suggesting that the concept of self-interest as a vehicle for social change is often exaggerated).

1994]
In fact, Malcolm went further and asserted that oppressors use subtle, deceptive, and deceitful methods to create an impression that things are getting better.\textsuperscript{159} This observation is accurate to the extent the oppressors may enact laws that appear to imply to the rest of the world that everyone receives equal respect and treatment in their system. In reality, however, the system remains the same or sometimes even gets worse.\textsuperscript{160} The amendments in the law may remove the physical chains from the ankles of the oppressed. Malcolm warned, however, that there is no need to celebrate this change in law if the oppressors have already chained the minds of the oppressed.\textsuperscript{161}

To free the subjugated minds of the oppressed, Malcolm proposed a massive psychological transformation. He attempted to restore their confidence in themselves and to sharpen their sense of responsibility. Malcolm directly attacked the psychology of subordination, which portrays the oppressed as a helpless crowd waiting for a savior from the ranks of the oppressors. Thus, the illusion that the oppressor is the ultimate messiah was finally shattered. By taking their destiny in their own hands, the oppressed would embrace self-help as the ultimate principle of durable freedom.\textsuperscript{162}

This, however, is not the end of the struggle. If oppressors are determined to impose helplessness on the oppressed and frustrate their efforts for self-cleansing and self-help, the oppressed must resort to self-defense. They must not hesitate to use force against force to preserve their human dignity.

B. Changing the Struggle from Civil Rights to Human Rights

Any means necessary is not a theory of aggression. It is a framework that Malcolm intended to be used as a tool in confronting various forms of oppression. A key question in the complex equation of

\textsuperscript{159} Malcom X Talks, supra note 3, at 24. Malcolm attempted to ensure that those who were oppressed did not fall prey to these misperceptions.

So my contention is that we are faced with a racialistic society, a society in which they are deceitful, deceptive, and the only way we can bring about a change is to talk the kind of language—speak the language that they understand. The racialists never understand a peaceful language. The racist never understands the nonviolent language. The racist we have, he's spoken his language to us for four hundred years.

\textsuperscript{160} Malcom X Talks, supra note 3, at 24.

\textsuperscript{161} By Any Means Necessary, supra note 3, at 80.

\textsuperscript{162} See, e.g., Walter E. Williams, The State of Mind That Promotes Wealth, SAT. EVENING POST, Jan.-Feb. 1993, at 33 (arguing wealth is possible when motivation, self-discipline, self-respect, and honesty are combined with freedom of exchange, protection of property, respect for contracts, and preservation of the right to earn at the social level).
any means necessary is the definition of oppression. Violence will replace social order if denial of every right and liberty is a legitimate cause for rebellion. Malcolm refuses to define oppression as a mere negation of civil rights. Instead, he invokes universally recognized human rights as the basis to identify the oppressed of the world. This shift from civil rights to human rights gives a new meaning to the concept of any means necessary.

Civil rights are derived from the national legal order. Their scope, availability, and continued existence depend upon political and judicial forces within a nation-state. Successive political majorities may modify the reach of civil rights by expanding or contracting the categories of the people entitled to these rights. If civil rights are subject to judicial interpretation, judges may expand or constrict the availability of these rights. This ephemeral nature of civil rights does not make the national legal order a dependable source for either defining oppression or providing permanent relief from it.

The reality is that the oppressor in control of the legal means is also in charge of the civil rights. There are many ways in which the oppressor may recognize civil rights in law but deny them in practice. If the system is under the command of the oppressor, the legislature may distort the rights recognized in the constitution; the judge may

163. MALCOLM X TALKS, supra note 3, at 67. ("So instead of launching our struggle at the civil rights level that would cause a whole lot of argument, we launched it at the human rights level.") MALCOLM X TALKS, supra note 3, at 67. Malcolm knew that an appeal for human rights would be more effective than a struggle for civil rights. "[B]y shifting his entire position from civil rights to human rights, [the Negro] puts it on the world stage and makes it possible where today he no more has to rely on only the white liberals within continental United States to be his supporters." MALCOLM X TALKS, supra note 3, at 45.

164. BY ANY MEANS NECESSARY, supra note 3, at 7-8. Malcolm consistently emphasized the importance of making the struggle one of human rights: "Once the civil rights movement is expanded to a human rights movement then they would be eligible to take the case of the Negro to the United Nations . . . ." BY ANY MEANS NECESSARY, supra note 3, at 7; "It must be human rights. So the best thing for you to do, who are liberals, is to go to the UN and get all the books on human rights." BY ANY MEANS NECESSARY, supra note 3, at 24; "So we must take it out of the hands of the United States government. And the only way we can do this is by internationalizing it and taking advantage of the United Nations Declaration of Human Rights . . . ." BY ANY MEANS NECESSARY, supra note 3, at 57; "The price to make others respect your human rights is death . . . . This is what you have to say. Respect me, or put me to death. But when you start to put me to death, we're both going to die together. You have to say that." BY ANY MEANS NECESSARY, supra note 3, at 86-87.

165. MALCOLM X TALKS, supra note 3, at 57. Malcolm believed that a civil rights struggle in this country would be inevitably futile.

So when we saw that we were up against a hopeless battle, we saw the necessity of getting allies at the world level or from abroad, from all over the world. And so immediately we realized that as long as the struggle was a civil rights struggle, was under the jurisdiction of the United States, we would have no real allies or real support. MALCOLM X TALKS, supra note 3, at 57.
diminish the rights granted in the statutes; and the police may simply breach with impunity even the most basic rights entrenched in law. "This is the trickery" by which the oppressor grants rights with one hand and takes them away with the other.\textsuperscript{166} Malcolm characterizes the civil rights movement as "a hopeless battle."\textsuperscript{167} The problem with a civil rights struggle is that the oppressed can only go forward to the degree that the oppressors will allow.\textsuperscript{168} Seeking civil rights as a relief from oppression may be a tragic admission by the oppressed that the oppressor alone has the authority to come to their rescue and lift the siege of oppression.\textsuperscript{169}

For these reasons, Malcolm had no faith in a civil rights struggle waged within the jurisdiction of an oppressive system. As long as the oppressed carry on their struggle in a manner that involves only the goodwill of internal forces of an oppressive system, Malcolm argued, no real changes will be made because there is no guarantee that those who possess the legal authority to grant and protect civil rights are on the side of the oppressed.\textsuperscript{170} In fact, Malcolm would suggest that as long as the oppressed are engaged in a civil rights struggle they are asking for rights at a level where the so-called benefactor is actually the powerful oppressor.

Furthermore, Malcolm points out that the oppressor wants to feel noble by throwing crumbs to the oppressed.\textsuperscript{171} Because a civil rights struggle is waged within the national legal system, the oppressed are forced to ask for a change from those who control the legal means. They appeal to the goodness of the oppressor, making moral arguments that the oppressor must change and allow the oppressed to ben-

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{166} \textit{By Any Means Necessary}, supra note 3, at 78.
\item\textsuperscript{167} \textit{Malcolm X Talks}, supra note 3, at 57.
\item\textsuperscript{168} \textit{Malcolm X Talks}, supra note 3, at 57 (arguing that the most powerful congressmen and senators from the South who could have brought change were not sympathetic to the plight of the oppressed. In fact, some of them heightened the oppression).
\item\textsuperscript{169} \textit{See Walter Williams, Affirmative Action Symposium: The False Civil Rights Vision}, 21 GA. L. REV. 1119 (1987) (arguing that the first premise of the civil rights vision states that discrimination causes an adverse effect on the group discriminated against; however, this premise does not hold up in the case of Japanese-Americans, who despite blatant discrimination, achieved great socio-economic success).
\item Professor Williams' argument must be accepted with caution. Discrimination by the powerful might lead a disfavored community to look inward for social and economic strength. This "China town" attitude could be very helpful in creating strength out of discrimination. However, discrimination will have a devastating effect on those who wish to join the mainstream power structures.
\item\textsuperscript{170} \textit{Malcolm X Talks}, supra note 3, at 57.
\item\textsuperscript{171} \textit{Autobiography}, supra note 2, at 315.
\end{enumerate}
\end{footnotesize}
Lessons From Malcolm X

efit from the same system that the oppressors have put in place for their own kind.\textsuperscript{172}

This approach is similar to the one where the poor solicit charity from the rich by praising their abundance of fortune, their nobility of character, and their generosity to share a part of their riches with those who have nothing to eat. The act of charity ennobles the rich, making them feel good about themselves and reminding the poor at the same time that the rich were under no obligation to be beneficent.

Similarly, in a civil rights movement any concessions given by the oppressor are portrayed to the public as deeds of virtue signifying the inherent goodness of the people in power. The oppressed wage a civil rights movement to demand the rights and liberties that they deserve. Yet, underlying such a movement is the cruel irony that by conceding these rights to the oppressed, the oppressors do not admit fault but congratulate themselves for being good and morally upright.

Instead of civil rights, Malcolm’s philosophy invokes the concept of human rights both to define oppression as well as to seek relief from the oppressors.\textsuperscript{173} “Human rights! Respect as human beings!” Malcolm would argue that this is the true problem.\textsuperscript{174} The oppressed do not want to “be walled up in slums, in the ghettos like animals. They want to live in an open, free society where they can walk with their heads up, like men, and women.”\textsuperscript{175} Malcolm proposed that the oppressed look for help beyond the boundaries of oppression so that their story could be told to the world and to similarly situated people who understand the nature of oppression. The oppressed should change the nature of moral discourse and “take it away from the civil rights label, and put in the human rights label.”

\textsuperscript{172} See Kimberle W. Crenshaw, \textit{Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-discrimination Law}, 101 \textit{Harv. L. Rev.} 1331, 1384-85 (1988) (arguing that the rights have been important in that they make the oppressed “formal equals,” while some legal scholars argue that the discourse of rights is harmful to the liberation movements because they deradicalize the oppressed). \textit{See also} Robert A. Williams, Jr., \textit{Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples’ Survival in the World}, 1990 \textit{Duke L.J.} 660 (1990) (arguing that by asserting rights in law-bound settings around the world, indigenous peoples have sought to redefine the terms of their right to survival under international law).


\textsuperscript{174} \textit{Autobiography}, supra note 2, at 313.

\textsuperscript{175} \textit{Autobiography}, supra note 2, at 313.
The two types of rights have distinctive normative assumptions. Civil rights flow from the values of those in power; human rights originate in the universal values of the peoples of the world.\textsuperscript{176} Civil rights are derived from a national statute or a constitution over which the oppressors might have full control; human rights are rooted in the inherent dignity of all members of the human family. Civil rights are administered within the jurisdiction of a nation-state; human rights are monitored in global forums.\textsuperscript{177} Those in power may manipulate the interpretation and enforcement of civil rights, but violations of human rights will expose the oppressors. By granting civil rights, those in power assert their own moral virtuousness as if they were under no prior obligation to extend these rights to all; by recognizing human rights, those in power must acknowledge their legal and moral duty to have respect for every human being.\textsuperscript{178} The oppressors must further admit that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind,"\textsuperscript{179} and that they have been morally insincere and uncivilized in their treatment of other human beings.

One might argue that human rights would not provide any relief to the oppressed unless the laws within an oppressive system change and protect these rights. The human rights movement, however, pressures national systems to incorporate human rights into their national laws and to actively protect them. Thus, the human rights movement has weakened the notion of national sovereignty that the oppressors may invoke to repel external criticism and to defend their actions within the boundaries of the nation-state. The oppressors can deny and cover up abuses of human rights, but no longer can they argue that they are beyond the reach of global scrutiny, nor can they take an insupportable moral high ground that their system is better than others. They must show compliance with human rights, otherwise the world will lose respect for them. This moral revolution in human civilization has subordinated civil rights to human rights. Even though


\textsuperscript{177} Id. at 9.

\textsuperscript{178} Many regional and global institutions exist to expose human rights abuses committed within the nation state. Although many states are reluctant to concede jurisdiction to international tribunals, no state may claim a degree of sovereignty which would absolutely exclude global scrutiny. Human rights, however, may also be litigated in domestic courts. See Richard B. Lillich, \textit{Invoking International Human Rights Law in Domestic Courts}, 54 \textit{U. CIN. L. REV.} 367 (1985).

\textsuperscript{179} Universal Declaration of Human Rights, Dec. 10, 1948, pmbl.
the human rights movement gathered its current momentum long af­

ter Malcolm’s assassination, one must recognize that Malcolm made a

prophetic and sound distinction between the two types of rights.

Malcolm’s doctrine of any means necessary remains confusing in

the context of a civil rights struggle. If a civil rights movement is

seemingly successful and if those in power are morally yielding to the

demands of the oppressed, the threat of any means necessary will slow

down the process of change. Those in power will harden their atti­

dudes in the face of threats and refuse to pass the necessary legislation

for the protection of civil rights. One might further argue that if those

in power are willing to change the system and have already done so to

some extent, it is ungrateful on the part of the oppressed to deny the

gains made in the past and resort to defiance, rebellion, or violence.

As noted above, however, this line of reasoning draws its force from

the mistaken notion that it is the oppressor's generosity versus legal

obligation to recognize civil rights for all.

The doctrine of any means necessary becomes powerful and mor­

ally defensible when it is analyzed in the context of human rights.

Human rights obligations begin with a simple truth that “all human

beings are born equal in dignity and rights.” Any systematic viola­

tion of the basic human dignity of a group is oppression. Accordingly,

those who control the legal means are under a clear obligation to pro­

mote and protect respect for fundamental human rights and freedoms.

The protection of these rights for all is a duty and not an act of charity

or a gesture of concession or goodwill on the part of those in power.

Once this legal obligation is clearly articulated, the definition of

oppression becomes apparent. Hence, any systematic denial of

human rights constitutes oppression. Any violation of human rights

must be condemned and corrected. This does not mean that individu­

als are allowed to resort to any means necessary whenever they sub­

jectively conclude that they have been oppressed. Such a definition of

oppression would weaken the very concept of social order without

which no rights and freedoms can be realized. Nor should the doc­

trine of any means necessary be the option of first resort, even if there

is a systematic violation of human rights.

Malcolm anchored the concept of freedom in the normative

framework of human rights. His doctrine of any means necessary

---

must, therefore, be defined in the same context. The Universal Declaration of Human Rights explicitly recognizes the circumstances under which the oppressed will lose hope in the legal system and decide to rebel. It states, "if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, human rights should be protected by the rule of law."\textsuperscript{182} From an analytical viewpoint, the Declaration raises important points.

First, it recognizes that the denial of human rights constitutes tyranny and oppression. It makes a descriptive statement that if oppression is not vacated, the oppressed may resort to rebellion. Within this descriptive statement, however, the Declaration introduces a normative standard by stating that rebellion should be the last resort. In its total effect, the Declaration supports Malcolm's doctrine that if an oppressed group has failed to obtain protection of their human rights through legal means, they are entitled, as a last resort, to seek freedom by any means necessary. What appears to be a theory of violence in the context of civil rights assumes an irrebuttable normative character in the context of human rights.

In the concentric context of the Universal Declaration of Human Rights and the teachings of Malcolm, an oppressed group must satisfy the human rights test before resorting to any non-legal means to obtain freedom. The group must anchor its claim of oppression in universally recognized human rights. Civil rights and liberties are important entitlements within a national legal system, and their significance to individuals should not be minimized. Nor should it be suggested that the denial of civil rights on the basis of unlawful discrimination be accepted without protest. Often there is no definitional or conceptual difference between civil and human rights since negation of one will be rejection of the other. Nonetheless, not all civil rights recognized in a particular legal system are universally recognized as human rights. Civil rights may vary from country to country, thus rights granted in one legal system may not qualify as rights in the other. In this context, a mere denial of civil rights not broadly recognized by the international community as human rights will be a case outside of the doctrine of any means necessary.

The oppressors may refuse to acknowledge the international regime of human rights. They may attack the conceptual roots of human rights, arguing that there exists no universal basis to formulate

\textsuperscript{182} Universal Declaration of Human Rights, Dec. 10, 1948, pmbl.
human rights for all. They may invoke their unique culture or religion to contest the nature and scope of human rights. They may accept human rights covenants with reservations. They may mythologize their constitutions to argue their internal normative order is superior to the global regime of human rights. They may refuse to cooperate with international agencies to monitor human rights violations within their jurisdictions. They may adopt a jurisprudence of oppression under which the domestic law, no matter how unjust, is superior to the provision of a human rights obligation. All these political and legal barriers to the recognition of human rights, however, cannot shield the oppressor from global scrutiny. National sovereignty is no longer an acceptable legal basis to defend the perpetration of oppression.

A group whose human rights are systematically abused often seek, and may even obtain, the attention of the global community. Malcolm repeatedly argued that the case of oppression against blacks in the United States should be internationalized. Oppressed groups in South Africa, Israel, and Afghanistan actively pursued their cases in the United Nations and other international bodies. Internationalization of an oppressive situation provides an opportunity for the global community to objectively determine the nature of the oppression. If the global community supports the oppressed group, the oppressor can no longer argue that the oppressed are just a group criminals or terrorists.

If the oppressor ignores the pressure of the international community and refuses to alleviate the human rights abuses, the doctrine of any means necessary gathers moral and legal force. The oppressed can

---

183. MALCOLM X TALKS, supra note 3, at 43. "This is the American way. This is the American democracy that she tries to sell the whole world as being that which will solve the problems of other people too. It's the worst form of hypocrisy . . . ." MALCOLM X TALKS, supra note 3, at 43.


185. BY ANY MEANS NECESSARY, supra note 3, at 7-8 (citing an interview by A.B. Spellman, New York (Mar. 19, 1964) (stating “Once the civil rights movement is expanded to a human rights movement, our African brothers and our Asian brothers and our Latin American brothers can place it on the agenda at the General Assembly. . . .”) BY ANY MEANS NECESSARY, supra note 3, at 7-8.

now make a legally defensible case consistent with the law of human rights, that the peaceful legal means available within the national order do not provide a remedy. In fact, they may successfully argue that the legal means under the control of the oppressor constitute a source of oppression. If the oppression is maintained, the international community will understand why the oppressed will no longer subject themselves to the brutality of the system and why for them, law and order has no moral justification.

VI. CONCLUSION

Malcolm’s concept of any means necessary rejects the oppressor’s normative system because historical hindsight convinced him that the oppressor is morally unteachable. Instead of putting their faith in civil rights granted within the oppressive legal system, the oppressed should invoke universally accepted human rights to fight oppression. This normative shift from civil rights to human rights creates a new psychology of freedom. No longer would the oppressed depend upon the national legal system to derive their human dignity. Realizing that legal means constitute the source of power, the oppressed must participate in the legal system to obtain some control over the legal means. They must take charge of their communities by exercising the principle of self-help, establishing businesses, and building cultural, and social institutions. The oppressed must eradicate social evils such as drugs, violence, and other artifacts of powerlessness and lack of self-respect. Furthermore, they must adopt a militant attitude toward the oppressor and refuse to be subjugated on a permanent basis.

Those who are oppressed would benefit greatly by bringing their situations to the attention of the international community to expose the oppressor as well as the nature of oppression. If the international community supports their movement for liberation, it would pressure the oppressor to lift the state of oppression. If the oppressor refuses to remove oppression, the argument for the use of any means neces-

Lessons From Malcolm X

necessary gathers moral and legal momentum. Under such circumstances, those who are oppressed must be willing to take Malcom's advice and liberate themselves from the status quo by any means necessary.